



Serial No. 01-02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 343 of 2022 with
WP(C) No. 344 of 2022

Date of Decision: 05.06.2024

Shri. Kiran Thapa,
S/o (L) Bihsnu Prasad Thapa,
All residents of Holding No. 48JB,
Sy. No. 135/77, Shillong Cantonment,
Shillong- 793001, East Khasi Hills District,
Meghalaya

:::Petitioner

-Vs-

1.Union of India,
Represented by the Secretary to the
Government of India, Ministry of Defence,
New Delhi

2.The Defence Estate Officer,
Guwahati Circle, Narangi Military Station,
P.O. Satgaon, Old Army School Building,
Guwahati – 781171, Assam

3.Shillong Cantonment Board, Shillong,
Represented by its Chief Executive Officer,
13, Pine Walk Area, Near Rhino Auditorium
Shillong – 793001, East Khasi Hills District,
Meghalaya



4.The Chief Executive Officer,
Shillong Cantonment Board,
13, Pine Walk Area, Near Rhino Auditorium
Shillong – 793001, East Khasi Hills District,
Meghalaya

:::Respondents

5.The Additional Deputy Commissioner
(Revenue), East Khasi Hills District,
Meghalaya

:::Proforma Respondent

The Shillong Cantonment Lease Holders Association,
An association registered under the Meghalaya Societies
Registration Act, 1983, Having its office at Anjalee
Cinema, Shillong – 1, East Khasi Hills District,
Meghalaya

Represented herein by its President,
Shri. Binod Rana,
S/o (L) Hira Singh Rana, aged about 67 years,
R/o Holding No. 50JB, Shillong Cantonment,
Shillong – 793001, East Khasi Hills District,
Meghalaya

:::Petitioner

-Vs-

1.Union of India,
Represented by the Secretary to the
Government of India, Ministry of Defence,
New Delhi

2.The Defence Estate Officer,
Guwahati Circle, Narangi Military Station,
P.O. Satgaon, Old Army School Building,
Guwahati – 781171, Assam

3.Shillong Cantonment Board, Shillong,
Represented by its Chief Executive Officer,



13, Pine Walk Area, Near Rhino Auditorium
Shillong – 793001, East Khasi Hills District,
Meghalaya

4.The Chief Executive Officer,
Shillong Cantonment Board,
13, Pine Walk Area, Near Rhino Auditorium
Shillong – 793001, East Khasi Hills District,
Meghalaya

:::Respondents

5.The Additional Deputy Commissioner
(Revenue), East Khasi Hills District,
Meghalaya

:::Proforma Respondent

Coram:

Hon’ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K.N. Choudhury, Sr. Adv. with
Mr. S. Sen, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. S. Rumthao, Adv. (For R 1&2)
Mr. S.P. Mahanta, Sr. Adv. with
Mr. M. Lyngdoh, Adv. (For R 3&4)
Mr. N.D. Chullai, AAG with
Ms. R. Colney, GA(For R 5)

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No



JUDGMENT AND ORDER

1. These two writ petitions being similar are being disposed of by this common judgment and order. The petitioners in both these writ petitions are aggrieved with the action of the Defence Estate Officer, in determining the Standard Table of Rent (STR), for existing and expired leases under the Shillong Cantonment, which they alleged is without following the procedure laid down under the relevant rules, and the consequent action of the Cantonment Authorities in demanding exorbitant and arbitrary rent for the leasehold properties.

2. The background facts are that all leasehold properties in the civil areas of the Shillong Cantonment were settled under the provisions of the Cantonment Land Administration Rules 1925 and 1937 (hereinafter referred to CLAR 1937). The CLAR, contains provisions relating to the management of properties vested in the Cantonment Board including powers to lease them out, fixing and collection of rents etc., and Rules 8 and 10 thereof, mandate that STR is required to be prepared in consultation with the Collector.



3. Mr. K. N. Choudhury, learned Senior counsel assisted by Mr. S. Sen, learned counsel on behalf of the petitioners submits that the STR has to be drawn up in accordance with the Government of India instruction dated 31.01.1976, which clearly outlines the manner in which the same is to be determined. He submits that the exercise of determination requires the following.

