

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

**DIVISION BENCH : HON'BLE SHRI JUSTICE S.C. SHARMA
HON'BLE SHRI JUSTICE VIRENDER SINGH**

Writ Petition No.15286/2018

Smt. (Dr.) Sajni Bajaj

Vs.

Indore Development Authority & Ors.

Writ Petition No.14970/2018

Kanhaiyalal Khera

Vs.

Indore Development Authority & Anr.

Writ Petition No.14971/2018

Sunil Garg

Vs.

Indore Development Authority & Anr.

Writ Petition No.15293/2018

Arpit Jain & Anr.

Vs.

Indore Development Authority & Anr.

CONC No.2021/2018

Sunil Garg & Ors.

Vs.

Shri Kumar Purshottam & Anr.

Mr. A. K. Sethi, learned Senior Counsel with Mr. Sumeet Samvatsar and
Mr. G.M. Agrawal, learned counsel for the petitioner(s).

Mr. Purushaindra Kaurav, learned Advocate General and Senior
Counsel and Mr. Sunil Jain, learned Senior Counsel with Mr. Ambar Pare,
learned counsel for the respondents.

Ms. Mini Ravindran, learned counsel for the respondents No.1 and 2
in Conc No.2021/2018.

O R D E R
(Delivered on this 12th of October, 2018)

Per : S. C. Sharma, J.

Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this Court. Facts of Writ Petition No.15286/2018 are narrated hereunder.

02- The petitioner before this Court, who is a resident of Ahmedabad (Gujarat) and a Doctor by profession, has filed present petition being aggrieved by the order dated 19/06/2018 and 27/06/2018 passed by the Competent Authority under the Madhya Pradesh Lok Parisar (Bedakhali) Adhinyam, 1974. The petitioner's contention is that the petitioner has appointed one Ranveer Singh Chhabra as duly constituted attorney *vide* Power of Attorney dated 11/03/1996 and the Power of Attorney is still in existence.

03- It has been further stated that a scheme was framed, keeping in view the provisions of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhinyam, 1973, known as Scheme No.71, for residential and commercial purposes and a plot in Sector-B, total area 3238.96 square meter was earmarked for Hospital.

04- A Notice Inviting Tender was issued in respect of the aforesaid plot and initially the plot was allotted to one Neeraj Mudholkar and as there was some dispute between the allottee and

the Indore Development Authority, the allotment of the plot was cancelled.

05- A petition was preferred by Neeraj Mudholkar challenging the cancellation of allotment i.e. Writ Petition No.1136/1993 and the same was dismissed by this Court on 13/02/2001. While the aforesaid writ petition was pending, the Indore Development Authority has again issued an advertisement for granting lease of the said plot and the petitioner who participated in the tender process through his Power of Attorney was held to be the highest bidder and by allotment dated 23/06/1995 the plot was allotted to the petitioner.

06- The petitioner has further stated that he has obtained a "No Objection Certificate" from the Commissioner, Indore Municipal Corporation, Indore. He has also applied for grant of building permission and the possession of plot was given to him on 07/06/1996.

07- The most important aspect of the case is that the plot in question was earmarked for Hospital and the petitioner after obtaining necessary permissions to build a Hospital, as the land was allotted only for establishment of Hospital, started raising construction and the petitioner has further stated that the building has been constructed as per the sanctioned building plan. The petitioner has further stated that he has constructed the building

partially. The construction has taken place in respect of Lower Ground Floor, Upper Ground Floor and First Floor.

08- The petitioner in his writ petition has categorically admitted that after completion of the partial construction, the petitioner transferred certain shops by way of sale deeds and lease deeds to certain other persons to carry out activities which are ancillary activities to a Hospital. It has been stated that PCO, Barber Shop, Laundry, Canteen, Juice Shop, etc. are in existence. The petitioner has further stated that the petitioner has received a notice dated 05/04/2005 issued by Indore Development Authority stating that earlier also notices have been issued on 23/07/2004, 27/09/2004 and 03/01/2005 informing the petitioner that lease has been terminated on account of violation of terms and conditions of the lease deed. The petitioner was also directed to deliver the possession of plot within seven days to the Executive Engineer of the Indore Development Authority *vide* notice dated 05/04/2005.

09- The petitioner being aggrieved by notice dated 05/04/2005 preferred a writ petition i.e. Writ Petition No.531/2005. The aforesaid writ petition was disposed of by this Court *vide* order dated 28/11/2007. This Court has quashed the letter dated 05/04/2005 by which the lease deed was cancelled as well as notice dated 09/02/2005 issued by Tehsildar (Nazul) in respect of delivery of possession and this Court has directed the Indore Development

Authority to pass a fresh order after issuance of a show cause notice at the first instance to the lessee i.e. the petitioner and also to the remaining occupants who were in actual possession of the shops / building.

10- The petitioner has further stated that respondent have later on issued a show cause notice on 29/05/2010 and the petitioner did submit a reply on 14/06/2010 and again an order was passed by the Indore Development Authority on 03/07/2010. By the said order, the allotment letter dated 23/06/1995 and lease deed dated 25/09/1996 were cancelled and the petitioner and other persons were directed to hand over possession of the premises by 25/07/2010.

11- The petitioner has further stated that against the aforesaid order again a writ petition was preferred i.e. Writ Petition No.8792/2010 and the respondent Indore Development Authority was directed to pass a fresh order in the matter. The petitioner pursuant to the order dated 03/07/2010 submitted a detailed reply and thereafter, a fresh order was passed after hearing the petitioner on 03/09/2010 and again the allotment order dated 23/06/1995 and the lease deed dated 25/09/1996 were cancelled.

12- The petitioner thereafter, submitted another writ petition i.e. Writ Petition No.11362/2010 challenging the order dated 03/09/2010 and the Indore Development Authority was directed to

pass fresh order within 15 days. After an order was passed on 12/10/2010 in the writ petition by considering the case of the petitioner as well as case of persons occupying various shops, the Estate Officer of the Indore Development Authority by notice dated 28/10/2010 informed the petitioner to appear in Board meeting which was going to be held on 10/11/2010 and again an order was passed on 23/11/2010 cancelling the allotment dated 23/06/1995 and lease deed dated 25/09/1996 on account of violation of conditions No.1, 2, 4, 15 and 16 of the lease deed. The petitioner as well as shopkeepers were directed to handover vacant possession of the shops in question.

13- The petitioner being aggrieved by the order dated 23/11/2010 as well as other occupants preferred writ petitions and the petitions were registered as Writ Petition Nos.14078/2010, 14075/2010, 14096/2010, 14152/2010, 14077/2010 and 14094/2010 and all of the aforesaid writ petitions were decided on 08/11/2011. The Division Bench of this Court has permitted the Indore Development Authority to evict the petitioner and other persons by following due process of law. After the judgment was delivered by this Court on 08/11/2011 in the aforesaid bunch, a case was registered for eviction of the petitioner and other persons under the provisions of Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974. An application was preferred under Section 4, 5 and 7 of the

Adhinyam and the Competent Authority after granting an opportunity of hearing to the petitioner and other occupants has allowed the application preferred in the matter directing eviction.

