Kewal Chand Mimani (D) By Lrs vs S.K. Sem And Ors on 23 July, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2569, 2001 (6) SCC 512, 2001 AIR SCW 2739, 2001 (4) SCALE 559, 2001 (4) LRI 598, 2001 SCFBRC 424, 2001 (7) SRJ 349, (2001) 6 JT 264 (SC), (2001) 4 SCALE 559, (2001) WLC(SC)CVL 651, (2001) 2 LACC 231, (2001) 2 ALL RENTCAS 608, (2002) 2 LANDLR 166, (2002) 1 MAD LJ 17, (2001) 2 RENCR 158, (2001) 2 RENTLR 255, (2001) 4 SCJ 292, (2001) 5 ANDHLD 14, (2001) 5 SUPREME 371, (2001) 3 RECCIVR 746, (2001) 4 ICC 860, (2002) 46 ALL LR 406

Bench: Umesh C. Banerjee, Brijesh Kumar

CASE NO.:
Appeal (civil) 4632 of 1997

PETITIONER:
KEWAL CHAND MIMANI (D) BY LRS.

RESPONDENT:
S.K. SEM AND ORS.

DATE OF JUDGMENT: 23/07/2001

BENCH:
UMESH C. BANERJEE & BRIJESH KUMAR

JUDGMENT:

JUDGMENT 2001 (3) SCR 1056 The following Judgment/Order of the Court was delivered :

BANERJEE, J. While there is no divergence of opinion as regards Status of a former tenant and his possession is juridical and protected by statute, the issue in the contextual facts, however pertains to State Government's obligation to restore possession of the premises requisitioned after termination of the requisition proceedings, namely to the owners or to the tenant/lessees from whom possession was taken on the date of the order of requisition, Mr. Dipankar Gupta, the learned senior Advocate appearing in support of the appeal has been father emphatic on his submission that the State has such an obligation, Mr. Venugopal, Mr. RF Nariman and Mr. Ranjit Kumar, Senior Advocates, appearing for different respondents, in one tune however sounded a contra note. The High Court negated the submissions as advanced before it that it is the tenant/lessee who is authorised to receive back the possession from the State after the expiry of requisition in the contextual facts and thus the appeal before this Court, Incidentally, juridical possession, spoken-off

> earlier in the paragraph, while is a possession protected by law against wrongful dispossession, but can not peruse always be equated with lawful possession. This has been the clear opinion of this Court in MC. Chockalingam & Ors., v. V. Manickavasagam,[1914]] 1 SCC 48. This Court in paragraph 14 of the report observed -
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> "Mr. Gupta strenuously submits that 'lawful possession' can not be divorced from an affirmatives positive legal right to possess the property and since the lease had expired by efflux of time the tenant in this case had no legal right to continue in possession-. In the context of Rule 15, we are clearly of opinion that a tenant on the expiry of the lease can not be said to continue in 'lawful possession' of the property against the wishes of the landlord if such a possession is not otherwise statutorily protected under the law against even lawful eviction through Court process, such as under the Rent Control Act. Section 6 of the Specific Relief Act does not offer such protection, but only, as stated earlier, forbids forcible dispossession, even with the best of title."

This Court further went on to observe in paragraph 15 of the report as below :.-

> ";,,.....Lawful possession cannot be established without the concomitant existence pf a lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant. Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it. This Court in Lalu Yeshwant Singh's case (supra) had not to consider whether juridical possession in that case was also lawful possession. We are clearly of opinion that juridical possession is possession protected by law against wrongful dispossession but can not per se always be equated with lawful possession."

Adverting presently however, to the matter under consideration, be it noted on the factual score that a vacant land in Howrah, West Bengal, measuring about 8 Bighas approximately belonging to the Dawans as owners was leased out to Mimanis for a period of 50 years commencing from 1st January, 1939. The land admittedly was used for a local weekly market (or 'Hat in popular parlance) known as 'Mangla Hat'. Interestingly the local market used to assemble on every Tuesday and it is therefrom only the local market got its nomenclature.

On the further factual score, it appears that in and around 20th/21st November, 1987, the entire Mangla Hat was completely gutted by a devastating fire and shortly thereafter on 24th November, 1987, an order of Requisition under sub-Section (1) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 was issued by the Collector, District Hawrah; West Bengal and 25th November, i.e. on the very next day itself, a Writ Petition was moved challenging the order of Requisition being Writ Petition No. 12527 (W) of 1987. The writ petition was, however, dismissed

