

## CIVIL WRIT

Before Khosla and Falshaw, JJ.

HARNAM SINGH SHAN, son of S. SARBAN SINGH EDITOR  
Punjab University Publications Bureau, Simla,—*Petitioner.*

*Versus*

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

Civil writ No 47 of 1952.

*Constitution of India—Article 226—Conditions precedent to grant of writs stated.*

1952

December  
15th

Held, that the High Court will not take action under Article 226 of the Constitution unless it is completely satisfied that the petitioner has a legal right which has been infringed or is about to be infringed or some illegal wrong has been inflicted upon him or is about to be inflicted upon him. In such cases the Court will proceed to consider the matter further and enquire whether any person has acted in excess of the authority conferred upon him by law and when this is proved an appropriate writ will issue.

*Petition under Article 226 of the Constitution of India praying as under :—*

- (i) *The writs of Prohibition Certiorari or any other appropriate Writ or Order under Article 226 of the Constitution of India be granted in favour of the petitioner against the respondents.*
- (ii) *Ordering that the respondents should not eject the petitioner from the portion of the upper flat of house No. 135 Bemloe View, Cart Road, Simla which is at present in his possession and should not enforce the said orders of ejectment of the petitioner.*
- (iii) *Cancelling the orders of eviction No. 908/RC, dated 20th December 1951 and No. 1386/RC, dated 24th March 1952 of the District Magistrate, Simla.*
- (iv) *Ordering the respondents not to interfere in any way in the possession of the petitioner of the said premises and to withdraw and cancel the said orders of ejectment; and*
- (v) *That such other writ order or direction as may be considered fit in the circumstances of the case, may be granted against the respondents;*

*And further praying that pending the disposal of this petition interim order be passed against the Respondents prohibiting them from ejecting or taking any steps for eviction of petitioner from the premises in his possession, and requesting that costs of the application be granted to the petitioner against the respondents.*

A. R. KAPUR and R. N. AGGARWAL, for petitioner.

S. M. SIKRI Advocate-General and B. S. Chawla, for Respondents.

#### ORDER.

Khosla, J.

KHOSLA J. This is a petition by Harnam Singh Shan praying for a writ of prohibition, *certiorari* or any other appropriate order against the Punjab State and the District Magistrate of Simla requiring them not to interfere with the petitioner's occupation of a portion of house No. 135, Bemloe View.

The facts briefly are that the Punjab State requisitioned the upper flat of the house in dispute in November 1947. The house was allotted partly to the petitioner Harnam Singh Shan and partly to Prahlad Singh a clerk in the office of the Director of Public Instruction, Simla. On 18th December 1951 an order derequisitioning the house was passed. Both the occupants, however, continued to remain in possession and it was understood that the landlord had leased out the entire requisitioned premises to Prahlad Singh. The allegation of the petitioner is that Prahlad Singh allowed the petitioner to remain in possession until the end of February 1952. After that the petitioner was to execute an agreement which would further extend his occupation of the premises. There is nothing on the record to show that landlord executed a lease deed in favour of the petitioner or that Prahlad Singh sublet any portion of the premises to the petitioner. Since Prahlad Singh wanted to take possession of the entire house and since the petitioner was not prepared to leave the portion in his occupation, Prahlad Singh sought the help of the Government. The Punjab Government thereupon proposed to take steps to eject the petitioner. The petitioner's grievance is that

the Punjab Government has no right to eject him Harnam Singh,  
from these premises.

Shan

v.

The State of  
Punjab and  
others

—  
Khosla, J.

The argument of Mr. Kapur who appears on behalf of the petitioner is briefly this. The petitioner was allowed to stay in these premises up to the end of February 1952. The premises were derequisitioned on 18th December 1951, and the Punjab Government took no steps at that time to deliver vacant possession to the landlord and it is now too late to do so. The petitioner having been allowed to remain in occupation of the premises beyond the date upon which the premises were derequisitioned the Punjab Government cannot now eject him and therefore the steps which the Punjab Government propose to take are in excess of their authority and unlawful to that extent.

It must be clearly understood that this Court will not take action under Article 226 of the Constitution unless it is completely satisfied that the petitioner has a legal right which has been infringed or is about to be infringed or some illegal wrong has been inflicted upon him or is about to be inflicted upon him. In such cases the Court will proceed to consider the matter further and enquire whether any person has acted in excess of the authority conferred upon him by law and when this is proved an appropriate writ will issue. In the present case we find that the petitioner claims to be a tenant in his petition, but in fact he is not a tenant. The petitioner has not produced any evidence of tenancy. All that is said on his behalf now is that he was a licensee inasmuch as he was permitted by Prahlad Singh to remain in occupation of a part of the premises until the end of February 1952. It is conceded by Mr. Kapur that although a tenancy may have been contemplated there was no agreement between the petitioner and the landlord entitling the petitioner to remain in possession as a tenant. The petitioner therefore is admittedly not a tenant. Mr. Kapur next argues that the petitioner as a licensee has

Harnam Singh, a legal right to remain in possession of the premises in his occupation. In the petition it is nowhere alleged that the petitioner is a licensee nor has Mr. Kapur been able to show any license in the petitioner's favour. The most that can be said is that as an act of charity the petitioner was allowed to remain in occupation of the premises until the end of February 1952 because he was unable at that time to move into any other house. The occupation of the petitioner therefore after the end of February 1952 became the occupation of a trespasser and it cannot be said that at the time this petition was filed or today the petitioner has any legal right to remain in possession of these premises or that he is being wrongfully ejected therefrom. The petitioner has therefore no *locus standi* to move this Court under Article 226 of the Constitution and his petition must be dismissed with costs which I would assess at Rs. 100.

**Falshaw, J.**

**FALSHAW, J.** I agree.