

(2008) 04 GUJ CK 0032

In the Gujarat High Court

Case No : Company Application No. 175 of 2008 in Company Petition No. 205 of 1996

Sureshchandra Lalbhai Desai

APPELLANT

Vs

O.L. Gujarat State Textile Corporation Ltd. (In Liquidation)
and Another

RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(1), 13(1), 28
Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1956 — Section 2, 25, 3(1), 3(2), 4(2)

Citation : (2008) 2 GLR 1644

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Girish D. Bhatt, for the Appellant; J.S. Yadav, for Official Liquidator and Bharat T. Rao, for the Respondent

Judgement

K.A. Puj, J.—The applicant has taken out this Judge's Summons seeking leave of this Court u/s 446(1) of the Companies Act, 1956 to continue the HRP Suit No. 1065 of 2006 filed by him against the opponents for the reliefs prayed for in the said suit comprising of the relief for the actual and physical possession of the suit premises as well as for decree for arrears of rent and mesne profits and for permanent injunction restraining the opponents from transferring, assigning or parting with the possession, in any manner, of the suit premises. With the leave of the Court, the applicant has also prayed for alternative relief seeking direction to the opponents to hand over vacant and peaceful possession of the premises in question, namely, ground floor premises of 8, Hindu Colony, Navrangpura, Ahmedabad-380 009 to the applicant.

2. This Court has issued notice on 10.03.2008 making it returnable on 19.03.2008. Mr. J.S. Yadav, learned advocate appeared for the Official Liquidator and waived service of notice. The Official Liquidator was directed to file his report

as to why no action has been taken during all these years for taking possession of the property of the Company in liquidation from the respondent No. 2.

3. On 25.03.2008, Mr. B. T. Rao, learned advocate appeared for respondent No. 2 and placed on record the affidavit-in-reply filed by the respondent No. 2. The Court recorded the submission made on behalf of the respondent No. 2 that the respondent No. 2 is residing with his family in the suit premises and he would not make any change so far as the present status of the property in question is concerned. The Official Liquidator has filed his report dated 12.03.2008.

4. An affidavit in support of the Judge's summons is filed by the applicant. Mr. Girish D. Bhatt, learned advocate appearing for the applicant has submitted that the applicant has filed HRP Suit No. 1065 of 2006 against the respondents in the Court of Small Causes Court, Ahmedabad praying for the reliefs of actual and physical possession of the suit premises as well as for decree for arrears of rent and mesne profits and decree for permanent injunction restraining the respondents from transferring, assigning or parting with the possession in any manner, the suit premises in favour of any one else. He has further submitted that it is the case of the applicant in the said suit that the suit premises were given to the erstwhile New Swadeshi Mills of Ahmedabad Limited, Naroda Road, Ahmedabad on 01.05.1980 on Leave and License basis by an agreement of even date. The premises was given for use and occupation by the said Mills at the rate of Rs. 800/- per month by way of compensation or license fees and that all Government and Municipal taxes as well as education cess were to be paid by the said Mills Company. Mr. Bhatt has further submitted that the applicant's wife had also executed a separate agreement of license in respect of furnitures which were allowed to be used by the Company on monthly compensation of Rs. 300/-. Since the winding up proceedings were initiated in Company Petition No. 185 of 1984 against the said Mills Company, the applicant and his wife have filed Company Application No. 167 of 1985 praying for the direction to hand over peaceful and vacant possession of the ground floor of the suit premises with furniture which were given on Leave and License basis to the said Mills Company. During the pendency of the said Company Application, the said Mills Company and all its rights and assets had been taken over by the Gujarat State Textile Corporation Limited. The Company Application filed by the applicant and his wife were disposed of by this Court vide order dated 06.08.1993 on the ground that the Company Application had become infructuous as the Company and all its rights and assets had been taken over by the Gujarat State Textile Corporation Limited.

