

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.346 of 2022

1. Harisons Continental Private Limited, A company registered under the Companies Act, 1956, Having its registered office at A/40 Housing Colony Kankarbag, P.S.- Kankarbag, District - Patna, through its director, Saurav Prakash, Aged about 29 years, Resident of A/40, Housing Colony, Housing Colony, Resident of Kankarbag, Patna, Bihar Pin 800020.
2. Pratibha Advertising Private Ltd., A Company registered under the Companies Act, 1956, Having its Registered office at 432, 4th floor, Adision Arcade, Frazer Road, P.S.- Gandhi Maidan, District - Patna, Through its duly authorized one of its director, Gaurav Prakash, Aged about 28 (Male), Son of Sri Anant Prakash, Resident of A/40, Housing Colony, Kankarbagh, P.S.- Kankarbagh, District - Patna - 800020.

... .. Petitioner/s

Versus

1. The State of Bihar, Through Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna.
3. The Director General of Police, Bihar
4. The Superintendent of Police, Patna. Bihar
5. The Deputy Superintendent of Police, Patna. Bihar
6. The Officer In charge Kotwali Police Station, Patna
7. Kraft outdoor Media Pvt. Ltd, A company registered under Companies Act, Having its office at 5th Floor, Abhay Bhawan, Fraser Road, P.S.- Kotwali, District - Patna - 1, Through its Director Manish Kumar, Son of Late Mohan Prasad, Resident of 3-D Shumbha Complex, West Boring Canal Road, Patna 800001

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr.Adv. Mr. Suraj Samdarshi, Adv. Mr.Avinash Shekhar, Adv. Mr. Vijay Shankar Tiwary, Adv.
For Respondent no.7	:	Mr. Sanjay Singh, Sr.Adv. Mr. Sangeet Deokuliar, Adv.
For the State	:	Mr. Saroj Kumar Sharma, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 12-10-2022

This case is a classic illustration of failure of the police
administration in protecting the lawful possession of the



petitioner over the premises in question. The petitioner has been dispossessed from the property by act of lawlessness, as alleged, by respondent no.7 in collusion with the local police. It is said to be in complete disregard and disobedience to the spirit of the order dated 18.12.2014 passed by the Hon'ble Company Judge in Company Petition No.10 of 1996 wherein while disposing of the company petition the Hon'ble Court categorically held that "... the Ex-management will have a right to evict any unauthorized encroachers/tenant/licensee in accordance with law, no one can take away the right of any person to claim his protection in capacity of being a tenant or licensee which again can be adjudicated before the appropriate forum/court strictly in accordance with law...." The petitioners were not put in the category of unauthorized occupants.

Case of the petitioners

2. It is the case of the petitioners that the property in question belongs to one Jai Mangal Limited (hereinafter referred to as 'the Company'), a public limited company incorporated under the provisions of the Companies Act, 1956. The said company had obtained lease of the land appertaining to Municipal Survey No.119, Holding No.251, 247, 231, 212 and 212A, Circle No.6, Ward No.2, situated at Frazer Road, P.S.-



Kotwali, District-Patna. The land was originally owned and possessed by one Jagdish Prasad who was Managing Director of the Company.

3. The Company faced a liquidation process in Company Case No.10 of 1996 but during the on-going liquidation proceeding the Managing Director of the Company entered into a memorandum of understanding dated 08.11.2006 with one Rupam Prakash (Director of the petitioner no.2) and arranged funds to pay all dues to the creditors of the company. By the end of December, 2009 the petitioner no.2 had paid a total consideration amount of Rs.1,41,49,000/-.

4. An agreement for sale was entered into between the Managing Director Jagdish Prasad and the petitioner no.2 on 17.03.2010 (Annexure-2). The sale agreement confirms the consideration amount at Rs.2.53 crores and acknowledges the receipt of Rs.1,41,49,000/-. It was agreed that the sale deed shall be executed within a period of four months from the date on which the liability on the property is discharged.

5. It is stated that because disposal of winding up matter was getting delayed, therefore, in order to enable the petitioner no.2 to start its business the Managing Director of the Company executed a registered lease deed in favour of



petitioner no.2 on 06.08.2011 (Annexure-3). Later on the petitioner no.2 executed a sub-lease dated 15.03.2012 in favour of petitioner no.1 for doing the business of a hotel in the name and style of Harisons Continental (Annexure-4 to the writ application).

6. It is stated that winding up proceeding was closed vide order dated 18.12.2014. By this time the petitioner no.2 had paid altogether a sum of Rs.2,24,45,035/- to the Company. The petitioner no.2 repeatedly tried to get the sale deed executed in terms of the agreement for sale by paying rest of Rs.28,54,965/- but the Managing Director of the Company namely Jagdish Prasad evaded the same on one ground or the other. The petitioner no.2 could sense that Jagdish Prasad was trying to sell the property in question to a third person, therefore, the petitioner no.2 got published a notice in the Hindi local Newspaper 'Dainik Bhaskar' on 06.05.2017 informing the public at large regarding its agreement for sale and the fact that Jagdish Prasad had already obtained the consideration amount from the petitioner no.2 and sold the property. A copy of the public notice dated 06.05.2017 is Annexure-5 to the writ application.

7. The petitioner no.2 had lodged an FIR against



Jagdish Prasad being Kotwali P.S. Case No.320/2017 dated 01.07.2017 for the offences under Sections 406, 409, 419, 420, 467, 468, 471 and 120B of the Indian Penal Code for committing cheating and fraud in which the police after investigation submitted a charge-sheet against him.

8. The petitioner no.2 filed a Title Suit no.165/2018 before the learned Sub-Judge 1, Patna on 24.04.2018 seeking specific performance of agreement for sale dated 17.03.2010. Later on the petitioner no.2 came to know that Jagdish Prasad had sold the property which includes the leased premises in question to respondent no.7 vide sale deed dated 21.03.2018, thereafter the respondent no.7 has been added in the suit and the reliefs in the plaint has been amended by seeking a declaration that the sale deed dated 21.03.2018 executed in favour of respondent no.7 be declared illegal, null and void and respondent no.7 be directed to join Jagdish Prasad in execution of sale deed in favour of petitioner no.2. On or about 24.08.2018 the said Jagdish Prasad died whereafter the petitioner no.2 took steps for substitution of legal heirs in the said suit. The respondent no.7 has appeared in the suit and has filed his written statement.

Eviction suit filed by the respondent no.7

9. It is further stated that the respondent no.7 has filed



an Eviction Suit on 25.08.2018 giving rise to Eviction Suit No.72 of 2018 against the petitioner no.1 and petitioner no.2 under Section 11(1)(c) and 14 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (hereinafter referred to as the 'Act of 1947'). In the eviction suit the respondent no.7 is admitting the possession of the petitioners over the leased area in question.

