IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 213 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SURYAKANT KANJI BHEDA: Petitioner.

Versus

HEMLATABEN INDUKUMAR RAJANIA : Opponent.

Appearance:

MR SURESH M SHAH for Petitioner

MR YS LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 31/03/98

ORAL JUDGEMENT

The petitioner, having failed in appeal he had filed in District Court at Bhuj against the judgment and decree passed by the then learned Civil Judge (J.D.) at Bhuj directing him to hand over peaceful and vacant possession of the premises, by this revision application challenges the legality and validity of the judgment and decree passed against him.

2. The facts which led the present petitioner to prefer this revision application may in brief be stated. There is a plot bearing No. 71 in Vijaynagar area at

Bhuj. On that plot the respondent has constructed her house. The first floor of the house bearing old block No. 10/6-160, the new number of which is 10/38-64, is let to the present petitioner at the monthly rent of Rs. 225/- exclusive of the taxes and charges. The petitioner is the medical officer serving in the Government hospital. He is having transferable job. In the year 1984 he was transferred from Bhuj to Mandvi. Thereafter he did not use the first floor (hereinafter referred to as the suit premises) let to him. For a period of more than six months he is not using the suit premises for the purpose for which they are let. The petitioner is also allotted with the residential quarter at Mandvi. He has, thus, acquired another suitable premises for his residence. The respondent therefore asked the petitioner to vacate the suit premises and hand over the possession thereof, but the petitioner paid no heed. The respondent was therefore constrained to prefer Regular Civil Suit No. 276/90 in the Court of the Civil Judge (S.D.) at Bhuj under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short the "Bombay Rent Act") The suit was assigned to the then Joint Civil Judge (J.D.) for hearing and disposal in accordance with law.

3. After being served with the summons, the petitioner appeared before the court. He filed his written statement Exh. 15 denying the case levelled against him and submitting further that he is using the suit premises. After he was transferred from Bhuj to Mandvi he was again transferred to Gandhidham from Mandvi. His counterpart at Gandhidham vice whom he was posted filed a suit and obtained interim relief. The implementation of the transfer order was stayed, with the result the petitioner could not take over his charge at Gandhidham and had to proceed on leave from 10th March 1990 to 4th June 1990. During this period of leave he stayed in the suit premises. Thereafter on 5th June 1990 he resumed his duties as Medical Officer at Mandvi. He is Class-I Officer. He has to perform his duties all over the district. He has to attend co-ordination meeting at Bhuj and many other meetings held periodically at Bhuj. During the visit of V.I.P., in the district, he was required to attend the meeting arranged in that connection, or remain with V.I.P. so as to take care of his health till he left the Dist. Centre. Hence often he was going to Bhuj and staying in the suit premises. Accordingly for about 5 months during the period of 6 months immediately preceding the date of the suit he stayed in the suit premises at Mandvi. He is unmarried, but his parents also resided in the suit premises. With a view to get the possession any how, the case about

non-user was made out. The learned Judge then framed necessary issues at Exh.18. Appreciating the evidence before him he reached the conclusions that the respondent had established the case of non-user, as well as acquisition of the suitable premises by the petitioner, and on that counts he passed the decree of eviction on 10th March 1997. Being aggrieved by such judgment and decree the petitioner preferred Regular Civil Appeal No. 72/97 in the District Court, Kuchchh-Bhuj at Bhuj. The appeal was assigned to the then learned Extra Assistant Judge at Bhuj who hearing the parties on 28th January 1998 dismissed the appeal and confirmed the decree passed by the learned Civil Judge (J.D.) at Bhuj. It is against that judgment and decree, the present revision application has been filed by the petitioner-original defendant in the suit.

4. On three grounds namely (1) limitation, (2) non-user and issue to be framed in that regard, and (3) acquisition of suitable residence, the judgments and decrees are assailed. With regards to limitation, it is submitted that the suit is barred by the period of limitation. The cause of action in such suits arises as and when the incident, attracting any of the grounds available to the landlord to seek the decree of eviction under the Bombay Rent Act occurs. In the case on hand as alleged in the plaint the petitioner was allotted with residential quarter by the Government in 1984 A.D.. Since then, the petitioner acquired the premises at Mandvi. It is also the case of the respondent that the petitioner since then is not using the suit premises for the purpose for which the same were let. Because of such incident, the cause of action arose in 1984. The suit therefore ought to have been filed as per Art. 113 of the Limitation Act within three years therefrom, instead that the suit was filed on 20th July 1990, about six years after the cause of action arose in the matter. The suit was therefore barred by the period of limitation. In reply to such contention, Mr. Lakhani, the learned advocate representing the respondent submitted that in such rent & possession suits, the cause of action no doubt arises soon the incident attracting any of the grounds available in Bombay Rent Act for seeking the eviction decree occurs, but the suit is not required to be filed within 3 years of the occurrence of the incident, as per Art. 67 of the Limitation Act such suits are required to be filed within the period of 12 years from the date the cause of action arises i.e., from the happening of the incident giving rise to the cause of action. Art. 113 will in no case apply.

