

(1995) 11 GUJ CK 0009
In the Gujarat High Court

Case No : Special Civil Application No's. 5144 to 5151, 5153 to 5167, 5169 to 5171 and 5174 to 5179 of 1994

The Competent Authority, Gujarat Housing Board	APPELLANT
Vs	
Dhamji Vijendra Mehta and Others	RESPONDENT

Date of Decision : 08-11-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 1
Gujarat Housing Board Act, 1961 — Section 56, 56(2)
Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 14, 15, 2, 4, 4(1)

Citation : AIR 1997 Guj 106 : (1997) 1 GLR 177

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Advocate : K.A. Mehta, for the Appellant; Nagin Gandhi and Ketan Dev, for the Respondent

Final Decision : Allowed

Judgement

N.N. Mathur, J.—this group of petitions, the petitioners-Competent Authority, Gujarat Housing Board has approached this Court in second round.

2. The Gujarat Housing Board had built tenements in 326 Middle Income Group (M.I.G.) at Bhavnagar. The present respondents were allotted premises on hire purchase basis. In the year 1984, many of the allottees having not paid rent equivalent to amount of instalments due and payable under the agreement entered into between the Housing Board and the allottees, the Competent Officer appointed under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as "the Gujarat Act of 1972") issued notice to the allottees calling upon them to show cause as to why an order of eviction should not be made. The competent officer, after following the procedure laid down under the Gujarat Act of 1972, passed the order of eviction on 25-11-1986. The allottees against whom the order of eviction was passed, preferred appeals to the Court of District Judge, Bhavnagar.

The learned District Judge allowed the appeals and quashed the order of eviction on the ground that the allottees were not governed by the provisions of the Gujarat Act of 1972, and therefore, proceedings initiated by the Competent Officer were without jurisdiction. The Gujarat Housing Board approached this Court by way of filing Special Civil Application. This Court, by judgment dated 15-4-1991 held that the Housing Board is a Corporation established under the Act of 1961 and is controlled by the State Government, and therefore, the premises belonging to or taken on lease by or on behalf of the Housing Board is a public premises within the meaning of Section 2(f) of the Gujarat Act of 1972. In view of this finding, this Court allowed the group of petitions and set aside the order passed by the District Judge and remitted the matter to the Competent Officer with a direction to pass orders afresh after affording reasonable opportunity of being heard to the respondents in accordance with law and in light of the observations made in the judgment. It appears that the Housing Board issued fresh notice to the individual defaulter allottees with a view to update the arrears due. It would be convenient to refer one of the notices as filed in Special Civil Application No. 5144/94. The notice has been given to one of the allottees namely: Dhamji Vijendra Mehta. English translation of the notice reads as under :

.....XXX.....XXX..... XXX.....XXX.....

"The undersigned has reason to believed that:

You have not paid the arrears of rent for more than two months of Rs. 0,498/- found due up to 8/91 for the premises shown in the accompanying schedule. You are required to produce the receipt/bank slip showing payment if made by you thereafter.

Therefore in view of the power vested to me under Sub-section (1) of Section 5 of the Gujarat Public Premises (Eviction of unauthorised Occupants) Act, 1972, I intend to get the aforesaid premises evicted from its occupants within thirty days of the order of eviction (hereinafter will be called the order) for the reasons stated hereinabove.

Now, therefore, you are hereby called upon to state within ten days of the receipt of this show cause notice as to why order under Sub-section (1) of Section 4 of the said Act, should not be passed. If you want personal hearing or through advocate or attorney, you are required to remain present at 12.00 on 10-12-91 in the office of the Estate Officer, Gujarat Housing Board, Shastrinagar, Bhavnagar and produce the suitable evidence."

.....XXX.....XXX.....-XXX.....XXX.....

3. Before the Competent Officer on the first date of hearing i.e. on 10-12-1991, Mr. S.J. Sheth, learned Advocate appeared for the allottees and sought time for filing written statement. Thereafter also various adjournments were granted as is evident from the order of the competent officer i.e. on 9-1-92, 10-2-92, 12-3-92, 26-3-92, 11-5-92, 9-6-92, 8-7-92, 5-8-92, 8-8-92, 9-11-92, 7-11-92, 3-1-93

and on 10-2-93. It appears that at a later stage, the objections were presented before the competent officer by the Clerk of the defendants' Advocate. The evidence on behalf of the plaintiff was recorded. In spite of several opportunities given, either the allottees or their Advocate did not appear. The competent officer in his order dated 9-7-93 has recorded that despite giving sufficient opportunities the defendant has failed to defend himself. He also recorded that the defendant is interested in prolonging the matter instead of extending co-operation.

