

Banwarilal Kejriwal and Another Vs Sajjan Kumar Jalan and Others

Court: Gauhati High Court

Date of Decision: Nov. 19, 1999

Acts Referred: Constitution of India, 1950 " Article 136, 226

Criminal Procedure Code, 1973 (CrPC) " Section 113, 154, 155, 156, 190

Penal Code, 1860 (IPC) " Section 278

Police Act, 1861 " Section 25

Specific Relief Act, 1877 " Section 9

Specific Relief Act, 1963 " Section 6

Citation: (2000) 1 GLT 60

Hon'ble Judges: Brijesh Kumar, C.J; D.N. Chowdhury, J

Bench: Division Bench

Advocate: D.C. Mahanta, K. Baruah, T.J. Mahanta, D.S. Bhattacharyya, T.G. Baruah, D.K. Bhattacharjee, S.A. Laskar, A. Rashid, Z. Iqbal, M.B. Sarma and Ratul Goswami, for the Appellant; A.B. Choudhury, G.K. Dutta and M. Hazarika, for the Respondent

Judgement

D.N. Chowdhury, J.

Both these appeals are directed against the judgment and order of the learned Single Judge dated 2.11.95, passed

on a writ petition registered and numbered as Civil Rule No. 938/95, presented by the Respondent No. 1 in Writ Appeal No. 526/95 and the

Respondent No. 8 in Writ Appeal No. 104/96, viz., Shri Sajjan Kumar Jalan, hereinafter referred to as the tenant. The learned Single Judge, by

the aforesaid judgment and order, allowed the writ petition and directed for restoration of possession of the Petitioner/tenant and for return of the

articles those were seized from the Petitioner.

2. The aforesaid writ application (Civil Rule No. 938/95) was directed against some of the actions of the Executive authority on the strength of an

order of the Chief Judicial Magistrate, Sibsagar, hereinafter referred to as the CJM, in the following circumstances. The tenant was occupying a

room measuring 10ft \times 45ft approximately, in the ground floor of a RCC building situated at L.K.B. Road, Amolapatty, Sibsagar, belonging to

Shri Banwarilal Kejriwal, the Appellant in Writ Appeal No. 526/95 and the 9th Respondent in Writ Appeal No. 104/96, hereinafter referred to as

the landlord. The said room-in-question is covered by Dag No. 1893 of P.P. Patta No. 1189 of Nugarmohal Mouza, Sibsagar, and was let out to

the tenant at a monthly rent of Rs. 321/- per month. According to the tenant, the landlord instituted a Title Suit in the Court of the Asstt. District

Judge, Sibsagar for eviction of the tenant on the grounds mentioned in the plaint; which was registered and numbered as Title Suit No. 68/94 on

the 7th of December, 1994. On 13th of December, 1994, the landlord made an application before the CJM, who was also arranged as

Respondent No. 8 in the writ petition, stating inter-alia that the tenant had been occupying the said premises under him (the landlord) as a monthly

tenant and that the said tenant was not paying any rent though the said room was occupied by the tenant and which emitted foul smell. In the said

application, it was further mentioned by the landlord that the tenant became insolvent and was unable to pay his dues to the creditors. It was also

asserted that the landlord, on enquiry, came to know that the tenant had been living in Arunachal Pradesh and accordingly prayed before the CJM

for a direction on the Officer-in-Charge, Sibsagar Police Station, to open the lock of the premises, take stock of the materials on making inventory

and thereafter to handover possession of the room to the landlord. The CJM passed an order directing the Officer-in-Charge, Sibsagar Police