5. It may be mentioned that formerly in such suits the cause of action was considered to be the termination of tenancy as made clear by the High Court of Bombay in Zainab Bai, wife of Hussainbhai Ebrahim and others vs. Navayug Chitrapat Co.Ltd.- AIR 1969 Bombay 194; but after the Supreme Court made the law clear in V. Dhanpal Chettiar vs. Yesodai Ammal - AIR 1979 SC 1745 cause of action will not be the termination of tenancy. As the law made clear by the Supreme Court, notice terminating the tenancy as per Sec. 106 of Transfer of Property Act is not required to be given because the tenant is protected by the Rent Legislations of different States. When in law notice terminating the tenancy is not required to be given, the cause of action in such suits arises from the day when the incident, attracting any of the grounds available to the landlord to seek decree of eviction against the tenant in the Bombay Rent Act and forfeiting tenants' right to be in possession occurs. Such position of law emerging because of the law made clear in V. Dhanpal's case (Supra) is also clarified by the Supreme Court in the case of Smt. Shakuntala S. Tiwari vs. Hem Chand M. Singhania - AIR 1987 S.C. 1823 holding that because of the Rent Acts in different States the tenancy is not required to be terminated giving the notice, and hence the termination of the tenancy would not provide the cause of action, but the grounds provided in the Bombay Rent Act or the concerned Rent Act would provide the cause of action, because the landlord would be entitled to the decree of eviction, not by termination of the tenancy, but by any of the grounds in the Rent Act is available to him, or the tenants commits the breach of any of the provisions of the Rent Act applicable. Thereafter discussing Section 12 & 13 of the Bombay Rent Act, it is made clear that for the suits to recover the possession of the premises let to the tenant Article 67 or 66 of the Indian Limitation Act as the case may be will apply and not Article 113 of the Limitation Act because there is no scope to apply Article 113. As per Article 67, if the landlord has to recover the possession from the tenant, the suit has to be filed within a period of 12 years from the day the tenancy is terminated. In the suit to recover possession of the rented premises as made clear by the Supreme Court in the case of V. Dhanapal Chettiar Supra) notice terminating the tenancy is not necessary. The question is therefore raised how the period of 12 years to be reckoned for the purpose of preferring the suits to recover the possession of the rented premises from the tenant ? The Supreme Court in the just referred case of Smt. Shakuntala S. Tiwari has made clear that Article 66 will also apply which provides that the suit has to be filed within the period of 12

years to be reckoned from the day when the forfeiture is incurred or the condition is not observed or fulfilled by the tenant. The forfeiture comes into being when the incident, attracting any of the grounds on which the landlord becomes entitled to claim possession occurs. In the case on hand as alleged the petitioner acquired the residential quarter at Mandvi in 1984, and since then he is not using the suit premises. The respondent has therefore come forward with the case that in the year 1984 A.D. the incident covered by both the grounds available for seeking the decree of eviction occurred. The period of 12 years' limitation in this case therefore began to run from 1984 A.D. The suit was therefore required to be filed latest by 1996 A.D., instead that the suit is filed in 1990 A.D. It therefore follows that the suit is filed within the period of limitation, the same is not barred by the period of limitation. On the ground of limitation therefore the suit does not fail.

