

(1991) 04 GUJ CK 0029

In the Gujarat High Court

Case No : Spl. Civil Application No's. 6042 of 1987 and 2301 to 2695 of 1991

The Competent Officer, Gujarat Housing Board

APPELLANT

Vs

K.B. Parmar and Others

RESPONDENT

Date of Decision : 15-04-1991

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 202
Companies Act, 1956 — Section 3
Constitution of India, 1950 — Article 14
General Clauses Act, 1897 — Section 6
Gujarat Housing Board (Amendment) Act, 1973 — Section 56
Gujarat Housing Board Act, 1961 — Section 2(14), 3, 56, 57, 57(1)
Gujarat Ownership Flats Act, 1973 — Section 60
Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 10, 14, 15, 16, 17

Citation : AIR 1993 Guj 5 : (1992) 1 GLR 79

Hon'ble Judges : C.K. Thakkar, J

Bench : Single Bench

Advocate : K.A. Mehta, for the Appellant; K.G. Vakharia and N.N. Gandhi, for the Respondent

Final Decision : Partly Allowed

Judgement

C.K. Thakkar, J.—This group of petitions is filed against the order dated May 30, 1987 passed by the District Judge, Bhavnagar in various appeals filed before him u/s 9 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as "the Public Premises Act").

2. The facts giving rise to the present controversy may now be shortly stated.

"The petitioner is a "Board" i.e. the Housing Board constituted u/s 3 of the Gujarat Housing Board Act, 1961 (hereinafter referred to as "the Housing Board Act"). The respondent in each petition is an allottee of a tenement either in Middle Income Group (MIG for short) or in Lower Income Group (LIG for short) Scheme of Housing Board at Bhavnagar. It is the case of the petitioner-Board

that the allottees had not paid rent equivalent to amount of instalments due and payable under the agreement to sell entered into between the Housing Board on one hand and the allottees who are tenants of the Board on the other hand. Since the instalments of several months were not paid by them, they were liable to be evicted u/s 4(i)(a) of the Public Premises Act. An officer on Special Duty was appointed by a notification dt. September 12, 1974 issued under the provisions of the Public Premises Act, as Competent Officer. He issued notices u/s 4 of the Public Premises Act calling upon the allottees to show cause why the orders of eviction should not be passed against them. After following the procedure laid down under the Public Premises Act, the Competent Officer passed orders of eviction on November 25, 1986 against the allottees.

3. Being aggrieved by the said orders of eviction, the respondent-allottees preferred various appeals before the District Judge, Bhavnagar u/s 9 of the Public Premises Act. After hearing the parties, the learned District Judge came to the conclusion that the appellant-allottees were not governed by the provisions of the Public Premises Act but were governed by the provisions of the Housing Board Act and the proceedings initiated by the Competent Officer under the provisions of the Public Premises Act were therefore, without jurisdiction. He was also of the opinion that it was not proved that the allottees were defaulters in payment of the rent equivalent to instalment of the hire-purchase amount. He, therefore, quashed and set aside the orders of eviction as being illegal and contrary to law, and discharged notices issued against them.

4. It is against these orders passed by the District Judge, Bhavnagar u/s 9 of the Public Premises Act, that the present petitions are filed by the petitioner-Board in this Court.

5. Mrs. Mehta, the learned Counsel for the petitioner-Board has raised two contentions. Firstly, she contended that in view of passing of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and particularly in view of Section 19 of the said Act, the Bombay Government Premises (Eviction) Act, 1955 and "any other corresponding law providing for the eviction of occupants from public premises", stood repealed. Thus, the corresponding provisions pertaining to eviction of the persons from the Board premises under the provisions of the Gujarat Housing Board Act, 1961 stood expressly repealed. Secondly, and in the alternative, she contended that even if the District Judge was right in holding that the provisions contained in the Housing Board Act relating to the eviction of the persons from the Board premises did not stand repealed even after the enactment of the Public Premises Act, and this court is of the opinion that the District Judge was right in holding so, then also, the petitioner-Board was having two parallel and concurrent remedies to proceed against the persons who were unauthorisedly occupying the Board premises, namely; either to proceed against them under the Housing Board Act, or under the Public Premises Act, and if the Board has proceeded under one of the statutes, the said action cannot be held to be contrary to law or without

jurisdiction.

6. Mr. K.G. Vakharia and Mr. N.N. Gandhi, on the other hand, supported the orders passed by the District Judge and submitted that all the petitions are required to be dismissed inasmuch as the conclusion of law recorded by the District Judge that the provisions of the Public Premises Act are not applicable but the provisions of the Housing Board Act are applicable to "the present respondents are correct and in accordance with law and by no stretch of imagination, it can be said that there is an error apparent on the face of the record committed by the District Judge, which requires to be interfered with in the present proceedings. They have also submitted that even on merits, the petitioner-Board has not made out a case for eviction of respondents and a finding of fact has been recorded by the District Judge that the respondents are not defaulters and, therefore, no eviction orders can be passed against them.

