

(2023) 06 GUJ CK 0013

In the Gujarat High Court

Case No : R/Special Civil Application No. 11326, 11342 Of 2014

State Of Gujarat Through Executive Engineer

APPELLANT

Vs

Lokumal Jawarharlal Ramchandani (Decd.) & Ors

RESPONDENT

Date of Decision : 05-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 32, 32(2), 227, 309
Gujarat Civil Services (Occupation Of Government Residential Accommodation) Rules, 2002 — Rule 12
Gujarat Public Premises (Eviction Of Unauthorised Occupants) Act, 1972 — Section 2(e), 2(g), 2(h), 5
Companies Act, 1956 — Section 3
Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 — Section 4, 4(1), 4(2), 5, 9, 10, 11
Bombay Rent Act, 1947 — Section 5(11)(c)

Citation : (2023) 06 GUJ CK 0013

Hon'ble Judges : Sandeep N. Bhatt, J

Bench : Single Bench

Advocate : Chintan Dave, Pratik Y Jasani

Final Decision : Partly Allowed

Judgement

Sandeep N. Bhatt, J

1. The present group of petitions is filed by the petitioner – State of Gujarat to the separate but identical orders impugned dated 01.03.2013 passed by the 11th Additional District Judge, Rajkot in group of Regular Civil Appeals, whereby the trial Court has set aside the order(s) passed by the Appropriate Authority & Deputy Collector, Rajkot in Eviction Cases dated 15.02.2011 under the Gujarat Public Premise (Eviction of Unauthorized Occupants) Act, 1972.

2. The brief facts of the case are epitomized as under :

2.1 The Government quarters in refugee colony are allotted to the respondents by the United States of Saurashtra, Revenue Department (Refugee), Rajkot vide

order dated 19.10.1949 on the certain terms and conditions. Since their retirement and their death, the legal heirs of the deceased have not returned back the said government quarters and unauthorisedly occupying the same by not paying even monthly rent.

2.2 The state authority had written communication to the respondents to evict the said Government quarter vide its communication dated 27.10.2009 and 18.12.2009. Thereafter, the Competent Authority (Eviction) and Deputy Collector, Rajkot had issued a show-cause notice dated 08.03.2010 to the respondents.

2.3 Being aggrieved by the said show-cause notice the respondents have filed Special Civil Application No.3480 of 2010 before this Court, wherein this Court has, vide its oral order dated 29.03.2010, dismissed the petition and directed the respondents to make the submissions before the Competent Authority concerned pursuant to the said show-cause notice.

2.4 The State Authority has filed eviction cases under Section 5 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 before the Deputy Collector and Divisional Magistrate, Rajkot in the year 2010, wherein the Authority has, vide its order dated 15.02.2011, held that the present respondents are unauthorisedly occupying the Government quarters and directed to recover the market rent and also to recover the taxis paid to the Rajkot Municipal Corporation from the respondents.

2.5 Being aggrieved by the side order, the respondents have preferred the Regular Civil Appeals No.21 of 2011 to 37 of 2011 before the trial Court – District Court, Rajkot.

2.6 The trial Court has, vide its separate but identical orders dated 01.03.2013, set aside the order passed by the Competent Authority dated 15.02.2011 in Eviction Cases, which are also separate but identical.

2.7 Hence, these petition by the State Authorities before this Court, wherein this Court has issued rule vide order dated 07.10.2014 and since then, these petitions are awaiting final adjudication. Therefore, with consent of both the learned advocates for the rival parties, this Court has heard and decided this group of petitions finally, today.

3. Heard Mr.Chintan Dave, learned Assistant Government Pleader for the State Authorities and Mr. Pratik Jasani, learned advocate for the respondents.

4.1 Learned AGP Mr. Chintan Dave for the petitioner – State Authorities has submitted that the respondents have already retired and died and their legal heirs are occupying the said Government quarters, which is unauthorizedly. He has further submitted that they are not paying even market rent and municipal taxes. He has submitted that the trial Court has wrongly held that the respondents are not unauthorisedly occupying the Government quarters.

