

**(2016) 12 Supreme Court Cases 44**

(BEFORE RANJAN GOGOI AND PRAFULLA C. PANT, JJ.)

JABAL C. LASHKARI AND OTHERS

.. Appellants;

*Versus*

OFFICIAL LIQUIDATOR AND OTHERS

.. Respondents.

Civil Appeals Nos. 3147-49 of 2016<sup>†</sup> with Nos. 3153<sup>‡</sup>,  
3157-72<sup>††</sup> of 2016, decided on March 29, 2016

**A. Rent Control and Eviction — Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (57 of 1947) — Ss. 12(2) and 12(3)(b) — Plea of readiness and willingness to pay the rent — Sufficiency of, to resist eviction on the ground of non-payment — Absence of notice of demand of rent — Effect of, on suit for eviction and possession**

— Held, S. 12 of the Rent Act confers protection on a tenant who is regularly paying or is ready and willing to pay the rent however, mere readiness and willingness to pay without actual payment cannot enure to the benefit of the tenant in perpetuity — Further, what is required under S. 12(2) is a serving of notice in writing by the landlord raising a demand of rent and only on the failure of the tenant to comply with such notice within a period of one month that the filing of a suit for recovery of possession is contemplated

— Predecessor of the appellants had leased out land in favour of a Company for a period of 199 years by a lease deed dated 10-12-1916 — A secured creditor of the Company in the year 1984 filed a company petition seeking its winding up — Though the rent has not been paid, the secured creditors including State Bank of India had all along been ready and willing to pay the rent and the reason for non-payment was lack of communication by the Official Liquidator to SBI of the precise amount of rent due — No notice giving an opportunity to the tenant to pay the unpaid rent had been issued by the landlord and/or brought to the notice of the Court — In the present case, held, the service of notice giving an opportunity to the tenant to pay the unpaid rent is the first chance/opportunity that the Rent Act contemplates as a legal necessity incumbent on the landlord to afford to the tenant — Further, the order of the Court which did not mention any specific rent to be tendered in Court and which only directed the Official Liquidator to bring to the knowledge of the bank (secured creditor) the precise dues on account of rent and gave liberty to the lessors to withdraw the same, held not to be an order under S. 12(3)(b) — Therefore, the finding of the High Court that the landlord was not entitled to seek eviction on the ground of non-payment of rent under S. 12, upheld — Arrears of Rent/Default/Tender of Rent/Striking off Defence — Default in payment of rent — When a ground for eviction — Compliance with statutory requirements

<sup>†</sup> Arising out of SLPs (C) Nos. 29282-84 of 2008. From the Judgment and Order dated 17-10-2008 of the High Court of Gujarat at Ahmedabad in OJ Appeals Nos. 65, 66 and 67 of 2006

<sup>‡</sup> Arising out of SLP (C) No. 29952 of 2008

<sup>††</sup> Arising out of SLPs (C) Nos. 29632 of 2008, 940, 1866, 2583, 5880, 7864, 12835, 12919, 14276, 14316, 21949, 31354 of 2009, 32444-45 of 2010, 31663 of 2011 and 4816 of 2012

**B. Rent Control and Eviction — Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (57 of 1947) — Ss. 13(1)(e) and 15 — Eviction on the ground of sub-letting — Grant of, when the lease deed itself permits the same**

- a* — Held, S. 15 which deals with sub-letting and transfer, though overrides the provisions contained in any other law, is subject to any contract to the contrary — In the present case, held, the lease deed (Cl. 7) was capable of being read as permitting sub-letting and not assignment — Hence, eviction could not be claimed on such ground — Sub-Letting/Sub-Tenant/Sub-Tenancy
- b* — Property Law — Transfer of Property Act, 1882 — Ss. 108(j), 54 and 111(g) — Sub-letting and assignment of lease, distinguished

**C. Rent Control and Eviction — Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (57 of 1947) — S. 13(1)(e) — Issuance of advertisement for assignment but not amounting to assignment — Effect of**

- c* — Appellant, sought eviction on the ground of unauthorised and impermissible assignment by the Official Liquidator on the strength of the notice/advertisement for disposal of the leased land — In the present case, held, the assignment was only sought to be made by the advertisement/notice issued and did not amount to a completed action on the part of the Official Liquidator so as to attract the consequential liability for eviction — Assignment of tenancy
- d* — What amounts to — Transfer of Property Act, 1882, Ss. 108(j) and 111(g)

**D. Rent Control and Eviction — Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (57 of 1947) — S. 13(1)(k) — Eviction, on the ground of unjustified user — Grant of, when the Company to which land was leased was under liquidation**

- e* — Held, the mere fact that the Company has been ordered to be wound up cannot be a ground to direct the Official Liquidator to hand over possession of the land to the owners inasmuch as the company in liquidation continues to maintain its corporate existence until it stands dissolved upon completion of the liquidation proceedings in the manner contemplated by the Companies Act — Wrongful User
- f* One Durgaprasad Lashkari (predecessor of the appellants) had leased out land admeasuring 35,772 sq m in favour of one Bechardas Spinning and Weaving Mills Ltd. (subsequently known as “Prasad Mills Ltd.”) for a period of 199 years by a lease deed dated 10-12-1916. A secured creditor of Prasad Mills Ltd. had in the year 1984 filed a company petition seeking the winding up of the aforesaid Prasad Mills Ltd. An order dated 5-5-1989 was passed by the learned Company Judge of the Gujarat High Court directing the winding up of Prasad Mills Ltd. and the appointment of an Official Liquidator. The Official Liquidator was directed to take charge and possession of all the assets of the Company.
- g*
- h* A company application (CA No. 462 of 1999) was filed by some of the heirs of Durgaprasad Lashkari for return of the leased property and also for orders restraining the Official Liquidator from selling/transferring the leased property. While the return of the leased land was sought on the twin grounds that in view of the winding-up order, the Company no longer required the land and furthermore default in payment of rent had occurred, for the second relief sought it was

urged that the Official Liquidator was not authorised to transfer/alienate the leased property in view of the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, as it then existed (hereinafter referred to as “the Bombay Rent Act”). a

The appellant filed Company Application No. 33 of 2004 for a declaration that the Official Liquidator had no right to sell the leased property.

