

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 2424 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J. C. DOSHI****Sd/-**

Approved for Reporting	Yes	No
	Yes	

VILLA C COLONY KARMACHARI ASSOCIATIONS PRESIDENT
RAJNIKANT KAMALJIT SOLANKI

Versus

EXECUTIVE ENGINEER PROJECT & ORS.

Appearance:

MR JEET B KARIA(11991) for the Appellant(s) No. 1

MR. G.H. VIRK, GP assisted by MS. DHWANI R. TRIPATHI, AGP
for the Defendant(s) No. 1,2,3,4

KUMAR H TRIVEDI(9364) for the Defendant(s) No. 6

ROHAN N SHAH(8866) for the Defendant(s) No. 5

CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 06/07/2026****JUDGMENT**

1. The instant appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') challenges the judgment and decree dated 11.04.2024 passed in Civil Suit No.1374 of 2014 by the City Civil Court, Ahmedabad, by which the plaintiff's suit was dismissed.

2. Parties are referred to as per their original status before the learned trial Court.

3. The briefly stated facts of the case are that the plaintiff, claiming himself as a President of the Villa "C" Colony Employees Association, filed a suit for declaration, permanent injunction, and specific performance of the suit property bearing block No.1 to 10 situated at Villa "C" Colony, Old IGP Compound, Meghaninagar, District: Ahmedabad (suit property).

3.1 Villa "C" Colony Employees Association is registered bearing registration No. A5794. Plaintiff claims that he is duly authorized to file the suit on behalf of the said association. Suit property are the residential quarters constructed for the residence of Class-IV employees of the Government of Gujarat. In total 10 blocks exist, and each block having 5 rooms plus 1 extra, in which 5 families are residing.

3.2 It is further stated that the plaintiff belongs to the Valmiki community. They are the backward class of Scheduled Castes and working as Class-IV employees in the various Departments of the Government such as Sweeper, Driver, Ward boy, Maid, Aaya, etc. and they are living in the suit property along with their family as suit property is allotted as part of the service condition since so many years.

3.3 It is further stated that the State Government had constructed the suit property for the residential purpose of Class-IV employees allotted to them after deducting the rent from the salary of the Government employees.

3.4 It is further stated that the allotment of the various blocks were given to the employees on the condition that they can continue to occupy the residential premises till they are in service. In this background, the plaintiffs came out with the case that the defendants are pressuring the plaintiffs to vacate the suit property. The plaintiff has given the reply of the various notices issued by the defendant. It is further stated that by GR No.1230 dated 04.06.1988, the State Government has decided to sell out the other Government quarters identical to suit property at concessional rate to the employees, who are residing at present on the rent, and further to the employees belong to SC/ST community at a sale consideration of Rs.15,000/-. In line of the policy decision, Government has sold out the Government quarters situated at Naroda, Opposite Vijay Mill, Ahmedabad on concessional rate on permanent basis to the Government employees. On Rule of Equity, it is claimed by the plaintiff that since they are permanent employees, the benefit of the GR be extended to them.

3.5 Mainly upon the aforesaid contention, the plaintiff, Rajnikant Kamaljit Solanki, though he was not a Government employee or in Government service, came out with the Civil Suit, being Civil Suit No.1374 of 2014, and claimed the following reliefs:-

“A) Pending the hearing and until the final disposal of this suit, your honor may be pleased to pass a temporary injunction order in favor of us plaintiffs and against the defendants, directing the defendants of this case, their servants, agents, or men not to carry out or cause to be carried out any construction of any kind, not to create or cause to be created any hurdle or obstruction, and not to

block or cause to be blocked our (plaintiffs') right of way in any manner on the disputed road mentioned in paragraph no. 9 of this suit application and temporary injunction application.

B) From the houses of the colony mentioned in paragraph no. 9 of this suit application and temporary injunction application, to us plaintiffs, the defendants of this case, their servants, agents, men, or power of attorney holders do not vacate or cause to be vacated, as well as do not cut the light and water facilities; an application is made to pass such a temporary injunction order in favor of us plaintiffs and against the defendants during the pendency of this suit and until the final disposal of the suit.

C) To grant any other relief which may be deemed fit and reasonable.”

(Translated from Gujarati to English for better understanding)

3.6 Apart from contending that the plaintiff's suit is false, frivolous and vexatious, the defendant Nos.1 to 4 in its reply at Exhibit-27, also contended that the plaintiff has no *locus-standi* to file the present suit.