4.2 He has submitted that the trial Court has erroneously relied as a lease,

transfer and sublet contrary to the terms and conditions of the order of the Government quarter allotted to the refugees, who are retired from the Government service and also died and therefore, the quarters retrained by the legal heirs amount to unauthorized occupants as per the definition given under Section 2(h) of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972. He has submitted that merely payment of regular rent i.e. Rs.69/- per month does not become entitlement to retain the Government quarters allotted to the refugees.

4.3 He has submitted that the trial court has committed gross error in appreciating the fact that the government quarters are not allotted for the perpetual succession but it is allotted to the refugees/employees only. He has submitted that they must have to surrender back to the State Government upon completion of the service or death of the employees. He has submitted that the trial Court has not properly appreciated the scheme of the allotment of the Government quarters to such refusees, as employees, in its true spirit.

4.4 He has submitted that the trial Court has completely ignored the provisions of the Eviction Act by observing that returning a government quarter by the legal heirs does not amount to unauthorised occupant.

4.5 He has submitted that when the original allottee is no more, it is the duty of the legal heirs or relatives of the original allottee to hand over the possession of the government quarter to the State Authority back. He has further submitted that looking to the allotment letter, there was no provision that after the death of original allottee, the legal heirs or relatives of the original allottee shall have right to possess the said Government quarter. He has also submitted that as per condition No.8 of the original allotment letter, the Government is entitled to take over the possession of the said Government quarter in question back after the death or after retirement of the original allottee.

4.6 He has submitted that as per Section 2(h) of the Act, the present respondents are the unauthorised occupants of the Government quarters in question.

4.7 In support of his submissions, he has relied upon the following decisions :

(i) 2008 (1) GLH 791 – Mangrol Takula Panchayat versus Ranabhai @ Gagubhai Gigabhai and others

(ii) AIR 2023 (0) 13 (Guj.) – Jaferkhan Alarakhabhai Radhanpuri Versus Dholka Nagar Palika

(iii) Civil Appeal No.4064 of 2004 – S.D. Bandi versus Divisional Traffic Officer, KSRTC (SC), dated 05.07.2013

(iv) Special Civil Application No.17396 of 2013 and other allied matters – M.R. Makwana & Ors. Versus State of Gujarat, dated 01.05.2023

4.8 He has submitted that these petitions may be allowed and the order passed

by the Competent Authority may be upheld, by quashing and setting the impugned order passed by the trial Court.

5.1 Learned advocate Mr.Pratik Jasani for the respondents has submitted that the competent authority has not properly appreciated oral evidence as well as documentary evidence produced by the parties. He has submitted that the competent authority has wrongly believed that the respondents are unauthorised occupants of the disputed premises. He has submitted that the authorities had issued notice to the dead person, inspite of having knowledge of the fact that the original allottees are no more. He has submitted that, therefore the notice as well as the consequential proceedings are nullity.

5.2 He is submitted that the disputed quarters are allotted to the father(s) of the respondents under the Special Act for the displaced persons by the then Saurashtra Government in the year 1949. He has submitted that the said quarters were allotted on rent and therefore it was leased for all purposes. He has submitted that the nature of allotment can never be inferred to be that it is controlled by the time, therefore, tenancy right would devolve on legal heirs automatically considering the provisions of Section 5(11) (c) of the Bombay Rent Act. He has submitted that there is no stipulation that the person allotted quarters shall be ceased to be tenant after the death of original allottee.

5.3 He has submitted that the disputed quarters were allotted to lessee or transferee as a refugee, not as a government servant. He has submitted that the respondents have paid the rent prescribed by the government regularly after and before the death of father of the respondents and the department has accepted the said rent from the occupiers and allowed to continue the possession. He has also submitted that the impugned notices were issued in the name of original allottees and therefore, it cannot be termed as valid notice, where the heirs of original allottees are occupying the said quarters.

5.4 He has further submitted that in most of the quarters, the legal heirs are residing and have paid rent to the Authority. He has submitted that the quarters in question were allotted to the original allottees by the Saurashtra State in the year 1949 as refugees and since then, the respondents are residing there. He has submitted that the said colony is itself known as Refugee colony. He has submitted that there is no time limit prescribed while allotting the quarters in question. He had submitted that the government has allotted the quarters in question to the original allottees and after their death, the heirs of them are in possession, and therefore they are not unauthorised occupants. He has submitted that these petitions may be dismissed and this Court may not interfere in the impugned order passed by the trial Court.