5. Company Petition No. 205 of 1996 had been registered before this Court on the basis of the opinion forwarded by the Board for Industrial and Financial Reconstruction pertaining to the Gujarat State Textile Corporation Limited. The said Company Petition along with Company Application No. 266 of 1996 was decided by this Court on 06.02.1997 and by virtue of the said order, Gujarat State Textile Corporation Limited was ordered to be wound up and the Official

Liquidator attached to this Court was appointed to take charge and possession of the properties and assets of the said Company and the Official Liquidator had appointed Gujarat Industrial Development Corporation as his Agent u/s 457(2) (v) of the Companies Act, 1956 for the purpose of preservation, protection and disposal of the property and that the said Agent was to act under the instruction of the Official Liquidator. The Official Liquidator was empowered to exercise of powers under Sections 456 & 457 of the Companies Act, 1956.

6. Mr. Bhatt has further submitted that initially, at the time when HRP Suit No. 1065 of 2006 was filed before the Small Causes Court at Ahmedabad, the Official Liquidator was not joined as a party. However, on reply being filed by the respondents, it was pointed out that the Official Liquidator was required to be joined as a party and accordingly, he was joined as a party and it was also brought to the notice of the applicant that leave u/s 446 of the Act is required to be obtained for continuing the suit against the respondents. Accordingly, the present application is filed before this Court. He has further submitted that the respondent No. 2 being the ex-employee of New Swadeshi Mills Company and there was separate Leave and License with the Company in liquidation, in view of the provisions contained in Section 630 of the Companies Act, 1956 and the settled position in law, the respondent No. 2 is required to be evicted from the suit premises and keeping this position in mind, the applicant has sought for the leave of this Court to make an amendment in the application which was granted by the Court and accordingly, an alternative prayer is made seeking direction against the respondents to hand over vacant and peaceful possession of the suit premises to the applicant.

7. Mr. J. S. Yadav, learned advocate appearing for the Official Liquidator has submitted that the Government of Gujarat issued Ordinance No. 8-85-Gujarat Closed Textile Undertaking Nationalisation Ordinance, 1985. Thereafter on 27.02.1986, the President of India gave assent and the Gujarat Closed Textile Undertaking Nationalisation Act, 1986 came to be passed. u/s 3(1) of the said Act, all the rights and interest in the specified undertaking in respect of the ownership possession etc. vests in the State Government. u/s 3(2) of the Act, all the properties, rights etc. vested in the State Government stood transferred to the Corporation i.e. Gujarat State Textile Corporation Limited. Pursuant to the opinion of the BIFR, an order came to be passed by this Court of winding up of the said Corporation in Company Petition No. 205 of 1996 with Company Application No. 266 of 1996 and the Official Liquidator attached to this Court was appointed as the Official Liquidator and was directed to take charge and possession of all the properties and assets of the said Corporation. Pursuant to the order, the Official Liquidator was in charge of all the properties of the GSTC inclusive of the properties of New Swadeshi Mills of Ahmedabad Limited. He has, therefore, submitted that no sooner the Company went into liquidation and thereafter by virtue of the closed textile Mills Act, the properties are vested in the State Government all throughout and the Official Liquidator was supposed to be in charge of the assets of the Company in liquidation and hence, the

respondent No. 2 has no right whatsoever to retain the possession of the suit premises. The agreement with the Mills Company has come to an end and thereafter no fresh agreement was executed in favour of the respondent No. 2. He has, therefore, submitted that the respondent No. 2 should be directed to hand over the possession either to the Official Liquidator or to the State Government and if they are not required this leasehold property for any further use, the property should be given back to the original landlord i.e. the present applicant.