6. It is the next contention of the petitioner that as per the requirement of law the issue about non-user is not framed by the trial court. Necessary ingredients of the relevant provisions of law ought to have been incorporated so as to make it known to the parties what was the point or fact in controversy and what evidence was required to be led. About the ground of non-user the relevant provision is vide Section 13 (1)(k) of the Bombay Rent Act. It provides that the landlord will be entitled to a decree of eviction if it is proved that the tenant is not using the suit premises without any reasonable cause for the purpose for which the same were let for a continuous period of six months immediately preceding the date of the suit. One of the ingredients, namely "without reasonable cause" is not covered by the issue framed by the trial court, as well as point for determination raised by the first appellate court. It would therefore be just & proper to frame the issue specifically & clearly and to have full justice to the parties, the suit may be remanded to the trial court for a fresh trial and decision. In support of his such submission, Mr. Shah the learned advocate representing the petitioner urged to consider the decision of this Court rendered in the case of Mohini Bhiryomal Hingorani v. Bhanubhai Manilal Patel - 25 (2) G.L.R. 1058 wherein it is, with regard to Section 13 (1)(k) of the Bom. Rent Act, laid down that the issue in that case framed was defective because therein the words "without reasonable cause" were not mentioned in the issue, and secondly instead of "the date of the suit", the words used were "date of the suit notice". In that case, because of such defect it was urged to remand the matter, but that was

found not necessary because the appellate court had already framed the issue and remanded the matter and finding was then given by the trial Court. It is the submission of Mr. Lakhani, the learned advocate for the respondent that no doubt the issues must be specific, but despite the same being defective if the parties are not mislead and no prejudice is caused, the findings given may not be upset and there would be no cause to remand the matter, as urged on behalf of the petitioner.

7. Considering the rival contentions about framing of the issues, one must look to Order 14 Rule 1, Civil Procedure Code.The issues are the back-bone of the suit. The object of framing the issue is therefore to pinpoint the points required to be determined for proper trial and right decision of the case, i.e., to ascertain the real dispute between the parties, to narrow down the zone of controversy and to see on what points both the parties differ namely one asserting and other side denying so as to guide the parties in the matter of adducing evidence and for a right decision. While framing the issues relevant provisions of law applicable should be kept in mind and necessary ingredients of the provision must find place in the issues otherwise the same cannot be termed clear & specific. The issues must therefore be sufficiently expressive of the matter in dispute specific, perfect, comprehensive unambiguous, crystallized, distinct and clear covering the requirements or essential ingredients of the provisions of the law applicable so as to sufficiently direct the attention of the parties as to what evidence is required to be led. But if the issues are not accordingly framed, and found to be improper, or of unsatisfactory nature, or imperfect, or wrong, or irregular, or defective, or the court has not framed a particular issue as a result of which either of the parties does not lead proper and sufficient evidence or is prevented from adducing necessary evidence, the trial will stand vitiated, and decision/findings on those issues will be liable to be set aside. In other words, where issues framed do not sufficiently direct the attention of the parties to the main question of fact necessary to be decided and the party is mis-led, or confused, or prevented from adducing the evidence, the trial will stand vitiated. However one must clearly bear in mind that omission to frame a particular issue or framing the issue incorrectly or the issue if found defective or imperfect, or improper, or wrong it will not always have fatal or vitiating effect; if the parties are not prejudiced, or the parties have gone to the trial knowing that the same question was in

issue and adduced the evidence or disposal of case on merits is not affected and substantial justice has been done, or the parties alive to the point, have led the evidence on it and have discussed it in the trial court, or the issues framed are comprehensive enough to cover the point or ingredient, or the issue even obscure embraces the essential ingredient, or sufficiently directs the attention of the parties to the requirements, or the same is correctly understood and the parties have led the evidence, and, the court has discussed the same and given the findings thereon may be cursorily, the trial will not be vitiated. If proper issues are not framed or issues framed are defective or incomplete or not capable of making a point certain or mis-leading,or not clear or perplexing, it is upto the parties to move the court to get the issues rightly framed. If the parties do not do so and lead evidence and invite the findings of the court, they cannot be allowed to find fault with the issues before appellate or revisional court so as to circumvent his failure before the lower court. In that case it can be said that the party was not confused or mis-led.

8. In the case on hand, the trial court framed the relevant issue at Serial No. 3 at Ex. 18 and that is couched as under;

"Whether the plaintiff proves that the suit premises is on non-use since last six months prior to the filing of the suit ?"

