

# RAJASTHAN HIGH COURT

Bija Ram

Vs.

Union of India

S.B. Civil Writ Petition No. 3484 of 2002

(Sunil Kumar Garg, J.)

24.09.2002

## JUDGMENT

**Sunil Kumar Garg, J.**

1. All the afore-mentioned fifty writ petitions are being decided by this common order as in all of them identical and similar questions of law and facts are involved.

*S.B. Civil Writ Petition No. 3484/2002*

2. This writ petition under Articles 226 and 227 of the Constitution of India has been filed by the petitioner on 11.9.2002 against the respondents with the prayer that by an appropriate writ, order or direction, the order dated 9.1.2001 (Ex.1) passed by the respondent No. 1, Air Officer Commanding & Estate Officer, Air Force Station, Jodhpur by which he in exercise of the power conferred under the provisions of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as "the Act of 1971") ordered the petitioner and other persons to vacate the premises in their occupation mentioned in schedule within 15 days of the date of publication of that order and the judgment dated 13.8.2002 (Ex.2) passed by the learned Addl. District Judge No. 2, Jodhpur (respondent No. 3) by which the appeal of the petitioner against the order Ex. 1 was dismissed, be quashed and set aside and the respondents No. 1 and 2 be restrained from interfering with the petitioner's peaceful possession and enjoyment of the property in dispute.

3. The case of the petitioner as put forward by him in this writ petition is as follows:-

The case of the petitioner is that he has his immovable property i.e. residential house in Haripura Vyas Colony (for short "Colony") located towards east of the

old Jodhpur-Pali Road near the Air Force Area Jodhpur. According to the petitioner, the said Colony is in existence for more than 30 years and the persons residing in this Colony including the petitioner have constructed their own houses and are living there with their families. They have their family ration cards, water and electricity connections and sewerage line connected with the sanitary line constructed by the Urban Improvement Trust, Jodhpur and the names of the eligible electors appear in the voter lists of the Lok Sabha, Rajasthan Vidhan Sabha and the Municipal Corporation of Jodhpur. Identity cards have also been issued to them.

The further case of the petitioner is that a survey was got conducted by the Urban Improvement Trust, Jodhpur time and again and ultimately the State Government took a decision to regularize the inhabitants of this Colony by issuing licenses and lease deeds in their favor. When the Urban Improvement Trust started issuing lease deeds, objections were raised on behalf of the respondent's No. 1 and 2 not to issue leases. The respondents No. 1 and 2 claimed that the colony is habited on the land belonging to the Air Force. When a threat of demolition and dispossession was raised, number of persons residing in the Colony approached civil court for redress against the respondent No. 2 and so also the Urban Improvement Trust, Jodhpur. A dispute was raised in between the defendants i.e., the respondents No. 1 and 2 on the one hand and the Urban Improvement Trust, Jodhpur, on the other hand as to whom the land under the colony belonged. Since the old and established possession was there the civil court issued an order that persons in established possession cannot be dispossessed without following due process of law. The Urban Improvement Trust categorically stated before the civil court that in case land belongs to the Trust they are going to regularize possession by issuing title deeds. The further case of the petitioner is that when a title is disputed as to whether the land belonged to the Government and vested in the Urban Improvement Trust or whether it belonged to the Air Force, the same can only be decided by a competent civil court or the revenue court by a regular suit. The further case of the petitioner is that the respondent No. 2 Estate Officer gave a notice under Section 4 of the Act of 1971 nearly to 61 persons (inhabitants of that Colony) and all persons submitted their replies and alleged that the respondent No. 2 had no jurisdiction whatsoever to issue any notice to them as the land in dispute does not belong to Air Force and, therefore, the proceedings initiated under the provisions of the Act of 1971 are contrary to law and in view of this fact, order Ex. 1 passed by the respondent No. 2 cannot be sustained.

