

(1999) 11 GAU CK 0005

Gauhati High Court

Case No: Writ Appeal No"s. 526 of 1995 and 104 of 1996 in Civil Rule No. 1938 of 1995

Banwarilal Kejriwal and
Another

APPELLANT

Vs

Sajjan Kumar Jalan and
Others

RESPONDENT

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 x 1½ 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 C JM 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 verifying (sic) the contents (?) kept inside the room.

I therefore pray that order may kindly be passed to break the lock of the room and also to enter into the room to verify its contents 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 ejection 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 Changla 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 than in due course of law, but a trespasser who has been thrown out of possession 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 the Plaintiff or of the Defendant can be raised or gone into in a summary case (under Section 9 of the 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 in such a suit is, however, always subject to a regular title suit and the person who has the 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 the 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 concomitants 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 affect 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 [w/ 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.