Station to register a case, investigate into the matter and to submit a report at an early date. The Sub-Inspector of Police, Shri NC Bora, Officer-

in-Charge of the Sibsagar Police Station submitted a report on 14.12.94 wherein he mentioned that the Petitioner was occupying the premises-in-

question as a tenant under the landlord. The tenant occupied the said premises on an arrangement to pay Rs. 1000/- per month about three years

back. That the tenant left for Arunachal Pradesh ""for his own purpose"". In the report, the Officer-in-Charge indicated that he visited the place of

occurrence and on his visiting the place of occurrence, he found that ""some unknown articles were kept inside the room which is suspected to be

illegal article. The room is situated around some other businessman establishment. Some bad smell is coming out from the room which causes

pollution and it may hamper the other public. The Sub-Inspector of Police, O/C Bora, by his report informed the CJM that though he was

directed to register a case, it was difficult for him to put the proper Section of law without verifying the articles kept inside the room. On receipt of

the report, the CJM directed the Police to ""investigate the matter"" The Officer-in-Charge was authorised to break-open the lock by the CJM. On

the basis of the said order, the lock of the room-in-question was broke-open, articles seized as per seizure list and the seized articles were handed

over in the zimma of the landlord which was the subject-matter of the writ petition. The learned Single Judge after hearing the learned Counsel for

the parties and on perusal of the affidavits as well as the other materials on record, held that the action of the CJM was illegal and without

jurisdiction and consequently set aside and quashed the order passed by the CJM. The learned Single Judge also held the action of the Police

Officer as illegal and without jurisdiction and accordingly, directed the Respondents Nos. 2 and 3 viz., the Director General of Police, Assam and

the Supdt. of Police, Sibsagar, respectively, to restore possession of the tenant and to return all the articles seized from the tenanted house. In

addition, the learned Single Judge ordered the Sub-Inspector of Police/Officer-in-Charge, Sibsagar Police Station (Respondent No. 7); CJM,

Sibsagar (Respondent No. 8) and the landlord (Respondent No. 9) to pay a cost of Rs. 1000/- each to the Petitioner/tenant. The Court, however,

left it open for the Petitioner/tenant. to claim for any damage in appropriate forum, if so advised. The landlord as well as the CJM being aggrieved

by the aforesaid order of the learned Single Judge, presented two separate appeals questioning the legality and the validity of the order of the

learned Single Judge.

3. Mr. D.C. Mahanta, learned senior counsel assisted by Mr. K. Baruah, appearing on behalf of the Appellant/landlord in Writ Appeal No.

526/95, assailed the judgment and order of the learned Single Judge on the ground of it being arbitrary, illegal and discriminatory. Mr. Mahanta,

the learned senior counsel, submitted that the CJM rightly ordered the Police to open the room-in-question on the fact situation of the case. That

the tenant was not paying the rent since June, 1992 and closed the shop from December, 1993 and kept the room under lock and key which

emitted foul smell for which there was also a public complaint. The CJM on receipt of the report, only ordered for removal of the public nuisance

and that the learned Single Judge failed to consider that aspect of the matter which cause grave failure of justice. Mr. Mahanta, the learned senior

counsel also questioned the legitimacy of the order of the learned Single Judge in awarding the compensation which, according to the learned

Counsel, was within the domain of the Civil Court. Mr. Mahanta, the learned senior counsel appearing for the landlord/Appellant, in support of his

contentions referred to the decisions in Himmat Singh and Others Vs. Bhagwana Ram and Others, and Gobind Singh Vs. Shanti Sarup,

4. Mr. D.K. Bhattacharjee, learned senior counsel appearing on behalf of CJM, Appellant in Writ Appeal No. 104/96, submitted that the CJM

exercised his judicial power entrusted to him under the law. In exercise of those " powers, the officer might have faltered, but in the absence of any

motive which was not imputed, question of dragging the CJM in the litigative battle was uncalled for. Mr. Bhattacharjee, the learned senior counsel,

submitted that the CJM as a Judicial Officer discharged his judicial duty and acted bonafide and in those circumstances, it was unwarranted on the

part of the learned Single Judge to hold that the CJM acted in unholy haste and, therefore, saddling him with a cost of Rs. 1000/- was/is

unsustainable. The learned Senior Counsel appearing on behalf of the CJM also questioned the tendency of dragging judicial officers to the Court

which cause unnecessary disturbance to the lawful discharge of judicial functions by such officers without any compelling reasons. Mr. D.K.

