5(1)(d) read with Sec. 5(2) of the Prevention of Corruption Act read with Sec. 161 I.P.C. and accordingly we hold that the respondent is required to be convicted for the aforesaid offences and accordingly we set aside the judgment and order of acquittal recorded by the learned Special Judge, Mehsana.

(Rest of the Judgment is not material for the Reports.)

(ATP) *Order accordingly.*

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CIVIL REVISION APPLICATION

Before the Hon'ble Mr. Justice J. N. Bhatt.

DEVIPRASAD VRAJLAL KACHHIYA v. CHHOTALAL NAROTTAMDAS PANCHAL & ANR.*

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (LVII of 1947) - Sec. 29(2) - Revision application to High Court - Power of the High Court in such revision is wider than the powers under Sec. 115 C.P.C. - If the findings of facts cannot be characterised as perverse or illegal, this Court cannot interfere with the same.

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (LVII of 1947) - Secs. 13(1)(a) & 13(l)(b) - Encroachment upon the open land - Erection of permanent structure without the consent of the landlord - Encroachment on the open space can at the most be breach of personal obligation and not breach of condition of tenancy - Without written consent of the landlord, tenant cannot erect any structure of permanent nature.

Transfer of Property Act, 1882 (IV of 1882) - Sec. 108 - Tenant acting contrary to provisions of Sec. 108 - Landlord is entitled to get possession.

Jurisdictional sweep of a revisional Court under Sec. 29(2) of the Bombay Rent Act, though little wider than Sec. 115 of the Code of Civil Procedure, is still circumscribed to correcting the impugned decision, which is not in accordance with law. Thus, a decision in an appeal of a District Judge can be revised under Sec. 29(2), by this Court, provided this Court is convinced that such a decision given in an appeal was not according to law. This Court, therefore, cannot interfere with the finding of fact which cannot be characterised as perverse or illegal. (Para 6)

If the Court is satisfied that the tenant has acted contrary to the provisions of clause (o) of Sec. 108 of the T.P Act, the tanant is liable to be evicted and the landlord is entitled to the decree for possession. It must be shown to the satisfaction of the Court that the impugned act of the tenant is actionable and incurs liability for the ejectment under the provisions of Sec. 33(1)(a) of the Bombay Rent Act, and for that, it is necessary to show that the tenant has acted contrary to the provisions of clause (o) of Sec. 108 of the T.P. Act. (Para 10)

*Decided on 30-7-1993. Civil Revision Application No. 307 of 1980 arising out of judgment and decree passed by District Judge, Bharuch on 25-7-1979 in Reg. Civil Appeal No. 108 of 1978 reversing judgment and decree passed in Reg. Civil Suit No. 143 of 1974.

Encroachment by the tenant on an open space which is adjacent to the demised premises and not forming part, thereof, could not be said in any case, a breach of the terms of the tenancy. Such a breach, even if made by the tenant, will be a breach of personal obligation and it cannot be equated with the breach of condition of tenancy. Encroachment by the tenant upon adjacent land towards the west of the demised premises could be at the best, said to be an act of trespass committed by the tenant simplicitor and not a breach of the covenant or even the breach of the statutory terms of tenancy. (Para 12)

Construction of a temporary structure does not fall under clause (b) of sub-sec. (1) of Sec. 13. Section 108(o) of the T.P. Act contains material provision. Any act which is destructive or permanently injurious to the demised premises committed by the tenant is, also, a ground of eviction under clause (a). Therefore, the question which is paused to be adjudicated upon, at this juncture is, as to whether the impugned or offending structures erected by the tenant could be said to be covered either under clause (a) or clause (b) of sub-sec, (1) of Sec. 13 ? The tenant cannot effect any permanent structure on the premises without the consent of the landlord in writing. (Para 14)

