

Mohammad Israil and anr. Vs. Union of India (Uoi) and ors.

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SooperKanoon Citation : sooperkanoon.com/888142

Court : Kolkata

Decided On : Sep-30-1974

Reported in : AIR1976Cal189,80CWN193

Judge : Salil K. Roy Chowdhury, J.

Acts : Defence of India Act, 1962 - Section 3(1) and 3(2); ;Defence of India Rules, 1962 - Rule 133V; ;[Enemy Property Act, 1968](#) - Sections 7 and 8; ;[Evidence Act, 1872](#) - Section 116; ;[Constitution of India](#) - Article 226

Appeal No. : Matter No. 105 of 1974

Appellant : Mohammad Israil and anr.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : N.C. Roy Choudhury, Adv.

Advocate for Pet/Ap. : Hassan Imam, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Salil K. Roy Chowdhury, J.

1. This is a writ petition challenging a notice dated the 24th of October, 1973 and two letters dated the 29th of October, 1973 issued by the respondent No. 3, Deputy Custodian of Enemy Property.

2. The facts shortly are; That a premises No. 19, Pheares Lane (formerly known as Chunamgully) hereinafter refer-red to as the said 'premises' belonged to the estate of one Benoy Madhab Law. On the 8th of February, 1927, the Executrix of the said estate leased out the said premises (a vacant plot of land) to one Haji Allah Jawaya for period of 20 years commencing from the 1st of March, 1927 with permission to build thereon structures and/or houses for residential purposes. Thereafter by virtue of a purported decree dated the 6th of April, 1936 in Suit No. 1319 of 1973 of this Court, the said premises was allotted on the 29th of August, 1944 to Mohendra Nath Law, the youngest son of the said Benoy Madhab Law On the 28th of December, 1945, the said Mohendra Nath Law sold the said premises to one Mussamet Boktam Begum and Md. Shafiq by a deed of conveyance subject to the said lease in favour of Haji Allah Jawaya. The said lessee and his successors-in-interest constructed buildings and structures on the said premises and alleged to have enjoyed the said premises even after the expiry of the said lease as lessees thereof under the said Mussamet Boktam Begum and Md. Shafiq. It is alleged that the Calcutta Thika Tenancy Act Ordinance was promulgated in 1948 and the same was replaced by the Calcutta Tenancy Act, 1949 and after the said expiry of the said lease, the successors-in-interest of the said lessees being Mohammad Anwer and Mohammad Zafar, grandsons of Haji Allah Jawaya continued to occupy the said premises as thika tenants. Thereafter by a deed of lease dated the 20th of February 1956 executed between Mossamet Boktam Begum and Md. Shafiq on the one part and Md. An-war and Md. Zafar as parties on the other part the said owner of the premises demised the said premises to Md. Anwar and Md. Zafar for period of 15 years. It is alleged (that) by the said purported deed of lease, the said Mussamet Boktam Begum and Md. Shafiq sought to defeat and annul the effect of the Calcutta Thika Tenancy Act and as such the said deed of lease is void. It further appears from the said alleged lease dated the 20th of February, 1955 that Md. Anwar and Md. Zafar were the absolute owners of structures standing on the plot of land at the said premises and thereby practically admitted that they were thika tenants under the said Mussamet

Boktam Begum and Md. Shafiq. By a registered deed of lease dated the 22nd of August, 1955 between the said Md. Anwar and Md. Zafar on the one part and Haji Mohammed Hossain on the other part, the said Haji Mohammed Hossain since deceased 'became the owner of the (partly tile-roofed and partly corrugated tin-roofed one storied hut consisting of 29 rooms erected on the said premises together with leasehold interest in the said premises. The said Md. Anwar and Md. Zafar at all material times and at the time of the sale of the said structures and transfer of the leasehold interest on the said premises were citizens of India. It is also alleged that the said Haji Mohammad Hossain also constructed five more rooms on the said plot of land at the said premises and continued in possession thereof till the date of his death on the 23rd of June, 1968. The petitioners Mohammad Israil and Ashique Hossain being the sons and Anwari Begum, Nejma Begum, Hargis Begum and Shamim Begum are the sons and daughters of the said Haji Mohammad Hossain and are the legal heirs and heiresses. Thereafter toy an amicable Deed of Partition dated the 12th of September, 1969, the said premises together with structures thereon was allotted to the petitioners Mohammad Israil and Ashique Hossain and since the said date the petitioners' are enjoying the proprietary right and exercising all acts of possession in respect of the said premises and all structures thereon. It is alleged that between June 1973 and August, 1973, the petitioners with a view to erect a building on the said premises entered into several agreements with several tenants of the huts which contained inter alia a term that the tenants would vacate their respective rooms under their tenancies in the said premises on the expiry of the month of September, 1973 failing which each of them would be liable to pay damages at the rate of Rs. 10 per diem till they would vacate the rooms and also if the petitioners would fail to construct the proposed new building within the specified time mentioned in the said agreement after obtaining vacant possession, then the petitioners would be liable to pay each of the tenants damages at the rate of Rs. 10 per diem until building is completed and possession is restored to them and the time was made essence of the said contracts between the petitioners and their tenants.