3.7 It is further contended that the plaintiff has not been allotted any premises. The plaintiff is an encroacher of the premises allotted to his mother, who is the erstwhile Government employee.

3.8 It is further contended that the entire colony is required for the larger public purpose of development and redevelopment, as such entire premises has been transferred to the Civil Hospital for the construction of hostel, housing facility for PG, non-teaching and medical employees, and considering

the public interest, possession of the property, which otherwise belongs to the State Government, cannot be claimed as a right.

3.9 It is further contended that the allotment letter, which was issued to the original allottee - Government employees, who are the residents of the premises, clearly states the condition that such allotment is made subject to service of a Government employee in the city of Ahmedabad and until he/she is in a Government job. Therefore, the allotment of the Government quarter, which was made under the condition, cannot be claimed as a permanent allotment.

3.10 Mainly upon this contention, it was urged to dismiss the suit.

3.11 After framing the issues and permitting both the parties to lead the evidence, the learned trial Court dismissed the suit.

3.12 Being aggrieved, the appellant has filed the First Appeal *inter-alia* on the grounds mentioned in the appeal memo.

3.13 The coordinate Bench of this Court, by order dated 02.09.2025, dismissed the Civil Application No.1 of 2025 and kept the matter for final hearing.

3.14 Being aggrieved, the appellant has preferred the SLP (C) No.34183 to 34184 of 2025 before the Honourable Supreme Court, whereby the Supreme Court vide order dated 20.04.2026 confirmed earlier order of status-quo to be maintained during hearing of the appeal and expedited final hearing of the appeal.

4. Heard learned advocate Mr. Jeet B. Karia for the appellant, learned GP Mr. G.H. Virk assisted by learned AGP Ms. Dhvani R. Tripathi for the State Government, learned advocate Mr. Kumar H. Trivedi for the respondent No.6 and learned advocate Mr. Rohan N. Shah for respondent No. 5.

5. Learned advocate Mr. Jeet B. Karia has placed on record the written submissions. Learned GP has also placed on record the written submissions along with the citations. Learned advocates appearing for the respective respondents submit that they adopt the arguments of the State.

5.1 As submitted by learned advocate Mr. Jeet B. Karia that as per the policy of the Government Resolution of 1981/1984, several Class-IV employees, who were in occupation of the Government quarters, have been sold these quarters at concessional rates. In line of the said policy, the Government cannot distinguish the residents of the "C" Colony and take a different stand.

5.2 He would further submit that even some of the persons living in "C" Colony were also given the alternative accommodation, which will be deciphered from page No.326 of the paper-book. Therefore, he submitted that the learned trial Court committed gross error in dismissing the suit.

5.3 It is further argued by learned advocate Mr. Jeet B. Karia that the employees, who are Class-IV and belong to the backward classes being Scheduled Caste and Schedule Tribes,

and when they were in a service, they were entitled to get title of the Government quarters at a concessional rate. Subsequently, their superannuation would not disentitle them from getting such Government quarter at the concessional rate. This aspect has been prayed and proved by the plaintiff before the learned trial Court and yet, the learned trial Court did not consider the same, and therefore, the impugned judgment since has lost sight of the basis on which the claims were made in the plaint and the prayers sought, more particularly the prayer sought that the defendants be directed as per Resolution to execute sale instrument in favor of the resident at concessional rate, is palpably erroneous.

5.4 Learned advocate Mr. Jeet B. Karia further submitted that the learned trial Court has not even whispered a word in the impugned judgment about policy of the Government to sell quarter and why same cannot be extended to the plaintiff. The learned trial Court; therefore, has failed to touch upon this issue, which makes the impugned judgment vulnerable.

5.5 It is sought to be submitted by learned advocate Mr. Jeet B. Karia that the plaintiff's evidence remains unchallenged. The defendant did not enter into the witness box and rebutted the evidence of the plaintiff. The learned trial Court did not discuss this issue and thereby, the judgment impugned remains in the grey.

5.6 Lastly, it is submitted that the allottees of the Government quarter of "C" Colony have authorized the present plaintiff to file a suit and they produced different affidavits and

also produced on record the Resolution at Exhibit-59, which makes the plaintiff's case even better and yet, the learned trial Court dismissed the plaintiff's suit on the ground of *locus-standi*.

5.7 He further argued that the learned trial Court finding in regards to no allotment made to the Villa "C" Colony Trust/Associates, and therefore, suit is not maintainable, is totally oblivious to the facts of the case as well as pleading made by the plaintiff.

