IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.02.2007

CORAM:
THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.6187 of 2003

The Society of St. Joseph's College
Tiruchy
Represented by its Procurator
Jesuit Residence
St. Joseph's College Campus
Tiruchy - 620 002 .. Petitioner

vs.

1. Union of India
Represented by Chief Post Master General
Anna Salai, Chennai - 600 002

2. The Senior Superintendent of Post Offices
Tiruchy Division
Tiruchy

3. The Post Master
Teppakulam Post Office
Tiruchy - 620 002 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus as stated therein.

For petitioner Mr. M. Venkatachalapathy
Senior Counsel for Mr. M. Sriram

For respondents Mr. V.T. Gopalan
Additional Solicitor General of India
For Mr. B. Ullasavelan

- - - - -

O R D E R

The Society of St. Joseph's College, Tiruchy has filed this writ petition seeking a writ of mandamus to the respondents to handover vacant possession of the premises in possession of the third respondent where Teppakulam Post Office is being situated, to the petitioner's society.

2. The brief facts, as culled out from the petitioner's affidavit, are as under:

a. The petitioner is registered under the Societies Registration Act, 1860 and is an autonomous institution created under and administered by Religious Minority and the college run by the petitioner was established in the year 1844, and it caters to nearly 5000 students in a year. The college receives grants from the Government in respect of salary for teaching and non-teaching staff and the rest of the expenditure is met by the College and no fee is collected from the students.

b. The petitioner has let out a number of buildings to commercial purposes and one such building was let out to the respondents in 1910 for a monthly rent of Rs.830/- wherein the third respondent Teppakulam Post Office is located. In 1974, when revision of rent was sought by the petitioner, the same was not complied with by the respondents and on the contrary, they started proceedings under the provisions of the Land Acquisition Act to acquire the entire land along with building. Accordingly, Notification under Section 4(1) of the L.A. Act and declaration under Section 6 of the same Act were made on 07.11.1979 and 17.02.1982 respectively and the petitioner challenged the land acquisition proceedings in W.P. No.5552 of 1982 and the same was dismissed on 18.04.1984. The writ appeal filed by the petitioner challenging the order in the writ petition was also dismissed. During the pendency of the writ petition filed by the petitioner, the Land Acquisition Officer passed an award of Rs.1,56,377/- on 06.04.1984. As against the order of dismissal of the writ appeal, the petitioner filed a Special Leave Petition before the Supreme Court and further moved a Writ Petition in W.P. (Civil) No.42 of 1985 before the Supreme Court to enforce its fundamental right as a Minority educational institution. The Supreme Court, disposed of the writ petition as well as the Civil Appeal filed against the writ appeal order, holding that the provisions of the Central Act I/1894 may not be invoked in respect of educational institutions run and administered by Minority and enabled the Union of India to safeguard its position, if any special enactment or amendment to the Central Act is to be made to cover such situation. It further held that pending and uncompleted acquisitions would stand lapsed on and after 31.05.2002. The I.A. filed by Union of India for extension of upper limit of 31.05.2002 was dismissed on 21.08.2002 and as such, the proceedings in respect of the petitioner's property lapsed on 31.05.2002.

c. Even though the third respondent had deposited the award amount under the provisions of the Land Acquisition Act, the petitioner did not make any claim and receive the compensation since the award was not properly conducted. In reply to the petitioner’s notice dated 26.11.2002 demanding

vacant possession and damages for use and occupation from 01.04.1984, the third respondent vide his reply dated 16.12.2002, categorically reiterated that there is no landlord-tenant relationship and declined to comply with the demand on the ground of intended future acquisition of the very same property. Hence, the third respondent is a rank trespasser and is to be evicted from the premises.

3. On the other hand, the second respondent has filed counter on behalf of other respondents as well and his case is as follows:

a. The rent for the entire premises occupied by the third respondent in 1893 was raised from time to time and on 26.04.1984, when the premises was handed over to the third respondent by the State Government, the rent paid by the third respondent was Rs.830/- per month and sums of Rs.1,56,377/- and Rs.1,00,625.20 were paid to the State Government on 04.05.1983 and 23.03.1985 respectively for payment to the petitioner as compensation for the land and building acquired by the third respondent and the non-payment of rent was not willful but due to the award granted by the State Government. A sum of Rs.1,87,718/- being arrears of rent from 26.04.1984 to 28.02.2003 @ Rs.830/- per month was also paid to the petitioner on 29.03.2003. Since the amendment of the Land Acquisition Act involved enormous time, the same could not be done within the time stipulated by the Supreme Court.