- (a) Cantonment land is to be divided into 4(four) zones viz. Bungalow, Civil, Shopping and lesser developed areas.
- (b) Valuations of Defence lands by adopting the ‘Comparable Sales Method of valuation of land’ based on the sale price of similar private lands or neighbouring municipal area and sales of land in the municipal areas, should determine the value of the corresponding land in the Cantonment.
- (c) The Zones, comparable areas in the town along with sales statistics, their analysis and examples selected, together with valuation proposed to be fixed to be submitted by the DEO to the Collector for his concurrence.



(d) Plans for zones in the Cantonment and corresponding areas in the Municipal limits, sales statistics and other relevant data, complete with analysis and appreciations of the sales, to be retained in safe-custody for future consultations as and when necessary.

4. He submits that from the records it is revealed that none of the requirements prescribed in the instruction has been followed, inasmuch as, the division into zones was not done, no materials are present to show which zone was compared with which corresponding neighboring private land or municipal area, nor any sales data of the said areas are present. He submits that there is nothing to show that the analysis and proposed valuation for each zone were ever sent by the respondent No. 2(DEO), to the Collector for concurrence. It is submitted that in the present case, the limited communication initiated by the respondent No. 2 with the Deputy Commissioner (Revenue) East Khasi Hills, was an inquiry with regard to the Standard Table of Rent w.e.f. 01.01.2018, which however on the same not being available, certain rates w.e.f. 07.07.2015 to 31.12.2017, was supplied. The learned Senior counsel contends that the rate supplied by the Deputy Commissioner pertains to the value of land and not for rent, but the respondent No. 2, based on this incorrect valuation, determined the



Standard Table of Rent, instead of determining the same on the basis of rental value of lands in the revenue areas, under the jurisdiction of the Deputy Commissioner (Revenue).

5. The learned Senior counsel has also submitted that the Government of India, on noticing that there was a rapid increase in the value of land in the Cantonment areas, had formulated an interim policy for fixation of rent thereof by order dated 10.03.2017, as many leases granted under the CLAR 1925 and 1937, had expired or were expiring. However, it is submitted that the respondent No. 2, determined the STR under the said interim policy is in complete and utter violation of CLAR 1937. An example he submits, is with clause 1(B)(a)(iii) which provides that, rent will be revised by 100% after expiry of every 10(ten) years, which is contrary to CLAR 1937, where the revision of rent is done after expiry of every 30(thirty) years and upto a maximum of 50%, enhancement of rent and not after expiry of 10(ten) years by full 100%.

6. The learned Senior counsel has then referred to the new CLAR 2021, which was notified in supersession of the CLAR 1937, and came into force on 01.12.2021, which mandates at Rule 9, that the respondent No. 2, shall in consultation with the District Collector or the Competent State Revenue Authority, compile STR's suitable for application to the sites in the



Cantonment, having regard to the situation, nature of soil, use of the site and the rates charged for adjacent agricultural land or for building sites in the neighborhood. The respondents No. 1 and 2, however he submits, did not constitute any committee or a consultative process for drawing up the STR, but obtained the Collector's purported concurrence on the STR, only on 15.02.2022, after the CLAR 2021 had been notified on 01.12.2021, and the demand for rent, was levied on 17.06.2022. The learned Senior counsel further submits that the STR determined by the respondents No. 1 and 2, is not in accordance with the procedure prescribed, and is therefore liable to be set aside.