The explanation to Sec. 13(l)(b) is very clear that no permanent structure shall be deemed to be erected in the premises by raising construction of a partition wall, door or lattice work or to fill in the kitchenstand or *such other alterations* made in the premises as can be removed without any serious damage to the premises. Thus, it shows that it is enumerative and not exhaustive. The legislature has given liberty to the tenant to make any one of the specific alterations in the premises in his occupation, and an; such alterations in the premises which can be removed without serious damage to the premises. One of the tests is removability of the offending structure. Even if such a structure, upon removal, causes some damage to the premises, it does not incur liability for rejectment. Explanation provides serious damage to the premises. It transpires that the underlying spirit even in the last portion of clause *(o) of* Sec. 108, namely, *"commits any other act which is destructive or permanently injurious thereto"* must have the same connotation and spirit as that of Explanation attached to Sec. 13(1)(b). (Para 14)

Rabari Prabhat Harji v. Patel Chandulal Trikamlal (1), Ibrahim v. Haji Khanmahomad (2) and Ramji Virji v. Kadarbhai (3), relied on. Ishwarbhai v. Parshottam (4), distinguished. Manmohan Das v. Bishun Das (5) and Suryakumar Govindjee v. Krishnammal (6), referred to.

K. S. Nanavati, for the Petitioner.

P. B. Majmudar, for *M/s. A. S Pandya* and *A. H. Acharya*, for the Respondents.

BHATT, J. In this revision, under Sec. 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('the Bombay Rent Act' for short), the petitioner has assailed the judgment and decree passed in Regular Civil Suit No. 108 of 1978, by the learned District Judge, at Bharuch, on 25th July, 1979.

2. The petitioner is the original plaintiff-Landlord and respondent No. 1 is the original defendant-Tenant and respondent No. 2 is the brother of the landlord. The parties are, hereinafter, referred to as the 'landlord' and 'the tenant' for the sake of brevity and convenience.

(1) 198O GLR 734. (2) 1965 GLR 27. (3) 1972 GLR 81.
(4) 1967 GLR 665. (5) AIR 1967 SC 643. (6) 1990 (4) SCC 343.

3. The landlord filed a Regular Civil Suit No. 143 of 1974, against the tenant, for perpetual injunction and, also for the recovery of the demised premises. The plaintiff and his brother are the owners of an immovable property, situated in Ward No. 3, bearing Municipal No. 273, known as Vankarvad area in Rajpipla town, and the tenant was let two rooms to the west of the said property, which is, hereinafter, referred to as "the demised premises'. The rent note, at Exh. 40, was executed by the tenant, on 18-1-1955, in respect of the demised premises (two rooms). The landlord, *infer alia* contended that the tenant, without obtaining any consent from the owners and without the permission of the Municipality, started construction work in the demised premises. The landlord had also applied before the Municipality to stop the tenant from constructing and making permanent alterations. The Rajpipla Municipality issued the order restraining the tenant from making construction. However, the landlord alleged that, in complete violation of the order of the Municipality, the tenant continued the construction work and encroached upon the open space on the west of (he demised premises, which was not let to the tenant. Therefore, the landlord filed the suit for perpetual injunction and also for possession.

4. The tenant, in his written statement, *inter alia*, contended that the demised premises were of kutcha construction and there was one room with a varandah on the west. According to his plea, he had hired the demised premises from the mother of the plaintiff-landlord, and with the permission of the landlady, he had erected the varandah, at his own cost, and there was no permanent construction. He also pleaded that the demised premises were in a dilapidated condition and the landlord failed to keep it in habitable repairs. The roof of the said premises was bent and was likely to fall down. Therefore, according to the contention of the tenant, he replaced the wooden roof and placed Mangalore tiles with the support of wooden bamboos, and for such work, no permission was required.

5. Upon appreciation of the evidence and the facts and circumstances, the trial Court decreed the suit filed by the landlord, holding that the tenant had encroached upon the open land not let to him and, thereby committed breach of the terms of the tenancy and that the tenant has made permanent construction and alterations in the demised premises, without the consent of the landlord. Thus, the decree came to be passed against the tenant, in the trial Court, under the provisions of Secs. 13(l)(a) and 13(l)(b) of the Bombay Rent Act, which, on an appeal, came to be reversed, by the learned District Judge, at Bharuch, in Regular Civil Appeal No. 108 of 1977, which is under challenge, before this Court in revision, under Sec. 29(2) of the Bombay Rent Act.

