IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 8703 of 2007

With

SPECIAL CIVIL APPLICATION NO. 8704 of 2007

TO

SPECIAL CIVIL APPLICATION NO. 8715 of 2007

With

CIVIL APPLICATION NO. 12353 of 2012

In

SPECIAL CIVIL APPLICATION NO. 8706 of 2007

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR.JUSTICE G.B.SHAH

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1	Whether Reporters of Local Papers may be allowed to see the judgment?	**YES**
2	To be referred to the Reporter or not?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment?	**NO**
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?	**NO**
5	Whether it is to be circulated to the civil judge?	**NO**

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KANAIYALAL DHIRAJLAL....Petitioner(s)

Versus

JAMNAGAR MUNICIPAL CORPORATION....Respondent(s)

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Appearance:
MR NIRAV C THAKKAR, ADVOCATE for the Petitioner(s) No. 1
MR AR THACKER, ADVOCATE for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE G.B.SHAH**

Date : 31/07/2014

CAV JUDGMENT

1. Present petitions have been filed by the petitioners challenging the General Board Resolution No. 28-G, dated 20/02/2006, passed by the respondent herein – Jamnagar Municipal Corporation (*herein after referred to as 'the respondent – Corporation*) whereby, the rent of the shops allotted to the petitioners herein, was increased to Rs.600/- and Rs.525/- respectively. The petitioners also challenge the communication dated 01/02/2007, by which, it was alleged to be conveyed to the petitioners by the respondent – Corporation that the petitioners shall have to pay the revised rent failing which, the petitioners would be liable to be evicted from the rented premises.

1.1 So far as Civil Application No. 12353 of 2012 is concerned, it is filed by the respondent - Corporation against the petitioner in Special Civil Application No. 8706 of 2007 by which it was sought to vacate the interim relief *qua* the said original

petitioner (*in Special Civil Application No. 8706 of 2007*) only, which was granted by this Court *vide* order dated 25/02/2008 while admitting these petitions on the ground that the opponent therein – original petitioner in Special Civil Application No. 8706 of 2007 is not paying the rent as is directed by this Court *vide* aforesaid order dated 25/02/2008.

2. I have heard Mr. Nirav C. Thakkar, learned advocate for the petitioners and Mr. A. R. Thacker, learned advocate for the respondent – Corporation, in all these petitions.

3. As the controversy involved in these petitions being common, all these petitions have been heard together and are being decided by this common judgment and order.

4. Facts in nutshell of the cases on hand are that certain portion of the lands in Limda Lane area of Jamnagar City was taken on lease for a period of 49 years by the respondent – Corporation from Panjarapole at the rate of Re.1/- *per annum*. Thereafter, the respondent – Corporation developed the said land and constructed shops thereon in an area admeasuring 1,397 sq. ft.

of the said land and gave an advertisement in the local daily newspapers declaring that the auction would be held for the purpose of allotting the shops on rent to the highest bidders. The earnest money was fixed to Rs.100/- and successful bidders had to pay the special fees known as 'Sukhdi' of which, 25% was required to be paid on the spot. The Transfer Fees, for transfer of the name in the Corporation, was fixed to Rs.150/-. The petitioners participated in the auction proceedings and were allotted the shops, subject to certain conditions as mentioned in the Tender Conditions dated 30/01/1969 produced at Annexure 'B' to the petition. The petitioners also paid the Sukhdi amount as aforesaid. According to the averments made in the petitions, out of the 22 shops put up for auction, rent for 17 shops was fixed at Rs.35/- per month whereas, the rent for the other 5 shops was fixed at Rs.25/- per month. The lease period for these shops, pursuant to the auction, was to be valid up to the year 2014.