During pendency of Eviction Suit-the forceful dispossession

10. It is stated at this stage that while the petitioner no.1 being in possession of the leased area in question was engaged in running its hotel business which will be evident from the latest electricity bill, account statement, telephone bill, GST returns, PF challans for the month of January/February, 2022 (Annexure-10 series) all of a sudden in the intervening night of 24th/25th February, 2022 the Director of respondent no.7 Manish Kumar and his brothers Mishel Kumar and Manas Mohan along with 50 others came to the reception counter of the hotel, started assaulting the Manager Ajay Kumar and staff namely Gautam Kumar who were present at the reception counter. Three staffs were kidnapped at the threat of gun and put in a vehicle and dropped off near Digha Bridge. The mobile phones and the identity proofs of these persons were also forcibly taken away. They forcibly took away the documents and computer system at



the reception along with cash of Rs.55,000/-. The local police station i.e. Kotwali police station was informed by the petitioners and representatives of the petitioners went to the Kotwali police station, nonetheless the police officials refused to take any action against the respondent no.7 rather they locked the premises and directed the petitioners to come on the next day. The petitioners have brought on record some photographs claiming that the police personnel may be seen locking the premises.

Kotwali Police did not lodge FIR-Emails sent to S.P., Patna

11. It is specifically alleged that the Kotwali police station was not lodging any FIR against the respondent no.7, therefore the petitioners vide their email dated 25.02.2022 at 2.50 AM requested the Superintendent of Police, Patna to direct the Kotwali Police Station to register an FIR regarding the wrongful activity of respondent no.7. On 25.02.2022 at 11.26 pm again another email was sent to the Superintendent of Police, Patna along with a written complaint and photographs for lodging FIR against the culprits (Annexure-13 to the writ application). It is stated that instead of addressing the grievance of the petitioners, police submitted a report on the basis of which the S.D.O., Sadar, initiated an action under Section 107 Cr.P.C. It is thus submitted that the police has locked the



premises causing huge financial loss to the petitioner no.1. In this manner, by taking law into their hands the respondent no.7 has interfered with the peaceful possession of the petitioner no.1. The action of the local police in not registering the FIR on the basis of information sent/given to them which were clearly showing commission of a cognizable offence has been questioned by the petitioner to demonstrate that the local police allowed the respondent no.7 to commit the unlawful act.

Counter affidavit of official respondent nos.4 to 6

12. The respondent nos.4 to 6 who are the official respondents have filed a counter affidavit. They have stated that on 24/25.02.2022 the Kotwali police station received an information through 'PIR' at about 2.15 AM that an incident of robbery is happening in Harrisons Hotel situated at Dakbunglow. Upon receiving such information the S.H.O. of Kotwali police station along with other police officials reached at the place of occurrence and saw that the door of the outside gate of the hotel was locked and few people standing there. After unlocking the lock the police entered and found that no occurrence of robbery was committed and thereafter the people standing there again locked the gate. On asking the name of the people standing there they told their name as Monu Kumar and



Manish Kumar and few other people were also found to be standing there. Suddenly four to five people reached there and started asking who has locked the door. On asking to disclose his name he told his name as Gaurav Kumar and thereafter the tangled up with the other side which created a law and order problem. Monu Kumar and Manish Kumar (respondent no.7) told that they have purchased the hotel by way of a sale deed in the year 2018 and the petitioner is running the hotel illegally.

13. It is then stated that the police registered a Sanha and both the parties came to the police station. During the duty one ASI Parmatma Dubey heard a voice from Hotel Harison and thereafter he along with respondent no.7 went to the hotel and found that one Santosh Kumar was inside the hotel. On unlocking the door said Santosh Kumar got out from the hotel and thereafter respondent no.7 again locked the door and took the key of the hotel with him. It is the stand of respondent nos. 4 to 6 that under these circumstances police has taken preventive action. It is further stated that the claim of the petitioners that they have taken the photographs of police personnel who were putting lock, may be of the period when the scuffle was taking place between the parties and the police entered into the hotel by unlocking the door and thereafter the respondent no.7 locked



the door. It is stated that the officials of the Kotwali Police Station have no occasion to lock the door of Harison Hotel and the police only intervened in the matter after receiving a PIR call and thereafter took the preventive measure to avoid law and order situation.

14. There is neither any denial of the assertion of the petitioners that emails containing specific allegation as to manner in which the occurrence took place were sent to S.P., Patna nor any plausible reason has been provided for not registering an F.I.R. on 25th February night by Kotwali police.

15. It is stated that as regards an alleged occurrence of assault on 16.05.2022 the petitioner has lodged an FIR being Kotwali P.S.Case No. 253 of 2022 dated 16.05.2022 under Sections 341, 323, 379, 504, 506 and 307/34 of the Indian Penal Code against Monu Kumar and five unknown whereas one FIR has been lodged by the employee of respondent no.7 being Kotwali P.S. Case No.254 of 2022 dated 16.05.2022 under Sections 341, 342, 323, 504 and 506 of the Indian Penal Code against the petitioner and others. Both the cases are under investigation.

Report of Dy.S.P. (Supervising Authority)

16. In course of hearing of this writ application, this



Court vide its order dated 19.09.2022 directed the Dy.S.P. to analyze the CCTV footage of the incident reported by the petitioners in the night of 24/25.02.2022 and submit a report thereon. A report has been submitted by the Dy.S.P. which has been perused by both the sides and this Court would record the relevant part of the same as under:-

(i) On 25.02.2022 at about 02.09.52 AM two persons of the first party came on a scooty in the police station.

(ii) At 02.12.22 AM sub-inspector of police Parmatma Dubey and four persons from first party and second party went inside the Sirista room.

(iii) At 02.18 AM one member of the second party is handing over the key to sub-inspector of police Parmatma Dubey who is giving it to the O.D. Officer.

(iv) At 02.32.30 AM the lawyer of the second party came to the police station who disclosed his name as Vishal Thakur.

(v) At 02.40.20 AM the O.D. Officer is giving the key to Parmatma Dubey.

(vi) At 02.42 AM sub-inspector of police Parmatma Dubey went away with the keys from the police station.

(vii) At 02.52 AM the members of the second party left



the police station.

(viii) At 02.59.58 AM the members of the first party went away by scooty.

17. The report further says that there was no CCTV footage at the place of occurrence and there was no back up available in the CCTV footage of Dakbunglow road Chauraha, therefore, CCTV footage could not be made available. It is further stated that during preservation of the CCTV footage of the police station it was noticed that the CCTV footage is running with a delay of about 34 minutes.

18. As regards the photographs enclosed with the writ application by the first party (the petitioners) when Dy.S.P. enquired from the officer in charge of Kotwali police station he was informed that the first person who reached at the place of occurrence after the alleged incident took place was Parmatma Dubey, the sub-inspector of police. Parmatma Dubey disclosed that he was on duty on 25.02.2022 morning at Budha Smriti Park when he got information on wireless that some occurrence is happening in Hotel Harison. When he reached there, he found that 1-2 persons were walking there who did not disclose about any occurrence. According to him, the lock was placed on the Harison Hotel, at the same time 2-3 persons came there and one



of them disclosed his name as Manish Kumar being owner of Harison Hotel. According to sub-inspector both the parties were indulging in quarrel, thereafter both the parties came to the police station and key of the hotel was given in the police station by the second party and then it was given to the O.D. Officer. After some time on the basis of an information that one person is knocking the shutter of the hotel when the sub-inspector went there he found that one tea vendor Sanjay Kumar was inside who came out. According to the report of the Dy.S.P. he had thereafter handed over the key to the person on O.D. duty.

