

Laxmi Narain and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jan-02-1963

Reported in : AIR1964All236

Judge : M.C. Desai, C.J. and ;S.N. Katju, J.

Acts : [Constitution of India](#) - Article 226; Tenancy Law; Uttar Pradesh Public Land (Eviction and Recovery of Rent and Damages) Act, 1959 - Sections 2

Appeal No. : Special Appeal No. 17 of 1961

Appellant : Laxmi Narain and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : Standing Counsel, ;A.P. Nigam and ;K.S. Verma, Advs. for Respondents Nos. 1 and 2

Advocate for Pet/Ap. : Naziruddin, ;B.K. Dhaon and ;S.B. Bajpai, Advs.

Disposition : Appeal dismissed

Judgement :

S.N. Katju, J.

1. This is a special appeal against the judgment of our brother Tandon by which he refused to issue any writ or direction as prayed for by the appellants and

dismissed their petition. The dispute between the parties relates to a market known as Fatehganj Bazar situate hi the city of Lucknow. The market contains a number of buildings occupied by different persons and the rest of the market is open area, where stall holders and other persons collect and bring their goods, particularly grain for sale to the general public. The stall holders have to pay certain dues for keeping their stalls which used to be collected by the appellants. On the 3rd of August, 1960, the opposite party No. 2 the Tahsildar, Lucknow, acting under the direction of higher authorities published a notice informing the public that the aforesaid market had been resumed by the State Government and further directing the persons visiting the market and liable to pay the market dues not to pay the same to the appellants, but to make the payment to the agent appointed by the State Government for realising the aforesaid dues. On 6th of August, 1960, the Lucknow Municipal Corporation was authorised to make the said collections.

2. The history of the aforesaid market goes back to 1868. On October 13 of that year by a robkar issued by the Deputy Commissioner, Lucknow, certain rights possessed by Darogha Mir Wajid AH were exchanged with the rights possessed by the Government in certain Nazul villages and bazars including the market in dispute, viz., the Fatehganj Bazar and a sanad to that effect was granted to Daroga Mir Wajid Ali. Possession of the aforesaid Bazar was delivered to Daroga Mir Wajid Ali on November 14, 1868. It appears that Daroga Mir Wajid Ali was succeeded by his son Nazir Hasan and after the death of the latter his interest passed to his daughter Qamar Jahan Begum. In 1932 Qamar Jahan Begum made a gift of 12 annas interest in her rights in the said bazar to her daughter Noor Jahan. In 1945 Qamar Jahan Begum and Noor Jahan Begum applied to the Collector, Lucknow for permission to sell their entire interest in Bazar Fatehganj and the necessary sanction for sale was accorded to them. They sold their proprietary lights in Bazar Fatehganj on November 1, 1945, to the appellant Laxmi Narain. On 29th November, 1945, under an agreement between the appellant No. 1 Laxmi Narain and the appellants Nos. 2 to 5, all the appellants became the owners of the Bazar.

3. It was alleged by the appellants that from 1949 till the date of the petition, litigation in respect of portions of the property had been going on and several persons objected to the exercise of 'the proprietary rights' of the appellants in Bazar Fatehganj. It was further alleged that the aforesaid persons were trying to move at first the Municipal Board, Lucknow, and later the Lucknow Corporation as also the State Government in a mala fide manner against the appellants and that the Municipal Board, Lucknow interfered with the appellants' 'proprietary rights' in the Bazar with the result that they filed the suit against the Board for the vindication of their rights. A suit was also filed for injunction against the State Government in 1954, in which the State Government admitted that the appellants were the owners of the properties on the Fatehganj Road. But the trial Court refused to grant the injunction on the ground that the exercise of the powers by the police under Section 34 of the Police Act could not be restrained by an injunction.