6.1 I have heard learned AGP Mr.Chintan Dave for the state authorities and learned advocate Mr. Pratik Jasani for the respondents - original allottees. I have perused the improved order passed by the trial court as well as the order passed by the competent authority. I have also gone through the material available on

record. It is noted that the present petitions are filed by the State of Gujarat under Articles 226 and 227 of the Constitution of India. Before dealing with the submissions made in the present petitions, it is appropriate to re-produce Articles 226 and 227 of the Constitution of India as under :

“226. Power of High Courts to issue certain writs-

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32.

227. Power of superintendence over all courts by the High Court

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may

- (a) call for returns from such courts;
 - (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
 - (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts
- (3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.
- (4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.”

6.2 From record, The following undisputed facts are emerged.

6.2.1 The original allottees i.e. the father/grandfather of the present respondents, got migrated to India from Pakistan in the year 1947.

6.2.2 Since they were Government servants and were the refugees, the erstwhile State of Saurashtra had allotted the Government quarters in question to them in the year 1949, on certain terms and conditions stated therein.

6.2.3 The State of Saurashtra has allotted the said quarters solely for the rehabilitation and resettlement of the said refugees at that time and therefore, the said quarters are known as refugee quarters till today.

6.2.4 The original allottees have retired from service after superannuation and have expired thereafter.

6.2.5 The rent of Rs.69/ is not paid by them to the concerned authority.

6.2.6 The respondents are occupying the said quarters till today. Some of them are the legal heirs and/or cousins and/or tenants, etc.

6.2.7 There are 17 such Government quarters, which are subject matters before this Court.

6.2.8 Some of them are in closed condition, in dilapidated conditions and even not in proper condition in which they can stay.

6.3 At this stage, it is relevant to refer to the order of allotment issued by the Authorities concerned in the year 1949 to such refugees, one of such orders is as under :

“ United State of Saurashtra

Revenue Department (Refugee)

Rajkot.

Date : 19th October, 1949

ORDER

The displaced persons both Government Servants and non-Government servants shown in the attached list are granted one house each at their own requested on the terms and conditions as shown below :-

1. they will pay monthly rent of Rs.25/- of such amount as may be fixed hereafter by the Executive Engineer.
2. They will keep up the building in good order and will not cause any damage to it.
3. They will not make any addition or alteration to the building.
4. They will not transfer or sub-let their use to anyone else.
5. They will execute an affidavit to the effect that they do not possess any house or other accommodation anywhere else in or outside Saurashtra.
6. They will surrender the accommodation at present occupied by them to this department when they vacate or when they are required by this department.
7. They will carry out the instructions of the Executive Engineer, Rajkot from time to time.
8. If default is committed in payment of rent for any month or if any of the above terms and conditions is violated, the grantee will be liable to be evicted.

Sd/- R.M. Trivedi

Asst. Secy. To Government

United State of Saurashtra

To :

All the allottees

The Executive Engineer

The Chief Accounts Officer

The Collector, Rajkot."

6.4 From above it transpires that there are specific conditions in the allotment letter, more particularly Condition No.6 that, they will surrender the accommodation at present occupied by them to this department when they vacate or when they are required by this department, and further Condition No.7 that, they will carry out the instructions of the Executive Engineer, Rajkot from

time to time, and further Condition No.8 that, if default is committed in payment of rent for any month or if any of the above terms and conditions is violated, the guarantee will be liable to be evicted.

6.5 In the present case, the department has, time and again, requested the present respondents to vacate the said Government quarters, but they have not vacated till date. Further, there is default committed by the respondents in payment of rent, which is undisputed, which can be seen from the following statement made by the department.

Sl.No.

SCA Nos.

Rent not paid since

1.

11326/2014

Last 10 Years

2.

11327/2014

June, 2022

3.

11328/2014

June, 2019

4.

11329/2014

January, 2019

5.

11330/2014

Last 10 years

6.

11331/2014

September, 2022

7.