19. At the end, the Dy.S.P. has written in the report that so far as question of key of Harison Hotel is concerned, the said key was handed over to the second party. The report is completely silent as to how and on whose direction the officer on duty with whom the key was placed by Parmatma Dubey, S.I. handed over the key to the member of the second party. (emphasis supplied)

20. Mr. Saroj Kumar Sharma, learned A.C. to A.A.G.-3 and the Dy.S.P. who has submitted the report have assisted the Court on behalf of the State.



Submissions of the petitioners

21. Mr. Pushkar Narayan Shahi, learned senior counsel for the petitioners has submitted that by a brazen act of lawlessness, the respondent no.7 invaded the leased premises in possession of petitioner no.1 at the midnight and took forceful possession of the premises by ousting all those staffs who were present inside. When the director of the petitioners protested, the police party did not help them, rather refused to lodge F.I.R. and it is evident from the Dy.S.P. report that the keys which were in the possession of the ASI and officer on duty of Kotwali are said to have been handed over to the director of respondent no.7. Learned senior counsel has heavily relied upon the judgment of this Court in the case of **Anand Kishore Prasad Sinha Vs. the State of Bihar and others** reported in **2021 (2) PLJR 445**. It is submitted that in almost similar facts situation when the petitioner of the said case was ousted from his chambers by a forceful entry and in an unlawful manner and the police collusion writ large on the face of the materials on the record, this Court entertained the writ application and granted relief to the petitioner. It is submitted that the judgment in the case of Anand Kishore Prasad Sinha (supra) was challenged before the Hon'ble Supreme Court in Special Leave to Appeal (Crl.)



Nos.3239/2021 but vide order dated 5.4.2021 the Hon'ble Supreme Court refused to interfere with the same and the special leave petition was dismissed.

22. Mr. Shahi, learned senior counsel has submitted that there are series of judgments of the various other Hon'ble High Courts and the Hon'ble Supreme Court wherein in the cases of illegal house grabbing the Hon'ble Courts have entertained the writ applications in order to instill confidence in public. Referring to the judgment of the Privy Council in the case of Midnapur Zamindary (51 Ind App 243) (PC) and the Hon'ble Constitution Bench judgment of the Supreme Court in the case of **Bishan Das & Ors. Vs.State of Punjab & Ors.** reported in **AIR 1961 SC 1570** and the judgments enclosed as Annexure-15 series to the writ application, learned senior counsel submits that where a person is in settled possession of the property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed except by recourse to law.

23. It is submitted that in the case of **Samir Sobhan Sanyal Vs. Tracks Trade Pvt. Ltd & others** reported in **1996 AIR SCW 2539**, the Hon'ble Supreme Court did not approve of the eviction of the appellant from the demised premises without taking recourse to any process of law even without deciding the



question whether the appellant is entitled to remain in possession. The Hon'ble Supreme Court directed the respondents to put the appellant back in possession within 24 hours. The rationale behind such an order was explained by the Hon'ble Supreme Court.

24. On these grounds, learned senior counsel has prayed for a direction to direct the respondents to unlock the premises and hand over possession of the same to the petitioner no.1 to enable him to run its business.

Stand of respondent no.7.

25. The respondent no.7 has filed a counter affidavit through its Director Manish Kumar. He has questioned the execution of sub-lease deed by the petitioner no.2 in favour of petitioner no.1 and submits that the agreement for sale executed between Sri Jagdish Prasad and the petitioner no.2 on 17.03.2010 had become redundant on expiry of four months and the term of registered lease deed had also expired on 05.08.2016, therefore, the occupation of petitioner no.1 was illegal and the petitioner no.1 does not have an existing executable right, therefore the petitioner no.1 cannot maintain a writ application seeking an equitable relief. The respondent no.7 does not deny that he is a party to the suit for specific



performance of contract which has been filed by the petitioner no.2. Further there is no denial that the respondent no.7 has filed an eviction suit against both the writ petitioners. Rather it is the specific averment of respondent no.7 in paragraph '15' of the counter affidavit that the ground seeking eviction is of personal necessity since the respondent no.7 are running their business from a rented accommodation. The respondent no.7 has denied the allegations made by the petitioners in paragraph '29' of the writ application but what is stated in paragraph '17' of the counter affidavit is worth taking note of. It is stated that "the petitioner can claim possession of the hotel area as per the terms of the lease deed and not of the entire building and the basement is under occupation and possession of answering respondent. The answering respondent Manish Kumar and Mishel Kumar who have their office in the neighbourhood came walking to the property at about 10.30 to find that there was no one in the hotel and the reception counter, the property appeared abandoned, they waited for about an hour or so and when no one came they called for locks and locked the outer gate of the hotel. Since they are in advertisement business and their majority business work takes place at odd hours, often in the night, they stayed in the vicinity expecting some one to come, representing the hotel.



It is stated that nobody came and the property in question had been left in an abandoned state. At about 2 in the night the police control room van came and told the two brothers that they had received information that there was commissioning of Dacoity in the hotel, Manish Kumar opened the lock and the police personnel went inside and found everything in order and they went away whereupon Manish Kumar again put the lock at the gate. Soon thereafter Gaurav Kumar along with 10-20 of his henchmen came there and questioned Manish Kumar as to how he had locked the premises. An altercation took place whereupon the police personnel came there and separated the two groups and took them to Kotwali police station. The police officer on duty in the PCR van again came back and informed the office at Kotwali that there was some one who had been locked inside. Manish Kumar thereafter accompanied the said police officer, it was he who opened the lock and the person locked inside was brought out, whereupon Manish Kumar relocked the gate and returned to Kotwali Police Station with key in his possession.” (emphasis supplied)

26. In paragraph ‘18’ of the counter affidavit, the respondent no.7 states that it is the answering respondents who have put their lock over the property in question since the



property in question was in an abandoned state. In Paragraph '20' of the counter affidavit, it is stated that the eviction suit is still pending and under the provisions of the Eviction Act, 1947 if it is found that the petitioner's eviction was illegal, under the Eviction Act their possession can be restored.

Submissions on behalf of respondent no.7

27. Mr. Sanjay Singh, learned senior counsel representing the respondent no.7 submits that in the given facts and circumstances of the case, this Court need not entertain this writ application and the parties be left to contest their matter in the civil court and the issue of alleged forceful dispossession of the petitioner may only be adjudicated by a competent civil court. Learned senior counsel has attempted to distinguish the facts of the present case from that of the case of Anand Kishore Prasad Sinha (supra).