by a learned Single Judge of the High Court and the Mimanis thereafter preferred an appeal being No. 1850 of 1988 against the said judgment and order of the learned Single Judge of the High Court. Incidentally, both the writ petition and the appeal were filed by the Mimanis and norby the owners though the latter were added as party- respondents upon attribution of their status as landlord. The records depict that the Appeal was pending in the High Court for quite some time and during the pendency of which, the lease expired by efflux of time. The appeal was heard from time to time and hearing was concluded on 29th March, 1996 but before the judgment could be pronounced, one of the judges hearing out the appeal was transferred from Calcutta High Court and as such the Bench could not pronounce the judgment and it is only thereafter however, on 28th August, 1996 that the respondent Nos. 7-10 in the appeal viz., the owners, after the expiry of about 9 years, filed an application for being transposed as appellant to conduct the pending appeal and by an order dated 19th March, 1997, the Division Bench allowed the application for transposition, though, however, without prejudice to the rights of the appellants to contest and conduct the appeal as appellants. Subsequently, the appeal was re-heard by a re-constituted Division Bench of the High Court and the judgment was reserved by the Bench. During the pendency of the pronouncement of the judgment, the Mimanis, however, moved this court under Article 136 against the order of transposition wherein this Court on 8th May, 1997 passed an order to the following effect:

> "The order against which the S.L.P. filed as an order on transposition as appellants. The order itself indicates that the petitioners are at liberty to raise all the objections. We see that even including the transposition and their right to contest in the capacity as appellants also is left open.
>
> The petitioners are at liberty to have the matter adjudicated. The Special Leave Petition is accordingly dismissed."

The necessity of transposition, the owners contended, cannot but be said to be justified by reason of the factum of the expiry of lease by efflux of time. The respondents contended that the interest in the indenture of lease, so far as the appellants were concerned, stand ceased and the latter had lost the locus-stand to pursue the appeal and in the event the appeal was allowed to be dismissed for non-prosecution by reason therefor - it would have definitely prejudiced the rights of the owners. Mr. Gupta, however contended that this effort to be on record as appellants has been utterly motivated, so as to decry the possessory rights of the Mimanis. Leaving aside the present controversy as regards transposition, be it noted that while one redeeming feature has been to file an application for being transposed as appellant to conduct the appeal after expiry of about 9 years as noticed above, another redeeming feature on the factual score is the lapse of the Act of 1948 by efflux of time.

The West Bengal Land (Requisition and Acquisition) Act, 1948 under which the Requisition order was passed in exercise of the powers conferred under the provisions of Section 3, the Act, was however, kept in the force only up to March, 1947 by virtue of the provisions of Sub-Section 4 of Section I of the said Act There is, therefore, a natural death of the statute in question and the issue as to its effect has been detailed in the Bench decision of the High Court, as pronounced on 21st May, 1997. The High Court relying upon the decision of this Court in S. Krishnan & Ors v. The State

of Madras and Anr., AIR (1951) SC 301 observed that the requisition of the premises in question was made "at a point of time when the life of the Act was there, but after the life of the Act has expired and when the Act was Allowed to die its natural death.....the property could not be allowed to be under Requisition....." In the present context, we are not, however, called upon to decide the issue and as such we need not delve in the matter further, regard being had to the scope of the appeal as npticed herein before, though however, the judgment of the Appellate Bench dated21st May, 1997, (hereinafter : referred to as the first judgment), mainly proceeded on the basis thereof.

Incidentally, the two concepts of acquisition and requisition cannot but be ascribed to be totally distinct and independent: whereas the acquisition involves an element of permanency and Finality involving a transfer of title: the concept of requisition is merely to take over the domain or control over the property without acquiring the rights of ownership and must, by its very nature, be of temporary duration.

The High Court concluded its first judgment by recording that the order of Requisition could not continue any longer by reason of the lapse of the Act as from 1st April 1997 and as such directed the State Government and the Municipal Corporation to restore the possession of the property to "the owner and/or the occupier, as the case may be, within 7 days from the date of the Judgment", There was, however, "liberty to mention" the matter, obviously with an intent that in the event of there being any difficulty experienced in the matter, the parties would be at liberty to bring the same to the notice of the Court.

Shortly after the pronouncement of the judgment, however, the Collector, District-Howrah on 28th May, 1997 informed the Advocate for the Mimanis to remain present at the site to receive back the possession of the land at premises No. 1 Strand Road being the premises in question. A copy of the intimation was also forwarded to Advocates of the owners. The possession, however, was to be delivered on 4th June, 1997 in terms of the letter noticed above. The service of the letter, however, evoked a stiff opposition from the Advocates of the owners and the latter by a letter dated 29th May, 1997 informed the Collector about the non-compliance of the directions of the Court since the Mimanis were otherwise not entitled to receive the possession as they were neither the owners not the occupiers of the property. The last paragraph of the letter seems to be of some relevance and the entire controversy, presently, rests thereon. It is in that perspective that we deem it fit to reproduce the same herein below. The last paragraph reads as below;-