Bhattacharjee, the learned senior counsel, further submitted that the CJM exercised his judicial powers within the four corners of law. The learned

senior counsel in support of his contentions, referred to the provisions of Chapter XII of the Code of Criminal Procedure and particularly to the

provisions of Sections 154, 155 and 156 of the said Code and submitted that a Magistrate all throughout acted within his jurisdiction and,

therefore, the findings of the learned Single Judge are not sustainable in law. Mr. Bhattacharjee referring to the allegations contained in the

application, stated that on the face of the allegation that the room-in-question was emitting foul smell and thereby made the atmosphere noxious to

health is an offence u/s 278 IPC and any Magistrate is competent to take cognizance of such offence. Mr. Bhattacharjee, the learned senior

counsel, by the aforesaid submission, sought to support the action of the Respondents as lawful.

5. Mr. A.B. Choudhury, the learned Counsel appearing on behalf of the tenant, fully supported the judgment and order of the learned Single Judge

and submitted that the State and its instrumentality not only acted contrary to law, but those were also destructive to the concept of rule of law.

6. Before entering into the respective merits of the contentions of the learned Counsel for the parties, it would be appropriate to refer to the salient

facts. On 13th December, 1994, the landlord submitted an application before the CJM, Sibsagar, for issuing appropriate order directing the

Officer-in-Charge, Sibsagar Police Station, to open the lock of the premises-in-question and to take stock of the materials after making an

inventory and also to handover possession of the house to the landlord/Petitioner for ends of justice. The full extract of the aforesaid application is

as follows:

The Petitioner most respectfully sheweth:

That the Petitioner is the landlord and the accused is a tenant of the Petitioner.

That the accused has been occupying a house of the Petitioner since two years on monthly rent and the accused is not paying the monthly rent of

the Petitioner. The accused has already stored a lot of materials in the said house and a bad smell"" is coming out of the same and there is every

chance of pollution and the nearby people including the Petitioner have to suffer a lot. The neighbouring people have been complaining to the

Petitioner but the Petitioner is helpless in this connection.

That the accused has become insolvent and he has to pay sufficient amount in the market at Sibsagar to different persons from whom he has

purchased materials.

That the Petitioner has been searching the accused persons here and there and now he has come to know that the accused person has been living

at Arunachal Pradesh.

That the Petitioner is very much aggrieved and finding no other alternative has approached the Hon"ble Court for justice and help.

It is therefore prayed that your kindness may be pleased to order the O/C Sibsagar RS. to open the lock and take stock of the materials after

making an inventory and handover the possession of the house to the Petitioner for ends of justice.

And for this act of kindness, the humble Petitioner shall ever pray.

On the body of the application itself, the learned CJM endorsed it to the Officer-in-Charge of Sibsagar Police Station with the following note:

O/C Sibsagar

PL. register a case investigate & submit F.F. within early date.

Sd/- Illegible

13/12

Chief Judicial Magistrate,

Sibsagar.

7. The police in turn submitted its report to the Chief Judicial Magistrate on 14.12.94, praying for a direction from the CJM to enter into the

locked room-in-question. The ad verbatim report of officer-in-charge of Sibsagar Police Station is extracted below:

Sir,

I have the honour to report that Shri Banwarilal Kejriwal S/O Bhakat Ram Kejriwal of SBR Amollapati lodged a petition in your honourable Court

on 13.12.94 against Shri Sajjan Kr. Jalan S/O Ramjilal Jalan of Amolapatty alleging that the opposite party took a rented house for holding shop

at Sibsagar Amolapatty about 3 years back at rate of Rs. 1000/- per month. After running about one year the opposite party had locked the room

since today about (two years) and reportedly left for Arunachal Pradesh for his own purpose. The opposite party did not turn up before the

Petitioner to hand over the room and also to pay the house rent.

I have visited the P.O. and found that some unknown articles were kept inside the room which is suspected to be illegal article (sic). The room is

situated around some other businessman establishment. Some bad smell is coming out from the room which causes pollution and it may hamper the

other public. Your honour has directed O/C SBR P/S to register a case but it is difficult to put the proper (sic) Section of law without verifining

(sic) the contence (?) kept inside the room.

