

The Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972

Guj. Act No. 12 of 1973

AND RULES

As Amended upto date

With Case Law

Law Officer

G.I.D.C. Ahmedabad

By :

M. L. Jindal

Advocate

Author of—

Maharashtra Local Acts, Andhra Pradesh Local Acts, Gujarat Local Acts, M.P. Local Acts, M.P. Laws, (Manual) Gujarat Digest, M.P. Digest, Maharashtra Digest & Rajasthan Digest



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THE GUJARAT PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1972

CONTENTS

1. Short titled, extent and Commencement	1
2. Definitions	1
3. Appointment of Competent officer	2
4. Issue of notice to show cause against order of eviction	3
5. Eviction of unauthorised occupants	5
6. Disposal of Property left on Public Premises by Unauthorised Occupants	5
7. Power to require Payment of rent or damages, in respect of - Public Premises	6
8. Power of Competent officer	6
9. Appeal	7
10. Finality of Order	7
11. Offences and Penalty	7
12. Power to obtain information	8
13. Liability of Heirs and Legal representatives	8
14. Recovery of rent etc. as an arrear of Land Revenue	8
15. Rent to be recovered by deduction from Salary or Wages of - Employee.	8
16. Bar of Jurisdiction	9
17. Protection of Action taken in good faith	9
18. Power to make Rules	9
19. Repeal, Saving and Validation	10

**GUJARAT PUBLIC PREMISES (EVICTION OF UNAUTHORISED
OCCUPANTS) RULES, 1974**

Rules	
1. Short title	1
2. Definitions	12
3. Form of order under sub-section (1) of section 4	12
4. Service of notice in other manner under sub-section (3) of section 4	12
5. Form of order under sub-section (1) of section 5	12
6. Entry into premises for taking possession	12
7. Form of Notice under sub-section (1) of section 7	12
8. Principles for assessment of damages under sub-section (2) of section 7	12
9. Form of Notice under sub-section (3) of section 7	12
10. Form of order under sub-section (2) of section 7	12
FORM	13
SCHEDULE	
NOTIFICATIONS	17

THE GUJARAT PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1972

GUJARAT ACT NO. 12 OF 1973¹

[THE GUJARAT PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1972]

(First published, after having received the assent of the President in the "Gujarat Government Gazette" on the 26th June, 1973).

As amended by Guj. 29 of 1981.

[26th June, 1973]

An Act to provide for the eviction of unauthorised occupants from public premises and for certain incidental matters.

COMMENTARY

Law Officer

Act, effect if retrospective

S.I.D.C. Ahmedabad

The word 'entertain' in S. 16 of the Gujarat Public Premises (Eviction of unauthorised occupants) Act, 1972 would not mean only "to receive and determine" but it would mean 'adjudicate upon' or 'proceed to consider on merits'. If this is the real meaning of word "entertain", it cannot be gainsaid that the Legislature under S. 16 clearly intended that civil Courts shall have no jurisdiction to adjudicate upon or proceed to consider on merits in any suit or proceeding in respect of eviction of any person on specified grounds from public, premises. In other words, the Legislature, by adopting the word 'entertain' clearly intended to oust the Jurisdiction of Civil Courts. —[*Jadeja Shivubha Dolubha vs. Gujarat State Road Transport Corporation, Ahmedabad*, (1977) 18 GLR 656.]

It is hereby enacted in the Twenty-third Year of the Republic of India as follows :—

1. Short title, extent and commencement.—(1) This Act may be called the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972.

(2) It extends to the whole of the State of Gujarat.

(3) It shall come into force at once.

2. Definitions—In this Act, unless the context otherwise requires,—

(a) "Competent Officer" means an officer appointed as such by the State Government under section 3;

(b) "corporate authority" means any Municipal Corporation, Municipality, Panchayat or other Corporation referred to in clause (f) of this section;

(c) "land" includes benefits to arise out of land and things attached to the earth or permanently fastened to the earth or permanently fastened to anything attached to the earth;

(d) "premises" means any land or any building or part of a building and includes—

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of a building; and

1. For Statement of Objects and Reasons, see Gujarat Government Gazette, Extraordinary Part V, dated 14th December, 1972, Page 351.

2 GUJ. PUBLIC PREMISES (EVL. OF UNAU. OCCUPANTS) ACT, 1972 Secs. 2-3

- (ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;
- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "public premises" means any premises belonging to or taken on lease or requisitioned by, or on behalf of, the State Government, and includes any premises belonging to, or taken on lease by, or on behalf of—
- (i) any Municipal Corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949, (Bom. LIX of 1949) or any Municipality constituted under the Gujarat Municipalities Act, 1963, (Guj. 34 of 1964);
- (ii) a panchayat constituted under the Gujarat Panchayats Act, 1961, (Guj. VI of 1962);
- (iii) any Corporation (not being a company as defined in section 3 of the Companies Act, 1956 (I of 1956), established by or under a Central or State Act and owned or controlled by the State Government; and
- ¹[(iv) any University established or incorporated by or under any law in the State of Gujarat or any institution recognised by the University Grants Commission or declared by the Central Government to be a University, in accordance with the provisions of clause (f) of section 2 or of section 3, as the case may be, of the University Grants Commission Act, 1956, (Act III of 1956).
- (g) "rent" in relation to any public premises, means the consideration payable periodically for the authorised occupation of the premises, and includes—
- (i) any charge for electricity, water or any other services in connection with the occupation of the premises;
- (ii) any tax (by whatever name called) payable in respect of the premises, where such charge or tax is payable by the State Government or the Corporate authority;
- (h) "unauthorised occupation" in relation to any public premises means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