b. Since the third respondent has deposited the award amount with the State Government, though not claimed by the petitioner, it has become the owner of the building from the date on which the premises was taken over after depositing the award amount and in view of ownership of the premises being in dispute for procedural lapses or wrong interpretation of Acts made by the State Government, non-payment of rent from the date of acquisition cannot be cannot be construed as wilful default and occupation of the premises cannot be termed as unlawful. Further, after 21.08.2002, though the acquisition process and ultimate award made by the State Government lapsed, the tenant-landlord relationship continues and it was also specifically mentioned by the third respondent in its reply to the notice sent by the petitioner that it would have the option to acquire the building in future after complying with the conditions prescribed by the Supreme Court and considering the fact that arrears of rent upto 29.03.2003 was paid, there is no trespass as alleged by the petitioner. Further, as per the judgment dated 21.08.2002 of the Supreme Court, it is only the acquisition proceedings which lapsed since the Land Acquisition Act was not suitably amended and the landlord-tenant relationship has re-started after the said judgment of the Supreme Court.

4. Mr. M. Venkatachalapathy, learned Senior Counsel appearing on the side of the petitioner has vehemently contended that in view of non-controversial issues and undisputed facts, the question of civil remedy does not arise in this case and the petitioner, especially being a minority educational institution, is very much entitled to maintain the writ petition to vindicate its fundamental rights guaranteed in Part III of the Constitution. It is his further contention that the position of the respondents, after the intervention of the Land Acquisition Act is nothing but unlawful and their possession amounts only to rank trespass.

5. The learned Senior Counsel for the petitioner has strenuously argued that during pendency of the land acquisition proceedings, the respondents stopped paying rent and the petitioner's claim from 01.04.1984 @ Rs.2,500/- per month towards damages for use and occupation was not complied with by the third respondent and in view of these, the writ petition has to allowed by directing the respondents to handover vacant possession of the premises in dispute.

6. In support of his contention that a writ petition is maintainable even in a case where the subject matter involved is an immovable property and where the facts are undisputed, the learned Senior Counsel for the petitioner has relied on a judgment of the Supreme Court reported in (1999) 4 SCC 450 in the case of Hindustan Petroleum Corporation Limited & another vs. Dolly Das (para 9)

> "We may now advert to the contention that the writ remedy is not appropriate in this case. Where interpretation of a contract arises in relation to immovable property and in working such a contract or relief thereof or any other fallout thereto may have the effect of giving rise to an action in tort or for damages, the appropriate remedy would be a civil suit. But, if the facts pleaded before the court are of such a nature which do not involve any complicated questions of fact needing elaborate investigation of the same, the High Court could also exercise writ jurisdiction under Article 226 of the Constitution in such matters. There can be no hard and fast rule in such matters. When the High Court has chosen to exercise its powers under Article 226 of the Constitution, we cannot say that the discretion exercised in entertaining the petition is wrong."

7. On the above contention itself as to whether a writ petition is maintainable for the relief of eviction, the learned Senior Counsel for the petitioner has further relied on a judgment of this Court reported in 2001 (1) CTC 1 in the case of N.R. Vairamani vs. Union of India represented by its Secretary, Ministry of Petroleum, Government of India, New Delhi & two others (para 6):

> ". . .From the facts culled out, it is very clear that the currency of lease was expired on 01.06.1998, and the respondent/Corporation has become the statutory lessee, and notice of termination was also served. Under the circumstances, we are of the view that the contention of the learned Senior Counsel for the appellant that the proposition of law, laid down by the Hon'ble Supreme Court in the above cited case, will squarely cover the case on hand, has some force. Since, the alleged facts does not involve any complicated questions, and need no elaborate investigation, and in view of the observations made by the Hon'ble Supreme Court in paragraph 9 in the decision cited supra, we deem it proper to entertain this writ appeal. As we have already stated, the appellant has sent only a notice of termination of lease and certainly, it will not amount to a notice of renewal. After the issuance of notice of termination of lease, respondent/Corporation has to vacate the premises. They are only rank trespassers. Considering their reply to the termination notice, for the reasons stated above, and in view of the decision of the Hon'ble apex Court cited supra, in our humble opinion, in the facts of the given case, it is not necessary to get the eviction from the appropriate court, and the appellant is entitled to get the vacant possession of the disputed property by invoking writ jurisdiction. . . ."

8. The learned Senior Counsel for the petitioner has placed further reliance on yet another judgment of the Supreme Court reported in (2004) 3 SCC 553 in the case of ABL International Limited & another vs. Export Credit Guarantee Corporation of India Ltd. & others on the maintainability of a writ petition in respect of disputed of question of facts and the relevant paragraphs of the said judgment read as under: (paras 16 & 27)

> "A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in the case of *Gunwant Kaur v. Municipal Committee, Bhatinada* where dealing with such a situation of disputed questions of fact

in a writ petition, this Court held: (SCC p. 774, paras 14 and 16)

> " 14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief, questions of fact may fall to be determined. In a petition under Article 226, the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account, the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.
>
> 16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties, the High Court should have entertained the petition and called for an affidavit-in-reply from the respondents, and should have

proceeded to try the petition instead of relegating the appellants to a separate suit."