It was alleged that the appellants had filed a first appeal from the aforesaid order of the trial Court which was pending. It was alleged that on August 3, 1960, without any notice to the appellants the Tahsildar, Lucknow, with about 50 constables suddenly came to the Bazar and by beat of drum announced that the State Government had resumed Bazar Fatehganj and no one had any right to make any collections in the Bazar and all realizations in the Bazar and its management would henceforth be made by the respondent No. 1 through its appointed agents. By a second notice issued on August 6, 1960, it was declared that the State Government would realise the tahbazari from Fatehganj Bazar through the Nagar Mahapalika, Lucknow, and that the latter would manage the Bazar from that day. As a result of the aforesaid proclamation and the notices some of the licensees of the appellants using the land 'owned by the appellants in the Fatehganj Bazar' had declined to pay the dues to them for the use and occupation of the land. It was contended that the aforesaid proclamation dated August 3, 1960, and the notice issued on August 6, 1960, were ultra vires and had no legal effect. The appellants prayed:

(a) That a direction, order or a writ including a writ of mandamus may be issued against the respondents 1 and 2 restraining them from giving effect to the proclamation dated August 3, 1960, and the notice dated August 6, 1960, and to

refrain from acting contrary to law.

(b) That a writ of mandamus may be issued to the respondent No. 1 commanding it to produce the order of resumption of the grant in respect of the petitioners' property in Mohalla Fatehganj and the same may be quashed by this Hon'ble Court.

(c) That a writ of mandamus may be issued to the respondent No. 1 to proceed according to-law for depriving the petitioners of their property.

(d) That an ad interim order may be issued to the respondents not to give effect to the proclamation dated August 3, 1960, and the notice dated August 6, 1960, pending the decision of this writ petition.

4. Respondent No. 1, the State of Uttar Pradesh admitted that the rights of local Agency in Bazar Fatehganj, Lucknow, and some other markets in the city of Lucknow were granted to Daroga Mir Wajid Ali by the sanad dated 26-8-1868/69 and some other property of the said Daroga was taken by the Government and that possession was delivered to the Daroga in pursuance of the aforesaid sanad. The market in dispute was eventually sold by Qamar Jahan Begum and Noor Jahan Begum to the appellant No. 1 and thereafter by the aforesaid agreement the five appellants became the owners of the bazar under the terms of the sanad. It was further admitted that the State Government had resumed the Bazar in pursuance of the proclamation made on the 3rd of August, 1960, and the possession of the bazar was resumed by the Government through the Tahsildar. It was, however, denied that no notice had been given to the appellants about the resumption. It was farther admitted that the possession of the Bazar had been transferred to the Nagar Mahapalika, Lucknow, on the 6th of August, 1960, and that the Nagar Mahapalika had since then been in possession of the said bazar and that in consequence of the resumption of the Bazar the appellants had ceased to have any right to collect the bazar dues as the same right had become vested in the respondent No. 3, viz., the Nagar Mahapalika since 6-8-1960. It was further denied that the, proclamation dated 3-8-60 and the notice dated 6-8-60 were ultra vires and had no legal effect and that they interfered with the appellants' right of properties or that they were without authority of law or that they amounted to

confiscation of property without compensation.

It was further denied that the issue of the afrosaid notice was mala fide. It was contended that the appellants, had been using the Bazar for the purposes of enhancing their income without looking to the needs of the Bazar and without performing their duties in connection with the said Bazar and that they had neglected the drains and roads as a result of which the Bazar had become insanitary and the roads had become impassable and difficult for use by the people. It was further contended that the appellants had sold out the Bazar land in parcels to private persons with the result that the existence of the Bazar had been jeopardised. It was further contended that the appellants had committed breaches of the obligations imposed on them by the sanad and that notices were served on the appellants to improve the sanitary condition of the Bazar and they were informed that on their failure to do so, steps would be taken to resume the Bazar. Further information had been given to the appellants that their act in selling the Bazar land bit by bit had jeopardised the very existence of the Bazar and the appellants were finally informed that steps were being taken to resume possession of the Bazar. It was further contended that the appellants were extracting illegal dues from the people and traders who frequented the Bazar and they had violated the terms of the sanad and that the State had no alternative but to resume possession of the Bazar under the terms of the sanad and to maintain the market under its own management. It was further alleged that the act of resumption related inter alia to the contractual conditions of the sanad and the writ jurisdiction of this Court could not be availed of to canvass the appellants' claim to property when they had themselves failed to perform the conditions imposed on them. Lastly, it was contended that the dispute involved complicated questions of title and other material facts and, therefore, the extraordinary remedy under Article 226 of the Constitution could not be availed of by the appellants.