COMMENTARY

Nagarpalika is a local authority

The Nagarpalika is a local authority and if its premises are in unauthorised occupation by the Central Government then recourse is to be had to this procedure provided in this Act.—[*Kapadwanj Nagarpalika vs. Bharat Petroleum Corporation Ltd.*, 1986 GLH 1124=1986 (2) GLR 1410.]

3. Appointment of competent officer—The State Government may, by notification in the *Official Gazette*,—

1. Cl. (iv), inserted by Guj. 29 of 1981.

(a) appoint such persons, being gazetted officers of Government or officers of equivalent rank of the corporate authority, as it thinks fit, to be competent officers for the purposes of this Act; and

(b) define the local limits within which, or the categories of public premises in respect of which, the competent officers shall exercise the powers conferred, and perform the duties imposed, on competent officer by or under this Act.

4. Issue of notice to show cause against order of eviction—(1) If the competent officer is satisfied—

(a) that the person authorised to occupy any public premises has—

(i) not paid rent lawfully due from him in respect of such premises for a period of more than two months, or

(ii) sub-let, without the permission of the State Government or, as the case may be, the corporate authority, the whole or any part of such premises, or

(iii) committed, or is committing such acts of waste as are likely to diminish materially the value, or impair substantially the utility, of the premises, or

(iv) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises, or

(b) that any person is in unauthorised occupation of any public premises, or

(c) that any public premises are required for any other purpose of the State Government, or, as the case may be, the corporate authority to whom such premises belong,

the competent officer shall, notwithstanding anything contained in any other law for the time being in force issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall—

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, a claim interest in the public premises, to show cause, if any, against the proposed order on or before such date as may be specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(3) The competent officer shall cause the notice to be served by post or by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the competent officer knows or has reasons to believe that any persons are in occupation of the public premises, then, without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed.

(5) If any person, makes an application to the competent officer for extension of the period specified in the notice, the competent officer may grant the same on such terms as to payment and recovery of the amount claimed in the notice, as it deems fit.

COMMENTARY

[1] Allottee from Housing Board sub-let the premises—Rent in arrears—Notice for eviction addressed to respondent No. 3, allottee, served by affixing on the premises—No notice issued to sub-lessee—Eviction of sub-lessee, illegal.

It is specifically provided in sub-section (2) that the notice shall (a) specify the grounds on which the order of eviction is proposed to be made, and (b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of or claim interest in, the public premises, to show cause, if any, against the proposed order on or before such date as may be specified in the notice, being a date not earlier than ten days from the date of issue thereof. It is, therefore, obligatory to call upon the person in actual possession of the premises to show cause. The Respondent No. 1, who was admittedly in possession of the premises since March 1978, was not called upon by the notice to show cause as to why the eviction order should not be passed against him. Sub-section (3) provides that the competent officer shall cause the notice to be served by post or by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed whereupon the notice shall be deemed to have been duly given to all persons concerned. But it does not necessarily mean that the notice was served to the person to whom the notice was not addressed. The notice is to be directed against the person in occupation of the premises also and such person should be called upon to show cause as to why the proposed order should not be passed against him and the service of such notice may be in either of the modes as provided in sub-section (3).—[*Gujarat Housing Board vs. Rameshbhai*, 1989 (2) GLH 402=(1989) XXX (2) GLR 975.]

[2] Interpretation of—Purpose of Act—Natural justice.

It was contended that since the eviction was sought on the ground of non-payment of rent, it was not necessary to address notice to the respondent No. 1, the sub-lessee in occupation, or to make him party to the proceedings and even then the notice shall be deemed to have been served on him as the notice was affixed on the conspicuous part of the premises and the respondent No. 1 is bound by the order of the competent authority.

Held, if such an interpretation of the section is accepted, it would lead to drastic result as the order of the competent authority would be binding to any person who is not made a party to the proceedings. The purpose of enacting the Act is to provide the speedy remedy for the eviction of the unauthorised occupants from the public premises, but the provisions of section 4 can never be interpreted so as to provide that the order of the competent authority, which is virtually a decree of the Court, is binding to the person who is not a party to the proceedings. If such an interpretation is accepted, it would offend the very principles of natural justice.—[*Gujarat Housing Board vs. Rameshbhai*, 1989 (2) GLH 402=(1989) XXX (2) GLR 975].