27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

9. Further reliance has been placed by the learned Senior Counsel for the petitioner, with regard to maintainability of this writ petition, on a judgment of this Court reported in 2001 (1) CTC 10 in the case of G. Mohamed Thajf & another vs. The Bharath Petroleum Corporation Limited, Chennai - 40 & another wherein this Court has followed the judgments of the Supreme Court in N.R. Vairamani case and Dolly Das case (supra): (paras 11 and 20)

"So far as the maintainability of this writ petition is concerned, the Supreme Court in the case of Hindustan Petroleum Corporation Limited and another vs. Dolly Das, JT 1999 (3) SC 61 held that the writ petition of this nature is maintainable and the principles laid down therein had been followed by the Division Bench of this Court consisting of the Honourable The Chief Justice and K. Raviraja Pandian, J. in N.R. Vairamani vs. Union of India represented by its Secretary, Ministry of Petroleum, Government of India, New Delhi and two others, 2001 (1) CTC 1 in their judgment dated 20.10.2000. Hence, I do not propose to elaborately discuss this issue . . .

The benefit of the City Tenants Protection Act can be claimed only by the tenants, but not by the trespassers. Once it is held by the Courts that after the expiry of the statutory lease period, the first respondent cannot be considered to be a tenant

holding over and they are rank trespassers, this Court is of the opinion that the first respondent is not entitled for any benefit under the City Tenants Protection Act. Hence, the petitioners are entitled for the relief sought for in this writ petition.

10. Mr. Venkatachalapathy has drawn the attention of this Court to yet another judgment of the Supreme Court reported in (2004) 8 SCC 579 in the case of Bharat Petroleum Corporation Limited & another vs. N.R. Vairamani & another in support of his contention on the aspect of maintainability of a writ petition: (paras 15 & 16)

> . . .Section 9 confers an additional statutory right on a tenant against whom suit for ejectment is filed to exercise an option to purchase the demised land to that extent only which he may require for convenient enjoyment of the property. The tenant has no vested right in the property instead; it is a privilege granted to him by the statute which is equitable in nature."
>
> . . . The policy underlying Section 9 of the Tenants Act is directed to safeguard the eviction of those tenants who may have constructed superstructure on the demised land, so that they may continue to occupy the same for the purposes of their residence or business. Section 9(1)(b) ordains the court to first decide the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant, it therefore contemplates that the tenant requires the land for the convenient enjoyment of the property. If the tenant does not occupy the land or the superstructure or if he is not residing therein or carrying on any business, the question of convenient enjoyment of the land by him could not arise. The court has to consider the need of the tenant and if it finds that the tenant does not require any part of the land, it may reject the application and direct eviction of the tenant, in that event, the landlord has to pay compensation to the tenant for the superstructure."

11. Mr. M. Venkatachalapathy has placed reliance on a judgment of the Supreme Court reported in (2006) 1 SCC 228 in the case of C. Albert Moris vs. K. Chandrasekaran & Others in support of his contention that the mere receipt of rent by the petitioner would not establish the tenancy of the third respondent which according to him, should be actually adjudicated by a court: (paras 21, 26, 32 and 40)

> "It was submitted that the first respondent by withdrawing the suit for eviction and accepting the

further rent has impliedly permitted the appellant to continue as a tenant and further affirmed the tenancy. The possession/right to the site, of the appellant, on the said site hence continues."

Though the arguments of the learned Senior Counsel appearing for the appellant are attractive on the first blush, yet, on a careful re-consideration of the same, it has no merits. The judgments cited by the learned Senior Counsel appearing for the appellant are not only distinguishable on facts but also on law. Much argument was advanced on the receipt of the rent by the landlord after the cancellation of the lease. The consensus of judicial opinion in this country is that a mere continuance in occupation of the demised premises after the expiry of the lease, notwithstanding the receipt of an amount by the quondam landlord, would not create a tenancy so as to confer on the erstwhile tenant the status of tenant or a right to be in possession. In this context, we may refer to the judgment of this Court in Raptakos Brett & Co. Ltd. v. Ganesh Property. In para 13 of the said judgment, this Court held:

> "In view of the aforesaid settled legal position, it must be held that on the expiry of the period of lease, the erstwhile lessee continues in possession because of the law of the land, namely, that the original landlord cannot physically throw out such an erstwhile tenant by force. He must get his claim for possession adjudicated by a competent court as per the relevant provisions of law. The status of an erstwhile tenant has to be treated as a tenant at sufferance akin to a trespasser having no independent right to continue in possession."

. . .We are, therefore, of the opinion that mere acceptance of rent by the landlord, the first respondent herein, from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit, would not create a tenancy so as to confer on the erstwhile tenant the status of a tenant or a right to be in possession. We answer this issue accordingly."