4.1 It is further the case of the petitioners that in the year 1987, the respondent – Corporation wanted to increase the rent from Rs.35/- per month to Rs.75/- per month for 17 shops and Rs.25/- per month to Rs.50/- per month for 5 shops. The

respondent – Corporation also proposed to increase the Transfer Fees. Therefore, the representatives of the petitioners filed Regular Civil Suit No. 5 of 1987 in the Court of 4th Civil Judge (S.D.), Jamnagar under O. 1 R. 8 of the Civil Procedure Code, 1908 challenging the proposed increase by the respondent – Corporation. The said suit came to be dismissed *vide* order dated 19/09/1988 *inter alia* on the ground that Bombay Rent Act is not applicable. The same was carried in appeal before the District Court, which also came to be dismissed *vide* order dated 31/03/2005. Thereafter, the respondent – Corporation passed the impugned General Board Resolution No. 28-G dated 20/02/2006, whereby, the rent for 17 shops was increased to Rs.600/- per month whereas, the rent for 5 shops was increased to Rs.525/- per month, without affording an opportunity of hearing to the petitioners and also without following the due process of law, as alleged. It is the case of the petitioners that the petitioners made several representations against the said increase to the respondent – Corporation, but, all went in vain, on the contrary, the respondent – Corporation replied the same by directing the petitioners to pay the outstanding amount of rent as per the impugned resolution or else the respondent –

Corporation would seal the shops of the petitioners. The petitioners also made a representation before the Urban Development and Urban Housing Department, Gandhinagar. The said department while directing the petitioners to approach the respondent – Corporation, also communicated *vide* communication dated 6-7/01/2007 requesting the respondent - Corporation to hear the President of Jamnagar Consumer Protection Council as representative of the petitioners in person and to take decision thereon, however, the respondent – Corporation has not given any personal hearing. Lastly, by the impugned communication dated 01/02/2007, the respondent – Corporation informed the petitioners that they have to pay the revised rent by 31/03/2007 and in failure to do so, they would be liable to be evicted from the rented premises. Accordingly, the petitioners are constrained to file the present petitions challenging the aforesaid General Board Resolution No. 28-G dated 20/02/2006 as also the communication dated 01/02/2007 of the respondent – Corporation.

5. By order dated 25/02/2008 passed by this Court, the present petitions were admitted and by way of interim arrangement, the respondent – Corporation was restrained from taking coercive

action against the petitioners, whereas, the petitioners were directed to pay half of the enhanced rent of Rs.600/- fixed by the respondent – Corporation *i.e.* Rs.300/- per month regularly till the final disposal of the petitions, starting from February 2008.

6. Mr. Nirav C. Thakker, learned advocate for the petitioners, has submitted that the Corporation has increased the rent of the said shops disproportionately without giving the petitioners an opportunity of hearing as contemplated by the conditions of auction. It is further submitted by the learned advocate for the petitioners that the market, where the shops are located, is not a municipal market within the meaning of Section 327 of the Bombay Provincial Municipal Corporations Act, 1949 *(hereinafter referred to as the 'BPMC Act')*, since, it is neither owned nor maintained by the respondent - Corporation, but is built upon the land which has been taken on lease by the respondent - Corporation from Panjarapole for a period of 49 years. The learned advocate for the petitioners submitted that since the land is not of the ownership of the respondent – Corporation, it does not have any right to increase the rent arbitrarily, invoking the provisions of the BPMC Act. It is

submitted that rent of Rs.35/- was enhanced to Rs.600/-, which is more than about 17 times of the original rent, without giving the petitioners an opportunity of hearing according to the conditions of auction.

6.1 The learned advocate for the petitioners submitted that since the shops were given on lease to the petitioners by paying specific fees (Sukhdi) till the lease subsists *i.e.* 2014 and therefore, the petitioners are not the ordinary tenant but are the lease holders, whose terms of lease cannot be altered by the respondent – Corporation under the tender conditions.

6.2 The learned advocate for the petitioners submitted that the increase is highly exaggerated and grossly disproportionate and also unjustified and in spite of direction and communication of the Urban Development and Urban Housing Department, the respondent – Corporation did not afford any opportunity of hearing to the petitioners. He submitted that earlier the respondent – Corporation had agreed for reasonable increase in the rent, however, subsequently, retracted from the same and now the respondent - Corporation is threatening to evict the petitioners from the shops in question if enhanced rent is not

paid. He submitted that the petitioners are earning their livelihood by running their small businesses like vehicle repairing, radio repairing, footwear, dairy etc. in the said shops since last many years. He further submitted that certain resolutions were passed *viz.* Resolution No. 468 dated 20/02/1986 seeking increase in the rent, which was strongly opposed by the petitioners and accordingly, the petitioners were charged but are paying the rent at old rate only. He further submitted that the suit filed by the petitioners was dismissed and appeal thereagainst was also dismissed on technical ground that suit is not maintainable under the Bombay Rent Act and under the orders of the Court, the petitioners have been depositing the rent at the old rent only. He submitted that the Deputy Commissioner proposed *vide* communication dated 07/07/2006 to increase the rent nominally in view of possible amicable settlement, however, the same was also not given effect by the respondent – Corporation. He further submitted that respondent – Corporation had not incurred any amount towards maintenance of the shops. Eventually, he submitted that the present petitions may be allowed and the impugned resolution as well as the communication, as aforesaid, be quashed and set aside.