[3] Notice to vacate—Petitioners carrying on business in cabins for six years—Held, two days notice is not sufficient.—[*Maresh Kumar*

Kantilal Bhavsar & Ors. vs. Dy. Engineer Pantnagar Yojna, Gandhinagar & Ors., 1984 GLH (UJ) 99.]

5. Eviction of unauthorised occupants.—(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, by himself, or by advocate, attorney or pleader, the competent officer is satisfied that any of the reasons specified in sub-section (1) of section 4 exists, the competent officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises; and there upon the order shall be deemed to have been duly served on all the persons concerned.

(2) If any person refuses or fails to comply with the order of eviction within thirty days of the date of its service under sub-section (1), the competent officer or any other officer duly authorised by the competent officer in this behalf may evict that person from, and take possession of, the public premises and may for that purpose, use such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2), where a person who has been ordered to vacate any public premises for the reasons specified in sub-clause (i) or (iv) of clause (a) of sub-sec. (1) of sec. 4 pays to the competent officer the rent in arrears or carries out or otherwise complies with the terms contravened by him to the satisfaction of the competent officer as the case may be, within one month, of the date of service of the notice or such longer time as the competent officer may allow, the competent officer shall, in lieu of evicting such person under sub-section (2), cancel his order made under sub-section (1) and thereupon such person shall hold the premises on the same terms on which he held them immediately before such notice was served on him.

COMMENTARY

[1] Secs. 5 & 9—Burmah Shell (Acquisition of Undertakings in India) Act, 1976—Sections 3 & 7—Central Public Premises (Eviction of Unauthorised Occupants) Act, 1971—Section 2(e)—Bombay Rents, Hotel and Lodging House Rates Control Act, 1947—Sec. 4—Right to occupy premises previously by Burmah Shell vested on 24-1-1976 in Central Government—Central Government transferred right to Corporation—Held, right of local authority to proceed against Corporation under Gujarat Act is not taken away.—[*Kapadwanj Nagar Palika vs. Bharat Petroleum Corporation Ltd.*, 1986 (2) GLR 1410=1986 GLH 1124.]

[2] Secs. 5 and 9—Order passed against unauthorised occupant of premises—District Judge directed through allottee also to be evicted—Held, order evicting original respondent No. 2 cannot be allowed.—[*Madhuben Rameshchandra Murawala vs. Competent Officer, Gujarat Housing Board, Ahmedabad*, 1984 GLH (UJ) 79.]

6. Disposal of property left on public premises by unauthorised occupants.—(1) Where any persons have been evicted from any public premises under section 5, the competent officer may, after giving fourteen days' notice to the persons from whom possession of the public premises has been taken and after publishing the notice in at least one newspaper hav-

6 GUJ. PUBLIC PREMISES (EVL. OF UNAU. OCCUPANTS) ACT, 1972 Secs. 6-8

ing circulation in the locality, remove, or cause to be removed or dispose of by public auction any property remaining on such premises. Such notice shall be served in the manner provided for service of notice under sub-section (3) of section 4.

(2) Where any property is sold under sub-section (1), the sale proceeds thereof shall, after deducting the expenses of the sale and the amount if any, due to the State Government or the corporate authority on account of arrears of rent or damages or costs, be paid to such person or persons as may appear to the competent officer to be entitled to the same:

Provided that where the competent officer is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, he may refer such dispute to the civil court of competent jurisdiction and the decision of the court thereon shall be final.

7. Power to require payment of rent or damages, in respect of public premises.—(1) Subject to any rules made by the State Government in this behalf and without prejudice to the provisions of section 4, where any person is in arrears of rent payable in respect of any public premises, the competent officer may, by issuing a notice to him, require that person to pay the same within such time, not less than ten days, and in such instalments as may be specified in the notice.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the competent officer may, having regard to such principles of assessment of damages as may be prescribed assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

(3) No order under sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the competent officer.

(4) The notice under sub-section (1) or (3) shall be served in the manner provided for service of notice under sub-section (3) of section 4.

COMMENTARY

Gujarat Public Premises (Eviction of unauthorised occupants) Rules, 1971—Rules 7(1) & 8—Order for damages—Held, it cannot be passed without show cause notice.

No order for damage under sub-section (2) could have been passed without issuing notice to the petitioner calling upon him to show cause why such order should not be passed against him.—[*Fulaji Okhaji Thakore vs. Union of India & Anr.*, 1985(1) GLR 434=1985 GLH 254.]

8. Power of competent officer.—A competent officer shall, for the purpose of holding any inquiry under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), when trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath

- (b) requiring the discovery and production of documents;
- (c) any other matter which may be prescribed.

9. Appeal.—(1) An appeal shall lie from every order of the competent officer made in respect of any public premises under section 5 or section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situate or such other judicial officer in that district who has for atleast ten years held a Judicial office in the State as the district judge may designate in this behalf.