It is alleged by the petitioners that with a view to frustrate the said agreement some interested persons and some of the tenants in collusion with each other began to create trouble for the petitioners. Thereafter the petitioner No. 1 received

the letter dated the 15th of September, 1973 from the respondent No. 3 alleging that various complaints were received from various sources that there is enemy interest in the said premises which has been purchased by the petitioners' father Haji Mohammad Hossain. By the said letter the said respondent No. 3 also called upon the petitioners to produce before him satisfactory documentary evidence in that regard 'by the 25th of September, 1973, it is alleged that from the above notices the petitioners realised that (some of the tenants who have entered into the agreement for vacating the said premises in their respective possession were not inclined to honour their agreement and caused the said notices to be issued to lodging complaints with him. It is alleged that the respondents Nos. 2 and 3, the Custodian of Enemy Property and Deputy Custodian of Enemy Property most arbitrarily and without giving a hearing to the petitioners and without any prior intimation to the petitioners issued notices on the monthly tenants of the petitioners calling upon them to pay their respective rents to the respondent No. 3. By a letter dated the 29th of October, 1973 which contained the order of the respondent No. 3 called upon the petitioners to pay him by 17th November, 1973-- the rents payable to the owners of the said premises under the lease as from 10th of September, 1965 to 23rd of February, 1970 and rents collected by the petitioners from the tenants of the said premises from 1st of March, 1970 to 30th of September, 1973 and along with the said letter a copy of authorization dated the 24th of October, 1973 was forwarded wherein it is stated that Mussamet Bokhtan Begum and Md. Shafiq are Pakistanis and owners of the said plot of land in the said premises and huts thereon. It appears that the respondents Nos. 2 and 3 are claiming as custodian of enemy property on the basis of the alleged Deed of Lease dated the 20th of February, 1955 executed 'between the said Mussemet Bokhtan Begum and Md. Shafiq as lessors and the said Md. Anwar and Md. Zatar dated the 20th of February 1955. It is further alleged that one of the provisions in the said purported Deed of Lease dated the 20th of February, 1955 is that on the expiry of the period of 15 years the land together with the structures standing thereon without any compensation would become the property of the said Mussamet Bokhtan Begum and Md. Shafiq. It is alleged that such a provision was clearly void as it was designed to take away the protection of the tenants under the Calcutta Thika Tenancy Act, 1949 and was against the public policy being contrary

to statutes. In this writ petition the petitioners have challenged the Notification No. 12/2/65 dated the 10th of September, 1965 of the Ministry of Commerce, Government of India, Authorisation No. 5 (216) PAK dated 24th October, 1973 made by the respondent No. 2 and the order contained in the Letters Nos. 115/2315-6 dated the 29th of October, 1973 of the respondent No. 3 on the grounds mentioned in paragraph 36 of the petition. After serving a letter demanding justice dated the 29th of January, 1974 through the petitioners' Advocate and the refusal by the respondent No, 3 by his letter dated the 9th of March, 1974, the present writ petition was filed on the 22nd of March, 1974 and an interim injunction was obtained by the petitioners. It will be convenient to set out the said Notification, Authorization and letter which are impugned in this petition which are as follows:--

'Copy of Government of India, Ministry of Commerce Notification No. 12/2/65 E. Pty., dated the 10th September, 1965.

In exercise of the powers conferred by Sub-rule (1) of Rule 133-V of the Defence of India Rules 1962, the Central Government hereby orders that all immovable property in India, 'belonging to or held by or managed on behalf of all Pakistan nationals, shall vest in the Custodian of Enemy Property for India with immediate effect.