Another company application i.e. CA No. 34 of 2004 was filed seeking permission from the Company Court to file a suit before the appropriate court for eviction of the Official Liquidator from the leased property. Eviction of the Official Liquidator was claimed, inter alia, on the grounds that: b

(i) the occupant Company i.e. Prasad Mills had no document in its favour entitling it to be in possession of the demised land;

(ii) admitted non-payment of rent for a period of over 15 years rendering the Company and now the Official Liquidator liable to eviction under Section 12 of the Bombay Rent Act; c

(iii) admitted non-user of the land for a period of over 6 years attracting Section 13(1)(k) of the Rent Act;

(iv) sub-letting in favour of the Company, Prasad Mills, in violation of Section 13(1)(e) of the Rent Act.

The learned Company Judge by an order dated 13-10-2004 rejected all the three company applications. d

The issue involved in this case was as to whether the appellant (landlord-lessor) was entitled to eviction by the operation of Sections 12 (default in payment of rent), 13(1)(e) (unauthorised assignment) and 13(1)(k) (non-user of the leased land) of the Bombay Rent Act?

*Held :*

Section 12 of the Rent Act confers protection on a tenant who is regularly paying or is ready and willing to pay the rent. In the present case while there is no doubt that rent has not been paid, equally, there is no doubt that the secured creditors including State Bank of India had all along been ready and willing to pay the rent and the reason for non-payment appears to be (para 43 of the impugned order of the High Court) lack of communication by the Official Liquidator to SBI of the precise amount of rent due. While there can be no doubt that mere readiness and willingness to pay without actual payment cannot enure to the benefit of the tenant in perpetuity what is required under sub-section (2) of Section 12 is a notice in writing by the landlord raising a demand of rent and only on the failure of the tenant to comply with such notice within a period of one month that the filing of a suit for recovery of possession is contemplated. The service of notice giving an opportunity to the tenant to pay the unpaid rent is the first chance/opportunity that the Rent Act contemplates as a legal necessity incumbent on the landlord to afford to the tenant. Admittedly, in the present case, no such notice as contemplated by Section 13(2) has been issued by the landlord; at least none has been brought to notice of the court. In such a situation, the readiness and willingness of the tenant to pay the rent, though may have continued for a fairly long time without actual payment, will not deprive the tenant of the protection under the Rent Act. Though the order of the High Court in para 43 of the impugned judgment has been placed before the Court as an order under Section 12(3)(b) of the Rent Act, the said order e  
f  
g  
h

a is not of the kind contemplated by Section 12(3)(b) inasmuch as not only the order does not mention any specific rent which has to be tendered in court but what is encompassed therein is a direction to the Official Liquidator to let State Bank of India know the precise amount that is required to be paid on account of rent and, thereafter, to pay the same to the Official Liquidator whereafter it has been left open for the lessors to withdraw the said amount from the Official Liquidator. Such an order by no stretch of reasoning would be one contemplated under Section 12(3)(b). In the aforesaid situation, the finding of the High Court that the landlord is not entitled to seek eviction on the ground of non-payment of rent under Section 12 of the Bombay Rent Act cannot be said to be so inherently infirm so as to require the interference of this Court. (Para 18)

b The non obstante clause of Section 13(1) overrides only the other provisions of the Bombay Rent Act and is also subject to the provisions of Section 15. Section 15 which deals with sub-letting and transfer, though overrides the provisions contained in any other law, is subject to any contract to the contrary.

c From Company Application No. 34 of 2004, which deals with the claim of the appellants for eviction of the Official Liquidator from the leased property, what is clear and evident is that the case of sub-letting of the leased premises on which basis eviction has been prayed for is not sub-letting/assignment by the Official Liquidator but assignment of the leased premises to Prasad Mills by the original managing agents in whose favour the initial lease was executed by the predecessors of the present owners. The ground of unauthorised and impermissible assignment d by the Official Liquidator on the strength of the notice/advertisement for disposal of the leased land thereby making the said authority liable for eviction is an argument advanced only at the hearing of the appeals before the Supreme Court. That apart, the said argument overlooks the fact that the assignment was only sought to be made by the advertisement/notice issued and did not amount to a completed action on the part of the Official Liquidator so as to attract the relevant provisions of the Bombay e Rent Act dealing with the consequential liability for eviction. Such argument also belies the injunctive/prohibitory relief sought for in the company applications, as already noticed, insofar as the contemplated sale/transfer/assignment of the leased property by the Official Liquidator is concerned. The arguments advanced on the strength of the provisions of Section 19 of the Bombay Rent Act would also stand answered on the above basis. (Para 19)

f *Hunsraj v. Bejoy Lal Seal*, 1929 SCC OnLine PC 111 : (1929-30) 57 IA 110 : AIR 1930 PC 59; *Ram Kinkar Banerjee v. Satya Charan Srimani*, 1938 SCC OnLine PC 64 : (1938-39) 66 IA 50 : AIR 1939 PC 14; *Laxmidas Bapudas Darbar v. Rudravva*, (2001) 7 SCC 409; *V. Dhanapal Chettiar v. Yesodai Ammal*, (1979) 4 SCC 214, referred to  
*Shri Lakshmi Venkateshwara Enterprises (P) Ltd. v. Syeda Vajhiunnissa Begum*, (1994) 2 SCC 671, cited

g Insofar as liability under Section 13(1)(k) of the Bombay Rent Act is concerned, what is to be noticed is the requirement of unjustified non-user for a period exceeding 6 months which evidently is not attracted to the present case in view of the pendency of the liquidation proceedings. That apart, Clause 5 of the lease deed which deals with non-user of the leased land does not contemplate eviction on account of such non-user but merely entitles the lessor to receive rent for the period of such non-user of the land. (Para 20)

h

The mere fact that the Company has been ordered to be wound up cannot be a ground to direct the Official Liquidator to hand over possession of the land to the owners inasmuch as the company in liquidation continues to maintain its corporate existence until it stands dissolved upon completion of the liquidation proceedings in the manner contemplated by the Companies Act. In the present case, it has been repeatedly submitted before this Court by both sides that presently revival of Prasad Mills is a live issue pending before the Gujarat High Court, a fact which cannot be ignored by this Court in deciding the above issue against the appellants. (Para 21)

*Jabal C. Lashkari v. Official Liquidator*, 2008 SCC OnLine Guj 171 : (2008) 3 GLH 528, affirmed