Apart from this, it has been further submitted by the petitioner that the land as alleged by the respondent No. 2 belongs to the Air Force and the respondent No. 2 himself is the Estate Officer i.e. Judge in his own cause and passed the order Ex. 1 under Section 5 of the Act of 1971 and, therefore, order Ex. 1 itself is vitiated since no one can be a Judge in his own cause. From this point of view also, order Ex. 1 cannot be sustained. The further case of the petitioner is that the respondent No. 2 Estate Officer took a subjective decision and passed an order Ex. 1 against the petitioner and other persons. Aggrieved from that order Ex. 1, all the persons including the present petitioner preferred an appeal under Section 9 of the Act of 1971 before the Appellate Authority i.e. respondent No. 3 Addl. District Judge No. 2, Jodhpur, but the respondent No. 3 dismissed the appeal of 56 persons vide judgment dated 13.8.2002, a copy of which is marked as Ex. 2. Hence, this writ petition with the prayers as stated above.

In this writ petition, the following submissions have been made by the petitioner :-

- (i) That the Colony is habited in Khasra No. 676 and admittedly 92 bighas 7 biswas of land of that khasra vests in the Urban Improvement Trust, Jodhpur and 41 bighas 6 biswas of land belongs to the Defense Department. The dispute is as to on which part the petitioner and other inhabitants (other petitioners) of that Colony have their residential houses. When the dispute was raised before the *Tehsildar*, Jodhpur, the *Tehsildar* vide letter dated 5.7.1999 categorically stated that it was not possible to identify the land separately. But, even then in Ex. 3, the land of Khasra No. 676 belonging to the Colony was marked as belonging to Defense Department and these wordings on the schedule annexed with Ex. 3 were written without any basis and the findings recorded by the respondent No. 2 Estate Officer in his impugned order Ex. 1 and similarly by the respondent No. 3 Addl. District Judge No. 2 in his judgment Ex. 2 were based on these wordings and thus, the findings of the respondents No. 2 and 3 are perverse and erroneous one and should be set aside.
- (ii) That the dispute can only be decided by civil or revenue courts and not by the respondent No. 2 Estate Officer, who himself is a party and who himself started the proceedings.
- (iii) That unless a clear demarcation is made of Khasra No. 676 by a competent court, no proceedings can be initiated by the respondent No. 2 Estate Officer.
- (iv) That the respondent No. 3 Appellate Authority during the course of hearing of appeals called for relevant record and a persual of letter dated 5.7.1999 written by the *Tehsildar*, Jodhpur to the Secretary, Urban Improvement Trust,

Jodhpur reveals that the houses constructed in that Colony were not in a properly demarcated manner and from letter Ex. 4 dated 16.5.2001, which was written by the Secretary, Urban Improvement Trust, Jodhpur to the Addl. District Judge No. 2, Jodhpur (respondent No. 3), it further appears that from Khasra No. 676, 92 bighas 7 biswas of land was allotted to the Urban Improvement Trust, Jodhpur and 41 bighas 6 biswas of land was allotted to the Defense Department, but the persons, who were in occupation and possession were demanding regularization of their plots etc. Therefore, it has been submitted by the petitioner that even Ex. 4 does not make out the position clear about the demarcation of the land. Hence, the present dispute is as to whether the land in dispute belongs to the UIT or to the Air Force and that can only be decided by revenue or civil court after taking evidence in accordance with law and not in the manner as has been done by the respondent No. 2 through Ex. 1.