5. Our brother Tandon expressed the view that the dispute raised in the petition could be divided into two parts; firstly, the dispute with regard to the right of the State Government to resume what has been said to be the grant made by it and the right of the corporation as well as of the State Government to make collections of the market dues from the persons using the market, and secondly, the question

with regard to the fact of possession which had been taken over by the respondents on the 3rd of August, 1960. As regards the first question, our learned brother thought that the determination of the question would depend on proof of various facts which could not be considered in a writ petition and consequently on that ground the writ jurisdiction of the Court could not be invoked. With regard to the second question, it was observed that it was not possible to adjudicate whether the State Government had become entitled or not to take over possession or whether the right of the appellants to continue in possession had come to an end, because such question could only be answered after a full enquiry into the matter which was not possible in a writ petition. It was, however, observed that the appellants were not trespassers of the market in dispute and the case of the appellants had to be distinguished from that of persons who had no right or title to continue in possession of the land in dispute.

It was further observed that the appellants, who were in possession, had been forcibly dispossessed. He, however, expressed the view that it would not be proper for the Court to restore possession of the market in dispute to the appellants because the right as to possession over the market by one or the other party had not been investigated, nor decided by the Court, even though the action of the respondent in forcibly taking and retaining possession could not be countenanced. While conceding that the appellants had a valid grievance against the manner in which they had been dispossessed, our learned brother held that complete remedy could not be given to the appellants in the present writ proceedings since many questions of fact which were relevant to the enquiry had not been determined. He, therefore, came to the conclusion that this was not a fit case in which the Court should issue any writ or direction and he, therefore, rejected the petition. Aggrieved from the aforesaid order, the appellants have now come up in appeal before us.

6. It is not denied that the appellants instituted a regular suit on 10-10-61 in respect of their rights in Bazar Fatehganj, which is pending before the Civil Judge, Mohanlalganj, Lucknow, and 12-11-1962 was fixed in the aforesaid suit for the disposal of certain issues. In the aforesaid suit the appellants have prayed for a declaration that the aforesaid proclamation dated 3-8-1960 and the notice dated 6-

8-1960 are ultra vires and illegal, and are not binding on the appellants and the order of resumption, if any, is against law and of no legal effect. They have, however, prayed for a mandatory injunction against the opposite-parties Nos. 1 and 3 restraining them from interfering with the proprietary rights and possession of the appellants in making realisation of their dues in Bazar Fatehganj and have further claimed damages for the loss suffered by them.

7. Learned Counsel for, the appellants contended that the mere existence of any alternative remedy or the fact that a suit has been instituted by the appellants with respect to their rights in the Bazar in dispute did not operate as a bar to their seeking adequate relief by the present writ petition. It was contended that, in any case, there had been an infringement of the appellants' fundamental rights to hold property by the respondents and, therefore, the writ jurisdiction of this Court could be invoked. It was strenuously contended that the respondents had no right to forcibly dispossess the appellants and the appellants had proprietary rights in the Bazar in dispute which could not be forcibly taken away from them by the respondents. It was further contended that the respondents could have taken action under the U.P. Public Land (Eviction and Recovery of Rent and Damages) Act, 1959 (U.P. Act No. XIII of 1959) and that they had acted in a high handed manner in deploying police force to dispossess the appellants from their rightful ownership and possession of the Bazar in dispute. It was further contended that there was no breach of the terms of the sanad and the appellants had fully complied with all their obligations under the sanad and no grievance against any violation under the terms of the sanad had been made after 1952 and consequently the act of resumption by the respondents clearly violated the appellants' right and, in any case, the respondents had no right of re-entry by forcibly dispossessing the appellants from the Bazar in dispute.