14- Being aggrieved by the aforesaid order passed by the Competent Authority dated 19/06/2018, the present writ petition has been filed. The Division Bench of this Court has granted an interim order in the matter and against the grant of interim order a Special Leave Petition has been preferred before the Hon'ble Supreme Court i.e. Indore Development Authority & Ors. Vs. Sajni Bajaj, Special Leave Petition (Civil) Nos.18774/2018, 19899/2018, 20754/2018, 20707/2018 and 21572/2018. The Hon'ble Supreme Court on 24/08/2018 has directed the parties to maintain status-*quo* and has also directed this Court to dispose of the writ petitions within a period of four weeks. The matter was taken up on 06/10/2018 and today it has been heard finally.

15- Learned Senior Counsel Shri Sethi has argued before this Court that there is no notification appointing the Sub Divisional Officer (Revenue), Malharganj to function as Competent Authority under Section 3 of the Madhya Pradesh Lok Parisar (Bedakhali) Adhinyam, 1974 and therefore, the order passed by the Sub Divisional Officer (Revenue) is bad in law. Other ground has been raised that the impugned order has been passed by the authority which is below the rank of Collector or Deputy Collector and

therefore, he was not having jurisdiction to pass the order.

16- It has also been stated that no powers have been delegated to Sub Divisional Officer, who has passed the order and therefore, the impugned order passed by the him is bad in law. It has also been stated that the petitioner has constructed only first floor of the building in such a manner that it can be used only for Hospital and other floors could not be constructed due to pendency of the legal dispute in various Courts from time to time and therefore, the impugned order passed by the Sub Divisional Officer is bad in law.

17- Reliance has been placed upon the judgment delivered in **Writ Appeal No.11/2016 (Asgar Ali Vs. Indore Development Authority)** decided on 01/08/2016 and also over a judgment delivered in the case of **R. K. Mittal Vs. State of U. P.** reported in **2012 (2) SCC 232** and it has been argued that no violation of any condition of the lease deed has been done by the petitioner and he has to be placed back in possession.

18- It has also been argued that cancellation of allotment and cancellation of lease deed is illegal. It has also been stated that the impugned order was passed initially on 19/06/2018 the Sub Divisional Officer as Rent Controlling Authority and subsequently it has been amended and the amendment dated 27/06/2018 has been passed behind the back of the petitioner. It has also been argued that tenants in the building are using the premises for medical and

ancillary purposes and there is no violation of the lease deed. It has also been argued that action of the respondent on 05/07/2018 in taking possession of the petitioner's property, dispossessing the occupants, causing damage to goods is contrary to the procedure laid down under the Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974.

19- It has also been argued that in case this court arrives at a conclusion that petitioner has violated terms and conditions of the lease deed, the petitioner is ready to make all possible endeavor to rectify the errors and utilize the property only for medical and ancillary purposes. The last ground raised in the writ petition is that entire action against the petitioner is discriminatory and is violative of Article 14 of the Constitution of India. The petitioner has prayed for quashment of order dated 19/06/2018 and 27/06/2018.

20- Shri Sethi, learned senior counsel while arguing the matter has also argued before this Court that the Competent Authority under the Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974 was also under an obligation to decide the issue in respect of cancellation of lease deed i.e. whether the order cancelling the lease was proper or not and the Competent Authority has not decided the issue of cancellation and therefore, the order passed by the Competent Authority is bad in law.

21- On the other hand, a reply has been filed by the Indore

Development Authority and the Indore Development Authority has given reference to the earlier orders passed from time to time. It has been stated by them that after an order passed by the Division Bench in the case of **Sajni Bajaj Vs. Indore Development Authority** reported in **2012 (1) MPLJ 53**, as this Court has held that occupants of the “Money Centre” i.e. building which is in existence over the plot in question cannot be disposed of without following the due process of law, they have initiated proceedings under the Madhya Pradesh Lok Parisar (Bedakhali) Adhinyam, 1974 and the Competent Authority after following the prescribed procedure has passed the impugned order granting 15 days time to vacate the premises in question.

22- It has been stated that the petitioner for the reasons best known to him has not challenged the order cancelling the lease by filing a civil suit till date. The respondents have stated that the order dated 19/06/2018 and 27/06/2018 have been passed by Dr. Rakesh Sharma, who belongs to State Administrative Services and who is posted as Deputy Collector and Sub Divisional Officer, Malharganj, as per order dated 22/12/2017 passed by General Administration Department.

23- The respondents have further stated that as per notification issued on 17/07/1981 keeping in view Section 3 of the Madhya Pradesh Lok Parisar (Bedakhali) Adhinyam, 1974, it is

evident that whosoever is posted as Deputy / Joint Collector, Rent Controlling Authority will also be competent to function as Competent Authority under the provisions of Adhinyam of 1974. It is Dr. Rakesh Sharma, who exercises jurisdiction as Competent Authority to decide the dispute under the relevant provisions of Madhya Pradesh Lok Parisar (Bedakhali) Adhinyam, 1974. The respondents have enclosed notification dated 17/07/1981 and the Distribution Memo dated 0706/2018.

24- At the time the return was filed, the possession of the property was also taken by the Indore Development Authority. It has been stated in the return that Section 5 of the Adhinyam of 1974 provides for the procedure of eviction of unauthorized occupants and they have rightly taken possession of the same by following the due process of law. It has also been stated that a similar writ petition was decided by this Court i.e. Writ Petition No.17154/2017 and this Court has declined to interfere with the matter.

25- The respondents have categorically stated that the action initiated by them is in consonance with the statutory provisions governing the field and the impugned order has been passed in the present case under the provisions of Madhya Pradesh Lok Parisar (Bedakhali) Adhinyam, 1974 by an authority who is empowered to pass an order regarding eviction of unauthorized occupants.

26- A rejoinder has been filed by the petitioner and it has been stated that the person, who has passed the order is not competent to function as Competent Authority in absence of valid notification and as the mandatory requirement under the law has not been followed, the impugned order is *void ab initio*. The petitioner has stated that all proceedings are bad in law. The respondents have passed initial order dated 19/06/2018 and thereafter, subsequent order was passed on 27/06/2018 and it is again illegal, *void* and opposed to law.

27- It has been stated that Dr. Rakesh Sharma is not the person competent to decide the dispute in respect of Police Station Annapurna and the same comes under the jurisdiction of one Ravi Kumar Singh and therefore, he was not having jurisdiction in the matter. A prayer has been made for quashment of impugned orders.

28- Additional reply has been filed in the matter and the respondents have stated that the State Government in exercise of powers conferred under Section 17 of the Madhya Pradesh Lok Parisar (Bedakhali) Adhinyam, 1974 has issued a notification dated 05/02/1975 and the subsequent notification issued on the subject of the year 1981 empowers the persons exercising jurisdiction as Rent Controlling Authority to function as Competent Authority under the Madhya Pradesh Lok Parisar (Bedakhali) Adhinyam, 1974 also and therefore, the order has been passed by a Competent Authority.