2. Nothing in this notification shall apply to any such property, belonging to or held by or managed on behalf of such of the Pakistan nationals as are employed in the different Missions of the Government of Pakistan in India.

GOVERNMENT OF INDIA OFFICE Of

THE CUSTODIAN OF ENE-

MY PROPERTY FOR INDIA KAISER-I-

HIND BUILDING, CURRIMBHOY ROAD,

Ballard Estate, Post Box No. 689,

Bombay-400001 B.R.

No. 5 (216) PAK/

Shri H. C. Biswas,

Dy. Custodian of Enemy Property

C/o National Bank of Pakistan,

14, Netaji Subhas Road,

Post Box No. 2678, Calcutta-1. Authorisation under Section 8 of the

[Enemy Property Act, 1968.](#)

WHEREAS, under Government of India, Ministry of Commerce Notification No. 12/2/65-E Pty. dated the 10th Sept., 1965 (copy reproduced overleaf), all immoveable property in India, belonging to or held 'by or managed on behalf of all Pakistan nationals are treated as 'enemy property and vest in the Custodian of Enemy Property for India and continue to so vest in the said Custodian under Section 5 of the [Enemy Property Act, 1968](#);

AND WHEREAS the person(s) detailed in Column 2 of the Schedule annexed hereto is/are all/a Pakistan nationals) owning the immoveable properties mentioned in Column 3 thereof.

NOW, therefore, I, Shri M.K. Ranga-chari, Custodian of Enemy Property for India under Section 8 of the [Enemy Property Act, 1968](#) authorise you to take, such measures as you consider necessary expedient for the preservation and management of the said 'enemy' property and

(i) to take action for re-covering rent including arrears of rent where due from the tenants of the property due to the enemy;

(ii) to institute, defend or continue any suit or other legal proceeding, refer any dispute to arbitration and compromise any debts, claim or liabilities in respect of the said enemy interest in the above property. Seal of the Custodian of Enemy Property for India.

Sd/-

(M. K. Rangachari)

Custodian of Enemy Property

for India Certified to be true

copy

Sd/_ H. C. Biswas

Dy. CUSTODIAN OF ENEMY

PROPERTY, CALCUTTA.

SCHEDULE

S. No.	Name (s) of the Pakistani Name (s) of the Property	Details of the Property
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123		
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1.	Mstt. Bute tan Begum and Md. Shafique (wife and son respectively of Md. Siddique deed)	
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		Plot at No. 19. Phears Lane, Calcutta, with huts and structures thereon.
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GOVERNMENT OF INDIA

OFFICE OF THE DEPUTY CUSTODIAN

OF ENEMY PROPERTY C/o. NATIONAL

BANK OF PAKISTAN,

14, Netaji Subhas Road, Post Box No. 2678

Calcutta-1.

REGISTERED A/D

No. 115/2316 29th October, 1973.

Janab Md. Israil,

23, McLeod Street,

CALCUTTA-16

Dear Sir,

Premises No. 19, Phears Lane, Calcutta.

I enclose, for your information a copy of an authorisation issued by the Custodian of Enemy Property for India on the 24th October, 1973 from which it may be observed that the abovementioned im-moveable property is an 'enemy property' and therefore vested in the Custodian with effect from 10-9-65 (subject to take measures, inter alia, for the preservation and management thereof). I hereby call upon you to pay to me at this office on any working day between 11.00 A.M. and 1.00 P.M., latest by the 17th November, 1973 :

(i) the lease rent payable to the owners of the property in question as from 10-9-65 to 28-2-70; and

(ii) the rent collected by you from the tenants at the above premises as from 1-3-70 to 30-9-73.

Yours faithfully,

Sd/

(H. C. BISWAS)

Dy. Custodian of Enemy Property. Enclo. As above.

3. Mr. Hassan imam appearing for the petitioners placed before me the facts which I have set out before from, the petition and annexures and thereafter submitted 'that two important questions arise in this matter: (i) Is the Rule 133-V of the Defence of India Rules, 1962 ultra vires Section 3 of the Defence of India Act? (ii)

Can the respondents Nos. 2 and 3 take possession of the said premises and interfere with the petitioners' possession and realising the monthly rents without taking recourse to due process of law?

4. Mr. Imam submitted on the first question that the said Rule 133-V is ultra vires Section 3 of the Defence of India Act, 1962 as Section 3(1) of the Act delegated power to the Central Government to make rules for the purposes mentioned therein i.e. (a) for securing the Defence of India and Civil Defence, (b) the public safety, (c) the maintenance of public order or efficient conduct of the military operation, (d) for maintaining supplies and services essential to the life of the community.