A reply to the writ petition was filed by the respondents No. 1 and 2 and it has been averred by them that the petitioner has suppressed an important aspect of the case that the petitioner filed a civil suit being suit No. 206/99 before the Court of Additional Civil Judge (Junior Division) No. 2, Jodhpur and the said suit was partly allowed on technical ground vide judgment and decree dated 21.4.2001 and the copy of said judgment and decree was produced by the learned counsel for the respondents during the course of arguments and the same is marked as C-1 and in the said judgment C-1, the present petitioner and other petitioners were treated as trespassers. (The details of the judgment C/1 shall be discussed later on at appropriate place). It has been further averred by the respondents that since the petitioner was in un-authorized occupation of the land in dispute, therefore, proceedings under the provisions of the Act of 1971 were rightly initiated against him by the respondent No. 2 and, therefore, order Ex. 1 passed by the respondent No. 2 Estate officer and judgment Ex. 2 dated 13.8.2002 passed by the respondent No. 3 Appellate Authority cannot be challenged. It has been further averred by the respondents that since the petitioner has been adjudged as trespasser by the competent civil court, therefore, he has no right whatsoever over the land in dispute and furthermore, he is not entitled to get any relief under Article 226 of the Constitution of India because he has no enforceable right to remain on the land in question and since through judgment and decree dated 21.4.2001 (C-1), a finding has been given by the civil court that the respondent No. 1 is the owner of the land in dispute, therefore, from this point of view also, the petitioner has got no case. Hence, it was prayed that the writ petition filed by the petitioner be dismissed.

4. I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and gone through the materials available on record.

5. Before proceeding further, one thing has to be kept in mind that the petitioner first approached the competent civil court by filing a civil suit for permanent injunction and that suit was decided by the learned Addl. Civil Judge (JD) No. 2, Jodhpur through judgment and decree dated 21.4.2001 (C-1). It may be stated here that the petitioner at page No. 4 of the writ petition has indirectly made reference of that judgment by observing that the matter was decided by the civil court in the manner that the persons in established possession could not be dispossessed without following the due process of law. But, it is surprising to note that the petitioner has not made reference in clear terms about the judgment C-1 in which he himself was plaintiff. Whether this fact amounts to concealment of materials fact or not, it would be discussed later on.

6. In the judgment (C-1) dated 21.4.2001, the following findings were recorded by the learned Addl. Civil Judge (JD) No. 2, Jodhpur:-

- (i) That the petitioner has failed to establish his title over the land in dispute.
- (ii) That the possession of the petitioner over the land in dispute was found, but in capacity as trespasser.
- (iii) That in para No. 17 of that judgment, the learned Addl. Civil Judge has given the categorical finding that from the records and documents, the ownership of the defendants No. 1 to 3 of that suit meaning thereby present respondent No. 1 Union of India was found on the land in dispute.
- (iv) That since the defendants No. 1 to 3 (respondent No. 1 Union of India) was the owner of the land in dispute and since the possession of the plaintiff (present petitioner) was found to be of trespasser, after placing reliance on the judgment of the Hon'ble Supreme Court in *Prataprai N. Kothari v. John Braganza*,<sup>1</sup> it was observed by the learned Addl. Civil Judge that the petitioner could not be dispossessed otherwise than in due course of law.

Thus, the suit of the plaintiff (present petitioner) was decreed partially in the manner as stated above.

7. There is no dispute on the point that the petitioner has not preferred any appeal against the judgment and decree (C-1) dated 21.4.2001 passed by the learned Addl. Civil Judge (JD) No. 2, Jodhpur and thus, the findings, recorded in that judgment (C-1), as mentioned above, should be taken as final so far as the disposal of the present writ petition is concerned.

8. The question for consideration is whether the action of the respondents No. 1 and 2 in evicting the petitioner from the land in dispute under the provisions of the Act of 1971 can be said to have been taken under the phrase "due process of law" or not.

9. To meet out the above question, the object of the Act of 1971 and the findings recorded by the learned Addl. Civil Judge (JD) No. 2, Jodhpur in the judgment (C-1) dated 21.4.2001 have to be kept in mind.

