seized. Under the proviso to sub-clause (2) of section 110 the period of six months, within which the said notice has to be given, can be extended by the Collector of Customs on sufficient cause being shown and if the notice was given during the extended period, the Customs authorities could retain the car with them till the final decision of the matter by them after obtaining a reply to the show-cause-notice from the person concerned.

Coming to the second contention, as rightly pointed out by the Collector of Customs in his return, there was no foundation for challenge on the basis of Article 14. There was no question of discrimination. The power to extend time was made to depend upon the existence of sufficient cause and decision in that behalf was to rest upon the merits of each case. Besides, the power to extend time had been vested by law in an officer of the position of a Collector of Customs, which in itself was an adequate safeguard. Article 14 was not attracted merely on the ground that the legislature had left to the subjective satisfaction of the authorities to decide whether time should be extended or not or on the ground that right of personal hearing had not been granted to the person who might be affected by such a decision. The argument of the learned counsel for the petitioner that the person concerned should also be called by the Collector of Customs when giving extension of time for making investigation to the customs officials under the proviso to sub-clause (2) of section 110, does not merit any consideration. The officials are naturally not going to divulge before the person concerned the enquiries that still remained to be made for which extension was sought. There is thus no substance in this contention as well.

The result is that this petition fails and is dismissed. There will, however, be no order as to costs.

K.S.K.

LETTERS PATENT APPEAL

Before R. P. Khosla and Inder Dev Dua, JJ.

THE CHIEF COMMISSIONER DELHI AND OTHERS,—*Appellants.*

versus

M/S MADAN ENGINEERING TOOL PRODUCTS AND OTHERS,—*Respondents.*

L.PA. 2-D of 1966.

April 29, 1966.

Constitution of India (1950)—*Article* 226—*Trespasser on State land dispossessed by the State—Whether should be restored to possession by* mandamus *under Art.* 226—*Possession—Rights accruing therefrom stated—Doctrine of Rule of law explained.*

Held, that if the writ-petitoner was a trespasser having trespassed over state land and was subsequently dispossessed, the High Court in its discretion under Art. 226 of the Constitution will not direct that he be put into possession of the land on which he had trespassed and will not direct the State to take proceedings in a Court for taking back the possession of its own land. Merely because a person had been in possession without any title is scarcely a good ground by itself to justify relief of restoration of illegal possession on writ side. The High Court would normally be disinclined in throwing its protection round a trespasser and in the absence of some just and equitable reason would not issue a *mandamus* to the State to hand back possession of its own land to a person who has been in unlawful occupation thereof. Proceedings under Art. 226 of Constitution can be invoked only when there is a legal right which has been infringed or when there is a legal wrong which has been inflicted and then relief under this Article is intended to provide remedy against manifest injustice.

Held, that possession may give birth to ownership either by taking control of *res nullius* or by expiration of a period of acquisitive prescription. Possession may also be *prima facie* evidence of ownership and he who would disturb a possessor must show either title or a better right. In a civil society, order is best served by protecting possession and leaving the true owner, if there is one, to seek his remedy in a Court of law. This course aids the criminal law by preserving peace, for, interference with possession tends almost inevitably to invite violence. Possession may also be protected as a part of law of torts. Right of action as a part of law of torts, however, is normally available in respect of immediate and present violation of possession. Possession is also generally as a part of law of property because the law does not always know that the possession in question is not lawful.

Held, that the social heart of the doctrine of Rule of law lies in the recognition by those in power that they are not free from the restraint of socio-ethical conditions embodied in law and that these rather represent the principles on which power is wielded and tolerated. Democratic administrative method is not of a self-willed dictator but of a sputnik controlled by Rule of law. But the Rule of law does not demand a uniform rule on all matters for every person in society regardless of the merits of varying conditions. It does not make "rule of the road" condemning all actions even aiming at substantive ideal of justice.

Letters Patent Appeal under Clause X of the Letters Patent against the Judgement of a learned Single Judge, (Hon'ble Justice Dulat), dated 24th September 1965, in *Civil Writ No.* 206-*D*/65.

Parkash Narain, Advocate, for the Appellants.