> "Accordingly, your letter should have been addressed to the owners of the property as aforesaid in terms of the order of the Hon'ble Division Bench, High Court, Calcutta. Therefore, your above letter dated 28.5.97 addressed to Bijoy Kumar Jain, Advocate for Ram Kishen Mimani and Bulaki Das Mimani should be treated as cancelled and you are requested to issue a fresh letter addressing to our clients Pranab Chandra Daw, Sm. Binapani Daw. Sm. Pranata Banik and Sm. Pratima Haider of 12B, Shib Krishna Daw Lane, Calcutta -- 700007, in terms of the order of the Hon'ble High Court dated 21:5.97, otherwise it will be treated as a non-compliance of the Hon'ble Court's direction For M/s A.M. Dawn Sd. S.G. Mookerjee"

Subsequently on the factual backdrop it appears that on 2nd June, 1997 a further letter was sent by the Advocates recording therein as below :

> "Having regard to the said facts and keeping in view of the specific order of the Hon'ble Appeal Court as regard to the restoration of possession in favour of the owner and/or occupier and not in favour of the lessee whose lease has already expired as has been categorically held in the order of the Hon'ble High Court, it is a duty cast upon you by the Hon'ble Appeal Court to deliver the said property to the owners,"

It is on the above factual background and culminating in the letter dated 2nd June, 1997 that the Collector, Howrah sent the following note to the Mimanis;

> "Since Shri B.K. Jain by his letter dated 30.5;97 claimed restoration of the Subject land in favour of his clients, the Mimanis on the ground of being occupiers and M/s. A.N. Daw, Solicitor by his letters dated 29.5.97 and 2.6,97 claimed restoration Of the land in favour of his client, Binapani Dawn and others being recorded owners; and since I am not in a position to implement the order of the Hon'ble High Court dated 21.5.97 in view of the claims and counter-claims; and since the order of the Hon'ble Court dated 21.5.97 directing restoration of possession of the land to owners and/or occupiers requires to be clarified; the programme of delivery of possession which was communicated to him by the memo under reference is kept in abeyance till the required clarification is received from the Hon'ble Court or any other clear direction is given by the Hon'ble Court."

The records depict that on 23th May, 1997 the matter was, however, mentioned before the Appellate Bench by the learned Advocate for the State asking for an extension of time for making over the possession in terms of the order and the High Court thereupon extended the time for handing over the possession of the premises in question till one week after the vacation and the matter, however, was directed to appear one day after the reopening. Subsequently, however, a formal application was filed by the owners for a direction to restore possession of the premises in question to the owners, It is on these state of facts the second judgment was pronounced by the Appellate Bench which directs making over of possession to the owners without prejudice to the rights and contentions of the parties and without prejudice to the rights of the lessee to file a suit for appropriate proceedings for recovery or otherwise and/or to enforce an agreement for purchase of the properties in accordance with law. The High Court allowed 48 hours time from the date of the communication of the order and by reason where for on 17th June itself a notice was sent to the owners requesting them to be present on 19th June, 1997 at 10.30 a.m. to receive the possession of the land at No. 1 Strand Road, Mimanis, however, being aggrieved by this order moved this Court and maintenance of status quo was directed without creation of any third party interest.

The .long factual narration probably could have been avoided but we deem it fit and proper to record the same for appreciation of the contentions as advanced before this Court. Mr, Gupta, appearing in support of the appeal contended on the first count that general principles for making

over possession of requisitioned property have been overlooked and secondly, the conclusiveness of the first judgment stands obliterated without recording of any reason whatsoever and the High Court has thus fell into a clear error -these are the two basic submissions made in support of the appeal. Let us, however, analyse the same in some greater detail. Mr. Gupta laid emphasis on the "General principles" which obviously mean and imply that if possession has been taken from a particular person the same ought to be allowed to be received back by that particular person and none other. Apparently an acceptable situation - but it does demand a scrutiny of facts

- the facts, however, detail out the following :

(i) Existence of a lease for a specified period; (ii) Requisition under a temporary statute of 1948;

(iii) On challenge to said order of -requisition,; learned Single Judge affirms the order impugned;

(iy) Appeal before the Appellate Bench of the High Court;

(v) Lease expires;

(vi) Appellate Bench of the High Court set aside the judgment of the Single Judge with a direction to restore possession to the owner and/or occupier as the case may be;

(vii) The governmental effort to give back the possession to Mimanis by a letter dated 28th May;

(viii) Two letters dated 29th May, 1977 and 2nd June, 1997 sent to the controller from the owners;

(ix) Collector's letter dated 3rd June asking the parties to obtain clarification from the High Court;

(x) In the meantime on 23rd May, State applies for extension of time and the Court grants till one week after die vacation though directs the matter to appear one day after the reopening;

(xi) Subsequently, application moved and upon completion of affidavits the second judgment was passed.