On behalf of the Housing Board, Shri S.J. Niha was examined. On the basis of the records produced by the Housing Board, the competent officer arrived at the conclusion that the defendant has committed default in payment of rent for more than two months. In view of the finding in each petition, the competent officer has passed order of eviction and also directed to make the payment outstanding.

5. Being aggrieved by the judgment and order dated 9-7-1993 passed by the competent officer. The allottees preferred appeal to the Court of District Judge, Bhavnagar, which was eventually heard by the Asstt. Judge. Before the First Appellate Court, the defaulter allottees raised the following contentions :

"(a) The learned Competent Authority has passed the order without providing sufficient opportunity to the appellant:

(b) that the Competent Authority has no jurisdiction to entertain this case as he is not appointed as the Competent Authority;

(c) that the Public Premises Act is not applicable to this property in question;

(d) that this case cannot be covered under the provisions of the Public Premises Act as provided in Section 2;

(e) that the notice given in this case is without any subjective satisfaction;

(f) that an attempt is made in tendering the notice u/s 4 on the basis of belief that the particulars furnished by the Housing Board is true, without verifying the fact whether amount is due or not and hence the said notice is illegal;

(g) that the notice provided u/s 7 is for the arrears of rent and no such notice is given and hence proceedings u/s 4 could not be initiated;

(h) that pending the RCS No. 262/86 before the Civil Judge (SD), Bhavnagar, no such order could be passed;

(i) that no enquiry is made whether the amount is due or not."

6. The learned Appellate Judge, in view of the decision of the Apex Court in the case of Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others, , that there may be different prices of land in different areas, difference in labour charges and in such circumstances, taking into consideration the time, place and different prices of different lands, the competent authority has right to fix the price", held that the competent authority of the Housing Board has undisputed powers to fix the price. The learned Judge also took note of condition

No. 1 of the agreement which provides that if rent of more than 2 months is due, action can be initiated under the provisions of the Gujarat Act of 1972. However, the learned Judge, analysing the provisions of the Act, and more particularly, of Section 4 of the Act of 1972 held that the pre-condition for issuing notice u/s 4 is a finding that the occupant is in unauthorised occupation. The learned Judge in arriving at the said conclusion, has relied on a decision in the case of Dr. Yash Paul Gupta Vs. Dr. S.S. Anand and Others, . The relevant finding is reproduced hereunder:

"In this regard, it is very clearly mentioned in AIR 1980 J&K 16 and 1981 ALJ 442, that when there is an order of allotment and until the same is not made cancelled, proceedings cannot be initiated u/s 4. In the circumstances, without giving a clear finding and without establishing that the appellant is an unauthorised occupant, the Competent Authority cannot issue a notice u/s 4, and if a notice u/s 4 is to be issued. Form "A" should be used."

The learned Judge while dealing with Section 7 of the Act, held that before issuing notice u/s 4, an enquiry of the arrears of rent u/s 7 is required to be held. The learned Judge also referred to the provisions of Section 14 of the Act, which provides that the Collector can initiate proceedings for recovery of the rent under the provisions of Land Revenue Code. In view of this finding, learned Judge allowed the appeal by judgment dated 2-3-1994 and quashed the order passed by the competent authority in respective eviction cases.

7. In this group of Special Civil Applications, the order of the Assistant Judge dated 2-3-1994 has been challenged. Mrs. Ketty A Mehta, learned Advocate appearing for the Housing Board has contended that the learned Asstt. Judge has committed error in holding that before issuing the notice for eviction u/s 4, the finding that the occupant is in unauthorised occupation is ex facie, illegal being contrary to law. She has submitted that Section 4 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act 1972, clearly makes distinction between the person authorised to occupy any public premises and a person in unauthorised occupation. Clause (a) of Sub-section (1) of Section 4 deals with the cases of person authorised to occupy public premises, but has committed default or committed breach under Sub-clause (1) to (iv) : whereas Clause (b) of Sub-section (1) of Section 4 deals with person in unauthorised occupation of any public premises. She has further submitted that the learned Judge has committed error in reading the provisions of Section 7 along with Section 4 of the Act. Advancing the contentions, the learned Advocate submits that provisions of Sections 4 and 7 play in different fields. Section 4 deals with the notice to show cause against the proposed order of eviction: whereas Section 7 deals with recovery of arrears of rent or damages of public premises.