8. The Advocate-General replying to the arguments of the learned Counsel for the appellants contended that there was no reason to interfere with the discretion exercised by Mr. Justice Tandon and that the discretion exercised by him had been properly exercised. It was urged by him that the appellants could not invoke the writ jurisdiction of this Court for seeking the relief prayed for by them because the appellants' rights were grounded in the aforesaid sanad, in which a right of

resumption had been given on the breach of the conditions of the sanad and that the resumption on the part of the State flowed from the said sanad. He, therefore, contended that the possession of the Bazar in dispute had been taken under the terms of the sanad itself which had provided for forfeiture when the obligations imposed by it on the appellants were not discharged and under the circumstances the resumption and taking over of the Bazar by the opposite parties was fully justified, He further contended that the appellants had been given full opportunity to perform their obligations and they had notice of the intention of the State and the appellants were dispossessed only when a final notice had been given to them that the Bazar would be resumed. Therefore, they had full opportunity to take any suitable action in a Court of law. Lastly, it was contended that the resumption was prompted in the interest of the public health and in the interest of the people and such resumption was clearly contemplated by the sanad itself.

9. The first question which arises for our consideration is whether the appellants are entitled to seek remedy by way of the present writ petition. What they asked for is a writ of mandamus for quashing the proclamation dated August 3, 1960, and the notice dated August 6, 1960 and for quashing the order of resumption of the Bazar in dispute. It is now well settled that the mere existence of alternative remedy would not bar the issue of a writ of certiorari. The Court would not generally issue a writ even where no alternative remedy exists, but where disputed questions of fact have to be decided. The extent and scope of such disputed questions, which would justify the refusal of a writ, would depend on the circumstances of each case. It was observed in *Kochuhni v. State of Madras* : AIR 1959 SC725 as follows : -

'We are not called upon, on this occasion, to enter into a discussion or express any opinion as to the jurisdiction and power of the High Courts to entertain and to deal with applications under Article 226 of the Constitution where disputed questions of fact have to be decided

It cannot be denied that the appellants had alternative remedy to seek redress of their grievances in an appropriate Court of law and that, in fact, they have done so. It may be that the present writ could not be thrown out on that ground alone.

Furthermore, the rule is now well settled that even where relief by way of a writ of certiorari could be granted, even where alternative remedy exists, no such relief by way of mandamus could be given. It was held in *U.P. State v. Mohd. Nooh* AIR 1958 SC 86.

'There is no rule with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy.'

10. An exception is, however, made where the relief prayed for involves the infringement of a fundamental right and in such cases mandamus could be issued even where there may be an alternative remedy. In support of this contention the learned Counsel for the appellants referred to *Rashid Ahmed v. Municipal Board, Kairana* : [1950]1SCR566 , *State of Bombay v. United Motors (India) Ltd* : [1953]4SCR1069 , *Himmatlal Harilal v. State of Madhya Pradesh* : [1954]1SCR1122 : AIR 1959 SC735 , *Venkateshwaran v. Ramchand Sobhraj* : 1983ECR2151D(SC) and *Bishan Das v. State of Punjab* : [1962]2SCR69 .

11. While it may be conceded that a mandamus may be issued even where an alternative remedy exists or has been resorted to, where a fundamental right is alleged to have been infringed, it does not necessarily follow that in every case where an allegation is made about the infringement of a fundamental right by a petitioner a prerogative writ of mandamus must be issued. It has to be seen and enquired whether there has been in fact, any such infringement of fundamental right and the Court has to satisfy itself that the allegation as to such infringement is well founded. Even where such allegations are made, but the case requires the investigation of disputed facts and there may be other circumstances, the Court may refuse to issue such a writ at its discretion. In : [1953]4SCR1069 (supra), it was held:-

'It is always desirable, when relief under Article 226 is sought on allegations of infringement of fundamental rights, that the Court should satisfy itself that such allegations are well founded before proceeding further with the matter.'