I therefore pray that order may kindly be passed to breaj the lock of the room and also to enter into the room to verified it contence so that we

may register a case under proper Section of law and also for smooth investigation of the case. The original petition is enclosed here with and

oblige.

Yours faithfully.

Sd/- Illegible

14.12.94

Officer Incharge

Sibsagar Police Station

On the said application itself, the CJM passed the following order:

Seen prayer of I/O. For the purpose of investigation of needed the I/O authorised to break open the lock. He will prepare an inventory in presence

of prominent persons of the locality.

Sd/- Illegible

14/12

Chief Judicial Magistrate,

Sibsagar, Assam.

The above order served the turn and the Police hit the nail on head. On 14.12.94 itself, Respondent 7 opened the closed door of the room-in-

question by breaking the lock and submitted the following report:

Sir,

With reference to the above noted GDE No. 630 dt. 14.12.94 in respect of the petition submitted by Sri Banwarilal Kejriwal against Sri Sajjan

Kumar Jalan of SBR Town. I have the honour to report that Petitioner Banwarilal Kejriwal of LKB Road Amolapatty had filed a complain against

Sri Sajjanlal Jalan on 13.12.94 alleging that Sri Sajjanlal Jalan took a room from the complt. in monthly rent system for opening shop since last 3

years back. After passing one year Sri Sajjanlal Jalan had closed the door with lock & key Sri Sajjanlal Jalan did not open the door & pay the

house rent to the owner Banwarilal Kejriwal. The complt alleged that Sri Sajjanlal Jalan had kept some articles inside the room & bad smell is

coming out from there which may pollution to him & other neighbourmen. There may be some offensive articles also.

The Honourable Court had directed to register case & to investigate. But it was difficult to register the case under proper Sec of law unless it verify

after breaking the lock of the room. Accordingly I have submitted a report to the honourable Court with a prayer to pass order to verify the

contains of the room after breaking the lock of the closed room.

Accordingly the Hon"ble Court has passed order to open the closed room by breaking the lock.

As per order of the Hon"ble Court on 14.12.94 I have opened the closed room by breaking the lock in presence of several prominent wits of that

locality.

During verification I found some articles which belongs to Sajjanram Jalan & seized all the articles in presence of said wits as per seizure list. (The

orgl seizure list are enclosed herewith). After seizure the said seized articles were given in zimma to Banwarilal Kejriwal as per Zimanamma. No

any offensive articles are found inside the room. Smell were coming of old paint bottles etc.

It appears that the matter was lodged due to non-payment of arrear rent by Sajjanlal Kejriwal to the complt. It is a civil dispute in nature. Order

may kindly be passed to return the seized articles to Sri Sajjanlal Jalan (owner). The original seizure list is enclosed herewith.

Submitted for favour of your kind information & n/a.

YF Sd/-

Illegible

19.12.94

The Police also made an entry in the General Diary as GD Entry No. 630 dated 14.12.94. From the said entry, it transpires that after opening the

lock, the Police found some C.I. Sheets, Chair, Table, two old Bicycles and some articles which were entered in the Seizure Memo and handed

over to the landlord in Zimma with the seizure memo. The GD Entry also shows that the officer-in-charge handed over the four broken locks as

well as the room. The Officer-in-Charge of the Police Station specifically noted that he did not find any incriminating articles in the room, but he

found some filthy odour emitted from the rotten articles and a decomposed rats, since the house was closed for long.

8. On 16th December, 1994, the tenant also made a similar application before the CJM wherein it was inter-alia stated that he was a monthly

tenant under the landlord at the rent of Rs. 321/- per month. That a Title Suit bearing No. 68/94 was also instituted by the landlord for ejectment

of the tenant and for realisation of Rs. 18000/- towards the arrear of rents. That taking advantage of the absence of the tenant, the opposite party

with the aid of the Police, broke the lock of the shop house on 14.12.94 and took-away all the belongings from the shop house to the Police

Station. On removing the articles from the tenanted premises, the landlord put up his own lock on the outward door of the said house. He also

referred to about lodging of an application before the C JM, Sibsagar, against the landlord on the allegation of theft. By the said application, the

tenant registered his objection against the high-handed action of the Police and prayed for justice. The CJM forwarded the said application on

16.4.94 to the Officer-in-Charge of the Sibsagar Police Station and fixed 19.4.94 for report. The CJM on receipt of the Investigating Officer's

report to put the seized articles in the zimma of the applicant/tenant, instructed the I.O. to put the seized articles in the zimma of the applicant/tenant

and after noting mat the house-in-question was not under lock and key of the Police, disposed the Misc. case.