7. On the other hand, Mr. A. R. Thacker, learned advocate for the respondent – Corporation, vehemently opposed the petitions and submitted that present petitions under Article 226 of the Constitution of India are not maintainable at all and only on that count, they should be dismissed. He further submitted that the respondent - Corporation has constructed the shops and allotted them to the petitioners on lease by charging only rent and no other taxes or any other charges or levies were charged. Moreover, he submitted that after conversion of the Nagar Palika into Corporation, the respondent – Corporation has time to time increased the rent, as is empowered under the BPMC Act, as shown in the Chart produced at Annexure 'R/1', page 54 to the petition, to which, the petitioners have never objected. He submitted that the shops are situated in a posh locality of Jamnagar City and the amount being charged towards rent by the respondent – Corporation is too small compared to the rent being charged by other private owners in the locality. Moreover, looking to development factor of the city and location of the area where the shops are situated, it is imperative for the respondent – Corporation to increase the rent more so when, the respondent – Corporation does not charge any taxes or other

levies from the petitioners and also in view of the increased Jantri rates by the Government. He further submitted that some of the original allottees have also transferred their shops to other parties by fetching handsome amount. Lastly, he submitted that the present petitions being without any substance, require to be dismissed.

7.1 In support of his submissions, the learned advocate for the respondent – Corporation relied upon a decision in ***Fruit Commission Agents Association and Others Vs. Government of A. P. and Others, reported in (2007) 8 SCC 511***, wherein it is held that, '*fixation of rent is an administrative/executive function and Court/Judiciary cannot interfere with except on Wednesbury principles. Montesquieu's theory of separation of powers broadly applies in India too. Therefore, where Agriculture Market Committee fixed revised rent in relation to shop-cum-godowns which were allotted on lease to fruit commission agents, the said fixation of rent made after taking into account various factors was rightly not interfered with by the High Court...*'.

7.2 The other decision relied upon by the learned advocate for the

respondent – Corporation is ***K. Mohd. Yousuf and Another Vs. Commissioner, Kadiri Municipality, Kadiri Anantapur Dist., reported in AIR 2005 NOC 82 (ANDH. PRA.)***, wherein, it is held that, "....*when once the licence granted to the petitioners is subject to certain conditions, and imposes the power of supervision and regulating the affairs of the private market with respect to the matter specified in sub-sec. (3) of S. 279 of the Municipalities Act, which inter alia include the power of the municipal council to deal with the rents and fees to be charged in the private markets, it cannot be said that the municipal council has no power to pass resolution enhancing the fee to be collected from the vehicles which transport goods to the shop owners situated outside the market area from outside the municipal area. In the instant case, the municipal council has passed resolution No. 334 dated 31-1-1996 enhancing the fee and such resolution having regard to the regulatory power conferred on the municipal council under S. 279(3) with respect to private markets, cannot be said to be illegal or arbitrary. It is not as if the petitioners had not been paying the fee at all. The petitioners had been paying the fee even prior to the enhancement without any grievance. Be that as it may, none can dispute the fact that a duty is cast on the local bodies, such as*

the panchayats, municipalities and municipal corporations, to maintain cleanliness and hygiene in their respective jurisdictions. For them to sustain and grow and carry on their administration effectively and efficiently and discharge the duties cast upon them and provide the basic civic amenities and keep its citizens happy, it is necessary that they should be financially strong and self-supporting. It is required to notice that it is the specific case of the respondent that the fee collected or levied by them from the vehicles transporting fruits to the shops of the petitioners from outside the municipal area is being used for incurring the expenditure towards removal of heaps of garbage thrown by the petitioners on to the roads, and that the petitioners, who are making profits by doing business in the markets, cannot expect the maintenance of the private markets, at the cost of tax paying citizens of the municipality."