7. Since an important question of law is involved in the present petitions, I have heard the learned Counsel of both the sides at a considerable length. So far as the Housing Board Act is concerned, as stated in the preamble, it was enacted with a view to consolidate and amend the law relating to the Housing Board in the State of Gujarat. The "Board" is defined under Sub-section (3) of Section 2 as Housing Board constituted u/s 3. The "Board Premises" is defined in Sub-section (4) of Section 2 as any premises belonging to or vesting in the Board or taken on lease by the Board or entrusted to the Board under the Act for management and use for the purpose of the Act. "Competent Authority" is defined in Sub-section (8) of Section 2 as "any person authorised by the State Government by notification in the Official Gazette, to perform the functions of the competent authority under Chapter VI for such area as may be specified in the notification" and shall be a person who is holding or has held an office, which is not lower in rank than that of a Deputy Collector or the Assistant Housing Commissioner under the Board. Section 3 provides for the establishment of Board by the State Government in the Official Gazette which shall be a body corporate having perpetual succession and a common seal and may sue and be sued in its corporate name and shall be competent to acquire and hold property both movable and immovable and to contract and do all things necessary for the purposes of the Act. For the purpose of the Act as well as for acquisition of land, the Board is deemed to be a local authority. The provisions of the relevant Rent Act will not apply to any land or building of the Board. The Board shall consist of the Chairman and 10 other members appointed by the State Government. Any member may resign from his office by submitting his resignation to the State Government. The State Government has also power to remove any member in certain circumstances. Chapter III provides for Housing Schemes. Chapter IV lays down procedure for acquisition and disposal of land. Chapter VI confers powers on the Board to evict persons from the Board premises. Section 56 of the Act is a material provision and it reads as under:--

"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

(ii-a) committed any act contrary to the provisions of the Gujarat Ownership Flats Act, 1973 (Guj. 13 of 1973) or of any Declaration, Deed of Apartment or of the bye-laws made under that Act or of any rules or regulations made under such bye-laws; or

(iii) otherwise acted in contravention of any of the terms, express or implied under which is authorised to occupy such 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 given 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 may grant the same on such terms as to payment and 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 provided for service of notice under Sub-section (1).

(3) If any person refuses 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 (1) 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 (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.

Explanation:-- For the purposes of this section and Section 57, the expression "unauthorised occupants", in relation to any person authorized 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."

Section 57 empowers the Board to recover rent or damages as arrears of land revenue. Section 58 enables the Board to recover rent by deducting it from the salary or wages of certain employees in certain cases. Section 59 provides for an appeal against the order passed Under Sections 56 or 57 and it reads as under:--

"59. Appeal:--

(1) Any person aggrieved by an order of the competent authority u/s 56 or Section 57 may, within one month of the date of the service of the notice under Sub-section (1) of Section 56 or Sub-section (1) or (2) of Section 57, as the case may be, prefer an appeal to the State Government:

Provided that the State Government may entertain the appeal after the expiry of the said period of one month, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under Sub-section (1), the State Government may after calling for a report from the competent authority, and after making such further inquiry, if any, as may be necessary, pass such orders as it thinks fit and the order of the State Government shall be final. (3) Where an appeal is preferred Under Sub-section (1), the State Government may stay the enforcement of the order of the competent authority for such period and on such conditions as it thinks fit."

Section 60 bars jurisdiction of civil courts. Chapter VII deals with finance, accounts: and audit, of the Board's funds and plenary powers have been conferred on the State Government in this respect also.

8. After the Act was enacted in the year 1961, certain provisions were subsequently amended. Since in this petition we are concerned with the power to evict a person from the Board premises, I will refer to only to those amendments which were made in Chapter VI. It appears that originally a person occupying the Board premises could be evicted if the competent authority was satisfied that he had not paid rent for a period of more than two months, the said provision was amended and for "two months" the words "six months" were substituted by Gujarat Act No. 1 of 1973. Similarly in Section 56(1)(a), as originally enacted in

1961, there were only three clauses (i), (ii) and (iii). However, by Gujarat Act No. 13 of 1973, after clause (ii) and before clause (iii), clause (ii-a) came to be added and the Board was authorised to evict a person if he had committed breach of the provisions of law mentioned in the said clause. Moreover, Section 60 excluding jurisdiction of Civil Courts was also amended by Act 1 of 1973.

9. Reference to the above amendments is necessary and material in view of the rival contentions of the parties and in view of the finding recorded by the District Judge. However, before I express any opinion on that aspect, it is necessary to refer to the relevant provisions of the Public Premises Act also.

10. As stated in the preamble, the Act was enacted to provide for the eviction of Unauthorised occupants from public premises and for certain incidental matters. "Competent Officer" is defined in Section 2(a) as "an Officer appointed as such by the State Government u/s 3". "Corporate authority" is defined under clause (b) as "any Municipal Corporation, Municipality, Panchayat or other Corporation" referred to in clause (f) of Section 2, "Public Premises" is defined in clause (f), which reads as under:--

"(f) "Public premises" means any premises belonging to or taken on lease or requisitioned by, or on behalf of the State Government, and includes any premises belonging to, or taken on lease, by, or on behalf of-

(i) any Municipal Corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949 or any Municipality constituted under the Gujarat Municipalities Act, 1963;

(ii) a panchayat constituted under the Gujarat Panchayats Act, 1961;

(iii) any Corporation (not being a company as defined in Section 3 of the Companies Act, (1956) established by or under a Central or "State Act, and owned or controlled by the State Government; and

(iv) any University established or incorporated by or under any law in the State of Gujarat or any institution recognised by the University Grants Commission or declared by the Central Government to be a University, in accordance with the provisions of clause (f) of Section 2 or of Section 3 as the case may be, of the University Grants Commission Act, 1956."