*Object of the Act of 1971*

10. The Act of 1971 was enacted to provide for a speedy machinery for the eviction of unauthorized occupants of public premises and certain incidental matters, keeping in view at the same time the necessity of complying with the provisions of the Constitution. The Estate Officer has been empowered to evict persons in unauthorized occupation of Public Premises. Reasonable opportunity has to be given to the persons affected to show cause against the proposed order of eviction and also to present their cause to the Estate Officer at the time of enquiry. The provisions for a fair hearing before Estate Officer, and that of an appeal against their orders to an independent judicial officer will be a safe guard against any arbitrary exercise of powers by the estate officers.

*Scope of the Act of 1971*

11. The Act of 1971 deals with two aspects (i) Eviction of un-authorized occupants and (ii) Certain consequential and incidental matters against continuation of unauthorized occupation. The Act of 1971 deals with "Public Premises" as distinguished from "Private Premises". Hence provisions of Transfer of Property Act etc. even though they are analogous and synonymous to the provisions of eviction in general of the occupants cannot be attracted for the purposes of enabling a person to claim protection against eviction. The provisions of Sections 4 and 5 of the Act of 1971 enable the Estate Officer to terminate, to launch and to pass eviction orders in

consonance with the rules laid down under the Act of 1971. The provisions of the Act of 1971 will supersede the provisions of general law, because of its specialization in substantive as well as procedural matters.

12. The word "Unauthorized occupation" has been defined in Section 2(g) of the Act of 1971 and for convenience, the same is quoted here :-

"(g) "Unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

13. The expression "unauthorized occupation", in relation to any public premises means the occupation by person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises, after the authority (whether by way of grant, or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined.

14. The definition envisages two classes of occupants:-

- (i) who are in occupation without any authority and
- (ii) whose occupation at inception was lawful but it rendered unlawful because of determination or term of lease has expired.

15. It may further be stated here that the provisions of the Act of 1971 are applicable to eviction of persons whose occupation is unauthorized.

16. In the present case, the civil court has categorically observed that the possession of the petitioner over the land in dispute was nothing but was of a trespasser.

17. If the facts of the present case are seen, it appears that there was khasra No. 676, out of which, 92 bighas 7 biswas of land was allotted to the Urban Improvement Trust, Jodhpur and 41 bighas 6 biswas of land was allotted to the respondent No. 1. The petitioner impleaded both Urban Improvement Trust, Jodhpur and respondent No. 1 Union of India as party to the civil suit filed by him before the Court of Addl. Civil

Judge (JD) No. 2, Jodhpur for permanent injunction in which the judgment and decree (C-1) was passed. The petitioner has himself asserted that there is a dispute between the Urban Improvement Trust, Jodhpur and the respondent No. 1 on the point as to which part of Khasra No. 676 is in occupation of the UIT and which part is in occupation of respondent No. 1 and since through Ex. 3 it was stated that the land in dispute of the Colony fell in the share of Defence Department, therefore, he was treated to be trespasser.

18. In my considered opinion, the land in dispute where the petitioner constructed his house and living with his family falls in the share of Urban Improvement Trust, Jodhpur or Defense Department is a different matter, but the question is that the petitioner is not the owner of that land and owner according to the petitioner is either Urban Improvement Trust or the respondent No. 1, but the civil court through judgment C-1 has categorically given finding that the respondent No. 1 is the owner of the land in dispute. In these circumstances and for the sake of argument, it may be a dispute between the Urban Improvement Trust and the respondent No. 1, but so far as the petitioner is concerned, he is not the owner of the land in dispute and his occupation and possession in that land is nothing but was of trespasser because of the simple reason that there is no documentary evidence to show that the land in dispute was ever given to him on lease or on license or in any other manner he was put in possession meaning thereby the findings recorded by the civil court in the judgment C-1 clearly reflect that the petitioner's possession over the land in dispute was of trespasser.

19. Apart from this, occupation of a person, on the plain language of the definition, would become unauthorized only if the public premises are occupied by a person without any authority whatsoever. In the present case, the petitioner has not shown any authority showing in what capacity he is in possession of the land in dispute.