28. Learned senior counsel has relied upon the judgments of the Hon'ble Apex Court in the case of **Mohan Pandey & Ors. Vs. Smt. Usha Rani Rajgaria** reported in **1992 (4) SCC 61** and in the case of **Roshina. T Vs. Abdul Azeez K.T. & Ors.** reported in **2019 (1) PLJR 230 SC = (2019) 2 SCC 329** to submit that where there is an existing civil dispute and it is claimed that a person has been



dispossessed “illegally” the said person may take back his possession by following proper legal channels. The submission is that where there is an alternative remedy available to the petitioner, the extraordinary writ remedy under Article 226 of the Constitution of India need not be exercised.

29. The learned senior counsel does not dispute to the extent that the petitioner no.1 was running Hotel Harison in the leased premises on 24th /25th February night. It is submitted that to that extent there is a positive averment in para-17 of the counter affidavit of respondent no.7 that the petitioners can claim their possession over the hotel area.

A brief analysis of the order dated 18.12.2014 passed in Company Petition No.10 of 1996

30. The entire history right from the date of filing of the company petition seeking winding up of M/S Jai Mangal Limited till its rehabilitation and thereby disposal of the company petition are duly incorporated in the order dated 18.12.2014 passed by this Court. A close reading of the order would show the fact that during winding up proceeding the Hon’ble Court had stayed the order of winding up and the ex-management was given opportunity to take steps towards



revival of the company. In the process, several directions were issued. The Ex-management entered into the MOU as well as executed the lease deed in favour of the petitioner no.2 during this period. The fact that the Ex-management had decided to lease out the hotel area as a measure toward revival of the company is a matter of record. In paragraph '29 (10)', the facts regarding calling of the meeting of the share holders and the secured creditors to consider the proposal for the compromise/arrangement is duly recorded and the Hon'ble High Court was apprised of the fact that the lease deed has been executed in respect of the area in question for running a hotel business. The relevant part of the order may be found in paragraph '24(6)'. The official liquidator in his report, after conducting the spot inspection, had reported that "presently, a sine-board in the name of Hotel Harisons was seen in entrance of Hotel door. Later on the Ex-management by filing a report justified its action towards leasing out as according to them it had become necessary for the time being. The Ex-management justified leasing of the portion of the premises in its possession for running the hotel business. It's decision was sought to be supported by a judgment of the Hon'ble Supreme Court in the case of Miheer H. Mafatlal Vs. Mafatlal



Industries Ltd. reported in (1997) 1 SCC 579 wherein it has been held that once the parties have given approval to the scheme and the Court has given it's sanction, the Court has no jurisdiction to sit in appeal in commercial wisdom of the parties.

31. A perusal of the complete order dated 18.12.2014 would show that after considering the report of the Ex-management this Court did not take any adverse view against leasing out of the portion in possession of the Ex-management for purpose of hotel business.

32. Further it would appear from the order of the Hon'ble High Court that after taking note of the objections of the large number of tenants who were earlier inducted in the premises either by the company or by the secured creditors, the Hon'ble Court took a view that the Ex-management will have a right to evict any unauthorized encroachers/tenant/licensee in accordance with law, no one can take away the right of any person to claim his protection in capacity of being a tenant or licensee which again can be adjudicated before the appropriate forum/court strictly in accordance with law.



Consideration

33. Having heard learned senior counsel for the petitioner, respondent no.7 and the learned AC to AAG-III as also on perusal of the pleadings recorded hereinabove, this Court finds that the possession of the petitioner no.1 in the locked hotel premises is an admitted fact. In the present writ application, this Court is not called upon to decide as to whether the petitioner no.1 has any existing right to continue with the possession of the premises in question or not. Such issues are pending adjudication in the eviction suit.

Midnight entry
in hotel area

34. From the counter affidavit of the respondent no.7 who is the main contesting respondent as well as that of respondent nos. 4 to 6 and the facts as to leasing mentioned in the order dated 18.12.2014 of this Court, there is no iota of doubt that the petitioner no.1 was running its hotel business in the premises which has been put under lock in the intervening night of 24th/25th February 2022 at midnight. In paragraph '13' of his counter affidavit the respondent no.7 admits the occupation of the premises by the petitioners but claims that their occupation was illegal and the petitioner no.1 does not have an existing executable right, therefore the petitioners cannot maintain the present writ application. This Court is of the



opinion that the respondent no.7 has not correctly raised the issue of maintainability of the writ application. In the present writ application this Court need not examine the existing executable right of the petitioners in respect of the property in question.

35. The only issue which is to be looked into is that, in case, the possession of the petitioner no.1 is admitted and it is found that he has been ousted by respondent no.7 in collusion with the local police, unlawfully and by use of force or by taking the law into his hand and it finally comes out to be a case of property grabbing or ouster of the petitioners by unlawful means, whether or not this Court would be justified in entertaining the writ application and granting the reliefs as prayed, to the petitioners. Thus, the submission of respondent no.7 that because the petitioner no.1 does not have an existing executable right, therefore, the petitioner no.1 cannot maintain the present writ application, is completely misconceived and misplaced kind of submission.

A case of property grabbing/ouster/dispossession of the petitioners by unlawful acts during midnight

Eviction suit by respondent no.7

36. In paragraph '15' of its counter affidavit the respondent no.7 admits to have filed an eviction suit under Section 11(1) (c) of the Eviction Act, 1947 against the petitioners on the ground of personal necessity. This is adjactly



Possession
admitted

what the Hon'ble Court in Company Petition No.10 of 1996 opined as procedure. In paragraph '17' the respondent no.7 in fact admits in clear words that the petitioner can claim possession of the hotel area as per the terms of the lease deed, though submission is that not of the entire building and it is claimed that the ground floor and the basement is in the occupation and possession of the answering respondents. At this stage, this Court is not required to look into anything beyond the subject matter of the writ application which is the hotel area which the respondent no.7 himself claims to have locked. It is unimaginable that on the one hand the respondent no.7 himself admits that the petitioner can claim possession of the hotel area but at the same time the respondent no.7 says that he locked the outer gate of the hotel on finding that there was no one in the hotel or its reception counter. This Court would discuss in detail the complete conflicting stand of respondent no.7 in paragraph '17' of its counter affidavit as regards the manner in which he claims to have locked the gate of the hotel and denies involvement of local police. For this purpose, this Court will discuss the statements in paragraph '17' of the counter affidavit of respondent no.7 side by side with the report of Dy.S.P. which contains analysis of the CCTV footage.



37. In paragraph '18' of the counter affidavit again the respondent no.7 has taken a stand that it is the answering respondent who has put the lock over the property in question since the property in question was in an abandoned state. It is neither the case of the respondent no.7 nor the State respondents (respondent nos. 4 to 6) that the petitioner no.1 was not occupying the premises. Their positive and admitted stand is that the petitioner no.1 was in the occupation of the said premises and petitioner no.1 was running its hotel business in the name of Harison Hotels. The respondent no.7 has not denied the specific averments of the petitioners in paragraph '7' of the writ application supported by Annexure-10 series that in fact the property in question was in the possession of the petitioner no.1 is also evident from the latest electricity bill, account statement, telephone bill, GST returns, PF challans for the month of January/February, 2022 in the name of Harisons Continental and the photographs.

Admitted presence of Manish Kumar & his persons during midnight at the hotel premises.