"Unauthorised Occupation" is defined in clause (h) as "an 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. u/s 3, the State Government can appoint certain officers as competent officers under the Act. Section 4 empowers the Competent Officer appointed by the State Government by a notification in the Official Gazette u/s 3 of the Act to issue show cause notice for evidence. It reads as under:--

"4(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 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,

(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 persons 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 tendering 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 fit."

Section 5 provides procedure for eviction of unauthorised occupants. Section 6 empowers the authority to dispose of the property left in public premises by unauthorised occupants. Section 7 confers power on the Competent Authority to require payment of the rent or damages in respect of the public premises. Section 9 provides for an appeal, which reads as under :--

"9(1) An Appeal shall lie from every order of the competent officer made in respect of any public premises u/s 5 or Section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district who has for at least ten years held a Judicial Office in the State as the district Judge may designate in this behalf.

(2) An Appeal under Sub-section (1) shall be preferred -

(a) in the case of an appeal from an order u/s 5 within fifteen days from the date of the service of the order under Sub-section (1) of that section; and

(b) in the case of an appeal from an order u/s 7 within fifteen days from the date on which the order is communicated to the appellant;

Provided that the appellate officer may entertain the appeal after the expiry of the said period of fifteen days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of the competent officer, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit.

(4) Every appeal under this section shall be disposed of by the appellate officer as expedi-tiously as possible.

(5) The costs of any appeal under this section shall be in the discretion of the appellate officer.

(6) For the purposes of this section the principal Judge of the Ahmadabad City Civil Court shall be deemed to be the district Judge of the district, and the City of Ahmedabad shall be deemed to be a district."

The order passed in appeal is made final u/s 10 of the Act. The authority has power to recover the rent, etc. as an arrears of land revenue (Section 14) and by deducting it from salary or wages from certain employees in certain circumstances (Section 15). Section 16 bars jurisdiction of Courts, Section 17 protects any action taken in good faith. Section 19 provides for repeal of certain statutes. It reads:

"19. The Bombay Government Premises (Eviction) Act, 1955 and any other corresponding law providing for the eviction of occupants from public premises are hereby repealed:

Provided that anything done or any action taken (including rules or orders made, notices issued, evictions ordered or effected, damages assessed, rents or damages or costs recovered and proceedings initiated) or purported to have been done or taken under the corresponding provisions of this Act, and shall be deemed to be and to have always been, as valid and effective as if such thing of action was done or taken under the corresponding provisions of this Act, as if this Act had been in force when such thing was done or such action was taken."

11. It is submitted by Mrs. Mehta that from the above provisions of both the statutes, it is clear that the Housing Board Act was enacted in the year 1961, while Public Premises Act was enacted in 1972. In other words, the Public Premises Act was enacted later in point of time, and it is a special law relating to the public premises and, therefore, is required to be given effect to. She also submitted that the expression "Public Premises" has been defined in Section 2(f) in very wide "terms and over" and above any premises belonging to or taken on lease or requisition and by, or on behalf of the State, Government, it includes any premises belonging to, or taken on lease, by or on behalf, of, any Corporation established by or under a Central or State Act and owned or controlled by the State Government. She submitted that so far as the premises belonging to or taken on lease or requisitioned by or on behalf of the State Government is concerned, the definition is exhaustive inasmuch as the expression "means" is used by the legislature, but so far as other premises are concerned, it is of wide amplitude in view of the fact that the expression used by the legislature is not "means" but "includes". In other words, so far as other premises are concerned, the definition is not exhaustive but inclusive. She submitted that it cannot be contended that the Housing Board is not a Corporation established under a State Act and controlled by the State Government. No doubt, Mr. Gandhi, contended that the Housing Board cannot be said to be a Corporation within the meaning of Section 2(f)(iii) of the Public Premises Act. But in my opinion, the said contention is not well founded. Looking to various provisions of the Housing Board Act and also looking to the power conferred on the State Government. I am of the opinion that the Housing Board can be said to be a Corporation established under the Act of 1961 and is controlled by the State Government and, therefore, premises belonging to or taken on lease by or behalf of the Board can be said to be "Public Premises" within the meaning of Section 2(f) of the Public Premises Act. The resultant effect is that the provisions of the Public Premises Act are applicable to premises belonging to or taken on lease by or Behalf of the Housing Board.