7.3 The next decision relied upon by the learned advocate for the respondent – Corporation is ***Gujarat Nagrik Purvatha Nigam Pachchhat Varg Karmachari Mandal and Another Vs. State of Gujarat and Another, reported in 1997 (2) GLH 996,*** wherein, it is held that, "*The claim of the petitioners for double*

payment is based on the Government resolution of 6th June, 1985. That Government resolution is ipso facto not binding on the Corporation. It may accept or may not accept the decision and the same analogy is applied to the contents of the letter dated 24th February, 1986. It is true that the Corporation sought the guidance from the Government under the subject. Double payment to the employees who have not gone on strike but still it is not binding. It is for the Corporation to resolve to accept it or not. In case the Corporation does not accept it, I fail to see how any legal or fundamental right of the petitioner is infringed. It is for the Corporation to decide to give the benefit of double pay to the employees who have not gone on strike but it is not a right much less an accrued right to the petitioners and that too of the character of enforceable and legal right. This Court sitting under Article 226 of the Constitution can only give the relief to the petitioners where they have a legal or fundamental right of double payment of salary on the ground that they have not gone on strike for the period of strike. The counsel for the petitioners is unable to point out any statutory provision or decision of the Corporation and in the absence of the same, this prayer of the petitioners for issuance of a writ of mandamus to the Corporation cannot be

granted. The Corporation very specifically rejected the claim of the petitioners for the grant of double payment and I do not find any illegality in that decision also". It is further held that, "*...It is a settled law that the administrative circulars or the decisions of the Government does not give any enforceable right to the person concerned. It is an administrative policy decision and even in the case where it would not have been implemented by the Government for its own employees I have my own reservation in case this would have been brought to the Court this court would have declined to interfere. Reference in this respect may have to the decision of the Apex Court in the case of Union of India vs. S.L. Abbas reported in JT 1993 (3) SC 678".*

8. I have considered the aforesaid rival submissions made by the learned advocates for the parties in light of the above-referred case laws. The learned advocate for the petitioners has relied upon the Tender Condition Nos. 15 and 16, English translation of the same reads as under:

> "*15. The lease period of Panjarapole is of 49 years, which is to be considered as 46 years and hence, if the Panjarapole increases the lease rent, the same shall be*

borne by the shop owners.

16. For amending and/or renewing the conditions, both the parties shall sit together and decide the same considering the extant position of the surroundings."

8.1 Drawing attention on condition No. 15, the learned advocate for the petitioners submitted that, from plain reading of the same it transpires that as and when the Panjarapole will increase the rent, the increase shall be payable by the petitioners. He further submitted that, for amending or renewing conditions, the shop owners *i.e.* the petitioners and the respondent will have to sit together and considering the extant position, will act accordingly. He then submitted that without affording any opportunity of hearing to the petitioners and without following the due process of law, the respondent – Corporation had passed the General Board Resolution No. 28-G dated 20/02/2006 and had increased the rent exorbitantly and the present petitions have been agitated on the same issue.

8.2 It is not in dispute that earlier, the respondent – Corporation had passed the Resolution No. 468 dated 20/02/1986 increasing the rent, which was challenged by the petitioners

herein before the Civil Court concerned and the Civil Court was pleased to dismiss the said suit being Regular Civil Suit No. 5 of 1987 by order dated 19/09/1998 passed by the learned 4th Civil Judge (S.D.), Jamnagar against which, an appeal was preferred before the District Court, which also came to be dismissed by order dated 31/03/2005. The said orders have not been challenged by the petitioners before the higher forum and accordingly, as submitted by the learned advocate for the respondent – Corporation, the said orders have attained the finality and now, it is not open for the petitioners to say that the said resolution was opposed by the petitioners because it has attained the finality, as stated herein above. It is also not in dispute that the land in the Limda Lane area was taken on lease for a period of 49 years by the respondent – Corporation at the rate of Re.1/- *per annum,* which was developed and construction of shops was made on the said land by the respondent - Corporation as aforesaid and allotted to the present petitioners on rent by auction on certain conditions. Though it is fact that the Panjarapole has not increased the lease rent, however, for the benefit of the society, respondent – Corporation has made the huge investment and expended money for construction, which is, as such, the public money and

