

//ORDER BELOW EXH.7//

1. The present application at Exh.7 is filed by the plaintiff seeking restoration of possession of the suit property on the principle underlying Section 6 of the Specific Relief Act, 1963 read with Section 151 of the Code of Civil Procedure on the ground that during pendency of the suit the defendants have dispossessed the plaintiff otherwise than in due course of law.
2. The plaintiff has pleaded that a Lease Agreement dated 02.12.2005 was executed between the parties for a period of 20 years and possession was delivered to the plaintiff at the time of execution of the lease. Prior to expiry of the lease period, notice dated 01.08.2025 was issued invoking the renewal clause. The defendants, by reply dated 19.08.2025, refused renewal. It is specifically alleged that on 02.12.2025, during pendency of the present suit, the defendants took over possession of the suit property without any decree or order of a competent court.
3. The defendants have contended in Exh.19 that the lease expired by efflux of time and that no automatic renewal took place. It is submitted that after expiry the plaintiff had no subsisting right and therefore cannot seek restoration. In Exh.21, the authorities relied upon by the learned

advocate for the plaintiff are sought to be distinguished on that basis.

4. Ld. Advocate for the plaintiff has relied upon the following judgments: (1) In Joseph Severance and others versus Benny Mathew and others, reported in (2005) 7 SCC 667, the Hon'ble Supreme Court has held that "The correct position in law is that the licensee may be the actual occupant but the licensor is the person having control or possession of the property through his licensee even after the termination of the licence. Licensee may have to continue to be in occupation of the premises for sometime to wind up the business, if any. In such a case licensee cannot be treated as a trespasser. It would depend upon the facts of the particular case. But there may be cases where after termination or revocation of the licence the licensor does not take prompt action to evict licensee from the premises. In such an event the ex-licensee may be treated as a trespasser and the licensee will have to sue for recovery of possession. There can be no doubt that there is a need for the licensor to be vigilant. A licensee's occupation does not become hostile possession or the possession of a trespasser the moment the licence comes to an end. The licensor has to file the suit with

promptitude and if it is shown that within reasonable time a suit for mandatory injunction has been filed with a prayer to direct the licensee to vacate the premises the suit will be maintainable."

(2) In *Krishna Ram Mahale (Dead) by his Lrs. v. Shobha Venkat Rao*, reported in (1989) 4 SCC 131, the Hon'ble Supreme Court has held that "It is a well-settled law in this country 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. If any authority were needed for that proposition, we could refer to the decision of a Division Bench of this Court in *Lallu Yeshwant Singh V/s. Rao Jagdish Singh*. (1968) 2 SCR 203 at pp. 208-210 : (AIR 1968 SC 620 at pp 622-23). This Court in that Judgement cited with approval the well-known passage from the leading Privy Council case of *Midnapur Zamindary Co. Ltd. V/s. Naresh Narayan Roy*, 51. Ind App 293 at p. 299 where it has been observed : "In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court.",

(3) In *Rame Gowda (Dead) by Lrs. v. M. Varadappa Naidu (Dead) by Lrs. and Another*, reported in (2004) 1 SCC 769, the Hon'ble Supreme Court has held that "It is settled law that a person in peaceful and settled possession is entitled to protect his possession even against the true owner, and such owner cannot dispossess him except by due process of law."

(4) In *Kartic Chandra Baroyee versus Kashinath Mondal and others*, reported in 1996 SCC Online Cal 365, the Hon'ble Calcutta High Court has held that "But at the same time it is to be noted, the remedy provided by sec. 144 CPC is not exhaustive. So, in order to meet the ends of justice, the court can exercise the power of restitution also under sec. 151 CPC i.e. the inherent power conferred on the court and in order to restore such possession in case of necessity the court can also pass an order for police help... where the question of restitution is involved and sec. 144 CPC does not cover that case, there in the interest of justice, the court may exercise its inherent power under sec. 151 CPC for restoration of possession... If a tenant is, thus dispossessed, he has got remedy to be restored to his previous possession under the order of the

court and such order, the court is competent to pass under sec. 151 CPC.”