12. There is an additional reason also why the submission of Mrs. Mehta requires to be accepted. If it is held as contended on behalf of the respondents that the Housing Board Act is exhaustive and self contained legislation even with regard to eviction of unauthorised occupants of Board premises and that detailed provisions have been made in the Housing Board Act, the legislature while enacting "Public Premises" Act, would have excluded the premises of the Housing Board from the definition clause and also from the operation of the Public

Premises Act. The legislature, however, has not done so. It cannot be presumed that the legislature has done anything in futility or without application of mind or in ignorance of the provisions of other Statutes. In fact not only in the definition clause the premises of the Board are included, but a notification u/s 3 of the Public Premises Act has been issued by the State Government in the Official Gazette appointing an officer on Special Duty as the competent Officer for the purpose of exercise of the power conferred under the Public Premises Act. Therefore, the conclusion reached by the District Judge that the provisions of the Public Premises Act are not applicable to the Board premises cannot be sustained. In my opinion this is a jurisdictional error requires to be corrected by issuing a writ of certiorari.

13. Mr. Vakharia, the learned counsel for the respondents heavily relied on the definition of the "Board premises" and contended that the provisions of the Public Premises Act Cannot apply to the Board Premises in view of the fact that the Public Premises Act can apply only to the "Public Premises" and not the "Board Premises". He submitted that the "Board Premises" cannot be said to be "Public Premises". It cannot however, be ignored that the expression "public premises" as defined in Clause(f) of Section 2 of the Public Premises Act is inclusive and in its sweep it would also include "Board Premises"; provided the conditions laid down in that clause are fulfilled. As discussed above, all the said conditions are fulfilled in the present case, namely;" (i) the Board Premises is premises belonging to or taken on lease by or on behalf of the Corporation; (ii) the Corporation is established under the Gujarat Housing Board Act, 1961; and (iii) the said Corporation is controlled by the State Government and hence the "Board premises" would mean "public premises". Therefore, the contention raised on behalf of the respondents requires to be rejected and the submission made on behalf of the Board requires to be accepted.

14. But in my opinion, the contention raised on behalf of Mrs. Mehta that in view of the provisions of the Public Premises Act, the provisions relating to the unauthorised occupation of the Board premises in Housing Board Act stood repealed, cannot be accepted. I have quoted Section 19 earlier which provides for repeal of certain Acts. Mrs. Mehta attempted to argue that this is a case of express repeal. According to her, the Bombay Government Premises (Eviction) Act, 1955 and "any other corresponding law providing for eviction of the occupants from the public premises" are repealed. She submitted that this is a case of express repeal and one has to forget the provisions concerned the unauthorised occupation and eviction contained in the Housing Board Act in view of Section 19 of the Public Premises Act. I am afraid I cannot uphold the said argument of Mrs. Mehta. So far as the principles of interpretation of statutes are concerned, they are very clear. It is well known that repeal is of two types; (i), Express Repeal and (ii) Implied Repeal. So far as express repeal is concerned, there is no difficulty since the legislature itself provides for repeal of a named statute or statutes. In the instnat case, by Section 19 the legislature has expressly repealed the Bombay Government Premises (Eviction) Act, 1955. This

is express repeal. In view of express repeal, it is not open to the Court now to refer to, rely on or base its decision on the Bombay Government Premises (Eviction) Act, 1955. But Mrs. Mehta is not right in submitting that the relevant provisions of the Housing Board Act are expressly repealed. When the legislature in Section 19 has stated that any other corresponding law providing for the eviction of the occupants from the public premises, is repealed" it cannot be said to be express repeal but implied repeal. One has to consider the relevant provisions of both the statutes, namely, the provisions of the Public Premises" Act and of the Housing Board Act and relying upon and following the well established principles of Interpretation of Statutes come to a conclusion Whether the provisions of the Housing Board Act stood repealed or whether both the statutes stand together and, can be given effect to by harmonious construction. If it is possible the "corresponding law" cannot be treated as repealed, but must be given effect to. On the other hand, if one comes to the conclusion that "corresponding law" cannot be given effect to without violating the provisions of the repealing statute, by applying the doctrine of implied repeal, no effect can be given to that "corresponding law."

15. In this connection, my attention is invited to a decision of this Court (Coram: B. K. Mehta, J.) in the case of State Vs. Surabhai Mafatbhai, . In that case, a notice was issued by the City Deputy Collector, Ahmedabad u/s 202 of the Bombay Land Revenue Code, 1879, calling upon the occupant to handover the vacant possession of the land within thirty days since he was in unauthorised occupation of the land. The said action was, challenged by him by filing a suit in the City Civil Court, Ahmedabad, contending, inter alia, that in the light of the provisions contained in Section 19 of the Public Premises Act, Section 202 of the Code, being "corresponding law" stood repealed. The City Civil Court accepted that argument and held that Section 202 of the Bombay Land Revenue Code stood repealed by Section 19 of the public Premises Act. The State approached this Court. The learned single Judge came to the conclusion that the City Civil Court was not right in coming to the conclusion that the provisions of Section 202 stood repealed by Section 19 of the Public Premises Act.

16. After considering the ambit and scope of the expression "corresponding law" this Court indicated some broad tests for determining whether there is implied repeal of a particular statute. The Court observed;

Firstly, whether there is a positive and irreconcilable repugnancy between the provision of old and new statute.