(2) An appeal under sub-section (1) shall be preferred,—

(a) in the case of an appeal from an order under section 5, within fifteen days from the date of the service of the order under sub-section (1) of that section; and

(b) in the case of an appeal from an order under section 7, within fifteen days from the date on which the order is communicated to the appellant;

Provided that the appellate officer may entertain the appeal after the expiry of the said period of fifteen days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of an competent officer, the appellate officer may stay the enforcement of that order for such period and on such conditions as he deems fit.

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

(5) The costs of any appeal under this section shall be in the discretion of the appellate officer.

(6) For the purposes of this section the principal Judge of the Ahmedabad City Civil Court shall be deemed to be the district judge of the district, and the City of Ahmedabad shall be deemed to be a district.

COMMENTARY

A person not party to proceedings under the Act—Eviction order not passed against him but executed against him—No appeal lies under the Act—Writ petition competent.—[*Gujarat Housing Board vs. Rameshbhai*, 1989 (2) GLH 402=(1989) XXX (2) GLR 975.]

10. Finality of order.—Save as otherwise expressly provided in this Act, every order made by a competent officer or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

11. Offences and penalty.—(1) Any person who obstructs the lawful exercise of any power conferred by or under this Act shall, on conviction, be punished with fine which may extend to one thousand rupees.

(2) If any person who has been evicted from any public premises under this Act again occupies the premises without authority for such occupation, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

8 GUJ. PUBLIC PREMISES (EVL. OF UNAU. OCCUPANTS) ACT, 1972 Secs. 11-15

(3) Any Magistrate convicting a person under sub-section (2) may make an order for evicting that person summarily and such person shall be liable to such eviction without prejudice to any other action that may be taken against him under this Act.

12. Power to obtain information—If a competent officer has reason to believe that any persons are in unauthorised occupation of any public premises or have committed any of the acts specified in clause (a) of sub-section (1) of section 4, the competent officer or any other officer authorised by him in this behalf may require those persons or any other person to furnish information relating to the names and other particulars of the persons in occupation of the public premises and every person so required shall be bound to furnish the information in his possession.

13. Liability of heirs and legal representatives.—(1) Where any person against whom any proceeding for the determination of arrears of rent or for the assessment of damages is to be or has been taken dies before the proceeding is taken or during the pendency thereof, the proceeding may be taken or, as the case may be, continued against the heirs or legal representatives of that person.

(2) Any amount due to the State Government or the corporate authority from any person whether by way of arrears of rent or damages or costs shall, after the death of the person, be payable by his heirs or legal representatives but their liability shall be limited to the extent of the assets of the deceased in their hands.

14. Recovery of rent etc. as an arrear of land revenue.—If any person refuses or fails to pay the arrears of rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the State Government or the corporate authority under sub-section (5) of section 9 or any portion of such rent, damages or costs, within the time, if any, specified, therefor in the order relating thereto, the competent officer may issue a certificate for the amount due, to the Collector who shall proceed to recover the same as an arrear of land revenue.

15. Rent to be recovered by deduction from salary or wages of employee.—(1) Without prejudice to any other provision of this Act, where any person to whom any public premises have been allotted is—

(a) an employee of the State Government or of a corporate authority, or

(b) an employee of a local authority, other than a corporate authority, who has executed an agreement as provided in sub-section (2), and is in arrears of rent payable in respect of such public premises, the amount of rent in respect of such premises shall, on a requisition in writing made in that behalf by the competent officer be liable to be deducted from the salary or wages payable to such person. On receipt of such requisition the head of the department or office of the State Government, corporate authority, or as the case may be, local authority under whom such person is employed, shall deduct from the salary or wages payable to such person the amount specified in the requisition, and pay the amount so deducted to the competent officer in satisfaction of the amount due as aforesaid.

(2) An employee of a local authority other than a corporate authority, who is allotted any public premises may execute an agreement in favour of the State Government, or, as the case may be, the corporate

authority to whom such premises belong, providing that the local authority by or under whom he is employed shall be competent to deduct from time to time from the salary or wages payable to him, such amount is specified in the agreement, and to pay the amount so deducted to the competent officer in satisfaction of any amount due by him in respect of the public premises allotted to him.

16. Bar of Jurisdiction—No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person on the ground that he is in unauthorised occupation of any public premises or for any other reason specified in sub-section (1) of section 4, or the recovery of the arrears of rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the State Government or the Corporate authority under sub-section (5) of section 9 or any portion of such rent, damages or costs.

COMMENTARY

Operation is not retrospective—Right to sue accrued to Corporation cannot be taken away.

Section 16 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 is not retrospective in operation. Ordinarily an Act is to be held prospective in operation, and the second dictum of law is that the jurisdiction of an ordinary Court is not to be assumed to be ousted or taken away, unless there are clear-cut provisions leading to one and only one conclusion, either expressly or by necessary implication. Acts are not normally to be held retrospective in operation and the ordinary jurisdiction of the civil Courts is not to be readily held to be ousted.