H. Hardy, R. S. Oberoi and B. N. Kirpal, Advocates, for the respondents.

JUDGMENT

DUA, J.—This appeal under clause 10 of the Letters Patent is directed against the order of a learned Single Judge of this Court dated 24th September, 1965, allowing the petition, under Article 226 of the Constitution, of M/s Madan Engineering Tool Products, and quashing the order of the Collector of Delhi, dated 12th April, 1965, whereby he had requisitioned plot No. 3, Canal Road near Gur Mandi, Delhi, measuring 2,574 square yards under section 29(1) of the Defence of India Act, 1962 (Act No. 51 of 1962) read with the Government of India, Ministry of Home Affairs' Notification No. CSR-1716, dated 18th December, 1962. This plot was requisitioned because it was considered "necessary for the public safety from floods in the Union Territory of Delhi."

The main facts which have been stated by the learned Single Judge to be not in dispute are that M/s Madan Engineering Tool Products (hereinafter called the petitioner) were in actual possession of a part of the plot in question which, originally evacuee property, later formed part of compensation pool, acquired by the Central Government under the Displaced Persons (C&R) Act (hereinafter called the Compensation Act). Possession of this plot had, however, not been take over by the Central Government. In the neighbourhood of this plot, there exists a channel called Najafgarh Nala meant to carry flood waters and because Delhi had been subjected to floods in rainy season, it was resolved to widen this Nala, with the result that some land along its banks was required for this purpose. It was for this reason that the impugned order requisitioning the plot in question was made. The petitioner approached this Court under Article 226 of the Constitution, alleging, *inter alia* that in 1957, the plot in question was occupied by the petitioner firm who started using it for storing iron-scrap, coal, coal ash, wood and other materials. The petitioner-firm, according to the averments in the writ petition, is engaged in the manufacture of casting for machine tools, building and hardware fittings, alligator, fasteners and other machine tools besides manufacturing case cartridges (shells) for defence. Respondent No. 4 in the writ petition, M/s Ashoka Manufacturing Company Private Ltd. is, according to the petitioner, engaged in the manufacture of railway stores, etc. Towards the end of 1960, respondents Nos. 4 to 6 and other directors of respondent No. 4 began to make plans for dispossessing the petitioner-firm of the plot in question. In the writ petition, some incidents are mentioned to have taken place in this connection which

resulted in cross-criminal cases between the workmen of the petitioner and of these respondents. Later, there was some kind of a compromise between them. On 23rd November, 1962, the plot in question was auctioned by the Managing Officer under the Compensation Act and Bawa Balwant Singh, respondent gave the highest bid of Rs. 75,000. On 29th November, 1962, the petitioner and respondent No. 4 jointly objected to this auction and they also applied to the Managing Officer for regularisation of their occupation in the respective portions of the plot in question. It is averred that these proceedings were still pending on the date when the writ petition was presented. I have mentioned this averment because some argument has been sought to be based on it. On 30th March, 1965, Shri V. P. Shingle, Additional District Magistrate, Delhi, respondent in these proceedings, along with some other officials went to the petitioner's factory requiring them to vacate the portion of the plot in question measuring about 2,000 square yards in their occupation and to deliver its possession to respondent No. 4, because the same had been requisitioned for them. On being asked to show the notification regarding the requisition, the Additional District Magistrate replied that written orders would be sent in due course. On 3rd April, 1965, the petitioner approached the Deputy Commissioner, bringing the above facts to his notice. On 12th April, 1965, Shri Kundan Lal, a partner of the petitioner-firm, was served with a copy of the impugned order requisitioning the plot in question. On 13th April, 1965, Shri Kundan Lal met the Deputy Commissioner and the Additional District Magistrate, Delhi, and they explained to him that the plot in question had been requisitioned for a national cause and not for the benefit of respondent No. 4 and that the petitioner should thus agree to surrender the plot. Believing the representation to be true, the petitioner expressed his willingness to surrender the plot in order to further the national cause and asked for time for removing the goods lying thereon. It was, however, suggested that a portion of the plot may be left to the petitioner for storage of coal etc., which the two officers agreed to consider if a request was made in writing. The petitioner thereupon made a written request to that effect. On the same day, at about 4.30 p.m., the Additional District Magistrate along with some other officers and 50 constables forcibly took possession of the plot. Respondents Nos. 5 and 6, directors of respondent No. 4, and about 50 workmen of theirs also came along with them. One half portion of the *kothri* on the petitioner's portion of the plot was demolished and the petitioner's goods were thrown out except the stock of coal. Thereafter, possession of the

entire place was handed over to respondent No. 6 who occupied it on behalf of respondent No. 4. The *kothri* and the portion of the plot in the occupation of respondent No. 4 was left untouched. It is on these averments in the writ petition that the impugned order was sought to be quashed.