11a. Ferris in 'Extraordinary Legal Remedies', 1926 Edition, on page 245 says:

'Mandamus is a supplementary remedy, to be used where the party has a clear legal right and no other appropriate redress to prevent a failure of justice. It does not supersede legal remedies, but rather supplies the want of such a remedy.'

On page 250 it is said:

'But although historically and generally mandamus is deemed to be a law action, yet it is to be exercised upon equitable principles; every mandamus, in a manner, seeks the aid of equity In the exercise of that discretion the Court may search the conscience of the transaction and if improper motives are shown, may deny its issuance. Relator must in all cases substantially demonstrate not only the propriety but the justice of his case; the Court is not bound to take the case as relator presents it, but may consider defendant's rights, the interest of third persons, the importance or unimportance of the case, and the applicant's conduct, in determining whether the writ shall go. That is, in exercising this discretion, the Court may refuse the writ where the reason for its issuance is, among other things, trifling, where it is unnecessary, where the purpose is to compel a literal compliance with a statute contrary to its true spirit, where it would be unreasonable, where it would promote confusion and disorder, where it would accomplish a wrong or injustice, or where it would be unavailing.'

12. It has, therefore, to be seen whether the allegations made by the appellants justify the issue of a writ of mandamus in the present case. It was urged that the rights of the appellants flow from the aforesaid sanad of 1868/69. It was contended that the appellants had been lawfully in occupation of the market in dispute and the act of the State in forcibly dispossessing them was an infringement of their right to hold it. It was further alleged that the dispossession, of the appellants infringed the provisions of the U.P. Public Land (Eviction and Recovery of Rent and Damages) Act, 1959, (U.P. Act No. XIII 1959), which provides that prior issue of notice for show cause against an order of eviction has to be made and the parties have to be given reasonable opportunity of producing evidence in support of their contention. The public authority could evict after satisfying it that there has been unauthorised occupation and such occupants had to be evicted. It was contended that the provisions of the aforesaid Act were violated by the State in

suddenly dispossessing the appellants from the market in dispute by the exercise of unlawful force. We do not think that the provisions of the aforesaid act apply to the market in dispute. The preamble of the Act runs thus:

'Whereas public land capable of being used for agricultural purposes is immediately required it is not the case of the appellants that the market in dispute is either agricultural land or is capable of being used for agricultural purposes.

12a. 'Public Land' is denned in Section 2, Sub-clause (e) as meaning:

'Land including forest land belonging to or owned by, the State Government but does not include land

(iii) for the time being occupied by any building constructed before unauthorised occupation of the land.'

The definition must be read along with the preamble of the Act and it could not be said that such public land could also mean land which was never occupied or used for agricultural purposes. It is not denied that the disputed land was not occupied by buildings constructed before the dispossession of the appellants. Under these circumstances we are of the opinion that the provisions of the U.P. Act XIII of 1959 do not apply to the market in dispute.

13. It was contended that no opportunity was given to the appellants to represent their case and the forfeiture by the Government of the market in dispute was made forcibly and without any notice to the appellants and without giving them any opportunity to represent their case before the State. Reliance was placed on James Dunbar Smith v. The Queen, (1878) 3 AC 614. In that case the action of ejectment had been brought by the Crown against the tenant in possession under a Statute of the colony of Queensland, intituled 'The Crown Remedies Act, 1874' to recover possession of a plot of land. The defendants claimed the land under a lease from Her Majesty for a term of ten years. On behalf of the Crown it was contended that the lease had been forfeited. The jury found a verdict for the Crown. The Supreme Court, on an application made to it for a rule nisi to set aside the verdict, refused it and from the order refusing the rule, the appeal was preferred

to the Judicial Committee. Their Lordships quoted an observation of Erle, C. J., which was as follows:

'It has been said that the principle that no man will be deprived of his property without an opportunity of being heard, is limited to a judicial proceeding. I do not quite agree to that. The law I think has been applied to many exercises of power which in common understanding would be not at all mere judicial proceedings than would be the act of the District Board in ordering the house to be pulled down.'