The right to sue that had accrued to the Corporation under the normal law of the land cannot be said to have been taken away by the interjection of the Act. AIR 1970 SC 1384, referred to.—[*Musling Dhulaji vs. Municipal Corporation of Ahmedabad*, (1978) 19 GLR 266 (DB).]

Word “entertain” means “adjudicate upon” or “proceed to consider on merits.”

The word “entertain” in sec. 16 of the Gujarat Public Premises (Eviction of unauthorised occupants) Act, 1972 means “to receive and determine” to “adjudicate upon” or “to proceed to consider on merits.” The Legislature, by adopting the word “entertain” clearly intended to oust the Jurisdiction of Civil Courts.—[*Shirubhi vs. G.S.R.T. Corpo., Ahmedabad*, 1977 GLR 656.]

17. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the State Government or the corporate authority or the appellate officer or the competent officer in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

18. Power to make rules—(1) The State Government may, by notification in the *Official Gazette* and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may be made to provide for all or any of the matters, expressly required or allowed by this Act to be prescribed by rules.

(3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.

(4) Any rescission or modifications so made by the State Legislature shall be published in the *Official Gazette* and shall thereupon take effect.

19. Repeal, saving and validation.—The Bombay Government Premises (Eviction) Act, 1955, (Bom. II of 1956) and any other corresponding law providing for the eviction of occupants from public premises are hereby repealed :

Provided that anything done or any action taken (including rules or orders made, notices issued, evictions ordered or effected, damages assessed, rents or damages or costs recovered and proceedings initiated) or purported to have been done or taken under the Act or law hereby repealed shall be deemed to have been done or taken under the corresponding provisions of this Act, and shall be deemed to be and to have always been, as valid and effective as if such thing or action was done taken under the corresponding provisions of this Act, as if this Act had been in force when such thing was done or such action was taken.

COMMENTARY

Sec. 202, Bombay Land Revenue Code, 1879 not impliedly repealed.

Since the expression "corresponding law" occurring in S. 19 of the Gujarat public Premises Act, 1972 is one lacking precise import the principles of interpretation of statute which apply to implied repeals generally will be applicable to such repeals.

The court below was not right in reaching the conclusion that S. 202 of the Bombay Land Revenue Code 1879 was repealed by necessary implication in light of the provisions contained in S. 19 of the Gujarat Public Premises Act, 1972. Even assuming that the Public Premises Act relates to the same subject matter at that of the Code, this would not be sufficient to warrant the conclusion of an implied repeal of similar provisions of the Code. It is difficult to urge successfully that the provisions of summary eviction in the Code, as provided in S. 79-A thereof and S. 4 of the Public Premises Act, are inconsistent or irreconcilable. It is much more impossible to contend that the Public Premises Act clearly intended to be complete substitute for the subject-matter of summary eviction of unauthorised occupants provided in the Code. Unless therefore the provisions contained in the Public Premises Act cover the entire subject-matter of summary eviction of unauthorised occupants in the Code, it cannot be held that there is, by necessary implication, repeal of the provisions contained in s. 202 of the Code. Having regard to the purpose and the object of the Code, it is manifestly clear that the Public Premises Act, which has been placed on the statute book to provide for eviction of unauthorised occupant from the public premises and other matters incidental thereof, was not envisaged to comprehend the entire subject unauthorised and wrongful occupation and summary eviction of such occupants on the revenue paying land of the Government. S. 202 of the Code provides only the manner in which summary eviction can be enforced by the Collector. It is difficult to appreciate how the court below has conside-

red this provision contained in S. 202 of the Code as a corresponding law, or part thereof, and, therefore, consequently repealed in light of the provision contained in S. 19 of the Public Premises Act. The substantive and procedural law of summary eviction in the Code is a special law in respect of the Government land. It is no doubt true that 'public premises' as defined in S. 2 (f) of the Public Premises Act means any premises belonging to Government including any land which has been defined in the same terms as defined in the Code. It appears that the Court below was therefore, persuaded to take the view that since the Public Premises Act provides for eviction from the public premises, it would also take in its sweep the eviction of unauthorised occupants from the Government land and, therefore, the procedural law as laid down in S. 202 of the Code being the same subject-matter and, therefore, would amount to corresponding law and necessarily stood repealed. The Court below overlooked the well recognized rule of law of interpretation that enactment of a general law broad enough in its scope and application to cover the field of operation of a special, or local statute will generally not repeal a statute which limits its operation to a particular phase of the subject covered by the general law. It is well recognised on the principles of statutory construction that there is a presumption that local or special law will not be repealed though this presumption is liable to be rebutted and overcome by irreconcilable inconsistency between the prior special Act and subsequent general law or where the entire subject matter of the special Act is covered by the general law. No irreconcilable inconsistency has been spelt out by comparison of the relevant provisions of the Code and the Public Premises Act so as to rebut the presumption that special law contained in the Code was repealed by the general law contained in the Public Premises Act. It cannot be stated without violence to the language that the entire subject matter of summary eviction as provided in the Code is sought to be covered by the provisions in the Public Premises Act. S. 202 of the Code thus does not stand repealed in the light of the provisions contained in S. 19 of the Public Premises Act.—[*State of Gujarat vs. Surabhai Mafatbhai*, (1982) 23 Guj. LR 596.]