5. Mr. Imam submitted that Subsection (2) of Section 3 of Defence of India Act does not confer additional power on the Central Government beyond the limitation imposed 'by Sub-section (1) of Section 3. He submitted that, that 'being the position, the Rule 133-V must be held to be beyond the scope, power and ambit of Sub-sections (1) and (2) of Section 3 of the Defence of India Act, 1962. Mr. Imam cited a Division Bench decision of the Bombay High Court in Amichand Valanji v. G. B. Kotak, : AIR1966 Bom70 . The said decision was under Defence of India Act, 1962 and in the said case the principle laid down in the Supreme Court decision in King Emperor v. Sibnath Banerjee, AIR 1945 PC 156 was applied and it was held that the Rule in question was beyond the rule-making power which the legislatures have thought fit to confer upon the Central Government and as such the said Rule was held to be invalid. Mr. Imam, therefore, submitted that in view of the said Privy Council decision relied on in the Bombay decision, the Single Bench decision of this Court in Deputy Custodian of Enemy Properties v. The Star Paper Mills Ltd., 48 Cal WN 163 must be held to be not correctly decided. Mr. Imam also relied on a Supreme Court decision in Santosh Kumar v. The State, : 1951 CriLJ757 where the provisions under the Essential Supplies (Temporary Powers) Act 1946 which are similar to the provisions of Section 3 (1) of Defence of India Act, 1962 came up for consideration and the said Privy Council decision in King Emperor v. Sibnath Banerjee, 72 Ind App 241 = (AIR 1945 PC 156) was approved. Mr. Imam relying on the said decision submitted that preservation of enemy property as provided under the said Rule 133-V of the Defence of India Rules was

clearly not within the rule making power of the Central Government under Subsection (1) of Section 3 of the Defence of India Act, 1962 and as such must be held to be ultra vires.

6. Regarding the second question Mr. Imam submitted that the said letter of authorization dated the 24th of October, 1973 issued by the respondent No. 2 and the notice dated the 29th of October, 1973 are clearly violative of the principles that nobody can take possession of any property or deprive any one of his proprietary right without due recourse to law. He relied on the Supreme Court decision in *Bishan Das v. State of Punjab*, : [1962]2SCR69 . He analysed the facts as disclosed from the petition and the lease documents that the petitioners are prima facie in possession as the owners of the structures of the said land for a long time and as such the respondents should have taken appropriate steps under the law for removal of the structures on the land and for getting declaration that the structures were forfeited to Mussamet Bokhtan Begum and Md. Shafiq in terms of the alleged purported Deed of Lease dated the 20th of February, 1955. He submitted that without due process of law the said Act, is illegal and violative of the fundamental rights of the petitioners who ere admittedly in possession of the said structures on the said premises at the date of the impugned letter of authorisation and the notice set out before. Mr. Imam submitted that on those grounds the Rule should be made absolute and appropriate writ should be issued setting aside and quashing the said letters of authorisation and the said impugned notices.

7. Mr. N.C. Roy Chowdhury appearing for the respondents relied on the said Calcutta decision in the *Deputy Custodian of Enemy Properties v. The Star Paper Mills Ltd.*, ((1944) 48 Cal WN 163) and submitted that the Rule 133-V of the Defence of India Rules is valid and within the rule making power under Section 3 (1) of the Defence of India Act, 1962. He submitted that preserving enemy properties and regulating vesting of the same in the Custodian of Enemy Properties are clearly within the wide rule making power under Section 3 (1) of the Defence of India Act, 1962. He also submitted that admittedly the said premises belongs to Mussamet Bokhtan Begum and Md. Shafiq who are Pakistani nationals and has been duly vested in the respondent No. 2 by virtue of Notification dated the 10th of September, 1965. He further submitted that under the said Deed of

Lease dated the 20th of February, 1955 the structures on the said premises were vested after the expiry of the period of lease in the respondent No. 2 as the lessors were entitled to the same in terms of the said lease. He relied on the terms of the lease dated the 20th of February, 1955 which, contained the provision for forfeiting the said structures on the land on the failure of the lessors to remove the said structures at their costs after the expiry of the said lease. Therefore, Mr. Roy Chowdhury submitted that the said notices were valid and legal according to the provisions of the Defence of India Rules and [Enemy Property Act, 1968](#) and, therefore, the Rule should be discharged and interim order vacated.

