

Reserved On : 23/06/2026

Pronounced On : 23/07/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 4914 of 2023

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2025

In R/FIRST APPEAL NO. 4914 of 2023

With

**CIVIL APPLICATION (FOR WITHDRAWAL/DISBURSEMENT
OF AMOUNT) NO. 1 of 2026**

In R/FIRST APPEAL NO. 4914 of 2023

With

R/FIRST APPEAL NO. 4917 of 2023

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2025

In R/FIRST APPEAL NO. 4917 of 2023

With

**CIVIL APPLICATION (FOR WITHDRAWAL/DISBURSEMENT
OF AMOUNT) NO. 1 of 2026**

In R/FIRST APPEAL NO. 4917 of 2023

With

R/FIRST APPEAL NO. 4918 of 2023

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2025

In R/FIRST APPEAL NO. 4918 of 2023

With

**CIVIL APPLICATION (FOR WITHDRAWAL/DISBURSEMENT
OF AMOUNT) NO. 1 of 2026**

In R/FIRST APPEAL NO. 4918 of 2023

With

R/FIRST APPEAL NO. 4922 of 2023

With

**CIVIL APPLICATION (FOR WITHDRAWAL/DISBURSEMENT
OF AMOUNT) NO. 1 of 2026**

In R/FIRST APPEAL NO. 4922 of 2023

With

CIVIL APPLICATION (FOR STAY) NO. 2 of 2023

In R/FIRST APPEAL NO. 4922 of 2023

With

R/FIRST APPEAL NO. 4923 of 2023

With

**CIVIL APPLICATION (FOR WITHDRAWAL/DISBURSEMENT
OF AMOUNT) NO. 1 of 2026**

In R/FIRST APPEAL NO. 4923 of 2023

With

CIVIL APPLICATION (FOR STAY) NO. 2 of 2023

In R/FIRST APPEAL NO. 4923 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

Sd/-

=====

Approved for Reporting	Yes	No
		No

=====

ATUL PRABHULAL SHAH

Versus

PRIYADARSHANBHAI BHIMBHAI MEHTA

=====

Appearance:

JAIMIN A GANDHI(8065) for the Appellant(s) No. 1

MR PA JADEJA(3726) for the Appellant(s) No. 1

MR JF MEHTA(461) for the Defendant(s) No. 1

=====

CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

CAV JUDGMENT

1. The captioned appeals arise from the common judgment and decree dated 20.03.2023 passed in Civil Suit No.47 of 2014 to Civil Suit No.54 of 2014, by which the learned City Civil Court, Ahmedabad has decreed the suit in favour of the plaintiff and passed the following operative order:-

“(1) The defendants of Civil Suit Nos.47 and 49 of 2014 to 54 of 2014 are partly allowed. Whereas the Civil Suit no. 48 of 2014 stands abated on account of demise of defendant

during the pendency of suit, and the right of plaintiff to file appropriate proceedings against the legal representatives of the said defendant is reserved.

(2) The defendants of Civil Suit Nos.47 and 49 of 2014 to 54 of 2014 are directed to vacate the respective suit property within 30 days from the date of this order and they are also restrained from creating any third party rights in any manner over the respective suit property, till the possession of suit property is handed over to the plaintiff. Upon failure on the part of concerned defendants to vacate the suit properties within 30 days, the plaintiff shall be entitled to seek execution through Court.

(3) The defendants of Civil Suit Nos.47 and 49 of 2014 to 54 of 2014 are also directed to pay damages at the rate of Rs.1000/- to the plaintiff from September-2013 till date of vacating of suit premises.

(4) The defendants of Civil Suit Nos.47 and 49 of 2014 to 54 of 2014 shall bear their own costs as well as the cost of the plaintiff.

(5) This judgment be placed in the file of C.S. no. 47 of 2014 and a copy of this judgment be placed in Record and proceedings of C.S. Nos. 48 to 54/2014.”

2. For convenience, parties are referred to as per their original status before the learned trial Court.

2.1 Firstly, let me refer that the Civil Suit No.48 of 2014 has been disposed of as abated and no appeal is filed against the order of abating the Civil Suit No. 48 of 2014.

2.2 By an order below Exhibit-27 in Civil Suit No. 47 of 2014, all eight suits were consolidated and evidence was recorded in Civil Suit No.47 of 2014. Consequently, common judgment and decree was passed to dispose of all the suits

except Civil Suit No.48 of 2014, which was disposed of as abated.

3. The brief facts of the case are that the plaintiff is owner of bungalow located on final plot No.827-828 (part thereof) of TP scheme No.3, Ellisbridge area, Ahmedabad abutting Ashram road located on the main road leading from Paldi to VS Hospital. In front part of the said bungalow, several shops towards the main road were existed. The defendants of above captioned suits were the tenants in these shops.