7. In support of his arguments, the learned Senior counsel has cited the following judgments.

- (i) *Printers House Pvt. Ltd. vs. Cold Storage and Food Production (1994) 2 SCC 133***
- (ii) *Chatturam Horliram vs. CIT AIR 1955 SC 619***
- (iii) *Mafatlal Industries Ltd. vs. Union of India (1997) 5 SCC 536***
- (iv) *Commissioner of Customs vs. Dilip Kumar & Co. (2018) 9 SCC 1***
- (v) *Union of India vs. Mahendra Singh (2022) SCC OnLine SC 909.***

8. Dr. N. Mozika, learned DSGI assisted by Ms. S. Rumthao, learned counsel for the respondents No. 1 and 2, submits that there are 127 lessees



in Shillong Cantonment, out of which 116 leases have expired, with the remaining 11 leases, set to expire in the next few years. These leases he submits, were granted during the British period, and the maximum possible lease period was for 90(ninety) years, and the annual lease rent for these leases was fixed in the 1930's and 1940's, at the rates prevailing in those times, with a provision for enhancement by 50% on the first extension and another further 50% on the second extension.

9. The learned DSGI then submits that CLAR 1937, at Rule 8 provided that, the Military Estates Officer in consultation with the Collector shall from time-to-time compile in the prescribed form in Schedule-II, STR's suitable for application, as per situation and nature of the sites. As per the executive instructions for STR dated 11.01.1973, he submits that the method had been laid down at Para – 3 of the said instructions, whereby the STR was to provide for rates of rent on the basis of 10 sq mtr. for the entire area, even if such area is in excess of $\frac{1}{4}$ th of an acre, and that the STR for residential purposes would be 2½% of the market value. Further he submits, executive instructions provided by the Ministry of Defence dated 31.01.1976, at Para – 4, 5, and 6, provided for the division of land into zones, for determination of value, such as, Bungalow area, Civil area, Shopping area and lesser developed areas. The learned DSGI has then



taken the Court to the affidavit filed on behalf of the respondents No. 1 and 2, and has also referred to the guidelines dated 10.03.2017, to show that as per clause - B(a) thereof, all leases given under the Cantonment Codes of 1899 and 1912, and CLAR 1925 and 1937, whose full term has either expired or is expiring before 31.12.2018, would be extended till 31.12.2018, subject to certain conditions, of which one of them was that lease rent was to be recovered based on STR rates prevailing on the date of expiry of lease. With regard to CLAR 2021, which came into force in 01.12.2021, it is submitted that the same would be applicable to fixation of future STR, which in the instant case would be from 01.01.2024 to 31.12.2026.

10. The learned DSGI then submits that in terms of the executive instructions/guidelines dated 11.01.1973 and 31.01.1976, the approval of the Collector/Deputy Commissioner is necessary, and the fixation for the STR, for Shillong Cantonment from 01.01.2012 onwards, is for every block of 3(three) years, with due concurrence from the Collector/Deputy Commissioner, on the basis of market valuation, with the rent payable at 2½ % of the STR valuation, depending on the area of the land. He further submits that the STR is in existence at least from 01.01.2012, and there have been only marginal increases in the STR from period to period, and



there has been no abrupt or sudden increase, as alleged. For the fixation of STR, for the period 01.01.2021 and 31.12.2023, the period for which the petitioners are extremely aggrieved with, it is submitted that for the fixation thereof, land valuations were sought from the Collector by letter dated 08.01.2021, and in reply thereto, the Deputy Commissioner vide letter dated 12.03.2021, had provided the rates to the respondent No. 2, whereafter approval was sought from the Deputy Commissioner vide letter dated 15.02.2022. It is then submitted that on approval being received, the fixation that was done, was fully in concurrence with the terms of the executive instructions/guidelines dated 11.01.1973 and 31.01.1976. The STR for the period 01.01.2024 to 31.12.2026, he submits is being fixed in terms of the new CLAR 2021, for which a committee has been duly constituted.

11. On the contention of the petitioner that, the extraction of lease rent amounts to the tax and that no tax can be levied or collected except by authority of law under Article 265 of the Constitution, the learned DSGI submits that lease rent is not a tax and hence, no analogy can be drawn with a taxing statute. Reference has been made to the judgment in the case of *Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1954) 1 SCC 412:*



1954 SCC OnLine SC 67, which he submits tax has been defined as a compulsory exaction of money by public authority for public purposes enforceable by law, and is not payment for services rendered, whereas rent on the other hand is defined to include various amounts agreed to be paid by a tenant, including amounts in respect of property tax payable in respect of tenanted premises.