We have already referred to the arguments advanced by both the parties in regard to the nature

> of tenancy and the statutory protection. It is abundantly clear from the recitals in the plaint, the Schedule to the notice and to the plaint and also of the lease deed that what was "leased out" was only a vacant site to put up a petrol bunk with accessory constructions thereon. The mention of a small shed in the current lease undoubtedly belonged to the tenant himself and, therefore, the building put up by the tenant situated in the vacant site belonging to the landlord cannot be said to be the building of the landlord in order to attract the statutory protection of the Rent Control Act. This issue is, therefore, answered against the tenant."

12. Per contra, Mr. V.T. Gopalan, learned Additional Solicitor General of India has strenuously argued that having made payment of rental arrears subsequent to the judgment of the Supreme Court, the third respondent is entitled to continue as a tenant and it is not right to call the third respondent a rank trespasser. It is his further contention that the failure on the part of the petitioner to claim and receive the rental arrears would only show its attitude of non-co-operation with the Government in the land acquisition proceedings and their inaction in collecting rental arrears would in no way preclude the position of the third respondent as a tenant.

13. With regard to the contention put forward by the Senior Counsel for the petitioner, the learned Additional Solicitor General has submitted that when the petitioner has not undertaken any maintenance work from 01.04.1984, the claim of the petitioner in respect of enhanced rent is in no way justified.

14. Mr. V.T. Gopalan, learned Additional Solicitor General of India, in support of his contention as to how a judgment has to be interpreted, has relied on a judgment of the Supreme Court reported in (2003) 6 SCC 697 in the case of Islamic Academy of Education and another vs. State of Karnataka & Others

> Interpretation of a judgment
>
> 139. A judgment, it is trite, is not to be read as a statute. The *ratio decidendi* of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The *ratio decidendi* of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal.
>
> 140. In Padma Sundara Rao vs. State of T.N., it is stated: (SCC p. 540, paragraph 9)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* (Sub nom British Railways Board v. Herrington). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

141. In General Electric Co. vs. Renusagar Power Co., it was held: (SCC p. 157, paragraph 20)

"As often enough pointed out by us, words and expressions used in a judgment are not to be construed in the same manner as statutes or as words and expressions defined in statutes. We do not have any doubt that when the words 'adjudication of the merits of the controversy in the suit' were used by this Court in *State of U.P. v. Janki Saran Kailash Chandra*, the words were not used to take in every adjudication which brought to an end the proceeding before the Court in whatever manner but were meant to cover only such adjudication as touched upon the real dispute between the parties which gave rise to the action. Objections to adjudication of the disputes between the parties, on whatever ground, are in truth not aids to the progress of the suit but hurdles to such progress. Adjudication of such objections cannot be termed as adjudication of the merits of the controversy in the suit. As we said earlier, a broad view has to be taken of the principles involved and narrow and technical interpretation which tends to defeat the object of the legislation must be avoided."

142. In Rajeswar Prasad Misra v. State of W.B. (sic) it was held;

"Article 141 empowers the Supreme Court to declare the law and enact it. Hence, the observation of the Supreme Court should not be read as statutory enactments.

It is also well known that ratio of a decision is the reasons assigned therein."

143. It will not, therefore, be correct to contend, as has been contended by Mr. Nariman, that answers to the questions would be the ratio to a judgment. The answers to the questions are merely conclusions. They have to be interpreted, in a case of doubt or dispute with the reasons assigned in support thereof in the body of the judgment, wherefor, it would be essential to read the other paragraphs of the judgment also. It is also permissible for this purpose (albeit only in certain cases and if there exist strong and cogent reasons) to look to the pleadings of the parties.

144. In Keshav Chandra Joshi vs. Union of India, this Court when faced with difficulties where specific guidelines had been laid down for determination of seniority in Direct Recruit Class II Engg. Officers' Association vs. State of Maharashtra, held that the conclusions have to be read along with the discussions and the reasons given in the body of the judgment.

145. It is further trite that a decision is an authority for what it decides and not what can be logically deduced therefrom.

146. The judgment of this Court in *T.M.A. Pai Foundation* will, therefore, have to be construed or to be interpreted on the aforementioned principles. The Court cannot read some sentences from here and there to find out the intent and purport of the decision by not only considering what has been said therein but the text and context in which it was said. For the said purpose, the Court may also consider the constitutional or relevant statutory provisions vis-à-vis its earlier decisions on which reliance has been placed.

15. In support of his contention that a writ is maintainable only if a statutory right is in question, the learned Additional Solicitor General has placed reliance on a judgment of the Supreme Court reported in (1999) 4 SCC 450 in the case of Hindustan Petroleum Corporation Limited and another vs. Dolly Das (para 7)

"In the absence of constitutional or statutory rights being involved, a writ proceeding would not lie to enforce contractual obligations even if it is sought to be enforced against the State or to avoid

contractual liability arising thereto. In the absence of any statutory right, Article 226 cannot be availed to claim any money in respect of breach of contract or tort or otherwise."