3.1 About the same time, in the year 1986, the Ahmedabad Municipal Corporation(AMC, for short) initiated proceedings to widen the road and to put a new road line, which was affecting as many as 80 shop owners including the defendants of the suit.

3.2 The affected person raised the Special Civil Application No.5745 of 1986 before the Division Bench of this Court questioning the implementation of the road widening scheme. The AMC in the said Special Civil Application agreed to provide alternative accommodation to all the occupiers/tenants and came out with a scheme. Pursuant to which, the affected persons/shop occupiers/tenants of the aforesaid suit have withdrawn the Special Civil Application vide order dated 06.03.1987 and the petition was disposed of.

3.3 Consequently, the AMC provided alternative accommodation to all the affected persons, including the tenants and defendants of the suits at a meager rent of Rs.101/- and

odd amount at a market area near Diwan Ballubhai school in Paldi area of Ahmedabad, and thereafter the road widening scheme took place.

3.4 The shops, which were falling in the road line, were demolished. The shops in front of the bungalow, which belonged to the plaintiff, is almost demolished leaving behind small space.

3.5 Another petition was filed before High Court of Gujarat; however, this time by the plaintiff being Special Civil Application No.13774 of 2012 against the State Government, AMC and its officers to take the action or to implement the statement made by the AMC before the Court.

3.6 Later on, since the issue was clarified, the plaintiff withdrew the Special Civil Application on 08.07.2013 with a liberty to redress the issue with the AMC.

3.7 In the backdrop of aforesaid factual aspect, plaintiff came out with a suit against the defendants that they were former tenants. However, having obtained the alternative accommodation offered by the AMC in lieu of demolition of their rented premises, lost their tenancy right over the remaining portion of the suit premises, which is barely of two feet wide and later on, trespassed into these shops with the oblique motive to blackmail the plaintiff for extorting the hard earned money of the plaintiff for vacating such premises/space.

3.8 The learned trial Court framed the issues in all the suits at different Exhibits, but one and same issues were framed. Thereafter, the plaintiff entered into the witness box and placed

on record the documentary evidence alongside his oral evidence. Despite a sufficient opportunity was granted, none of the defendants came forward to cross-examine the plaintiff or to challenge the legality and relevancy of the documents or the evidence produced by the plaintiff.

3.9 The solitary defense contended by the defendants that they are in possession of the suit shop for more than 60 years; That the relationship of landlord and tenant will not discontinue on the demolition of the part of shops or on acquiring the alternative accommodation and that the learned City Civil Court has no jurisdiction to decide cause of action pleaded and relief claimed by the plaintiff, which snaps the landlord and tenant relationship.

3.10 The defendant, who did not cross-examine the plaintiff, filed an application at Exhibit-58 in the suit proceeding to permit them to cross-examine the plaintiff. By a detailed order dated 09.02.2023 City Civil Court rejected the application Exhibit-58. The defendant did not choose to file the appeal/SCA against the said order, as such the order attained finality.

3.11 Alike to his earlier conduct, defendant did not enter into the witness box and offer their oral or documentary evidence to strengthen contention raised in the written submission.

3.12 Although, the defendant did not offer any evidence, learned advocate appearing for the defendant filed a written submission. The learned trial Court, after examining the evidence on record, pleased to pass the aforesaid final order.

3.13 Being aggrieved, appellants- defendants have preferred these batch of appeals.

4. Heard learned advocate Mr. Jaimin Gandhi as well as learned advocate Mr. Nilesh Shah respectively appearing for the appellants.

4.1 In addition to oral argument, learned advocates appearing for both the sides have also placed on record the written submissions.

4.2 The argument of learned advocates Mr. Jaimin Gandhi and Mr. Nilesh Shah appearing for the appellant are summarized as under:-

4.3 That the learned trial Court has failed to consider the existing relationship of landlord and tenant between the plaintiff and defendant, which take away the City Civil Court's jurisdiction to decide the issue in view of Presidency Small Cause Courts Act, 1882 (hereinafter referred to as the 'Small Cause Courts Act').

4.4 They also submitted that the suit shop is a tenanted premises, whereby plaintiff was owner and defendant were tenants for more than 60 years is admitted facts. The road widening took place in year 1990 and though major portion of the rented premises or suit shop was demolished in the road widening, part thereof still remains, which demonstrate and prove the existing and live landlord and tenant relationship which implies that the learned City Civil Court cannot decide the issue arised between the landlord and tenant, which is in

exclusive domain of the Small Cause Court and to be determined in view of the provision of the Bombay Rent Act (hereinafter referred to as the 'Rent Act').

4.5 They would further submit that since tenancy qua undemolished or non-demolished and unacquired portion remains, which the plaintiff has accepted in a pleading of Special Civil Application No.13774 of 2012, without issuing the notice under Section 12 of the 'Rent Act', no ejectment proceeding can be commenced or carried, the learned City Civil Court; however, ignored this position of law, passed impugned various decree; however, that question of law is sufficient to allow the appeal.