*State of Gujarat v. Official Liquidator*, Company Application No. 250 of 2006, order dated 17-7-2006 (Guj); *Manguben v. Official Liquidator*, 2008 SCC OnLine Guj 512; *Anilkumar Vaikuthlal Patel v. Official Liquidator*, 2008 SCC OnLine Guj 508; *Dinesh Prabhakar Mehd. v. Official Liquidator*, 2008 SCC OnLine Guj 510; *Virendra Bhogilal Shah v. Official Liquidator*, 2008 SCC OnLine Guj 509; *Shree Swaminarayan Temple v. Official Liquidator*, 2008 SCC OnLine Guj 513; *Rahul Rohitkumar Patel v. Official Liquidator*, 2008 SCC OnLine Guj 515; *Mangaldas & Bros. (P) Ltd. v. Official Liquidator*, 2008 SCC OnLine Guj 514; *Vidyaben Somalal Patel v. Official Liquidator*, 2009 SCC OnLine Guj 12114; *Ajitkumar Ganpatlal Chaudhry v. Official Liquidator*, 2008 SCC OnLine Guj 511; *Dhirubhai Ramchandra Patel v. Official Liquidator*, 2009 SCC OnLine Guj 6015; *Dhirubhai Ramchandra Patel v. State of Gujarat*, 2010 SCC OnLine Guj 7603; *Rajendra Bhogilal Khalas v. Official Liquidator*, 2011 SCC OnLine Guj 4120; *Harshadbhai Dahyabhai Patel v. Official Liquidator*, 2010 SCC OnLine Guj 7767, reversed

*Rajendraprasad D. Lashkari v. Official Liquidator*, Company Application No. 462 of 1999, order dated 13-10-2004 (Guj), referred to

VN-D/56764/SV

Advocates who appeared in this case :

Mihir Thakur, Sanjib Sen, V. Giri, Ms Meenakshi Arora, Colin Gonsalves and Shekhar Naphade, Senior Advocates (Rudreshwar Singh, Gautam Singh, Kaushik Poddar, D.N. Ray, Lokesh K. Choudhary, Ms Sumita Ray, Ms Nandini Gore, Abhishek Roy, Ms Trishala Kulkarni, Kartik Bhatnagar, Ms Manik Karanjawala, Abhigya, Abhay Singh Kushwaha, Pradeep Kr. Dubey, Ms Anushree Kapadia, C. George Thomas, Ejaz Maqbool, Faraz Maqbool, Nikhil Goel, Chankya B., Ms Naveen Goel, Marsook Bafaki, Ms Sheela Goel, B.K. Satija, Ms Aparna Bhat, Runjun Borah, A. Venayagam Balan, Nachiketa Joshi, Ms Sucheta Joshi, Ritwiz Rishabh, Venkita Subramoniam T.R., Dharmesh V. Shah, Divya Jyoti Jaipuriar, Satya Mitra and Mohit D. Ram, Advocates) for the Appellants;

Tushar Mehta and P.S. Narasimha, Additional Solicitors General, S.H. Shlute, Jaideep Gupta, Sanjay R. Hegde, Mahendra Anand, Mihir Joshi, Shekhar Naphade, Mahendra Anand and Yashank Adhyaru, Senior Advocates [Mukund G. Nagarkar, S. Nithin, Anil Kr. Mishra-I, Aditya Kr. Choudhary, Harshul Singh, Ms Kanika Gaur, Dharmendra Kr. Sinha, Mahesh Agarwal, Vivek Jain, Apoorva Vakil, E.C. Agrawala, Rishabh Parikh, Ms Devika Mohan, Gaurav Agrawal, Mohit D. Ram, Ram Lal Roy, R.N. Keswani, Rajesh Kumar, Gaurav Kr. Singh, Rakesh Chaurasiya, M/s Mitter & Mitter Co., K.R. Sasiprabhu, Somiran Sharma, Biju P. Raman, Manish K. Bishnoi, Venkat Poonia, Ms Hemantika Wahi, Ms Jesal Wahi, Ms Vinakshi Kadan, Aditya Kr. Choudhary, Upendra S. Dindsha, D.K. Sinha, R. Chandrachud, S.K. Sabharwal, D.N. Ray, Ms Sumita Ray, Dinesh Mathur, Ms Aparna Singh (for M/s Dua Associates), Ritesh Kumar, Kaushik P., Ms Madhavi Divan, Ms Nidhi Khanna, Sridhar Potaraju, Ms Sushma Sur, Ankur Mittal (for M/s Khaitan & Co.), Ayushya Kumar and Abhijeet Sinha, Advocates] for the Respondents.

JABAL C. LASHKARI v. OFFICIAL LIQUIDATOR (*Ranjan Gogoi, J.*) 49

**Chronological list of cases cited on page(s)**

1. 2011 SCC OnLine Guj 4120, *Rajendra Bhogilal Khalas v. Official Liquidator (reversed)* 61a-b
- a 2. 2010 SCC OnLine Guj 7767, *Harshadbhai Dahyabhai Patel v. Official Liquidator (reversed)* 61a-b
3. 2010 SCC OnLine Guj 7603, *Dhirubhai Ramchandra Patel v. State of Gujarat (reversed)* 61a-b
4. 2009 SCC OnLine Guj 12114, *Vidyaben Somalal Patel v. Official Liquidator (reversed)* 61a-b
- b 5. 2009 SCC OnLine Guj 6015, *Dhirubhai Ramchandra Patel v. Official Liquidator (reversed)* 61a-b
6. 2008 SCC OnLine Guj 515, *Rahul Rohitkumar Patel v. Official Liquidator (reversed)* 61a-b
7. 2008 SCC OnLine Guj 514, *Mangaldas & Bros. (P) Ltd. v. Official Liquidator (reversed)* 61a-b
8. 2008 SCC OnLine Guj 513, *Shree Swaminarayan Temple v. Official Liquidator (reversed)* 61a-b
- c 9. 2008 SCC OnLine Guj 511, *Ajitkumar Ganpatlal Chaudhry v. Official Liquidator (reversed)* 61a-b
10. 2008 SCC OnLine Guj 512, *Manguben v. Official Liquidator (reversed)* 61a-b
11. 2008 SCC OnLine Guj 510, *Dinesh Prabhakar Mehd. v. Official Liquidator (reversed)* 61a-b
12. 2008 SCC OnLine Guj 509, *Virendra Bhogilal Shah v. Official Liquidator (reversed)* 61a-b
- d 13. 2008 SCC OnLine Guj 508, *Anilkumar Vaikuthlal Patel v. Official Liquidator (reversed)* 61a-b
14. 2008 SCC OnLine Guj 171 : (2008) 3 GLH 528, *Jabal C. Lashkari v. Official Liquidator* 51a-b, 56c-d, 56f, 57a, 57a-b, 57g-h, 60d-e, 60e-f, 60f-g
15. Company Application No. 250 of 2006, order dated 17-7-2006 (Guj), *State of Gujarat v. Official Liquidator* 60f, 61a, 61a-b
- e 16. Company Application No. 462 of 1999, order dated 13-10-2004 (Guj), *Rajendraprasad D. Lashkari v. Official Liquidator* 51a
17. (2001) 7 SCC 409, *Laxmidas Bapudas Darbar v. Rudravva* 55a-b, 55b, 55b-c, 55c, 55d-e, 56d-e, 59c-d
18. (1994) 2 SCC 671, *Shri Lakshmi Venkateshwara Enterprises (P) Ltd. v. Syeda Vajhiunnissa Begum* 55d-e
- f 19. (1979) 4 SCC 214, *V. Dhanapal Chettiar v. Yesodai Ammal* 55b, 55b-c
20. 1938 SCC OnLine PC 64 : (1938-39) 66 IA 50 : AIR 1939 PC 14, *Ram Kinkar Banerjee v. Satya Charan Srimani* 58a-b, 59e
21. 1929 SCC OnLine PC 111 : (1929-30) 57 IA 110 : AIR 1930 PC 59, *Hunsraj v. Bejoy Lal Seal* 58a-b, 59e