5.8 He has further stated that the finding of the learned trial Court that the suit without issuing a mandatory notice under Section 80 of 'the Code' being mandatory is not maintainable, is again an eye-closed approach to the order below Exhibit-12. Therefore, dismissing the suit on the two technical grounds is erroneous on the part of the learned trial Court.

5.9 Relying upon Order I Rule 10 of 'the Code', it is argued by learned advocate Mr. Jeet B. Karia that if learned trial Court was of the opinion that the allottees of the Government premises are necessary party, the Court should have exercised the power under Order I Rule 10(2) of 'the Code' and amend the suit by joining the other plaintiffs and to proceed further, but dismissing the suit on this ground is hyper-technical, but erroneous approach.

5.10 Lastly, it is submitted that the trial Court has passed the judgment without application of mind. In the judgment it is referred deposition of one Mukesh Kanjibhai Patel at Exhibit-59; however, no such deposition has been recorded. Such glaring

error alone is sufficient to prove non-application of the mind on the part of the learned trial Court.

5.11 Mainly on the aforesaid submission, learned advocate Mr. Jeet B. Karia submits to allow this appeal and to quash and set aside the impugned order and to direct the State Government to execute the sale deed in line of its policy at concessional rate in favor of the allottee of Villa "C" Colony, and to issue permanent injunction to that effect and till then, not to disturb plaintiff's possession.

6. *Per contra*, learned GP refers to the written submission and mainly submitted that the President of the appellant association allegedly claimed that the members of association are the retired Government employee or family members of the retired Government employees to whom the Government had allotted Government quarters in Villa "C" Colony, old IGP compound, Meghaninagar. However, it established that the suit property is the Government quarters and allotted to the Government employee as a part of the service condition. The so-called association consists of retired employees or family members of the retired employee, and thus, they are not entitled to retain possession.

6.1 He submits that the allotment condition, which prevails, states that the Government employee has to vacate the premises on the day when they retire from the Government job. It is in these factual circumstances that the suit filed by the plaintiff was not maintainable, and rightly discussed.

6.2 He further submits that the so-called beneficiary of purported relief, all were retired Government employees and they have not vacated the premises, which renders their status as a status of an encroacher.

6.3 He further submits that in the appeal memo, Mr. Rajnikant Kamaljit Solanki has admitted that neither he nor Association is owner of the suit property. Learned GP refers to page No.6 of the appeal memo. Therefore, he submits that the plaintiff has no *locus-standi* to file the suit as he is not possessing any of the Government quarter as allottee.

6.4 Referring to Exhibit-61, the prototype allotment letter issued to one Shakaraji B. Thakor, he submits that the condition No. (G), (T), and (D) thereof suffice to bring down the case of the plaintiff, wherein it is submitted that the house is allotted to the person taking it only for the period during which he holds the said post in Ahmedabad under the Government and whenever the house is to be vacated, the allottee shall be bound to it and that such allotment is subject to the Civil Services Rules regulating the occupation of the Government employee. In the context to the aforesaid Exhibit-61, he referred to Exhibit-50, the deposition of the plaintiff and submitted that the plaintiff has not produced any allotment letter indicating that he has been allotted any of the premises in Villa "C" Colony.

6.5 Learned GP would further submit that Block No.A/04 possessed by the plaintiff was allotted to his mother and she has retired from service.

6.6 Learned GP submits that since the plaintiff has failed to prove and establish any enforceable legal right or subsisting right to remain in possession or to continue to remain in possession, his suit seeking the relief of declaration and permanent injunction is not maintainable.

6.7 Further, it is submitted by the learned GP that the policy decision taken by the State Government for particular Government quarter cannot *ipso-facto* press service for other Government quarter. There may be myriad reasons for taking a decision for a particular quarter, but same reasons are not applicable to the other Government quarters. Therefore, plaintiff cannot insist that the Government has executed the sale deed for some Government quarters, it is duty bound to execute the sale deed for Villa "C" Colony.

6.8 He submits that nonetheless, the Resolution upon which learned advocate for the plaintiff relies upon is AMC's Resolution and not that of the State Government. It is in regards to another colony belonging to Ahmedabad Municipal Corporation. The plaintiff cannot insist that the Government should follow the decision taken by the AMC and to execute the sale deed in regards to the quarters at Villa "C" Colony.

6.9 Lastly, it is argued that the public interest outcasts the personal interest. It is further submitted that the entire campus of the Villa "C" Colony has been handed over for redevelopment of the Civil Hospital and for construction of the hospital building, hostels, and residential facility for medical staff. It is further submitted that the redevelopment project

serves an independent and important public purpose and directly enhances public healthcare infrastructure. Therefore, plaintiff, who has no enforceable right, by filing a civil suit cannot outcast or outweigh true public interest.