Before the learned Single Judge, it was argued on behalf of the petitioner that the control of floods in Delhi is not a purpose mentioned in section 29 of the Defence of India Act, with the result that the State Government could not requisition the plot in question under this section. Though the learned Single Judge felt inclined to agree with Mr. Hardy's submission on this point, he, however, preferred not to make a considered pronouncement on this question. The learned Single Judge took the view that the plot in question had not been taken for widening the Najafgarh Nala, but had been taken either to compensate or to accommodate another party whose land had been taken for the purpose of widening the Nala. The argument raised on behalf of the State by Shri Parkash Narain that the petitioner being a trespasser on the plot in dispute, which, admittedly, belonged to the Central Government, could not invoke this Court's jurisdiction under Article 226 of the Constitution, was disposed of by the learned Single Judge in the following words:—

> "It is quite right that in a sense the petitioner is a trespasser, that is, in the sense that he has no proprietary interest in the disputed land, but he has certainly been in its possession, and I find difficulty in accepting the suggestion that a person in actual possession of land has in law no right to or interest in it."

The decision of the Supreme Court in *State of Orissa* v. *Ram Chandra* (1) was distinguished as being confined to its own facts. According to the learned Judge, the petitioner had certainly a right because he had been in peaceful possession and, therefore, he could not be permitted to be disturbed except by and through a legal process. Mr. Parkash Narain's contention that the petitioner had by means of a written request acquiesced in the requisition was also repelled because that request was made on the assumption that the land was being taken for a national cause. There could thus be no estoppel founded

(1) A.I.R. 1964 S.C. 685.

on this kind of a written request. The impugned order was accordingly quashed, but it was left to the authorities concerned to take other legal steps, if so advised, in connection with the disputed land and it was hoped that if no other legal steps are taken, then possession of the disputed plot would be restored to the petitioner.

On Letters Patent Appeal in this Court, the first point which has been very forcefully pressed by the appellants' learned counsel is that the petitioner is a trespasser and has no right to the possession of the plot in question and having actually been dispossessed before the writ petition was presented to this Court, it was not a fit case in which this Court should allow its extraordinary jurisdiction under Article 226 of the Constitution to be invoked. In this connection, it has also been urged that though the petitioner had been dispossessed before presenting the writ petition, the fact of dispossession was not disclosed in the petition. This suppression of material fact would by itself constitute a good and legitimate ground for disallowing relief to the petitioner under Article 226. Shri Parkash Narain has in support of his submission sought assistance from the following decisions. *State of Orissa* v. *Ram Chandra Dev* (1), *Calcutta Gas Co.* v. *State of West Bengal* (2), *Kalyan Singh* v. *State of U.P.* (3), *Director of Endowments* v. *Akram Ali* (4), *Gurcharan Singh* v. *Chairman, Delhi Improvement Trust* (5), *Harnam Singh*, v. *State of Punjab* (6), and an unreported decision of this Court in *East India Hotels Ltd.* v. *Union of India*, C.W. No. 219 of 1965.

The next point raised by Shri Parkash Narain is that section 29, Defence of India Act, can lawfully be extended to measures meant for protecting inhabitants from floods. The expression "public safety" used in this section should, according to the counsel, be construed in a broad sense so as to include safety from floods. Lastly, it has been contended that the written request made by the petitioner should be held to operate as an estoppel disentitling him to challenge the impugned requisition.

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(2) A.I.R. 1962 S.C. 1044.
(3) A.I.R. 1962 S.C. 1183.
(4) A.I.R. 1956 S.C. 60
(5) I.L.R. 1955 Punj. 94=A.I.R 1955 Punj. 34.
(6) I.L.R. 1953 Punj. 655=A.IR. 1953 Punj. 176.

Shri B. N. Kirpal, learned counsel, appearing for respondents Nos. 2 and 3 in this appeal, has also supported the appeal. According to him, the expression "public safety" in section 29 deserves to be construed in its plain sense and its meaning and scope should not be restricted by reference to the other words used in the context. The learned counsel has strongly argued that in an emergency the expression "Public safety" calls for a wider rather than a narrower construction. He has also emphasised that his client is engaged in manufacturing lathes for being used by the Government and, therefore, entitled to protection.