At this stage, one must look at the relevant provision namely Section 13 (1) (k) of the Bombay Rent Act. As per that provision, three ingredients are required to be fulfilled by the landlord seeking the decree of eviction on the ground of non-user by the tenant. He must show that (1) the tenant is not using the premises let for a continuous period of six months immediately preceding the date of the suit; (2) he does not use for the purpose for which the premises were let; and (3) he does not use without any reasonable cause. On perusal of the above quoted issues it appears that relevant provision of the Bom. Rent Act namely Sec. 13(1)(k) is not clearly kept in mind and necessary expression covering the ingredients of the provision especially the last one mentioned hereinabove namely without reasonable cause does not find place in the issue. The question therefore which is required to be examined is whether in the absence of such specific issue, the finding thereon & consequently the trial of the suit are vitiated, and this court will have no option but to remand the suit to the trial court for a

fresh trial on that point after framing the specific issue ? As made clear about the law on framing of the issues, what is required to be seen is whether either of the parties was misled or confused, and/or could not understand the same correctly, consequently failed to lead, or was prevented from leading required evidence in the matter ? On perusal of the evidence both oral and documentary on record with meticulous care and finicky details, there is no reason to hold that either of the parties was mislead or puzzled and failed to lead or was prevented from leading necessary evidence on the ingredient namely "without any reasonable cause". It may be remembered that the petitioner has come out with a case that he was using the premises as and when he was required to attend different meetings at Bhuj or whenever one or another VIP had been to Bhuj. He also used the premises for about 87 days when he was on leave because of the suit having been filed by his counterpart affected by the transfer at Gandhidham,the transfer-order was stayed. The learned trial Judge has also discussing at length different evidence coupled with the case laws cited before him in para 36 of his judgment concluded that petitioner had failed to establish any of the available reasons in law for showing that his non-user is not without any reasonable cause. The appellate court has of course not in details but dealing with the point and attendant circumstances on record in brief agreed with the finding of the learned trial Judge on the point of reasonable cause. The petitioner has led evidence to show that periodically he was using the premises and had the intention to return, and his non-user for rest of the period was owing to his transfer to Mandvi. Of course his such case about periodical use is not helpful to him, but it is clear that he made an attempt adducing such evidence to show that whatever was the situation, it was not without any reasonable cause. When accordingly the evidence is led, arguments were also advanced and the case putforth is considered by the courts below, in view of the law made clear by several authorities referred to hereinbelow, it cannot be said that the petitioner was mislead, or puzzled because the issue framed being defective, could not be correctly understood and necessary evidence could not be led. It may be stated that, if the courts below have not discussed the facts in detail, but in short referred the same and reached the conclusion qua reasonable cause, it would not be a ground to remand the matter because in that case, it cannot be said that either of the parties incorrectly understood the issue or was mislead and failed to adduce necessary evidence. Both the lower courts have also, may be in short or incomprehensibly or clumsily but implicitly

dealt with the point keeping in mind one of the ingredients namely, "without any reasonable cause". When that is the case, even if the issue framed is defective or not satisfactory, it has not prejudiced the parties and hence I see no reason to remand the suit to the trial court for a fresh consideration on the ground of non-user framing the specific, distinct & clear issue i.e. the issue sufficiently expressing the requirements and containing necessary ingredient of the provision applicable. If the issue framed if found to be defective or incomplete, the petitioner could have moved the trial court for recasting of the issue. If he did not do so, and adduced evidence and invited the findings of the Court, he cannot be allowed to find fault with the issue before this court so as to circumvent his failure before both the courts below.

9. The next question that arises for consideration is whether non-user in this case can be said to have been established. Considering the restraints of Revisional Jurisdiction the question has to be examined. This court cannot assess the value of the evidence and interfere with the findings of facts by substituting another finding. What is permissible in law while exercising Revisional Jurisdiction is that this Court can interfere if there is error of law leading to patent injustice apparent on the face of record calling for prompt redressal and securing the ends of justice, or to correct manifestly perverse finding so as to prevent miscarriage of justice. It is contended on behalf of the petitioner that as per the requirements of Section 13(1)(k), non-user must be for a continuous period of six months immediately preceding the date of the suit. If continuous non-user for a period of six months is not established, certainly the landlord cannot have a right to seek the decree of eviction on that ground. The present suit came to be filed on 20th July 1990. Six months' period immediately preceding the date of the suit would therefore be from 20th January 1990 to 20th July 1990. The user or non-user pertaining to this period only being material is required to be ascertained. From 10th March 1990 to 4th June 1990, i.e.,for a period of 87 days the petitioner was on leave, and according to him he resided at Bhuj in the suit premises. The said period falls within six months' period immediately preceding the date of the suit. When for this 87 days the petitioner resided in the suit premises, the requirement of Section 13 (1)(k) to have non-user continuously for a period of 6 months cannot be said to have been established as continuity of the period was broken. Further to attend V.I.Ps and several meetings the petitioner used to go to

Bhuj and stay in the suit premises. In view of the facts the courts below apparently erred and their findings qua non-user being manifestly perverse, interference of this court is warranted. The learned advocate for the opponent has refuted such contention advanced on behalf of the petitioner.