11332/2014

November, 2019

8.

11333/2014

September, 2017

9.

11334/2014

October, 2022

10.

11335/2014

Last 10 Years

11.

11336/2014

February, 2022

12.

11337/2014

November, 2021

13.

11338/2014

November, 2021

14.

11339/2014

January, 2022

15.

11340/2014

Last 10 Years

16.

11341/2014

April, 2022

17.

11342/2014

June, 2022

6.6 At this stage, it is relevant to take into consideration the relevant provisions of Section 2(e) regarding public premises, which reads as under :

"2(e) "public premises" means-

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendments Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,- (i) any company as defined in section 3 of the Companies Act, 1956, in which not less than fifty-one per cent, of the paid up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company."

6.7 Since it is the public premises, at this stage, it is relevant to refer to the provisions of Section 2(g) of the Act, which is as under :

"2(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

6.8 From the conjoint reading of above, it becomes clear that the premises in question is 'public premises' as contemplated under the said Act. Therefore, the provisions under the Act would be applicable and attracted in respect of the premises in question. This brings into picture the definition of the term "unauthorised occupation", which is provided under Section 2(g). As per the said provisions, any person who occupies public premises, without authority, for such occupation, then he is in unauthorised occupation. The said term also includes continuance of occupation of the public premises by any person, even after the authority under which he was allotted to occupy the premises, expires or gets determined for any reason whatsoever. It is also relevant to consider the contention raised by the respondents that notice is issued in the name of heirs of dead person i.e. Lokumal. It is relevant to refer to Section 4(1) & (2) of the Public Premises (Eviction of Unauthorised Occupants) Act, which read as under :

"4. Issue of notice to show cause against order of eviction.—

(1) If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall—

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises,—

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof; and

(ii) to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.”

It is undisputed fact that notice is received by heirs of original allottees, deceased Lokumal in the present case, who are actual but unauthorized occupants and are having knowledge about the notice of the public premises. On the contrary, this hyper-technical contention shows their dishonest intention to prolong their occupation of premises under one pretext or another. This Court is taking serious note of such conduct of the respondents and it transpires that the trial Court has committed gross error in giving findings on this aspect. The trial Court has not appreciated the contents of said notice itself and misread the documentary evidence which should have been read in its entirety. In fact, the said notice refers to conditions no.4 and 8 of the allotment order and this Court, vide order dated 29.03.2010 in Special Civil Application No.3480 of 2010, has rejected the said petition filed by respondent against such notice issued by the State Authorities.

6.9 From the facts noted above, it transpires that the respondents (original allottees) have committed breach of the conditions of the allotment order and since they have retired from the services / expired, they have not vacated the said quarters. Therefore, the concerned authority has filed an application before the Deputy Collector and Sub Divisional Magistrate, Rajkot for eviction of the government quarters under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act. After hearing the parties, the Competent Authority has, vide its reasoned order dated 15.02.2011, allowed the application and declared that the respondents are the unauthorised occupants.

6.10 At this stage, it would be fruitful to refer to Section 5 of the Act regarding eviction of unauthorised occupants, which the authority has properly followed, which is as under :

“5. Eviction of unauthorised occupants -

(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, by himself, or by

advocate, attorney or pleader, the competent officer is satisfied that any of the reasons specified in sub-section (1) of section 4 exists, the competent officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises; and there upon the order shall be deemed to have been duly served on all the persons concerned.

(2) If any person refuses or fails to comply with the order of eviction within thirty days of the date of its service under sub-section (1), the competent officer or any other officer duly authorised by the competent officer in this behalf may evict that person from, and take possession of, the public premises and may for that purpose, use such force as may be necessary.

(3) Notwithstanding anything contained in sub- section (2), where a person who has been ordered to vacate any public premises for the reasons specified in sub-clause (i) or (iv) of clause (a) of sub-sec. (1) of section 4 pays to the competent officer the rent in arrears or carries out or other- wise complies with the terms contravened by him to the satisfaction of the competent officer as the case may be, within one month, of the date of service of the notice or such longer time as the competent officer may allow, the competent officer shall, in lieu of evicting such person under sub-section (2), cancel his order made under sub-section (1) and thereupon such person shall hold the premises on the same terms on which he held them immediately before such notice was served on him."