9. From the foregoing discussions, it thus emerges that the* order for breaking open the lock of the room occupied by the tenant and thereafter

allowing the landlord to take possession of the room/house was made on the strength of the application of the landlord dated 13.12.94 presented

before the CJM, Sibsagar, as mentioned in the proceeding paragraph. The landlord by the aforesaid application prayed before the CJM to

handover possession of the house to him. The learned CJM rightly did not take cognizance of the matter. However, the learned CJM ordered the

Officer-in-Charge, Sibsagar Police Station to register a case, investigate and to submit a report although no offence as such was disclosed in the

application. Even the Police expressed its inability to register a case on the materials available and requested the Court to pass an order to break

open the lock of the room-in-question and to enter into the room to verify the contents for the purpose of registering a case under appropriate

Section of law. The Police in fact asked the Court to allow it to make a fishing enquiry for registering a case and consequently thereby to encroach

upon the privacy of a tenant. The application dated 13.12.94 as well as the Police report dated 14.12.94, spell out that the dispute-in-question

pertained to a dispute between the landlord and the tenant. The Police in its report portrayed that some unknown articles were kept inside the

room which were "suspected to be illegal article". The Police report was not clear as to what was meant by ""illegal article"". It only referred to

some bad smell"" emanating from the room which, according to the Officer-in-Charge, ""causes pollution and it may hamper other public."" The

report per se also did not disclose any offence. The learned CJM readily obliged to the request of the Police Officer without due care and caution

and gave the handle to the Police to break open the lock of the tenanted premises. The Police authority took full advantage of the situation and

even went a step further in handing over possession of the room to the landlord, which is reflected in the G.D Entry No. 630 dated 14.12.94.

From the facts set out above, it appears that the authorities donning the State power, fell under the spell of the landlord and delivered possession of

the tenanted premises in aid of the Criminal Court through the Police. The legitimacy of the said action was the subject-matter for adjudication in

the writ petition. The constitutionality of the State action in aid of judicial power of the State was the core issue before the Court.

10. The Indian jurisprudence does not countenance of taking law in one's own hand and to dispossesses a person in actual possession without

following the due process of law. According to the Privy Council, "in India, persons are not permitted to take forcible possession; they must obtain

such possession as they are entitled to through a Court Midnapore Zamindari Co. Ltd. v. Naresh Narain Roy 51 IA 293 (299) : AIR 1924 PC

144 (147) Section 6 of the Specific Relief Act, 1963 has put a damper on people to act on their own for taking possession. In K.K. Verma and

Another Vs. Union of India and Another, Chief Justice Chagla observed that the law in India was essentially different from the law in England and

further stated:

Under the Indian law the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in

possession after the termination of the tenancy his possession is juridical and that possession is protected by statute. u/s 9 of the Specific Relief act

a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise man in due

course of law, but a trespasser who been thrown out of possessing cannot go to Court u/s 9 and claim possession against the true owner.

Section 9 of the Specific Relief Act, 1877 is akin to Section 6 of the Specific Relief Act, 1963. In Yar Muhammad and Another Vs. Lakshmi Das

and Others, the Full Bench of the Allahabad High Court observed:

No question of title either of me Plaintiff or of me Defendant can be raised or gone into in mat case (under Section 9 of me Specific Relief act). The

Plaintiff will be entitled to succeed without proving any title on which he can fall back upon and the Defendant cannot succeed even though he may

be in a position to establish the best of all titles. The restoration of possession of in such a suit is, however, always subject to a regular title suit and

the person who has me real title or even the better title cannot, therefore, be prejudiced in any way by a decree in such a suit. It will always be

open to him to establish his title in a regular suit and to recover back possession.