8. Mr. B. T. Rao, learned advocate appearing for the respondent No. 2 has submitted that the applicant has not come with clean hands and suppressed material facts before this Court and had not disclosed even correct facts as the premises which is occupied by the respondent No. 2 is not the premises held by New Swadeshi Mills of Ahmedabad Limited as tenant and tenancy rights have already come to an end on 30.04.1983 and thereafter, the respondent No. 2 is residing in the said premises as tenant. For some time, the Mills Company has paid the rent and thereafter Zenith International has paid the rent by demand draft which was accepted by the applicant. He has, therefore, submitted that the present application deserves to be dismissed only on the ground of suppression of material facts. Earlier also, the applicant had filed Company Application No. 167 of 1985 in Company Petition No. 185 of 1984 and the Company Petition No. 185 of 1984 has been disposed of pursuant to the Government of Gujarat passing the Act being Gujarat Sick Textile Undertakings (Nationalisation) Act, 1986. The present application being delayed one should not be entertained by this Court as the applicant has never initiated any proceeding in any Court of law.

9. Mr. Rao has further submitted that the applicant for the first time has filed HRP Suit No. 1065 of 2006 before the Small Cause Court, Ahmedabad and since the property in question does not belong to the Company in liquidation, this Court has no jurisdiction to entertain the present application. The respondent has been occupying the suit premises since 1980 and after 1984, the respondent No. 2 has been making payment of rent but the applicant is refusing to accept the same. At no point of time any independent proceedings has been initiated by the present applicant in any Court of law which shows that the respondent No. 2 is tenant and it is well within the knowledge of the applicant looking to the contemporaneous record.

10. Mr. Rao has further submitted that the present application seeking leave u/s 446 of the Act is not maintainable as New Swadeshi Mills of Ahmedabad Limited has already intimated the applicant that the leave and license agreement with the Company has been expired and now the respondent No. 2 will be using the premises as the sole tenant and payment will be made by the respondent No. 2. The Mills Company wrote a letter to the Ahmedabad Municipal Corporation requesting for change in occupier and his name was shown in the Municipal record as the occupier instead of the name of the Mills Company. He has further submitted that the present application does not lie before this Company Court

when the premises for which the applicant has sought for is not held by erstwhile New Swadeshi Mills of Ahmedabad Limited and it had been handed over by the said Mills Company long back in April, 1983 to the respondent and since then the respondent is in occupation of the property as a tenant directly and the applicant has never objected to for the same and, therefore, the present application deserves to be dismissed with cost.

11. Mr. Rao has further submitted that the rent has been paid by Zenith International of Bombay from October 1984 till July 1985. The applicant has not accepted the rent paid by Zenith International for the period from August 1985 to October 1985 which was sent through money orders. Gujarat State Textile Corporation Limited had issued notice to the respondent No. 2 calling upon him to vacate the premises on 05.11.1986. The said notice was duly replied to by the respondent No. 2 on 09.12.1986 wherein all the facts have been stated by the respondent No. 2 and stated that the respondent No. 2 has become statutory tenant and the applicant has never objected to for the same. He has further submitted that as there was stiff rise in the property tax by Ahmedabad Municipal Corporation, the respondent No. 2 had filed Municipal Valuation Appeal Nos. 15590, 15589 and 15591 of 1988 for the Assessment Years 1985-86, 1986-87 and 1987-88 and all the Appeals came to be allowed and at no point of time, the applicant has ever objected for the same. The applicant has paid the property tax of Ahmedabad Municipal Corporation for the years 1986-87, 1987-88 and 1988-89 amounting to Rs. 29,565 and later on the applicant has demanded the said amounts from the respondent and the respondent No. 2 has paid the said amount to the applicant by an A/c. Payee cheque and the receipt has also been issued by the applicant towards Municipal tax. He has, therefore, submitted that the respondent No. 2 has been accepted as occupier of the premises and the property tax is being paid by him regularly. Not only this, the respondent No. 2 has deposited all the property tax of AMC regularly.

12. Mr. Rao has further submitted that the Company in liquidation was never in occupation of the premises after April 1983 and hence, question of handing over possession to the Official Liquidator does not arise. The Official Liquidator has never filed any Company Application pursuant to the reply given by the respondent. Even Gujarat State Textile Corporation has also never issued any notice for handing over possession and only one notice was given which was duly replied by the respondent No. 2. Thereafter, GSTC has not initiated any proceedings in any Court of law against the respondent No. 2 which establishes that the respondent No. 2 is the direct tenant of the present applicant.

