

(2025) 01 GUJ CK 0024

In the Gujarat High Court

Case No : Special Civil Application No. 16682 of 2024

Vitthalbhai Khushalbhai Patel Through Administrator Puren
Upendrabhai Patel & Ors. Versus

APPELLANT

Vs

State of Gujarat & Anr.

RESPONDENT

Date of Decision : 02-01-2025

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 182

Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 — Section 2,2(f), 3, 4, 5

Citation : (2025) 01 GUJ CK 0024

Hon'ble Judges : Mauna M. Bhatt, J

Bench : Single Bench

Advocate : Nirav C Thakkar, Aakash Gupta, Mehul Sharad Shah

Final Decision : Dismissed

Judgement

Mauna M. Bhatt, J

1. Rule. Learned Assistant Government Pleader Mr.Aakash Gupta waives service of Rule on behalf of respondent No.1 and learned advocate

Mr.Mehul Sharad Shah waives service of Rule on behalf of respondent No.2.

2. This petition is filed challenging the notice dated 25.11.2024 whereby petitioners have been directed to evict the premises in question, within a period of 15 days from the date of notice, failing which, appropriate action for eviction is indicated.

3. Facts in brief as referred in the petition are as under:

3.1. It is case of the petitioners that they are occupiers of small shops at Sardar Bhuvan Complex besides Sardar Statue on Station Road, Nadiad

(hereinafter referred as subject shops). The said shops are in possession of

petitioner's predecessor since its existence i.e; nearly 60 years. The shops in question were allotted to their predecessors on payment of rent. Construction of subject shops was done upon deposit of certain amount by the then occupiers and thereafter allotment of respective shops was done by respondent No.2 i.e.; Nadiad Nagarpalika. Upon allotment of subject shops, rent was fixed and predecessors of petitioners were paying monthly rent on regular basis. The said arrangement of payment of rent and possession of shops in question with occupiers continued since many years. It is case of petitioner No.14 that somewhere in 1982, respondent No.2 " Nagarpalika had actually sold the ownership rights and, therefore, petitioner No.14 is owner of his shop. Thereafter, from 2022, respondent No.2 stopped accepting rent from the occupiers-present petitioners and on account of action of respondent No.2 of not receiving the rent, petitioners herein have made efforts to make payment of rent but they failed. It is case of the petitioners that subject shops are the place of their livelihood which is being used by their ancestors since last two decades..

3.2 Further, in the year 2020, respondent No.2 issued notices under Section 182 of the Gujarat Municipalities Act, 1963 stating that the premises are in dilapidated condition and required corrective measures. Notices under section 182 of The Gujarat Municipalities Act, in the year 2020 were issued because water way below the shops needed to be cleared since the shops are situated on "Kaans". It is also stated in the notices of the year 2020 that respondent No.2 does not wish to continue the rental arrangements because they want to reconstruct new shops at the same place. Thereafter the shops were repaired and the petitioners are still in possession of the subject shops. After carrying out repairs and renovation particularly with regard to having cleared the water way of "Kaans", action has been initiated directing the petitioners by issuance of notice dated 28.05.2024, stating that the subject shops are in dangerous condition and, therefore, the same needs to be vacated. Notice dated 28.05.2024 is followed by notice dated 25.11.2024, aggrieved by which, present petition is filed.

4. Heard learned advocate Mr.Nirav Thakkar for the petitioners and learned advocate Mr.Mehul Sharad Shah for respondent No.2-Nadiad Nagarpalika.

5. Learned advocate Mr.Thakkar for the petitioners submitted that the notices

dated 25.11.2024 are illegal and unjust for the following reasons:

(i) The notices dated 25.11.2024 are issued to the petitioners who are occupiers of subject shops, without citing any provision of law. Notices state

that petitioners are occupiers of the subject shops and on account of their dilapidated condition they need to be demolished.

(ii) Originally, the shops were constructed upon deposit of certain amount by the predecessors of the petitioners in 1960, and thereafter the shops were

given on lease and the said lease continued for many years. Suddenly, upon expiry of lease period in the year 2020, the rent from petitioners was not

accepted for which the petitioners are not at fault.

(iii) Further, the lease agreement not continued as referred in the notice is erroneous because petitioners as on date are also ready to pay the lease

rent however, the same has not been accepted and, therefore, lease being not continued is factually incorrect. Since the petitioners are ready to pay

the lease even for the period for which it was accepted and therefore, the lease agreement may be directed to be continued by giving post facto

extension.