Secondly, whether the two statutes relate to the same subject matter and have the same purpose; and

Thirdly whether the new statute purports to replace the old one in its entirety or only partially.

Another rule of law recognized in the principles of interpretation is that the enactment of a general law broad enough in its scope and application to cover

the field of operation of a special or a local statute will generally not repeal a statute which limits its operation to a particular phase of the subject covered by the general law to particular locality within the jurisdictional scope of general law to particular locality within the jurisdictional scope of general statute.

17. Considering the provisions of both the statutes, namely, the Public Premises Act and the Bombay Land Revenue Code, this Court came to the conclusion that by the Public Premises Act, the relevant provisions of the Bombay Land Revenue Code did not stand repealed. The Court concluded "I have not been able to appreciate how the learned City Civil Judge has considered this provision contained in Section 202 of the Code as a corresponding law, or part thereof, and, therefore, consequently repealed in light of the provision contained in Section 19 of the Public Premises Act. The substantive and procedural law of summary eviction in the Code is a special law in respect of the Government land. It is no doubt true that "public premises" as defined in Section 2(f) of the Public Premises Act means any premises belonging to Government including any land which has been defined in the same terms as defined in the Code. It appears that the learned Judge was, therefore, persuaded to take the view that since the Public Premises Act provides for eviction from the public premises, it would also take in its sweep the eviction of unauthorised occupants from the Government land and, therefore, the procedural law as held down in Section 202 of the Code being the same subject matter and, therefore, would amount to corresponding law and necessarily stood repealed. In my opinion, the learned Judge overlooked the well-recognised rule of law of interpretation that enactment of a general law broad enough in its scope and application to cover the field of operation of a special, or local statute will generally not repeal a statute which limits its operation to a particular phase of the subject covered by the general law."

18. I am in respectful agreement with the view taken by my learned brother Mehta, J. As stated by me hereinabove this is not a case of express repeal and in the facts and circumstances of the case, implied repeal cannot be presumed.

19. In this connection two cases decided by the Supreme Court require to be considered. In Jain Ink Manufacturing Company Vs. Life Insurance Corporation of India and Another, , the appellant was inducted as a tenant by one Mithanlal, who was the owner of the suit premises. The premises were, however, purchased by the Life Insurance Corporation of India, at the auction sale in execution proceeding and the appellant in view of the same attorned to the new landlord. The new landlord gave a notice u/s 106 of the Transfer of Property Act to the appellant and determined his tenancy. It appears that meanwhile the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (Central Act) came into force and a notice u/s 4(1) of the Act was issued to the appellant by the State Officer. The appellant raised some preliminary objections which came to be overruled and he approached the High Court by filing a writ petition. The main contention on behalf of the appellant was that the Estate Officer had no jurisdiction to proceed with the matter under the Public Premises Act in view of

the fact that provisions of the Delhi Rent Control Act, 1958 were applicable to his case. The said contention having been negatived by the High Court, the appellant approached the Supreme Court. The Supreme Court took into account certain factors for the purpose of coming to the conclusion that the provisions of the Public Premises Act were applicable to the facts of the case and that the appellant could not claim protection of the Rent Act. In the first place, the Rent Act was passed in the year 1959 while the Premises Act was passed in 1971. Secondly though in both the Acts there were non obstante clauses the question to be determined was whether the non obstante clauses operated in the same field or had two different spheres though there might be some amount of overlapping. The Court observed that in such cases the conflict should be resolved by reference to the object and the purpose of the law under consideration. After referring to the earlier judgment in *Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited*, , the Court observed:

"In the light of the principles laid down in the aforesaid cases we would test the position in the present case. So far as the Premises Act is concerned it operates in a very limited field in that it applies only to a limited nature of premises belonging only to particular sets of individuals, a particular set of juristic persons like companies, corporations or the Central Government. Thus, the Premises Act has a very limited application. Secondly, the object of the Premises Act is to provide for eviction of unauthorised occupants from public premises by a summary procedure so that the premises may be available to the authorities mentioned in the Premises Act which constitute a class by themselves. That the authorities to which the Premises Act applies are a class by themselves is not disputed by the counsel for the appellant as even in the case of *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, : *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, such authorities were held to form a class and, therefore, immune from challenge on Article 14 of the Constitution. Similarly, the summary procedure prescribed by the Premises Act is also not violative of Article 14 as held by this Court in *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, : *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, .

Thus it would appear that both the scope and the object of the Premises Act is quite different from that of the Rent Act. The Rent Act is of much wider application than the Premises Act inasmuch as it applies to all private premises which do not fall within the limited exceptions indicated in Section 2 of the Premises Act. The object of the Rent Act is to afford special protection to all the tenants or private landlords or landlords who are neither a Corporation nor Government or Corporate Bodies. It would be seen that even under the Rent Act, by virtue of an amendment a special category has been carved out u/s 25B which provides for special procedure for eviction to landlords who requires premises for their personal necessity. Thus, Section 25B itself becomes a special law within the Rent Act. On a parity of reasoning, therefore, there can be no

doubt that the, Premises Act as compared to the Rent Act, which has a very broad spectrun, is a special Act and override the provisions of the Rent Act."