The Judgment of the Court was delivered by

- g **RANJAN GOGOI, J.**— Leave granted in each of the special leave petitions. The facts arising in the civil appeals arising from SLPs (C) Nos. 29282-84 of 2008, which is being taken as the lead case, may be noticed at the outset.

- h **2.** One Durgaprasad Lashkari (predecessor of the appellants) had leased out land admeasuring 35,772 sq m in favour of one Bechardas Spinning and Weaving Mills Ltd. (subsequently known as “Prasad Mills Ltd.”) for a period of 199 years by a lease deed dated 10-12-1916. A secured creditor of Prasad Mills



Ltd. had in the year 1984 filed a company petition seeking the winding up of the aforesaid Prasad Mills Ltd. While the company petition was pending, some of the legal heirs of Durgaprasad Lashkari had filed a suit in the Small Cause Court seeking permanent injunction against the sale of assets of the Company, more particularly the sale of the leased property. a

3. An order dated 5-5-1989 was passed by the learned Company Judge of the Gujarat High Court directing the winding up of Prasad Mills Ltd. and the appointment of an Official Liquidator. The Official Liquidator was directed to take charge and possession of all the assets of the Company. An application was filed by another heir of Durgaprasad Lashkari in the winding-up petition seeking direction to further prosecute the suit pending before the Small Cause Court. The learned Company Judge by order dated 24-2-1995 ordered that the suit may be withdrawn and instead directions may be sought from the Company Court for return of the leased property. Pursuant thereto a company application (CA No. 462 of 1999) was filed by some of the heirs of Durgaprasad Lashkari for return of the leased property and also for orders restraining the Official Liquidator from selling/transferring the leased property. While the return of the leased land was sought on the twin grounds that in view of the winding-up order, the Company no longer required the land and furthermore default in payment of rent had occurred, for the second relief sought it was urged that the Official Liquidator was not authorised to transfer/alienate the leased property in view of the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, as it then existed (hereinafter referred to as “the Bombay Rent Act”). While the above company application was pending, the building, superstructure, plant and machinery of the Company was sold in a public auction. It appears that on 6-2-2004, an advertisement was issued by the Official Liquidator for the sale of the leased property. As against the aforesaid advertisement, the appellant had filed Company Application No. 33 of 2004 for a declaration that the Official Liquidator had no right to sell the leased property. The grounds urged were principally on the basis of lack of any such empowerment in the lease agreement and in view of the bar/restriction contained in Section 15 of the Bombay Rent Act. b  
c  
d  
e

4. Another company application i.e. CA No. 34 of 2004 was filed seeking permission from the Company Court to file a suit before the appropriate court for eviction of the Official Liquidator from the leased property. Eviction of the Official Liquidator was claimed, inter alia, on the ground that: f

- (i) the occupant Company i.e. Prasad Mills had no document in its favour entitling it to be in possession of the demised land;
- (ii) admitted non-payment of rent for a period of over 15 years rendering the Company and now the Official Liquidator liable to eviction under Section 12 of the Bombay Rent Act;
- (iii) admitted non-user of the land for a period of over 6 years attracting Section 13(1)(k) of the Rent Act;
- (iv) sub-letting in favour of the Company, Prasad Mills, in violation of Section 13(1)(e) of the Rent Act. g  
h

a 5. The learned Company Judge by a very elaborate order dated 13-10-2004<sup>1</sup> rejected all the three company applications. Aggrieved, the appellant and other legal heirs of Durgaprasad Lashkari filed three separate appeals before the Division Bench of the High Court. The High Court by a common order dated 17-10-2008<sup>2</sup> dismissed all the appeals on grounds and reasons that will be noticed shortly. It is against the aforesaid common order dated 17-10-2008<sup>2</sup> that the present appeals have been filed.

b 6. We have heard Shri Mihir Thakur, learned Senior Counsel appearing for the appellants in civil appeal arising out of SLPs (C) Nos. 29282-84 of 2008; Shri P.S. Narasimha, learned Additional Solicitor General appearing for the Official Liquidator; Shri Tushar Mehta, learned Additional Solicitor General and Shri S.N. Shlute, learned Senior Counsel appearing for Gujarat State Textile Corporation. We have also heard the learned counsel appearing for the parties in all the other cases.

c 7. At the very outset the relevant provisions of the Bombay Rent Act (hereinafter referred to as “the Rent Act”) as applicable to the State of Gujarat and the provisions of the lease agreement dated 10-12-1916 may be noticed:

d “12. *No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.*—(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, insofar as they are consistent with the provisions of this Act.

e (1-A) Where by reason of riot or violence of a mob any material part of the premises in a disturbed area is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let, the landlord shall not be entitled to—

(a) the standard rent and permitted increases due for the premises,

(b) recover possession of such premises merely on the ground of non-payment of standard rent and permitted increases due, during the period in which such premises remain so destroyed or unfit.

f (2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted, increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882 (4 of 1882).

g (3)(a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one

h 1 *Rajendraprasad D. Lashkari v. Official Liquidator*, Company Application No. 462 of 1999, order dated 13-10-2004 (Guj)

2 *Jabal C. Lashkari v. Official Liquidator*, 2008 SCC OnLine Guj 171 : (2008) 3 GLH 528



month, after notice referred to in sub-section (2), the court may pass a decree for eviction in any such suit for recovery of possession.