4.6 That there is no evidence on record, which infers that the tenant have surrendered the tenancy, yet the learned City Civil Court has erred by believing so.

4.7 Thus, it is submitted that the tenancy of some portion, despite tenancy of the suit shop continues to operate despite a major portion of the suit shop was demolished in 1990, is an unnoticeable aspect that is visibly absent from the judgment.

4.8 That the learned City Civil Court committed a grave error in believing that since defendant - tenants have been offered alternative accommodation by the AMC, it snaps the relationship of landlord and tenant.

4.9 Mr. Nilesh Shah, learned advocate, in addition to aforesaid submission, also argued that few of the tenants - defendants have preferred standard rent application in the Small

Cause Court and, in that standard rent application, which filed in 1994, the landlord answered that the rent cannot be reduced in proportion to demolition of the suit shop. Such statement in the written statement made by the landlord indicates that he has accepted continuation of the tenancy after the 1990 demolition. Thus, learned advocate Mr. Nilesh Shah submitted that the learned City Civil Court has committed serious and gross error in decreeing the suit.

4.10 In support of their submission, learned advocates appearing for the appellants relied upon the following judgments:-

- i) *Mahendra Raghunathdas Gupta v. Vishvanath Bhikaji Mogul*, reported in 1997 (5) SCC 329.
- ii) *Madhuriben Shashikant Joshi v. Sarlaben Yashchandra Desai*, reported in 2006 (1) GLH 777.
- iii) *Rameshkumar Chhotalal Shah v. Patel Varanasibhai Shivram*, reported in 2011 JX(Guj) 1611.
- iv) *Sevumal Topandas Sadhwani v. Jaynomal Nanomal*, reported in 1993 (2) GLH 628.
- v) *Shankarrao Jagtap Sakaram v. Vasantrao Sakaram Pawar*, reported in 1999 (1) GLR 94.
- vi) *Thavardas Vasantmal Bharvani v. Jagdishbhai Tekchandbhai Pamnani*, reported in 2010 (2) GLR 1136.
- vii) *Rajkot Nagarik Sahakari Bank Limited v. Jignesh Jayantilal*

Ramanuj, reported in 2011 (3) GLR 2129.

viii) Patel Bhailalbai Talsibhai v. Chandulal Girdharlal, reported in 1986 (2) GLR 990.

ix) Parvatishanker Mulshanker v. Prafulchandra Ravjibhai Patel, reported in 1979 (1) GLR 762

x) Nanubhai Pragji v. Chhaganlal Ranchhodji, reported in 1993 (2) GLR 1613

xi) Govindbhai Parshottamdas Patel & Others v. New Shorrock Mills, Nadiad, reported in 1984 (1) GLR 156

xii) National Thermal Power Co. Ltd. v. CIT, reported in 229 ITR 383 (SC).

4.11 Upon the above submissions, learned advocates appearing for the appellants submitted to overturn the judgment and decree passed by the learned City Civil Court and dismiss the suits filed by the original plaintiff.

5. *Au contraire*, Mr J.F. Mehta learned advocate representing the original plaintiff supports the impugned judgment and decree and submits that at no point of time, plaintiff credited that defendants are tenants of the suit shops after 1990 demolition.

5.1 He would further submit that the learned advocate appearing for the appellant has read some portion of the pleading in Special Civil Application No. 13774 of 2012. At no

point of time, even in pleading, plaintiff accepted that, after 1990, the defendants continue their status as a tenant.

5.2 He would further submit that in the pleading of the Special Civil Application, plaintiff pleaded that the defendants are rank trespassers and they have unauthorizedly trespassed upon the remaining portion of approximately 2 feet wide and 10 feet long, which otherwise falls in the possession of the plaintiff.

5.3 Learned advocate Mr. J.F. Mehta referred to the order passed in Special Civil Application No. 5745 of 1986 by the Division Bench of this Court and submitted that the affected persons have preferred Special Civil Application to get the alternative accommodation in lieu of compensation, which can be granted to landlord and tenant at the time of widening the road line. The Division Bench of this Court accepted the contention as well as the submission of AMC in context to the prayer made by the affected person, whereby AMC came out with a scheme to provide alternative accommodation at two sites: firstly, open market site behind Diwan Ballubhai High School, Paldi, and another in Mahalaxmi Shopping Centre, opposite Munshaw's Bungalow, Ellisbridge, Ahmedabad.

5.4 He would further submit that the affected person chose the first option and accepted the alternative accommodation, pursuant to which the Special Civil Application was disposed of. The scheme was framed and as many as 44 shops and 33 stalls were granted by making a scheme, and at a yearly rental of Rs.101/-.