6. At this stage, it may be noted that (he jurisdictional sweep of a revisional Court under Sec. 29(2) of the Bombay Rent Act, though little wider than Sec. 115 of the Code of Civil Procedure, is still circumscribed to correcting the impugned decision, which is not in accordance with law. Thus, a decision in an appeal of a District Judge can be revised under

Sec. 29(2), by this Court, provided this Court is convinced that such a decision given in an appeal was nut according to law. This Court, therefore, cannot interfere with the findings of fact which cannot be characterised as perverse or illegal. Bearing in mind the limited scope of the revisional powers under Sec. 29(2) of the Bombay Rent Act, the merits of this revision are required to be examined.

7. The learned Counsel for the original plaintiff-landlord has submitted the following two contentions :

(1) that the tenant has encroached upon the open land or space to the west of the demised premises, and it is contrary to the provisions of clause (o) of Sec. 108 of the Transfer of Property Act, 1882 ('the T.P. Act' for short), and therefore, the landlord is entitled to recover the possession under the provisions of Sec. 13(l)(a) of the Bombay Rent Act, and

(2) that the tenant, without the consent of the landlord in writing, has erected permanent structure on the demised premises, and in that the tenant has replaced a new wooden roof supported by the wooden bamboos and has placed Mangalore tiles on the wooden roof, and therefore, the tenant is liable for ejectment under the provisions of Sec. 13(l)(b) of the Bombay Rent Act.

8. There is no dispute as regards the offending structure erected by the tenant. The tenant has failed to prove that the consent of the landlord in writing was obtained for the said structure. Thus, the plea of the tenant that he had obtained the consent of the landlady, the mother of the plaintiff-landlord and defendant No. 2, falls to the ground. Even otherwise, also, the landlord's consent must be in writing and not oral, as contemplated under the provisions of Sec. 13(l)(b), so as to enable the tenant to raise or erect any permanent structure on the demised premises. No doubt, the exact nature of offending structure erected by the tenant is not pleaded in the plaint. However, it is not in dispute that the tenant has erected a new wooden roof with Mangalore tiles with support of wooden bamboos. Initially, the two rooms of the demised premises let to the tenant were also of wooden structure. The tenant has been doing business of black-smith, in the premises. The rent note which is not in dispute, is produced at, Exh. 40, dated 18th January, 1955. According to this rent note, two rooms were let to the tenant, on 1-10-1954. The precise purpose of the letting is not mentioned in it. The map of the Court Commissioner, dated 13-4-1977 is produced, at Exh 87. The report of the Surveyor, Mr. Satwara, is produced, at Exh. 101.

9. In so far as the first contention is concerned, the question which requires to be adjudicated upon is, as to whether the act of the tenant in making encroachment in the open space to the west of the demised premises could be said to be an act contrary to the provisions of clause (o) of Sec. 108 of the T.P. Act ? The trial Court held that such an act on the part of the tenant will amount to contrary to the provisions of

clause (o) of Sec. 108 of the T.P. Act and, therefore, the tenant is liable to be ejected under Sec. '3(l)(a) of the Bombay Rent Act. The learned District Judge, unfortunately, has not given a specific and clear finding on this aspect. The learned District Judge also found that in absence of any specific pleading in this behalf, there cannot be a breach of the aforesaid provisions. This observation, with due respect, of the learned District Judge, docs not appear to be sound in the facts and circumstances. There is no dispute about the fact that specific issue arising out of the provisions of Sec. 13(I)(a) of the Bombay Rent Act and came to be raised and in answered by the trial Court. Once the issue is raised and the parties have led the evidence and the Court has adjudicated upon the issue, the plea of want of specific averment in the plaint would pale into insignificance. It would be necessary to refer to the relevant provisions of Sec. 13(l)(a) of the Bombay Rent Act. Section 13(l)(a) of the Bombay Rent Act reads as under :

> "13(1) (a) : Notwithstanding anything contained in this Act (but subject to the provisions of Sec. 15') a landlord shall be entitled to recover possession of any premises if the Court is satisfied -
>
> (a) that the tenant has committed any act contrary to the provisions of clause (o) of Sec. 108 of the Transfer of Property Act, 1882;....."