(iv) Further since the notices are issued without citing any provision of law, the respondents have no right to evict the premises as they are having no

powers of summary eviction. The powers of summary eviction are only with the State Government which is evident from the provisions of Gujarat

Public Premises (Eviction of Unauthorised Occupants) Act, 1972.

(v) The respondents can only exercise the powers assigned to it by the State Government. No reference has been made of any State Government

directions; directing respondent No.2 to evict the premises of the petitioners and, therefore, notices dated 25.11.2024 deserve to be quashed and set

aside.

(vi) Possession of subject shops is with the present petitioners and therefore, they cannot be stated to be un-authorized occupants. The only procedure

which respondent No.2 can follow is under the provisions of the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972, which is

not followed in this case because of that the notices dated 25.11.2024 are bad in law.

(vii) By placing reliance on the provisions of the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972, learned advocate submitted

that as referred in Section 2 of the said Act, 1972, competent officer means an officer appointed as such by the State Government under Section 3.

Public premises is defined under Section 2(f) of the Act. Un-authorized occupation is defined under Section 2(h) of the Act, which means the

occupation by any person of the public premises without authority for such occupation. In this case, the petitioners cannot be stated to be in un-

authorized occupation since they have been allotted the premises by way of lease agreement which has been continued from time to time and,

therefore, the notice of eviction dated 25.11.2024 being bad in law, deserves to be quashed and set aside.

(viii) Further, as prescribed under Sections 4 and 5 of the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972, the procedure

needs to be followed before directing eviction which has not been done in the present case and, therefore, the notices are bad in law.

(ix) Earlier in the year 2020, notices were issued to vacate the premises for repair work. The said notice was subject matter of challenge before this

Court in Special Civil Application No.13063 of 2024. The said petition was disposed of on a statement made that the petitioners shall not put up pakka

construction over the manholes and keep it open by making a temporary provision so that it can be cleaned on regular basis. Since earlier notices were

only for keeping the manholes open and for cleaning of ""Kaans"", the notices issued on 25.11.2024, for the same subject shops directing eviction are

bad in law.

(x) Further the report relied upon by the petitioner of BVM College does not suggest absolute demolition and, therefore immediate action of eviction

within a period of 15 days is not warranted. Further, earlier notices in the year 2020 seeking vacating of the shops were issued to provide natural

water-way below the shops and thereafter followed by present notices that the subject shops are in dilapidated condition; are two separate actions

taken by the respondent - Nagarpalika beyond the provisions of the Act, therefore, deserve to be quashed and set aside.

(xi) The approach of the respondent " Nagarpalika is arbitrary because respondent being State within the meaning of Article 12 of the Constitution

of India, ought to have acted fairly particularly, when it concerns the livelihood of the people because present petitioners are carrying their small

businesses in the subject shops. Therefore, the present petition deserves consideration and this Court may quash and set aside the notices dated 25.11.2024.

6. On other hand, Learned advocate Mr. Mehul Sharad Shah for respondent â?" Nadiad Nagarpalika submitted that certain factual aspects need to be considered.

(i) Learned advocate pointed out that several other shops along with the shops in question were constructed on ""Kaans"" in the year 1962. The said shops were constructed without RCC slab and since they were without support, one shop collapsed resulting into death of one person. Similarly other two shops situated on ""Kaans"" also collapsed on account of their dilapidated condition and that building was therefore demolished by respondent-Nagarpalika. There are remaining 40 subject shops and they are also in a dilapidated condition and, therefore, earlier notices dated 28.05.2024 under Section 182 of the Gujarat Municipalities Act were issued.

(ii) Respondent No.2 â?" Nagarpalika thereafter decided to take opinion of the expert body and since the shops were in a dilapidated condition, municipality had stopped collecting the since long. Therefore, contention of the petitioners that the petitioners are lease holders is incorrect since their lease period has expired. Further, none of the petitioners are original tenants of respondent-Nagarpalika. On the contrary they have committed breach of conditions of the lease by creating sub-lease/sub-tenancy. Therefore, considering dilapidated condition of 62 years old building, notices dated 25.11.2024 were issued directing eviction. Prior to action of eviction, structural stability report dated 03.09.2024 from BVM College was taken.