6.10 Mainly upon the above submission, learned Government Pleader Mr. G.H. Virk relying upon the following judgments submitted to dismiss this first appeal:-

- i) ***Union of India and Ors. v. Vasavi Co-op Housing Society Ltd***, reported in **2014 (0) AIJEL-SC 54787**.
- ii) ***Kishan Chand (Dead) Through Lrs. v. Gautam Gaur Hitkarak Sabha, Kota***, reported in **2026 (0) AIJEL-SC 76960**.
- iii) ***Union of India v. Onkar Nath Dhar***, reported in **2021 (0) AIJEL-SC 67647**.
- iv) ***N.K. Parmar v. State of Gujarat***, reported in **1992 SCC OnLine Guj 359**.
- v) ***TD Vansia v. State of Gujarat***, reported in **2004 SCC OnLine Guj 518**.

7. Learned advocates for the other respondents adopt the arguments of learned GP.

8. Regard being had to the rival submissions of learned advocates appearing for the parties and perusing the impugned

judgment along with the Record and Proceedings, firstly let refer the issues framed by the learned trial Court, which reads as under:-

“1 Whether the plaintiff who is the President of "C" Colony which is registered vide registration No. F-5794 wherein houses are built for the residence of Class IV Employees of the State Government in which there are 1 to 10 blocks each block having six rooms and there is a gap for ingress and egress on the right side and the plaintiffs were residing there since more than 50 years as mentioned in the plaint ?

2 Whether the plaintiffs prove that the defendants with malafide intention and with a view to harass the plaintiffs, closed the road used by the plaintiffs for ingress and egress

3 Whether the suit filed by the plaintiff is maintainable ?

4 Whether the plaintiffs are entitled to relief as claimed in para 10 of the suit ?

5 What order and decree ?”

9. All the issues are answered in ‘negative’ and in regards to Issue No.5, the suit is dismissed.

10. Before discussing the argument canvassed by learned advocates for both the sides, let me refer the reasons assigned by the learned trial Court to dismiss the suit as under:-

“18. Now, keeping in mind above stated legal aspects on considering the pleadings of the plaintiff and deposition of plaintiff at Exh.50 (PW-1) which is written chief examination as per the provision of Order 18 Rule 4 of CPC, the facts stated in the written chief examination is in line of Exh.1. Now considering the cross-examination of the plaintiff who deposed as a President of Villa "C" Colony Employees

Association. Now he has admitted in his cross-examination that plaintiff association is registered in the office of Charity Commissioner and a copy for the same is produced at P/Exh.58. Now, considering this document, it is a copy of Schedule II of the trust having no. F-5794, Ahmedabad of Villa "C" Colony employee association for block no. 1 to 10 situated at Mental Hospital Compound, Asarva, Ahmedabad. Now on perusing this document it is not proved that present witness Solanki Rajnikant came on record as a President as per Change Report No. 63/06. Further, being a president he is not aware about how many trustees are there in the association. Further, the resolution produced vide P/Exh.59 which is dated 05.06.2014 but it is a photo copies and original are not furnished on record but the said document referred in the cross-examination of this witness by the defendant therefore, it is considered in evidence and the authority by the members given to the present witness for the court proceedings is proved and the affidavit regarding authority produced vide P/Exh. 60 which is a photo copy dated 21.07.2014 wherein 15 members have given authority to the witness for proceedings. Further, the allotment letter for quarter no. 15 and 16 is there in the name of Shakaraji Thakor which is produced vide P/Exh.61. Further, this witness admitted that as per the P/Exh.61 wherein a specific condition is there when the government wants to vacate the house, at that time the allottee has to vacate it.

19. Further, he admitted that the association is having no any official allotment of house. Further, he admitted that government has also given alternative accommodation to one of the allottees Khodidas Ranabhai. Further, he admitted that the entire Civil Hospital Campus is taken under re-development by the government for the housing facilities, hostel of medical students and residential accommodation for the medical staff of the hospital. Further, this witness is having no any knowledge of about retirement of members out of 21 members. Thus, from the above cross-examination it is proved that the residential houses allotted to the members of plaintiff association as employees and not as a owner. Therefore, being employee of the government no one can claim his right on the allotted residential houses as an owner which is also specifically stated in the terms and

conditions of the allotment letter P/Ex.61. Thus no one can claim as of right on the allotted residential properties.