10. The landlord is entitled to a decree for ejectment and possession of the demised premises on one or more grounds specified in Sec. 13. If the Court is satisfied that the tenant has acted contrary to the provisions of clause (o) of Sec. 108 of the T.P. Act, the tenant is liable to be evicted and the landlord is entitled to the decree for possession. It must be shown to the satisfaction of the Court that the impugned act of the tenant is actionable and incurs liability for the ejectment under the provisions of Sec. 13(l)(a) of the Bombay Rent Act, and for that, it hi necessary to show that the tenant has acted contrary to the provisions of clause (o) of Sec 108 of the T.P. Act. It will be, therefore, necessary to refer to, at this juncture, the relevant provisions of clause (o) of Sec. 108 of the T.P. Act. It reads as under :

> "Section 108(o) : The lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use. or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lesson or work mines or quarries not open when the lease was granted, or commit any other act which is destructive on permanently injurious thereto;"

11. Any act contrary to the above provision is made a ground for ejectment under Sec. 13(l)(a) of the Bombay Rent Act. These acts are :

(1) Using the premises rot as a prudent man, in other words, the tenant has made *unreasonable user,*

(2) User by the tenant or other persons permitted by the tenant for a purpose other than for which it was let, in other words *change of user,*

(3) Felling or selling or growing timber on the premises,

(4) Pulling down or damaging building belonging to the landlord,

(5) Opening by the tenant of new quarries and mines on the premises, and

(6) Committing any other act which is destructive or permanently injurious to the premises.

12. The act on the part of the tenant of making an encroachment on the open space to the west of the demised premises could not be said to be covered under any one of the acts enumerated in clause (o) of Sec. 108 of the T. P. Act. The rent note, at Exh. 40, also, does not lay down or stipulate any covenant in this regard. In the facts of the present case also, it cannot be said that there is a breach of statutory terms, on the part of the tenant. Even if such a covenant is made in the rent note and has been breached, then in that case also, it cannot be said to be a breach or violation of the provisions of Sec. 13(l)(a). Encroachment by the tenant on an open space which is adjacent to the demised premises and not forming part, thereof, could not be said in any case, a breach of the terms of the tenancy. Such a breach, even if made by the tenant, will be a breach of personal obligation and it cannot be equated with the breach of condition of tenancy. Encroachment by the tenant upon adjacent land towards the west of the demised premises could be at the best, said to be an act of trespass committed by the tenant simplicitor and not a breach of the covenant or even the breach of the statutory terms of tenancy. In *Raburi Prabhut Harji v. Patel Chandulal Trikamlal & Ors.*, (1980) XXI GLR 734, this Court had an occasion to examine a similar issue and it was held that the tenant making an encroachment upon the adjacent land, though the rent note prohibited the tenant from the use of such an adjacent land, cannot be equated with a breach of the condition of the tenancy. It was held that such an encroachment is nothing, but a trespass and such a restricted covenant docs not cause any obligation regarding the subject-matter of the tenancy. Therefore, in the opinion of this Court, the act of encroachment upon the adjacent land, by the tenant, as in the present case, is neither in contravention of the covenant in the rent nor the statutory provision, and it cannot be regarded as a breach of condition of tenancy incurring or entailing eviction under Sec. 13(l)(a) of the Bombay Rent Act. The act of the tenant what is complained of in this regard is that the open space to the west of the demised premises, admeasuring 2 1/2 which is meant for passing of eves water by covering it by over-hanging projections of the newly raised wooden roof. In the light of the present case, that aspect itself, cannot be said to be a breach of the provisions of clause (o) of Sec. 108, and therefore, there cannot be said to be a violation of the provisions of Sec. 13(1)(a) of the Bombay Rent Act. In the result, the first contention raised by the learned Counsel on behalf of the landlord is without any substance and it is rejected.