8. On the other hand, Mr. N.N. Gandhi, learned Advocate appearing for the allottees has supported the impugned judgment of the learned Asstt. Judge, Bhavnagar, Mr. Gandhi submits that before issuing notice u/s 4, finding by the competent officer that the occupant is in and "unauthorised occupant" is a

condition precedent, and for arriving at such finding, it is necessary that an enquiry is held by giving show cause notice. He further submits that in case of arrears of rent, after the notice is given, if the occupant pays the rent, then he cannot be said to be a person in unauthorised occupation and in such case eviction proceedings cannot be initiated by notice u/s 4. Substantiating this contention, he has taken me through the various provisions of the Gujarat Act of 1972 to show that the Act has been enacted to provide for eviction of unauthorised occupants from the public premises, and not the authorised occupants who are defaulters. He has also read the definition of "unauthorised occupation" as provided in Clause (h) of Section 2 of the Act. Mr. Gandhi contents that unauthorised occupation in relation to public premises includes continuing in occupation of public premises by any person after the authority under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever. It is contended that proceedings u/s 4 cannot be initiated unless the allotment is cancelled after notice. In case of default in payment of rent, first notice is required to be given u/s 7. Reading Section 7 of the Act, the learned Advocate submits that where a person is in arrears of rent, the competent officer, by giving notice will require him to pay rent as specified in the notice. If the rent has been paid after the notice u/s 7, the proceedings by issuing notice u/s 4 cannot be initiated.

8A. The short question which falls for consideration is:

"Whether a show cause notice u/s 4 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972, is required to be preceded by notice to show cause that the person is in unauthorised possession."

Section 4 of the Gujarat Act of 1972 empowers the competent officer to issue notice calling upon the person concerned to show Cause why an order of eviction should not be passed. For the sake of convenience, Section 4 is reproduced below:

"4. Issue of notice to show cause against order of eviction (1) If the competent officer is satisfied

(a) that the person authorised to occupy any public premises has-

(i) not paid rent lawfully due from him in respect of such premises for a period of more than two months, or

(ii) sub-let without the permission of the State Government or, as the case may be, the corporate authority, the whole or any part of such premises, or

(iii) committed, or is committing such acts of waste as are likely to diminish materially the value, or impair substantially the utility, of the premises, or

(iv) otherwise acted in contravention of any terms, express or implied, under which he is authorised to occupy such premises, or

(b) that any person is in unauthorised occupation of any public premises, or"

(c) that any public premises are required for any other purposes of the State Government, or, as the case may be, the corporate authority to whom such premises belong, the competent officer shall, notwithstanding anything contained in any other law for the time being in force 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, to show cause, if any, against the proposed order on or before such date as may be specified in the notice, being a date not earlier than ten days from the date of issue thereof,

(3) The competent officer shall cause the notice to be served by post or by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned,

(4) Where the competent officer knows or has reasons to believe that any person are in occupation of the public premises, then without prejudice to the provisions of Sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or rendering it to that person or in such other manner as may be prescribed,

(5) If any person makes an application to the competent officer for extension of the period specified in the notice, the competent officer may grant the same on such terms as to payment and recovery of the amount claimed in the notice, as it deems it."

9. On analysing Section 4, it clearly appears that the competent officer can seek eviction of public premises covered under the Gujarat Act of 1972 in three sets of circumstances.

Firstly -- person authorised to occupy is a defaulter or guilty of breach under Clause (a)

Secondly -- person is in unauthorised possession under Clause (b)

Thirdly -- The premises is required for public purpose.