It was found that the defendant had not been heard in the sense in which the word 'hearing' has been used in the case which had been quoted and in many others in the sense required by the principles of natural justice. Their Lordships were of the opinion that the Crown had failed to establish that there was a hearing in the case as would enable the Crown to assert

'that it was proved to the satisfaction of the Commissioner within the meaning of the Act, that the defendant had abandoned his selection, or had failed in regard to the performance of the conditions of residence, and that consequently the governor had no jurisdiction to issue the proclamation.'

14. In *Hopkins v. Smethwick Local Board of Health*, (1890) 24 QBD 712 it was held:

'Where there is power to enter and pull down buildings which have been erected in contravention of bye-laws, it would be contrary to fundamental justice to allow that course to be taken without giving the owner notice and an opportunity to show cause.'

Learned counsel also referred to *Cooper v. Wandsworth District Board of Works*, (1863) 14 CB (N. S.) 180. All these aforesaid cases were discussed in *Rameshwar Prasad Kedarnath v. District Magistrate* : AIR1954 All144 . It was held by Mootham, J., (as he then was) that a man could not be deprived of his property without being given an opportunity of being heard and under the Constitution the right to hold property is a fundamental right possessed by every citizen.

15. All the aforesaid cases are clearly distinguishable. In the case before us the very right to hold the property was in dispute and the contention of the State is that the market in dispute could be lawfully resumed under the terms of the sanad and under the circumstances of the case the appellants have no right to continue to remain in possession of the same. It was further contended that notice had, in fact, been given to the appellants and the appellants had ample and sufficient opportunity to represent their case to the respondents and it was after full consideration that the market in dispute was taken over by the State. It could not be said that either the appellants had no notice or that they were denied any opportunity to make suitable representations to the State. It was further stated on behalf of the opposite parties that the rule laid down by Mootham, J., in the aforesaid case was clearly distinguishable because in the case in appeal the appellants had no right to hold the market in dispute.

16. It was thus to be examined and seen whether the appellants had any right to continue to remain in possession of the market in dispute and whether they had notice of the intention of the State to resume the market and they had been given sufficient opportunity to represent their case before the State.

17. Learned counsel for the appellants further relied on *Virendra Singh v. State of Uttar Pradesh* : [1955]1SCR415 , *Wazir Chand v. State of Himachal Pradesh* : 1954 CriLJ1029 and *Kali Mohan Datta v. Municipality of Agartala* AIR 1959 Tripura 47. In *Virendra Singh's* case : [1955]1SCR415 (supra), the Rulers of erstwhile States of Charkari and Sairola had granted certain villages to the petitioners in the case. The aforesaid States were originally independent States acknowledging paramountcy of the British Crown and after the Independence of India they acceded to the dominion and eventually there was merger and the villages were absorbed in the United Provinces as it then was. On 29-8-52 the Governor of Uttar Pradesh passed an order to confiscate these lands. It was held that no 'act of State' could be exercised and the confiscation was wholly illegal as it was not grounded on any authority of law. In the case before us the resumption by the State was in no sense an 'act of State' and the market in dispute was claimed by the State by virtue of the provisions of the sanad as the property of the State which could be taken over by them, under the terms of the aforesaid sanad itself.

18. In the case of : 1954 CriLJ1029 (supra), the police in India had seized goods in possession of the petitioner in India at the instance of the police of Jammu and Kashmir and the seizure was not under any authority of law. It was held that seizure of the goods from the possession of the petitioner amounted to an infringement of his fundamental rights, both under Articles 19 and 31 of the [Constitution of India](#) and relief should be granted to him under Article 226.