13. Next, it will bring into sharp focus as to whether the tenant is liable to be ejected on the ground of replacing the roof and making

permanent structures and alterations in the demised premises. Apart from the technical benefit accorded by the learned District Judge, by holding that the specific averments are not made in the plaint in this behalf, this Court is of the clear opinion that there is no any legal leg to stand for the landlord to claim decree for ejection on that count. There is no dispute about the fact that the tenant has erected a new roof with Mangalore tiles, thereon, and by raising wooden pillars and bamboos and making projection over-hanging in the adjacent land. Could these acts of the tenant be said to be attracting the rigors of the provisions of Secs. 13(l)(a) and 13(l)(b) of the Bombay Rent Act ? One of the six acts enumerated, hereinbefore, while analysing the provisions of clause (o) of Sec. 108 of the T.P. Act, it is mentioned that committing any other act by the tenant which is destructive or permanently injurious to the premises, is also a ground for eviction under Sec. 13(l)(a) of the Bombay Rent Act. Likewise, erection of the offending structure could be said to be also covered under the Explanation to the provisions of Sec. 13(l)(b) of the Bombay Rent Act. It will be, also, therefore, necessary to have a close look into the provisions of Sec. 13(l)(b) of the Bombay Rent Act. It reads as under :

> "Section 13(l)(b): (1) Notwithstanding anything contained in this Act (but subject to the provisions of Sec. 15), a landlord shall be entitled to recover possession of any premises if the Court is satisfied -
>
> (b) that, save as otherwise provided in Sec. 23A, the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure; or....."

14. Construction of a temporary structure does not fall under clause (b) of sub-sec. (1) of Sec. 13. Section 108(o) of the T.P. Act contains material provision. Any act which is destructive or permanently injurious to the demised premises committed by the tenant is, also, a ground of eviction under clause (a) Therefore, the question which is paused to be adjudicated upon, at this juncture is. as to whether the impugned or offending structures erected by the tenant could be said to be covered either under clause (a) or clause (b) of sub-sec. (1) of Sec. 13 ? The tenant cannot effect any permanent structure on the premises without the consent of the landlord in writing. In the present case, the plea of the tenant that he had raised the impugned structure with the oral consent of the landlord is not established. Even if it is established, as stated earlier, the oral consent is not permissible. Therefore, the question which requires to be decided is as to whether the offending structure is destructive or permanently injurious to the demised premises ? Whether the impugned or offending structure, is permanent or not, and that it is permanently injurious to the premises is to be judged in the light of several aspects in a given case. The explanation to Sec. 13(1)(b) is very clear that no permanent structure shall be deemed to be erected in the premises by raising construction of a partition wall, door lattice work or to fill in the kitchen-stand or *such other alterations* made in the premises as can be removed without any serious damage to the premises. Thus, it shows that

it is enumerative and not exhaustive. The legislature ha? given liberty *to* the tenant to make any one of the specific alterations in the premises in his occupation, and any such alterations in the premises which can be removed without serious damage to the premises. One of the tests is removability of the offending structure. Even if such a structure, upon removal, causes some damage to the premises, it does not incur liability for ejectment. Explanation provides serious damage to the premises. It transpires that the underlying spirit even in the last portion of clause (o) of Sec. 108, namely *'commits any other act which is destructive or permanently injurious thereto'* must have the same connotation and spirit as that of Explanation attached to Sec. 13(l)(b).

15. The case law relied on by the; learned Counsel is required to be mentioned, at this stage. Firstly, reliance is placed by the learned Counsel on behalf of the tenant, on a Division Bench decision, rendered in *Ibrahim v. Haji Khanmahomad*, (1965) VI GLR 27. In that case, while examining the provisions of Sec. 13(l)(b) of the Saurashtra Rent Control Act, 1951 which are similar to that of the provisions of Sec. 13(l)(b) of the Bombay Rent Act, this Court held that the structures erected by the tenant were not permanent structures. In that case, the suit premises consisted of a piece of land together with otta like that of a raised platform and fali. Soon after taking possession, the tenant erected three rooms and cattle shed with a loft over it. The said structures were made up of bamboos and iron sheets. This Court found that the said offending structures cannot be said to be permanent structures. This decision supports the version of the tenant.