(iii) Further, contention that the notice was issued without citing any provision of law is incorrect since the said notices contain reference of Circular dated 05.03.2001 and 12.11.2001. As per the directives of the State Government vide Circular dated 05.03.2001 and 12.11.2001, no construction is permitted on the land of lake, water body or the same cannot be given on rent or by sale. Thus, since Nagarpalika was not in a position to renew the lease agreement, notices were given on 06.06.2020. Further it cannot be ignored that earlier â??Kaans"" was constructed to cover the natural water flow of monsoon, going to Shedhi River. The ""Kaans"" in question is around 10 Kms in length, 16 feet in width and 8 feet deep and the same is passing

through the city of Nadiad from Canal to Shedhi River. On this ""Kaans"", building consisting of 20 shops on ground floor and 20 shops on the 1st floor

were given on lease in the year 1962.

(iv) As stated earlier, all the shops were in a dilapidated condition and therefore, the Nagarpalika has passed the Resolution dated 30.12.2022 (R-4

page 121) wherein decision was taken to have the premises vacated. In the said resolution every detail for breach of lease agreement was stated. The

rent being not taken is also part of the said resolution. Therefore, there is no illegality as alleged.

(v) Further, from the report of BVM College, it is evident that entire structure has been scrutinized. The report at Annexure R-5 page 125 is in great

detail covering every aspect. Further, the Circular dated 05.03.2001 (R-6 page 142) is also clear that no construction is permitted on a water body and,

therefore there is no illegality as alleged. The circular of Government dated 05.03.2001 is followed by another circular dated 12.11.2001 on the same

lines and contention of the petitioners that respondent being a statutory body cannot act against the provisions of law is incorrect. The Respondent â?

Nagarpalika has acted in terms of provisions of law and also the Government Circular and, therefore, no interference is called for. Most importantly,

more than 90% are not the original owners. The original owners have sub-leased the property and, therefore, petitioners have no locus since the

present petitioners had not entered into lease agreements with the respondent No.2 â?" Nagarpalika. Moreover, from 2012, rent was not taken and

therefore, present petitioners are not legal occupiers of subject shops.

(vi) Learned advocate has placed on record the details with regard to the shop number, original lessee, present occupiers, end of lease period and the

last date of payment of lease rent in a tabular form and the same is taken on record.

7. Considered the submissions. Revisitation of the following facts are necessary. The petitioners herein are the occupiers of the subject shops since

their predecessors had entered into lease agreement with respondent-nagarpalika in the year 1962 and the lease agreement was continued thereafter

till 2012. Further, as contended by the respondent-nagarpalika in its reply and supported by the details provided in a tabular form substantiates its case

that present petitioners are not original allottees of original leases. Ownership of

the subject shops is with respondent-nagarpalika. Further, non-renewal of lease agreement and non-acceptance of lease rent by respondent-nagarpalika are admitted facts and therefore in the opinion of this Court, present petitioners cannot be stated to be in authorized possession of the shops in question.

8. Further, situation of subject shops on "Kaansâ" which is the water-way cannot be ignored. The detailed structural stability report of BVM

College dated 03.09.2024 notes that the shops in question are without any RCC slab and in a dilapidated condition which requires demolition.

Moreover, accident resulting into loss of life of one person and other two shops being collapsed on account of their dilapidated condition, cannot be ignored.

9. Additionally, there are two Government Circulars, which supports the case of the respondent "Nagarpalika that no construction is permitted on a

water body. Therefore, in the opinion of this Court, when the petitioners are not owners of the subject premises and when the lease has expired and

no rent was collected by respondent "Nagarpalika, they have a right of taking back the possession of the subject premises which has been done by

issuance of notice dated 25.11.2024. Further, in the notice itself it has been noted that the lease period has expired. The notice also refers that the

building is more than 62 years old and in a dilapidated condition. The notice also refers to the structural stability report as also reliance has been placed

on Government Circulars and the resolution passed by Nagarpalika dated 30.12.2022.

10. In view of above, no illegality is found in issuance of notices dated 25.11.2024 to the petitioners for giving peaceful vacant possession of the

subject shops. Since, the notices are issued as per the provisions of the law, no interference is called for. Therefore, the present petition deserves to be

dismissed and the same is hereby dismissed. Rule is discharged.