13. Mr. Rao has further submitted that the present applicant was harassing the respondent No. 2 from fetching water and creating all types of disturbances and filing complaints after complaints. The respondent No. 2 has, therefore, filed HRP Suit No. 4049 of 1987 in the Small Causes Court at Ahmedabad praying for the direction to restrain the applicant from disturbing enjoyment of the water from AMC's water connection and for construction of water tank. In that matter,

panchnama has been drawn by the Court Commissioner and it was found that the respondent No. 2 is in possession of the entire ground floor of the Bungalow No. 8 as tenant which is owned by the present applicant. He has further submitted that the said suit was ultimately compromised and accordingly, with the permission of the applicant, the respondent No. 2 has constructed under ground water tank and overhead tank on pillars and the respondent No. 2 has been getting water from the connection of AMC. Mr. Rao has further submitted that the applicant is having two separate electric connections, one for ground floor bearing Service No. 89472 in the name of the applicant and which is used by the respondent No. 2 and every alternate month, the applicant receives the bill for Service No. 89472 which is used by the respondent No. 2. The applicant passes over the said bill to the respondent No. 3 and it is paid by the respondent No. 2 through A/c. Payee cheque to the electricity Company every alternate month regularly.

14. With regard to the alternative prayer made by the applicant demanding possession from the respondent No. 2, Mr. Rao has submitted that the respondent No. 2 is the lawfully inducted tenant of the applicant. Statement of affairs nowhere shows the leasehold interest of the Company in liquidation. The law does not require a written agreement of lease and tenancy can be brought about by an oral agreement between the parties. Reliance is placed on the decision in the case of Tirath Ram Gupta Vs. Gurubachan Singh and Another, . The existence of a rent note is not mandatory and documents such as rent receipts, electricity bills, telephone bills, licensee etc. constitutes a valid evidence of tenancy. Once it is shown that the occupant is lawfully inducted and that the owner has accepted the rent from such occupant, such occupant is entitled to a protection as tenant of the premises. He has further submitted that it is settled position that merely because Company goes into liquidation and liquidator/ Official Liquidator is appointed, the rights of the Company vis-a-vis its landlord and/or its tenants do not undergo any change. Reliance is placed on the decision in the case of Smt. Nirmala R. Bafna and Ors. v. Khandesh Spinning & Weaving Mills Company Limited and Anr. AIR 1993 S.C. 1340.

15. Mr. Rao has further submitted that it is settled legal position that all tenants in Gujarat would be entitled to protection under the Bombay Rent Hotel and Lodging Houses Rates Control Act, 1947. Sub-section (1) of Section 12 of the Rent Act restrains the landlord from taking recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of the Act. He has, therefore, submitted that any tenant pays or is ready and willing to pay the amount of standard rent or permitted increases and observes and performs the other conditions of the tenancy cannot be evicted from the premises. Reliance is placed on the decision in the case of Bhaiya Punjalal Bhagwanddin Vs. Dave Bhagwatprasad Prabhuprasad, and in the case of Vora Abbasbhai Alimahomed Vs. Haji Gulamnabi Haji Safibhai,

16. Mr. Rao has further submitted that the respondent No. 2 has paid rent till it was being accepted by the applicant. For subsequent period, letters have been addressed offering the rent. In any case, the respondent No. 2 is ready and willing to pay the rent and can deposit the outstanding amount, if any. Mr. Rao has further submitted that in addition to the documents produced on record evidencing tenancy, the respondent No. 2 can lead further evidence, documentary as well as oral in support of his claim of tenancy. Under the Bombay Rent Act, the respondent No. 2 is entitled to protection against recovery of possession. In case, the respondent No. 2 is found in breach of any of the conditions of tenancy, necessary proceedings will have to be initiated in appropriate Court for recovery of possession. As a matter of fact, the applicant has filed H. R. P. Suit No. 1065 of 2006 before the Small Causes Court, Ahmedabad. In this suit, an absence of tenancy or the breach of conditions of tenancy will have to be pointed out and the respondent No. 2 would be entitled to an opportunity to dispute the alleged breach and/or raise such contention as may be available in law and oppose the motion for eviction. The applicant, however, cannot straightway demand possession based solely on the fact that the Company, the original licensee is ordered to be wound up.