20. Further, on perusing the entire oral and documentary evidence it is proved that plaintiff has filed present suit against the government and various government authorities and Ahmedabad Municipal Corporation therefore, the notice under section 80 has become mandatory prior to file the present suit against the defendants. Further, the statutory notice also mandatory against the Ahmedabad Municipal Corporation prior to filing present suit and there is no any statutory provision to waive such notice against AMC. Further, after filing of present suit, plaintiff has not complied with the mandatory provision of Section 80 of CPC after filing of present suit. In these circumstances, present suit is defeated on the ground of non service of mandatory notice to the defendants and also not maintainable without joining the members of respective houses of Villa "C" Colony employees Association because the prayer sought for in the present suit is pertaining to each of the members of the Villa "C" colony and therefore they all are become necessary parties as per provision of Order 1 Rule 10 CPC.

21. Further, it is pertinent to note that the government has never allotted a single residential unit to the plaintiff's association therefore the association cannot claim any legal right by way of filing suit wherein no any possession of the association is there on any of the properties. Thus, in absence of the necessary parties, present suit is not maintainable. Further, it is pertinent to note that plaintiff association registered under the Bombay Public Trust Act and the suit is preferred for its members in these circumstances, the permission of Charity Commissioner under section 50 of the Bombay Public Trust has become crucial and when the pleadings of the plaintiff is such that it has authority as a President of a Trust registered under the Bombay Public Trust then the above permission is must prior to filing of present suit but the above said property are not registered with the Charity Commissioner Office as a Trust property therefore plaintiff has to prove that the property are attached with the trust and the members also a trustees of the trust but on perusing the documents produced by plaintiff vide P/Exh.58 it is not proved that the residential

unit registered with trust and all the members are the trustees of the trust. Thus, merely getting registration under the Bombay Public Trust Act, the plaintiff being President of said trust, cannot get any authority automatically to act on behalf of other allottees without having proper authority from the Competent Authority.”

11. Summarizing the suit of the plaintiff, in title it is stated by the plaintiff that he is the President of the Villa "C" Colony Karmachari Association. In the first paragraph of the plaint, he has pleaded that he is filing the suit as a President of the Villa "C" Colony Karmachari Association.

12. Perusing the entire pleading, nowhere the plaintiff has asked any relief in regards to his personal character. To be noted that this suit is not filed under Section 91(1)(b) of 'the Code' read with Order I Rule 8 of 'the Code'. The plaintiff in his individual capacity filed the suit and claimed the relief for a public at large without joining the persons, who are the beneficiary of the relief. Even plaintiff did not examine any of the so-called beneficiaries of the relief of the plaint. Plaintiff, being a one-man army, has filed and fought the suit for nearly Fourteen years and although he is not a Government employee nor an allottee of the Government quarter, resisted eviction from Government quarter from all these years.

13. The crux of plaintiff's suit that the Villa "C" Colony is occupied by Class-IV employees of the State Government, they belong to backward and Schedule Caste and they are entitled to continue their possession till they are the allottees under the Government allotment letter and their possession is protected till

they are in job. In this principal pleading, another sort of pleading was made that the State Government by Resolution No.1230 dated 04.06.1981 decided to sell the Government quarters to its employees, more particularly who belong to the backward class or Schedule Caste, at Rs.15,000/-.

14. In ***N.K. Parmar v. State of Gujarat & Ors.***, reported in ***(1992) 33 (2) GLR 1508***, the point in issue was the same. The Division Bench of this Court in the group of the petitions was dealing with the prayer by Government employees and the prayer of the employees of the GSRTC and other Government corporations that the Government should be directed to sell them the tenements, which are allotted to them as employees for residential purpose during their service tenure. The dispute was pertaining to “F”, “G” and “K” colonies in Meghaninagar housing colonies. These colonies are situated just near Villa "C" Colony. The Division Bench *inter-alia* held as under:-

“5. In our view, it is difficult to accept that the Government employees or the employees of the State Transport Corporation have any legal or equitable right to insist that the quarters or blocks which were allotted to them during their service tenure should be sold to them. Normally, residential accommodation is provided to the employees either because of service conditions or for giving facility to them during their service period because of transfer from one place to another and with a view to see that there is no hardship to them in getting the rental accommodation. If this contention of transferring the quarters or blocks in favour of the employees who are residing therein is accepted, the result would be that, for every Government employee or the employee of the Corporation, the Government or the Corporation would be required to construct new houses or blocks. Further, if some tenements/blocks were transferred

or sold under some scheme in the past by the Government at the subsidised rate to the Government employees, it cannot be said that for all time to come the Government should go on framing such schemes and transferring the blocks/tenements after constructing the same to the employees.”