GUJARAT PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) RULES, 1974

[Published in G.G. Gaz. Pt. IV-B, dt. 4-7-1974, p. 644 and amended subsequently by Noti. dt. 4-9-1975; G.G. Gaz. Pt. IV-B, dt. 25-9-1975, p. 988.]

Whereas the Gujarat Public Premises (Eviction of Unauthorised Occupants) Rules, 1973 were published as required by sub-section (1) of section 18 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (Guj. 12 of 1973) at pages 218 to 225 of the Government of Gujarat Gazette, Extraordinary, Part IV-B, dated the 20th December, 1973 under the Government Notification, Public Works Department, No. GH/J/24/73/EVC/1173/A-1, dated the 14th December, 1973 inviting objects and suggestions from all persons likely to be affected thereby, within thirty days from the date of its publication;

And whereas no objections and suggestions were received;

Now, therefore, in exercise of the powers conferred by section 18 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (Guj. 12 of 1973), the Government of Gujarat hereby makes the following rules, namely :—

1. Short title—These rules may be called the Gujarat Public Premises (Eviction of Unauthorised Occupants) Rules, 1974.

2. Definitions.—(1) In these rules, unless the context otherwise requires,—

(a) “Act” means the Gujarat Public Premises (Eviction of Unauthorised Occupants), Act, 1972;

(b) “Form” means a form appended to these rules;

(c) “Section” means section of the Act;

(2) words and expressions used but not defined in these rules shall have the meaning assigned to them in the Act.

3. Form of notice under sub-section (1) of section 4.—The notice under sub-section (1) of section 4 shall as far as may be in Form A.

4. Service of notice in other manner under sub-section (3) of section 4.—The competent officer shall, in addition to the manner specified in sub-section (3) of section 4, cause a proclamation of the notice to be affixed in the colony office or in the office of the Mamlatdar within whose jurisdiction the concerned premises are situated or in the local office where the concerned person is working.]

5. Form of order under sub-section (1) of section 5.—The order under sub-section (1) of section 5 shall as far as may be in Form B.

6. Entry into premises for taking possession.—For the purpose of taking possession of the public premises under sub-section (2) of section 5, the Competent Officer or any Officer or servant authorised by him in this behalf may enter the premises at any time after sunrise and before sunset.

7. Form of Notice under sub-section (1) of section 7.—The notice under sub-section (1) of section 7 shall as far as may be in Form C.

8. Principles for assessment of damages under sub-section (2) of section 7.—For the purpose of assessing damages for unauthorised use and occupation of any public premises under sub-section (2) of section 7, the competent Officer shall take into consideration the following matters namely:—

(a) the purpose and the period for which the public premises were in unauthorised occupation;

(b) The nature, size and standard of the accommodation, available on such premises;

(c) the rent that would have been realised if the premises had been let on the rent for the period of unauthorised occupation;

(d) any damage done to the premises during the period of unauthorised occupation;

(e) any other matter which in the opinion of the competent officer is relevant for the purpose of assessing the damages.

9. Form of Notice under sub-section (3) of section 7.—The notice under sub-section (3) of section 7 shall as far as may be in Form D.

10. Form of order under sub-section (2) of section 7.—The order under sub-section (2) of section 7 shall as far as may be in Form E.

1. Subs. by—[Noti. No. GH/J/33/75/EVC/1173/A. 1, dt. 4-9-1975—Guj. Govt. Gaz., Pt. IV-B, dt. 25-9-1975, P. 988.]

FORM A

(See rule 3)

@Here specify the name of the person authorised to occupy the premises and the names of all the persons in unauthorised occupation or claim interest in the premises, wherever, necessary.

To
Shri/Shrimati/Kumari—@
residing at.....Room No.....
Taluka.....Dist.....
Whereas I, the undersigned have reason to believe—

*(i) That you have not paid rent lawfully due from you for more than two months in respect of the premises described in the Schedule appended hereto;

@(Name of the Corporate authority).

*(ii) that you have sub-let, without permission of the Government or, as the case may be, the @corporate authority the whole or part of the premises described in the schedule appended hereto;

@Here specify the definite wrong committed,

*(iii) that you have @ such acts have diminished materially the value, or impaired substantially the utility of the premises described in the Schedule appended hereto;

|| Here specify the wrong committed.

*(iv) that you have || and thereby have acted in contravention of the terms under which you were authorised to occupy the premises described in the Schedule appended hereto;

*(v) that you are in unauthorised occupation of the premises described in the Schedule appended hereto;

|| || Here specify the name of the authority.