38. The petitioners have alleged that during intervening night of 24/25.02.2022 the Director of respondent no.7 namely Manish Kumar and his brother namely Mishel Kumar and



Manas Mohan along with 50 other came at the hotel. So far as this part of the statement in paragraph '20' of the writ application is concerned, the deponent Manish Kumar who has sworn the counter affidavit for respondent no.7 himself admits that during the odd hours of 24/25.02.2022 he had gone there, though his stand is that in connection with his business he was there but admittedly he had gone there during the odd hours in night and it is his statement in paragraph '17' of the counter affidavit that he came walking to the property and found that there was no one in the hotel or its reception counter. It is, therefore, an admission of Mr. Manish Kumar deponent of the counter affidavit of respondent no.7 that during the odd hours in the intervening night of 24/25.02.2022 he had gone up to the reception counter of the hotel.

39. So far as the case of the petitioners that Mr. Manish Kumar and his brothers Mishel Kumar and Manas Mohan along with 50 others came to the reception counter of the hotel and started assaulting the manager and kidnapped the three staffs are concerned, those are not admitted by the respondent no.7 and this Court need not at this stage go into that discussion. This Court would only observe that the admitted presence of Mr. Manish Kumar, Director of respondent no.7 at the reception



counter of the hotel premises in respect of which an eviction suit is going on at the instance of respondent no.7 and the parties are litigating would prima-facie impress this Court that during the intervening night of 24/25.02.2022 the Director of respondent no.7 went there unauthorizedly.

40. As per report, the Dy.S.P. has in the counter affidavit also stated that at about 2.15 AM (midnight of 24/25.02.2022), on information through PIR was received that a robbery is taking place inside the hotel when the S.H.O. reached there, he found that the door of the hotel was locked from outside and few people were standing there who disclosed their name as Monu Kumar and Manish Kumar and few other people were also found to be standing there. The counter affidavit of the official respondents (respondent nos.4 to 6) goes a long way to show that during the midnight the Directors of respondent no.7 along with some more people were found present and the hotel gate was locked. The official respondents further states that thereafter 4 to 5 people from the petitioners' side went there and enquired as to why the other side had put the lock than they were told that the petitioner was running the hotel illegally.

41. A conjoint reading of the stand of respondent no.7 and that of the respondent nos.4 to 6 would leave no doubt in



the mind of this Court to the extent that during the odd night hours of 24/25.02.2022 the hotel premises was unlawfully locked with the sole intention to dispossess the petitioners during the pendency of the eviction suit, taking the law into their hand. A written complaint/email of the petitioners regarding the alleged occurrence was not immediately registered and entered in the station diary as F.I.R. The simple story put forth by respondent no.7 through its Director Manish Kumar that when he went there to the hotel and to the reception counter, on finding that there was no one so he called for a lock and locked the hotel gate cannot be believed by any person with a sense of reasoning. The presence of so many persons with Manish Kumar at 2.15 AM (midnight) at the gate of the hotel is not in dispute either by respondent no.7 or by the official respondents.

42. What disturbs this Court is the fact that Kotwali police station did not lodge any FIR and even the email sent to the Superintendent of Police, Patna on 25.02.2022 at 2.50 AM regarding the alleged unlawful activity and then a reminder sent on 25.02.2022 at 11.26 AM to the Superintendent of Police, Patna with a written complaint and photographs for lodging the FIR did not move the police administration. There is no



statement of respondent nos. 4 to 6 that those were duly entered in the station diary, thus, to this Court it is crystal clear that the Kotwali police was acting in complete violation of the Hon'ble Constitution Bench judgment of the Supreme Court in the case of **Lalita Kumari Vs. Government of Uttar Pradesh and others** reported in **(2014) 2 SCC 1** (paragraph 120-120.8).

43. The report of the Dy.S.P. which has been perused by both learned senior counsel for the parties and the submissions have been made thereon indicates that on 25.02.2022 at about 02.09.52 AM two persons of the first party (the petitioners are the first party) came on scooty to the police station. At 2.12.22 AM four persons of first party and second party were found going inside the Sirista chamber with sub-inspector of police Parmatma Dubey. The report is silent as to when did the sub-inspector of police Parmatma Dubey entered in the premises of Kotwali police station and when did the persons of the second party reached the police station. The report further says that at 2.18 AM the member of the second party was found handing over the key to sub-inspector of police Parmatma Dubey who handed it to the officer on duty. He again takes back the key from the O.D. officer at 2.40.20 AM and left the police station.

44. Contrary to this, in the counter of respondent nos.4



to 6 it is stated that upon receiving information the SHO, Kotwali along with other police officials reached the place of occurrence and saw that the door of the outside gate of hotel was locked and few people were standing there.

45. According to the DyS.P. report, Parmatma Dubey was on duty on 25.02.2022 near Budha Smriti Park when he got information from PIR regarding the alleged occurrence taking place in Harison Hotel. He claims that after the key was handed

Admission of
S.I. that the
photographs is
of the time
when he was
putting the lock
after taking out
Sanjay Kumar

over to him by the second party at the police station, he handed over the same to the Officer on duty but after some time he got information that one person is locked inside the hotel whereafter he took the key, opened the shutter and then he after taking out the said person namely Sanjay Kumar from inside the hotel took the key and handed it over again to the officer on duty. As per report, the photographs showing the S.I. putting lock is of that period. The report of the Dy.S.P. says that sub-inspector of

Collusion of
police handing
over of keys by
police to
members of the
second party

police Parmatma Dubey was seen going with the key at 2.42 AM whereafter members of the second party left the police station at 2.52 AM and members of the first party left at 2.59.58 AM. The SI Parmatma Dubey has not been seen returning to the police station and thereafter handing over the key to officer on duty. Here is the allegation of connivance of local police with



the members of the second party.

46. The fact that the sub-inspector of police Parmatma Dubey had been in possession of the key and he had left the police station with the key and then claims to have returned the key to the officer on duty but subsequently the said key is said to have been handed over to the members of the second party are the circumstances which would give this Court to prima-facie believe that the local police despite knowing very well that the first party was in possession of the hotel premises and was running the hotel business, allowed the respondent no.7 to indulge in the unlawful act of forcefully ousting the petitioner no.1 by putting lock at the gate of the hotel and then after taking possession of the key again handed over the same to the second party. The allegations are that of unlawful use of force by respondent no.7 and collusion of local police. The respondent no.7 in its counter affidavit has not disclosed these vital parts of the information which have come out on the record from the counter affidavit of respondent nos. 4 to 6 and the report of the Dy.S.P.

47. In his one of the replies affidavit filed by Mr. Manish Kumar, Director of respondent no.7, he has gone on to say that in the night hours between 12.30 AM-1.45 AM he



found the property in abandoned condition then he put the lock and at about 2.00 AM police was informed that dacoity is taking place inside the premises whereupon police came but they were told by the representatives of respondent no.7 that no such occurrence had taken place. The judicial conscience of this Court is bound to take a view that the very presence of the Director and representatives of respondent no.7 between 12.30 AM and 2.00 AM at the hotel premises goes a long way to suggest that the entire action of forceful dispossession has been done during midnight in a concerted manner. The fact that police reached there on information of commission of dacoity but returned after being told by the representatives of respondent no.7 further suggests foul play in action. These observations of this Court are however, limited to and in connection with the issues involved in this writ petition and no part of it shall prejudice the case of the either side pending or which may be brought in the civil court.