12. He therefore submits that, due process as envisaged under the Rules and executive instructions/guidelines having been duly followed in the fixation of STR, and further the same being in place since the year 2012, with only a marginal increase, no case has been made out for interference by this Court. In closing his arguments, the learned DSGI submits that as it is, the petitioners' leases have already expired and they have no right to continue with the lease and that at this day and age, they cannot claim to be liable to pay rent at the rate that has been fixed 90 to 100 years ago.

13. Mr. S.P. Mahanta, learned Senior counsel assisted by Mr. M. Lyngdoh, learned counsel for the respondents No. 3 and 4 has adopted and endorsed the submissions made by the learned DSGI.

14. Mr. N.D. Chullai, learned AAG assisted by Ms. R. Colney, learned GA for the proforma respondent No. 5, in his reply has submitted that though no relief is sought for, or claimed against the State respondent by



the petitioners, the Deputy Commissioner does not determine or approve the Standard Table of Rent of the Shillong Cantonment Area, and that a perusal of the letter dated 15.02.2022, of the respondent No. 2, clearly indicates that the Standard Table of Rent was prepared on the basis of the minimum valuation of land forwarded by the office of the Additional Deputy Commissioner (Revenue). He further adds that, the minimum valuation of land was provided, without being aware that the same was for the purposes for preparation of STR for the Shillong Cantonment, and that it was in this context that the Schedule-II column had been signed by the concerned officer.

15. Having heard the learned counsel for the parties, it is seen that in these writ petitions, two main issues have been raised i.e. the Standard Table of Rent (STR) of Shillong Cantonment and the Revision of Rent done on the said STR. The contention is that, the STR has been determined incorrectly, which as submitted has resulted in an exorbitant increase in the lease rents. Before coming to the grievance of the petitioners, it would be expedient to outline the method and procedure that is adopted in the fixation of these rents in the Cantonment area. The preparation of STR is governed by the Ministry of Defence, Government of India letter No. 18/35/L/L&C/54 dated 31.01.1976, which inter alia provides that for



determining the value of land, each Cantonment may be divided into zones such as Bungalow, Civil, Shopping etc. These lands are then identified with similar lands in the neighbouring municipal areas, and the sales that have taken place to determine the value of corresponding land. For the sake of convenience, Paragraphs – 4-7 of the letter dated 31.01.1976, being relevant are quoted herein below.

“4. For determining the value of the land, each Cantonment may be divided into Zones, e.g., bungalow area, civil, Shopping, and lesser developed areas. Where in a cantonment there are similar private lands in the neighborhood, valuations of Defence lands can be based on the sale price of the private lands. In other Cantonments, the lands in various Zones should be identified with similar lands in the neighboring municipal area and the sales of land that have taken place in a particular region in the municipal area should determine the value of the land corresponding land in the Cantonment. For example, the land comprising the bungalows in a Cantonment may more or less correspond to the land in the civil lines of a city. The land in the Civil area for building purposes in a Cantonment may be compared with residential area of similar density and income group in the town. Shopping Centre in the Cantonment may be compared to a Shopping Centre in the town. Where necessary, some allowance may be made for



difference in the state of development, distance from Central marketing centres and Railways or Bus terminals etc.

5. A-2 and other B-4 lands which are large compact areas not fully developed may be compared with less developed land in the suburbs of the neighboring municipal area. The Zones into which a Cantonment is divided, and comparable areas in the town alongwith sales statistics, their analysis and examples selected, together with valuation proposed to be fixed for each zone or different parts in each zone maybe submitted by the DEO to the Collector for his concurrence. In case the concurrence/comments on the rates of rent adopted in the draft-STR are not received within a period of 90 days the DEO shall forward the draft STR to the D.D.E. of the Command necessary by him. The D.D.E. may, if necessary, visit the station to examine the relevant areas in the town, sales which are proposed to be applied, before according his approval.