(5) In Sushilkumar Dey Biswas and another versus Anilkumar Dey Biswas, reported in 2015 (2) SCC (Civil) 308, the Hon'ble Supreme court has held that “Application for restoration of possession of the room on the first floor and the shop room on the ground floor was negated by the courts below merely on the ground of delay. Without going into the merits of rival contentions of both the parties in order to meet the ends of justice, in our view, possession of the first floor along with staircase and the shop room on the ground floor should be restored to the appellants–defendants. Delay in filing the application for restoration of possession cannot be the reason for declining relief.”

(6) In Altamish @ Monu Versus Md. Tarique and another, Civil Misc. Jurisdiction no.994 of 2018 D/d 11.01.2024, the Hon'ble Patna High Court has held that when it is the admitted case of plaintiffs that the defendants was in the possession of suit property and there is further admission about the dispossession of the defendant, equity demands that the defendant is not forced to further litigate in the matter and the defendant should be put into

possession of the area from which he has been dispossessed.

(7) In Meghamala and others Versus G.Narsimha Reddy and others, reported in (2010) 8 SCC 383, the Hon'ble Supreme Court has held that "Even a trespasser cannot be evicted forcibly. Thus, a person in illegal occupation of the land has to be evicted following the procedure prescribed under the law. (Vide Midnapur Zamindary Co. Ltd. V/s. Naresh Narayan Roy AIR 1924 PC 124; Lallu Yeshwant Singh V/s. Rao Jagdish Singh & Ors. AIR 1968 SC 620; Ram Ratan V/s. State of U.P. AIR 1977 SC 619; Express Newspapers Pvt. Ltd. & Ors. V/s. Union of India & Ors. AIR 1986 SC 872; and Krishna Ram Mahale V/s. Mrs. Shobha Vankat Rao AIR 1989 SC 2097). In Nagar Palika, Jind V/s. Jagat Singh AIR 1995 SC 1377, this Court observed that Section 6 of the Specific Relief Act 1963 is based on the principle that even a trespasser is entitled to protect his possession except against the true owner and purports to protect a person in possession from being dispossessed except in due process of law. Even the State authorities cannot dispossess a person by an executive order. The authorities cannot become the law unto themselves. It would be in violation of the

rule of law. Government can resume possession only in a manner known to or recognised by law and not otherwise. (Vide Bishan Das V/s. State of Punjab AIR 1961 SC 1570; Express Newspapers Pvt. Ltd. (supra); State of U.P. & Ors. V/s. Maharaja Dharmender Prasad Singh & Ors. AIR 1989 SC 997; and State of West Bengal & Ors. V/s. Vishnunarayan & Associates (P) Ltd. & Anr. (2002) 4 SCC 134). The forcible eviction of the appellant/applicant by the respondents was unwarranted and unlawful. Proceedings had been initiated under the Act, 1982. It is a special Act to prevent illegal activities of land grabbing. The Legislature, in its wisdom, constituted a Special Court presided over by a person who is or eligible to be the Judge of the High Court, and consisting of the Members who are or eligible to become District Judge and District Collector. Therefore, persons having enough experience and who have acquired a higher status have been given responsibility to adjudicate upon the disputes under the Act 1982. That Special Court has been conferred with the powers of Civil or Criminal Courts. As per the provisions of Section 10 of the Act 1982, the burden of proof is on the accused to prove that he is not guilty. Thus, it is not like

any other criminal case where accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right, however, subject to the statutory exceptions, the said principle forms the basis of Criminal Jurisprudence. For this purpose, the nature of offence, its seriousness and gravity thereof has to be taken into consideration. Statutes like Negotiable Instruments Act, 1881; Prevention of Corruption Act, 1988; and Terrorist and Disruptive Activities (Prevention) Act, 1987, provide for presumption of guilt if the circumstances provided in those Statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. Thus, the Legislature has adopted a deviating course from ordinary criminal law shifting the burden on the accused to prove that he was not guilty. The High Court while deciding these cases has not considered the issue of the locus standi of the respondents to maintain the application for eviction of the appellant/applicant. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution."