*(vi) that the premises described in the Schedule appended hereto are required for the purposes of Government or, as the case may be, the corporate || || authority to whom the said premises belong;

And whereas, in exercise of the powers conferred under sub-section (1) of section 5 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972, it is proposed to make an order of eviction against you (as well aswho is or are in occupation of the whole or a part of the said premises) to vacate the said premises within thirty days from the date of issue of the proposed order on the grounds aforesaid (hereinafter referred to as the "proposed order");

Now, therefore, in pursuance of the provisions of sub-section (1) of the said section 4, you are hereby called upon to show cause in writing within.....**.....days, from the date of service of this notice, why

*Any of the alternative which is relevant to be specified.

**Period not to be less than ten days.

the proposed order of eviction should not be made. You or your advocate/attorney/pleader may, if you desire to be heard in person or by an advocate/attorney/pleader, remain present at my office on.....at.....You may produce* such evidence as you deem fit in support of your cause.

SCHEDULE

(Description of the premises)

Room No.
Taluka :
District :
Date :

Signature of the
Competent Officer

FORM B

(See rule 5)

@Here specify the name of the person authorised to occupy the premises and the name of all persons in unauthorised occupation or claim interest to the premises, wherever necessary.

To
Shri/Shrimati/Kumari/@
residing at.....Room No...
Taluka.....Dist.....
Whereas I, the undersigned,
am satisfied—

|| (Name of the Corporate authority)

@Here specify the definite wrong committed.

|| || Here specify the definite wrong committed.

*(i) that you have not paid rent lawfully due from you for more than two months in respect of the premises described in the Schedule appended hereto;

*(ii) that you have sub-let, without permission of the Government or the || corporate authority, as the case may be the whole or part of the premises described in the Schedule appended hereto;

*(iii) that you have @..... Such acts have diminished materially the value, or impaired substantially the utility of the premises described in the Schedule appended hereto;

*(iv) that you have || || and thereby have acted in contravention of the terms under which you were authorised to occupy the premises, described in Schedule appended hereto;

*(v) that you are in unauthorised occupation of the premises described in the schedule appended hereto;

* Any of the alternative which is relevant to the specified.

*Here specify the name of the authority.

*(vi) that the premises described in the schedule appended hereto are required for the purposes of Government, or, as the case may be, the **corporate authority to whom the said premises belong.

Now, therefore, in exercise of the powers conferred under sub-section (1) of section 5 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972, I order you (as well as.....who is or are in occupation of the whole or a part of the said premises) to vacate the said premises on or before**

SCHEDULE

(Description of the premises)

Room No.
Taluka :
District :
Date :

Signature of the
Competent Officer

FORM C

(See rule 7)

To

Shri/Shrimati/Kumari
Residing at.....Room No
Taluka.....District.....

Whereas you are in occupation of public premises described in the Schedule hereto appended;

And Whereas a sum of Rs.....being the arrears of rent from.....
.....197 to.....197,.....in respect of the said premises is due and payable by you to the State Government or Corporation or Board to which they belong;

Now, therefore, in exercise of the powers conferred under sub-section (1) of section 7 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972, I hereby order you to pay the said amount within ***.....days and in ****.....instalments from the date of service of this notice.

SCHEDULE

(Description of the premises)

Room No.
Taluka :
District :
Date :

Signature of the
Competent Officer,

*Any of the alternative which is relevant to be specified.

**The date to be specified.

***Period not to be less than 10 days.

****Number of the instalments to be mentioned.

16 GUJ. PUBLIC PREMISES (EVI. OF UNAU. OCCUPANTS) Rr., 1974 Forms D-E

FORM D

(See rule 9)

Whereas I, the undersigned, have reason to believe that you are in unauthorised occupation of the public premises described in the Schedule appended hereto;

Now, therefore, in pursuance of sub-section (3) of section 7 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972, you are called upon to show cause within ||days from the service of this notice why the order for payment of damages under sub-section (2) of section 7 should not be made against you. If you have any objection you may produce any evidence in the support of your objection.

Date,

Signature of the
Competent Officer.

SCHEDULE

(Description of the premises)

Room No.
Taluka :
District :
Date :

Signature of the
Competent Officer

FORM E

(See rule 10)

To

Shri/Shrimati/Kumari
Residing at.....Room No.....
Taluka.....District.....

Whereas you are in unauthorised occupation of the public premises described in the Schedule appended hereto;

And whereas in exercise of the powers conferred upon them by sub-section (2) of section 7 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972, I have assessed Rs.....as damages payable by you on account of the use and occupation of the said premises, I hereby order you to pay the said amount of damages within **.....days and*.....instalments from the date of the service of the notice.

SCHEDULE

(Description of the premises)

Room No.
Taluka :
District :
Date :

Signature of the
Competent Officer.

*Number of the instalments to be mentioned:

**Period not to be less than 10 days.

|| Here specify the period.

Notification
under
Gujarat Public Premises (Eviction of Unauthorised Occupants)
Act, 1972

(Guj. 12 of 1973)

Notification under section 3, dated 21-11-1984, published in Guj. G. Gaz., Pt. IV-B, dt. 20-12-1984, P. 1241 and as amended by Notification dated 2-4-1987, published in Guj. Govt. Gaz., Pt. IV-B, dt. 23-4-1987, P. 393.