Thus, the above provisions empower the authority to order eviction of an unauthorized occupants and therefore, the authority has rightly passed the order.

6.11 In the present case, Neither the widow, nor the legal heirs, nor the cousins, nor the tenant was allotted any quarter by the Government, which is undisputed fact. Thus, it can be said that the allotment orders were issued in favour of the original allottees i.e. the father / grandfather of the present respondents and it is also an undisputed fact that the original allottees, who were refugees, have been allotted the quarters and thereafter they have expired. Therefore, it can be said that the agreement is in existence between the original allottees and the Government and therefore, it cannot be considered that that agreement is with the present respondents, who are the heirs of the original allottees.

6.12 This Court has decided the similar question in the case of M.R. Makwana and others versus State of Gujarat – Special Civil Application No.17396 of 2013 and allied matters dated 02.05.2023. The relevant paras : 17.2.3.2 to 19 are as under :

" 17.2.3.2 With regard to holding possession of the Government quarters after retirement and/or death is concerned, it is noted that after their retirement, the respondent has called upon the petitioners to hand over the vacant and peaceful possession of the Government quarters in question on the ground that the so-

called agreement of allotment stands cancelled due to the retirement on superannuation and/or death. Therefore, it is clear that the petitioners are occupying the said Government quarters after their retirement and/or death illegally. At this juncture, Rule 12 of the Gujarat Civil Services (Occupation of Government Residential Accommodation) Rules, 2002 is required to be considered, which is as under :

“12. Occupant of the residential accommodation - The incumbent of a post, for whom a residential accommodation has been made available, shall be considered to be in occupation of the same during the period of his incumbency of the post.”

The said Rule 12 is enacted by the Government by exercising the powers conferred by the proviso to Article 309 of the Constitution of India, wherein, it is clearly stated that the residential accommodation is available till an individual is holding a particular post in the Government establishment. Hence, as soon as the Government employee is discharged from his post for any reason whatsoever, then he is bound to vacate the residential accommodation provided to him.

17.2.4 With regard to question of illegal occupants is concerned, it is noted that the petitioners were allotted these Government quarters while they were in Government service on curtailed terms and conditions. They are retired / have expired since long. They have not vacated the quarters in question inspite of the terms and conditions of the allotment letters. Some of them are even not paying the rent of such quarters. The authorities have issued notices to the petitioners time and again for vacating the quarters and for arrears of rent. Thus, this Court finds that the petitioners are in illegal possession of the said Government quarters since long.

18. From above, it is clear that the quarters are the Government quarters and the Government is its owner. While in service, the petitioners were allotted such quarters. They are retired / have expired. Various notices were served to the petitioners for vacating the quarters. Many of them are not paying even rent to the Government as on today. Still they are in possession of the said quarters and therefore, after retirement, it can be said that the petitioners are occupying the Government quarters illegally.

19. We cannot shut our eyes about the hard reality that many Government employees, who are at present in the service, are waiting for allotment of the Government quarters. Learned AGP for the State has placed on record the statement of the employees who seek Government quarter since long which is about 1200 in figures. I know that all the employees, who are in service, cannot be accommodated by vacating the quarters in question, but atleast some of them can be accommodated by the Government.

It is relevant to refer to the decision of the Hon'ble Apex Court in the case of S.D. Bandi versus Divisional Traffic Officer, KSRTC & Ors., recorded on Civil Appeal No.4064 of 2004, dated 05.07.2013. The relevant paras: 1, 2, 5 and 12 are as

under :

"1. The instant case relates to the occupation of government accommodation by members of all the three branches of the State, viz., the Legislature, the Executive and the Judiciary beyond the period for which the same were allotted. The houses/quarters difficulty in occupation beyond the accommodating of period other such government prescribed causes persons waiting for allotment and, therefore, the Government is at a loss on the one hand in not being able to accommodate those persons who are in need and on the other is unable to effectively deal with the persons who continue to occupy unauthorisedly beyond the period prescribed.