5.5 He would further submit that it was not a statutory obligation upon the AMC to provide alternative accommodation while implementing the road widening scheme, alternative accomodation was provided in lieu of compensation.

5.6 Further argued that, in lieu of the compensation, the AMC agreed to provide alternative accommodation and it was accepted. Learned advocate Mr. J.F.Mehta submitted that once an alternative accommodation has been accepted by the tenants of the shops, their tenancy right extinguishes.

5.7 He would further submit that subsequent re-entry of the defendants into the remaining part of the suit shops is an act of encroachment or a rank trespasser. Therefore, the learned City Civil Court has jurisdiction to decide this issue and to remove encroachment.

5.8 He would further submit that none of the defendant – appellants have not challenged order passed below Exhibit-58 by which they have been denied to cross-examine the plaintiff. As appellant – defendant have not challenged the order below Exhibit-58 and order attained finality. Thereby, appellant – defendant cannot argue that no sufficient opportunity is granted to them.

5.9 In line of aforesaid circumstances, it is submitted by learned advocate Mr. J.F. Mehta that the appeals are filed only with the malafide intention to extort the amount from the plaintiff and thus, such appeals deserve to be dismissed.

5.10 He would also submit that the learned trial Court has not committed any error in passing the judgment, and thereby, requests this Court to confirm the said judgment and decree, and further, requests this Court to disburse the amount of mesne-profit deposited by the appellant in favor of the original plaintiff. Ultimately, it is prayed to dismiss the appeals.

6. Regard being had to the rival submissions of learned advocates for both the sides and on perusal of the Record & Proceedings, inasmuch as, common judgment and decree, some of the facts appear undeniable.

6.1 Plaintiff is owner of bungalow located on final plot No.827-828 (part thereof) of TP scheme No.3, Ellisbridge area, Ahmedabad. The bungalow constructed on this plot has shops in the front portion, which had been rented to defendants or their ancestors.

6.2 In 1986, the AMC came out with the road widening scheme and issued notice under Section 212-213 of the BPMC Act.

6.3 In the road widening scheme, if rented property is demolished, the compensation received for the implementation of the scheme has to be divided amongst the landlord and plaintiff in view of the provision of law. More than 80 shops were to be demolished for widening the road from Paldi to VS Hospital in the city of Ahmedabad. More than 80 shop occupiers, be it the owner or tenant, were affected.

6.4 Before the the road widening scheme was implemented, some of the affected persons filed Special Civil Application No.5745 of 1986 before the Division Bench of this Court. It is disposed of on 06.03.1987 permitting the parties to withdraw the same as AMC came out with the scheme of providing the alternative accommodation, which was treated to be in lieu of the compensation.

6.5 The scheme was also prepared by the AMC on 20.02.1989 (Annexure-B in the paper-book) and pursuant to which all the affected persons, be the petitioners before the High Court or otherwise, were provided the alternative accommodation in TP Scheme No.3, Final Plot No.929 in Ellisbridge area (Annexure-C, Colly.)

6.6 After providing the alternative accommodation, the shops given in the road widening area were demolished and some part of the demolished shops, which were outside the range of the road widening, were kept as it is in dilapidated and in half-demolished position.

6.7 All the shop-keepers being affected by the road widening, have shifted themselves as well as their businesses to the alternative accommodation. However, some of the erstwhile shop occupiers/tenants re-entered into the remaining part or the part, which was outside the range of the road widening, remain dilapidated and in half-demolished position.

6.8 In this backdrop, the centric issues arise that,

i) Whether City Civil Court has jurisdiction to decide the suit

filed by the plaintiff or in view of Section 28 of the 'Rent Act' as well as the provisions of the 'Small Cause Courts Act', the Small Cause Court has jurisdiction ?

ii) Secondly, whether appellant – defendant proved that they hold the tenancy right for dilapidated and half-demolished part of the suit shops which stands on bare small piece of land ?

iii) Whether City Civil Court has committed error preparing impugned judgment and decree ?

iv) What decree?

6.9 All the appellants came out with the case that they are the tenants and they continued their possession as tenant since more than 60 years. None of them have ever surrendered their tenancy rights and even after the demolition of the shops took place in the road widening scheme, they continue to occupy the remaining portion of the shops as tenant, and therefore, they cannot be evicted without following the process laid down in the 'Rent Act'.

7. Firstly, let me notice that the appellant claims to be the tenant of the remaining portion of the suit shop, failed to demonstrate a single document on record, which suggests and proves that the landlord – tenant relationship continues to live after the suit shops itself were demolished in the road widening scheme of 1990. It is true that mere non-payment of rent would not *ipso-facto* evict the tenant, the scheme of the 'Rent Act' provides that before ejection of the tenant on the ground of arrears of rent, notice under Section 12(2) of the 'Rent Act' is

required to be served upon the tenant and further to grant one month time to pay the arrears of rent. Nonetheless, when the tenants claim that they are in possession of the part of the suit shops since 1990, to demonstrate the same, appellants were required to place on record at least one such rent receipt or any document equivalent to the said, which without doubt establish that the relationship of landlord and tenant continued after 1990.