19. In AIR 1959 Tripura 47 (supra), the petitioner was occupying a market site belonging to the Municipality with the permission of the Municipality and built on it with their permission or at least with their knowledge, and they had been accepted rent for the same, and his possession was about five years old when he was ejected by, force. There was nothing in the Tripura Municipality Act which authorised the Municipality to eject the holder of the site like the petitioner, in the manner the petitioner was ejected. Held that the action of the Municipality was without the authority of law and, therefore, illegal and without jurisdiction and there was a clear breach of the legal rights of the petitioner and he was entitled to a writ of mandamus.

20. In the cases referred to above if was found that there had been violation of fundamental rights and consequently the petitioners were given redress by the grant of mandamus. (His Lordship then examined the terms of the sanad and events which eventually led to the resumption of the market in dispute in Paras 21-35 and proceeded :)

36. The aforesaid narrative shows that the sanad had laid down certain conditions which had to be fulfilled by the appellants. The sanad clearly stipulated that in case there was breach of the aforesaid conditions the 'Local authority' had powers to resume the grant. The appellants challenged the fact that the respondent No. 3 was the successor to the aforesaid local authority. From the material on the record before us, it is clear that the Nagar Mahapalika, Lucknow, is the successor of the said local authority. The questions whether there have been breaches of the aforesaid conditions with regard to the levying of unauthorised charges by the appellants and for not making adequate conservancy and sanitary arrangements and not keeping the road in good condition and furthermore, in selling the market

land itself bit by bit are disputed questions. It however, appears that the appellants have alienated considerable parts of the Bazar in dispute. It further appears that there were complaints about the levying of unauthorised charges by the appellants and of keeping the market road in an unsanitary condition and in keeping the market road in poor state, by a section of the people itself. The respondent No. 3 being responsible for maintaining public health, it is not possible for us to interfere with the views expressed by it that the conservancy and sanitary arrangements in the market were inadequate. Furthermore, it is not possible for us to record a conclusive finding that unauthorised charges were being levied by the appellants. These are all disputed matters, which require investigation and enquiry. The fact, however, is clear that if there have been breaches of the conditions laid down by the sanad the opposite party No. 3 would be within its rights to resume the market in dispute under the terms of the sanad itself.

37. It may be emphasised that the land in dispute is nazul land and the act of resumption could not be said to be an act of the State. It was contended by the appellants that considering the history of the grant and the sanad, it would appear that Mir Wajid Ali had exchanged his property in which he had absolute and full proprietary interest for the Ganges and other property which included the market in dispute and, therefore, there were no limitations to the proprietary interest of the appellants in the market in dispute. It may be that Mir Wajid Ali had full proprietary rights in the property that he exchanged for the market in dispute. He, however, in the aforesaid exchange took a perilous interest in the market in dispute which clearly provided for resumption in case there were breaches of the conditions laid down by the sanad. It was thus a matter of contractual arrangement between Mir Wajid Ali and the local authority by which the parties agreed to exchange their property and Mir Wajid Ali agreed to take the properties including the market in dispute under the conditions laid down in the sanad. There could; therefore, be no complaint if on the violation of the aforesaid conditions in the sanad the market in dispute was resumed by the respondents and the appellants were thus dispossessed.

38. Thus the right which the appellants want to enforce by means of a writ is founded purely on a contract. It is a well recognised rule of law that the Court

would not issue a writ or an order of mandamus in cases where contractual obligations are in dispute. Ferns in his 'Extraordinary Legal Remedies' says on page 229:

'The duties enforceable by mandamus, although not necessarily public duties, are those imposed by law. Mandamus will not lie therefore to enforce a right founded purely on private contract, however clear that right may be.'

Further on page 351 it is said:

'It is well settled that duties imposed on corporations, not by virtue of express provision of law or charter, or necessarily arising from the nature of the privileges or obligations conferred but arising out of private contractual relations involving no question of public trust or duty, will not be enforced by mandamus, either against the trustees or the corporation. The aggrieved party is left to his ordinary remedies, either at law or equity.'