These few paragraphs reveal the entire factual backdrop of the appeal under consideration. The issue therefore is whether the general principles of recovery of possession of a requisitioned property upon de-requisitioning being effected would apply or not. We are unable to record our concurrence with the same. The special factual feature of lease coming to an end has a definite

impact and the matter is dealt with in detail on the basis therefor, hereinafter and suffice it however to record herein that the question of applicability of the general principles in the contextual facts would not arise.

The lessee has ceased to be a lessee by reason of the expiry of the lease by lapse of time: What then would be his status? Does the lessee continue to be in awful possession of the leasehold property, assuming there was no requisition of the premises; or alternatively is he a trespasser? And if so, can he be removed from the premises excepting by due process of law? The other question which also arises, namely, can the lessee of an expired lease without a renewal clause be termed to be a tenant holding over, resulting thereby of reversal of status of former lessee to a tenant holding over-Undoubtedly, interesting questions.

Significantly be it noted at this juncture and before adverting to the twin issues noticed above, that upon an order of Requisition being passed, the physical possession of the property stands temporarily transferred to the State in terms of the Requisition Order, though, however, ownership of the property remains with the owners even during the time the requisition continues. In the event, however, of there being acquisition after the order of requisition, the ownership also stands vested on to the acquisitioning authority.

The lease deed in the facts of the matter under consideration was executed in March, 1939 for a period of 50 years certain, commencing from 1 . 1 . 1939 without any clause for renewal and thus the lease expired on 3 1 .12. 1 988 by efflux of time. The possession of the land admittedly in terms of the order of requisition was taken on 25th November, 1987: - obviously, within the validity of the period indenture of lease, but by the time, the Appellate Bench ordered restoration of possession of the property, the lease deed has come to an end-what would be its effect, we have to turn round to twin issue noticed above, before so doing however, be it noticed that different provisions of the defunct statute (as the statute may be presently ascribed by reason of its expiry by efflux of time) has been relied upon to depict the intent of the legislature and Mr. Venugopal appearing for the respondents relying upon Section 6 of the lapsed temporary Statute of 1948, contended that it is incumbent upon the State Government to make an inquiry and ascertain the factum of entitlement to possession and the possession ought to be delivered in accordance therewith to the person concerned. Mr. Venugopal, in continuation contended that as a matter of fact on the expiry of the lease, question of assertion of any right under the lease does not and cannot arise and it is on this score the Respondents contended that the statute itself advisedly used the words "who appeared to be entitled to possession" (Emphasis supplied). As such the State Government ought not to have even attempted to make over the possession to Mimanis: Mr. Gupta on the other hand relied upon Section 7(3) of the Act wherein a provision existed as regards payment of compensation to every person interested in the land for the requisition and damage done during the period of requisition-Mr. Gupta contended that the factum of being disinterested in the land so far as the lessees are concerned after expiry of the lease does not and cannot arise. The Statute, in the present context, invalidates itself by reason of the expirty of period and as such none of the provisions can be invoked. Expiry by efflux of time will have its effect as if it stands repealed and the law is well settled in regard thereto since, the true effect of the word "repeal" connotes 'as if not there' in the Statute Book. The assessment of intention of legislature of a repealed statute does not and cannot arise,

more so having regard to the fact situation of the matter under consideration.