(b) In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the court may fix, the tenant pays or tenders in court the standard rent and permitted increases then due and thereafter— a

(i) continues to pay or tender in court such rent and permitted increases till the suit is finally decided; and

(ii) pays costs of the suit as directed by the court. b

(4) Pending the disposal of any such suit, the court may out of any amount paid or tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increases due to him as the court thinks fit.

*Explanation.*—In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the court under sub-section (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the court. c

**13. When landlord may recover possession.**—(1) Notwithstanding anything contained in this Act but subject to the provisions of Section 15; a landlord shall be entitled to recover possession of any premises if the court is satisfied— d

(a) to (d) \* \* \*

(e) that the tenant has, since the coming into operation of this Act unlawfully sublet the whole or part of the premises or assigned or transferred in any other manner his interest therein; or e

(ee) to (j) \* \* \*

(k) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit;

\* \* \* f

**15. In absence of contract to the contrary tenant not to sublet or transfer.**—(1) Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein: g

Provided that the State Government may, by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification.

(2) The bar against sub-letting, assigning or transferring premises contained in sub-section (1) shall be deemed not to have had any effect before the commencement of the Bombay Rents, Hotel and Lodging House h

JABAL C. LASHKARI v. OFFICIAL LIQUIDATOR (*Ranjan Gogoi, J.*) 53

a Rates Control (Amendment) Ordinance, 1959 (3 of 1959), in any area in which this Act was in operation before such commencement; and accordingly, notwithstanding anything contained in any contract or in the judgment, decree or order of a court any such sub-lease, assignment or transfer in favour of such persons as have entered into possession despite the bar as sub-lessees, assignees or transferees, and have continued in possession at the commencement of the said Ordinance, shall be deemed to be valid and effectual.

b \* \* \*  
**19. Unlawful charges by tenant.**—(1) Save in cases provided for under the proviso to Section 15, it shall not be lawful for the tenant or any person acting or purporting to act on behalf of the tenant to claim or receive any sum, or any consideration as a condition of the relinquishment transfer or assignment of his tenancy of any premises.

c (2) Any tenant or person who in contravention of the provisions of sub-section (1) receives any sum or consideration shall, on conviction, be punished with imprisonment for a term which may extend to six months and shall also be punished with fine which shall not be less than the sum or the value of the consideration received by him.”

d **8. The terms of the lease deed are as follows:**  
“... And whereas the abovementioned three pieces of land are owned by the first party, and the second party has rented the same from first party; And whereas the rent is fixed at Rs 3501.00 — Rupees three thousand five hundred and one for one year of 12 months to be paid to first party, by the second party; as rent on the following conditions:

e (1) The said rent will be given to first party, by second party every year and if the second party does not pay the rent due to them every year, the first party will give registered notice for recovery of rent; and in spite of such notice the second party or their successors, heirs or administrators do not pay the rent. The first party or their successors, heirs, attorneys or administrators are entitled to obtain possession of the land with buildings, either by mutual understanding or through Government.

f (2) This rent note is valid for 199 years, in words one hundred ninety-nine years, agreed by second party and on expiry of the said period, we, the second party will vacate the land, resurface it and will give it to the first party or their successor with any amount of rent due, by the second party or their successors or administrators, whosoever would be, and while giving back the possession, second party will not raise any dispute or objection, and even if raised will not be admissible by virtue of this agreement.

g (3) The first party, or their successors, heirs, are not entitled to sale or pledge, or give possession of these pieces of land, to any other party, and even if they do so, it will be void by virtue of this agreement.

h

(4) In case the Government needs this land and/or if the Government purchases some part of this land; then the right to receive compensation for such acquisition is of first party; however, interest at the rate of one per cent per hundred of whatever amount the first party thus receive will be adjusted by the second party from the rent payable, or the second party will give such reduced rent to first party after adjusting the said amount, in the following years; and the first party will have no right to any objection or dispute, and even if they raise any dispute it will not be sustainable by virtue of this agreement. a

(5) In case the second party, or their successors, attorneys, administrators, assignees or executors do not stay, or do not make use of, or do not store material, on the land; or vacate the land and give possession to the first party, before the specified period, then the first party is entitled to receive rent till the date of possession so given; and the first party has no right to claim rent for the remaining period. b

(6) The municipal tax for the land is Rs 500.00 per year, which will be paid by the second party; and the second party will give rent of Rs 3501 to first party every year. However, the second party does not pay the municipal tax of Rs 500 and the same has to be paid by the first party, then the second party, or their successors will reimburse such amount with six per cent interest per hundred per year thereon. c

(7) The first party will not object up to 199 years, if the second party, or their successors, heirs or administrators, construct buildings with necessary Government permission, or use a free land or the second party give on rent or on lease, and the first party is entitled to take possession of the land immediately on expiry of 199 years. d

(8) The first party, or their successors, heirs, administrators or attorneys are entitled to take possession of the land before the expiry of rent period, if the second party fail to pay rent to first party every year. e

(9) The government tax on this land is to be paid by we, first party; but if some additional tax is levied because of construction on the land, it will be borne by the second party. Municipal tax is Rs 500 per year at present. However, hereafter if municipality levies some additional tax on first party or on second party; or the Government decide to levy some new tax; then all such taxes will be borne by the second party, and will not claim it from first party; nor will adjust it against rent payable to the first party; and the first party has no right to take possession of the land before expiry of 199 years, but the first party has right to receive amount of rent till the above period. f

(10) The first party and the second party and their successors, heirs, administrators, attorneys and assignees, are accepting the terms and conditions set out in this agreement. g

Thus, the second party has rented the pieces of land, from the first party under the terms set out in this agreement, at our will, and signed and sealed this agreement.” h

JABAL C. LASHKARI v. OFFICIAL LIQUIDATOR (*Ranjan Gogoi, J.*) 55

a 9. Before cataloguing the arguments advanced on behalf of the rival parties it will be apposite to take note of the reasoning of the High Court which had prompted it to arrive at the impugned conclusions recorded in the order under appeal.