17. Mr. Rao has further submitted that the premises in question was acquired by the respondent No. 2 as tenant in 1983. The Company, namely, GSTC was wound up in 1997 and for a period of 12 years, neither the Official Liquidator nor the applicant has denied the tenancy of the respondent No. 2. He has enjoyed the possession to the knowledge of the applicant and the Official Liquidator. The respondent No. 2 has, thus, become owner by adverse possession and cannot be evicted in the manner sought to be done by the applicant. He has, therefore, submitted that the reliefs prayed for by the applicant is required to be rejected.

18. Considering the voluminous evidence produced by the respondent No. 2 before the Small Causes Court as well as before this Court, Mr. Rao has submitted that there is no dispute about the fact that the respondent No. 2 was the tenant since 1984 onwards and the Company in liquidation has nothing to do with the suit property. He has, therefore, submitted that neither any leave is required to be granted u/s 446 nor any order directing the respondent No. 2 to hand over the possession either to the Official Liquidator or to the State Government or to the present applicant is required to be passed.

19. Having heard the learned advocates appearing for the parties and having carefully considered their submissions in light of the statutory provisions and decided case law on the subject, this Court is of the view that the submission of Mr. Rao to the effect that the respondent No. 2 is the direct tenant of the applicant, on the basis of the respondent No. 2 being in continuous occupation of the premises since 1984 and Municipal record, electricity bills and other legal proceedings, cannot be accepted for the simple reason that the Leave and License Agreement was executed between the applicant and the Company in liquidation for the period of 3 years and that agreement expired in 1983. Simply

by writing a letter by the Company in liquidation to the applicant terminating the lease agreement is not enough. Such an unilateral action cannot bind the applicant. It is an admitted position that there is no direct agreement between the applicant and the respondent No. 2. The applicant has not been accepting the rent from the respondent No. 2 from 1985 onwards as he is very much disputing the alleged claim of tenancy of the respondent No. 2. The applicant is certainly entitled to claim possession on termination of the leave and license agreement between the applicant and the Company in liquidation and as soon as the Company goes into liquidation, the employer-employee relationship between the Company in liquidation and the respondent No. 2 has come to an end. In the case of *K.K. Dhawan v. Dr. (Mrs.) Promila Suri* reported in *All India Rent Control Journal* 1998(1) 181 , the Delhi High Court has held that relationship of landlord and tenant is created by a contract, mere payment of rent does not necessarily establish the relationship of landlord and tenant. The respondent No. 2 could have occupied the premises so long as the employee of the Company in liquidation. Thereafter, he has no right to retain the possession of the premises. In *Sheodhari Rai and Others Vs. Suraj Prasad Singh and Others*, , the Hon"ble Supreme Court held that payment of rent does not necessarily establish relationship of landlord and tenant. Such payment may only prove permissive occupation not amounting to any right or title to possession. In *D.H. Maniar and Others Vs. Waman Laxman Kudav*, , the Hon"ble Supreme Court has held that a person continuing in possession of the premises after termination, withdrawal or revocation of the license continues to occupy it as a trespasser or as a person who has no semblance of any right to continue in occupation of the premises. Such a person by no stretch of imagination can be called a licensee.

20. In the case of *Official Liquidator of Aryodaya Spinning and Weaving Mills Co. Ltd. v. Charansingh Dhupsingh and Ors.* (2005) 125 Comp Cas 765 (Guj), this Court has held that once it is found that a person is a trespasser, proceedings u/s 446 of the Act are due process of law, and the trespasser as such can be directed to be evicted and such direction cannot be said to be without due process of law. The Court can always make an order which is just and proper in the facts and circumstances of a case and it is immaterial as to what are the prayers in the application and particularly in winding up proceedings, whenever the Court discovers any property of the Company in the possession of anybody since the court is to administer justice and to prevent multiplicity of proceedings when the fact of unauthorized occupation of the Company's asset or property by a person is clearly proved before the Court, the Court has ample power u/s 446(2)(a), (b), (d) and Section 468 read with Rule 9 of the Companies (Court) Rules, 1959 to pass such order as it may think proper which the facts and circumstances of the case demand, for determining the rights of the parties.