8. Learned advocate Mr. Jaimin Gandhi as well as learned advocate Mr. Nilesh Shah referred to para 3 of the SCA No.13774 of 2012 filed by the plaintiff, more particularly para 3.5 and 3.6 to submit that even plaintiff admits that appellants – defendants are in possession since 1990 in capacity of tenant. Therefore, such admission of the plaintiff is sufficient to prove that appellants were the tenants and its tenancy right are neither surrendered nor snapped due to demolition of the shops in 1990. I am not impressed by such submission.

9. Taking up few paragraphs from the pleading and to argue the case is impermissible. Conjoint reading of para 3.5, 3.6 & 3.7 of the SCA No.13774 of 2012 indicates that the petitioner has pleaded in para 3.7, which is continuation of paras 3.5 & 3.6 that the appellants – defendants are occupying the premises as unauthorized encroacher and have further prayed to demolish the part of the premises occupied by the appellants – defendants for effective implementation of the scheme by performing their duty. Therefore, it is incorrect to say that the plaintiff has accepted the landlord – tenant relationship even after the year 1990.

10. Before the road widening scheme implemented by the AMC, some of the petitioners filed Special Civil Application No.5745 of 1986 before the Division Bench of this Court. The implementation of the road line was allowed by the Division Bench of this Court on the statement made by learned Counsel appearing for the AMC and consequently, petitioners were permitted to withdraw the Special Civil Application. The entire order of the Division Bench having a bearing upon the disputed issue between the parties, is required to be referred. The order is reproduced hereinunder:-

“ When these petitions were called on for admission, after hearing the Counsel for the petitioners as well as the respondents, we suggested to the Counsel for the respondent-Municipal Corporation to consider the possibility of granting alternative accommodation to the petitioners at certain market and shopping centre sites developed by the Municipal Corporation in the city of Ahmedabad. Taking note of the fact that the Municipal Corporation disposes of these shops/premises at the market price to the members of the public on certain terms and conditions approved by the Municipal Corporation, we thought it would be possible for the Municipal Corporation to grant alternative accommodation to the petitioners who are to be evicted on account of their shops/premises or part thereof being within the regular line of the road. Mr. Nanavati, learned advocate for the petitioners, while conceding the fact that the petitioners would have no legal right to claim any particular site belonging to the Municipal Corporation, made a request that since the petitioners were to be adversely affected on the implementation of the road line, the petitioners could be considered for grant of alternative accommodation on priority basis on such terms and conditions as may be agreed upon by and between the parties. In view of these submissions made at the bar during the hearing of these

petitions, Mr. Panchal, learned advocate for the Municipal Corporation makes the following statement:

"Even though in law the petitioners have no right to any alternative accommodation and even though the Municipal Corporation does not concede any such right, having regard to the fact that the Municipal Corporation is in a position to consider the petitioners' request for alternative accommodation at two sites, namely, (1) open market site behind Divan Ballubhai High School, opposite N.I.D., Paldi, Ahmedabad, (2) Mahalaxmi shopping centre, opposite Munsho's bungalow, Ellisbridge, Ahmedabad, the Municipal Corporation has in principle agreed to consider sympathetically the grant of alternative accommodation to the petitioners at the said two sites at the price to be fixed by the Municipal Corporation after considering the view point of the petitioners in that behalf at a later date. The area will also have to be determined keeping in mind the extent to which each petitioner is affected by the prescribed road line."

In view of the above statement made by Mr. Panchal, Mr. Nanavati seeks leave to withdraw these petitions. Mr. Nanavati also states that till such time as the alternative accommodation is made available to the petitioners, the road line may not be implemented by the Municipal Corporation for otherwise the petitioners will suffer on account of total loss of business premises by some and partial loss by others. We are sure that the Municipal Corporation will keep this fact in mind and expedite the arrangement regarding granting of alternative accommodation so that it synchronises with removal of the petitioners' properties falling within the road line.

In view of the above, the petitions are rejected as withdrawn. Notice discharged."

11. What could be inferred from the aforesaid order that the affected persons were asking for alternative accommodation

in lieu of offering their possession over the shops, including the suit shops. It is needless to say that the road widening scheme provides only for the compensation to the affected persons and there is no obligation to provide alternative accommodation. However, the learned Counsel appearing for the AMC agreed to provide the alternative accommodation on request of the affected persons and two choices were given. One in the open market behind Diwan Ballubhai school at Paldi and another at Mahalaxmi Shopping Centre, opposite Munshaw Bungalow, Ellisbridge.