20. When this being the position, the petitioner's occupation over the land in dispute can be adjudged as un-authorized occupation as defined in clause (g) of Section 2 of the Act of 1971.

21. Thus, initiation of proceedings under Section 5 of the Act of 1971 by the respondent No. 2 Estate Officer against the petitioner can be justified.

*Maxim 'no one shall be judge in his own cause'*

22. No doubt the respondent No. 2 passed the order Ex. 1 in capacity as Estate Officer, but he was also Air Officer Commanding, Air Force Station, Jodhpur. It may be stated here that under the provisions of Section 3 of the Act of 1971, the appointment of Estate Officer is made.

23. The maxim that no one shall be judge in his own cause only means that he should not have private interest in the case he is to adjudicate. Estate Officer discharges his official function under the law. He acts as a Tribunal and has no private interest. He cannot be said to be both the prosecutor and the judge. He is competent to order eviction.

24. "Persona designata" are persons selected to act in their private capacity and not in their capacity as judges or as holder of other office.

25. Since the Estate Officer discharges public duties not in private capacity, but in capacity as Judge, therefore, he cannot be designated as a persona designata. Thus, since he acts as a Tribunal and has no private interest, therefore, he is competent to order eviction.

26. Furthermore, in my considered opinion, appointment of Estate Officer is not violative of principles of natural justice nor arbitrary and Section 3 of the Act of 1971 is constitutionally valid.

27. Since the orders passed by the Estate Officer under Section 5 of the Act of 1971 are appealable under Section 9 of the Act of 1971 and the appeals are being heard by the civil court of the cadre of Addl. District Judge and, therefore, such orders passed by the Estate Officer are scrutinized by the civil court of competent jurisdiction. Thus, from this point of view also, it cannot be said that arbitrary power is given to the Estate Officer in deciding the matter. Therefore, it cannot be said that whatever is decided by the Estate Officer is a final verdict.

28. Therefore, order Ex.1 cannot be assailed merely on the ground that it was passed by a person in capacity as Estate Officer, who was also an Air Officer Commanding (respondent No. 1).

*Words "Due Course of Law"*

29. The next question for consideration is what the words "due course of law" mean because this has to be answered in the present case as the civil court through judgment (C-1) has ordered that the petitioner should not be dispossessed without due course of law. Therefore, it has become necessary to say some thing about the words "due course of law".

30. To read the words 'due course of law' as merely equivalent to the word 'legally' is, we think to deprive them of a force and significance which they carry on their very face. For a thing which is perfectly legal may still be by no means a thing done 'in due course of law'. To enable this phrase to be predicted of it, it is essential, speaking generally that the thing should have been submitted to the consideration and pronouncement of the law, and 'the due course of law' means, we take it, the regular, normal process and effect of law operating in a matter which has been laid before it for adjudication.

31. The Hon'ble Supreme Court in *East India Hotels Ltd. v. Syndicate Bank* <sup>2</sup> explaining the word "due course of law" held that in each particular case it means such an exercise of the power by duly constituted Tribunal or Court in accordance with the procedure established by law under such safeguards for the protection of individual rights. A course of legal proceedings according to the rules and principles which have been established in our system of jurisprudence for the enforcement and protection of private rights. There must thus be a Tribunal competent by its constitution, that is by law of its creation, pass upon the subject-matter of the suit; or proceeding; and, if that involves merely a determination of the personal liability of the defendant, it must be brought within its jurisdiction by service of process within the State, or his voluntary appearance. Due course of law implies the right of the person affected thereby to be present before the Tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense; to be heard, by testimony or otherwise and to have the right of the controversy by proof, every material fact which bears on the question of fact or liability be conclusively proved or presumed against him. This is the meaning of due course of law in a comprehensive sense.