29- It has also been stated that the property in question is situated within the territorial jurisdiction of Sirpur Village which comes under the Tehsil Malharganj and the revenue jurisdiction is being exercised by Dr. Rakesh Sharma as he is the Sub Divisional Officer, Malharganj under which the Scheme No.71 is in existence and under which Sirpur village is also in existence, where the property is located and in those circumstances, the order passed is justified. It has been further stated that initial order was passed on 19/06/2018 by the Competent Authority and as there was a typographical error in the cause title, the same has been rectified by an order dated 27/06/2018. A prayer has been made for dismissal of the writ petition.

30- The petitioner has also placed reliance upon the Rules known as Madhya Pradesh Vikas Ki Sampattiyon Ka Prabandhan Tatha Vyayan Niyam, 2018 framed by the State Government in exercise of powers conferred under Section 85 read with Section 58 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 and the contention of the petitioner is that in light of the Rules framed and notified in official Gazette on 14/08/2018, the irregularity / breach of terms and conditions of the lease deed can be compounded and therefore, an opportunity should be given for compounding the breach committed by the petitioner by way of last resort.

31- Heard learned counsel for the parties at length and perused the record and the matter is being heard finally at motion hearing stage itself.

32- The Indore Development Authority constituted under Section 38 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 has issued a tender in respect of Scheme No.71 inviting application for allotment of residential and commercial plots and in the Scheme No.71, Sector-B, a plot was earmarked for Hospital. The area of the plot was 3238.96 square meter and a Notice Inviting Tender was issued.

33- One Neeraj Mudholkar, who has offered the highest bid was allotted the plot, however, on account of some dispute between Neeraj Mudholkar and Indore Development Authority, the allotment was cancelled. It was subjected to judicial scrutiny and this Court has dismissed the petition preferred by Neeraj Mudholkar i.e. M.P. No.1136/1993 by an order dated 13/02/2001.

34- A fresh NIT was issued in respect of same plot on 15/11/1994 and the petitioner along with other persons submitted their bid. The petitioner's offer was the highest offer and *vide* letter dated 23/06/1995 the plot was allotted to the petitioner. After allotment of the plot to the petitioner, a "No Objection Certificate" was issued by Commissioner, Indore Municipal Corporation, Indore and thereafter, a lease deed was executed on 25/09/1996. The

petitioner was placed in possession on 07/06/1996 and the petitioner thereafter, deposited the entire amount and applied for grant of building permission to Indore Municipal Corporation in light of the Municipal Corporation Act read with Madhya Pradesh Bhoomi Vikas Niyam, 1984.

35- A proposed sanctioned plan was submitted for construction of a Hospital as the plot was earmarked for Hospital only and also other ancillary units which are required for running a Hospital like Restaurant, Office, Health Centre, etc. The petitioner's application for grant of sanction was approved by Indore Municipal Corporation and the petitioner thereafter, constructed Lower Ground Floor, Upper Ground Floor and First Floor.

36- The facts of the case reveal that except for starting a Hospital, all kind of activities were started from the building in question including shops like STD-PCO, Barber Shop, Laundry, Canteen, Juice Shop, Garments shops, Jewellery Shop, etc. and in those circumstances, a notice was issued by the Indore Development Authority, as there was a breach of the terms and conditions of the lease deed, on 05/04/2005 directing the petitioner to hand over the possession as on account of violation of the terms and conditions the lease was terminated.

37- The petitioner in the year 2005 for the first time came-up before this Court by challenging the order passed by the Indore

Development Authority and this Court has allowed the writ petition i.e. Writ Petition No.531/2005 with a direction to the Indore Development Authority to pass a fresh order after hearing the petitioner and the other occupants who were occupying the shops in the building constructed by the petitioner. The operative paragraphs of the judgment delivered by this Court on 20/11/2007 in Writ Petition No.531/2005 reads as under:-

“It is apparent from the narration of the detailed facts noticed above that the action which has been taken by the Indore Development Authority is without following the due procedure of law and in any case in complete violation of the principles of natural justice. Neither the original lessor Dr. Sajni Bajaj nor other occupants were even heard in the matter before passing the order of cancellation of lease. The notices appended along with the reply of the Indore Development Authority cannot be taken to be proof of due service upon the lessee/occupants.

On the basis of the aforesaid conclusion, it would be appropriate to direct the Indore Development Authority to reconsider the matter of cancellation of the lease. Before any such action is taken, it would also be appropriate to afford a hearing to the other occupants, who are in actual physical possession of the constructed portion.

Since the matter is to be re-examined by the competent authority of Indore Development Authority, therefore, it would be also appropriate to provide a hearing to the Tehsildar (Nazul), respondent No.4, to determine as to whether any portion of the ownership land of the State Government has been included in the leased area.

Consequently, the present petitions are allowed. The order dated April 5, 2005 passed by the Chief Executive Officer, Indore Development Authority and the notice dated February 9, 2005 issued by the Tehsildar (Nazul) respondent No.4 are set aside. However, a liberty is granted to Indore Development Authority to pass a fresh order, if so desired, by issuing a show cause notice, at the first instance, to lessee Dr. Sajni Bajaj and remaining occupants, who are in actual physical possession of the constructed building, indicating the reasons on which the lease in question is proposed to be terminated/cancelled. The lessee/occupants would be provided two weeks time to file detailed replies to the said show cause notices. Thereafter the competent

authority of Indore Development Authority shall provide a hearing to the representative of all the petitioners (who shall also be entitled to be represented by counsel) and also shall provide a hearing to the Tehsildar, respondent No.4, and pass an appropriate detailed and speaking order in the matter. The Tehsildar (Nazul), shall also be entitled to raise the claim of the Government with regard to the ownership of the government. Detailed and speaking order which shall be passed after hearing, would be communicated to all concerned.”