2. Despite the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short 'the Act'), it is seen that it has not been effective enough in dealing with the eviction inasmuch as the competent Authority, i.e., Estate Officer has to first initiate proceedings and pass orders after hearing the parties and thereafter, one statutory appeal lies to the District Judge under Section 9 of the Act. After disposal of the appeal, people resort to writ proceedings thereby enjoying the scarce government accommodation. There are cases where the occupants are so affluent that they are willing to pay the penal/ market rent and continue to occupy government quarters especially in metropolitan cities where such government quarters are a luxury situated in several acres of land within the heart of the city.

5. Pursuant to the said order, this Court, taking note of the fact that in government quarters, unauthorisedly, people are continuing for years together to the detriment of the persons who are entitled to occupy the same and also that the same is the position in most of the State capitals and Head quarters of the Union Territories, issued notices to the Union of India, all the States and the Union Territories with a direction to furnish the list of such unauthorized occupants of government quarters in the State capitals and Head quarters of Union Territories belonging to all the three limbs of the State, viz., the Legislature, the Executive and the Judiciary. This Court further directed to furnish all the details including names of such persons, details of quarters, period of unauthorized occupancy, steps taken for vacation and its result etc., and also that in case no steps have been taken, reasons for such inaction.

12. Before considering the response of the Union of India, States and the Union Territories as to the suggestions of learned amicus curiae, let us consider the relevant provisions of the Act applicable to the persons in service. The Act was enacted to provide for eviction of unauthorized occupants from public premises. Section 2(e) of the Act defines 'public premises' as under:

"e) "public premises" means-

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the

Public Premises (Eviction of Unauthorised Occupants) Amendments Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,- (i) any company as defined in section 3 of the Companies Act, 1956, in which not less than fifty-one per cent, of the paid up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company."

Section 2(g) defines "unauthorized occupation" as under:

"(g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

Section 4 of the Act speaks about issue of show cause notice before passing an order of eviction and Section 5 deals with eviction of unauthorized occupants. Section 7 relates to direction for payment of rent or damages in respect of public premises. Section 9 speaks about appeal against the order of the Estate Officer. In terms of Section 10, the order passed by the Appellate Authority shall be final and shall not be called in question in any original suit, application or execution proceedings whereas Section 11 speaks about offences and penalty." "

6.13 It is also fruitful to rely on the judgment of the Hon'ble Apex Court in the case of M/s Estralla Rubber versus Dass Estate (Private) Ltd. reported in (2001) 8 SCC 97, and more particularly para 6 thereof, which reads as under:

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in number of decisions of this Court. The exercise of power under this Article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do duty expected or required by them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the courts subordinate or tribunals. Exercise of this power and interfering with the orders of the courts or tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person

can possibly come to such a conclusion, which the court or Tribunal has come to.”

6.14 Thus, in view of above facts and circumstances of the case as well as keeping in mind the ratio laid down by this Hon’ble Court as well as by the Hon’ble Apex Court as noted above, this Court finds that the trial Court has committed an error in evaluating the facts of the present case. The order passed by the Competent Authority is just and proper. The trial Court has not properly considered the terms and conditions of the allotment order and has also not properly interpreted the provisions of law in its true spirit and committed error apparent on the face of record and also findings are perverse, as such, is without properly considering the terms of allotment order and also ignoring settled position of law. The trial Court has also not properly considered the factual aspects of the matter, therefore, such erroneous order passed by the trial Court – District Court is required to be quashed and set aside and the order passed by the Competent Authority (Eviction), Rajkot is required to be confirmed and restored.

7. For the reasons recorded above, the following order is passed.

7.1 All these petitions are partly allowed.

7.2 The orders impugned passed by the District Court, Rajkot in Regular Civil Appeals No.21 of 2011 to 37 of 2011 dated 01.03.2013 are hereby quashed and set aside. Consequently, the order(s) passed by the Competent Authority (Eviction) is required to be implemented.

7.3 Rule is made absolute to the aforesaid extent in all these petitions.

8. At this stage, learned advocate for the respondents Mr.Pratik Jasani requests to stay of this judgment. This Court has observed that since the respondents are occupying the premises in question unauthorisedly and without authority, as observed in this judgment above, the request is rejected.