

## **S.R. Ejaz vs The Tamil Nadu Handloom ... on 26 February, 2002**

**Equivalent citations: AIR 2002 SUPREME COURT 1152, 2002 (3) SCC 137, 2002 AIR SCW 915, 2002 SCFBRC 437, 2002 (3) SRJ 591, (2002) 2 ALLMR 611 (SC), (2002) 2 JCR 100 (SC), (2002) 2 JT 317 (SC), 2002 (2) SLT 202, 2002 (2) SCALE 304, 2002 (2) JT 317, 2002 (1) ALL CJ 388, (2002) 2 ALL WC 1337, (2002) 1 RENCRC 331, (2002) 1 ALL RENTCAS 471, (2002) 1 CURCC 234, (2002) 2 CIVILCOURTC 220, (2002) 2 LANDLR 360, (2002) 3 MAD LW 5, (2002) 3 MAHLR 379, (2002) 1 RENTLR 351, (2002) 2 RAJ LW 332, (2002) 2 SCJ 163, (2002) 2 SUPREME 128, (2002) 2 ICC 871, (2002) 2 SCALE 304, (2002) WLC(SC)CVL 325, (2002) 1 UC 499, (2002) 48 ALL LR 73, (2002) 3 BLJ 323, (2002) 3 CAL HN 103, (2002) 2 CIVLJ 251**

**Bench: M.B. Shah, B.N. Agrawal**

CASE NO.:

Appeal (civil) 1671 of 2002

PETITIONER:

S.R. EJAZ

Vs.

RESPONDENT:

THE TAMIL NADU HANDLOOM WEAVERSCO-OPERATIVE SOCIETY LTD.

DATE OF JUDGMENT: 26/02/2002

BENCH:

M.B. Shah & B.N. Agrawal

JUDGMENT:

Shah, J.

Leave granted.

The appellant who was forcibly and illegally dispossessed since May 1986 from the tenanted premises by his landlord is moving from pillar to post for getting justice. Unfortunately, after considering all the relevant facts which were brought on record, the High Court remanded the

proceedings under Section 6 of the Specific Relief Act, 1963 (hereinafter referred to as "the Act") for reconsideration by the trial court. It is apparent that the whole purpose of proceedings under Section 6 of the Act is frustrated by such order. The procedure under Section 6 of the Act is summary and its object is to prevent self help and to discourage people to adopt any foul means to dispossess a person. Dispossession of a tenant should be in accordance with law.

It is the submission of the appellant that as Proprietor of India Watch House, he was doing business in tenanted premises situated at 843, Anna Salai Madras for more than 35 years. Subsequently, the respondent the Tamilnadu Handloom Weavers Co-operative Society Ltd., Madras purchased the said premises and, therefore, the appellant was paying rent regularly to it.

In 1978, respondent filed Civil Suit for getting the premises vacated from the appellant. During the pendency of the proceedings, appellant gave a power of attorney to one Muralidhar Balani to run business of India Watch House, hence Balani was getting the said shop re-modelled. However, on 20th May, 1986 at about 7.30 p.m., while the work of re-modelling of shop was going on, one Mr. Anakaputhur Ramalingam and about 20 Co-Optex Workers with the help of police forcibly trespassed into the tenanted premises. They took forcible possession despite the fact their Civil Suit for eviction was pending in the court.

On the same day, appellant filed a complaint but the police did not take any action on it. On 21st May, 1986, the complaint was sent to the Commissioner of Police, Chennai for immediate action against the trespassers. On 31st May, 1986 telegraphic complaints were sent to the Director General of Police and the Inspector General of Police. Thereafter, on 16th June, 1986, appellant filed Writ Petition No.5382 of 1986 for a direction to the police to take appropriate action on the complaint filed by the appellant. That writ petition was allowed by the High Court on 3rd May, 1988 and the Court directed the CB CID to investigate the complaint of the appellant. On such direction, CB CID registered the offence punishable under Sections 143, 147, 149, 323, 341 and 441 of IPC. The main accused Anakaputhur Ramalingam was arrested on 19th July, 1988. Thereafter, on 18.6.1991, the Government of Tamilnadu accorded sanction to prosecute the case against the accused. Hence, the CB CID police filed the charge sheet against all the accused for the offence punishable under sections 147, 149, 441, 352, 380 and 341 of IPC in the Court of Addl. Chief Metropolitan Magistrate, Egmore, Chennai. It is alleged by the appellant that accused succeeded in pressurizing and influencing the Government to withdraw the prosecution against all accused and thereafter public prosecutor filed an application for withdrawal of the prosecution. Permission to withdraw the prosecution case was granted by the ACMM on 15th October, 1993.