In these circumstances, the Supreme Court came to the conclusion that the Premises Act had overriding effect over the provisions of the Rent Act.

20. Very recently in Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, almost ann identical question arose. Referring to Jain Ink Manufacturing Co. Ltd. (supra), the Supreme Court reconciled the provisions of the Public Premises Act as well as Delhi Rent Control Act and observed as under (at page 878):

"The Rent Control Act makes a departure from the general law regulating the relationship of landlord and tenant contained in the Transfer of Property Act inasmuch as it makes provision for determination of standard rent, it specifies the grounds on which a landlord can seek the eviction of a tenant, it prescribes the forum for adjudication of disputes between landlords and tenants and the procedure which has to be followed in such proceedings. The Rent Control Act can, therefore, be said to be a special statute regulating the relationship of landlord and tenant in the Union Territory of Delhi. The Public Premises Act makes provision for a speedy machinery to secure eviction of unauthorised occupants from public premises. As opposed to the general law which provides for filing of a regular suit for recovery of possession of property in a competent Court and for trial of such a suit in accordance with the procedure laid down in the Code of Civil Procedure, the Public Premises Act confers the power to pass an order of eviction of an unauthorised occupant in a public premises on a designated officer and prescribes the procedure to be followed by the said officer before passing such an order. Therefore, the Public Premises Act is also a special statute relating to eviction of unauthorised occupants from public premises. In other words, both the enactments, namely, the Rent Control Act and the Public Premises Act, are special statutes in relation to the matters dealt with therein. Since, the Public Premises Act is a special statute and not a general enactment the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and in accordance with the principle that the later laws abrogate earlier contrary laws, the Public Premises Act must prevail over the Rent Control Act."

Regarding non obstante clause contained in both the Acts, the Court stated:

"As regards the non obstante clauses contained in Sections 14 and 22 and the provisions contained in Sections 50 and 54 of the Rent Control Act, it may be stated that Parliament was aware of these provisions when it enacted the Public Premises Act containing a specific provision in Section 15 barring jurisdiction of all courts (which would include the Rent Controller under the Rent Control Act). This indicates that Parliament intended that the provisions of the Public Premises Act would prevail over the provisions of the Rent Control Act in spite of the abovemehtioned provisions contained in the Rent Control Act."

In the above view of the matter, the Court finally concluded-

"For the reasons aforesaid, we are unable to accept the contention of the learned counsel for the petitioners that the provisions contained in the Public Premises Act cannot be applied to premises which fall within the ambit, of the Rent Control Act. In our opinion, the provisions of the Public Premises Act, to the extent they cover premises falling within the ambit of the Rent Control Act, override the provisions of the Rent Control Act and a person in unauthorised occupation of public premises u/s 2(e) of the Act cannot invoke the protection of the Rent Control Act."

21. From the above two judgments of the Supreme Court, it becomes clear that what is required to be seen by the Court in construing the statutes which come up for interpretation is the ambit and scope of both the Statutes, operation of the fields occupied by them, underlying object of the enactments, time of the bringing into force the respective statutes; policy and the legislative intent as conveyed by the language used in both the Statutes, etc.

22. An additional factor to be considered, by the Court while interpreting the Statute in question is "whether the legislature itself has treated a particular legislation having been repealed by the subsequent statute". In case of express repeal, there is no difficulty at all. But in case of implied repeal, such difficulty may arise. Since I am of the opinion that the instant case is not of express repeal, it is necessary to consider whether the legislature itself has treated the relevant provisions of the Housing Board Act as repealed. The Public Premises Act is Gujarat Act 12 of 1973. It was brought into force on June 26, 1973. Relying On these facts the learned counsel for the respondents submitted that had the legislature considered and treated Section 56 of the Housing Board Act as repealed, it would neither have amended Clause (i) of Section 56(1)(a) nor inserted clause (ii-a) thereto. They also submitted that the Court will not presume that the legislature has made an amendment in the statute which was repealed and that any amendment, modification, substitution or addition in the statute has been made by the legislature in futility or without application of mind and that it should be ignored. In this connection my attention was invited to the case of Municipal Corporation of Delhi Vs. Shiv Shanker, . In that case also a similar contention was advanced that in view of the enactment of the Essential Commodities Act, 1955 and the Fruit Products Order, 1955 issued thereunder, the provisions of the Prevention of Food Adulteration Act, 1954 stood impliedly repealed. Considering the purpose and object of both the statutes, the Court rejected the said argument. The Court also observed: "The two provisions may, therefore, have within these narrow limit conterminous fields of operation." Both the statutes can function with full vigour side by side in their own parallel channels. Even if they happen to some extent to overlap, Section 26 of the General Clauses Act fully protects the guilty parties against double jeopardy or double penalty."

But an important factor was also taken into account by Hon"ble Supreme Court

and it was the amendments made from time to time in both the enactments. Even though the Essential Commodities Act was enacted in 1955, the Food Adulteration Act and the Rules made thereunder came to be amended in 1956 and again in 1960. Relying upon this aspect the Court observed;

"The subsequent amendments of the Adulteration Act and of the Essential Commodities Act by the Parliament and the amendment of the Adulteration Rules would also tend to negative any legislative intendment of implied repeal of the Adulteration Act by the Essential Commodities Act or the Fruit Order."