Another aspect of some importance ought also to be delved into at this stage, to wit, the effect of the liberty granted to mention the matter after the judgment was delivered. It is on this score that Mr. Gupta, very strongly contended that question reopening the issue by reason of the liberty would not arise. As a matter of fact, it has been contended that by the aforesaid first judgment, the High Court came to a definite finding that the property should immediately be restored back to the possession of the owner of the property and/or the occupier, which cannot but mean the Mimanis, as the case may be-this direction as contained in the judgment by itself connotes final disposal and denotes specifically the determination of the issue raised in the matter. The High Court; Mr, Gupta contended, recorded that though many other points were argued and several case laws were cited, but mere was felt no necessity for deciding those points as the appeal succeeded on the point of Order of requisition not been continued on the basis of a lapsed statute. No doubt - a very convincing reason that when the entire appeal stands disposed of there exists no scope of reopening the issue on the basis of the liberty granted to mention the matter-doubt, there is none: 'Liberty to mention' can not be used as a means to achieve an advantage which is not otherwise available in law-a question which stands finally decided can not be reopened neither the Court has any farmer jurisdiction upon the signature been appended on the judgment by oral mention. The issue stands concluded as soon as the judgment is pronounced and the same is signed. Be it noted, however, that me words "liberty to mention" has been as a matter of fact a phraseology, which did come through judicial process without any definite legal sanction for the purpose of clarification, if needed, but not otherwise. It is a legal process which has been evolved for convenience and for shortening the litigation so that the parties are not dragged into further and further course of litigation, and it is in this context that the submissions of Mr. Gupta, that the Court has no jurisdiction to reopen the issue on me ground of availability of the legal phraseology of liberty to mention can not be brushed aside. As noticed herein before, the insertion of the above noted legal phraseology is to obliterate any confusion or any difficulty being experienced in the matter-it does not give the right anew to the party to agitate the matter further nor does it confer jurisdiction on the Court itself to further probe the correctness of the decision arrived at. Review of a judgment can not be had on the basis of this liberty. The circumstances, under which review can be had - are provided under Order 47 of the Code of Civil procedure. In any event, law is well settled on this score that the power to review is not any inherent power and it must be conferred by law either specifically or by necessary implication. In this context, reference may be made to the decision in Patel Narshi Thakershi & Ors- v: Pradyumansinghji Arjunsinghji, AIR (1970) SC 1273. In continuation of his submissions, Mr. Gupta further contended that after the pronouncement of the first judgment, the Court has no jurisdiction to nullify its own order passed either and placed strong reliance on the decision in State of U.P. v. Brahm Datt Sharma & Anr., [1987] 2 SCC 179, The question which fell for consideration in Sharma's case (supra) was whether notice dated January 29, 1986 was invalid and was liable to be quashed, The Learned Single Judge of he Allahabad High Court quashed the notice on the ground that the allegations specified in the show cause notice, whether the same had been the subject matter of departmental enquiry resulting in the respondent's dismissal from service and since dismissal order stood quashed in the Writ Petition, it was not open to the Government to take proceeding for imposing any embargo on the Writ Petitioner's pensionary right on the basis of self same charges. This Court, however, did not lend its concurrence with the views taken by the High Court, since

while quashing the order of dismissal, the High Court did not quash the proceeding, but the same was quashed by reason of the fact that the Writ Petitioner was not afforded any opportunity to show cause against the proposed punishment and as the High Court did not enter into validity of the charges or findings recorded against the Writ Petitioner during the enquiry held against him, question of any legal bar against State in following the course of action as has been followed would not arise. It is on these facts, this Court further in paragraph 10 of the report observed :-

> "lo.The High Court's order is not sustainable for yet another reason. Respondents' writ petition challenging the order of dismissal had been finally disposed of on August 10,1984, thereafter nothing remained pending before the High Court. No miscellaneous application could be filed in the writ Petition to revive proceedings in respect of subsequent events after two years. If the respondent was aggrieved by the notice dated January 29, 1986 he could have filed a separate petition under Article 226 of the Constitution challenging the validity of the notice as it provided as separate cause of action of him. The respondent was not entitled to assail validity of the notice before the High Court by means of a miscellaneous application in the writ petition which had already been decided The High Court had no jurisdiction to entertain the application as no proceedings were pending before it, The High Court committed error in entertaining the respondent's application which was founded on a separate cause of action. When proceedings stand terminated by final disposal of writ petition it is not open to the court to: reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed there would be confusion and chaos and the finality of proceedings would cease to have any meaning,"

Significantly, the High Court in impugned Judgment observed as below:-

> In the instant case, the appeal at the instance of the Mimanis was not maintainable and that this court had no power to grant any relief on the appeal filed by the Mimanis as on the date when the judgment was delivered, the Mimanis had no stick subsisting legal right. If the court could not maintain the appeal as the instance of the Mimanis. (emphasis supplied) the question is whether the court can pass an order granting relief in favour of that party indirectly, or in other words, even though the Mimanis are not entitled to any relief, has the court power to direct restoration of possession in favour of Mimanis. If the appeal was maintainable at the instance of the Mimanis, there was no difficulty in passing an order directing restoration of the property to the Mimanis who were the lessees and who were in possession on the date of requisition. But because of the changed circumstances and loss of the life of the Act and interest of the Mimanis the Mimanis could not be given any relief by this court in this appeal; if the court could not grant any relief, to the Mimanis, can the Court direct that the property should be handed over to the Mimanis. The decisions cited by Mr. Mukherjee in this regard have no manner of application as it is not a case that the lessor or the owner had forcibly taken over possession. The possession is still in the hands of the State, and after the lapse of the Act, the court has to direct the

restoration of the possession to the persons concerned."