b 10. The Division Bench of the High Court in answering the appeals before it exhaustively considered a three-Judge Bench decision of this Court in *Laxmidas Bapudas Darbar v. Rudravva*<sup>3</sup>. The Division Bench took note of the fact that in *Laxmidas Bapudas Darbar*<sup>3</sup> the Bench had occasion to consider the purport and effect of the decision of this Court in *V. Dhanapal Chettiar v. Yesodai Ammal*<sup>4</sup> (seven Judges) before holding that: (*Laxmidas Bapudas case*<sup>3</sup>, SCC p. 414, para 14)

“14. ... As a matter of fact the question of curtailment of fixed-term contractual lease was not involved in *Dhanapal Chettiar*<sup>4</sup>.”

c In fact in para 15 of the judgment in *Laxmidas Bapudas Darbar*<sup>3</sup> it was held: (SCC p. 415)

d “15. It has nowhere been held that by virtue of the provisions of the Rent Act the contract of term lease is completely obliterated in all respects. The effect of the Rent Act on tenancy under contract has been considered only to a limited extent, confining it to the necessity of giving notice under Section 106 of the Transfer of Property Act.”

e 11. In *Laxmidas Bapudas Darbar*<sup>3</sup> another decision of this Court in *Shri Lakshmi Venkateshwara Enterprises (P) Ltd. v. Syeda Vajhiunnissa Begum*<sup>5</sup> rendered in the context of Section 21 of the Karnataka Rent Act and, specifically, the provisions of the aforesaid section of the Karnataka Act were considered. The non obstante clause in Section 21 of the Karnataka Act which gives an overriding effect over any provision in *any other law* was specifically taken note of and eventually it was held that the effect of the non obstante clause contained in Section 21 of the Karnataka Act on a fixed-term contractual lease would be as follows: (SCC p. 416, para 18)

f “18. The effect of the non obstante clause contained under Section 21 of the Karnataka Rent Act on the fixed-term contractual lease may be explained as follows:

(i) On expiry of period of the fixed-term lease, the tenant would be liable for eviction only on the grounds as enumerated in clauses (a) to (p) of sub-section (1) of Section 21 of the Act.

g (ii) Any ground contained in the agreement of lease other than or in addition to the grounds enumerated in clauses (a) to (p) of sub-section (1) of Section 21 of the Act shall remain inoperative.

h <sup>3</sup> (2001) 7 SCC 409  
<sup>4</sup> (1979) 4 SCC 214  
<sup>5</sup> (1994) 2 SCC 671

(iii) Proceedings for eviction of a tenant under a fixed-term contractual lease can be initiated during subsistence or currency of the lease only on a ground as may be enumerated in clauses (a) to (p) of sub-section (1) of Section 21 of the Act and it is also provided as one of the grounds for forfeiture of the lease rights in the lease deed, not otherwise. a

(iv) The period of fixed-term lease is ensured and remains protected except in the cases indicated in the preceding paragraph.” b

12. The Division Bench of the High Court took note of the fact that the non obstante clause in Section 13 of the Rent Act only gave the said Section 13 an overriding effect over the *other provisions of the Act*. Section 13 was also made subject to the provisions of Section 15 of the Bombay Act. This is in contrast to Section 21 of the Karnataka Act which had an overriding effect over any other law or contract to the contrary. Section 15 which deals with the authority of the lessee to sub-lease or assign the leased rights/property, though, gives an overriding effect over any other law has been made subject to any contract to the contrary. Therefore, the terms of the lease and other cognate provisions of law is not obliterated. The Division Bench, in view of the above provisions of the Bombay Rent Act, went on to hold that: (*Jabal C. Lashkari case*<sup>2</sup>, SCC OnLine Guj para 66) c

“66. ... the ratio of the decision of three-Judge Bench of the Apex Court in *Laxmidas Bapudas Darbar*<sup>3</sup> would apply with much greater force for the benefit of the lessee under a fixed long-term lease in the State of Gujarat.” d

It is on the aforesaid basis that the Division Bench came to the conclusion that the Rent Act did not obliterate the effect of the provisions of Section 108(j) of the Transfer of Property Act which would vest a right in the lessee not only to sublet but also to assign the subject-matter of the lease granted to him by the original lessor. e

13. So far as the contention of the appellants that as the Company has been wound up it no longer required the leased land for its use is concerned, the High Court, in the impugned judgment<sup>2</sup>, disagreed with the aforesaid proposition as a viable and acceptable proposition of law. Furthermore, it was held that the liability/obligation to pay rent for the leased land does not constitute an onerous obligation on the company in liquidation so as to justify surrender of the leased land by the Official Liquidator or any direction to the said effect under Section 525 of the Companies Act. f

14. So far as the issue with regard to default in the payment of rent is concerned, the High Court, in the light of its views with regard to the applicability of the provisions of the Transfer of Property Act, had invoked both Section 114 of the Transfer of Property Act and Section 12(3) of the Rent Act to hold that as g

<sup>2</sup> *Jabal C. Lashkari v. Official Liquidator*, 2008 SCC OnLine Guj 171 : (2008) 3 GLH 528 h

<sup>3</sup> *Laxmidas Bapudas Darbar v. Rudravva*, (2001) 7 SCC 409

JABAL C. LASHKARI v. OFFICIAL LIQUIDATOR (*Ranjan Gogoi, J.*) 57

a “the secured creditors and workers have always shown their readiness and willingness to pay the rent and arrears thereof. The lessors are not entitled to claim or get possession of the land leased to the company presently in winding up”. (*Jabal C. Lashkari case*<sup>2</sup>, SCC OnLine Guj para 68)

However, in the operative part of its order the Gujarat High Court was pleased to observe as follows: (*Jabal C. Lashkari case*<sup>2</sup>, SCC OnLine Guj para 88)

b “88. In view of the statement of Mr R.M. Desai, learned counsel for the secured creditor that the arrears of rent, if any, remaining unpaid by the company in liquidation shall be paid by the secured creditor, we direct that within one month from today, the Official Liquidator shall supply to the secured creditor the particulars of the rent for the demised land for the period up to 31-10-2008, remaining unpaid so far, and the secured creditor State Bank of India shall deposit the amount with the Official Liquidator within one month thereafter. It will be open to the lessors to withdraw such amount.”