16. Mr. Gopalan has further relied on a judgment of the Supreme Court reported in (2006) 1 SCC 228 in the case of C. Albert Morris vs. K.Chandrasekaran & Others to substantiate his contention that the petitioner ought to have filed only a suit for ejectment and ought not to have approached this Court by way of a writ petition and the relevant paragraphs of the said judgment read as under:

"3. While so, the landlord sought for a writ of mandamus before the High Court directing that the licence of the appellant to carry on petrol bunk shall not be renewed. It was his contention that the appellant had lost his right to the site and hence, the licence was liable to be cancelled under Rule 153 (1) of the Petroleum Rules, 1976.

43. In our opinion, any right which the dealer has over his site was the right which he had acquired in terms of the lease. When that lease expired and when the landlord declined to renew the same and also called upon the erstwhile tenant to surrender possession, the erstwhile lessee could no longer assert that he had any right to the site. His continued occupation of something which he had no right to occupy cannot be regarded as source of a right to the land of which he himself was not in lawful possession. As observed by this Court in *M.C. Chockalingam v. V. Manickavasagam*, litigious possession cannot be regarded as lawful possession. As rightly pointed out by the Division Bench of the High Court, the right referred to in this rule has necessarily to be regarded as right which is in accordance with law and the right to the site must be one which is capable of being regarded as lawful. We have already referred to *Bhawanji Lakhamsi vs. Himatlal Jammadas Dani* wherein this Court held that the act of holding over after the expiration of the term does not create a tenancy of any kind. A new tenancy is created only when the landlord assents to the continuance of the erstwhile tenant or the landlord agrees to accept rent for the continued possession of the land by the erstwhile tenant. The contention of Mr. L.N. Rao that the landlord's assent should be inferred from the conduct of the landlord who had filed the suit for ejectment, but did not pursue the same, has no force. This suit was withdrawn with liberty to file a fresh suit on the

same cause of action, liberty for which the Court has granted. The possession of this site by the erstwhile lessee does not ripen into a lawful possession merely because the landlord did not proceed with the suit for ejectment at that time, but reserved the right to bring such a suit at a later point of time. That cannot amount to an assent on his part to the continued occupation of the land under cover of a right asserted by the erstwhile lessee. The words "right to the site" in Rule 153(1)(i) must, therefore, in our opinion, be given their full meaning and the effect that unless the person seeking a licence is in a position to establish a right to the site, he would not be entitled to hold or have his licence renewed. We have already rejected the contention of Mr. L.N. Rao that the appellant tenant is a statutory tenant for the reasons recorded earlier. The lease deed is very clear as to what was leased. The lease was of vacant land. That is evident from the recitals in the plaint, legal notice, lease deed, etc. It is, therefore, not in dispute that the lease of land is not covered by the statute, the Pondicherry Buildings (Lease and Rent Control) Act, 1969 in force extending protection to the tenants.

17. The Additional Solicitor General has relied on a judgment of the Supreme Court reported in (2000) 7 SCC 232 in the case of Bhuneshwar Prasad & another vs. United Commercial Bank & Others and the relevant paragraphs read as under:

> 7. Mr. Sanyal, learned Senior Counsel appearing for the appellants contends that Section 116 of the Transfer of Property Act would not be attracted merely on acceptance of rent. Reliance is placed upon a decision of the Federal Court in *Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden*. We agree that to bring a new tenancy into existence within the meaning of Section 116, there should be an agreement as the section contemplates that on one side, there should be an offer of taking a fresh demise evidenced by the lessee's continuing occupation of the property after the expiry of the lease and on the other side, there must be a definite assent to this continuance of possession by the lessor/landlord and that such an assent of the landlord cannot be assumed in cases of tenancies to which the Rent Restriction Acts apply on account of the immunity from eviction which a tenant enjoys even after the expiry of lease. In such cases, the