No. GH/J/5/84/EVC-1083/3774/N-(i).—In exercise of the powers conferred by Section 3 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (Guj. 12 of 1973), and in supersession of Government Notification, Public Works Department No. GH/J/15/75/EVC-1173/A, dated the 15th April, 1975, as amended from time to time the Government of Gujarat hereby,—

(a) appoints the officers specified in column 2 of the schedule appended hereto to be competent officers for the purposes of the said Act, and

(b) defines the categories of public premises respectively specified against each of such officers in column 3 of the said schedule as the categories of public premises in respect of which each of the said officers shall, within the local limits of his jurisdiction, exercise the power conferred, and perform the duties imposed, on such officers by or under the said Act:—

SCHEDULE

Sr. No. 1	Officers 2	Categories of public premises 3
"1. (i) The Collector of District		All public premises and also public premises occupied by Government Servants who are drawing pay Rs. 2500/- or more per month., other than those specified in serial No. 2 to 15.
(ii) The Deputy Collector of a sub-division or a part of a District not being Gandhinagar District or Dangs District & where there is no such Deputy Collector, an Assistant Collector or a Resistant Deputy Collector in Charge of such sub-Division prant.		All Public premises and also public premises occupied by Government Servants who are drawing pay less than Rs. 2500 per month, other than those specified in serial Nos. 1 (i) and 2 to 15,
2. The Chief Officer, Gandhinagar Notified Area, Gandhinagar.		All public premises situated in Gandhinagar township of Gandhinagar District other than those specified in serial numbers 1 and 3 to 15.

1	2	3
3. Collector of Dangs District.		All public premises other than those specified in serial numbers 1, 2 and 4 to 15.
4. The Deputy District Development Officer (Revenue) of each of the District Panchayat or in the absence of Deputy District Development Officer (Revenue) in a district Panchayat, any Deputy District Development Officer of such District Panchayat.		Premises belonging to or taken on lease by or on behalf of the Panchayat.
5. Officer on Special Duty, Gujarat Housing Board.		Premises belonging to, or taken on lease by, or on behalf of, the Gujarat Housing Board.
6. The Deputy General Manager of the Gujarat State Road Transport Corporation.		Premises belonging to or taken on lease by, or on behalf of, the Gujarat State Road Transport Corporation.
7. The Municipal Commissioner, the Deputy Municipal Commissioner, the Assistant Municipal Commissioner, the Officer on Special Duty and Director of Estate and Town Planning, of all the Municipal Corporations of the State of Gujarat.		Premises belonging to, or taken on lease by, or on behalf of the respective Municipal Corporations within the State of Gujarat, constituted under the Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949).
8. The following officers of the Gujarat Industrial Development Corporation namely,—		Premises belonging to, or taken on lease by, or on behalf of, the Gujarat Industrial Development Corporation.
(i) Deputy Chief Executive.		
(ii) Assistant Chief Executive Officer.		
(iii) Regional Manager.		
9. The following officers of the Gujarat Electricity Board, namely:—		Premises belonging to, or taken on lease by or on behalf of, the Gujarat Electricity Board, within the jurisdiction of the officers shown in column 2.
(i) The Additional Chief Engineer		
(ii) The Superintending Engineer of concerned Operation and Maintenance Circle.		

1	2	3
	(iii) The Superintending Engineer of the concerned construction Circle.	
	(iv) The Executive Engineer, Operation and Maintenance, Baroda.	
	(v) The Engineer Incharge, Thermal Power Stations, Wanakbori.	
10.	The Deputy Secretary, Gujarat Slum Clearance Board.	Premises belonging to, or taken on lease by, or on behalf of the Gujarat Slum Clearance Board.
11.	The Administrative Officer, Gujarat Rural Housing Board.	Premises belonging to, or taken on lease by or on behalf of the Gujarat Rural Housing Board.
12.	The following officers of any of the Universities, namely:—	Premises belonging to, or taken on lease by, or on behalf of any University.
	(i) Registrar,	
	(ii) Deputy Registrar,	
	(iii) Assistant Registrar and the	
	(iv) Administrative Officer.	
13.	The following officers of Urban Area Development Authorities namely:—	Premises belonging to, or taken on lease by or on behalf of Urban Development Authority or Area Development Authority Constituted under the Gujarat Town Planning and Urban Development Act, 1976.
	(i) The Chief Executive Officer,	
	(ii) The Deputy Collector, and	
	(iii) The Estate Officer.	
14.	The Administrator, Sardar Nagar Township of Ahmedabad District.	Premises belonging to, or taken on lease by or on behalf of the Sardarnagar Township.
15.	The Rehabilitation and Land Acquisition Officer, Narmada Project, Kevadia Colony.	Premises belonging to Narmada Project at Kevadia Colony.

THE END