

demand interference. On the facts and circumstances of the present case I am unable to persuade myself to hold that the order of the Court below is so perverse or contrary to the record that to uphold it would be travesty of justice and would mean that a proved guilty person has been wrongly acquitted. The impugned order of acquittal is based on reasons which do not seem to be so perverse and unreasonable as to call for the exercise of the *suo motu* power of revision; and there is hardly any grave miscarriage of justice. It is hardly necessary for me to say anything more on this point.

In the result this appeal succeeds and allowing the same I acquit the appellant. The murder reference must thus be held to have been declined.

J. S. BEDI, J.—I agree.

Bedi J.

B.R.T.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

DR. AYA SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1460 of 1961

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Section 29—Property forming part of compensation pool sold in public auction and Sale certificate issued—Property in possession of a tenant under custodian—Such tenant whether can be ejected by Rehabilitation authorities—Constitution of India—Article 226—Writ for restoration of possession in case of illegal ejection—Whether can be granted.

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10th.

Held, that evacuee property which formed part of compensation pool and having been sold in public auction, the

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authorities under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, have nothing to do with the evacuee property which formed part of the compensation pool and was sold by public auction especially after the sale certificate had been granted to the purchaser. The transferee of the property can eject the tenant who was in possession thereof under the custodian prior to the transfer by taking ejectment proceedings against him under the ordinary law of the land. Section 29 of the said Act affords special protection from ejectment to the persons in occupation of the transferred property and a tenant of such property cannot be ejected for a period not exceeding two years.

Held, that in case of illegal ejectment, a writ of *mandamus* can issue to restore possession of the property to a person wrongfully ejected. The power of restitution is inherent in the High Court.

Petition under Article 226 of the Constitution of India, praying that a writ of certiorari, mandamus or any other appropriate writ, direction or order be issued quashing the order of respondent No. 3, dated 28th of September, 1961 and the orders of even date, i.e., 28th of September, 1961, passed by the Deputy Commissioner (respondent No. 2) and also praying that the possession of the property in dispute be ordered to be restored to the petitioner.

A. C. HOSHIARPURI, ADVOCATE, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL AND K. S. CHHACHHI, ADVOCATE, for the Respondents.

ORDER

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Bahadur, J.

SHAMSHER BAHADUR, J.—The petitioner Dr. Aya Singh has challenged the orders passed by the authorities purporting to act under the Displaced Persons (Compensation and Rehabilitation) Act, on 28th and 29th of September, 1961, culminating in his forcible ejectment on 30th September, 1961, from the shop which had been in his possession since 1947-48. The State of Punjab, the Deputy Commissioner, Sangrur, the Tehsildar, Narwana and Nihal Chand have been impleaded as respondents in the petition filed by the

petitioner for a writ of *mandamus* under Article 226 of the Constitution and the prayer is that he should be put back in possession, the order of ejectment being illegal and unwarranted in law.

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The case was originally fixed for an actual hearing on 12th of February, 1962. As none of the respondents was present, the petition was heard *ex parte* and was allowed by my order of the same date. Subsequently, the fourth respondent Nihal Chand moved for a re-hearing of the petition as "actual date" notices had not been served on some of the respondents. The petition has been heard once again and I have taken into consideration the written statements which have now been filed by the respondents and also the arguments which have been addressed on their behalf by the learned Additional Advocate-General, Mr. Sharma and Mr. Chhachhi.

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It is not disputed that the petitioner has been in occupation of the shop No. 145 situated in Narwana Mandi since it was allotted to him in 1947-48, on a monthly rent of Rs. 7. The petitioner was paying the rent of the shop to the appropriate authorities. This shop was later put to auction on 12th of July, 1956, and the bidding closed in favour of the fourth respondent, Nihal Singh, a cloth merchant of Narwana. Though the rights in this shop were provisionally transferred on 17th of March, 1959, the regular sale deed was drawn up in favour of the fourth respondent on 1st of May, 1961. The Tehsildar, Narwana was moved by the fourth respondent for the ejectment of the petitioner from this shop and a notice was sent by this authority to the petitioner, Dr. Aya Singh, on 28th of September, 1961, calling upon him to vacate it within six hours as "it was necessary to deliver possession of it to the landlord." In an endorsement beneath this notice, it was stated that the time for vacation of the shop was extended till 6 P.M., on 29th of September, 1961. The Deputy Commissioner, Sangrur, purporting to act as a District Rent and managing Officer, stayed eviction proceedings by his order of 28th of September, 1961, but soon thereafter he passed an order that the eviction was justified and

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the stay granted by him should be treated as "cancelled." In pursuance of these orders, the petitioner was ejected forcibly from the shop on 30th of September, 1961.