10. Significantly the Gujarat Act of 1972, unlike Central Act, i.e. Public Premises (Eviction of Unauthorised Occupants) Act, 1959 (hereinafter, referred to as "the Central Act of 1959), is designed to provide two distinct category of "persons authorised to occupy" and "person in unauthorised possession". First category under Sub-clause (a) provides of person who have entered in the premises legally but subsequently has incurred liability for eviction under Sub-clause (i) to

(iv). This category is distinguishable from second category under Sub-clause (b) wherein a person is in unauthorised possession may be from inception. The scheme of the Act of 1972 does not contemplate any enquiry prior to issue of notice u/s 4. In view of Section 4(i)(a) a person authorised to occupy any public premises, on satisfaction of the authority that he has committed default in payment for more than two months, or he has sub-let the premises or materially altered the premises or has acted in contravention of the agreement, can be served with show cause notice of eviction. In the case of Dr. Yash Paul Gupta Vs. Dr. S.S. Anand and Others, the Court relied upon by the learned Asstt. Judge for holding that without clear finding and without establishing that the person is in unauthorised possession, the competent authority cannot issue notice u/s 4, is distinguishable and thus does not apply to the present case. Section 4 of the Central Act of 1959 does not provide category of authorised occupants of public premises, which is evident from the comparison of the two provisions given below:

GUJARAT PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1972 PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT 1959

Section 4 Section 4

"4(i) If the competent officer is satisfied- (a) that the person authorised to occupy any public premises has- (i) not paid rent lawfully due from him in respect of such premises for a period of more than two months or (ii) sub-let, without the permission of the State Government or, as the case may be the corporate authority, the whole or any part of such premises, or (iii) committed, or is committing such acts of waste as are likely to diminish, materially the value, or impair substantially the utility, of the premises, or (iv) otherwise acted in contravention of any of the terms express or implied, under which he is authorised to occupy such premises, or (b) that any person is in unauthorised occupation of any public premises, or (c) that any public premises are required for any other purpose of the State Government, or as the case may be, the corporate authority to whom such premises belong the competent officer shall, notwithstanding anything contained in any other law for the time being in force, 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."

"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. 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 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 10 days from the date of issue thereof

In Yashpal's case (supra) (Jammu & Kashmir) Section 4 of the Central Act of 1959 was considered which only provides "persons in unauthorised occupation of public pre-mises. There is no category of "persons in authorised occupation of public premises" In view of the category of "person in authorised occupation" there is no requirement of finding of person in unauthorised occupation.

11. Mr. N.N. Gandhi, learned Advocate further contends that even the Gujarat Act of 1972 has been enacted with an object to provide for eviction of only unauthorised occupants. He has invited my attention to the preamble of the Act, which describes the Act as one to provide for eviction of unauthorised occupants from the public premises. He has also referred to the definition of "unauthorised occupants" as provided in Clause (h) of Section 2 of the Gujarat Act of 1972. It is established law that preamble discloses the primary intention of the statute but does not override, the express provisions of the statute. As already stated, Clause (a) of Sub-section(1) of Section 4 by express provisions provides for issue of notice to persons authorised to occupy. Thus, in my opinion, notice u/s 4 of the Gujarat Act of 1972, is not required to precede by notice that the person is in unauthorised occupation of public premises.

12. It is next contended by the learned Advocate Mr. Gandhi that the proceedings under the Act of 1972 can be initiated only when the occupant has incurred liability of eviction under the provisions of the Housing Board Act. He relies on the earlier judgment in the present case referred by this Court in the case of The Competent Officer, Gujarat Housing Board Vs. K.B. Parmar and Others, This Court, while dealing with the contention that the forum provided under the Act of 1972 is more drastic, onerous and causes hardship than provided under the Housing Board Act of 1961, in view of the ratio laid down in the case of Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others, held that the authority has choice to proceed either under the Housing Board Act, 1961 or under the Act of 1972. Further the Court held that if the occupant incurred liability under the provisions of the Housing Board Act, the Board may initiate proceedings against him for eviction either under the Board Act or under the Act of 1972. The learned Advocate submits that the petitioner has not incurred liability u/s 56 of the Housing Board Act. The occupant will incur liability under the Board Act only after the notice is served u/s 56(2) and the procedure is undergone and the occupant has not complied with the same. In order to appreciate the contention, it would be convenient to read Section 56 of the Housing Board Act which is reproduced hereunder:

"56. Power to evict certain persons from Board Premises

(1) If the competent authority is satisfied-

(a) that the person authorised to occupy any Board premises has-

(i) not paid rent lawfully due from him in respect of such premises for a period of more than six months, or

(ii) sub-let, without the permission of the Board, the whole or any part of such premises, or

(iii) otherwise acted in contravention of any of the terms, express or implied under which he is authorised to occupy premises, or

(b) that any person, is in unauthorised occupation of any Board premises, the competent authority may, notwithstanding anything contained in any law for the time being in force, by notice served (i) by post or (ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises, or (iii) in such other manner as may be prescribed, order that person as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice.