23. In my opinion, what Shiv Shanker's case (supra) lays down is that a subsequent amendment made in a statute goes a long way in deciding, whether an enactment is treated by the legislature as having been repealed. If Section 56 of the Housing Board Act is treated as having been repealed by the Public Premises Act by the legislature, there was no necessity for the legislature to amend Clause (i) or to insert Clause (iia) in Sub-section (1) which was done by Act No. 1 of 1973 and 13 of 1973 respectively. This circumstance in my opinion, therefore, goes to show that the legislature has not treated Section 56 of the Housing Board Act as repealed.

24. A similar view is also taken by the High Court of Bombay in the case of Arjun Babloo Tukaral Vs. G.V. Javalkar and Others, .

25. There is still one more reason why the provisions of the Housing Board Act cannot be said to be impliedly repealed. I have quoted the relevant provisions of Section 4 of the Public Premises Act and Section 56 of the Housing Board Act earlier. Looking to the provisions of both the statute it becomes clear that a person can be said to be in unauthorised occupation of a public premises if he has not paid rent for a period of more than two months. On the other hand, if the person is occupying the Board premises, he can be said to be in unauthorised occupation only if he does not pay rent for a period of more than six months. Now, if the contention of Mrs. Mehta is accepted that in view of the Public Premises Act, the relevant provisions of the Housing Board Act stood repealed; even though as per the amendment made by the Legislature by Act 1 of 1973 in the Housing Board Act, a person cannot be said to be in unauthorised occupation till he is in arrears of rent for more than six months, he would incur liability of eviction under the Public Premises Act as soon as he was in arrears of rent for more than two months. This is not the intention of the legislature. In fact, Clause (i) of Section 56(1)(a) was amended and the words "six months" were substituted for the words "two months". The Court cannot ignore the legislative intent and the amendment made in the statute in 1973.

26. A similar is the effect of insertion of Clause (iia) in Section 56(1)(a) of the Housing Board Act. In the Public Premises Act, there is no provision relating to the commission of any act contrary to the provisions of the Gujarat Ownership Flats Act, 1973 or of the Declaration, Deed of Apartment or of the bye-laws made under that Act or of any rules or regulations made under such bye-laws. This

ground is available only under the Housing Board Act in respect of the Board premises. This is also an addition made by the Legislature by Gujarat Act No. 13 of 1973. It cannot be forgotten that the Public Premises Act is Act No. 12 of 1973. If the doctrine of implied repeal is applied and the provisions of the Housing Board Act are treated as impliedly repealed the Court cannot give effect to the legislative amendment made by Gujarat Act No. 13 of 1973 and the said amendment will have to be ignored. It is settled principle of interpretation of statutes that the Court will not presume that the legislature has made any amendment in a repealed statute. Thus, the amendments made in the Housing Board Act in 1973 also tend to negative any legislative intendment of implied repeal of that Act by virtue of Section 19 of the Public Premises Act.

27. Having given thoughtful and anxious consideration to the question involved in these petitions and applying the well established principles laid down in various decisions referred to above to the facts and circumstances of the present case, I am of the view that the Public Premises Act has neither expressly nor impliedly repealed any of the provisions of the Housing Board Act for the following reasons. Both the statutes, viz. the Public Premises Act as well as the Housing Board Act have been enacted by the same legislature; both of them deal with premises belonging to certain specified categories; both of them make a departure from the general law regulating the relationship of landlord and tenant contained either in the Transfer of Property Act or in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947; both of them lay down summary procedure for eviction of unauthorised occupants from the premises belonging to the specified categories; the Public Premises Act has not expressly repealed any of the provisions of the Housing Board Act; the legislature has not treated the provisions of the Housing Board Act as having been impliedly repealed which is apparent from the amendments made in the Housing Board Act by Acts 1 of 1973 and 13 of 1973. For all these reasons, in my considered opinion both the statutes can be said to be special statutes and none of the provisions of the Housing Board Act has been repealed by Public Premises Act.

28. But the question then is whether the provisions of the Public Premises Act would also be applicable to the premises of the Housing Board in question. From the above discussion, in my judgment, the District Judge was right in observing that the Housing Board Act cannot be said to be a "corresponding law" within the meaning of Section 19 of the Public Premises Act and, therefore, it does not stand repealed by the Public Premises Act. But that does not necessarily mean that the provisions of the Public Premises Act would not be applicable to the premises of the Gujarat Housing Board. As pointed out earlier, the expression "Public Premises" includes any premises belonging to or taken on lease by or on behalf of the Corporation -- Gujarat Housing Board. This fact cannot be ignored by the Court while deciding the matters. In the exercise of the powers u/s 3 of the Public Premises Act, the Competent Officer is also appointed and initially the orders are passed by the Competent Officer. This fact is not disputed by the respondents. In fact it is against the orders passed by the Competent Officer that