21. In the case of *Bimal Chand Vs. D.C.M. Ltd.*, while dismissing the petition, the Court held that the question whether a person is tenant or licensee necessarily has to be determined keeping in view the intention of the parties. It has to be seen whether the documents create a lease or license. Giving the payment a

label of rent will not make a person a tenant. Looking to the facts of the present case, it clearly appears that the respondent No. 2 was never inducted as tenant and Leave and License agreement was with the Company in liquidation. The applicant has never agreed to accept the respondent No. 2 as tenant and all throughout, he has not accepted the rent from the respondent No. 2. Since the Company in liquidation was taken over by GSTC which went into liquidation and the property was vested in the State Government, the proceedings were not initiated for eviction and when suit is filed before the Small Causes Court and leave of this Court is sought for during the pendency of suit proceedings, the Court found that the very induction of the respondent No. 2 is illegal and he was never the tenant of the Company in liquidation. The Court can issue direction to the Official Liquidator to take possession from the respondent No. 2 and if it is not required for the business of the Company, the possession should be handed over to the landlord i.e. the applicant.

22. In the case of Prahladbhai Rajaram Mehta Vs. Popatbhai Haribhai Patel and Another, this Court has held that Section 630 of the Companies Act, 1956, applies to a past officer or employee of a Company, if the wrongful obtaining, withholding or application of the property was done in his capacity as such Officer or employee. Thus, when an employee refuses to vacate the premises of the Company on determination of the employment or on his retirement but continues in possession even after his retirement, the employee can be held liable u/s 630 of the Act. The Court further held that Section 13(1)(f) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, provides that if premises are let to a tenant for use as resident in consequence of his being in service, it is also a ground for eviction. This clause refers to an occupation by a servant as tenant, whether by way of remuneration or a part payment for services or whether paying rent or not. If the Company decides to seek possession u/s 13(1) of the 1947 Bombay Act against the employee-tenant the Company has to pursue the remedies before a competent Court as provided u/s 28 of the 1947 Bombay Act. The provisions of Section 630 of the Companies Act, 1956, also provide a special remedy which is summary in nature against a person who ceases to be in the employment of the Company who was given possession of the premises out of such service relation. The Company has an option either to pursue the remedy provided u/s 630 of the Companies Act or u/s 13(1)(f) under the 1947 Bombay Act. There are thus two remedies open to companies. Both provisions give different but concurrent remedies to companies. Even in the case of tenancy, the provisions of Section 630 of the Companies Act are available to a Company. The provisions of the 1947 Bombay Act and the provisions of Section 630 of the Companies Act are required to be interpreted harmoniously so that the object of both the statutes is advanced and not defeated. To say that the provisions of Section 630 cannot be invoked in a case of tenancy would be to render the provision otiose. The provisions of a Central legislation later in point of time, will prevail over the provisions of an earlier State law. Therefore, even if there were any inconsistency, the remedy under the

provisions of Section 630 of the Companies Act, 1956, would be unaffected by Section 28 of the 1947 Bombay Act.

23. The above decisions clearly indicate that if no independent right of tenancy is flowing in favour of the ex-employee of the Company, mere retention of the possession or payment of Municipal taxes, electricity bill etc. would not be enough to establish his right as tenant. The original landlord or the Company and if the Company in liquidation, the Official Liquidator is certainly entitled to claim possession and for that matter, provisions of Section 446 of the Act can also be resorted to.