While strong criticism has been levelled by Mr. Gupta, against the observations as emphasised above, and we also do feel justifiably so, but significantly the matter was argued at great length on the merits as well. The Learned Advocates appearing for the respondents, however, contended that in any event the possession was to be delivered to the Mimanis, the Mimanis will have to have some right to obtain the possession and it is in this context, the respondents contended that but by reason by expiry of the lease period and without there being any renewal clause, question of making over possession to the Mimanis, would not arise. The right of the Mimanis would be dealt with, however, while dealing with twin issues as noticed herein before but presently we do feel it convenient to record that strictly speaking in the contextual facts, the second judgment of the High Court is not warranted by reason of the specific direction as contained in the first judgment. Liberty to apply cannot be taken recourse to, as noticed hereinbefore more fully, to have the matter re-heard and the issue judged further. The judgment has been pronounced and in terms of the judgment, it was on the Government to decide the issue. In the normal course of events, we should have thought mat when the matter has been brought to the notice of the Court, the Court should have taken the same stand as was already in the judgment to win decision of the State Government as to the entitlement of the possession of the property; unfortunately that has not been done - a step rather difficult to appreciate. We would have event at this stage, also directed the State Government to carry out the direction as contained in the first judgment but since the matter has been argued at length on merits before this Court and by reason of the efflux o f time, we deem if fit to examine the issue ourselves under Article 136 of the Constitution and it is in this perspective that the twin issues referred to above ought to be considered.

Let us now come to the twin issues as noticed above for assessing the acceptability or otherwise of the judgment on merits-What were the rights of the Mimanis?: As trespassers-who are however trespassers? Admittedly, the possession; is with the State Government and there is no dispute in regard thereto. It is true that a trespasser even can not be evicted without due process of law. But can the Mimanis be ascribed to be trespassers on the facts of the matter under consideration?

The word 'trespass' in common English acceptation means and implies unlawful or unwarrantable intrusion upon land. It is a transgression of law or right, and a trespasser is a person, entering the premises of another with knowledge that his entrance is in excess of the permission that has been given to him. The Law Lexicon (The Encyclopaedic Law Dictionary with Legal Maxims and Words & Phrases, 2nd Edition, 1997 by P. Ramanatha Aiyar) hast however, the following to note:

"Trespass in its largest and most extensive sense, signifies any transgression or offence against the law of nature, of society, or the country in which we live; whether

> it relates to a man's person or his property. Therefore, beating another is a trespass; for which an action of trespass in assault and battery will lie. Taking or detaining a man's goods are respectively trespasses, for which an action of trespass on the case in drover and conversion, is given by the Law; so, also, non-performance of promises or undertakings is a trespass, upon which an action of trespass on the case in assumesit is grounded, and, in general, any misfeasance, or act of one man, whereby another is injuriously affected or damnified, is a transgression, or trespass, in its largest sense; for which an action will lie. (3 Comm. c.12, Tomlins Law Ok.)"

Black's Law Dictionary (Seventh Edition by Garner) records a meaning to the word 'trespass' as an unlawful act committed against a person and property of another: The Dictionary also quotes a passage Groin Salmond on Tort and which we may also profitably record here for assessment of situation and for proper appreciation of the import of the word 'trespass'. The passage reads as below ;

> "The term trespass has been used by lawyers and laymen in three senses of varying degrees of generality. (1) In its widest and original signification it includes any wrongful act--any infringement or transgression of the rule of right. This use is common in the Authorised Version of the Bible, and was presumably familiar when that version was first published. But it never obtained recognition in me technical language of the law, and is now archaic even in popular speech. (2) In a second and narrower signification- its true legal sense-the term means any legal wrong for which the appropriate remedy was a writ of trespass - viz. any direct and forcible injury to person, land, or chattels. (3) The third and narrowest meaning of the term is that in which, in accordance with popular speech, it is limited to one particular kind of trespass in the second sensed-viz., the tort of trespass to land (trespass quare clausum fregit)". R.F.V. Heuston, Salmond on the Law of Torts 4 (17th ed. 1977)."

Significantly, Salmond also in his Law of Torts, stated that the word 'trespasser' has an ugly sound, as it covers wickedness in the innocence and the duty of the occupier also varies according to the nature of the trespass, The issue, however, involved in the present context centres round Section 108A of the Transfer of Property Act which provides the rights and liabilities of the lessee on the determination of the lease. the statute has been rather specific to the fact that there is existence of a bounded obligation to put the lessor into possession of the property, and it is on this score that Mr. Nariman, the Learned Senior Advocate appearing for one of the respondents very strongly contended that the Statute has created an enforceable obligation and question of acting contra to the provisions of law does not and can not arise. It is on this score, the issue of complete justice between the parties has been brought to our notice. It is trite knowledge that presently, the Law Courts are being guided by a justice oriented approach, since the concept of justice is the call of the day and a need of the hour. Justice is the goal of jurisprudence- procesual/procedural as much as substantive. Puritan approach has lost its significance in the present day context; since justice ought to be the end product of equity and go to roots It is this complete justice between the parties which stands statutorily recognised in Section 108A as noticed above (please see the observations of Krishna lyer, J. in Ahmedabad Municipal Corporation. Ahmedabad & Ors. v. Ramanlal Govindram etc., AIR

(1975) SC 1187.

