IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3189 of 2018

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd//-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

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JAFERKHAN ALLARAKABHAI RADHANPURI
Versus
DHOLKA NAGAR PALIKA

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Appearance:
MR VIVEK V BHAMARE(6710) for the Petitioner(s) No. 1
MR. SUHAIL Z SAIYED(6690) for the Petitioner(s) No. 1
MR PREMAL R JOSHI(1327) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
Date : 17/08/2022
CAV JUDGMENT

1. The present writ petition has been filed *inter alia* for the following relief:

> *"9b) This Hon'ble Court may be pleased to hold and declare that the order dated 06.05.2017 passed in Case No.1/2006 dated 03.05.2008 and confirmed in Civil Misc. Appeal No.69/2008 are erroneous, illegal, contrary to facts and law and without application of mind and void and therefore the same may be quashed and set-aside and be*

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further pleased to hold and declare that the petitioner is a deemed tenant of the property in question."

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

2.1 On 10.07.1971, one Ismailbhai Chandbhai Radhanpuri entered into a Tenancy Agreement with the respondent-Dholka Nagarpalika for the property bearing Tikka No.2C, Survey No.319, admeasuring 1750 sq.ft. situated on the Western side of Bank of Baroda, Dholka Branch, Dholka. The shop is known as Virat Saw Mill. On 20.01.1977, the tenant-father of the petitioner was served with a notice for eviction under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short "the Eviction Act"), which was challenged before Civil Judge, Dholka seeking permanent injunction against the eviction by the respondent. Vide a decree dated 29.11.1980, Civil Judge, Dholka concluded that the possession of the premises may not be taken from the tenant without following due procedure of law. On 01.08.1997, the respondent again issued a notice for eviction to the petitioner, to which he gave a detailed reply on 27.08.1997. Thereafter, the same had culminated into Jamin Appeal No.3 of 2005 before the Deputy Collector, Dholka and vide order dated

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15.09.2005, the said appeal was dismissed clarifying that the respondent shall issue notice in the prescribed format. Thereafter, the respondent preferred Case No.1 of 2006 before the court of Sub-Divisional Magistrate seeking eviction of the petitioner under Section 5 of the Eviction Act. After hearing the parties, the authority came to the conclusion that the petitioner is an unauthorised occupant of the property in question as he is an adopted son of Hawaben, who is the legal heir of tenant-Ismail Chandbhai Radhanpuri and as per the Mohammedan Law, adoption is not permissible as well as on other grounds also, Case No.1 of 2006 filed by the respondent was allowed vide order dated 03.05.2008.

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3. Learned advocate Mr.Bhamare appearing for the petitioner has submitted that father of the petitioner had instituted Civil Suit No.66 of 1977 before the Court of Civil Judge, Junior Division, Dholka and by the judgement and order dated 29.11.1980, the respondent was declared not to take possession of the property in question without following due procedure of law and hence, the petitioner, who is the adopted son of Ismailbhai Chandbhai Radhanpuri, can be said to

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be a "protected tenant" and hence, he could not have been evicted by resorting to the provision of the Eviction Act. He has placed reliance on the definition of 'tenant' as stipulated under Section 5(11)(c)(2) of the Gujarat Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the Rent Act") and has submitted that since he is the protected tenant, the provision of the Eviction Act cannot be resorted. It is submitted that the respondent authority should have instituted a civil suit under the provision of the Rent Act for getting him evicted.

3.1 In support of his submissions, learned advocate Mr.Bhamare has placed reliance on the judgement of the Apex Court in the case of *Suhas H. Pophale Vs. Oriental Insurance Company Limited and its Estate Officer*, (2014) 4 S.C.C. 657 and has submitted that the Eviction Act came into force in the year 1972 and such provision could not have been invoked since the case of the petitioner would be governed by the Rent Act. He has submitted that as per the observations of the Apex Court, the Eviction Act will apply only in those cases, who have occupied the properties after such date and since, in the present case, father of the petitioner has already occupied it

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and there was an order passed by the Civil Court, the petitioner could not have been evicted by resorting to the provision of the Eviction Act. It is submitted that the provisions of the Eviction Act are not retrospective in nature. In support of his submissions, he has placed reliance on the judgement of the Division Bench of this Court in the case of *Mulsing Dhulaji Vs. Municipal Corporation of Ahmedabad*, 1977 GLR 266. He has submitted that after the demise of his father, the petitioner can be said to be the "protected tenant". In support of his submission, he has placed reliance on the judgement of the Apex Court in the case of *Tara Chand and Anr. Vs. Ram Prasad*, 1990 3 S.C.C. 526. Thus, he has submitted that the impugned order may be set aside.