10. Both the lower courts below have dealt with the point and found that at times during the period of 6 months the petitioner might be staying in the suit premises, but in the eye of law such casual stay would not amount to the use of the premises for which the same were let, and therefore even if it is believed that during the period of 87 days the petitioner stayed in the suit premises, it would not disentitle the respondent from seeking the decree of eviction. During that period, it may be mentioned here that the gas consumption was found `Nil' and the electric consumption was found minimum. If the gas consumption is `Nil' it would show that there was no dwelling at all and that fact negatives the use for residential purpose. Of course, the electric energy consumption was found minimum but that cannot help the petitioner because even if the consumption is `Nil', the Electricity Board issues bill for minimum charges. No doubt, the petitioner used to receive some posts namely greeting cards or invitation cards and some periodicals or magazines at the suit premises, but that may be the result of carelessness in not getting the address changed.

11. Before the case about non-user is dissected, what is the meaning of residence in the eye of law may be recollected. The word "residence" denotes the place where the individual eats, drinks, sleeps or where his family or servants eat, drink and sleep and where there is some permanence for continuance of such eating, drinking and sleeping. Prima facie a man is said to reside where he is obliged to stay at the place. To put in different words, the residence must be with a considerable measure of continuance and not occasional and casual visits. Where a person has a permanent place of dwelling in one place, he cannot be said to be dwelling at a place where he has lodged for a temporary purpose. To reside at a place and to pay a visit to a place are two different things, the distinction of which should be kept in mind. A similar question about the interpretation of the word "residence" arose before this court in the case of Mohini Bhiryomal Hingorani v. Bhanubhai Manilal Patel - 25 (2) G.L.R. 1058 : 1984 (2) G.L.R., wherein it is held that the residence must be permanent not spasmodic stay in the premises or casual visits. In another case

of Khemchand Kalidas Mehta vs. Kothari Gubharuchand Motilal - 1996 (1) G.L.H. 413, keeping Section 13 (1)(k) of the Bombay Rent Act in mind, about the residence what has been made clear is that, by spasmodic visits it can never be said that there is no non-user of the lease-hold premises. What is made clear is that even if it is presumed that a tenant makes casual visits to the leasehold premises, that ipso facto does not constitute a reasonable cause for non-user saving him from the rigors of the provisions of Section 13 (1)(k) of the Bombay Rent Act, as the casual visits to the premises would not render the non-user as non-continuous. In law constructive residence would not help the tenant. What is contemplated is the actual residence.

12. In this case, after the petitioner was transferred in 1984 he left the charge at Bhuj, took over the charge at Mandvi and started to reside with his father and mother in the quarter allotted to him. Thereafter as stated above, for a period of 87 days according to him he stayed at Bhuj, and periodically also he used to stay in the suit premises at Bhuj as and when he was required to attend the meetings. Whether such use can be said to be the use satisfying the requirements of dwelling or residence is to be determined. It may be noted that during his stay, as he made clear in his evidence, the gas consumption was `nil'. He used to receive the electricity bills of minimum charges. This circumstance on record goes to show that in fact the petitioner was not dwelling or residing in the suit premises. Both the courts below were right in holding that minimum charges bills are issued even if the consumption of the electric energy is `Nil', and when gas consumption is found `Nil', it was the strongest circumstance on record going to show that required eating, drinking and sleeping were during his visits absent, and discrediting the case about user advanced in defence. Even if it is believed that he was eating and drinking in the premises during his such casual visits, it would not amount to dwelling in the suit premises because his headquarter was at Mandvi. He was unmarried but his father and mother who were residing with him were at Mandvi-his headquarter in the quarter allotted to him. He can therefore be said to be residing, where his family members were residing. and his visits at Bhuj should in view of such evidence be treated to be casual or occasional. Secondly if the person is having transferable job, on his transfer from one place to another, the place where he is transferred should ordinarily be considered to be the place of permanent residence because he is supposed to settle down at that

place of his posting. In this case, therefore, his residence being at Mandvi, his casual visits at Bhuj, and during such casual visits using the suit premises, cannot tantamount to a break in the six months period of non-user required to be established by the landlord. In other words, the period during which the petitioner was casually visiting Bhuj and staying in the suit premises being the lodgement and not residence would not be excluded from the period of non-user immediately preceding the date of the suit. When that is so the continuous non-user for 6 months or more is not broken as canvassed. In view of the matter, the courts below were perfectly right in passing the decree on the ground of non-user.