Case-laws discussed

48. In the case of **Anand Kishore Prasad Sinha** (supra) this Court has discussed the line of judgments from both the sides. In the case of **Anju Devi Vs. Commissioner of Police** reported in **1994 SCC Online Del 327** when the Hon'ble Delhi



High Court found the fact that the respondent no. 3 and 4 did not controvert the averments made in the writ petition and did not dispute that the petitioner had been living in the premises in question for the last about four years, although, it was claimed that she was living as a licensee of respondent no. 3, on noticing that with the active connivance of the police the respondent no. 3 & 4 were inducted in the premises, the Hon'ble Delhi High Court directed restoration of 'status quo' ante and directed respondent no. 1 & 2 to put the petitioner back in possession of the property in question within a week. The Hon'ble Court rejected the contention of the respondents that the petitioner has filed a suit for possession which is pending in the civil court and disputed questions of facts and law form part of the said suit and thus the petition was not maintainable.

49. The Hon'ble Delhi High Court was of the view that it was not concerned with the title of the property in question and on noticing the fact that the respondent no. 3 & 4 were inducted into possession in connivance with police and the petitioner was thrown out of the house where she was living for about four years, the court took a view that it has quite and ample powers to pass appropriate orders including orders for restoration of possession. The relevant observations of the



Hon'ble Delhi High Court are quoted hereunder for a ready reference :-

“.....In such circumstances, this Court, to do complete justice between the parties, has wide and ample powers to pass appropriate orders including orders for restoration of possession. On the facts like the present it is the duty of the Court to come to the aid of person who is oppressed and is in disadvantageous position and, therefore, it is necessary to make innovations and forge new tools when atrocities are committed by those who are required to enforce the rule of law. The alleged offender cannot be permitted to take advantage of delay in justice delivery system. The contention that they may have prima facie committed the offence of trespass for the purpose of registration of FIR, which may be registered, and that the law will have its own course after registration of the FIR and at this stage no orders for delivery of possession can be passed, cannot be accepted on the peculiar facts of this case. Of course, the criminal law will have its own course. Of course, the suit would also be decided on its own merit and this order will not prejudice parties in those proceedings but all this does not persuade us to deny the relief of putting the petitioner back into possession. All situations are not alike. What relief deserves to be given in exercise of jurisdiction under Article 226 cannot be placed in a rigid mould. It cannot be put in a straight jacket. The relief is to be moulded as the facts and circumstances of the case and cause of justice may demand.....”

50. In the case of Vijay Khanna & Anr. Vs. Union of India reported in **1998 SCC Online Del 846** the Hon'ble Division Bench of Delhi High Court was examining a case in



which restoration of possession was sought for in writ jurisdiction. The petitioners were alleging dispossession from the ground floor portion of the house by respondent no. 15 and others while from first floor portion by respondent no. 16 and others on 14th April, 1994 and 26th April 1994 respectively. The Hon'ble High Court rejected the contention of the respondents that the petitioner may get restored their possession in terms of Section 456 Cr.P.C. and expressed its views in the following words:-

“..... It will not be out of place to state that power to restore possession of immovable property under Section 456 Cr.P.C. can be resorted to by the court only after recording the finding of guilt against the accused and the decision in case FIR No. 259/1994 is likely to take couple of years time. Taking note of the ratio in Smt. Anju Devi's case (supra) and the facts and the circumstances of the case, the petitioners deserves to be put back into possession of their house.”

51. In the case of Waf Alalaulad and Anr. Vs. Sundardas Daulatram and Sons and Ors. reported in 1996 SCC Online All 176 = AIR 1996 All 355, the Hon'ble Allahabad High Court observed in paragraph 14, 15, 16, 17, 19, 20 and 21 as under:-

“14. But dispossessing a person from his property otherwise than in due course of law is different from grabbing the property by terrorising the person in possession. To capture the property forcibly by creating terror by applying brute force is not a



simple case of dispossessing a person from property. In a country governed by rule of law no person can be deprived of his life, liberty and property by third degree methods, such as terrorising and man-handling the person concerned. In such a case not only the person who has been dispossessed of his property but the society itself is taken to ransom by brute force. Such an act creates terror in the minds of the people and has the effect of shaking the social fabrics of the society. These acts also hit and damage the authority of the Government with the result that the public order, peace and tranquility of the society are disturbed. In such cases it is the duty of the Government to come to the rescue of the persons who are threatened or have been dispossessed from their property by brazen act of lawlessness."

15. [In Charan Lal Sahu v. Union of India](#), AIR 1990 SC 1480, generally known as "Bhopal Gas leak disaster case" the Supreme Court while dealing with the concept known as "parens patrias", has held that the Government has the sovereign power of guardianship over the persons under disability and it is its duty to protect them. It was further held that where the citizens are not in a position to protect their rights the Government must intervene and fight for their rights. Relevant extract from the above decision of the Supreme Court is reproduced below at page 1504 :

"There is a concept known both in this country and abroad, called "parens patriae". Dr. B. K. Mukherjee in his 'Hindu Law of Religious-and Charitable Trusts,' Tagore Law Lectures, Fifth Edition, at p. 454, referring to the concept of parens patriae, has noted that in English Law, the Crown as parens patriae is the constitutional protector of all property subject to charitable trusts such trusts being essentially matters of public concern. Thus the position is that according to Indian concept parens patriae doctrine recognised King as the protector of all citizens and as parent. In *Budhkaran Chaukhani v. Thakur Prasad Shah*, AIR 1942 Cal 311 the position was explained by the Calcutta High Court at page 318 of the report. The same position was reiterated by the said High Court in



[Banku Behary v. Banku Behary Hasra](#) AIR 1943 Cal 203 at pp. 205 of the report. The position was further elaborated and explained by the Madras High Court in [Kumaraswami Mudaliar v. Rajammal](#) AIR 1957 Mad 563 at p. 567 of the report. This Court also recognised the concept of parens patriae relying on the observations of Dr. K. Mukherjee aforesaid in [Ram Saroop v. S. P. Sahi](#), (1959) 2 Supp SCR 583 at pp. 598 and 599; AIR 1959 SC 951 at pp. 958-959. In the "words and phrases" permanent Edition, Vol. 33 at p. 99, it is stated that parens patriae is the inherent power and authority of a Legislature to provide protection to the person and property of persons non sui juris, such as minor, insan, and incompetent persons, but the words "parens patriae" meaning thereby 'the father of the country', were applied originally to the King and are used to designate the state referring to its sovereign power of guardianship over persons under disability. (Emphasis supplied). Parens patriae jurisdiction, it has been explained, is the right of sovereign and imposes a duty on sovereign, in public interest, to protect persons under disability who have no rightful protector. The connotation of the term "parens patriae" differs from country to country, for instance, in England it is the King, in America, it is the people, etc. The Government is within its duty to protect and to control persons under disability. Conceptually, the parens patriae theory is the obligation of the State to protect and take into custody the rights and the privileges of its citizens was discharging its obligations. Our Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert and secure their rights, the State must come into picture and protect and fight for the rights of the citizens. The preamble to the Constitution, read with the Directive Principles. Arts. 38, 39 and 39A enjoins the State to take up the responsibility. It is the protective measure to which the social welfare State is committed. It is necessary for the State



to ensure the fundamental rights in conjunction with the Directive Principle of State Policy to effectively discharge its obligation and for this purpose, if necessary, to deprive some rights and privileges of the individual victims or their heirs to protect their rights better and secure these further."