(2) Before an order under Sub-section (1) is made against any person the competent authority shall inform the person by notice in writing of the grounds on which the proposed order is to be made and give him a reasonable opportunity of tendering an explanation and producing evidence, if any and to show cause why such order should not be made, within a period to be specified in such notice. If such person makes an application to the competent authority for extension of the period specified in the notice the competent authority for extension of the period specified in the notice the recovery of the amount claimed in the notice as it deems fit. Any written statement put in by such person and documents produced in pursuance of such notice shall be filed with the record of the case and such person shall be entitled to appear before the authority proceeding in this connection by advocate, attorney or pleader. Such notice in writing shall be served in the manner in provided for service of notice under Sub-section (1).

(3) If any person refused or fails to comply with an order made under Sub-section (1), the competent authority may evict that person from, and take possession of the premises and may for that purpose use such force as may be necessary.

(4) If a person, who has been ordered to vacate any premises on the grounds mentioned in Sub-clause (i) or (iii) of clause (a) of Sub-section (i) within one month of the date of the service of the notice or such longer time as the competent authority may allow, pays to the Board, the rent in arrears or carries out or otherwise complies with the terms contravened by him to the satisfaction of the competent authority, as the case may be, the competent authority shall, in lieu of evicting such person under Sub-section (3) cancel its order made under Sub-section (i) 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.

Explanation-- For the purposes of this section and Section 57, the expression "unauthorised occupation" in relation to any person authorised to occupy any Board premises, includes the continuance in occupation by him or by any person claiming through or under him of the premises after the authority under which he

was allowed to occupy the premises has been duly determined".

The learned Advocate Mr. Gandhi submits that the occupant can be said to have incurred the liability under Sub-section (1) i.e. default in payment of rent only when the procedure provided under Sub-section (2) is followed. Sub-section (2) of the Section 56 provides that before the order under Sub-section (2) is made against any person, the competent authority shall inform the person by notice in writing of the grounds on which the proposed order is to be passed, and afford reasonable opportunity of tendering explanation and producing evidence, if any, and to show cause why such order should not be made within a period to be specified in such notice. He further submits that only after the procedure provided u/s 56 is undergone, and the occupant has not complied with the same, the occupant can be said to have incurred liability under the Board Act. As no procedure has been followed as provided in Section 56, it cannot be said that the respondents have incurred liability under the Gujarat Housing Board Act, 1961. According to the learned Advocate, in view of the provisions contained in the Housing Board Act, notice u/s 4 is bad in law. In my opinion, there is no substance in this contention raised by the learned Advocate for the respondents. Sub-clause (4) of Section 56 provides that if the competent authority is satisfied that the person authorised to occupy any premises has not paid rent lawfully due from him in respect of the premises, for more than six months, he is liable to be evicted, and in the present case, it is not in dispute that the notice has been given which says that the petitioner has not paid the rent due from him in respect of the premises for more than two months. Mr. Gandhi, states that as there is a categorical statement that arrears is for more than two months, there is no defect in the notice. However, his only contention is that procedure under Sub-section (2) of Section 56 has not been followed. Procedure u/s 56, Sub-section (2) can be followed only when the Board prefers to initiate the proceedings for eviction under the provisions of the Housing Board Act. In the present case, as the Housing Board has chosen to initiate the proceedings for eviction against the occupant-respondents under the Act of 1972, there was no question of following the procedures provided in Sub-section (2) of Section 56. Thus, in my view, there is no substance in the contention raised by the Learned Advocate for the respondents.

