



2026:UHC:4897

SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			<p><u>WPMS/2992/2023</u></p> <p><u>Hon'ble Manoj Kumar Tiwari, J</u></p> <ol style="list-style-type: none">1. Mr. Shobhit Saharia & Mr. R.S. Bisht, Advocates for the petitioners.2. Mr. N.K. Papnoi, learned Brief Holder for the State of Uttarakhand.3. Mr. V.K. Kaparuwan & Mr. Manoj Kumar, Advocates for the Indian Railways.4. By means of this writ petition, petitioners have sought the following relief:-<ol style="list-style-type: none">(i) Issue an appropriate Writ, Order or Direction in the nature of certiorari quashing the impugned Notices dated 05.10.2023 issued/served/pasted by the Respondent No. 2 (Annexure No. 1 to the writ petition).5. Petitioners claim to be owner of immovable property situate at Jharipani, Mussorrie, District Dehradun. Senior Section Engineer (Works), Northern Railways, Dehradun issued a general notice, asking the persons in possession over the land belonging to Railways to vacate the land within 30 days, failing which they shall be evicted by use of force and shall be liable to pay the expenses incurred in removing them.6. The impugned notice is enclosed as annexure 1 to the writ petition. The name of person, who is in unauthorised possession, is not mentioned in the notice and notice is issued to the public at large. The notice does not indicate the



		<p>Statutory provision, under which it was issued.</p> <p>7. Learned counsel for the petitioners submits that the notice was affixed on the dwelling houses belonging to the petitioners, therefore, they have imminent threat of forcible dispossession. He further submits that petitioners have title over the land in question and in support of this contention, he refers to the sale deeds and gift deeds, enclosed with the writ petition.</p> <p>8. Per contra, learned counsel appearing for respondent nos. 1 & 2 submits that Indian Railways is the owner of the land and petitioners are unauthorisedly occupying land belonging to the Railways. He submits that petitioners have no right to remain on Railways land, as such notice was given asking them to vacate.</p> <p>9. Learned counsel for respondent nos. 1 & 2, however, could not give any satisfactory reply as to whether the notice was issued under any Statute or was issued in administrative capacity by the Senior Section Engineer.</p> <p>10. Forcible dispossession of a person from immovable property without legal sanction is a violation of both Constitutional and Human Rights. The law mandates that even a trespasser or a tenant in settled possession cannot be evicted forcibly; land owner must obtain orders from the Competent Court and follow established legal procedure.</p> <p>11. Hon'ble Supreme Court in the case of <i>Padhiyar Prahladji Chenaji v. Maniben</i></p>
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Jagmalbhai, reported as (2022) 12 SCC 128 reiterated that settled possession of even a person in unlawful possession cannot be disturbed forcibly by the true owner taking law in his own hands. Para 28 of the said judgment is reproduced below: -

"28. In the said decision in *Maria Margarida [Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira, (2012) 5 SCC 370 : (2012) 3 SCC (Civ) 126]* , this Court has approved the following findings of the High Court of Delhi in *Thomas Cook (India) Ltd. v. Hotel Imperial [Thomas Cook (India) Ltd. v. Hotel Imperial, 2006 SCC OnLine Del 36 : (2006) 88 DRJ 545]* : (*Hotel Imperial case [Thomas Cook (India) Ltd. v. Hotel Imperial, 2006 SCC OnLine Del 36 : (2006) 88 DRJ 545]* , SCC OnLine Del para 28)

"28. The expressions "due process of law", "due course of law" and "recourse to law" have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed "forcibly" by the true owner taking law in his own hands. All these expressions, however, mean the same thing—ejectment from settled possession can only be had by recourse to a court of law. Clearly, "due process of law" or "due course of law", here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.

Now, this "due process" or "due course" condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the "bare minimum" requirement of "due process" or "due course" of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e. for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the "recourse to law" stipulation stands satisfied when a judicial determination is made with regard to the first



party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law.""

12. In the present case, impugned notice is not referable to any Statute. Law is now well settled that even a person in unlawful possession cannot be removed from a property without following due process of law. Thus, the administrative notice, whereby petitioners were asked to vacate the land property within 30 days, cannot be sustained in the eyes of law.

13. Accordingly, the impugned notice dated 05.10.2023 (Annexure No. 1 to the writ petition) is quashed *qua* the petitioners. The writ petition is allowed. This, however, will not preclude respondent nos. 1 & 2 from taking necessary steps, as per law, against the persons found to be in unlawful possession.

WPMS/1800/2026

1. Mr. C.S. Rawat, learned counsel for the petitioner.
2. Mr. N.K. Papnoi, learned Brief Holder for the State of Uttarakhand.
3. Mr. Lalit Sharma, learned Deputy Solicitor General of India with Mr. Manoj Kumar, learned Central Government Standing Counsel for Government of India.
4. Petitioner has sought a direction to the District Magistrate and other Revenue Authorities to erect boundary pillar within a reasonable time.



5. Learned counsel for the petitioner submits that eviction notice dated 05.10.2023 issued to petitioner by Railway Authorities was challenged in WPMS No. 2992 of 2023; since that writ petition is allowed by this Court by a judgment of even date, therefore, he is not pressing the relief as claimed in this writ petition.

6. In view of the statement made by learned counsel for the petitioner, the writ petition stands disposed of.

(Manoj Kumar Tiwari, J)

16.06.2026

Aswal