39. Again in Halsbury's Laws of England, Vol. II (Simonds Edition) it is stated thus at page 105:

'Duties must be public. The order is only granted to compel the performance of duties of a public nature. It will not, accordingly, issue for a private purpose, that is to say, for the enforcement of a merely private right.'

40. It is thus obvious that in the case in appeal, the dispute relates to contractual matters between the parties which cannot be properly resolved on the allegations made on the affidavits presented before us. Furthermore, the dispute is between the parties with regard to nazul land, which had been given by the respondents to the appellants subject to the conditions of the sanad and it clearly involves the consideration of the conditions of the aforesaid sanad by which the pre-decessors-in-interest of the appellants held the market in dispute. Therefore in such a matter the appellants have no right to seek a writ of mandamus from this Court, since the matter pertains to contractual disputes between the parties. Furthermore, the disputes are of such a nature which cannot be adequately resolved on affidavits by this Court. Under these circumstances we are clearly of the opinion that the

appellants have no right to seek a writ of mandamus from this Court.

41. Lastly, considerable emphasis was put on the fact that the appellants had been forcibly dispossessed without sufficient opportunity having been given to them to represent their case before the opposite-parties. As would appear from the resume of the events given by us earlier, the appellants were duly informed by the respondents of the intention to resume the market in dispute. They, in fact, had sent a reply to the notice expressing the intention to resume sent by the respondent No. 3. Again, by another notice the appellants were informed that the market land was going to be resumed. The mere fact that the actual resumption was delayed by several years would not give any sufficient cause of complaint to the appellants. As a matter of fact, there was sufficient time for the appellants to resort to any proper remedy in a Court of law. They apparently did not decide to do so. Learned Counsel for the appellants emphasised that there was nothing on record to indicate that the conditions prevailing in 1952 or 1953 still existed at the time when the proclamation to resume the market in dispute was issued by the respondents. We are not in a position to say whether the conditions existing in 1952 or 1953 continued to exist at the time when the actual resumption took place. That again is a disputed matter and there is nothing on the record to indicate that conditions had materially altered during the interval between 1953 and the date when the market in dispute was resumed and the appellants were dispossessed therefrom.

42. Learned counsel for the appellants further contended that there was a distinction between resumption and re-entry and assuming even if the respondents had a right to resume, they had no right to re-enter forcibly and dispossess the appellants from the market in dispute. We fail to see any such distinction between a right to resume and a right to re-enter. The act of resumption implies the right to re-enter even though the actual re-entry may follow the proclamation of resumption.

43. Learned Counsel for the appellants referred to *Dhirendra Kumar v. State of West Bengal* : AIR1956 Cal437 and *State of West Bengal v. Birendra Nath* : AIR1955 Cal601 . We do not think these two cases help the appellants. On the

contrary, it was pointed out in the aforesaid cases that a rightful owner had a right of re-entry and he could enter even by force, if necessary. If, however, such forcible re-entry is made, the party making such a re-entry does so at his peril and may be held responsible for the consequences. A similar view was expressed in *Bandu v. Naba*, ILR 15 Bom 238.

44. The Advocate General referred to the provisions of the Government Grants Act which pointedly exclude the provisions of the Transfer of Property Act to any grant or other transfer of land made by or on behalf of the Government in favour of any person whomsoever. It is, however, not necessary to go further into the matter.

45. We are satisfied that Mr. Justice Tandon was right in refusing to issue any writ of mandamus as prayed for by the appellants. We are clearly satisfied that no question of any fundamental right to hold property is involved. Furthermore, the dispute pertains to contractual rights and obligations of the parties and lastly, it is of a nature which cannot be adequately resolved on the allegations made before us in the affidavits of the parties. We, therefore, see no reason to interfere with the order passed by our learned brother. The appeal is dismissed with costs.

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