5. It is not in dispute that the lease was executed and that possession was delivered to the plaintiff at the time of execution. It is also not in dispute that the lease period expired on or about 02.12.2025 and that renewal was refused.
6. The enforceability of the renewal clause is a matter for trial. At this stage, the Court is not concerned with final contractual rights but with the allegation that possession was taken during pendency of proceedings.
7. The material placed on record, including the communication dated 03.12.2025 referring to taking over possession, prima facie indicates and satisfies this Court that possession of the suit property was taken over by the defendants on or about 02.12.2025. The defendants have not produced any decree, warrant of possession, or order of any competent court authorising such recovery.
8. Even assuming that the lease expired by efflux of time, recovery of possession must be in accordance with law. Expiry of lease does not authorise unilateral resumption of possession without recourse to lawful procedure. No such lawful procedure is shown on record. No material is placed before this Court to indicate that possession was obtained through any process

recognised by law. Self-help is not recognised as a permissible mode of recovery of possession under law.

9. The principles relied upon by the learned advocate for the plaintiff lay down that settled possession cannot be disturbed except by due process of law and that unilateral alteration of possession during pendency of litigation cannot be permitted. The learned advocate for the defendants, by filing Exh.21, has sought to distinguish the authorities relied upon by the plaintiff on the ground that the lease had expired by efflux of time and that the plaintiff had no subsisting right after such expiry. However, the distinction so sought to be drawn pertains to the ultimate contractual rights of the parties, which are matters to be adjudicated at trial. The present application is confined to the limited question whether possession was taken during pendency of the proceedings otherwise than by due process of law. Even assuming expiry of the lease, recovery of possession must be through a procedure recognised by law. Therefore, the submissions advanced in Exh.21 do not justify dispossession otherwise than in accordance with law.
10. This Court is prima facie satisfied that:
(i) the plaintiff was in continuous, peaceful and

admitted possession since execution of the lease and thus in settled possession,

(ii) possession was taken during pendency of proceedings, and

(iii) such taking over is not shown to be pursuant to any lawful process.

11. If restoration is not granted, the subject matter of the suit would stand altered and the proceedings may be rendered infructuous. The injury caused by dispossession during pendency cannot be adequately compensated in monetary terms. The balance of convenience therefore lies in restoring the position existing immediately prior to such dispossession. This is a fit case for grant of mandatory interim relief as the act of dispossession during pendency interferes with the administration of justice and warrants immediate restitution.

12. The present direction is issued to restore status quo ante to prevent frustration of judicial proceedings and in exercise of powers under Section 151 of the Code of Civil Procedure, as no specific provision governs restoration of possession during pendency in the present factual matrix. This order does not determine the validity or enforceability of the renewal clause and does not create or recognise any fresh tenancy in favour

of the plaintiff. The defendants are at liberty to recover possession strictly in accordance with law. In view of the foregoing discussion, I pass the following order.

// ORDER //

1. The present application below Exh.7 is hereby allowed.
2. The defendants are directed to restore possession of the suit property to the plaintiff within 15 days from the date of this order.
3. Upon restoration, both parties shall maintain status quo as to possession and nature of the suit property as restored pursuant to this order till final disposal of the suit.
4. Observations made herein shall not affect adjudication of the suit on merits.

Pronounced in the open Court today on 18th March, 2026.

Date : 18/03/2026

Place : Jetpur

[Pranav Dilipkumar Modi]

Principal Sr. Civil Judge &
A.C.J.M., Jetpur.

Code: GJ01202.