13. A tenant having transferable job if tries for his posting back at the place from where he was transferred, or he is expecting his reposting at the place from where he was transferred, by that mere fact it cannot be construed that the tenant is having animus revertendi, and his non-user must be held to be reasonable & just, and not without any reason, for the master of the tenant when transfers him, it is with a view to satisfy his administrative requirements, and so transfer is always with a view to cause the employee to settle down at the place where he is posted. The contention, advanced on behalf of the petitioner that because of the possibility that he will be re-transferred and posted back at Bhuj, there is animus revertendi and case of non-user gains no ground to stand upon, must fail. I will now switch over to the last ground viz., acquisition of suitable premises.

14. About suitable acquisition, Mr. Shah, learned advocate taking me to the relevant provision vide Section 13 (1)(l) of the Bombay Rent Act contends that no doubt the petitioner has been allotted with the quarter by the Government at Mandvi and he occupies the same after taking over the charge at Mandvi, but such acquisition would not be the acquisition in the eye of law, for the provision of the Bombay Rent Act contemplates acquisition within the local limits of that village or town where leasehold premises are situated and no where else. The leasehold premises being within the local limits of Bhuj and the quarter allotted being at Mandvi, a place other than Bhuj, the petitioner cannot be said to have acquired another suitable premises and therefore on that count the respondent is not entitled to the decree of eviction. In support of his submission, Mr. Shah has drawn my attention to a decision in Ramagauri Girdharlal v. Narottam Narandas - 16 G.L.R. 176 wherein it is held

that Section 13 (1)(l) of the Bombay Rent Act cannot apply to the tenant who acquires or is allotted with vacant possession of premises in a different town. It would be an exercise in non-reason to authorize the eviction even if the so-called alternative premises are situated in a different town. Surely a tenant in Ahmedabad cannot be evicted merely because he purchases a suitable residential house and acquires vacant possession thereof in some far distant place may be Madras or Moscow. The learned advocate representing the other side, in reply has relied upon the decisions in the cases of Dahyabhai Motiram (Decd. through his heir) & Anr. v. Nathubhai Bhimbhai Naik - 16 G.L.R. 404 and Chandrakant M. Deshpande vs. Vasantrao B. Toke & Others - 1996 (1) G.L.H. 26 in support of his submission that the tenant cannot be allowed to stick to two premises or sit tight on the leasehold premises after acquiring another premises at the place where he has to settle or going to settle down, may be owing to transfer or for any other cause.

15. In the case of Dahyabhai Motiram (Supra), what happened was that the tenant having the rented premises in Billimora had constructed his bungalow in the Talodh Gram Panchayat area situated topographically on the outskirts of Billimora. Looking to the short distance between the two stations, it was held that tenant had acquired the suitable residence within the meaning of Section 13 (1)(l) of the Bombay Rent Act. In the case of Chandrakant M. Deshpande (Supra) the defendant was the tenant of the room situated within the local limits of Baroda Municipal Corporation. The tenant was then allotted with the quarter by his master. At this stage, one more likewise decision may be referred to. In Champaklal Chhotalal & Anr. vs. Parvatiben Kuberbhai 1994 (1) GCD 801, the tenant was using and occupying the leasehold property within the local limits of Surat Municipal Corporation. The master of the tenant then allotted a quarter at Udhna a town situated touching the border of the Surat city. In both these cases though the towns were different, the tenants were held to have acquired the suitable premises because another town or village topographically situated close to the border of the town or city where leasehold properties were situated, and so it was in those cases held that virtually within the same town the tenant had acquired the premises. But in this case topographically Mandvi is not situated close to the border of Bhuj and therefore these two decisions may not be pressed into the services of the respondent was the submission on behalf of the petitioner. What is further submitted is that when in