15. Therefore, the contention by the plaintiff Mr. Rajnikant Solanki that the State Government should sell the Government quarters to them, which were allotted for residential purpose during their service tenure, is difficult to accept and such awful and appalling contention is accordingly repelled.

16. Exhibit-61 is the prototype allotment letter allotting one of the residential quarters of Villa "C" Colony to allottee - Mr. Shakaraji B. Thakor. Learned advocate Mr. Jeet B. Karia appearing for the appellant could not dispute the terms and conditions of the allotment letter. The terms and conditions of the allotment letter are reproduced herein as under:-

“The premises described in the margin is allotted to him/her for their own use and generally for the use of the dependents residing with them from the date of this order, subject to the following terms and conditions:

- (a) When the Allottee takes possession of the quarter, he/she shall sign an inventory of all fixtures, fittings, etc., and when he/she vacates the residence, he/she shall hand over such fixtures, fittings, etc. back in good condition. The Colony Clerk shall verify this inventory.*
- (b) The liability for rent shall commence upon the expiry of a period of seven days from the date of receipt of the allotment order or from the date on which the quarter*

becomes vacant, whichever is later; provided that if a written intimation stating that the quarter is not to be accepted is given to the Accommodation Director within seven days from the date of receipt of this order and an acknowledgment to that effect is obtained by the employee, there shall be no liability for rent.

- (c) The quarter is allotted to the Allottee only for the tenure during which he/she holds the office in this Government at Ahmedabad.*
- (d) The said quarter shall not be used by anyone other than the Allottee and his/her dependents, and it shall not be used for any purpose other than residential.*
- (e) The Allottee shall not sublet the residence or any part thereof allotted to him/her to any other person, and/or shall not keep any paying guest. Strict action shall be taken against unauthorized possession. If unauthorized possession is detected, the quarter shall be got vacated.*
- (f) No act shall be done which causes damage to any part of the property or defaces its appearance. The Allottee shall be held liable for the cost, expenses, and consequences of any such damage or act defacing the appearance of the quarter caused by the Allottee, or any person residing with him/her, or any person visiting him/her, and the same shall be recovered from him/her. The Allottee shall not carry out any structural alterations, additions, modifications of a permanent or temporary nature, or fix any items in the residence, nor shall keep it locked for a long period, without the prior permission of the Accommodation Director, Ahmedabad.*
- (g) Except in the circumstances of change and transfer, when the Allottee intends to vacate the residence, he/she shall give one month's prior notice in writing to the Director of Accommodation, Ahmedabad, and obtain a clear acknowledgment of having handed over the possession of the vacant quarter to his/her representative. If the Allottee fails to give one month's notice and if the quarter remains vacant due to non-giving of such notice, the Allottee shall be liable to pay*

rent until the quarter is re-allotted to another person or for such period as may be decided by the Government.

- (h) If the information furnished by the Allottee is found to be false, the order of allotment of quarter shall stand automatically cancelled, and the Allottee shall not be entitled to demand any Government accommodation in future.*
- (i) When the quarter is ordered to be vacated, the Allottee shall be bound to do so.*
- (j) The quarter is ready for occupation. The Allottee can take possession of the quarter by contacting the Colony Clerk within fifteen days from this order of allotment. If the possession of the quarter is not taken within the stipulated time, this allotment shall be deemed to be automatically cancelled. In case the quarter is allotted upon becoming vacant, a period of 7 (seven) days shall be computed from the date on which the quarter becomes vacant.*
- (k) This premises is allotted subject to the Bombay Civil Services Rules regulating the occupation of Government residences.*
- (l) If the possession of the allotted quarter/flat is not taken, no other flat or quarter shall be allotted as per rules, and house rent allowance shall also not be admissible.*
- (m) If a house is constructed or acquired in the name of either of the spouses, they shall shift to such house and vacate the Government quarter allotted by this order.*
- (n) A Government quarter shall be compulsorily got vacated from an employee who commits a breach of these conditions.*
- (o) The Allottee shall affix his/her signature in the prescribed quarterly register maintained with the Accommodation Clerk.*
- (p) The employee shall comply with the provisions of Government Resolution No. ACD, 1076, 1960, 11 N-1, dated 22-10-'92 regarding the quarter allotted to them, and shall have to vacate the quarter within the time*

limit prescribed for the occasions mentioned therein, and shall have to hand over vacant possession back to the employee. If the quarter is retained for a period exceeding the time provided under the said Resolution, such period shall be treated as unauthorized possession and the rent thereof shall be recovered from the concerned employee in accordance with the provisions of the said Resolution. The responsibility for not vacating the quarter within the prescribed time limit mentioned in the said Resolution shall rest with the concerned employee.