24. The applicant has also prayed for arrears of rent and mesne profit in the suit which is filed before the Small Causes Court, Ahmedabad. Under the Leave and License Agreement of 1980 with the Company, the monthly rent was fixed at Rs. 800/-. Over the years, there is bound to be periodical increase in the amount of rent. So far as Rules governing measurement of damages are concerned, Madras High Court in the case of *The Union of India (UOI) and Another Vs. Andhra Bank Limited*, held that a tenant continuing in possession of the demised premises after the determination of a lease is called a tenant at sufferance. If such possession is attributable to the consent of the landlord given either expressly or by necessary implication, then he is called a tenant holding over or a tenant at will. But if in a given situation, such consent is not proved, then he is called a tenant by sufferance. But in no case he can be characterised as a trespasser. If a tenant at sufferance continues to occupy the premises after the determination of the lease, then he cannot unjustly enrich himself by claiming that he will pay only the quondam rent and not reasonable rate of damages for use and occupation of the premises. If he assents to pay the enhanced rent demanded at a time when the landlord determines the lease, then he will be considered as a tenant holding over on the basis of new contract of lease as between himself and the landlord. If the tenant, in spite of the warning, contumaciously remains in possession of the premises, the landlord secures a right to get a reasonable compensation from the tenant for such occupation, but it need not necessarily be the enhanced rate of rent claimed by him; but in no circumstances, it can exceed the enhanced rate demanded by him. The Court further held that the Court should investigate and it has the jurisdiction to do so, and find in its discretion whether the enhanced rate claimed by the landlord, in such circumstances is penal or otherwise equitably justified. The Court has power and the discretion to fix a fair and equitable rent in such situations.

25. In the case of *Kesardeo Baijnath Vs. Nathmal Kisanlal*, the Bombay High Court while laying down the criteria for ascertainment of mesne profit, has held that criterion is not what plaintiff might have got had he been in possession but value of user of tenement in defendant after termination of tenancy. The Court further held that Protection of Rent Control Order is not available to erstwhile tenant. Considering all these issues in the context of unavailability of houses on rent, value or user of tenement to defendant would necessarily be much more

than what defendant paid as rent.

26. The plea of Mr. Rao that the application is barred by delay, laches and acquiescence has also no substance. The Gujarat Closed Textile Undertakings (Nationalization) Act, 1986 is an Act to provide for the acquisition and transfer of the closed textile undertakings and the right, title and interest of the owners in respect of the closed textile undertakings specified in the first Schedule, with a view to reorganizing and reconstructing the said textile undertaking and thereby forming viable units to sub serve the interest of the general public by the augmentation of the production and distribution, at fair prices of different varieties of cloth and yarn, and for matters connected therewith, or incidental thereto. First Schedule, inter alia, includes "The New Swadeshi Mills-Ahmedabad". Section 3(1) of the Act states that on appointed date, every specified textile undertaking and the right, title and interest of the owner in relation to every such textile undertaking shall stand transferred to, and shall vest absolutely in the State Government. Section 2 states that "appointed date" means 8th day of November, 1985. Though the Leave and License Agreement was said to have been terminated by the Mills Company in 1983, possession of the premises was not handed over to the applicant. The Mills Company had no power or authority to induct the respondent No. 2 as tenant nor to hand over the possession to him directly. Hence, for all practical purposes, the Mills Company is considered to be tenant at sufferance on the appointed date. Such rights are, therefore, vested in the State Government. Sub-section (2) of Section 3 states that the specified textile undertaking which stands vested in the State Government by virtue of Sub-section (1) shall immediately after it has so vested, stand transferred to and vested in the Corporation. Sub-section (2) of Section 4 states that all property which has vested in the State Government under Sub-section (1) of Section 3 shall by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting it, and any attachment, injunction or decree or order of any Court restraining the use of such property in any manner shall be deemed to have been withdrawn.