these two decisions rendered in Dahyabhai Motiram's case (Supra) and Champaklal Chhotalal's case (Supra), a different view on the basis of topography of the concerned towns, is taken than the view taken in the case of Ramagauri Girdharlal (Supra), having regard to the law of precedence the court cannot ignore the decision in the case of Ramagauri Girdharlal. The proper course that would be open to the court would be to refer the matter to the larger bench for finally setting the issue at rest. About the law of precedence, my attention was drawn to a decision rendered by the Apex Court in the case of Somabhai Mathurbhai Patel vs. New Shorrock Mills - 1983 G.L.H. 273, wherein it is laid down that the Single Judge of the High Court cannot reject the ratio of the decision of another Single Judge of the same High Court by merely saying that attention of that Single Judge was not invited to the decision of the Supreme Court which may have an impact on the point under examination. Judicial comity demands and the Apex Court has often reiterated that in that event the matter should be referred to a larger bench. Such view will remain the same if attention of the Single Judge is not drawn to a decision of another Single Judge taking contrary view, is the submission.

16. Whether the decisions cited are conflicting and the issue is required to be referred to the larger bench is the question that arises for consideration. On perusal of all the decisions, it becomes clear that the decisions in the case of Dahyabhai Motiram, Chandrakant M. Deshpande, and Champaklal Chhotalal (Supra), do not run counter to the decision in the case of Ramagauri Girdharlal (Supra); on the contrary those decisions supplement the law made clear in Ramagauri's case. The said decision is elucidated, or occult or recondite meaning thereof is clarified, scope of misreading the same is eradicated and any puzzle or doubt that may arise is dispelled. What is made clear is that if the tenant acquires the premises at a different place where he is certainly to settle or is required to settle down certainly or has already settled down leaving the town or village or city where leasehold premises are situated, it will also amount to acquisition of the premises within the meaning of Sec. 13(1)(l) of the Bombay Rent Act, which is not kept out of sight in Ramagauri's case. By mentioning "Madras" or "Moscow" (as the leasehold premises were situated in Ahmedabad) what is made clear is that if acquisition of the house at a different place or at a farthest place where the tenant is not at all going to settle down in near future or will have no compulsion to settle down for any good cause, such

acquisition is no acquisition within the meaning of Sec. 13(1)(l) of the Bombay Rent Act. In that case he will not lose the protection and the landlord would not be entitled to get the decree of eviction. The criteria of settling down at the place where the premises are acquired is not done away with. The decisions thus do not run counter to the other one and so reference to a larger bench is not warranted as contended.

17. The petitioner is serving as Medical Officer in Govt. Hospital. As per Rules governing the service conditions, his job is transferable at the interval of specified period. A residential quarter suitable to his post is provided by the Government. Hence if the petitioner is transferred from one place to another,he has to settle down at the place where he is transferred & posted, either willingly or otherwise, and when the quarter is allotted to him at the place of his posting, it would be the acquisition of suitable premises within the meaning of Sec.13(1)(l) of the Bombay Rent Act. After the petitioner was transferred to Mandvi in 1984, he is allotted with suitable quarter there and he has occupied the same and at present uses the same as he had to settle down there, till the next transfer as per rule. The quarter is allotted so that the petitioner can conveniently and comfortably settle down there and can render the services promptly, efficiently and conveniently. To cultivate the belief that he would be re-transferred to Bhuj (not yet re-transferred from 1984) and so the petitioner has the animus revertendi is nothing but the illusion. On that count as submitted it cannot be said that the petitioner is not to settle down at Mandvi. It may however be stated that possibility of retransfer cannot impair the landlord's right to get the decree of eviction on the ground that the tenant has acquired vacant possession of another premises. It may be mentioned that there is no dispute about the fact that the quarter allotted at Mandvi where the petitioner has to settle down is suitable. The courts below have therefore committed no error in passing the decree of eviction on the ground of acquisition of suitable premises at Mandvi. Under the circumstances, both the courts below were right in holding that the respondent succeeded in establishing the case of non-user and acquisition of suitable premises by the petitioner, and on that count passing the decree of eviction. There is therefore no justifiable reason to allow the Revision and upset the decree passed.

18. For the aforesaid reasons, I see no justification to interfere with the decisions rendered by both the

courts below. The decree passed by both the courts, being quite in consonance with law, are required to be maintained. In the result, this revision application, being devoid of merits, is hereby dismissed with costs. Rule discharged.

19. Mr. Shah,the learned Advocate representing the petitioner seeks time so as to have appropriate order against the impending execution, to which Mr. Lakhani, learned advocate representing the other side submits that the respondent is not going to execute the decree till 30th June 1998. In view of the matter, I see no need to pass any order in the matter.

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(rmr).