16.The position of the Government being that of parent it has to act, intervene and protect lives, liberty and property of the people when threatened or invaded. Its duty is much greater in the case of a person under disability. A person is under disability not only when he suffers from physical or legal infirmities, but also when he is unable to stand up and protect his right and property from invasion by or with the help of anti social elements, Mafias and terrorists. In such a case it is not only duty of the Government to protect a person in distress and restore the possession of his property to him, but it is also the duty of this Court, when approached, to pass appropriate orders and issue necessary directions to the Government to protect his life, liberty and property and, when found necessary, to restore him the possession of his property.

17.A learned Single Judge of this Court in [Jai Prakash Vashisht v. Addl. District Magistrate](#), 1995(26) All LR 46 has, in this connection, laid down as under:

"Illegal house grabbing seems to be rapidly becoming the order of the day in many places in Uttar Pradesh. This Court will be failing in its duty if it does not voice its protest against these brazen acts of lawlessness. A man's house is said to be his castle. But when the castle is invaded illegally by a mob of anti social elements who beat up the inhabitants, throw them out and illegally occupy the same, it is the matter of great concern for all law abiding citizens. Several instances of such illegal house grabbing have lately come to the notice of this Court, and reports about them have been published widely by the newspapers."

20.When a person, who has been



dispossessed from his property by brazen acts of lawlessness by or with the help of anti-social elements, approaches this Court under [Article 226](#) of the Constitution, this Court does not exercise its power to enforce the contractual and legal obligations of the parties. It only directs the Government to enforce the Rule of law and to protect the lives, liberty and the properties of the people and, if found necessary, to restore the possession of the property to the person who has been dispossessed therefrom, leaving it open to the parties to get their rights adjudicated through Civil Court. To tell a person whose property has been forcibly captured and seized by or with the help of anti social elements, to file a suit for its recovery and be on the street till the suit is decided by the last Court, is nothing but slapping a person in distress. The first two preliminary objections raised by the learned counsel for the owner are, therefore, rejected.

21.As regards the third preliminary objection it may be mentioned that Supreme Court in [Krishna Ram Mahale v. Mrs. Shobha Venkat Rao](#), (1989) 4 SCC 131 : AIR 1989 SC 2097 (supra), relevant extract from which has been reproduced before, has held that no person can forcibly be dispossessed from property even by the owner except by recourse to law. If a person is sought to be dispossessed by brute force he has a right to approach this Court, to protect his possession and it is the duty of this Court to issue appropriate order, direction or writ in the nature of mandamus to the Government to protect the possession of the property of such a person till he is dispossessed therefrom through a Court. In the instant case period of lease expired on 31- 12-1994. But the tenants have a right to continue in its possession till they are evicted through Court. They thus have the right to approach the Court to protect their possession of the property. Their writ



petition as such cannot be said to be not maintainable. The third preliminary objection is also rejected.....”

52. In the case of Ram Prasad Narayan Sahi & Anr. Vs. The State of Bihar and others reported in **AIR 1953 SC 215**, their Lordships of the Hon’ble Supreme Court did not allow to circumvent and overreach the rule of law. This case has been relied upon by a Bench of this Court in the case of **Hindustan Petroleum Corporation Ltd. Vs. The State of Bihar and others** reported in **1996 SCC online PAT 378=AIR 1996 PAT 163** and on finding that the college authorities knew it very well that in order to evict the petitioner company it will have to file a suit, instead of doing that an understanding was reached with PRDA authorities and by demolishing the structure, the petitioner company had been got rid of it, the Hon’ble Court strongly condemned the same in the following words:-

“Thus rule of law has been circumvented and overreached. The college authorities knew it very well that in order to evict the petitioner company it will have to file a suit. Instead of doing that so called understanding was reached with PRDA authorities and by demolishing the structure, the petitioner company had been got rid of. This Court strongly contends the subversion of rule of law by the PRDA authorities at the instance of the college authorities.”

53. In the case of Yar Mohammad vs. Lakshi Das reported in **AIR 1956 All page 1 (FB)** which has been approved in **Lallu Yeshwant Singh & others Vs. Rao Jagdish Singh &**



Ors. (AIR 1968 SC 620), the Full Bench of Hon'ble Allahabad High Court observed :-

“ Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court.”

54. In the case of **Bishan Das & others Vs. State of Punjab & others (AIR 1961 SC 1570)** which has been affirmed in **State of UP Vs. Maharaja Dharmander Prasad Singh Vs. Maharani Raj Laxmi Kumari Devi & others** reported in **AIR 1989 SC 997**, their Lordships held that possession of the lessee, even after the expiry of lease or its termination is juridical in nature and forcible dispossession is prohibited and the lessee cannot be dispossessed otherwise than in due course of law. The same principle has been followed in the case of **Krishna Ram Mahale VS. Shobha Venkat Rao** reported in **AIR 1989 SC 2097**. Relying on the principles of **Lallu Yeshwant Singh (supra)** and **Midnapur Zamindary (51 Ind App 243) (PC)**, the Hon'ble Supreme Court held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law.

55. In the case of **Samir Sobhan Sanyal Vs. Tracks**



Trade Pvt. Ltd. & others reported in **1996 AIR SCW 2539**, the Hon'ble Supreme Court did not approve the eviction of the appellant from the demise premises without taking recourse to any process of law even without deciding the question whether the appellant is entitled to remain in possession. The Hon'ble Supreme Court directed the respondents to put the appellant back in possession within 24 hours. The rationale behind such an order was explained by the Hon'ble Supreme Court saying that “ The Court cannot blink at their unlawful conduct to dispossess the appellant from demised property and would say that status quo be maintained. If the Court gives acceptance to such high-handed action, there will be no respect for rule of law and unlawful elements would take hold of the due process of law for ransom and it would be a field day for amarchy....”

56. In the case of **Anand Kishore Prasad Sinha** (supra), this Court had occasion to consider the similar issue as to whether in a matter where the petitioner claims to have been forcefully dispossessed from his chambers, a writ application be entertained or not. A contention was raised that the petitioner in the said case has got an alternative remedy of suit before the competent civil court but this Court rejected the said contention and after distinguishing the judgments of the Hon'ble Supreme



Court in the case of Mohan Pandey (supra) and Roshina T. (supra) held that those were the cases in which admittedly no unlawful act was done to dispossess the petitioner.