d 15. On behalf of the appellants it is urged that the Company in liquidation i.e. Prasad Mills Ltd. and the Official Liquidator appointed by the learned Company Judge in the liquidation proceedings involving the said Company have rendered themselves liable to eviction on the ground of default in payment of rent under Section 12 of the Rent Act. It is further contended on behalf of the appellants that eviction of the Official Liquidator is required to be ordered on the grounds enumerated in Sections 13(1)(e) and 13(1)(k) of the Rent Act. Pointing out the provisions of Section 15 of the Rent Act it has been urged that the Official Liquidator has assigned the property contrary to the provisions of Section 15, such act not being saved either by express term of the contract/lease deed or by the proviso to Section 15 of the Rent Act. Sections 18 and 19 of the Rent Act have also been relied upon by the appellants to show that the Official Liquidator is not entitled to receive any payment apart from the standard rent. It is urged that in the absence of any such enabling provision not only receipt of such consideration upon assignment is illegal but the property itself has become onerous being incapable of earning any profit. Besides, the property has ceased to serve the purpose of lease in view of the liquidation of the Company. Accordingly, the Official Liquidator is liable to surrender the same to the original owners, it is urged.

g 16. Shri P.S. Narasimha, learned Additional Solicitor General, on the other hand, has submitted that the provisions of default in the matter of payment of rent would not be attracted as the secured creditors including State Bank of India had all along been ready and willing to pay all rents due. In fact, the learned Additional Solicitor General has drawn the attention to the directions of the High Court contained in para 43 of the impugned judgment<sup>2</sup> (extracted above) to contend that the same is an order passed under Section 12(3)(b) of the Rent Act which, however, could not be honoured in view of the interim order passed by this Court at the time of entertaining the special leave petitions.

h  
<sup>2</sup> *Jabal C. Lashkari v. Official Liquidator*, 2008 SCC OnLine Guj 171 : (2008) 3 GLH 528



Insofar as the arguments advanced on behalf of the appellants with regard to Section 13(1)(e) is concerned, it is urged by the learned Additional Solicitor General that under Clause 7 of the lease deed dated 10-12-1916 sub-letting is admittedly permissible. In the present case, according to the learned Additional Solicitor General, there is no assignment. In this regard reliance is placed on two decisions of the Privy Council in *Hunsraj v. Bejoy Lal Seal*<sup>6</sup> and *Ram Kinkar Banerjee v. Satya Charan Srimani*<sup>7</sup> to contend that the law, as prevailing in India, does not recognise any substantial difference between sub-letting and assignment. So far as Section 13(1)(k) is concerned, it is urged that the purpose of lease is not spelt out in the lease deed and in any event Section 13(1)(k) contemplates non-user of the leased premises without a reasonable cause. In the present case, such non-user is on account of the fact that the company was ordered to be wound up as far back as in the year 1989.

17. The main plank on which the appellants have based their case, as already noticed, is the operation of Sections 12 (default), 13(1)(e) (unauthorised assignment) and 13(1)(k) (non-user of the leased land). We may now take up the aforesaid issues in seriatim.

18. Section 12 of the Rent Act confers protection on a tenant who is regularly paying or is ready and willing to pay the rent. In the present case while there is no doubt that rent has not been paid, equally, there is no doubt that the secured creditors including State Bank of India had all along been ready and willing to pay the rent and the reason for non-payment appears to be (para 43 of the impugned order of the High Court) lack of communication by the Official Liquidator to SBI of the precise amount of rent due. While there can be no doubt that mere readiness and willingness to pay without actual payment cannot enure to the benefit of the tenant in perpetuity what is required under sub-section (2) of Section 12 is a notice in writing by the landlord raising a demand of rent and only on the failure of the tenant to comply with such notice within a period of one month that the filing of a suit for recovery of possession is contemplated. The service of notice giving an opportunity to the tenant to pay the unpaid rent is the first chance/opportunity that the Rent Act contemplates as a legal necessity incumbent on the landlord to afford to the tenant. Admittedly, in the present case, no such notice as contemplated by Section 13(2) has been issued by the landlord; at least none has been brought to our notice. In such a situation, the readiness and willingness of the tenant to pay the rent, though may have continued for a fairly long time without actual payment, will not deprive the tenant of the protection under the Rent Act. Though the order of the High Court in para 43 of the impugned judgment has been placed before the Court as an order under Section 12(3)(b) of the Rent Act, we do not find the said order to be of the kind contemplated by Section 12(3)(b) inasmuch as not only the order does not mention any specific rent which has to be tendered in court but what is encompassed therein is a direction to the Official Liquidator to let State Bank of India know the precise amount that is required to be paid

6 1929 SCC OnLine PC 111 : (1929-30) 57 IA 110 : AIR 1930 PC 59

7 1938 SCC OnLine PC 64 : (1938-39) 66 IA 50 : AIR 1939 PC 14

a on account of rent and, thereafter, to pay the same to the Official Liquidator whereafter it has been left open for the lessors to withdraw the said amount from the Official Liquidator. Such an order by no stretch of reasoning would be one contemplated under Section 12(3)(b). In the aforesaid situation, the finding of the High Court that the landlord is not entitled to seek eviction on the ground of non-payment of rent under Section 12 of the Bombay Rent Act cannot be said to be so inherently infirm so as to require the interference of this Court.

b 19. This will bring the Court to a consideration of the liability of the Official Liquidator to a decree of eviction on the ground contemplated under Section 13(1)(e) of the Bombay Rent Act. As already discussed in a preceding paragraph of the present order, the non obstante clause of Section 13(1) overrides only the other provisions of the Bombay Rent Act and is also subject to the provisions of Section 15. Section 15 which deals with sub-letting and transfer, though overrides the provisions contained in any other law, is subject to any contract to the contrary. Though in the present case the lease deed (Clause 7) is capable of being read as permitting sub-letting and not assignment what has been held in the present case by the High Court, by virtue of the decision of this Court in *Laxmidas Bapudas Darbar v. Rudravva*<sup>3</sup>, is that in view of the limited operation of the non obstante clause in Section 15 of the Bombay Rent Act, unlike Section 21 of the Karnataka Act, the provisions of the Transfer of Property Act [Section 118(o)] will not become irrelevant to the relationship between the parties in which event assignment may also be permissible notwithstanding the specific content of Clause 7 of the lease deed in question. However, we need not dwell on this issue at any length or would also be required to consider the efficacy of the arguments of the learned Additional Solicitor General on the strength of the two Privy Council decisions mentioned above i.e. *Hunsraj v. Bejoy Lal Seal*<sup>6</sup> and *Ram Kinkar Banerjee v. Satya Charan Srimani*<sup>7</sup> inasmuch as from Company Application No. 34 of 2004, which deals with the claim of the appellants for eviction of the Official Liquidator from the leased property, what is clear and evident is that the case of sub-letting of the leased premises on which basis eviction has been prayed for is not sub-letting/assignment by the Official Liquidator but assignment of the leased premises to Prasad Mills by the original managing agents in whose favour the initial lease was executed by the predecessors of the present owners. The ground of unauthorised and impermissible assignment by the Official Liquidator on the strength of the notice/advertisement for disposal of the leased land thereby making the said authority liable for eviction is an argument advanced only at the hearing of the appeals before us. That apart, the said argument overlooks the fact that the assignment was only sought to be made by the advertisement/notice issued and did not amount to a completed action on the part of the Official Liquidator so as to attract the relevant provisions of the Bombay Rent Act dealing with the consequential liability for eviction. Such argument also belies the injunctive/prohibitory relief sought for