38- The respondent Indore Development Authority thereafter, issued a fresh show cause notice to the petitioner and the petitioner submitted a reply on 14/06/2010 and again an order was passed on 03/07/2010 cancelling the allotment letter dated 23/06/1995 for violating the conditions No.1, 2, 4, 15 and 16. The relevant conditions of lease deed dated 25/09/1996, which were allegedly violated by the petitioner reads as under:-

“(1) उपरोक्त भूमि प्राधिकारी द्वारा प्रथमतः 30 वर्ष की लीज पर लीजगृहिता को चिकित्सालय बनाने के लिये दी गई है । उनके बाद सदर लीज का नवीनीकरण 30-30 वर्ष की अवधि के लिये 2 बार किया जा सकेगा । प्रत्येक नवीनीकरण के समय 50 प्रतिशत तक लीजरेंट प्रत्येक बार प्राधिकारी द्वारा बढ़ाया जा सकेगा । प्रत्येक नवीनीकरण के समय प्राधिकारी को अधिकार होगा कि वह ऐसी अतिरिक्त शर्तें आरोपित करें या वर्तमान शर्तों में संशोधन करें जो वह उचित समझे ।

(2) इस भूमि का उपयोग एक बड़े चिकित्सालय स्थापित करने के लिये है। आधुनिक सुविधा में युक्त चिकित्सालय का निर्माण करना होगा। प्रस्तावित भवन में चिकित्सालय के अतिरिक्त मेडिकल स्टोर्स, पी.सी. ओ., कैंटिन एवं अन्य आवश्यक सुविधाओं जो कि रोगियों एवं अस्पताल के लिये आवश्यक हो व्यवस्था की जावेगी।

(4) यह कि, जब तक इंदौर नगर पालिका निगम द्वारा भवन निर्माण के नक्षे मंजूर नहीं किये जावे तब तक लीजगृहिता भवन निर्माण का कोई भी कार्य भूखंड पर नहीं कर सकता । स्वीकृत नक्षे के खिलाफ किया हुआ प्रत्येक कार्य अनाधिकृत माना जावेगा।

(15) उपरोक्त शर्तों का पालन न करने पर लीज को समाप्त के लिए लीज को मासिक अवधि को मानकर 15 दिन की अवधि के अंदर सूचना पत्र द्वारा लीज समाप्त की जा सकेगी ।

(16) लीज अनुबंध की किसी भी शर्त का उल्लंघन होने पर लीज

निरस्त माना जावेगा एवं प्रिमियम की जो भी रकम जमा है वह जप्त की जावेगी ।”

39- The petitioner being aggrieved by the order passed by the Indore Development Authority dated 03/07/2010 again preferred a writ petition i.e. Writ Petition No.8792/2010 and this Court, as the petitioner was not heard in the matter, directed the Indore Development Authority to pass a fresh order in accordance with law after hearing the petitioner. This Court in Writ Petition 8792/2010 on 23/07/2010 has held as under:-

“Resultantly, impugned order dated 3rd July, 2010 is hereby quashed and the petitioner namely Smt. (Dr.) Sajni Bajaj is directed to file reply positively within 15 days from today before the Indore Development Authority i.e. latest by 16th August, 2010 and the Indore Development Authority after receiving the reply of the petitioner shall pass a final order in the matter by 30th August, 2010. Till a final order is passed by the Indore Development Authority in the matter the question of permitting other persons to carry out other activities from the premises in question, does not arise.

It is also made clear that in case no reply is filed by the petitioner Smt. (Dr.) Sajni Bajaj before the Indore Development Authority by 16th August, 2010, the Indore Development Authority shall be free to pass appropriate order in accordance with law even in absence of the reply of the petitioner.

It is noteworthy to mention that in the earlier round of litigation this Court has passed an order dated 28.11.2007 in W.P. No.531/2005 and the Indore Development Authority was directed to pass a speaking order in the matter. The Indore Development Authority woke up from the slumber only in the year 2010 and has issued a show cause notice pursuant to order dated 28.11.2007 only on 29th May, 2010 for the reasons best known to the officers of the Indore Development Authority. It is really strange that the Indore Development Authority has initiated action in the matter after lapse of about 3 years and therefore, this Court is of the considered opinion that the inaction on the part of the Indore Development Authority in passing an appropriate order and in issuing show cause notice is a serious lapse on the part of the Indore Development Authority and its officer who are responsible for the same. Resultantly, after passing an appropriate order in the matter of lease which has been granted in favour of Smt. (Dr.)

Sajni Bajaj, the Commissioner, Indore Division Indore shall hold a fact finding inquiry in the matter as to why delay of 3 years has taken place in complying the order passed by this Court dated 28.11.2007. The Commissioner Indore Division Indore after holding a fact finding inquiry shall forward a report to the Indore Development Authority as well as to the State Government for taking appropriate action in accordance with law against persons/officers, if held responsible in the fact finding inquiry. The Commissioner, Indore Division Division shall conclude the fact finding inquiry within a period of 2 months from the date, a final order is passed by the Indore Development Authority as directed by this Court in the present case. The Commissioner, Indore Division Indore shall also forward a copy of his report to the Principal Registrar of this Court.

With the aforesaid, this petition stands disposed of. It is also made clear that this Court has not expressed any opinion on merits.”

40- The petitioner in light of the aforesaid judgment submitted a reply through her attorney and again after granting an opportunity of hearing to the petitioner, an order was passed on 03/09/2010, whereby the allotment order dated 23/06/1995 and lease deed dated 25/09/1996 were cancelled w.e.f. 15/09/2010 and the petitioner was directed to handover vacant possession of the plot to the respondent Indore Development Authority.

41- The petitioner for the third time approached this Court by filing a writ petition i.e. Writ Petition No.11362/2010 stating that the Chief Executive Officer, Indore Development Authority was not the Competent Authority to pass the order dated 03/09/2010 and as the order was not passed by the Indore Development Authority (Board), the Indore Development Authority was directed to pass a fresh order within 15 days in respect of cancellation of lease granted to the

petitioner. The operative paragraphs of the order dated 03/09/2010 passed by this Court in Writ Petition No.11362/2010 reads as under:-

“In the present case, there is no provision in existence under the provisions of M. P. Nagar Tatha Gram Nivesh Adhinyam, 1973 as well as under the Madhya Pradesh Nagar Tatha Gram Nivesh Viksit Bhoomiyo, Griho, Bhavno Tatha Anya Sanrachanao Ka Vyayan Niyam, 1975 for delegating the powers of the Authority to the Chief Executive Officer and therefore, in the absence of statutory provisions, no such power could have been delegated in the matter, authorizing the Chief Executive Officer to act on behalf of the Authority in the matter of cancellation of the lease.

Resultantly, the writ petition is allowed in the following directions:-

(a) The Indore Development Authority shall pass a fresh order within a period of 15 days from the receipt of copy of this order, in the matter of cancellation of lease granted to the petitioner namely Smt. (Dr.) Sajni Bajaj.

(b) The Authority shall consider the reply enclosed with the writ petition as Annexure P-25, while passing a fresh order in the matter.

(c) The persons who have purchased the shops from the petitioner or those who are occupants have also submitted their replies before the Indore Development Authority and the Authority shall also consider the replies filed by the occupants/owners/tenants of the shop in question, while passing a fresh order in the matter.

(d) It is further clarified that no commercial activity shall be carried out till a final order is passed, in accordance with law, in the matter as aforesaid.

As this Court has allowed the present writ petition, the other writ petitions i.e. W. P. No.11393/2010 (Smt. Manjulata Garg and another Vs. Indore Development Authority and others), W.P.No.11394/2010 (Vinay KumarJain and another Vs. Indore Development Authority and Others), W.P.No.12174/2010 (Pramod Dubey and others Vs. Indore Development Authority and Others), W.P.No.12175/2010 (Smt. Rajni Shukla and others Vs. Indore Development Authority and others) also stands disposed of, as the Indore Development Authority has been directed by this Court to pass a fresh order in the matter.”