the respondent – Corporation has made an attempt to increase the rent, as is reflected from the documents produced by the respondent – Corporation – original defendant at Annexure 'R/1', page 54, which is also tallied with the Resolution No. 468 dated 20/02/1986. The petitioners herein had challenged the said action before Civil Court at Jamnagar as referred above, in which the petitioners have not succeeded and the said action of the respondent – Corporation has attained finality. The learned advocate for the petitioners has much argued on the fact that no opportunity of hearing has been given by the respondent prior to said increase of rent. It is the fact that the said Resolution No. 468 was challenged by the petitioners before the Civil Court and subsequently before the Appellate Court and it appears that ample opportunity was with the petitioners as well as with the respondent for any kind of settlement. It appears that by challenging the action of the respondent – Corporation one after another before the Courts of law, the petitioners have prolonged the issue with sole intention of not paying the increased rent as mentioned in the document at Annexure 'R/1', page 54. From the said conduct of the petitioners, it transpires that they are simply interested in prolonging the issue though the same has attained finality as referred above. It is also important to note

that the original lease is also going to expire in this year i.e. in the year 2014.

8.3 At this juncture, it is pertinent to note that as per the provisions of the BPMC Act, the persons who are in occupation of immovable property as a tenant or landlord, have to pay the Property Tax. In the instant case, no Property Tax has been levied on the shops allotted to the petitioners, as submitted by the learned advocate for the respondent – Corporation. Nothing substantial has been put-forth by the learned advocate for the petitioners to controvert the said submission.

8.4 The submission of the learned advocate for the petitioners that the respondent – Corporation has not spent any amount towards the maintenance under Section 327 of the BPMC Act of the shops after the construction and accordingly, it has no power to increase the rent taking into account various developmental factors requiring revenue etc. is baseless. On this issue, except bare words, nothing is forthcoming on record to substantiate the said submission. The petitioners could not produce any cogent evidence to prove that any demand made by them at any point of time for maintenance of their shops was

rejected by the respondent – Corporation. In absence thereof, the said submission has no substance and merit. Nevertheless, a duty is cast upon the respondent – Corporation to maintain cleanliness and hygiene in the respective areas.

8.5 In the affidavit-in-reply, the respondent - Corporation has contended that as per the Chart Annexure 'R/1', rent was gradually increased as mentioned therein from the period in between 1984-1985 and 2006-2007 and the petitioners had never objected to it. In the affidavit-in-rejoinder, the petitioners have averred that the Chart produced at Annexure 'R/1' showing the rent allegedly charged from the petitioners from 1984 to 2007 is baseless inasmuch as the petitioners were and are charged at the old rate only. It is further averred that under the orders of the Court, the petitioners have been depositing the rent at the old rate and therefore, the contention of the respondent – Corporation is false. The petitioners have not produced any evidence to prove the above-referred submission nor has the respondent produced any material to show that the petitioners had ever paid the rent as per Annexure 'R/1'. In the said circumstances, it is deemed proper not to delve much upon the said issue. The fact remains that money was spent by the

respondent – Corporation, which is public money, for construction of shops for the benefit of the society after following due procedure i.e. issuing Public Notice in the newspapers and conducting public auction and for allotment of the same to the residents of Jamnagar, that too in the year 1969. Under the circumstances, there is substance in the submission of the learned advocate for the respondent – Corporation that it was imperative for the respondent – Corporation to revise the rent from time to time to generate revenue taking into account various prevailing developmental factors of area where the shops are situated and also for development of the city, more particularly, when the shops had been allotted by charging only rent and not charing any other taxes or charges.

8.6 Considering the case laws on which the learned advocate for the respondent – Corporation has placed reliance, it is clear that revision of rent is an administrative / executive function of the respondent – Corporation and it appears that it has revised rent in relation to shops allotted which had been constructed by expending public money, the said action appears reasonable and the Court should not interfere with the same and considering various aspects of the cases on hand discussed herein above, in

my view the ratio laid down in the same is applicable to the cases on hand.

9. In view of the above discussion, present petitions deserve to be dismissed and are accordingly dismissed. Rule is discharged. Ad-interim relief, if any, shall stand vacated forthwith. No costs. In view of dismissal of petitions, Civil Application No. 12353 of 2012 does not survive and the same is disposed of accordingly.

[G. B. Shah, J.]

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