- (q) You shall immediately intimate this office regarding your transfer, retirement, dismissal from Government service, resignation from Government service, etc.*
- (r) You shall take over possession of the said quarter and vacate the quarters under your occupation within 7 days. In the event of failure to do so, rent shall be recovered at the market rate for the entire period during which the possession of two Government quarters is retained or until the Government so decides.”*

(Translated from Gujarati to English for better understanding)

17. It is clear that the allotment of the residential quarter to the plaintiff was subject to terms and conditions stated hereinabove. It is not absolute and permanent allotment. It is always subject to service conditions and governed by the service regulations. The Government employee as of right cannot claim to continue in a Government premises post superannuation. Terms and conditions are clear as crystal. Employee whom Government quarters are allotted have no vested right or any actionable claim. Government employee are bound to vacate quarter as and when ordered by the competent officer; inasmuch as their occupation is governed by Bombay Civil Service Rules. In this factual position, suit filed for seeking relief and specific

relief under the Specific Relief Act, was not maintainable since inception.

18. Now, it is time to examine the deposition of the plaintiff. The sole crusader.

18.1 In his cross-examination, he has admitted that he doesn't know how many trustees were there in the plaintiff's trust when he has filed the suit, then in second thought said that as of now, 11 to 15 trustees are forming the part of the trust.

18.2 He has further admitted that at the time when he has filed the suit, in total 21 persons were with him (None of them are party to the suit, none of them have signed the suit, and none of them has entered into the witness box).

18.3 He has further admitted in Exhibit-P59 that, only 5 persons signed this document (This is a Resolution by which plaintiff claims that he was authorized to file the suit).

18.4 He has further admitted in Exhibit-P60 that, as many as 15 persons have signed the affidavit and permitted him to file the suit. So there is a contrast in Resolution at Exhibit-P59 and the affidavit at Exhibit P-60.

18.5 He has further admitted that he is in possession of A/04 Villa "C" Colony. He further admitted that the allotment of the A/04 was made in the name of his mother - Shitalben K. Solanki *alias* Shantaben G. Rana, and she has retired from service.

18.6 He has further admitted that he cannot say that on which date the allotment was made to his mother. He has further admitted that he has not produced the copy of the allotment letter by which his mother has been allotted A/04 of Villa "C" Colony. He has also admitted that State Government has not allotted any residential quarter to Villa "C" Colony Karmachari Association, and admitted that only the employees are allotted the residential quarters.

18.7 He has further admitted that originally A/04 Villa in "C" Colony was allotted to Khodidas Rana and he has been allotted the alternative accommodation. He answered the question with the clarification that Government has forcefully given the alternative accommodation to him. Then in para 14, he admitted that the entire campus of Villa "C" Colony has been handed over to the Civil Hospital for development and redevelopment, but clarified that except the disputed land, every other part has been handed over to the Civil Hospital.

18.8 He has further stated that he does not know whether the 21 persons, who are the beneficiaries of the plaint, are retired or superannuated from service during the pendency of the suit.

19. It is in this position, what appears is that the plaintiff, who is neither a Government employee nor has any right to remain in possession of the Government quarter, under the pretext of the suit, continued the illegal possession/occupation for years together. Once a Government employee, in view of the conditions of the allotment letter as well

as in view of the regulations had retired from service, he has to vacate the Government shelter and has to handover the possession thereof to the State Government. If he continues the possession after superannuation, his possession would become illegal, and that of rank trespasser, which cannot be protected in the Court of law.

20. At this juncture, I may refer to the famous judgment of the Supreme Court in the case of ***Maria Margarida Sequeira Fernandes and Ors. v. Erasmo Jack De Sequeira (Dead) through Lrs.***, reported in **(2012) 5 SCC 370** in regards to the term “possession” and “due process of law”. Para 64, 67, 68, 69, 70, 71, 75 held as under:-

“64. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the title-holder. Further, possession of the past is one thing, and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the Courts.

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67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars

and documents to support his claim in order to continue in possession.

68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the Court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularized specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive:

(a) who is or are the owner or owners of the property;

(b) title of the property;

(c) who is in possession of the title documents

(d) identity of the claimant or claimants to possession;

(e) the date of entry into possession;

(f) how he came into possession - whether he purchased the property or inherited or got the same in gift or by any other method;

(g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;

(h) If taken on rent, license fee or lease - then insist on rent deed, license deed or lease deed;

(i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;

(j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and

(k) basis of his claim that not to deliver possession but continue in possession.

71. Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.

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75. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.”

20.1. The Supreme Court crystallized the Principle of Law as under:-

“97 Principles of law which emerge in this case are crystallized as under:-

1. *No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.*
2. *Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.*
3. *The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.*
4. *The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.*
5. *The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”*

21. In view of above reasons, plaintiff's suit found wholly voracious and frivolous. Plaintiff has no *locus-standi* or any legally enforceable right to ask relief to protect his possession or possessions of 21 retired employees over the Government quarter or to ask for relief of directing Government to sell the Government quarters to the retired Government employees

22. It is noticeable that a completely groundless person is allowed to continue to occupy the suit premises since 2014, inasmuch as the possession of the Government quarter also occupied since 2014, despite Government Class-IV employees

have retired, which has outweighed the public purpose of development and redevelopment for the Civil Hospital, this kind of the attempt in an already choked system is to be deprecated and accordingly, is deprecated. Therefore, while nipping this attempt, the Court is expected to impose exemplary cost.

23. Apt to note that the unauthorized occupation of Government quarters is not a mere breach of the terms of allotment; it constitutes an unlawful deprivation of a scarce public resource held by the State in trust for eligible public servants. Official accommodation is allotted to facilitate efficient discharge of public duties and not to create a vested or perpetual right in favour of the allottee. Once the authority to occupy the premises comes to an end, continuance in possession is plainly unauthorized and cannot be countenanced on equitable or sympathetic considerations. The Supreme Court has repeatedly expressed serious concern over the growing tendency of unauthorized retention of Government accommodation. In **S.D. Bandi v. Divisional Traffic Officer, Karnataka State Road Transport Corporation & Ors.**, reported in **(2013) 12 SCC 631**, the Court observed that continued occupation of Government quarters beyond the permissible period causes grave hardship to persons awaiting allotment and results in loss to the public exchequer. The Court emphasized that such unauthorized occupation frustrates the very object of the statutory mechanism enacted under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, which provides for a speedy procedure for eviction of unauthorized occupants.

The observation of the Supreme Court in para 34 reads as under:-

“34. It is unfortunate that the employees, officers, representatives of people and other high dignitaries continue to stay in the residential accommodation provided by the Government of India though they are no longer entitled to such accommodation. Many of such persons continue to occupy residential accommodation commensurate with the office(s) held by them earlier and which are beyond their present entitlement. The unauthorised occupants must recollect that rights and duties are correlative as the rights of one person entail the duties of another person similarly the duty of one person entails the rights of another person. Observing this, the unauthorised occupants must appreciate that their act of overstaying in the premise directly infringes the right of another. No law or directions can entirely control this act of disobedience but for the self-realisation among the unauthorised occupants. The matter is disposed of with the above terms and no order is required in IAs for impleadment and intervention.”

24. The same principle was reiterated in **Lok Prahari v. State of Uttar Pradesh**, reported in **(2016) 8 SCC 389**, and again in **Lok Prahari v. State of Uttar Pradesh**, reported in **(2018) 6 SCC 1**, wherein the Supreme Court held that Government bungalows and official residences are public property belonging to the people and cannot be retained after the cessation of the legal entitlement. The Court underscored that the distribution and retention of public property must conform to the constitutional mandate of equality and public trust and that no person, irrespective of the office earlier held, can claim a special privilege to continue in occupation contrary to law.

25. This Court is, therefore, of the considered view that unauthorized occupation of Government quarters has assumed the character of a public menace. Any leniency towards such illegal retention not only rewards disobedience of law, but also prejudices the rights of eligible employees awaiting accommodation and undermines public confidence in the fair administration of Government property. Courts must, therefore, ensure that public premises are restored to the State without undue delay so that public assets remain available for the purpose for which they were intended.

26. For the foregoing reasons, the appeal fails and accordingly, stands dismissed with the costs of **Rs.10,000/-** to be paid by the appellant - plaintiff to the Gujarat State Legal Services Authority within a period of **15 days** from today, failing which Registry shall issue the recovery certificate to recover the said amount as arrears of land revenue.

27. Interim-relief, if any, granted earlier is vacated forthwith. Connected CA, if any, does not survive.

Registry to send the Record and Proceedings to the concerned Court forthwith.

Raj

Sd/-
(J.C. DOSHI, J.)