In the meantime, within a period of six months from the date of dispossession, on 25.9.1986, appellant filed OS No.6998 of 1986 for restoration of possession under Section 6 of the Act. Respondent filed written statement and pleaded that appellant had informed them that he has vacated the premises and it was open to the respondent to take the possession either on 19th or 20th May, 1986. Therefore, possession was taken in presence of the police constables. The trial court dismissed the suit. Against the said judgment and order, appellant preferred C.R.P. No.1818 of 1996 before the High Court of Madras. Considering the facts stated above, the High Court allowed the petition. However, the High Court held that in the interest of justice the matter requires to be

remanded to the trial court for fresh consideration of the evidence and proper disposal. That order is challenged in this appeal.

From the facts narrated above, it is apparent that pending suit filed by the respondent for evicting the appellant, the respondent took forcible possession of the tenanted premises, for that purpose appellant had lodged criminal complaint on the same day and as no action was taken, he had informed various authorities immediately. Despite the representation made to the higher authorities as police had not taken any action, appellant preferred Writ Petition before the High Court and the High Court directed the CB CID to investigate the case. Thereafter the charge sheet was submitted; Government granted sanction; however, for the reasons best known to it, the Government withdrew the criminal proceedings. This would clearly establish that appellant was in possession of the premises and pending suit, he was forcibly dispossessed. Hence, in such circumstances if matter is remanded for reconsideration after lapse of 15 years, the whole purpose of summary suit under Section 6 of the Act for taking possession would be frustrated. The facts were eloquent and no further evidence was necessary nor anything was required to be re- appreciated. It is to be stated that admittedly there is no document to indicate that appellant willingly handed over the possession of the suit premises. If appellant was prepared to hand over the possession of the suit premises willingly a consent decree would have been obtained in a pending suit which was filed in 1978. In any case, there was no necessity of taking possession by use of force in presence of police. If the appellant had willingly handed over possession, he would not have immediately lodged the criminal complaint and made representation to the higher authorities for taking action nor he would have filed a writ petition for appropriate directions. Hence, this contention does not deserve to be accepted by any process of reasoning.

In our view, if such actions by the mighty or powerful are condoned in a democratic country, nobody would be safe nor the citizens can protect their properties. Law frowns upon such conduct. The Court accords legitimacy and legality only to possession taken in due course of law. If such actions are condoned, the fundamental rights guaranteed under the Constitution of India or the legal rights would be given go bye either by the authority or by rich and influential persons or by musclemen. Law of jungle will prevail and 'might would be right' instead of 'right being might'. This Court in *State of U.P. and others vs. Maharaja Dharmander Prasad Singh and others* [(1989) 2 SCC 505] dealt with the provisions of Transfer of Property Act and observed that a lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited. The Court also held that there is no question of Government withdrawing or appropriating to it an extra judicial right of re-entry and the possession of the property can be resumed by the Government only in a manner known to or recognized by law.

In this view of the matter, this appeal is allowed. Impugned judgment and order passed by the High Court is set aside. The suit filed by the plaintiff-appellant for restoration of possession of the suit property is decreed. The respondent is directed to hand over the possession of the premises within one month to the appellant. Further, we strongly deprecate the high handed action taken by the respondent in taking forcible possession from a tenant and direct the respondent to pay

Rs.50,000/- as costs to the appellant.

J. (M.B. Shah) J. February 26, 2002. (B.N. Agrawal)