h <sup>3</sup> (2001) 7 SCC 409

<sup>6</sup> 1929 SCC OnLine PC 111 : (1929-30) 57 IA 110 : AIR 1930 PC 59

<sup>7</sup> 1938 SCC OnLine PC 64 : (1938-39) 66 IA 50 : AIR 1939 PC 14

in the company applications, as already noticed, insofar as the contemplated sale/transfer/assignment of the leased property by the Official Liquidator is concerned. The arguments advanced on the strength of the provisions of Section 19 of the Bombay Rent Act would also stand answered on the above basis. a

**20.** Insofar as liability under Section 13(1)(k) of the Bombay Rent Act is concerned, what is to be noticed is the requirement of unjustified non-user for a period exceeding 6 months which evidently is not attracted to the present case in view of the pendency of the liquidation proceedings. That apart, Clause 5 of the lease deed which deals with non-user of the leased land does not contemplate eviction on account of such non-user but merely entitles the lessor to receive rent for the period of such non-user of the land. b

**21.** The mere fact that the Company has been ordered to be wound up cannot be a ground to direct the Official Liquidator to hand over possession of the land to the owners inasmuch as the company in liquidation continues to maintain its corporate existence until it stands dissolved upon completion of the liquidation proceedings in the manner contemplated by the Companies Act. In the present case, it has been repeatedly submitted before this Court by both sides that presently revival of Prasad Mills is a live issue pending before the Gujarat High Court, a fact which cannot be ignored by this Court in deciding the above issue against the appellants. c  
d

**22.** For the aforesaid reasons, we affirm the order of the High Court dated 17-10-2008 in *Jabal C. Lashkari v. Official Liquidator*<sup>2</sup> and dismiss the civil appeals arising out of SLPs (C) Nos. 29282-84 of 2008 wherein the said order is under challenge.

**23.** The other civil appeals, which have been heard analogously, can be divided into two categories. The first is where the order dated 17-10-2008 passed in *Jabal C. Lashkari v. Official Liquidator*<sup>2</sup> impugned in civil appeals arising out of SLPs (C) Nos. 29282-84 of 2008 has been followed. In the other group are the cases where the said order has been followed and also an additional ground has been cited, namely, that in view of the order dated 17-7-2006 passed in *State of Gujarat v. Official Liquidator*<sup>8</sup> a direction has been issued to hand over possession of the leased premises to the State Government; hence, the question of putting the property to sale does not arise. e  
f

**24.** Though we have affirmed the order dated 17-10-2008 of the Gujarat High Court passed in *Jabal C. Lashkari v. Official Liquidator*<sup>2</sup> and dismissed the civil appeals arising out of SLPs (C) Nos. 29282-84 of 2008 (*Jabal C. Lashkari v. Official Liquidator*), our decision to affirm the said judgment of the High Court is based on a consideration of the specific clauses in the lease deed between the parties to the case. What would be the effect of the principles of law underlying the present order vis-à-vis the specific clauses of the lease deed between the parties in the other cases is a question that has to be considered by the High Court in each of the cases. That apart, whether the g  
h

<sup>2</sup> 2008 SCC OnLine Guj 171 : (2008) 3 GLH 528

<sup>8</sup> Company Application No. 250 of 2006, order dated 17-7-2006 (Guj)

JABAL C. LASHKARI v. OFFICIAL LIQUIDATOR (*Ranjan Gogoi, J.*) 61

- order dated 17-7-2006 passed in *State of Gujarat v. Official Liquidator*<sup>8</sup> has attained finality in law and forecloses the question raised and further whether
- a constructions have been raised on such land by the State Government for the benefit of the general public, as has been submitted to dissuade us from interfering with the order of the High Court, are questions that would require a full and complete consideration by the High Court on the materials available. To enable the said exercise to be duly performed, we set aside the orders<sup>8,9</sup> of the High Court impugned in each of the aforesaid civil appeals and remit all
- b the matters to the High Court for a fresh consideration in accordance with the observations and principles of law contained in the present order.

c

d

e

f

- g <sup>8</sup> Company Application No. 250 of 2006, order dated 17-7-2006 (Guj)  
<sup>9</sup> *Manguben v. Official Liquidator*, 2008 SCC OnLine Guj 512; *Anilkumar Vaikuthlal Patel v. Official Liquidator*, 2008 SCC OnLine Guj 508; *Dinesh Prabhakar Mehd. v. Official Liquidator*, 2008 SCC OnLine Guj 510; *Virendra Bhogilal Shah v. Official Liquidator*, 2008 SCC OnLine Guj 509; *Shree Swaminarayan Temple v. Official Liquidator*, 2008 SCC OnLine Guj 513; *Rahul Rohitkumar Patel v. Official Liquidator*, 2008 SCC OnLine Guj 515; *Mangaldas & Bros. (P) Ltd. v. Official Liquidator*, 2008 SCC OnLine Guj 514; *Vidyaben Somalal Patel v. Official Liquidator*, 2009 SCC OnLine Guj 12114; *Ajitkumar Ganpatlal Chaudhry v. Official Liquidator*, 2008 SCC OnLine Guj 511; *Dhirubhai Ramchandra Patel v. Official Liquidator*, 2009 SCC OnLine Guj 6015; *Dhirubhai Ramchandra Patel v. State of Gujarat*, 2010 SCC OnLine Guj 7603; *Rajendra Bhogilal Khalas v. Official Liquidator*, 2011 SCC OnLine Guj 4120; *Harshadbhai Dahyabhai Patel v. Official Liquidator*, 2010 SCC OnLine Guj 7767
- h