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C.A.No. 6288 OF 1998

ITEM No.109

Court No. 2

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 6288 of 1998

AHMEDABAD MUNICIPAL CORPORATION Appellant (s)

VERSUS

PRAKASHBHAI SURENDRABHAI Respondent (s)

With Civil Appeal No. 6289 of 1998

Civil Appeal No. 6291 of 1998

Date : 18/03/2004 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

HON'BLE MR. JUSTICE G.P. MATHUR

For Appellant (s) Mr. Mahendra Anand, Sr. Adv.  
Mr. H.S. Parihar, Adv.  
Mr. Pradeep Parihar, Adv.

For Respondent (s) Nemo

UPON hearing counsel the Court made the following  
O R D E R

Heard the learned counsel for the appellant.

The civil appeals are allowed.

No costs.

[ T.I. Rajput ] [ Om Prakash ]  
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6288 OF 1998

Ahmedabad Municipal Corporation ...Appellant(s)

Versus

Prakashbhai Surendrabhai                      ...Respondent(s)

W I T H

Civil Appeal Nos.6289/1998 and 6291/1998

O R D E R

Civil Appeal No. 6288 of 1998:

Despite service of notice, neither the respondent is present before the court nor he is represented.

A suit was filed by the respondent claiming that he is a tenant in respect of certain properties in respect of which a notice under Section 53 of the Bombay Town Planning Act was issued by the Estate Officer calling upon him to deliver vacant possession of the same along with the super-structure, as shown in the sketch attached to the notice. The trial court, after detailed enquiry, recorded a finding that though the respondent describes himself as a tenant, he was not, in fact, a tenant. At best, he could only be a licensee over the suit land or the super-structure. His interest as a licensee commenced some time from 19th August,

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1957 or 15th September, 1957. At any rate, his interest as a licensee had come into existence for the first time quite long after the publication of the declaration of the intention to frame a Scheme in July, 1951 in the official gazette. Even though this was the finding upon which the trial court dismissed the suit filed by the respondent, in the first appeal, a learned Single Judge of the High Court reversed the same proceeding on the basis that it is an undisputed fact that the respondent is in possession of the property in question on the crucial date, that is, the date on which the Town Planning Act was notified in the official gazette, set aside the notice issued by the Estate Officer and allowed the first appeal. When the matter was carried further in the Letters Patent Appeal, the Division Bench of the High Court felt that though it had been argued that the crucial date on which the respondent should have been in possession of the land in question is July 1, 1951, but no factual foundation had been put forth in the pleadings before the trial court. Proceeding on that basis, the Division Bench affirmed the order made by the learned Single Judge. Hence, this appeal by special leave.

It is clear from the finding recorded by the trial court that the point was very much put in issue before it as to whether the respondent had come into possession of the property in question well before July 1, 1951. On the other

hand, the trial court came to the conclusion that, on examination of the pleadings and the evidence before it, his interest as a licensee had come into existence long after the publication of the said notification. This aspect was lost sight of both by the learned Single Judge and by the Division Bench. In that view of the matter, we set aside

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the orders made by the learned Single Judge in the first appeal and by the Division Bench in the Letters Patent Appeal and restore that of the trial court.

The civil appeal is allowed accordingly.

No costs.

Civil Appeal Nos. 6289/1998 and 6291/1998:

In view of the order passed by us in Civil Appeal No. 6288 of 1998, these appeals are allowed. No costs.

.....J.  
[S. RAJENDRA BABU]

.....J.  
[D.M. DHARMADHIKARI]

.....J.  
[G.P. MATHUR]  
New Delhi,  
March 18, 2004.