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No attempt has been made to justify the peremptory order of ejection passed by the authorities concerned. The shop which was at one time evacuee property formed part of the compensation pool and once having been sold in public auction to the fourth respondent the authorities under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, had nothing to do with it especially after the sale certificate had been granted on 1st of May, 1961. The fourth respondent could enforce ejection proceedings under the ordinary law of the land. The position taken up by the second and third respondents is that they acted *bona fide* in the belief that the orders which they passed were legal. It passes my comprehension how the assistance of the Tehsildar, Narwana, could have been invoked by the fourth respondent to have the ejection of the petitioner carried out forcibly, and it is astonishing that the second and third respondents readily agreed to lend their aid to him. There is no provision in the Displaced Persons (Compensation and Rehabilitation) Act, to justify the course which the Tehsildar chose to adopt in this case. It may be observed that even where a lease has to be cancelled proper notice has to be given to the person whose ejection is sought. As I said in my previous order it would be a travesty of justice to call the notice to vacate issued on the 28th of September, 1961, as a reasonable opportunity to the petitioner to show cause why he should not be ejected. It has been pleaded in the written statement that the petitioner submitted no objection to the effect that the notice of ejection was illegal. This is hardly any defence of the unjustifiable and illegal action which has been taken. Section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, affords special protection from ejection to those living in property which is transferred to other persons under the provision of this Act. A tenant of such premises shall be deemed to be a tenant of the transferee on the same

terms and conditions as to payment of rent or otherwise on which he held the property immediately before the transfer. Under the proviso to section 29, a tenant of such premises shall not be liable to be ejected from the property for a period not exceeding two years. It has been contended by Mr. Hoshiarpuri that this period was to commence from the execution of the sale deed and this position has not been controverted by the counsel for the respondents.

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In my opinion, there is really no answer to the case of the petitioner and the orders of the authorities concerned of 28th and 29th of September, 1961, and the consequential order of ejection of 30th of September, 1961, being without any legal justification must, therefore, be set aside. In the present instance this would be manifestly insufficient and a redress to the petitioner requires restoration of the shop from where he has been improperly ejected by force.

As held in a Division Bench of the Madras High Court (Horwill and Balakrishna Ayyar, JJ.), in *K. P. S. Thangaswamy Chettiar v. A Bapoo Sahib* (1), "the power of a Court to direct restitution is inherent in the Court itself. It rests on the principle that a Court of Justice is under a duty to repair the injury done to a party by its act." An injury has been done to the petitioner in the present instance by the acts of the second and third respondents and it is plainly the duty of this Court to see that he is restored to the position which he enjoyed before the forcible ejection was carried out. Mr. Sharma, for the State, has invited my attention to the Supreme Court authority of *Shri Sohan Lal v. Union of India and another* (2), in which it was held that where the eviction of a displaced person was in contravention of the expressed provisions of section 3 of the Public Premises (Eviction) Act and was consequently illegal, a writ of *mandamus* could issue against the Union of India to restore possession of the property to him from which he has been evicted if the property is in possession of the Union of India. Their Lordships made it clear that if a person who is

(1) A.I.R. 1951 Mad. 804.

(2) A.I.R. 1957 S.C. 529.

Dr. Aya Singh now in possession had knowledge that the eviction
 v. was illegal a writ of *mandamus* would lie against him.
 The State of Punjab and In my opinion, the fourth respondent, at whose ins-
 tance the order of ejection was sought, must be
 others deemed to have known like the second and third res-
 pondents the illegality and impropriety of such a
 course and a writ of *mandamus* can be issued requir-
 ing him to restore possession of the shop to the peti-
 tioner

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I would in the circumstances direct the second and third respondents to put the petitioner in possession of the shop in dispute which is now with the fourth respondent. A report should be sent to this Court about the compliance of this order within one month. The petitioner would get the costs of this petition from the fourth respondent.

K.S.K.

CIVIL MISCELLANEOUS

Before Mehar Singh and P. D. Sharma, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB,—
Applicant.

versus

DALMIA DADRI CEMENT, LTD.—*Respondent.*

Income-Tax Reference No. 6 of 1961,

1962
 May.. 21st. *Income-tax Act (XI of 1922) Sections 18A(5) and (6) and 34(1)(b)—Proceedings under section 34(1)(b)—Whether can be started for recovery of excess amount of interest allowed under section 18-A(5) and for recovery of interest under section 18-A(6) not charged when original demand created.*

Held, that no proceedings under section 34(1)(b) of the Income-tax Act, 1922, can be initiated for recovery of excess amount of interest that was allowed to the assessee under section 18A(5) and for recovering interest under section 18A(6) which was not charged when the original