12. Ultimately, the open market behind Diwan Ballubhai school at Paldi was accepted, fixed and finalized for the purpose of providing the alternative accommodation. The letter of the Municipal Commissioner, at Annexure-B in the paper-book fixing the scheme to provide the alternative accommodation, reads as under:-

“ Letter of the Municipal Commissioner

Classification No. ETS/SCH/45/28

Date: 20/02/1989

Name of Department: Estate

Subject: Regarding providing alternative arrangement to the shopkeepers affected by the road line of the Corporation Act placed upon the properties on the road from Paldi to V. S. Hospital.

Municipal Secretary,

Enclosures:

1. Fair copy showing the shops mini-stalls for providing the

facility of alternative in the market plot of T.P. Scheme No.3, Final Plot No.9291.

- 2. List of 80 units getting affected by the road line.*
- 3. List of the occupants of 34 units getting affected in which the area remains of less than 100 sq. ft.*
- 4. List of the affected occupants included in the petition but whose area remains more than 100 sq. ft.*
- 5. Copy of the lease agreement to be executed.*

Due to the road line placed under the Municipal Corporation Act from Paldi to V. S. Hospital, as stated in the statement enclosed herewith, 80 persons are affected by the acquisition proceedings under the Corporation Act for widening the road. Out of them, there are total 78 shops and two banks. The said two banks which get affected are not eligible for an alternative. Out of the remaining 78 shops, 4 shops are in the possession of the owners. The said 4 shops being of ownership, are not eligible for an alternative. The remaining 74 shops are affected by the road line to a greater or lesser extent. Following the notices of acquisition proceedings in this regard, 17 out of the said affected occupants had filed a writ petition before the High Court of Gujarat. In the said petition, the High Court of Gujarat has directed the petitioners to make representation before the Municipal Corporation for providing an alternative and directed the Municipal Corporation to do the needful after taking into consideration their representation. Pursuant to the said order, the applicants were given an opportunity to make representation before the Director, Estate and Town Planning. In the representation, the applicants have fixed a demand that the land for the Municipal Market near Divan Ballubhai Primary School be given for constructing shops at the rate of Rs.1,000/- per sq. m. and that, they may immediately pay 50 percent of the original price and pay the remaining amount in installments.

Instead of considering only the petitioners for the purpose of alternative arrangement, out of all the 74 affected shopkeepers, the shop area of 34 shopkeepers remains less than 100 sq. ft. after deduction. Out of them, the areas of two shops remain 96 sq. ft. and 97 sq. ft. Therefore, the said two shopkeepers will carry on business at the said two places.

Therefore, regarding the said two shopkeepers whose shop area remains 96 sq. ft. and 98 sq. ft., it remains to be considered whether they should be given an alternative or not. If they give an undertaking to shift from the original place, it is appropriate to give them an alternative. Now, in the plan prepared by the Engineering Department, provision has been made for 44 shops and 33 stalls. Out of the said 34 shopkeepers, there are five(5) shops whose original area, even before being deducted in the road line, is less than 50 sq. ft. It is appropriate to give them the alternative of stalls. Hence

- 1. Thus, it would be appropriate to allot land on a 99-year lease to the total 34 shopkeepers for development of only ground floor shops, on payment of premium at the rate of Rs.1,000/- per sq. m. (Since the occupant will use only one-third of the property, the provisions of Section 79D will be complied with.)*
- 2. The remaining twelve persons are those whose shops, even after deduction on account of the road line, have an area of more than 100 sq. ft. Therefore, as per the prevailing policy, they are not eligible to be provided with an alternative. However, since they are the petitioners, it would be appropriate to allot land to them for development on a 99-year lease on payment of premium at the rate of Rs.1,100/- per sq. m., as they are willing to shift from the original premises.*
- 3. Thus, out of the 34 shopkeepers, five (5) shopkeepers are to be provided with stalls as an alternative. Accordingly, out of 13 stalls, after allotting 5 stalls, 8 stalls would remain. Similarly, after excluding the said 5 shopkeepers from the 34 shopkeepers, the remaining 29 shopkeepers together with the 12 shopkeepers (petitioners) would make a total of 41 shopkeepers to whom shops are to be provided as an alternative. Out of 44 shops, after allotting 41 shops, 3 shops would remain. Thus, as 8 stalls and 3 shops would remain, it would be appropriate to invite offers from those shopkeepers who are not eligible for an alternative to pay the premium amount and if they are willing to offer a higher premium, to allot land to them for development of only ground floor shops. However, they shall have to shift from the original*

premises.

Thus, as stated above, by taking premium, on the land near the Municipal Market near Divan Ballubhai School, they shall be able to construct only ground floor construction according to the plan prepared by the Municipal Corporation. Construction of the basement shall not be done. If required in future, the Municipal Corporation shall carry out construction of the upper floor.

The annual rent of Rs. 101/- for the land given on lease shall be paid by the lessee and the Municipal Tax and Education Cess in respect thereof shall also be paid by the lessee. The other conditions shall be as per the lease agreement.