32. Thus, from the foregoing discussion and observations, it is clear that the words "otherwise than in due course of law" excludes self-help. They are not, however, synonymous with the word "illegally". The phrase "due course of law" means in the

regular, normal process and effect of the law operating in a matter which has been laid before a Court, civil or criminal for adjudication.

33. In the present case, since it has been found proved that the petitioner was in unauthorized occupation of the land in dispute, therefore, if action is taken against the petitioner under the provisions of the Act of 1971, it would amount to taking action in due course of law because of the following reasons :-

- (i) That the suit which was filed by the petitioner against the respondents No. 1 and 2 and Urban Improvement Trust, Jodhpur was partly allowed by the judgment and decree (C-1) in which the petitioner has been declared as trespasser.
- (2) That possession of the respondent No. 1 Union of India was found legal one.
- (3) That title of the petitioner was not found in any manner over the disputed land.

34. Now the question for consideration is whether the judgment Ex. 2 dated 13.8.2002 passed by the Appellate Authority-learned Addl.District Judge No. 2, Jodhpur (respondent No. 3) is liable to be set aside or not.

35. From perusing the judgment Ex. 2 dated 13.8.2002, it appears that the Appellate Authority has given the following findings :-

- (i) That the land in dispute belonged to Khasra No. 676 and out of which, 92 bighas 7 biswas of land was found in the Khata of Urban Improvement Trust and 41-1/9 bighas of land was found in the khata of Defense Department.
- (ii) That no doubt through letter dated 5.7.1999 it was pointed out by the *Tehsildar*, Jodhpur that demarcation was not possible, but a schedule was also placed showing those khasras in which colonies were established and a list was also placed and at serial No. 86 of that list, Haripura Vyas Colony was shown and against that colony, 676 Khasra number was also quoted there and it was further mentioned in that list that the said Colony was established on the land of the Defence Department meaning thereby on the land 41-1/9 bighas out of khasra No. 676. Hence, the learned Appellate Authority categorically observed that Haripura Vyas Colony is established on the land belonging to the Defense Department.
- (iii) That during the course of regularization of that colony, if Urban

Improvement Trust prepared a list of those persons, who have inhabited in that Colony, but by that act, trespassers would not get any right nor by this act, the land belonging to the Defense Department becomes the land of the Urban Improvement Trust.

Therefore, the Appellate Authority further observed that it is clear that Haripura Vyas Colony is established on that portion of land of Khasra No. 676 which belonged to the Defense Department.

36. In my considered opinion, the above findings of fact recorded by the learned Appellate Authority are based on correct appreciation of evidence and material available on record.

37. The jurisdiction of High Court under Article 227 of the Constitution of India is not appellate but supervisory and, therefore, it cannot interfere with the findings of fact recorded by the Court below unless there is no evidence to support the finding or the finding is totally perverse.

38. A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227 of the Constitution of India and the supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution of India is limited to seeing that an inferior court or Tribunal functions within the limits of its authority and not to correct an error apparent on the face of the record, much less an error of law and for that the decision of the Hon'ble Supreme Court in *Mohd. Yunus v. Mohd. Mustaqim and ors*<sup>3</sup> may be referred to.

39. The High Court in writ jurisdiction does not interfere with the findings of fact unless they are found to be based either on no evidence or that the findings are wholly perverse and/or legally untenable.

40. In the present case, from perusing the impugned judgment Ex. 2 passed the Appellate Authority, it does not appear that the findings of facts recorded by the Appellate Authority, just quoted above, are perverse and erroneous and based on no evidence or material, but on the contrary, it appears that they are based on correct appreciation of evidence and material on record. The findings of facts recorded by the Appellate authority do not suffer from any basic illegality or infirmity and thus, they are not to be interfered with by this Court in exercise of power under Article 227 of

the Constitution of India.

41. It may be stated here that the question of adequacy of evidence is outside the purview of writ jurisdiction and from this point of view also, the findings of facts recorded by the Appellate Authority are not to be interfered with by this Court.