As against these arguments, Shri Hardy has, to begin with, argued that his client has a legal right to claim the plot in question. It is not disputed, and indeed it is conceded, that his client trespassed on the plot in question in 1957 but a press note issued on 9th February, 1962, conferred a legal right on him as an occupier of the plot. This press note, according to Shri Hardy, transformed his client from a trespasser into a permissive occupant. The learned counsel has in this connection brought to our notice a Single Bench decision of this Court in *Anant Singh* v. *Union of India* (7), which seems to treat such a press note as if it is a binding rule of law within the contemplation of Article 13 of the Constitution. It must, however, be observed in fairness to the learned counsel that after making a faint attempt, he soon dropped the effort to support the view adopted in the reported case and frankly conceded that press note like the one before us cannot be given the solemn status of law as contemplated by Article 13. After referring to Rules 22, 25 and 26 of the Displaced Persons (C&R) Rules, Shri Hardy also felt constrained to concede that no rule made under the Displaced Persons (C&R) Act deals with vacant site except Rule 39 which concededly does not cover the present case. The learned counsel had then to fall back on the general argument that power to manage the property acquired by the Central Government under section 16 of the above Act is wide and comprehensive enough to permit the authorities concerned to give the site in question to his clients. Lastly, it was argued—and it was this argument on which most eloquent and forceful stress was laid—that the Government had no business to use force to dispossess Shri Hardy's client even if he was a trespasser. Support by way of analogy was sought from a Bench decision.

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(7) 1965 D.L.T. 293.

of this Court in *Satish Chander* v. *Delhi Improvement Trust* (8), which struck down the Government Premises (Eviction) Act No. 27 of 1950 as *ultra vires*, being violative of the fundamental right to property conferred by Article 19(1)(f) of the Constitution. The present case has been described as an instance of colourable exercise of power or an abuse of power against which this Court, it is claimed, should grant relief. To decline to do so would, according to the counsel, encourage undemocratic and arbitrary misuse and naked abuse of power. Requisition, says Shri Hardy, operates against possession and not against title. He has cited *Province of Bengal* v. *Board of Trustees for the Improvement of Calcutta* (9) and *Mangi Lal Karwa* v. *State of M.P.* (10). For controverting the contention that the expression "public safety" covers the present case, our attention has been drawn to the *Superintendent, Central Prison* v. *Dr. Ram Manohar Lohia* (11), particularly to the part of the judgment at p. 641, *Romesh Thapar* v. *State of Madras* (12) *at* p. 127 *and Brij Bkushan* v. *State of Delhi* (13), at p. 130. The impugned action has also been described as *mala fide*. The appellants' argument of estoppel has been met by the submission that concession offered to surrender possession for national purpose can by no stretch operate as an estoppel as understood in our law.

Shri Parkash Narain has in reply pointed out that the press note pressed into service by Shri Hardy deals with property worth Rs. 10,000 or less, whereas the present property was admittedly auctioned for Rs. 75,000. He has referred us to paragraph 6 of the writ petition in this connection. The learned counsel has also emphasised that before presenting the writ petition in this Court, the writ petitioner had been held disentitled to get the plot in question. In any case, at the present moment, admittedly the writ petitioner has no title to the possession of the plot and having been actually dispossessed before the presentation of the writ petition, this Court should not order restoration of possession to him on writ side. The counsel has read section 35 of the Defence of India Act, under which

(8) I.L.R. 1958 Punj. 195=1957 P.L.R. 621.
(9) A.I.R. 1946 Cal. 416.
(10) A.I.R. 1955 Nag. 153.
(11) A.I.R. 1960 S.C. 633.
(12) A.I.R. 1950 S.C. 124.
(13) A.I.R. 1950 S.C. 129.

on derequisition, possession is to be restored only to the person entitled to it under the law. There is thus no legitimate occasion to exercise judicial discretion in favour of the writ petitioner says Shri Parkash Narain.