Approval:

Taking note of the above, it is requested that approval of the Municipal Corporation be obtained through the Standing Committee for authorizing the Municipal Commissioner to provide, as an alternative arrangement, on lease for 99 years, by executing a lease agreement after taking the premium amount, annual rent of Rs. 101/-, Municipal Tax and Education Cess amount, the space for shop/mini stall as shown in the statement according to the plan prepared by the Municipal Architect in the open land of Ellisbridge T.P. Scheme No. 3 (Varied), Final Plot No. 929 (in the market plot near Divan Ballubhai Primary School), to the shopkeepers affected by the acquisition proceedings for widening the road from Paldi Cross Roads to V. S. Hospital.

(For) Municipal Commissioner

Copy of the resolution of the Standing Committee passed on the letters of the Municipal Commissioner, Estate Department No. ETS.SCH/45/28 dated 20/02/1989 and 10/08/1989.

The meeting of the Standing Committee was held in the Standing Committee Room on Friday, 18/08/1989 at 12:00 noon; Copy of the resolution passed therein.

Item No. 20 Resolution No. 1030 Year 1989-90

Resolved that after all the facts contained in the letters of the Municipal Commissioner No. ETS.SCH/45/28 dated 20/02/89 and 10/08/89 became known, recommendation be made to the Corporation to grant approval for authorising the Municipal Commissioner to provide, as an alternative arrangement, by executing a lease agreement for 99 years after taking the premium amount, annual rent of Rs. 101/-, Municipal Tax and Education Cess amount, the space for shop/ministall as shown in the letter of the Municipal Commissioner according to the plan prepared by the Municipal Architect in the open land of Ellisbridge T.P. Scheme No. 3 (Varied), Final Plot No. 928 (in the Municipal Market plot near Divan Ballubhai Primary School), to the shopkeepers affected by the acquisition proceedings for widening the road from Paldi Cross Roads to V. S. Hospital.

True Copy Dated: 18/08/1989

Sd/-

P. M. Sukhadiya

Municipal Secretary

Copy of the Corporation Resolution passed on Standing Committee Resolution No. 1030 dated 18/08/1989.

Meeting of the Ahmedabad Municipal Corporation

The adjourned ordinary monthly meeting of the Ahmedabad Municipal Corporation was held in "Gandhi Hall" on Friday, 29/09/1989 at 6:00 p.m. Copy of the resolution passed therein.

Item No. 8 Resolution No. 482 Year 1989-90

Resolved that approval is granted in accordance with the recommendation of Standing Committee Resolution No. 1030 dated 18/08/1989.

True Copy Dated: 30/09/1989

Sd/-

P. M. Sukhadiya

Municipal Secretary ”

(Translated from Gujarati to English for better understanding)

13. It was followed by the Resolution of the AMC dated 18.08.1989 No.10309, which shows the notices issued to the multiple affected persons allotting the alternative accommodation, at Annexure-C (Colly.).

14. Thus, it demonstrates that all the affected persons, including the appellants – defendants were provided alternative accommodation at the instance of the AMC to take the possession of the suit shops and other shops. Consequent thereto, the roads were widened and suit shops along with the other shops were demolished.

15. Thus, in this factual scenario, it is highly unbelievable that at the time of road widening, appellants – tenants were in possession of the part of the suit shop at the time of the demolition of the shops.

16. In view of the aforesaid scheme, tenants have vacated the premises and resumed their possession at the alternative site. This amounts to implied surrender of the tenancy. Even otherwise the tenants cannot have two different tenanted premises for one tenancy right. In other words, the tenant cannot continue its tenancy at suit shops after obtaining the alternative accommodation, which was granted in lieu of the demolition of the tenanted shops, whereby after demolition of the suit shops in the road widening scheme, the right of the appellants – tenants of the suit shops does not remain. Re-entry to the remains of suit shops thereof would be no less than the entry of the encroacher or possession to dwell upon the desire of extorting the money from the owner of the property.

17. At the cost of repetition, this Court reiterates that tenancy was created for the shops prior to 1990 and in the demolition, the tenants accepted the alternative sites and started the business at alternative, now cannot come back and say that in the remaining part of suit shop, the tenancy survives or exists and they legitimately can occupy the same.

18. In the aforesaid reasons, the centric issue that whether landlord and tenant relationship existed on the day when the suit was filed, answer of which has the repercussion over the jurisdiction of the City Civil Court, is held that no landlord or tenant relationship did not existed post demolition of the shop, more particularly in view of the alternative accommodation offered and accepted by the tenants.