landlord cannot eject him except on specified grounds mentioned in the Rent Restriction Acts and thus, the acceptance of rent by the landlord from a statutory tenant, whose lease has already expired, would not be taken as evidence of a new agreement of tenancy and it would not be open to such a tenant to urge that by acceptance of rent, a fresh tenancy was created. We do not expect a lessor not to accept the rent when, in view of the protection granted by the rent restriction laws, without existence of one or the other ground, he is precluded from seeking eviction of the lessee and in such a case, there would be no question of creation of tenancy from month to month. Under these circumstances, mere acceptance of amount equivalent to rent or the standard rent would not attract Section 116. Assent to the lessee continuing in possession would be absent in such cases. However, an agreement creating fresh tenancy within the meaning of Section 116 can be implied from the conduct of the parties. In *Ganga Dutt Murarka v. Kartik Chandra Das* while affirming the dictum laid down in *Khushroo* case, it was held that apart from an express contract, conduct of the parties may undoubtedly justify an inference that after determination of the contractual tenancy, the landlord had enterd into a fresh contract with the tenant, but whether the conduct justifies such an inference must always depend upon the facts of each case. In *Bhawanji Lakhamshi vs. Himatlal Jamnadas Dani*, again, the question that came up for consideration was as to whether a fresh tenancy was created or not by acceptance of rent by the lessor after the termination of the tenancy by the efflux of time. This Court declined the prayer to reconsider *Ganga Dutt Murarka* case and held that acceptance by the landlord from the tenant, after the contractual tenancy had expired, of amounts equivalent to rent or an amount which was fixed as standard rent did not amount to acceptance of rent from a lessee within the meaning of Section 116 of the Transfer of Property Act. The present is not a case of acceptance of amounts equivalent to rent or amounts fixed as standard rent but acceptance of increased rent. It was also observed that:

> "We do not say that the operation of Section 116 is always excluded whatever might be the circumstances under which the tenant pays the rent and the landlord accepts it."

> The whole basis of Section 116 is that a landlord is entitled to file a suit for ejectment and obtain a decree for possession and, therefore, his acceptance of rent after expiry of lease is an unequivocal act referable to his desire to assent to the tenant continuing possession. It would be absent in cases where there are restrictions as contemplated by rent laws. In such cases, therefore, it is for the tenant where it is said that the landlord accepted the rent not as a statutory tenant but only as a legal tenant indicating his assent to the tenant's continuing possession, to establish it."

18. Finally, the learned Additional Solicitor General has vehemently argued that since Petroleum Corporations are covered by an Act and the third respondent is covered under an Act, the judgments of the Supreme Court in Hindustan Petroleum case and Bharat Petroleum case relied on by the Senior Counsel for the petitioner are not applicable to the case on hand.

19. Before proceeding with the case on hand, it is not only relevant but also necessary to refer to a Constitution Bench judgment of the Supreme Court reported in (2002) 1 SCC 273 in the writ petition (Civil) filed by the petitioner herein against the respondents herein (paras 8 and 9):

> "We cannot accept the submission of the learned Attorney-General that the provisions of a statute that provides for the acquisition of property in general, as for example, the Land Acquisition Act, are adequate for the compulsory acquisition of the property of minority educational institutions because what is payable thereunder is compensation, or that the provisions of clause (1-A) of Article 30 should be read into such statute. Clause (1-A) clearly states that after the date of its introduction, there must be a law that specifically relates to the compulsory acquisition of the property of minority educational institutions and that that law must make provisions that ensure that the amounts that are fixed or determined thereunder for the acquisitions are such as do not restrict or abrogate the right guaranteed under Article 30. Necessarily, such law must require the taking into account of factors that do not come into play in the determination of amounts payable in relation to the acquisition of the properties of others and are, therefore, not set out in the general acquisition statutes.

> We think, however, that it is appropriate that Parliament and the State legislatures should have time upto 31.05.2002 to make such laws, if they so choose, and that pending and uncompleted acquisitions of the properties of minority educational institutions should lapse only if at the end of such time, the statutes under which the acquisitions have been commenced have not been duly amended. On the other hand, if they are duly amended, the amounts payable for such acquisitions shall be determined thereunder."

20. The above ruling of the Supreme Court clearly spells out that the Land Acquisition Act is not applicable to minority educational institutions. Therefore, the Supreme Court, in its judgment dated 20.11.2001, has directed the Parliament and State Legislatures to make the laws to ensure that the amounts that are fixed thereunder for the acquisition are such as do not restrict or abrogate the right guaranteed under Article 30 of the Constitution. It has also made it clear that pending and uncompleted acquisitions of the properties of the minority educational institutions should lapse only if, at the end of such time, the statutes under which the acquisitions have been commenced have not been duly amended. Now, the fact remains that neither the Parliament nor the State Legislatures have set in motion, the necessary amendment to Land Acquisition Act, as directed by the Supreme Court. Therefore, in such a situation, having waited for about nine months from the stipulated time till the filing of the writ petition, the petitioner left with no other effective remedy, has moved this Court seeking a writ of mandamus directing the respondents to handover possession of the premises in dispute. Now, the question is under what provision of law, the petitioner can work out the remedy to make his right enforceable.

21. As already stated, the learned Additional Solicitor General of India has contended that the third respondent cannot be termed as a "rank trespasser" since there has been no default in payment of rent as well as rental arrears and the fact that the petitioner has not claimed and received the same would only reflect its attitude of non-cooperation to the land acquisition proceedings and its inaction to collect rental arrears cannot deny the position of the third respondent as a tenant.