6. Plans of zones in the Cantonment and corresponding areas in the Municipal limits, sales statistics and other relevant data, complete with analysis and appreciations of the sales, will be retained in safe-custody for future consultations as and when necessary.

7. In view of the rapid increase of land values in Urban areas, including Cantonments, it has also been decided that



STRs of all Cantonments would be revised at least once in every 3 years instead of 5 years, at present, in case or fast developing Cantonments where the revision should be carried out every 2 years.”

16. That with regard to the STR for residential purposes, the Ministry of Defence had vide letter dated 11.01.1973, decided that the same was to be 2.5% of the market value of land, and as provided in the letter dated 31.01.1976, at Paragraph – 7 thereof, the STR would be revised at least once in every 3(three) years instead of 5(five) years, except in the case of fast developing cantonments, where the revision was to be carried out every 2(two) years. The extract of letter dated 11.01.1973, is reproduced herein below.

“7. Preparation of STR-Metric Units

It has been decided that for all building sites the STRs shall provide for rates of rent on the basis of 10 Sq. Metres for the entire area even if such area is in excess of 1/4th acre. The STR for residential purposes will be 2½% of the market value.”

17. The respondents had also put in place an interim policy for the leases dated 10.03.2017, which provides for the extension of expired/expiring Cantonment Code Leases of 1899 and 1912, and 1937, and for renewal of



Cantonment Code and CLAR Leases, whose full term had not expired. By this policy decision leases whose full term had expired or were expiring before 31.12.2018, were extended till 31.12.2018, subject to conditions mentioned in Paragraph – (B)(a)(iii), that lease rent shall be recovered from the lessee based on STR rates prevailing on the date of expiry of leases. Para – (B)(a)(iii) is reproduced herein below.

*No 11013/2/2016/D(lands)
Government of India
Ministry of Defence*

New Delhi, the 10th March, 2017

To,

*The Director General, Defence Estates
New Delhi*

Subject: 1. *Extension of expired/expiring Cantonment Code Leases of 1899 & 1912 and Cantonment Land Administration Rules, 1925 & 1937*

 2. *Renewal of Cantonment Code and CLAR Leases whose full term has not expired*

1. *Extension of Expired Leases*

A. Full term of a large number of Cantonment Code Lease given under Cantonment Codes of 1899 & 1912 has expired and that for the remaining will be expiring soon similarly a number of leases given under the Cantonment Land Administration Rules (CLAR), 1925 & 1937 have expired after having completed full lease term. Ministry of Defence has been working on



formulation of a new a policy to deal with such leased sites whose full term has expired or is expiring soon, which is likely to take some more time. Therefore, to regularize the occupation of these sites from the date their full term has expired and to recover lease rent, the Government has decided to take following internal measures:

B(a) All leases given under the Cantonment Codes, 1899 & 1912 and CLAR 1925 & 1937 whose full term has either expired or is expiring before 31.12.2018 will be extended till 31.12.2018 subject to the conditions given in the succeeding paras.

(i).....

(ii).....

(iii) Lease rent shall be recovered based on STR rates prevailing on the date of expiry of leases. The lease rent will be revised by 100% after expiry of every 10 years, period on compounding basis. Rent will be fixed on the basis of use of site which is classified as residential, commercial and lucrative. The lease rent for residential sites is equal to normal STR (Standard Table of Rent) rates, for commercial sites twice the STR rate and for lucrative sites four times the STR rates as per extant instructions.”

This policy has been extended by the Ministry of Defence from time to time, last by letter dated 29.12.2022, for the period upto 1(one) year or



till the finalization of a new policy beyond 31.12.2022 (Annexure – D of affidavit of the respondents No. 1 and 2).