8. Considering the respective contentions very carefully I am of the view that the first contention of Mr. Imam has no substance. The Rule 133-V of the Defence of India Rules is not ultra vires as contended by Mr. Imam. The decisions relied on by Mr. Imam Vide Emperor V. Sibnath Banerjee, AIR 1945 PC 156, Aminchand Valanji v. G.B. Kotak, AIR 1966 Born 70 and Santosh Kumar Jain v. The State, : 1951 CriLJ757 instead of supporting Mr. Imam's contention, go against it as the relevant passage of the Privy Council decision in Emperior v. Sibnath Banerjee which is at page 160 of AIR 1945 PC is as follows:--

'In the opinion of their Lordships, the function of Sub-section (2) is merely an illustrative one; the rule-making power is conferred by Sub-section (1), and 'the rules' which are referred to in the opening sentence of Sub-section (2) are the rules which are authorised by, and made under Sub-section (1); the provisions of Sub-section (2) are not restrictive of Subsection (1), as indeed is expressly stated by the words 'without prejudice to the generality of the powers conferred by Sub-section (1)'. There can be no doubt as the learned Judge himself appears to have thought that the general language of Sub-section (1) amply justifies the terms of Rule 26, and avoids any of the criticism which the learned Judge expressed in relation to Sub-section (2).'

9. The said passage is quoted with approval in the Supreme Court decision in Santosh Kumar Jam v. State, : 1951 CriLJ757 .

10. In the latest Supreme Court decision in Kesavananda v. State of Kerala, : AIR 1973 SC1461 where the constitutional validity of the Constitution 24th, 25th, 26th

and 29th Amendment Acts came up for consideration and dealt with the - interpretation of the words 'without prejudice to the generality of the provisions contained in Article 31-A'. The said wordings occur in Article 31-B of the Constitution. The Thirteen Judges Bench of the Supreme Court upheld the validity of the said Amendments of the Constitution and rejected one of the contentions raised that the said words showed that the mention of particular statutes in Article 31-B read With Ninth Schedule was only illustrative and that, accordingly, Article 31-B could not be wider in scope relying on the said Privy Council decision in Sibnath Banerjee's case (AIR 1345 PC 156). The Supreme Court in the decision in Kesavananda v. State of Kerala rejected the said contention and relied on previous Supreme Court decision in the State of Bihar v. Kameshwar Singh of Darbhanga, : [1952]1SCR889 , where Patanjali Sastri, C. J. observed:--

'There is nothing in Article 31-B to indicate that the specific intention of certain statutes was only intended to illustrate the application of the general words of Article 31-A. The opening words of Article 31-B are only intended to make clear that Article 31-A should not be restricted in its application by reason of anything contained in Article 31-B and are in no way calculated to restrict the application of the latter article or of the enactments referred to therein to acquisition of 'estates'.'

Mahajan, J. also repelled a similar argument made in the said Kameshwar Singh's case in the following words:--

'In my opinion the observations in Sibnath Banerji's case far from supporting the contention raised negatives it. Article 31-B specifically validates certain acts mentioned in the Schedule despite the provisions of Article 31-A and is not illustrative of Article 31-A, but stands independent of it.'

The said two passages were approved in the Supreme Court decision in Kesavananda v. State of Kerala in the judgment of Sikri, C, J. in paragraphs 480-432 at page 1564 of AIR 1973 SC and also paragraphs 755 and 766 at page 1647 of AIR 1973 SC being the judgments of Hegde and Mukherjea, JJ.

11. Therefore, in my view, applying the said principles as are well-settled regarding the interpretation of the words mentioned above it must be held that

Rule 133-V of the Defence of India Rules is not ultra vires but valid and constitutional and within the rule making powers of the Central Government.

12. Regarding the second and last point of Mr. Imam I am unable to accept his contention that the respondents have issued the said authorisation dated the 24th of October, 1973 and letter dated the 29th of October, 1973 without taking recourse to due process of law. As admitted from the facts it appears that the Premises No. 19 Phears Lane, Calcutta is an enemy property within the meaning of the Defence of India Act, 1962 and Rule 133-V made thereunder read with [Enemy Property Act, 1968](#) and as such it has duly vested in the Custodian of Enemy Property by the said Notification dated the 10th of September, 1965 made under Sub-rule (1) of Rule 133-V of the Defence of India Rules, 1962. The petitioners are claiming as lessees under the said Lease dated the 20th of February, 1955 executed by Musssmet Bokhtan Begum and Md. Shafiq and as such they are estopped from raising any question as to the title to the lessors who are now admittedly Pakistani nationals and are enemies within the meaning of the said Act and Rules mentioned above.