22. It is seen that from the date of the Supreme Court judgment i.e. 20.11.2001, more than five years have lapsed and even from the time-limit fixed by the Supreme Court, more than four years have lapsed. But, nothing has been spelt out by the respondents in their counter or by the counsel for the respondents in his submissions, whether, after the ruling of the Supreme Court, any steps have been taken by the Union of India to amend the Land Acquisition Act to

regulate and enforce the acquisition of the properties of the minority educational institutions. In the absence of any such amendment to the Land Acquisition Act, what would be the proper law the petitioner can invoke to have its remedy fulfilled, is the question for consideration.

23. It is also argued by the learned Additional Solicitor General that when the common law remedy is available, the petitioner ought to have filed only a suit for ejectment and ought not to have approached this Court. He has also contended that the judgments relied on by the counsel for the petitioner involving Petroleum Corporations are not applicable to the case on hand as the Petroleum Corporations are covered by the Act and the third respondent is covered under an Act.

24. Various judgments have been placed by the learned Additional Solicitor General for consideration of this Court that a writ of mandamus is not maintainable without a constitutional or statutory right being involved. In this regard, he has argued as to how a judgment has to be construed or interpreted. According to him, there is always a peril in treating the words of a speech or judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case; a broad view has to be taken of the principles involved and narrow and technical interpretation which tends to defeat the object of the legislation must be avoided; while understanding a judgment, in a case of doubt or dispute with the reasons, it would be essential to read the other relevant paragraphs of the judgment also; the legislative enactment, the intent, purport and object of the enactment has to be given due consideration and anything which would defeat the object must be avoided and therefore, for the said purpose, the Court may also consider the constitutional or relevant statutory provisions and its earlier decision on which reliance has been placed and proper interpretation has to be given in each and every case. In the instant case, the decision relied on by the learned Senior Counsel for the petitioner pertaining to petroleum corporations are covered by statute of those Corporations. Therefore, the object under those statutes is applicable to the facts and circumstances of the cases concerned. Whereas, here is a case which is covered under an Act which is either being in existence or to be legislated. The Petroleum Act and Rules are applicable in case of acquisition of site for those allottees whose right as a tenants, is of a statutory nature and they, having protection of the Rent Acts, are all concerned with the object of that Act and Rules. In the instant case, the acquisition of land is for a public purpose and that too from a minority educational institution. Hence, the purport and object will have to be read in whole context and to be construed to the facts of the case on hand. Therefore, I am of the considered view that the reliance placed by the learned Senior Counsel for the petitioner on the judgments pertaining to Petroleum Acts are not applicable to the facts of the case on hand in view of constitutional

interpretation of rights of minority educational institutions. Of course, needless to say, certain general principles enshrined therein may be applicable to any case.

25. The binding force of the judgment of the Supreme Court has to be construed in the light of the provision under Article 141 of the Constitution. Article 141 empowers the Supreme Court to declare the law and enact it. Hence, the observation of the Supreme Court should not be read as statutory enactments. It is also well known that ratio of a decision is the reasons assigned therein.

26. In the given facts and circumstances, in order to find out the appropriate remedy available to the petitioner, if the petitioner is directed to file an ejectment suit by invoking common law, in the absence of any legislation, what would be the impact? Can the subordinate judiciary frame issues and decide the question relating to enforcement of a constitutional right? Also, after the Supreme Court ruling, in the absence of any legislation, can the Court concerned go into that question at this stage to decide the rights of the parties, particularly, when the relationship of the parties itself is in a fix and when the issue involves interpretation of constitutional rights and judgment of the Supreme Court in the matter of rights of minority educational institutions? If at all the court concerned deals with the matter, I feel there is a possibility that the issue may be complicated and confusion created in the mind of the court concerned, resulting in further delay. Therefore, I am of the considered view that it may not be proper for this Court to direct the petitioner, at this stage, to file a suit for ejectment to enforce its right.

27. The next point for consideration is the question of maintainability of a writ petition under Article 226 of the Constitution in the absence of any law time being in force to deal with the acquisition of the properties of a minority educational institution. As on date, whether there is any enforceable constitutional or statutory right available to the petitioner, is the point to be answered.