13. Mr. Gandhi, learned Advocate for the respondents next contends that in case of eviction on the ground of default in payment of rent, prior to issue of notice u/s 4 a notice u/s 7 is required to be given and if the payment of rent is made, it will be not a case of default in payment of rent, for a notice u/s 4. Section 7 of the Act of 1972 reads as under:

"Power to require payment of rent or damages in respect of public premises-- (1) Subject to any rules made by the State Government in this behalf and without prejudice to the provisions of Section 4, where any person is in arrears of rent payable in respect of any public premises, the competent officer may be, issuing a notice to him require that person to pay the same within such time not less

than ten days, and in such instalments as may be specified in the notice.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, competent officer may, having regard to such principals of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

(3) No order under Sub-section (2) shall be made against any person until after the issue of notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any evidence he may produce in support of the same, have been considered by the competent officer.

(4) The notice under Sub-section (1) or (3) shall be served in the manner provided for service of notice under Sub-section (3) of Section 4".

A plain reading of Section 7 shows that it is a provision essentially for the recovery of arrears of rent or damages. The very opening sentence of Sub-section (1) of Section 7, is "without prejudice to the provisions of Section 4". Thus, the provisions of Section 4 has no bearing on the process of eviction u/s 4. In fact, Section 7 provides a procedure of computation of arrears of rent and assessment of damages, and further, Section 14 provides a procedure for recovery of rent. As apparently, while Section 4 provides procedure for eviction, Section 7 provides procedure for payment of arrears of rent or damages in respect of the public premises. Both plays in different fields. Thus, there is no substance in the contention raised by the learned Advocate for the respondents that prior to issue of notice u/s 4, the notice of payment of arrears u/s 7 is essential.

14. Lastly, the learned Advocate for the respondents Mr. Gandhi contended that the matter may be remitted to the first appellate Court as various contentions raised before that a Court have not been decided for the obvious reason that respondent-occupants could succeed on the ground that notice u/s 4 was bad in law, as it was not preceded by notice for cancellation of allotment. He has invited my attention to para3 of the judgment, wherein the contentions raised by the occupant-respondents have been noticed, but the same have not been dealt with.

15. This is an old matter and the initial notice for eviction was given as back as in the year 1986. Therefore, I am not inclined to interdict and put the clock back to further prolong the matter, and proceed to deal with the contentions raised before the appellate Court. The learned Advocate also submits that in each petition, occupant-respondents have filed affidavit and has raised certain objections. I have gone through the affidavit and it appears that in each petition, the identical cyclostyled affidavit is filed. The affidavits are not on oath and further the affirmation is not in accordance with law, as it has not been stated that which of the paras or part of the para are true to the personal knowledge of

the dependent and which paras are true on the basis of information and belief. Thus, they are not affidavits in the eve of law. However, I wilt also deal with the objections raised in the said so-called affidavits.

16. First I take up the contentions raised before the learned Asstt. Judge. The first contention is that the learned competent authority has passed the order without providing sufficient opportunity to the respondents. The Learned Advocate has failed to point out how sufficient opportunity was denied to the respondents. On the contrary, it is evident from the narration of proceedings as noticed in para 3 of this judgment that in spite of opportunities given, occupants failed to defend themselves and they were only interested in prolonging the matter instead of extending co-operation. Hence there is no substance in the contention and the same is rejected. The second contention is that the competent authority has no jurisdiction to entertain the case as he is not appointed as the competent authority. For this contention, no foundation has been laid to show as to what is the basis to say that the competent authority has not been appointed as the competent authority. Third contention is that the Gujarat Act of 1972 is not applicable to this property in question. No foundation has been made for the said contention. In the earlier petition, this Court, in the case of The Competent Officer, Gujarat Housing Board Vs. K.B. Parmar and Others, has held that the premises belonging to the Board are "public premises" within the meaning of the Act of 1972 and the Board can take action against an unauthorised occupant under the Act. The fourth contention that notice given is without the subjective satisfaction, and that attempt is made in tendering the notice u/s 4 on the basis of the belief that the information furnished by the Gujarat Housing Board is true without verifying the fact whether the amount is due or not. It is stated by the learned Advocate for the petitioner that the entire relevant material was placed before the competent authority and there is overwhelming evidence to show that the occupant-respondents are in default of arrears of rent. Thus, there is no substance in this contention also. The another contention raised is with respect to filing of Civil Suit. Suffice it to say that merely the pendency of a Civil Suit will not, debar the Housing Board from taking proceedings under the Gujarat Act of 1972. Thus there is no substance in any of the contentions raised before the learned Asstt. Judge, which are narrated in para 3 of the judgment.