Incidentally, the justice oriented approach is not of recent origin; Four decades ago Wanchoo, J in Baivantrai Chimanlal Trivedi, Manager, Raipur Manufacturing Co. Ltd. Ahmedabad v. M.N. Nagrashna & Ors., AIR (I960) SC 407 in paragraph 5 of the report observed ;-

> "The question then arises whether we should interfere in our jurisdiction under Art. 136 of the Constitution, when we are satisfied that there was no failure of justice. In similar circumstances this court refused to interfere and did not go into the question of jurisdiction on the ground that this Court could refuse interference unless it was satisfied that the justice of the case required it: see A.M Allison v. BL. Sen, [1951] SCR 359: (S) AIR (1957) SC 227. On a parity of reasoning we are of opinion that as we are not satisfied that the justice of the case requires interference in the circumstances, we should refuse to interfere with the order of the High Court dismissing the writ petition of the appellant....."

In a fairly recent decision, this Court in Taherakhatoon (d) by LRs. v. Salambin Mohammad, [1999] 2 SCC 635 in paragraph 17 of the report has the following to state :-

> "17. The above principles were followed and reiterated by a three-Judge Bench in Hem Raj v. State of Ajmer holding that even after the appeal is admitted and special circumstances exist, and that, if there is no interference, substantial and grave injustice-will result and that the case has features of sufficient gravity to warrant a" review of the decision appealed against on merits Only then would this Court exercise its overriding powers under Article 136". Mr. Nariman in elucidation of Section 108 Q of the Act contended that the lease has expired and there is no question of any doubt about the same, by reason where for, the Mimanis have lost the right title and interest over and in respect of the lease hold property being the subject matter of dispute and having regard to the provisions of Section I08Q of the Act. The requirement of the concept of justice being of prime consideration, a short and simple question as to the existence of a right in favour of Mimanis after the expiry of the lease would-answer the issue. Mr. Gupta's emphasis that Mimanis have a legal protected possessory right, however, in out view can not be sustained, though as a proposition of law it is well settled that a person who is in possession or a tenant, whose lease had expired but not having been evicted in accordance with the law has legal protected and possessory right Further a person, whose lease has expired is still entitled to maintain possessory right so long as and until he be evicted by due process of law, various decisions have been cited before this Court, but we do not consider them relevant in the matter under consideration. The factual aspect of the matter has to be gone into to make the provisions of law or judicial precedence applicable-the proposition which is noticed above pertains to the possessory right and eviction in accordance with law. The lessee has lost his possessory right and the same stands shifted on to the State :

Once, however, the possessory right is transferred or shifted from the lessee and the lease deed stands terminated during this temporary interregnum when lessee was deprived of its possession, question of putting back, the lessee on to the possession, after the expiry of the lease in accordance with the provisions of law, does not and can not arise. The Court has to do equity and in doing so, it has to consider the fact-situation of the matter in issue and it is only thereafter pass certain orders thereof There is not even iota of right existing in favour of the Mimanis to call for its possessory right The right of the lessee stand obliterated by reason of efflux of time coupled with the issuance of the requisition order which temporarily suspended the lessee's right to occupy though does not put an end to the lessor's right to own the premises unless of course, acquisition follows the requisition order and the provisions of law on the basis of which the order for requisition was passed also expired by lapse of time.

Significantly, the lessee addressed a letter to the Chief Minister of the State of Bengal, wherein-it was stated "the above place was taken on a lease from Dawn family by Kanhaiyalal and Surajmal Mimanis, the patterns of the firm for a period of SO years commencing from 1939, on the terms and conditions contained in the Said lease.....the said lease is due to expire on 31st December, 19S8.....There is no renewal clause in the said lease, and the same has not been renewed....." Does this letter imply a right or a mere plea before the Chief Minister to help the Mimanis in the matter? There must be some semblance of right at least and that right must continue till the Judgment is pronounced, because on the day of the pronouncement of the Judgment, the Court can pass appropriate order only in the event of entitlement of such judgment, but hot otherwise, The Mimanis were in fact not entitled to obtain the possession on the date of the judgment by reason of the expiry of the deed of lease and how can that right be enforced by the Court in the event of non entitlement thereof-there is no satisfactory reply thereto.

The principle of justice is an inbuilt requirement of justice delivery system and indulgence and laxity on the part of the law Courts would be an unauthorised exercise of jurisdiction and thereby put a premium to illegal acts. While it is true that the intent of legislature in the matter of a defunct statute would not be a material consideration in the fact-situation of the matter in issue and as noticed earlier, but even assuming such an intent is relevant Section 6 of the Act 1948 categorically refers to an inquiry as to the entitlement to obtain the possession. The language itself of the statute is to be noticed; to wit; ".....is to be released from requisition. State Government may, after making such inquiry, if any, as it considers necessary, specify by order in writing the person, who appears to it to be entitled to the possession of such land". The paramount requirement of Statute, therefore, was an inquiry by the State Government as to the person/persons who appears to be entitled to obtain the possession. Therefore, taking recourse even to the language of the defunct statute, the legislature contemplated an inquiry-why is it so, obviously; the situation may change and the entitlement may also change; if the intent was to apply the general principle

that a person ought to be restored in possession from whom the possession was taken, there was no difficulty on the part of the law makers to say so explicitly. State Government is put to inquiry--this inquiry thus: to meet the unchanged facts and situations.