I have devoted my most serious thought to the arguments addressed at the bar and after going through the allegations in the writ petition and the replies thereto and considering the relevant law and the judicial decisions brought to my notice, I am inclined to allow the appeal. It is true that the writ petitioner had been in possession of the plot in question since 1957 but admittedly, this possession started unlawfully as a trespass. It is also not disputed that this possession has not so far been regularised. The press note on which Shri Hardy, learned counsel for the respondents, has, in usual forceful manner, placed reliance, only takes within its fold urban evacuee plots, the value of which did not exceed Rs. 10,000, and is obviously inapplicable to the plot in question because it was quite clearly auctioned for Rs. 75,000 and indeed this is the writ petitioner's own case as made out in the writ petition. Except for this press note, there is no other basis on which the writ petitioner can even pretend to found his claim to the plot in question. And when this press note on its very face is inapplicable to the plot in dispute, whether the press note has a binding force of law as held in *Anand Singh's case*, may not be strictly necessary for the Court on the present occasion to consider and decide. I must, however, point out that it is not the view of law in this Republic that whatever the Government says is the law—a position which may prevail in some despotic systems of government. In our democratic set-up, even the Government itself is ruled by law and all its actions have to be justified by reference to law made in accordance with our Constitution. Law of our conception is a link between man and freedom and, broadly speaking, should be the will of the people expressed in accordance with our Constitution rather than mere will of the State as different from the people; for in the latter case it may well be an instrument of tyranny. Unless, therefore, the State can trace its authority to issue the press note in question to some delegated legislative power within the constitutional limits, the press note cannot claim the status of law, whatever other force it may possess as an administrative direction authorised by law. Section 40 of the Displaced Persons (C&R) Act does confer on the Central Government power to make rules to carry out the purposes of the Act and the rules made in accordance with that section would undoubtedly have the force of law. But

such rules, in order to have such force, have to fall within the four corners of this section and have also to comply with the provisions of sub-section (3) of section 40. It is not claimed before us that the press note in question satisfies this requirement. Section 16 of the Displaced Persons Act providing for management of compensation pool merely authorises the Central Government to take suitable measures necessary or expedient for the custody, management and disposal of the compensation pool in order effectively to utilise it in accordance with the Act. Ministerial steps or administrative decisions taken in pursuance of this power may be lawful steps and lawful decisions, but I am inclined, as at present advised, to think that it may be going too far to say as a general proposition that every administrative decision under section 16 attains the status of law as envisaged in Article 13 of the Constitution. But be that as it may, I do not think it is necessary for us in the present case to consider this precise question because the press note indisputably does not touch the plot in question, the value of which far exceeds Rs. 10,000.

The question which faces us is : does mere possession in these circumstances give to the writ petitioner a right which deserves protection by the writ Court under Article 226 of the Constitution? Possession even without ownership may certainly have the utmost practical importance because possession may give birth to ownership either by taking control of *res nullius* or by expiration of a period of acquisitive prescription. Possession may also be *prima facie* evidence of ownership and he who would disturb a possessor must show either title or a better right. In a civil society, order is best served by protecting possession and leaving the true owner, if there is one, to seek his remedy in a Court of law. This course aids the criminal law by preserving peace, for, interference with possession tends almost inevitably to invite violence. Possession may also be protected as a part of law of torts. Right of action as a part of law of torts, however, is normally available in respect of immediate and present violation of possession. Possession is also generally protected as a part of law of property because the law does not always know that the possession in question is not lawful. This attitude was presumably adopted when proof of title was difficult and the owner out of possession was accordingly also directed to the Court. In the case in hand, once we start with the assumption that the writ petitioner was a trespasser and had trespassed on the land belonging to the State and has since actually been dispossessed, the question

arises : should this Court in its discretion direct that the writ petitioner be put back into the possession of the land on which he had trespassed and to direct the State to a Court for taking back the possession of its own land? In the absence of any equity in favour of the writ petitioner, we are disinclined, as at present advised, to make such an order. The attention of the learned Judge in Single Bench was apparently not drawn to the aspects noticed by us and this is clear from the manner in which he has disposed of this part of the case. Merely because a person had been in possession without any title—and particularly where his attempt to have the possession regularised had also failed—appears to us to be scarcely a good ground, by itself, to justify relief of restoration of illegal possession on writ side, and we are unable to see any cogent reason why this Court should not in its judicial discretion decline to give relief to the writ petitioner and should make an order restoring to him the fruit of his trespass by directing the State to go through the long process of eviction proceedings against the trespasser. Apart from the bare fact of possession founded on trespass, there is no other equity—if at all this is an equity—which has been pointed out to us in favour of the writ petitioner. Coupled with this the fact that the land is being utilised, even though somewhat indirectly, for the benefit of the community at large in protecting the people from the damaging effects of floods, would apparently constitute greater reason and justice to decline interference on writ side. The Court would normally be disinclined in throwing its protection round a trespasser and in the absence of some just and equitable reason, would not issue a *mandamus* to the State to hand back possession of its own land to a person who has been in unlawful occupation thereof. If the writ petitioner had felt inclined to quit the land voluntarily and peaceably when called upon to do so, no difficulty would have arisen. The intended wrong by the writ petitioner can hardly form a just basis for a *mandamus* to the State to hand over possession of the plot in derogation of its lawful right. Proceedings under Article 226 of the Constitution, it may be recalled, can be invoked only when there is a legal right which has been infringed or when there is a legal wrong which has been inflicted : and then relief under this Article is intended to provide remedy against manifest injustice. Where a trespasser has been already dispossessed, we do not think it is open to him, in the absence of manifest injustice or of some clear equity in his favour, to invoke the assistance of the High Court under this Article for being restored to his unlawful possession. In the view that we have taken on this point, it is unnecessary to express any considered