28. In the case reported in (2000) 7 SCC 232 in the case of Bhuneshwar Prasad & another vs. United Commercial Bank & Others, while dealing with Section 116 of the Transfer of Property Act, the Supreme Court held that acceptance by the landlord from the tenant after the contractual tenancy had expired, of amounts equivalent to rent or an amount which was fixed as standard rent did not amount to acceptance of rent from a lessee within the meaning of Section 116 of the Transfer of Property Act. The whole basis of Section 116 is that the landlord is entitled to file a suit for ejectment and obtain decree for possession and therefore, the acceptance of rent after expiry of lease is an unequivocal act referable to his desire to assent to the tenant continuing possession. It would be absent in cases where there are restrictions as contemplated by rent laws. In

such cases, therefore, it is for the tenant where it is said that the landlord accepted the rent not as a statutory tenant but only as a legal tenant indicating his assent to the tenant's continuing possession, to establish it. From a reading of the above ruling of the Supreme Court, it is crystal clear that there is a specific restriction to apply the Tamil Nadu Buildings (Lease and Rent Control) Act and also Land Acquisition Act in respect of a minority educational institution and in such a case, what would be the enforceable or constitutional right available to the petitioner. Now, it is clear that after the ruling of the Supreme Court, it is the case of the third respondent that the rent paid by it as a tenant is not accepted by the petitioner.

29. The valiant features of a writ of mandamus is a judicial remedy which is in the form of an order from a superior court to any Government, Court, Corporation or public authority to do or to forbear from doing some specific act which that body is obliged under law to do or refrain from doing as the case may be and which is in the nature of a public or statutory duty. The mandamus is a writ of most extensive remedial nature and is in form, a command issuing from the High Court of Justice directed to do some public or statutory duty. Its purpose is to remedy defects of justice and accordingly, it will issue, to the end that justice may be done, in all cases where there is a specific legal right. No one can ask for a mandamus without a legal right. There must be a judicially enforceable as well as legally protected right before one suffering a legal grievance can ask for a mandamus. A person praying for a mandamus must show that he has a legal right to compel the opponent to do or refrain from doing something. A legal public duty or statutory duty sought to be enforced must have a duty of public nature or a right created by provision of the Constitution or of a statute or some rule of common law. Therefore, this remedy unless it is shown to be a right enforceable under the Constitution or statute or common law, there cannot be a writ of mandamus to compel any person to do or refrain from doing something. In the instant case, in the absence of any such enforceable right as on date as the legislation is yet to be amended, the petitioner has no legal right to enforce it by compelling Union of India to handover possession.

30. In view of the above, it may not be proper for the petitioner to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution when there is no constitutional or statutory right is available. The position as on today is, when the proceedings initiated under the Land Acquisition Act lapsed on expiry of the time stipulated by the Supreme Court, i.e. 31.05.2002, the position as on the date of judgment on the stipulated time would stand as it is. Therefore, the petitioner is not having any enforceable remedy in the absence of any legislative enactment so far made as directed by the Supreme Court, and in that view of the matter, this writ petition cannot be maintained. However, in view of my conclusion that a writ would not lie to enforce a contractual

obligation even if it is sought to be enforced against a State or to avoid contractual liability arising thereto, the only remedy available to the petitioner is to file a suit for ejectment under the common law. Even as per the judgment of the Supreme Court, when the Land Acquisition Act is not applicable to minority educational institutions and when there is a specific bar in respect of applicability of the Tamil Nadu Buildings (Lease and Rent Control) Act to the properties of the minority educational institutions, the only course available to the petitioner is to invoke the common law and file a suit for ejectment. But, as stated in the earlier part of my discussion, if the petitioner files a suit for ejectment, in the absence of any law applicable to minority institutions, the subordinate judiciary will only be handicapped in arriving at any conclusion in the matter involving interpretation of statute and constitutional right and this will further complicate the issue. Hence, as already stated, it is not proper to direct the petitioner to file a suit for ejectment also at this stage.

31. Thus, when the fact remains that the petitioner can neither invoke the extra-ordinary jurisdiction under Article 226 of the Constitution nor file a suit for ejectment for an effective remedy, having regard to the occupation of the premises by the respondents for over a century for a public cause and interest and that rent has been paid till date, though not received by the petitioner and in view of the fact that the Supreme Court has dealt with this matter under Article 32 of the Constitution and now this Court is dealing with the same under Article 226 of the Constitution, this Court directs the Union of India and the State concerned to initiate steps to implement the direction of the Supreme Court given in its Constitution Bench judgment reported in (2002) 1 SCC 273, by bringing in an amendment to the Land Acquisition Act or by enacting any suitable legislation so as to make it applicable to minority educational institutions as well, as expeditiously as possible, at any rate, not later than 31.12.2007. Till such time, the parties to the writ petition are directed to maintain status quo as on date and thereafter, to work out their remedy as per their statutory rights.

In fine, the writ petition is disposed of accordingly. No costs.



Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

cad

To

1. The Chief Post Master General
   Anna Salai, Chennai - 600 002

2. The Senior Superintendent of Post Offices
   Tiruchy Division
   Tiruchy

3. The Post Master
   Teppakulam Post Office
   Tiruchy - 620 002

+1cc to Mr.M.Sriram, Advocate Sr 12336
+1cc to Mr.B.Ullasavelan, Advocate Sr 12190

RS (CO)
km/7.3.

W.P. No.6187 of 2003