57. In the case of Mohan Pandey & Anr. (supra), the Hon'ble Supreme Court noticed that a suit for eviction of the appellants from the building was pending in the trial court. The respondent no. 1 claimed that she had let-out the same to one Sri B.K. Pandey who later on illegally handed over possession thereof to the appellant no. 1. A portion of the said house property which was the subject matter of the present suit was beyond the purview of the pending suit. The respondent claimed that the occasion for initiating the present proceeding with respect to this portion arose because of the high handedness of the appellant who illegally trespassed beyond the area which the subject matter of the pending suit and indulged in several illegal activities.

58. The facts of the present case are totally different and distinct.

59. Again in the case of **Roshina T.** (supra) the facts of the case would disclose that the dispute relates to the possession of a Flat on third floor of a building. Respondent no. 1 filed a writ petition in the Hon'ble High Court of Kerala seeking a



relief of restoration of possession over the Flat. The Division Bench of the High Court allowed the writ petition and directed the restoration of possession of the Flat in question to respondent no. 1. Before the Hon'ble Supreme Court, a question was raised as to whether the High Court was justified in entertaining the writ petition filed by the respondent no. 1 and whether the High Court was justified in issuing a mandamus against the appellant directing him to restore the possession of the Flat to respondent no. 1. In paragraph '11' of the said judgment the Hon'ble Apex Court noticed the fact that one Civil Suit no. 807/2014 was pending between the appellant and respondent no. 1 in relation to the Flat in question for grant of injunction.

60. Here is the distinction between the present case and that of Roshina T. (supra) that in the present case both the parties are not claiming possession over the premises rather in unequivocal words at several places in the counter affidavit the respondent no.7 admits not only the possession of the petitioner no.1 but also asserts that the petitioner can claim its possession of the hotel area as per terms of the lease deed (paragraph 17 of the counter affidavit of respondent no.7). In these facts situation, the judgment of the Hon'ble Supreme Court in the case of Roshina T. (supra) would not apply.



Respondent no.7-avoiding established procedure and indulging in unlawful act to get possession.

61. This Court has taken note of the relevant part of the order dated 18.12.2014 passed in Company Petition no.10 of 1996. It is evident from the order itself that long back in the year 2012 itself the Hon'ble High Court was duly apprised of the fact that the portion of the premises which was in possession of the Ex-management has been leased out as a measure of rehabilitation of the Company. The arrangements made by the Ex-management was duly approved in the meeting which was authorised by the Court. The official liquidator had reported to the Hon'ble High Court that a sine-board of 'Hotel Harison' was present on the leased premises. The Hon'ble High Court had not even interfered with the possession of the other tenants and so far as the present petitioners are concerned, the Ex-management had not made any complaint against them and they were not even put in the category of unauthorised occupants or tenants.

62. In these circumstances, when the respondent no.7 for any reason if purchased the entire property and to get possession of the leased premises filed an eviction suit, he was required to pursue the eviction suit and contest the suit which was filed by the petitioners in which respondent no.7 has been substituted but instead of doing so he chose to indulge into



unlawfully grabbing the possession of the leased premises from the petitioners. This act of the respondent no.7 is, therefore, against the spirit of order of the Hon'ble High Court. Something which the High Court did not permit to be done in respect of alleged tenant in default and left it for the parties to get their rights adjudicated, the respondent no.7 has done the same act unlawfully circumventing the spirit of the order of the Court even as the petitioners were not in the category of those tenants and the lease was done during continuation of the Company Petition.

63. In the light of the discussions made hereinabove, this Court would have no hesitation in coming to a conclusion that during the pendency of the eviction suit brought by the respondent no.7 against the petitioners, the respondent no.7 through its Directors acted unlawfully by taking law into its hand and while doing so the local police administration has not only remained a mute spectator despite information given by the first party (the petitioners) in time but went to the extent of helping the respondent no.7 by handing over the key to the second party. The report of the Dy.S.P. clearly says that key was given by sub-inspector of police Parmatma Dubey to the officer on duty, if it was so, a vague statement in the same report that



key was handed over to the second party speaks a volume about the conduct of the local police. As per report, it was the said sub-inspector of police Parmatma Dubey who had left the police station with key. He claims to have opened the shutter and took out the tea vendor Sanjay Kumar who was inside the hotel premises and then again handed over the key to the officer on duty, if it was so then there would be no iota of doubt that key was handed over to respondent no.7 by police. The fact that two emails sent to the Superintendent of Police, Patna on 25.02.2022 one of which were at midnight itself did not get any response again only strengthens the case of the petitioners that the local police was in collusion and they failed to protect the petitioners from unlawful dispossession.

64. In the given facts and circumstances of the case which are appearing from the records and speak for themselves, this Court cannot close its eyes at the unlawful conduct of the Director who is deponent of the counter affidavit of respondent no.7 admitting that he went to the hotel premises and the reception counter during odd hours/midnight, the facts revealed in the report of Dy.S.P. and counter affidavit of respondent nos.4 to 6 that the said director and several other persons were found standing there, and then a fanciful statement of the deponent



Manish Kumar that he locked at gate on finding the property in abandoned condition cannot be given any credence.

65. If this Court would give acceptance to such highhanded action, in the words of the Hon'ble Supreme Court in the case of Samir Soban Sanyal (supra), there will be no respect of rule of law and unlawful elements shall take hold of the due process of law for ransom and it would be a field day. In case of this nature which is akin to grabbing of the property and dispossession of an occupant by unlawful means, relegating the petitioner to a civil suit to get back his possession would only encourage more and more such acts of high handedness and there will be no respect for the rule of law. Such unlawful means must be discouraged. Thus, this Court being a constitutional Court is required to exercise its' extraordinary writ jurisdiction in the facts of the present case. The petitioners have made out a case for grant of reliefs.

66. In result, this writ application is allowed. The Superintendent of Police, Patna (respondent no.4) and the officer in-charge, Kotwali police station, Patna (respondent no.6) are directed to take back the possession of the key from the respondent no.7 forthwith and immediately remove the lock put on the main gate of the premises in question and hand over the possession of the same to the petitioner. If respondent no.7 does not cooperate the



respondent no.4 and 6 shall break open the unauthorised lock.

67. At this stage, this Court would make it clear that in the present judgment/order, this Court has not dealt with any of the issues which are pending adjudication in the suits referred hereinabove and those will be decided independently on their own merit. The observations of this Court are limited to the present case and to the issue as to unlawful dispossession of the petitioners in collusion with the local police administration.

68. From the pleadings available on the records, it appears that the petitioners have filed a complaint case bearing no.3323(c)/2022 as regards the occurrence of 24th/25th February night and they have complained that police has acted in collusion with the respondent no.7 and others named therein. This Court, is, of the considered opinion that the complaint case shall proceed on it's own merit and no part of the observations of this Court in this judgment shall be used to the pre-judice of either parties.

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	AFR
CAV DATE	22.09.2022
Uploading Date	12.10.2022
Transmission Date	12.10.2022