11. Under the legal system in this country, no one is permitted to take the law in his own hand and to dispossess a person in actual possession

without recourse to a Court. Interpreting Section 9 of the Specific Relief Act, 1877, Chief Justice Edge in *Wall Ahmad Khan v. Ayodhya Kundu*

(1891) ILR 13 All 537 (556) observed:

The object of the Section was to drive me person who wanted to eject a person into the proper Court and to prevent them from going with a high

hand and ejecting such persons.

12. Upkeep and preservation of law and order, jealous commitment to uphold the rule of law, are the concomitant for an orderly society.

Prominence or sustenance of the rule of law is ingrained in the Indian Constitution itself. Rule of law essentially speaks of sovereignty or supremacy

of law over man/men--all persons irrespective of his or her status will be subject to law. Judicial review essentially represents the bedrock for

application of the rule of law. Under a system where the rule of law prevails, every action of the State or its instrumentality must have a legal

pedigree which is required to be done according to law. The State and its instrumentality is to point out to the legal authority under which it acts.

When it encroaches upon or infringes the liberty of a person, the State must be able to justify its action by pointing to some law. All State actions

that affects the rights and liberties of any person, are to be backed by some law. The rule of law acts as a constraint upon exercise of all powers

and safeguards the rights, liberties and the dignity of the people. The rule of law is meant for the interest of the society and it demands that the

Statutory enactments made by the legislature are faithfully adhered to by the executive authority, the orders of the Court are assiduously obeyed,

existence of scope for reasonable access to the Courts to enforce the law and that the powers are exercised justly and lawfully and not arbitrarily;

above all, the law should be ascertainable and predictable.

13. Admittedly, in the case in hand, a tenant was sought to be evicted from a tenanted premises in aid of the Criminal Court. The power and

jurisdiction of the Criminal Courts are delineated by Statute, more particularly by the Code of Criminal Procedure. The Police authority is invested

with the power to receive information in relation to commission of cognizable offence and to investigate any cognizable case without the order of a

Magistrate as per the scheme of the Code of Criminal Procedure. In addition, any Magistrate empowered u/s 190 of the Code may also order

such investigation. A Magistrate is similarly authorised to take cognizance of any offence upon receiving a complaint on facts which constitute an

offence; upon a Police report of such facts, and upon information received from any person other than a Police Officer, or upon his own

knowledge, that such offence has been committed. A Court can take cognizance of an offence only when the conditions requisite for initiation of a

proceeding before it as indicated in Chapter XIV of the Code, are fulfilled. The Code does not countenance any such action on the part of the

Criminal Court as was embarked upon/taken in the instant case.

14. The contention of the learned Senior Counsel, Mr. D.K. Bhattacharjee, that in the instant case since it was a matter relating to making the

atmosphere noxious to health, it amounted to an offence u/s 278 IPC, also cannot be accepted on a bare reading of the complaint. The basic

ingredients of Section 278 IPC were/was absent. The said provision or any other provision of the Code of Criminal Procedure do not empower

the CJM to order the Police to hand over possession of the premises-in-question to the landlord. The impugned action of the Respondents, more

particularly of the State and its instrumentality, under no circumstance can be sustained. It is a case in which the State and its instrumentality readily

yielded to the request of the landlord and thereby took the law into their own hands to dispossess a tenant from the tenanted premises without any

authority of law and total disregard to the rule of law. The Supreme Court in *Wazir Chand Vs. The State of Himachal Pradesh*, observed that

the State or its executive officer cannot interfere with the rights of others unless they point to some specific rule of law which authorise their acts".

And in view of the discussions and the reasons as stated above, the decisions viz., *Himmat Singh (supra)* and *Govind Singh (supra)*, cited by Shri

D.C. Mahanta, learned senior counsel for the landlord cannot be applied to the facts and circumstances of the instant case. In these circumstances,

we do not find any infirmity in the judgment of the learned Single Judge so far as it relates to the legality of the action of the Respondents/authority.