16. On behalf of the landlord, the learned Counsel has relied on a decision of this Court of a learned single Judge, rendered in *Ishwarbhai v. Parshottam*, (1967) VIII GLR 665. It was held that the removability cannot *'per se"* be a test nor it is necessary that a particular type of material is to be used to give the structure an element of permanence or to make it of such a nature as to be of a lasting nature. The expression 'permanent structure' in Sec. 13(l)(b) of the Bombay Rent Act is used to denote some work which is not of a temporary nature. It would, therefore, not be proper to say that, because in the offending structure, beams of wood and such other materials were used and not the cement or the steel frame. Therefore, it could not be considered to be a permanent structure. It was also held that the objective test is required to be employed in finding out the nature of the structure being permanent or not. In the aforesaid case, the offending structure consisted of a ground floor structure in which two shops had been constructed on what was originally a kutcha or temporary shed or godown. The upper storey was also constructed with all the modern facilities, and considering the objective test and rejecting the subjective consideration, as aforesaid, the revision was dismissed. The facts of the present case are different. Not only that, the ratio profounded in the said decision is also not helpful to the landlord.

17. This Court in *Ramji Virjiv, Kadarbhai*, (1972) XIII GLR 81, has held while interpreting the provisions of Sec. 13(l)(b) of the Bombay Rent

Act, that the tenant constructing a loft which was entirely wooden structure for putting mattresses etc., and covering the balcony portion by converting it into a bathroom, cannot be said to be permanent construction. This decision is relied upon by the learned Counsel for the tenant and it helps the version of the tenant.

18. The learned Counsel for the landlord has relied on a decision of the Apex Court in *Manmohan Das v. Bishim Das,* AIR 1967 SC 643. Having examined the entire decision carefully, this Court is of the opinion that it is not applicable to the present case. In that case before the Supreme Court, the offending structure made by the tenant in the demised premises was so extensive that the entire nature of the premises was changed. The tenant, by lowering the level of the ground floor by about *1 1/2* by excavating the earth, therefrom, and putting up a new floor, the consequent lowering of the front door and putting up instead a larger door lowering correspondingly, the height of the Chabutra so as to bring it on the level of the new door step, the lowering of the base of the staircase entailing the addition of new steps thereto and cutting the plinthband on which the door originally rested so as to bring the entrance to the level of the new floor, made structural alterations which were not only material alterations, but were such as to give a new face to the form and structure of the premises. In view of the extensive nature of the offending structures, and considering the relevant provisions of Sec. 3(1)(c) of the U. P. (Temporary) Control of Rent and Eviction Act, the Supreme Court allowed the appeal, restoring the eviction decree passed by the trial Court. The said decision cannot be said to be helpful, in any way, to the plea raised by the landlord in the case on hand.

19. On behalf of the landlord, heavy reliance is also placed on the decision of *Suryakumar Govindjee v. Krishnammal,* 1990 (4) SCC 343. The attention of this Court is invited to para 10, in particular. Having examined the entire decision, this Court is of the clear opinion that the said decision is also of no avail to the landlord. In that case, the question was about the interpretation of expression *"Building"*. The Supreme Court held that the offending structure in that case was within the purview of definition of the word "Building". This Court is at great loss to understand as to how this decision is helpful to the landlord ?

20. In view of the catena of judicial pronouncements on the point in question, the Court is obliged to consider the following factors and points in a case like the one on hand, wherein, the Court is called upon to consider the provisions of Sec. l3(l)(b) :

(1) The intention of the party in putting up the structure;

(2) The intention has to be gathered from the degree of annexation;

(3) Whether the structure can be removed without doing serious damage to the demised premises ?

(4) The material used for structure and also the removability thereto;

(5) The nature of the materials used for the structure;

(6) The purpose and the object with which the erection of the structure is made;

(7) The durability of the structure ?

(8) The nature and character of the structure;

(9) The offending structure *vis-a-vis* the original structure;

(10) The manner and mode in which the structure is erected, and dimensions thereof.

21. When the Court is called upon to adjudicate upon a case under Sec. 13(l)(b) of the Bombay Rent Act, the Court is obliged to consider all the factors enumerated hereinbefore.