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4. In response to the aforesaid submissions, learned advocate Mr.Joshi appearing for the respondent has submitted that the writ petition is not required to be entertained since the primary contention, which has been raised by the petitioner of resorting to the provision of the Rent Act will not apply in view of Section 4 of the Rent Act. He has submitted that merely because the Civil Court has passed the judgement

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and decree in favour of father of the petitioner, the same cannot be extended in favour of the petitioner, after demise of his father. He has submitted that the respondent had never taken any decision for extending the rent agreement in case of the petitioner and hence, he is not entitled to hold the property in question, which belongs to the respondent-Nagarpalika. He has submitted that the notice dated 01.08.1997 was issued to the petitioner under the provision of the Eviction Act however, the same was withdrawn since it was not in appropriate format and hence, again a notice dated 17.07.2006 was issued to the petitioner asking him to evict the property of the respondent-Nagarpalika. It is submitted that thereafter, the respondent initiated procedure under the Eviction Act being Case No.1 of 2006 for getting the property evicted and an order dated 03.05.2008 was passed in favour of the respondent under the provisions of Section 5 of the Eviction Act. Thus, he has submitted that the petitioner, who is an unauthorized occupier, is not entitled to get the property of the respondent- Nagarpalika and hence, the provisions of the Eviction Act are precisely invoked in order to evict the property.

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5. In response to the above, learned advocate Mr.Bhamare has submitted that in fact the notice, which has been issued on 17.07.2006, is under Section 5 of the Eviction Act and no notice under Section 4 of the Eviction Act has been issued to the petitioner and hence, the entire procedure is undertaken under the Eviction Act is nullity.

6. Learned advocate Mr.Joshi, in counter, has submitted that in fact the aforesaid provision is incorrectly mentioned and merely because incorrect provision is mentioned , the order does not dilute the entire proceedings and such proceedings cannot be declared as nullity. In support of his submission he has placed reliance on the judgement of the Apex Court in the case of *Vikram Singh Junior High School Vs. District Magistrate (Fin. & Rev.) and Ors.*, (2002) 9 S.C.C. 509.

7. I have heard the learned advocates for the respective parties to the *lis*, and also perused the documents as pointed out by them.

8. The present writ petition emanates from the impugned order dated 06.05.2017 passed by 4th Additional District and Sessions Judge, Ahmedabad (Rural) in Civil Misc. Appeal No.69 of 2008. It

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is the case of the petitioner that the respondent-Nagarpalika should have initiated the proceedings for eviction under the Rent Act instead of the Eviction Act since he can be termed as “Protected Tenant” in view of the proceedings initiated by his father. It is not in dispute and is an established fact that the property in question belongs to the respondent-Nagarpalika and the same was given on rent for a period of 11 months to the father of the petitioner on 17.02.1971. It appears that the father of the petitioner had instituted Civil Suit No.66 of 1977 before the court of Civil Judge, Junior Division, Dholka and by the judgement and decree dated 29.11.1980, the same was decreed in his favour and the respondent-Nagarpalika was directed not to evict him, without following due procedure. The petitioner, who is adopted son, is claiming the benefit of the aforesaid judgement and decree dated 29.11.1980. It appears that the father of the petitioner passed away on 27.05.1980 and thereafter, the petitioner occupied the said property. It is also an established fact that after demise of father of the petitioner, the respondent neither has entered into any agreement with the petitioner nor agreement, which was

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already entered with his father, is redeemed. The petitioner has primarily premised his case on the provisions of Rent Act and has claimed himself as "Protected Tenant" under the definition of the "tenant" as envisaged under Section 5 (11)(c)(2) of the Rent Act.

9. At this stage, it would be apposite to refer to Section 4 of the Rent Act, which reads as under:

> *"SECTION 4 : Exemptions*
>
> *(1) This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy or other like relationship created by grant from the Government in respect of premises taken on lease or requisitioned by the Government; but it shall apply in respect of premises let to the Government or a local authority.*
>
> *13 (1-A) This Act shall not apply to-*
>
> *(a) any premises constructed on or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Gujarat Second Amendment) Act, 2001 (Guj. 27 of 2001) (hereinafter referred to as "the amending Act");*
>
> *(b) any existing premises which is self-occupied by the owner or vacant on or after the commencement of the amending Act, and is let after such commencement;*
>
> *177 [****].*
>
> *Explanation.-For the purposes of this section, "existing premises" means any premises which exists on the date of commencement of the amending Act.*
>
> *2 . XXXXX*

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3. XXXX

"(4) (a) The expression "premises belonging to the Government or a local authority" in sub-section (1) shall, notwithstanding anything contained in the said sub-section or in any judgement, decree or order of a court, not include a building erected on any land held by any person from the Government or local authority under an agreement, lease or other grant, although having regard to the provisions of such agreement, lease or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be; and

(b) xxxxx"

9.1 An explicit reading of the aforesaid provisions of Sections 4(1) and 4(4) will explicate that the Rent Act will not apply to any premises belonging to the Government or a local authority. Thus, the provision of the Rent Act will not apply in the case of the petitioner, who is occupying the premises of the respondent-Nagarpalika, which is a statutory local authority. In case of ***Tara Chand*** **(supra)**, the facts of the case suggest that the property in question was a private property and no provision of the Rent Act similar to the above was considered. Hence, neither the late father of the petitioner nor the petitioner can endorse themselves as "protected tenant" under the Rent Act.