15. However, the materials on record do not justify imposition of any cost on a judicial officer. The bonafide of the judicial officer was never in

dispute. It may also be pointed out that the landlord did not indicate about pendency of any suit between the parties to the CJM and, therefore, no

motive can be imputed to the CJM. In the absence of any motive, we could not find any justification to penalise a judicial officer for discharging his

lawful duty/functions. In discharge of judicial functions/duty an officer may err in his judgment, but for that reason alone, a judicial officer could not

have been impleaded as a party to the proceeding. Impleadment of a judicial officer as a party (Respondent) without any just cause may erode the

very fabric of the rule of law thereby affecting the free flow of justice. This shall not, however, be construed as our approval of the action of the

CJM in directing the Police to break open the lock of the suit-house in question. The learned CJM, wielding the judicial power, ought to have

acted with more care and caution and conduct the matter with higher degree of responsibility. We part with the subject by recording our note of

discomfort.

16. In the instant case, the parties approached the CJM for discharging his judicial function/duty. A judicial officer is not like that of an executive

officer. A person holds a judicial office and discharges judicial duty under the Statutes. Statutes are also made to protect the judicial officers so as

to enable them to discharge fair justice freely without any impediment. Under the facts and circumstances of the case, there was no question of

necessity to implead the judicial officer who disposed of the original case as authorised by law. In *Savitri Devi v. District Judge Gorakhpur* and

Ors. Civil Appeal No. 932/99 arising out of SLP (C) No. 566/98, a three Judges' Bench of the Supreme Court deprecated such practice, the

relevant portion of which is quoted below:

Before parting with this case it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the

High Court as well as the SLP filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division) Gorakhpur are

shown as Respondents and in the SLP they are.... shown as contesting Respondents. There was no necessity for impleading the judicial officers

who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them

as parties in the SLP and describing them as contesting Respondents. We do not approve of the course adopted by the Petitioner which would

cause unnecessary disturbance to the functions of the concerned judicial officers. They cannot be in any way equated to the officials of the

Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article

226 of the Constitution of India or Special Leave Petitions under Article 136 of the Constitution of India was stopped. We are strongly

deprecating such a practice.

17. As stated earlier, the decisions referred to Mr. D.C. Mahanta, the learned senior counsel are not applicable to the facts and circumstances of

the case in hand. In *Govind Singh (supra)*, admittedly, this was not a matter relating to a proceeding u/s 113 Code of Criminal Procedure,

therefore, it does not assist the learned Counsel for the Appellant in Writ Appeal 526/95. The action of the Respondents for handing over

possession of the house-in-action cannot even be protected by taking aid of Section 25 of the Police act, 1861. By the above provision, a Police

Officer is permitted to take charge of all unclaimed property and to furnish an inventory thereof to the Magistrate by such order as received from

the Magistrate of the district. Assuming the CJM to be a Magistrate within the meaning of Section 25 of the Police Act, the power as conferred u/s

25 of the above act do not cover handing over possession of a tenanted premises. The above provision only permitted the Police Officer to take

charge of all unclaimed property and to furnish an inventory thereof to the Magistrate.

18. The decision of Himmat Singh (supra) was a case pertaining to an order of a revisional Court on a subject relating to public nuisance. In that

case, a proceeding was initiated u/s 113 Code of Criminal Procedure and the City Magistrate passed an order thereon and thus, this case also

does not have any bearing in the present case.

19. For the foregoing reasons, we uphold the judgment and order of the learned Single Judge to the extent indicated and dismiss the Writ Appeal

No. 526/95 preferred by the landlord/Appellant.

20. However, in view of our finding that the" CJM was not a necessary party to the proceeding (writ petition) read with other attending

circumstances, the question of imposing a cost on the CJM, in our opinion, is unsustainable and accordingly, the finding of the learned Single Judge

to that extent is set aside and consequently, imposition of cost/fine on the CJM is set aside. The judgment and order of the learned Single Judge is

accordingly modified to the extent indicated above and the Writ Appeal No. 104 of 1996 stands accordingly disposed.