42- The Board of the Indore Development Authority held a meeting on 10/11/2010 and finally a resolution was passed by the

Indore Development Authority, meaning thereby, by the authority empowers to do so. The resolution passed by the Board was communicated to the petitioner and thereafter, *vide* order dated 23/11/2010 again the lease deed dated 25/09/1996 was cancelled and the petitioner was directed to handover vacant possession of the building in question.

43- The petitioner again came-up before this Court by filing a writ petition challenging the order dated 23/11/2010 and the occupants to whom the shops were sold contrary to the provisions of lease deed also preferred writ petitions. This Court has passed a detailed and exhaustive order in Writ Petitions No.14078/2010, 14075/2010, 14096/2010, 14152/2010, 14077/2010 and 14094/2010. The Division Bench of this Court while disposing of the writ petitions has held that so far as issue regarding cancellation of lease is concerned, as disputed question of facts are involved, it requires a trial either in regular civil proceedings or in a proceedings for eviction, if initiated by the Indore Development Authority. The Division Bench of this Court has not decided the disputed question of fact i.e. the issue regarding cancellation of lease. The operative paragraphs of the judgment delivered by the Division Bench of this Court on 08/11/2011 in Writ Petition No.14078/2010 and other connected cases reads as under:-

“19. Having considered the aforesaid submissions of the

learned counsel for the parties, we find that both the parties are at one on the point that this Court, while exercising jurisdiction under Article 226 of the Constitution, cannot examine the correctness and validity of the impugned order of cancellation of lease deed. We are also of the view that the questions, which are involved in the matter, relate truly of the civil right of the parties flowing from the lease deed. These questions cannot be effectively decided in this petition under Article 226 of the Constitution of India, as has been held by the Supreme Court in the case of State of UP and others v. Mahajara Dharmendra Prasad Singh (supra). The questions arising out of the lease; such as, whether there has been breach of covenant under the lease, whether there was a valid sanction for the construction, which has been raised by the petitioner, the stand of the petitioner that there was obstruction in raising the further construction and that the sanction of building map by the Indore Municipal Corporation was made known to the IDA and at no point of time, the IDA objected for raising of the said construction, are all questions, which cannot be decided in this writ petition. These are the questions, which require trial either in regular civil proceedings or in a proceeding for eviction, if initiated by the IDA under the Public Premises Eviction Act. In the circumstances, we refrain ourselves from deciding these disputed questions of fact in this petition under Article 226 of the Constitution of India.

20. However, at the same time, in view of the law laid down by the Supreme Court, on cancellation of lease, for taking possession, instead of taking recourse of law, the IDA cannot be permitted to take possession on the basis of their own order of cancellation of lease. The IDA has no right to take back the possession extra judicially by use of force from the lessee/occupants, even after cancellation of the lease deed. The possession of the lessee even after cancellation of the lease deed, is juridical possession and the dispossession forcibly cannot be permitted. Lessee/occupants cannot be dispossessed otherwise than in due course of law. Even if, as in the present case, lessor is the IDA, an instrumentality of the State, it will not be placed at any higher or better position. In the circumstances, we repel the contention of the learned Senior Counsel appearing for the IDA that on cancellation of the lease, the petitioners can be dispossessed without adopting the procedure of law for taking the possession. This argument is not only specious but highly dangerous by reason of its implications and impact on law and order (See **Bishan Das and others v. State of Punjab and others [AIR 1961 SC 1570]**).

21. In the circumstances, we are of the considered view, that there is no question for the IDA to resort to an extra judicial method of taking possession and in our considered view, the possession has to be taken by the IDA only, in accordance with law. We also find no force in the contention of the IDA that Rule 51 of Rules of 1975, empowers the IDA to take the possession

directly without resorting the legal method. Rule 51 nowhere empowers the IDA to take forcible possession after cancellation of the lease.

22. Having regard to the aforesaid legal position, without recording any finding about the validity of the impugned order passed by the IDA, by which the petitioner's allotment and the lease deed have been cancelled, keeping the said question open to be adjudicated by the competent Court of law and giving liberty to the parties to take necessary steps/raise their respective pleas before the appropriate forum, we restrain the IDA from taking possession of the said land/shops from the lessee/occupants of it, otherwise than in due course of law.

23. With the aforesaid observations, liberty and direction, we dispose of all these writ petitions. Parties to bear their own costs.”

44- Thus, in short the petitioner was certainly at a liberty to file a civil suit for judicial scrutiny of the order by which his lease was cancelled. The order was passed by the Division Bench of this Court on 08/11/2011 and for the reasons best known to the petitioner, the petitioner has not challenged the order dated 23/11/2010 before the appropriate forum. There is no civil suit filed by the petitioner or by the occupants of those 52 shops which have been constructed and sold out / leased out contrary to the terms and conditions of the lease deed as mentioned in order dated 23/11/2010. The Division Bench of this Court *vide* judgment dated 08/11/2011 has also permitted the Indore Development Authority to take possession from the petitioners only in a manner known and recognized by law.

45- In the State of Madhya Pradesh the eviction from public premises is governed under the provisions of Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974 and the Indore Development

Authority, as liberty was granted by the Division Bench, preferred an application for eviction of petitioner as well as other occupants. Some of them have also filed writ petitions which are connected with the present writ petition and a case was registered as Case No.13/A-90(7)/2016-17. The petitioner as well as other occupants were heard and finally an order has been passed on 19/06/2018 by the Competent Authority. There was a slight typographical error in the order, as the Competent Authority was also functioning as Rent Controlling Authority, in the first line of the order (title of the Court) the designation of Court was shown as Court of Rent Controlling Authority, however, it was immediately rectified by issuing another order dated 27/06/2018. It was a technical / typographical error, however, the fact remains that the Competent Authority under the Public Premises Act has passed the impugned order.

46- It has been argued before this Court that the person, who has passed the order was not the Competent Authority for the purposes of Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974. The State Government in exercise of powers conferred by Section 7 of the Act of 1974 issued a notification dated 05/02/1975 and it was published in official Gazette empowering the Collector to exercise the powers conferred under the Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974. A subsequent notification was also issued and published in official Gazette on 17/07/1981 notifying

the Rent Controlling Authority and in the same notification it was mentioned that the Rent Controlling Authority will also exercise the powers of the Competent Authority conferred under the Madhya Pradesh Lok Parisar (Bedakhali) Adhinyam, 1974.