Thus in any event, the right to be restored with status quo ante in favour of Mimanis stands contra to the basic principles of Jaw.

Coming back to the second of the twin issues as noticed above, namely, can the Mimanis be termed to be a tenant holding over incidentally, the act of holding over in any event after the expiration of the term does not necessarily create tenancy of any kind: if the lessee remains in possession after the determination of the term and for all practical purposes, he becomes a tenant at sufferance. This Court in R.V: Bhupal Prasad V. State of A.P. and Others, [1995] 5 SCC 698 Had the occasion to deal with this concept of tenancy at sufferance. In paragraph 8 of the report, this Court observed ;-

"8. Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expirty of the lease by efflux of time The tenant at sufferance is, therefore, One who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser.

In Mulla's Transfer of Property Act (7th Edn.) at page 633, the position of tenancy at sufferance has been stated thus; A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a: lawful title continues in possession after that title has been determined, without the consent of the person entitled. A tenancy at sufferance does not create the relationship of landlord and tenant. At page 769, it is stated regarding the right of a tenant holding over thus. The act of holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remaining in possession after the determination of the term, the common law rule is that he is a tenant on sufferance. The expression "holding over" is used in he sense of retaining possession. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the landlord's consent. The former is called a tenant by sufferance in the language of the English law and the latter class of tenants is called a tenant holding over or a tenant at will. The lessee holding over with the consent of the lessor is in a better position than a mere tenant at will. The tenancy oh sufferance is converted into a tenancy at will by the assent of the landlord, but the relationship of the landlord and tenant is not established until the rent was paid and accepted. The assent of the landlord to the continuance of the tenancy after the determination of the tenancy would create a new tenancy. The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue to possession after the termination of the tenancy, his possession is juridical."

There is thus, however, a subtle difference resultantly a definite distinction between a tenant holding over and a tenant-at-sufferance, as noticed above in Bhupal Prasad's decision (supra): Holding over stands equivalent to the retention of possession after determination of lease, but with the consent of the landlord - whereas, on similar circumstances if the possession is without the consent of the landlord then the same stands out to be a tenant-at-sufferance Section 116 of the Transfer of Property Act does let a statutory recognition to the concept of holding over: is the situation presently a skin to a tenancy by way of holding over the property or the Mimanis be even termed as a tenant-at-sufferance - the answer obviously, in the facts of the matter under consideration, can not but be in the negative- Are the Mimanis in possession? The answer again can not, but be in the negative. There exists a differentiation between the lessee of a determined lease in possession and a lessee dispossessed. Mimanis stands, admittedly dispossessed from the lease premises. Can any right be said to accrue in favour of the Mimanis-the answer cannot but be an emphatic 'no' - law courts will have to act within the limits of law and the courts try to take note of the moral fabric of the law.

One other short issue also came up for consideration, namely, institution of a suit for specific performance by one of the Mimanis (Mohan Lal Mimani) on the basis of an allegation that there was an oral agreement between the Mimanis and the owners for sale of the property. As the records depict that the application for injunction in the suit for specific performance though taken out but was dismissed upon hearing and the order of dismissal stands accepted by reason of there being no further proceedings by way of appeal thereafter. The suit for specific performance, however, (Title suit number 1991/97) was dismissed for default and though an application for restoration has been filed, the records depict no order has been passed thereon and the same is still pending.

This factual element has been brought on record in the preceeding paragraph, to note the factum of initiation of the suit by only one of the Mimanis and the others have even not chosen to file separate written statements: The conduct thus exemplify the seriousness of the concerned parties. In any event, we do not wish to go into the same, neither any detailed discussion is also called for having regard to the issue raised in the matter, the Appellate Bench of the High Court has passed the order upon preservation of the rights and contentions of the parties and specifically without prejudice to the rights of the lessee to file suit or appropriating proceedings for recovery or otherwise or to enforce the agreement for purchase of the properties in accordance with the law and we do also feel it convenient to record such a reservation of right.

In the premises we are unable to lend any concurrence in support of the appeal. The appeal, therefore, fails and is thus dismissed without prejudice, however, to the rights and contentions of the parties in the pending matter or in the matter of initiation of any proceedings or in the matter of enforcement of any agreement or otherwise in accordance with law. Each party, however, to pay and bear its own cost.