opinion on the question whether the expression "public safety" in section 29, Defence of India Act, calls for a broader construction so as to include safety of the public from floods. Shri B. N. Kirpal, learned counsel for respondents Nos. 2 and 3, who has sought to support the appeal, has of course very persuasively submitted that this expression should receive a wider connotation because of the emergency. But as observed earlier, I consider it unnecessary in this case to express any opinion on the exact effect and scope of this expression. I may, however, observe that too frequent reliance on emergency to justify encroachment on citizens' right is not favoured by this Court. Emergency, it must never be forgotton, is a tough plant to uproot once it has taken hold. Declaration of emergency to serve its purpose must reflect itself in the daily conduct, behaviour and attitude of the people and the Government. Its prolonged continuance, without so reflecting itself, may tend to demoralise the nation and deprive the Government of the moral support of the people. This tendency increases in proportion with the increase in the use of the declaration affecting citizens' rights.

Shri Hardy has, as observed earlier, very eloquently urged that the State must be held to be controlled by law and if democracy and the Rule of Law mean what they profess to stand for, then the State must not be permitted to take the law into its own hands and act as an absolute despot, considering itself above the law. I am in full agreement with the submission that law should govern not only relationship between individuals but it should govern also the Government itself. This indeed appears to me to be the essence of civil liberty : only then can the individual be content with the law and only then can he be content with the State. Speaking for my part, the social heart of the doctrine of Rule of Law appears to lie in the recognition by those in power that they are not free from the restraint of socio-ethical conditions embodied in law and that these rather represent the principles on which power is wielded and tolerated. Democratic administrative method is not of a self-willed dictator but of a sputnik controlled by Rule of Law. But the Rule of Law, it must also be remembered, does not demand a uniform rule on all matters for every person in society regardless of the merits of varying conditions. It does not make "a rule of the road" condemning all actions even aiming at substantive ideal of justice. The guiding principle for the exercise of discretion under Article 226 is also, in my opinion, a material and an integral part of the Rule of

Law; to direct a trespasser, therefore, to be put in possession when he has no conceivable pretention to a lawful right against the public as a whole may well be defeating or violating the rule of law itself.

The contention pressed by Shri Hardy that the impugned act by which the writ petitioner was dispossessed was *mala fide* and an abuse of power because he was still pressing his representation in the matter of regularisation of his possession is also of no avail to him. Exhibit 8, dated 3rd April, 1965, is the representation on which reliance has been placed and it is emphasised that the impugned order was made on 12th April, 1965. As against this, our attention has been drawn by Shri Parkash Narain to Annexure 'G', dated 17th January, 1963, by means of which the Managing Officer dealt with the writ petitioner's claim and held him to be a trespasser on the plot in question and directed his eviction. This order is a complete answer to any claim the writ petitioner could have based for regularisation of his possession of the plot in question. Annexure 'H', dated 22nd April, 1965, is an order of the Settlement Commissioner, dismissing an appeal from Annexure 'G' and noticing an order of the Deputy Chief Settlement Commissioner, dated 28th March, 1963, in which the writ petitioner was held not to be entitled to the transfer of the plot in question.

I am unable on the circumstances of this case to conclude any *mala fides* as contended by Shri Hardy. In truth, it was the writ petitioner who seems to have been trying to stick to his illegal possession of the plot on which he had trespassed by taking advantage of the fact that it belonged to the State and not to any individual. One may well ask if a person's right to complain should not ethically be limited to violations of principles which he himself acknowledges. But it is unnecessary to pursue this aspect on the present occasion.

There has also been some argument about estoppel operating against the writ petitioner but on this point again, we do not consider it necessary to express any considered opinion either way.

In view of the foregoing discussion, in our opinion, this appeal should prevail, and allowing the same we dismiss the writ petition. In the circumstances of this case, however, there would be no order as to costs.

R. P. KHOSLA, J.—I agree.

K.S.K.