19. In view of aforesaid finding, the City Civil Court has inherent jurisdiction under Section 9 of 'the Code' to conduct the suit and to pass the decree. The former tenant, whose tenancy rights has been seized pursuant to road widening scheme and availing alternative accommodation scheme, cannot rely upon the provisions of the 'Rent Act' to say that he should not be evicted without following the procedure laid down there. The possession and status of the appellants – defendants post 1990 after widening of the road and demolition of the shops remains that of rank trespasser or encroacher. The City Civil Court; therefore, has the jurisdiction to decide the issue.

20. Learned advocate Mr. Jaimin Gandhi as well as learned advocate Mr. Nilesh Shah half-heartedly submitted that since the appellants have not led the evidence as learned

advocate have not informed them, the suit runs *ex-parte* against them and culminated into the *ex-parte* decree, breaches the principle of natural justice. Thus, they have submitted to remand the matter for fresh hearing.

21. To answer the said submission, let me say that the Record & Proceedings of the suits exposes that more than sufficient opportunity and multiple dates were granted by the learned City Civil Court to cross-examine the plaintiff and to challenge the evidence thereof. The defendant did not encash those opportunities, except filing the application at Exhibit-58, which was turned down by the learned City Civil Court. The appellant, who raise quarrels before this Court of not providing the opportunity, did not chose to assail the order passed below Exhibit-58 and even thereafter they did not chose to enter into the witness-box. Surprisingly, yet they have filed the written submission.

22. The Supreme Court, in ***Rajneesh Kumar & Anr. v. Ved Prakash***, reported in **2024 INSC 891**, in context to condoning the delay under Section 5 of the Limitation Act, declined to accept the lawyers' carelessness, negligency to be a reason for condoning the delay. The observation of the Supreme Court is relevant to answer this submission that the appellant – defendant, a poor litigant, could not get the opportunity to lead the evidence. In para 10 & 11, the Supreme Court after referring to the judgment in the case of ***Salil Dutta v. T.M. & M.C. Private Ltd.*** reported in **(1993) 2 SCC 185**, observed as under:-

‘10. It appears that the entire blame has been thrown on the

head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.

11. In the aforesaid context, we may refer to a decision of this Court in the case of Salil Dutta v. T.M. & M.C. Private Ltd. reported in (1993) 2 SCC 185, wherein this Court observed as under:-

“8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engage him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognized. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq [AIR 1981 SC 1400] must not be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not deposed of before taking up the suit for final hearing they felt piqued and refused to appear

before the court. May be, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they S.L.P. (CIVIL) NOS. 935-936 OF 2021 were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.” (Emphasis supplied)”

23. Thus, every litigant, who appears in Court, needs to be vigilant of his right and is also expected to be vigilant in the judicial proceedings pending before the Court. Litigant cannot be permitted to pass the entire blame upon the advocate. Rather, it has become now a tendency to put a blame on the advocates just trying to make it out as if they were (litigant) totally unaware of the nature or significance of the proceedings.

24. In ***Hameed Joharan v. Abdul Salam***, reported in **(2001) 7 SCC 573**, the Supreme Court's following pertinent observation is relevant:-

*“...It cannot, but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times. Even the doctrine of prescription in Roman Law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming dis-favour. Law courts never tolerate an indolent litigant since delay defeats equity. The Latin maxim *Vigilantibus non dormientibus jure subventiunt*’ (law assists those who are vigilant and not those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of right...”*

25. Thus, the submission that the appellants – defendants did not get the opportunity to lead the evidence is just another designed tactic to avoid the consequences of the decree. Alone, the *ex-parte* decree is legal and valid in eyes of law. Appellant – defendant, who chose to remain absent from putting evidence, cannot impeach impugned decree on the ground of *ex-parte* decree.

26. Lastly, it was argued that the standard rent applications were entertained by the Small Cause Court and in reply thereof, the plaintiff had accepted the continuation of the tenancy post 1990 demolition is concerned, in para 8.10 of the impugned judgment, the learned City Civil Court dealt with the same argument and held that the standard rent application No.752 of 1994 filed by Care Well Tailor did not reach to the logical conclusion, deciding any issue on merit as it was dismissed for non-prosecution on 11.12.1997. In these circumstances, the submission, again failed to buttress the case of the appellants. In a nutshell, the appellants fail in their appeals.

27. For the reasons aforesaid, the appeals found arid of merits, deserve dismissal. The facts of the case discussed hereinabove makes it clear that the judgments upon which learned advocates for the appellants are relying, are factually distinguishable.

28. *Ex-consequenti*, all appeals fail and are accordingly dismissed.

29. Interim-relief, if any, granted earlier is discontinued. Connected CA, if any, does not survive.

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

31. Registry to keep the copy of this judgment in all the matters.

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

After pronouncement of the judgment, learned advocate appearing for the appellant seeks stay on the enforcement of the judgment and to continue the interim-relief for 04 weeks. This Court, for the reasons recorded hereinabove, does not find any reason to grant the relief. Accordingly, the request is rejected.

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

Raj