22. In the present case, while considering the aforesaid factors, in the light of the settled proposition of law, and in the background of the facts of the present case, the offending structures cannot be said to be permanent structures as contemplated under Sec. 13(l)(b) of the Bombay Rent Act. It cannot, also, said to be destructive or permanently injurious to the demised premises, as envisaged in clause (o) of Sec. 108 of the T.P. Act. This Court is also of the clear opinion that the impugned actions of the tenant cannot be said to be unreasonable, in respect of the user of the demised premises. The user of a prudent man test if applied, then in that case also, it cannot be said that the offending structures is, in any way, unreasonable, destructive or permanently injurious. In fact, as such, the offending structures cannot be said to be permanent structures. In such case, ordinarily, an expert's opinion will be very important. The opinion of an engineer or architect or an expert in the building construction will, surely, assist the Court to determine as to what is the nature of the offending structure. There is no such evidence in the present case. The conclusion reached by the trial Court that the tenant is liable to be ejected under Secs. 13(l)(a) and 13(l)(b) is, totally, not only erroneous, but is illegal. The appeal filed by the tenant was allowed, rightly, but on wrong premise. Therefore, the revision is required to be dismissed on different grounds.

23. Lastly, it was contended that while making the offending structure, the tenant has committed waste and the adjacent land is rendered unusable, as there is an over-hanging projection of the replaced wooden roof. In fact, there is no plea or issue with regard to the ground of waste committed by the tenant. Therefore, such a plea in a revision cannot be allowed to be raised for the first time. However, learned Counsel Mr. Majmudar, fairly, made a fair statement that the tenant shall pay an amount of Rs. 3,500- (Rupees Three thousand five hundred only) to the landlord as he had not returned the material changed and shifted while making the offending structure in the demised premises and, also, for the resultant non-actionable damage to the permises, as well as due to the fact that the adjacent land is, to some extent, rendered useless, in so far

as the landlord is concerned. Mr. Majmudar, learned Counsel for the respondent-tenant, states that the tenant shall deposit the amount of Rs. 3,500/- in this Court, on or before 15th September, 1993.

24. Having regard to the overall picture emerging from the record of the present case, this Court is of the opinion that there is no fit case for ejectment either under Sec. 13(l)(a) or 13(l)(b) of the Bombay Rent Act and, therefore, the conclusions reached by the trial Court are required to be reversed on different grounds than the grounds which are mentioned in the impugned judgment of the learned District Judge. Having regard to the peculiar facts and circumstances, there shall be no order as to costs.

25. On depositing the amount, of Rs. 3,500/-, it will be open for the landlord to withdraw the same. As and when the amount is deposited and applied for withdrawal, the Nazir of the Court shall make the payment by an Account Payee Cheque to the landlord. With this observation, this revision is dismissed with no order as to costs. Rule discharged.

Application dismissed.

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SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice A. P. Ravani and the Hon'ble Mr. Justice Y. B. Bhatt.

SWAMINARAYAN EDUCATION TRUST v.
STATE OF GUJARAT & ORS.*

Bombay Primary Education Act, 1947 as amended by Gujarat Act 24 of 1986 - Secs. 40A & 63 - Bombay Primary Education Rules, 1949 -Rules 106 to 116 - State Government has power to fix pay scales etc. of teachers serving in public or private primary schools - The management as a condition of recognition is bound to obey such instructions - The power is not unconditional - However in so far as retrospective effect is given from 1-4-1987, it is invalid in relation to private schools.

It is contended that the State Government has no powers to make Rules regarding rates of pay, pay scales and allowance for teachers employed in recognised private primary schools. It is also contended that the State Government has no power to issue Government Resolution providing for pay, pay scales and allowances for teachers employed by private primary schools. (Para 10)

la view of the decision of the Division Bench of this Court *Shri Safal Kelvani Mandal v. State,* 1984 (2) GLR 1488 the question as regards power of the State Government to fix the pay scales of teachers even in primary schools is concluded. (Para 12)

Scheme of the Act and the Rules framed thereunder clearly indicate that the Government is required to take care of the teaching standards and conditions of services of teachers. (Para 13)

*Decided on 12-11-1992. Special Civil Applications Nos. 2549, 2550, 2551, 2552 of 1992 and S.C.A. Nos. 6119, 6310, 7419, 7512, 8839, 4373 and 4382 to 4192 all of 1990.