17. Now taking the affidavits, it is contended that as the original proceedings were remitted to the competent authority by the judgment of this Court reported in The Competent Officer, Gujarat Housing Board Vs. K.B. Parmar and Others, and as such proceedings continued and no fresh notice could have been issued. The learned Advocate for the respondents has failed to point out how this has caused any prejudice to the occupant-respondents. There is substance in the say of the learned Advocate for the petitioner that issuance of fresh notice was necessary as the occupant-respondents have further fallen in payment of arrears of rent and it was necessary to indicate the amount due. In view of this, there is no substance in this contention also. It may also be stated that no such

contention was raised before the competent authority. The respondents cannot be permitted to raise such contention for the first time before this Court in a writ petition. It is contended that the notice issued is at Annexure "A" to the petition. That notice is purported to have been served by affixing a copy thereof on the outer door of the occupant-respondents' premises. The notice ought to have been served by post or by delivering or tendering it to him. The Learned Advocate for the respondents submits that under Sub-section (3) of Section 4, it is incumbent upon the competent officer to serve the notice by post or by having it affixed on the outer door or some other conspicuous part of the public premises. Sub-section (4) of Section 4 provides that where the competent officer knows or has reason to believe that any persons are in occupation of the public premises, then without prejudice to the provisions of Sub-section (3), he shall cause one copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as prescribed. Sub-section (3) of Section 4 has been reproduced in the preceding paragraphs. A plain reading of Section 4 shows that Sub-section (4) is attracted when during the course of service of notice on the person as provided in Sub-section (1), if the competent officer believes that instead of the said person, some other person has unauthorisedly entered in the premises. In order to meet such a situation, and not to further delay the proceedings, Sub-section (4) empowers the competent officer to deliver the notice at home, by post or delivering or tendering it to that person without prejudice to the provisions of Sub-section (3). Therefore, in such a situation, notice is required to be served as provided in Sub-section (3). In the present case, the respondents have not made any factual foundation on this point. In view of this, there is no substance in this contention also.

18. Another contention raised is that the competent officer who is the authorised officer on duty of the Board, and he being a party interested, cannot be a Judge in a dispute with the Board. I have not been impressed by the argument. The competent officer is appointed by the notification of the State Government, and he cannot be said to have personal interest and further a remedy of appeal before the District Judge is provided under the scheme of the Act of 1972. Such a contention was rejected by Delhi High Court in the case of *M.L. Joshi Vs. Director of Estates, Government of India, New Delhi and Another*, . The Court observed that (at p. 88 of AIR)-

"To say that no one shall be a Judge in his own cause, means that the Judge must not have anything like personal interest in the cause he is to adjudicate upon and not that an officer discharging his official functions must not start proceedings in a matter which he is under the law competent to adjudicate, upon".

The contention raised is accordingly rejected. Another contention raised is that the Estate Officer has stated in the statement that he was Estate Officer for Bhavnagar only since last few years and as such he has no personal knowledge

with regard to the present case and thus, in view of such a statement, the authority could not have concluded that the respondents were in arrears of rent as alleged in the notice. There is no substance in the contention. No personal knowledge is required in the matter. Entire material was placed before the competent authority. On the basis of the material produced, the competent officer arrived at the conclusion that the occupants-respondents in each petition were defaulters in payment of rent.

19. Lastly, it is submitted that practically, all the rent due has been paid under the receipt from the bank and there is no arrears of rent on the basis of which eviction can be sought. In this regard, no factual foundation has been laid by the occupants-respondents. I asked Mr. Gandhi, learned Advocate for the respondents to produce a chart showing the details of deposit of amounts from the date of allotment till today and also to produce bank or any other receipt. This opportunity has not been availed of by the respondents.

20. In view of the aforesaid discussion, this group of Special Civil Application is allowed and the judgment and order dated 2-3-1994 passed by the learned Asstt. Judge, Bhavnagar in each petition is quashed and set aside. The order of the Competent Officer in each petition is restored.

Rule made absolute accordingly in each petition. There shall be no order as to costs.