the respondents approached the District Court by filing 396 appeals. Thus, looking to the provisions of the Public Premises Act, it cannot be contended that the premises of the Gujarat Housing Board cannot be said to be a public premises within the meaning of the Public Premises Act. In these circumstances, in my opinion, the alternative contention of Mrs. Mehta requires to be accepted that if the provisions of the Housing Board Act as well as Public Premises Act are applicable to the respondents, the Board is at liberty to take action under either of the laws. That point is also no longer *res integra*. In *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, , a similar question arose before the Court. Two parallel procedures were provided for the purpose of recovery of possession of property. One mode provided the forum of Civil Courts while the other provided the forum of the Administrative Authorities. The first one was the ordinary mode of filing a Civil Suit, while the other was of a summary nature; more drastic, onerous and harsh. It was contended on behalf of the petitioner that the onerous, harsh and drastic procedure was violative of Article 14 of the Constitution of India and if ordinary procedure was available, drastic procedure could not be resorted to. The Supreme Court rejected the contention of the petitioner and held that if two modes of procedure are provided by a statute one ordinary and other drastic the statute would not be bad on that ground. The fact that in such cases the executive will choose which cases are to be tried under the special procedure will not affect the validity of the statute.

The Court, therefore, held that if two procedures are provided by the Act, the executive authority had power to choose any mode and to proceed accordingly.

29. In *Arjoon Babloo*, the High Court of Bombay also relying upon *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, held that the Railway authorities had power to proceed against unauthorised occupants either under the Public Premises Act or under the Railway Act.

30. In view of the above discussion, in my opinion, it cannot be said that by Public Premises Act, Chapter VI or Section 56 is impliedly repealed. As per the well settled principle of interpretation of the statute and the judgments of the Supreme Court, as well as of this Court, such implied repeal cannot be inferred. I am of the opinion that it also Cannot be said that since the provisions of the Housing Board Act are applicable, provisions of the Public Premises Act cannot apply to the premises in question. In view of the fact that the premises in question can be said to be not only, the Board Premises within the meaning of the Housing Board Act, but also public premises within the meaning of the Public Premises Act the provisions of both the Acts can be applied. If this is the legal position" as per the ratio laid down in *Maganlal Chhaganlal's* case (*supra*) the authority has choice to proceed either under the Housing Board Act or under the Public Premises Act.

31. I wish to make one thing clear from the provisions of Section 56 of the Housing Board Act, as amended in 1973, an occupant of the premises of the Board does not incur liability of eviction until he does not pay rent for a period of

more than six months while an occupant of the public premises under the Public Premises Act incurs such liability if he does not pay rent due for a period of more than two months. Thus, the protection given to the occupiers under the Housing Board Act is wider than the protection granted under the Public Premises Act. There is no specific ground of eviction in the Housing Board Act for committing acts of waste etc. which is found in the Public Premises Act. On the other hand, an occupier of the premises of the Housing Board is liable to eviction if he commits any act contrary to the provisions of the Gujarat Ownership Flats Act, 1973, or of any Declaration, Deed of Apartment or of the bye-laws made under that Act or of any rules or regulations made under such bye-laws. The said provision does not find place in the Public Premises Act. Therefore, the grounds of eviction mentioned in both the statutes can be said to be substantive law relating to eviction and the occupiers of the Board premises, in my judgment are governed by the provisions of the Housing Board Act only and not by the Public Premises Act. It is only after an occupier incurs the liability of eviction under the provisions of the Housing Board Act that the Board may initiate proceedings against him for eviction either under the Housing Board Act or under the Public Premises Act.

32. Mr. Vakharia as well as Mr. Gandhi, learned counsel for the respondents contended that the procedure followed by the competent officer in the instant case is not proper and the orders having been passed without affording reasonable opportunity of being heard and without application of mind are violative of the principles of natural justice and fair play. The learned District Judge has also upheld the said contention. In my opinion, the learned District Judge is right on this point. Mrs. Mehta also could not point out anything against the finding recorded by the District Judge on this aspect. In these circumstances, even though the petitions filed by the Board are required to be allowed the matter will have to go back to the competent authority by directing him to afford reasonable opportunity of being heard to the respondents and pass orders afresh in accordance with law and in the light of observations made in this judgment after complying with the principles of natural justice.

33. In the result the petitions are partly allowed. The order of the District Judge, Bhavnagar, setting aside the order of eviction is hereby confirmed on the ground that the eviction order was passed by the Competent Officer without affording reasonable opportunity to the respondents. However, his decision that the provisions of the Gujarat Public Premises Act, 1972 are not applicable to the premises of the Gujarat Housing Board is reversed and it is held that none of the provisions of the Gujarat Housing Board Act, 1961 stands repealed either expressly or by necessary implication by the Gujarat Public Premises Act, 1972. It is clarified that after an occupier of the Board Premises incurs liability of eviction under the provisions of the Gujarat Housing Board Act, 1961, it is open to the Board authorities to proceed against such unauthorised occupant either in accordance with the provisions of the Housing Board Act or under the Public Premises Act. Rule is accordingly made absolute with no orders as to costs.