47- Thus, in short all the Rent Controlling Authorities in the township of Indore have also been delegated with the powers to function as Competent Authority under the Madhya Pradesh Lok Parisar (Bedakhali) Adhinyam, 1974 over the area in respect of which they are exercising their jurisdiction. Notification published in the official Gazette dated 17/07/1981 reads as under:-

“कार्यालय, कलेक्टर, जिला इन्दौर, मध्यप्रदेश
इन्दौर, दिनांक 17 जुलाई 1981

क्र.1682-स्थापना-2-81. - मध्यप्रदेश लोक परिसर (बेदखली) अधिनियम, 1974 की धारा 3 सहपठित मध्यप्रदेश शासन, गृह विभाग की अधिसूचना क्र. एक-13-1-75-द्रो-अ (3), दिनांक 5 फरवरी 1975 द्वारा प्रदत्त शक्तियों का प्रयो करते हुये, मैं, ए.पी.के.जागी, कलेक्टर, जिला इन्दौर, श्री आर. परशुराम, अनुविभागीय अधिकारी, महू को तहसील महू के अपने सीमा अधिकार क्षेत्र में सक्षम अधिकारी (काम्पिटेंट अथारिटी) नियुक्त करता हूँ ।

(2) यह भी आदेश दिया जाता है कि भविष्य में जो भी अनुविभागीय अधिकारी, महू नियुक्त किये जावेंगे वे मध्यप्रदेश लोक परिसर (बेदखली) अधिनियम, 1974 के अंतर्गत पदेन सक्षम अधिकारी (काम्पिटेंट अथारिटी) रहेंगे.

क्र. 1684-स्थापना-2-81-मध्यप्रदेश लोक परिसर (बेदखली) अधिनियम, 1974 की धारा 3 सहपठित मध्यप्रदेश शासन, गृह विभाग की अधिसूचना क्र. एक-13-1-75-दो-अ-(3), दिनांक 5 फरवरी 1975 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये, मैं, एम. पी. के. जोगी, कलेक्टर, जिला इंदौर, श्री के. के. बाजपेई, डिप्टी कलेक्टर एवं भाड़ा नियंत्रण अधिकारी, इन्दौर को इन्दौर नगर पालिक निगम .. के भीतर उक्त अधिनियम के प्रावधानों के लिये सक्षम अधिकारी (काम्पिटेंट अथारिटी) नियुक्त करता हूँ ।

(2) यह भी आदेश दिया जाता है कि भविष्य में जो भी डिप्टी / सहायक कलेक्टर भाड़ नियंत्रण अधिकारी नियुक्त किये जायेंगे वे

मध्यप्रदेश लोक परिसर (बेदखली) अधिनियम, 1974 के अंतर्गत पदेन सक्षम अधिकारी (कांपीटेंट अथारिटी) रहेंगे.

क्र. 1686-स्थापना-2-81.- मध्यप्रदेश लोक परिसर (बेदखली) अधिनियम, 1974 की धारा 3 सहपठित मध्यप्रदेश शासन, गृह विभाग की अधिसूचना क्रमांक एक-13-1-75-दो-अ-(3), दिनांक 5 फरवरी 1975 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये, मैं, ए. पी. के. जोगी - कलेक्टर, जिला इन्दौर, श्री एस.एस. पुरोहित, अनुविभागीय अधिकारी, इन्दौर-सांवेर को इन्दौर नगर पालिका निगम की समा क्षेत्र को छोड़कर तहसील इन्दौर तथा तहसील सांवेर के अपने सीमा प्राधिकार क्षेत्र में सक्षम अधिकारी (कांपीटेंट अथारिटी) नियुक्त करता हूँ ।

(2) यह भी आदेश दिया जाता है कि भविष्य में जो भी अनुविभागीय अधिकारी, इन्दौर-सांवेर नियुक्त किये जायेंगे वे मध्यप्रदेश लोक परिसर (बेदखली) अधिनियम, 1974 के अंतर्गत पदेन सक्षम अधिकारी रहेंगे,

क्र. 1688-स्थापना-2-81.-मध्यप्रदेश लोग परिसर (बेदखली) अधिनियम, 1974 की धारा 3 सहपठित मध्यप्रदेश शासन, गृह विभाग की अधिसूचना क्र. एक-13-1-75-दो-अ (3), दिनांक 5 फरवरी 1975 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये, मैं, ए. पी. के. जोगी, कलेक्टर, जिला इन्दौर, श्री एम. के. खरे, अनुविभागीय अधिकारी देपालपुर को तहसील देपालपुर के अपने सीमा अधिकार क्षेत्र में सक्षम अधिकारी (कांपीटेंट अथारिटी) नियुक्त करता हूँ ।

(2) यह भी आदेश दिया जाता है कि भविष्य में जो भी अनुविभागीय अधिकारी, देपालपुर नियुक्त किये जायेंगे वे मध्यप्रदेश लोक परिसर (बेदखली) अधिनियम, 1974 के अंतर्गत पदेन सक्षम अधिकारी (कांपीटेंट अथारिटी) रहेंगे ।

ए. पी. के. जोगी, कलेक्टर''

48- The Competent Authority (Dr. Rakesh Sharma, Member of State Administrative Services) who has passed an order was posted at Indore by an order dated 22/12/2017 and the order was passed by the Department of General Administration. The Collector, Indore has issued a Distribution Memo and Dr. Rakesh Sharma is a Rent Controlling Authority and Sub Divisional Officer in respect of Tehsil Malharganj. He is also exercising magisterial powers under the Code of Criminal Procedure, 1973 in respect of Malharganj, Khudel and Kampel area.

49- It has been argued by learned Senior Counsel Shri Sethi that the area in question does not fall within Malharganj. The property in question is situated in Village Sirpur and the scheme No.71 is also situated in Village Sirpur. The Sub Division Malharganj i.e. Sub Division No.3 includes Sirpur. Jurisdiction in respect of Malharganj Tehsil is reproduced as under:-

अनुभाग – 3 मल्हारगंज

प्र. क्र.	अनुभाग का नाम	राजस्व निरीक्षक सर्कल	राजस्व निरीक्षक सर्कल मुख्यालय	पटवारी हल्का मुख्यालय	हल्के के अन्तर्गत आने वाले ग्राम	विधान सभा क्षेत्र	वार्ड	सी एम पी क्षेत्र	थाना क्षेत्र	जन संख्या की स्थिति	
1	2	3	4	5	6	7	8	9	10		
1	मल्हारगंज	वृत्त-1	छोटा बांगड़दा	छोटा बांगड़दा	छोटा बांगड़दा	विधान सभा क्षेत्र 1 व 4	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 57, 58, 67, 68,69	मल्हारगंज व सराफा	मल्हारगंज, सदरबाजार, एरोडम, सराफा, पण्डरीनाथ, छत्रीपुरा	3.50 लाख	
2				नैनौद	नैनौद						
3				कोर्डियाबर्डी	कोर्डियाबर्डी						
4		वृत्त-2	सिरपुर	सिरपुर	सिरपुर						
5				सुल्काखेड़ी	सुल्काखेड़ी						
6		वृत्त-3	बाणगंगा	बाणगंगा	बाणगंगा						बाणगंगा
7					गाडराखेड़ी						गाडराखेड़ी
8		वृत्त-4			कस्बा इन्दौर						कस्बा इन्दौर-1 (सदर बाजार क्षेत्र)

50- The respondents have also filed a document i.e. Gazette notification issued in respect of Scheme No.71 and it is in village Sirpur and in those circumstances Dr. Rakesh Sharma was very much the Competent Authority in respect of the property in question.

