

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 50 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

=====

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

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil
judge ?

=====

BHAVNAGAR MUNICIPAL CORPN. - Appellant(s)

Versus

NARENDRA MANSUKHLAL PATEL - Defendant(s)

=====

Appearance :

MR JR NANAVATI for Appellant(s) : 1,

MR RJ OZA for Defendant(s) : 1,

=====

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 28/02/2007

ORAL JUDGMENT

1. Mr.J.R. Nanavati, learned counsel for the appellant and
Mr.R.J. Oza, learned counsel for the respondent.
2. Present is an appeal filed by Bhavnagar Municipal
Corporation which has lost in both the courts.

3. The plaintiff – respondent had filed the suit submitting inter-alia that on Press Road in Karchalia-Para area of Bhavnagar, a piece of land admeasuring 40' X 13'-9" was given to him under lease, by the erstwhile Municipality of Bhavnagar under its Resolution No.4148/83 dtd.26/12/1973 for its use for industrial purpose at a monthly rent of Rs.30/- per month. It was submitted by the plaintiff that some disputes were raised by the Municipal Corporation and it filed Criminal Case No.150 of 1975. The plaintiff prayed that he be declared to be in valid possession with an injunction against the respondent that they would not be entitled to dispossess the plaintiff, except in accordance with law and further prayed that the defendant should accept the rent.
4. The defendant appeared before the trial court and submitted that the lease was for a period of one year and on expiry of the said period, if the lease was not extended or renewed, the possession of the plaintiff became illegal and unauthorised. They also submitted that moment it is held that the defendant was in unauthorised possession, no court would declare that he continues to be a tenant, nor a mandatory injunction could be granted against the defendant to receive the rent.
5. The learned trial court, after hearing the parties, held that the plaintiff would be deemed to be a tenant by holding over and so long as he is in possession of the property, he would

be liable to pay the rent and the defendant would be obliged to accept the rent. The Court also directed that the defendant would not be entitled to dispossess the plaintiff, except in accordance with law. Being aggrieved by the said judgment and decree, the defendant preferred the appeal, which was dismissed, therefore, the defendant is before this Court.

6. The appeal has been admitted for hearing the parties on the following substantial question of law;

“Even if the respondent is held to be a tenant of the suit premises, will it not be open to the appellant Corporation to take action against him under the provisions of the Gujarat Public Premises (Eviction of Unauthorised Occupation Act, 1972?

7. From the very frame of the question, it would be clear that the Court, while admitting the appeal, had observed that even if the respondent – plaintiff is held to be a tenant of the suit premises, will it not be open for the appellant Corporation to take action against him under the provisions of the Eviction Act, 1972. The question presupposes that the original plaintiff is a tenant and the defendant has a right to take action under the provisions of the Eviction Act, 1972. In fact, two courts below have done nothing beyond that. The courts have

held that the plaintiff is a tenant and the defendants would be entitled to take action in accordance with law.

8. During the course of arguments, Mr.Nanavati, learned counsel for the appellant submitted that after the expiry of the lease period, it was for the defendant to accept the plaintiff as a tenant and if they do not accept him as a tenant, then, his possession would be that of a trespasser or he would be deemed to be in unauthorised occupation.
9. In the opinion of this Court, the argument of Mr.Nanavati, learned counsel for the appellant - defendant, is in oblivion of the legal provisions, because, a person who continues to be in possession after lease period has expired, would be deemed to be, depending upon the facts, a tenant by holding over or a tenant by sufferance. So long as such tenancy is not determined in accordance with law, such person cannot be termed to be a person in unauthorised occupation of the property. The appellant - defendant certainly would be entitled to take an action in accordance with law but that does not mean that the law as they understand.
- 10.I find no reason to interfere. The appeal deserves to and is accordingly dismissed. Interim relief, if any, is vacated. No costs. Let a decree be framed accordingly.