42. The learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in *Government of Andhra Pradesh v. Valluri Kesava Rao and anr.* <sup>4</sup> where it was observed that summary proceedings can be initiated only where unauthorized occupation of Government property is not disputed, but where title to the land is *bonafide* disputed by the occupant such dispute must be adjudicated not by the summary proceedings but by civil suit and *bonafides* of the occupant's claim can be inferred from his occupation for a long period.

43. In my considered opinion, the law laid down by the Hon'ble Supreme Court in the above authority would not help the present petitioner because of the following reasons :-

(i) That the present petitioner has not come forward with the plea that he is the owner of the land in dispute and thus, title over the land in dispute does not vest in the petitioner at all and though there is a finding that the title of the land in dispute vests in the respondent No. 1, but for the sake of argument if it is found disputed one, it is between Urban Improvement Trust and the Defence Department and not with the petitioner.

(ii) That this aspect has also been considered by the civil court prior to initiation of summary proceedings under the Act of 1971 and the civil court has also found the petitioner as trespasser over the land in dispute.

44. The learned counsel for the petitioner has also placed reliance on the decision of the Hon'ble Supreme Court in *State of Haryana and anr. v. Mohinder Pal and Ors.* <sup>5</sup> where it was observed that eviction can only be carried out according to due procedure prescribed by law as set out in Sections 4 and 5 of the Haryana Public Premises and Land (Eviction and Rent Recover) Act, 1972 and it was further observed in that case that where proposed evictees were in possession of the disputed land, there was no need for examination of their title. This authority would also not be helpful to the petitioner as the possession of the present petitioner was found to be of a trespasser by

the competent civil court and, therefore, if action is taken against him for eviction under the provisions of the Act of 1971, it cannot be said that it was not a part of due process of law.

45. The submission that since the matter is decided by the competent civil court, action initiated by the respondent No. 2 is invalid, cannot be accepted in view of the fact that the civil court has given a finding against the petitioner through judgment C-1.

46. In view of the discussion made above, all the submissions raised by the learned counsel for the petitioner fail and stand rejected.

47. Apart from this, Court in *Mohammed Yunus v. Urban Improvement Trust, Jodhpur and ors.*,<sup>6</sup> has observed that a petition under Article 226 of the Constitution of India is only maintainable when there is judicial enforceable right and if there is suppression of material fact by the petitioner, he is not entitled to the relief sought for.

48. In the present case also, the fact that the civil court through judgment and decree (C/1) has found the petitioner to be trespasser has not been mentioned by the petitioner in this writ petition and, therefore, it can reasonably be inferred that the petitioner has concealed the material fact. From this point of view also, the petitioner is not entitled to discretionary relief under Article 226 of the Constitution of India.

49. For the reasons stated above, there is no merit in this writ petition and the same is liable to be dismissed.

*S.B. Civil Writ Petitions mentioned above from serial No. 2 to 50 of this order.*

50. The writ petitions mentioned above from serial No. 2 to 50 of this order also raise the same controversy which has been decided in S.B. Civil Writ Petition No. 3484/2002 and for the reasons given in S.B. Civil Writ Petition No. 3484/2002, the writ petitions mentioned at serial No. 2 to 50 of this order are also liable to be dismissed. Accordingly, all the afore-mentioned fifty writ petitions are dismissed. However, on humanitarian ground, the respondents are directed not to dispossess the petitioner from the land in dispute immediately, but after four months from today so that during this period, they may be able to search out other residential accommodation elsewhere.

No order as to costs.

Petition dismissed.

Cases Referred.

1. 1999(3) RCR (Civil) 119 (SC): (1999 RLW (SC) 292)
2. ((1992) 2 Civ. L.J. 497 (SC))
3. (AIR 1984 SC 38)
4. ((1982) 2 SCC 135)
5. ((2001) 9 SCC 292)
6. (2000(1) RLR 245)