18. Thus, it is seen the fixation of the STR pursuant to the leases as granted under Cantonment Codes of 1899 and 1912, and CLAR of 1925 and 1937, were regulated as per the set procedure and policy by the respondents No. 1 and 2, as narrated above. What has to be examined by this Court is only as to whether the fixation of STR was as per the adopted policy, for the relevant period and recovery made in accordance thereto. First it is noted that, as per the stipulations, concurrence of the Deputy Commissioner, East Khasi Hills was obtained by the respondent No. 2 on the STR for Shillong Cantonment w.e.f. 01.01.2018 – 31.12.2020, and respondent No. 2, had revised the STR rates based on the said inputs. It is seen from the records that the Deputy Commissioner, for the said period has approved the same in the Schedule II form of the STR, by appending his signature, which similarly was done for the period 01.01.2021 – 31.12.2023, wherein the signature of the Deputy Commissioner of approval is present. It is also noted from the said Schedule II, that the Cantonment area has been designated into four zones, encompassing the leasehold lands within the Cantonment, with the rates given therein. As such, it cannot be said that, there was no compliance with the letter dated 31.01.1976, as far



as the zoning of the areas, as also the concurrence that had been received on the rates of rent adopted in the STR. This STR was also published in the local papers, for the benefit of the public.

19. On the other contentions regarding issue or demand notice by the respondent No. 4, i.e. the CEO, Shillong Cantonment Board, to the lessees demanding exorbitant amounts, in lieu of advanced rent/occupation charges in respect of lease hold properties, it is seen that this action, is as per the interim policy dated 10.03.2017, wherein provisions for issue of demand notices had been given in cases where the full term of lease had expired. Further, the STR on the basis of the land valuation of the zone, as provided by the Deputy Commissioner, monthly rent had been calculated at 2.5% of the total market value (for residential purpose), as per the letter dated 11.01.1973, and for commercial purpose as per policy dated 10.03.2017. The procedures adopted by the respondents therefore, in the considered view of this Court, does not suffer from any arbitrariness or illegality.

20. With regard to the other contention that, as CLAR 2021, has come into effect and that the STR which has been implemented, was without the constitution of a committee as mandated, this contention is of no consequence, inasmuch as, though the CLAR came into force from



01.12.2021, fixation under the same would commence from the block period 01.01.2024 to 31.12.2026.

21. In this context, it is also relevant to mention herein that the annual lease rents for these properties were fixed in the 1930s and 40s, at the rates prevailing in those times, wherein enhancement of lease rents was 50% on the first extension and another 50% on the second extension, and that out of the 127 lessees, 116 leases have expired, with another 11 leases expiring in the next few years. With the passage of time, it is therefore but expected that, there be considerable increase in the rents payable, which will naturally seem exorbitant to the lessees. The imposition of the STR by the respondents on these lessees, mostly of whom leases have expired, being in consonance with the guidelines contained in the letter dated 10.03.2017, wherein extensions were given till 31.12.2018, subject to the conditions contained therein at clause – B(a), therefore cannot be held to be arbitrary.

22. The submissions of the learned AAG that, the concurrence of the Deputy Commissioner as evidenced from the records, in the Schedule II form of the STR, was given without the knowledge that the same was for the purposes of computation of rental value is not accepted, inasmuch as, it is not possible that a high-ranking officer approve a document without knowing its contents, and its purport thereof. Further, as the STR was fixed



at 2.5% of the total market value (for residential purpose), as per the letter dated 11.01.1973, and for commercial purpose as per policy dated 10.03.2017, the supply of the land valuation rates, was all that was required by the respondent No. 2, to fix the STR.

23. To the other contentions of the petitioners that, CLAR 1937, was not followed, the same are noted only to be rejected, inasmuch as, the detailed guidelines of 1976 and 2017, as discussed above, have been seen to have been complied with. The authorities relied upon by the counsel for the petitioners not being of any substantial assistance are not discussed herein.

24. As such, for the reasons stated above, no case of arbitrariness on the part of the respondents, or violation of the petitioners' rights have been made out to warrant any interference by this Court.

25. Accordingly, the writ petitions stand dismissed.

26. No order as to costs.

27. Records as produced to be returned back to the learned DSGI.

Judge

Meghalaya
05.06.2024
"D.Thabab-PS"

DARIHUN
THABAH

Digitally signed by
DARIHUN THABAH
Date: 2024.06.05
15:44:53 +05'30'