13. In that view of the matter the respondents seem to have duly taken (steps) under the relevant law, that is, the Defence of India Act, 1962 and Rule 133-V of the Defence of India Rules, 1962 and Section 5 of the [Enemy Property Act, 1968](#) and as such it cannot be said that they have proceeded without due process of law. The decision in *Bishan Das v. State of Punjab*, : [1962]2SCR69 relied on by Mr. Imam has no application in this case as the steps taken by the respondents are not by mere executive orders but in the exercise of statutory powers under the Defence of India Rules and Enemy Property Act mentioned above. Reference may be made to the recent decision of the Division Bench of this Court in the *Corporation of Calcutta v. Dharendra Nath Sen*, : AIR1973 Cal506 where the identical question raised by Mr. Imam has been dealt with and negatived by the Division Bench as the acts complained of were under exercise of statutory powers and not mere executive orders.

14. In my view, the same principle also applies in this case.

15. I may also note here that certainly there is a nexus between the Rule 133-V of the Defence of India Rules and Section 3 (1) of the Defence of India Act, 1962. In my view, the said property in question is still an enemy property within the meaning of the Defence of India, Act and Rules made thereunder and also the [Enemy Property Act, 1968](#). The collection from the said properties and also custody of the said property relates to maintenance of public order which is one of the main purposes mentioned in Section 3 (1) of the Defence of India Act, 1962 for making Rules by the Central Government. However, in view of the Supreme Court decision which I have mentioned before, it must be held that the Rule 133-V of the Defence of India Rules under which the said Notification dated the 10th of September, 1965 was made is intra vires and valid vesting the said property in the custodian of enemy property. Therefore, it is within the writ jurisdiction of the custodian of enemy property to take any action and steps under the provisions of the Defence of India Act, 1962 and Defence of India Rules, 1962 which they have done under the said two impugned authorisation letters dated the 24th October, 1973 and the two letters dated the 29th October, 1973.

16. It is well settled that before writ petition under Article 226 of the Constitution can be moved the petitioner must have a legal right and that legal right must be clear or in any event cannot be disputed as a matter of law but if such legal right depends on disputed question of fact and out of which serious and complex questions arise both in law and fact in that event the Court cannot exercise its power and writ jurisdiction for granting any relief to the petitioner. In this instant case the question whether the petitioners are thika tenants or not is a disputed question of fact. The question whether the petitioner is in adverse possession of the said premises is also a question of disputed facts, and further whether they are entitled to the structures on the said land or not and whether the petitioner has entered into various agreements alleged by them with their tenants in the said premises are all seriously disputed questions of fact. In that view of the matter this is not a legal right which the petitioner can get any redress of any writ application under Article 226 of the [Constitution of India](#). The petitioners' proper remedy is to take appropriate proceedings in ordinary course either 'by filing suits or taking appropriate proceedings where those disputed questions can be gone into and they can get proper relief. In that view of the matter I hold that the [present

application is not maintainable under Article 226 of the [Constitution of India](#) and the Rule is discharged, interim [order vacated and this order will not prejudice in any way the petitioner's right to take appropriate proceedings for adjudication of their rights to the said properties including the structures thereon in appropriate proceedings as it may be advised I am making it clear that in this application, I have not gone into the merit of the question as to whether the petitioners are thika tenants in respect of the said premises or not or as to whether the structures on the said premises have vested in the owners of the said premises as the custodian as the case may be or I have not dealt in any way with the respective rights of the petitioners or their tenants of the said premises. In short all these questions will be gone into if the petitioners take appropriate proceedings under the law as they may be advised. No order as to costs. I must also observe that it is very strange in this case that the custodian has not taken any steps in the matter in taking decision of the said premises since 1965. It is only in October, 1973 that the said authorisation letter and the two letters have been issued to the petitioner. Therefore the petitioner seems to have reasonable prima facie grounds in the matter of claiming the title to the said premises or the structures thereon as a thika tenant or otherwise. However, it is desirable that the petitioner will get opportunity to agitate the questions before a competent Court of Law before the respondents take any final steps in the matter.