10. It is the case of the petitioner that the benefit of the judgement and decree rendered in

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the case of father of the petitioner is required to be extended to him also. Such opinion of the petitioner is ill-conceived since, indubitably, the respondent-Nagarpalika has neither entered with any agreement nor the agreement, which was entered by his father, is redeemed. In absence of such agreement the petitioner cannot step into the shoes of his father and claim to be a legal occupier of the premises. There cannot be any cavil of law with regard to proposition of law as enunciated by the Apex Court in the case of ***Suhas H. Pophale*** **(supra)**, wherein it is held by the Apex Court that the provisions of the Eviction Act are prospective in nature. The judgment and decree in favour of father of the petitioner specifically holds that he should not be evicted by the respondent-Nagarpalika, without following the due procedure of law. In the present case, the respondent-Nagarpalika has followed the provisions of the Eviction Act for ordering the eviction of the petitioner from their property. The only issue, which requires to be examined, is that whether such procedure is in accordance with the statute or not.

11. It is the case of the petitioner that the respondent-Nagarpalika has not issued any notice

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under Section 4 of the Eviction Act before evicting him. At this stage, it would be apposite to refer to the provisions of Section 5 of the Eviction Act.

> *"5 [(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under sub-clause (ii) of clause (b) of sub-section (2) of section 4, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer shall make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order but not later than fifteen days from the date of the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises:*
>
> *Provided that every order under this sub-section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice under sub-section (1) or sub-section (1A), as the case may be, of section 4.]*
>
> *(2) If any person refuses or fails to comply with the order of eviction 6 [on or before the date specified in the said order or within fifteen days of the date of its publication under sub-section (1), whichever is later,] the estate officer or any other officer duly authorised by the estate officer in this behalf 7 [may after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person] from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary. 1*
>
> *[Provided that if the estate officer is satisfied, for reasons to be recorded in writing, that there exists any compelling reason which prevents the*

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person from vacating the premises within fifteen days, the estate officer may grant another fifteen days from the date of expiry of the order under sub-section (1) to the person to vacate the premises.]"

12. Initially, a notice dated 22.07.2005 was issued to the petitioner by the competent authority asking the petitioner to evict the property, but the same was withdrawn on 15.09.2005 stating that the same was not in proper format. Thereafter, again a notice dated 17.07.2006 was issued to the petitioner. It is admitted by the respondent-Nagarpalika that Section 5 of the Eviction Act is inadvertently mentioned in the notice instead of Section 4. Thereafter, after affording hearing to the petitioner and following the necessary procedure, an order dated 03.05.2008 was passed by the Sub-Divisional Magistrate, Dholka under Section 5 of the Eviction Act. Being aggrieved, the petitioner challenged the same before the Court of 4th Additional District and Sessions Judge by filing Misc. Civil Appeal No.69 of 2008, which has been dismissed vide judgement and order dated 06.05.2017. The appellate authority, though has delved into the issue of adoption of the petitioner, this Court does not find it necessary to comment upon such findings in view of the issues and facts raised in the writ petition. The

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judgment and order cannot be set aside on this sole issue in wake of the fact that the appellate Court has cautiously dealt with the relevant facts and submissions canvased by the respective parties.

13. This Court has perused the notice dated 17.07.2006, which contains incorrect provision of Section 5 of the Eviction Act instead of Section 4 of the Eviction Act. However, a perusal of the contents of the notice will reveal that the same is intended to have been passed under Section 4 of the Eviction Act. Thus, an incorrect mention of the provision of the Eviction Act cannot dilute further proceedings in wake of the law enunciated by the Apex Court in the case of ***Vikram Singh Junior High School*** **(supra),** wherein the Apex Court has held that merely because a wrong provision was quoted by the authority for exercising the power, while deleting the name of the appellant from the revenue record, would not invalidate the order, if it is shown that such an order could be passed under other provisions of the statute. Similar view has been expressed by the Apex Court in the case of *Ram Sunder Ram vs. Union of India & Ors.*, 2007 (13) S.C.C. 255, wherein it held that "*If an authority has a power*

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under a law merely because exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

14. Hence, this Court does not find that the impugned order is tainted with any perversity or illegality. The petitioner has no right to keep on occupying the property of the respondent-Nagarpalika even after the demise of his father, to whom the property was given on rent for 11 months in the year 1971. The provisions of the Eviction Act has been precisely invoked in the case of the petitioner and hence, no interference by this Court is necessitated.

15. The writ petition fails. RULE is discharged.

Sd/- .
(A. S. SUPEHIA, J)

*Bhavesh-[PPS]**

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