51- The issue regarding exercise of powers by Rent Controlling Authorities has been subjected to judicial scrutiny earlier also and this Court in the case of **Karan Singh and Others Vs.**

State of M.P. and Others reported in **2008(4) MPLJ 338** in paragraphs No.08 to 14 has held as under:

“8. The argument that respondent No. 5 was not validly appointed as Competent Authority requires examination of Sections 17 and 3 of the Act which read as under:

17. Delegation of powers.- The State Government, may by notification in the Official Gazette, direct that any power exercisable by it under this Act shall subject to such conditions, if any, as may be specified in the notification be exercisable also by an officer of the State Government.’

3. *Appointment of Competent Authority.*- The State Government may, by notification in the Official Gazette,-

- (a) appoint such person being an officer not below the rank of Assistant Collector or Deputy Collector as Competent Authority for the purposes of this Act; and
- (b) define the local limits within which, or the categories of public premises in respect of which, the Competent Authority shall exercise the powers conferred, and perform the duties imposed on Competent Authority by or under this Act.

Section 17 of the Act authorises the State Government to delegate its powers whereby the State Government may, by notification in the Official Gazette, direct that any power exercisable by it under the Act shall, subject to such conditions, if any, as may be specified in the notification, be exercisable also by an officer of the State Government, by a notification in the Official Gazette, may appoint certain persons, not below the rank of Assistant Collector or Deputy Collector, as Competent Authority for the purposes of the Act. Thus, the powers, which vested in the State Government under Section 3 if delegated to the Collectors by a notification in the Official Gazette, can also be exercised by the Collectors within their respective jurisdiction.

9. The State Government, in exercise of the powers conferred by Section 17 of the Act, issued a notification dated 5-2-1975, which was published in the Official Gazette on 13-2-1976. The Notification is as under:

“Home Department
Bhopal, dated 5th February, 1975

No. F. 13-1-75-II-A (3).- In exercise of the powers conferred by Section 17 of the Madhya Pradesh Lok Parisar (Bedakhali) Adhinyam, 1974 (No. 46 of 1974), the State Government hereby directs that the powers exercisable by it under Section 3 of the said Adhinyam shall also be

exercisable by all Collectors within their respective jurisdictions.

Pursuant to the delegation of powers Collector, Chhatarpur, by a notification dated 26-8-1975 which was published in the Official Gazette on 19-9-1975, appointed all Sub-Divisional Officers, including respondent No. 5, as Competent Authority of their respective Tehsils.

10. It is to be noted that although the notification under Section 17 was issued on 5-2-1975, it was published in the Official Gazette on 16-4-1976 whereas the notification dated 26-8-1975 issued by the Collector appointing Sub-Divisional Officers was published in the Official Gazette on 19-9-1975. The learned Senior Counsel for petitioners has, therefore, argued that delegation of powers by the State Government under Section 17 of the Act became effective from the date 16-4-1976 when the notification was published in the Official Gazette and the Collector, Chhatarpur, had no authority to appoint Sub-Divisional Officers as Competent Authority under Section 3 before that date. The learned Counsel, in support of his argument that when the requirement of the notification is publication in Official Gazette the date of the notification is the date of its publication, has relied upon the decisions of Supreme Court in Municipal Board, Pushkar v. State Transport Authority, Rajasthan and Ors. : AIR1965SC458 ; Union of India and Ors. v. Ganesh Das Bhojraj : [2000]244ITR691(SC) and Subhash Ramkumar Bind @ Vakil and Anr. v. State of Maharashtra : 2003CriLJ443 . From these cases, it can be taken as well settled that when an order is to be made by notification in the Official Gazette, the order comes into force and becomes operative from the date of issuance of notification in the Official Gazette. But there was no bar for taking action in anticipation that the order of delegation made by the State Government in favour of Collectors under Section 17 of the Act would be published in the Official Gazette and become operative. The Collector, Chhatarpur, issued the order dated 26-8-1975 appointing all Sub-Divisional Officers, including respondent No. 5, as Competent Authority of their respective Tehsils and sent it for publication which was published in the Official Gazette on 19-9-1975. These actions taken by the Collector were in anticipation of the order of delegation issued under Section 17 by the State Government becoming operative and were not immediately effective but they became effective when the order of the State Government delegating the powers to Collectors was published in the Official Gazette on 16-4-1976. The order of the Collector, Chhatarpur, appointing all Sub-Divisional Officers, including respondent No. 5, as Competent Authority, thus, also became operative from 16-4-1976. Respondent No. 5 was, therefore, a Competent Authority within the meaning of Section 3 when he passed the order dated 10-2-2000.

11. It is also interesting to note that in the case of Municipal

Board, Pushkar (supra), the bus operators were aggrieved by the order dated 4-12-1959 of fixation of the new bus stand and discontinuance of old bus stand but even before that order was notified on 28-6-1960 and became operative a revision was filed. The Supreme Court in that case held that revision was made before the date of notification in anticipation of the notification and did not reject the revision on the ground that it was premature and incompetent.

12. There is yet another way of looking into the matter. Section 22 of the Madhya Pradesh General Clauses Act, 1957 (in short 'the 1957 Act') permits making of rules or bye-laws and issuing of orders between publication and commencement of a Madhya Pradesh Act but the Rules etc. so made before commencement of the Act come into operation from the date, the Act comes into force. Section 31 (b) of the 1957 Act applies all the provisions of the 1957 Act, including Section 22, for the construction of rules, regulations, bye-laws, orders, notifications, schemes or forms made or issued under any Madhya Pradesh Act. Therefore, the principle of anticipatory action behind Section 22 of the 1957 Act can also be applied to an order of delegation made by the State Government under Section 3 of the Act. Applying this principle, the Collector's order appointing Sub-Divisional Officers including respondent No. 5 as Competent Authority though made earlier and published earlier to the date when the delegation under Section 17 of the Act became operative by publication in the Official Gazette was valid. The order, however, became operative from the date delegation became operative by publication of the notification in the Official Gazette.

13. For these reasons, I find that respondent No. 5 was validly appointed as Competent Authority and the order dated 10-2-2000 passed by him is not a nullity. The order is thus not open to question in an original suit and the Civil Court is clearly forbidden from passing any injunction in respect of any action taken pursuant to or to be taken pursuant to the said order.

14. The learned Government Advocate has argued that even if there was some illegality in the appointment of respondent No. 5 as Competent Authority, he at least functioned as a de facto authority and his orders cannot be called in question on the ground of illegality in his appointment. As I have already held that respondent No. 5 was validly appointed as Competent Authority, I do not find it necessary to consider this argument.”