27. In view of the above provisions, the Corporation issued notice on 05.11.1986 on the respondent No. 2 for vacation of the premises. It is clearly stated in the said notice that M/s. New Swadeshi Mills of Ahmedabad Limited had hired a premises and was a tenant for the said premises, whereas the respondent No. 2 was in illegal possession thereof. The respondent No. 2 was also made aware about the provisions of Section 25 of the Act, which provides that any person who having in his possession, custody or control of any property forming part of the specified textile undertaking, shall wrongly withheld such property from the State Government or the Corporation, or any person authorized by the Government or the Corporation as the case may be, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to Rs. 10,000/- or with both. Simply because the State Government or the Corporation did not take any action pursuant to such notice does not mean

that the respondent No. 2 was not in illegal possession of the said premises.

28. Since this Court vide its order dated 28.12.2006 passed in Company Petition No. 203 of 2003, directed the Official Liquidator to hand over the custody and possession of the properties of the New Swadeshi Mills Limited i.e. Land bearing Survey No. 1399/1, Block No. 716, Kathwada admeasuring 241875 Sq. Mts. and Final Plot No. 1, T.P. Scheme No. 16 admeasuring 98,085/- Sq. Mts. to the State Government, the Court is of the view that the property of the applicant which was given to the Mills Company and which is in illegal possession of the respondent No. 2 is no longer required by the State Government or by the Official Liquidator and hence, it is required to be returned to the applicant forthwith.

29. Considering the above provisions of the Act, initially the Corporation and after the winding up order is passed, the Official Liquidator is entitled to take the possession of the premises in question. Since the Official Liquidator has not taken the possession and since the applicant has filed this application seeking leave of the Court to proceed with the suit, this Court is of the view that no leave as sought is required and only the directions are to be issued to the Official Liquidator to take back the possession from the respondent No. 2. After taking possession from the respondent No. 2, the property is required to be handed over to the State Government. However, the State Government does not require this property and hence, the present applicant being the owner of the property, is entitled to get back the said property. The respondent No. 2 has no right whatsoever to retain this property. The plea raised by the respondent No. 2 with regard to the adverse possession is also not tenable as it was not his case and he was considered himself to be tenant and since this plea of tenancy has not been accepted by the Court, he cannot switch over to altogether a different stand and retains the property by invoking the rule regarding adverse possession. Since the Official Liquidator is a party before the Court and considering the relevant statutory provisions and decided case law on the subject, the Court hereby directs the Official Liquidator to take the possession from the respondent No. 2 forthwith and hand it over the same to the applicant. Since the Court has taken this view, the suit filed by the applicant before the Small Cause Court has become infructuous and even for this reason, there is no need to grant any permission as prayed for.

30. As far as arrears of rent is concerned, the Court is of the view that the same is outstanding since 1985 onwards. The premises was given to the Company in liquidation on Leave and License basis and the said Leave and License Agreement has come to an end in 1983. Thereafter, the property was retained by the respondent No. 2. He was Vice President of the respondent No. 2 Company and knowing fully well about the implications of the Gujarat Closed Textile Undertaking (Nationalization) Act, 1986, he managed all these affairs in such a manner that the said provisions may not be invoked by the applicant or by the State Government or by the Corporation and he can as well retain the possession

without any obstruction from any one. However, the stand adopted by the respondent No. 2 is contrary to law and settled legal position and hence, from 1985 onwards, the respondent No. 2 is under an obligation to pay the occupation charges at the rate of Rs. 800/- per month with increase of 10% at every completed year and the entire outstanding amount would be paid by the respondent No. 2 to the Official Liquidator within a period of one month from today and on receipt of the said amount by the Official Liquidator from the respondent No. 2, the said amount shall be handed over to the present applicant.

31. Subject to the aforesaid directions and observation, this Company Application is accordingly disposed of.

32. After pronouncement of judgment, Mr. S. M. Sojatwala, learned advocate appearing for Mr. B.T. Rao for respondent No.2 prays for stay against the implementation of this order. Mr. Girish D. Bhatt, learned advocate appearing for the applicant objects to grant any stay in the matter. However, considering the facts and circumstances of the case, since the respondent No.2 is in possession of the property in question since 1985, stay against taking possession from him is granted for two weeks so as to enable him to approach the higher forum.