In the aforesaid case, a similar issue was involved and the exercise of powers by Sub Divisional Officer as Competent Authority under the provisions of Madhya Pradesh Lok Parisar

(Bedakhali) Adhiniyam, 1974, who was also Rent Controlling Authority was held to be valid and lawful.

52- A Division Bench of this Court again in the matter of eviction under the Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974 in similar circumstances has upheld the exercise of powers conferred upon a person who was Rent Controlling Authority and who was also a Competent Authority appointed under the Act of 1974. The Division Bench of this Court in the case of **Smt. Shanti Devi Vs. State of M.P. & Ors.** (Writ Petition No.3962/2018, decided on 08/03/2018) in paragraphs No.11 to 16 has held as under:-

“11. The Competent Authority, who passed the order of eviction was duly appointed by the District Collector, Indore with prior permission of the State Govt. as contemplated under Section 28(1) of the M.P. Accommodation Control Act and to perform as Rent Controller and by the gazette notification published in 1981, the appointed Rent Controller is further competent to function as Competent Authority appointed under the Act, 1974 (Notification Annexure R-2/8).

12. The petitioner has submitted **SBP & Com. Vs. Patel Engineering Ltd. MANU/SC/1787/2005, Ram Milan and Ohters Vs. Bansi Lal Tej Singh MANU/MP/0071/1958, Mantri Mantri and Company Vs. State of M.P. MANU/MP/0891/2007 : 2008 (1) MPLJ 47** in which stay was granted during pendency of the appeal before the Appellate Authority under the Act, 1974, considering the fact that though the possession of plot has been taken over from the petitioner, but the same has not been allotted to any third party. **Deoraj Vs. State of Maharashtra MANU /SC/0314/2004** in which the Hon'ble the Supreme Court held that situations may emerge where the granting of an intern relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an intern relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing, there would be nothing left to be allowed as relief to the petitioner do all the findings maybe in his favour. In such cases the availability of a very strong prima facie case of a standard much higher than just prima facie case, the consideration of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the

applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of Justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent.

13. The respondent has filed **Sardar Bhim Singh Vs. Nanded Sikh Gurudwara Sachkhand Sri Hazur Apchalnagar Sahib, Nanded (SCC online) 2008 (6) Mh.L.J. 101** which states that during pendency of appeal, filing of writ petition is not permissible. **Bombay Metropolitan Region Development Authority, Bombay Vs. Gokak Patel Volkart Ltd. (1995) 1 SCC 642**, which states that in case of availability of adequate alternative statutory remedy, the writ petition should not have been entertained. **Executive Engineer, ZP Engg. Divn. Vs. Digambara Rao and Others (2004) 8 SCC 262** which states that the petitioner is bound to lay its whole claim having regard to Order 2 Rule 2 CPC or principles analogous thereto and general principle of res-judicata applies to an industrial adjudication.

14. We have heard learned counsels of both the parties at length and have perused the record.

15. It is averred by the respondent that in compliance of the warrant issued by the Competent Authority under the Act, 1974 possession has already been taken and handed over to the Indore Development Authority (Respondent No.2) on 02/02/2018 (Annexure R2/3 to 7). Nothing contrary is available on record. The petitioner has lost its battle regarding title and validity of possession at every legal platform or before all legal forum. We also do not find any exceptional or extraordinary prima facie case in his favour. In that case no writ, as prayed for, can be issued in his favour. In such situation, we are not inclined to consider the merits or to comment on the grounds taken by the petitioner as all these grounds can be agitated before and adjudicated by the Appellate Authority and it would prejudice the case of either party.

16. In view of the aforesaid, we do not find any merits in the petition and dismiss it as such.”

In light of the aforesaid judgment as similar issue has been decided regarding competence of the Competent Authority under the Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974

who was also exercising powers as the Rent Controlling Authority, the question of interference by this Court does not arise. The judgments relief upon by Senior Counsel are of no help to the petitioner.

53- Shri Sethi, learned Senior Counsel has also argued before this court that the issue regarding validity of the order cancelling the lease has not been decided by the Competent Authority under the provisions of Adhinyam of 1974. The Adhinyam of 1974 deals with a procedure for eviction of unauthorized occupants from public premises and the Adhinyam does not empowers the Competent Authority to decide the issue regarding correctness of the order cancelling the lease deed. There is no provision of law under the Adhinyam of 1974, which empowers the Competent Authority to decide the issue regarding cancellation of lease deed by acting as a Civil Court and therefore, this Court is of the opinion that the Competent Authority has rightly passed the order directing eviction of the petitioner on an application preferred by the Indore Development Authority keeping in view the aim and object of the Adhinyam and the jurisdiction conferred upon the Competent Authority by virtue of Adhinyam of 1974.

54- The petitioner before this Court *prima-facie* has not constructed the Hospital and has constructed a Shopping Complex as reflected from the record and since the date of allotment has

taken no steps to establish a Hospital. Approximately 52 shops in Commercial Complex are in existence and it is certainly a flagrant breach of mandatory conditions of the lease deed. The lease deed was for a period of 30 years and since 2005 the Indore Development Authority has not been able to take possession of the property in question. The matter has travelled to this Court again and again and the fact remains that till date the petitioner has not challenged the order of cancellation of lease before appropriate forum as per the liberty granted by this Court in the earlier round of litigation.

55- In the considered opinion of this Court, keeping in view the totality of the circumstances of the case, this Court does not find any reason to interfere with the order passed by the Competent Authority directing the eviction of the petitioner.

56- The petitioner has placed reliance upon the Rules framed by the State Government known as Madhya Pradesh Vikas Pradhikarano Ki Sampattiyon Ka Prabandhan Tatha Vyayan Niyam, 2018, however, the aforesaid Rules have come into force on 01/10/2018 and Rule 1(2) makes it very clear that Rules are in force from the date of their publication in official Gazette. The aforesaid rules cannot be made applicable in the present case.

57- In the present case, the petitioners were evicted from the premises in question and on account of an interim order passed by this Court i.e. *status-quo* ante they have been placed in possession

and therefore, keeping in view the balance of convenience, this Court is of the opinion, as the petitioners do not have any case in their favour, the lease stands cancelled as there is no Hospital in existence, the order passed by the Competent Authority has to be implemented forthwith and therefore, the Indore Development Authority shall be entitled to take possession forthwith of the premises in question. No case for interference is made out in the matter and the writ petition along with all other connected petitions stand dismissed.

58- In Contempt Case No.2021/2018, the petitioner who was evicted on account of the order passed by the Competent Authority and as this Court has granted *status-quo ante*, has been placed back in possession and as this Court has now decided the issue finally permitting the Indore Development Authority to take possession forthwith, the contempt case also deserves to be dismissed in light of the order passed today in the main writ petition. The contempt petition is accordingly dismissed.

No order as to costs.

Certified copy as per rules.

(S. C. SHARMA)
J U D G E

(VIRENDER SINGH)
J U D G E