

Court No.3

Case :- WRIT - C No. - 3400 of 2024

Petitioner :- Dilip Charan Wahal And Another

Respondent :- Union Of India Thru. Secy. Ministry Defence And 2 Others

Counsel for Petitioner :- Samarth Saxena

Counsel for Respondent :- A.S.G.I.,Sanjeev Singh

Hon'ble Mrs. Sangeeta Chandra J.

Hon'ble Subhash Vidyarthi J.

1. Heard learned counsel for the petitioners, Shri S.B. Pandey, learned D.S.G.I. assisted by Shri Raj Kumar Singh, learned counsel for the respondent Nos.1 & 3 and Shri Sanjeev Singh, learned counsel for respondent No.2.

2. This petition has been filed with the following prayers:-

“(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned demand notices dated 08.12.2023 (ANNEXURE NO 2) and 19.02.2024 (Annexure No.3) issued by the Defence Estates Officer, Lucknow Circle, Lucknow to the extent, it seeks to recover an amount of Rs. 91,63,857/- from the petitioners in respect of an area of 3.36 acres, situated over Survey No. 93/2 Cator House 236 M.G. Road Lucknow Cant.

(ii) Issue a writ, order or direction in the nature of certiorari ‘summoning and quashing the minutes of the meeting of the Cantonment Board, Lucknow dated 25.09.2023 in so far as it increases the Standard Table of Rent (STR) of Zone-I, to Rs. 566.70/- per sq. meter w.e.f. 01.07.2023 to 01.07.2024.

(iii) Issue a writ, order or direction in the nature of mandamus declaring Clause-B(a)(iii) of the Policy dated 10.03.2017 as extended till 31.12.2024, in so far as it directs recovery of lease rent on the basis of Standard Table of Rent (STR) prevailing on the date of expiry of lease as ultra vires to the provisions of Rule-16 r/w rule 28 and also Schedule VIII of the Cantonment Land Administration Rules, 1937 and Article 14 of the Constitution of India.

(iv) Issue a writ, order or direction in the nature mandamus directing the respondents not to take any coercive measures

against the petitioners in pursuance to the impugned demand notices dated 08.12.2023 and 19.02.2024 issued by the Defence Estates Officer, Lucknow Circle, Lucknow and further direct the respondents to accept the lease rent in respect of Survey No. 93/2 Cator House 236 M.G. Road Lucknow Cant. from the petitioner at the rate of Rs. 50/- per annum.”

3. The learned Counsel for the petitioners has submitted that a lease deed was executed on behalf of the Central Government on 15.05.1934 in respect of a premises described as ‘Cator House, 236, M.G. Road, Lucknow Cantonment’ in favour of Shri Shiv Charan, for a period of 30 years with effect from 25.10.1933, which was renewable up to 90 years. The said property has been mentioned at Survey No.93/2 and comprises of buildings known as Cater house and Shiv Kutir. The petitioners are in actual physical possession of Shiv Kutir and are residing therein and they are in *de-jure* possession of the rest of the property (Cater House) which is in occupation of the respondents, as it was let out to the Governor General in Council by Smt. Lalto Devi, wife of Shri Shiv Charan at a monthly rent of Rs.220/- by a lease deed dated 21.11.1941. The entire demised premises measures 13,597.44 Sq. Mts. On 10.03.2017, the Central Government framed a policy providing for an extension of expired/expiring leases and in pursuance of such policy, the lease of the demised premises was extended initially up to 31.12.2019 and thereafter it was again extended on 15.02.2021 up to 31.12.2021 or till finalization of a new policy, whichever is earlier. The policy dated 10.03.2017 was further extended beyond 31.12.2022 for one year i.e. till 31.12.2023 or till finalization of a new policy, whichever is earlier. The lease dated 15.05.1934 in favour of the predecessors of the petitioners, had expired on 24.10.2023 and in pursuance of the policy dated 10.03.2017 issued by the Central Government as extended from time to time, the petitioners have been allowed to occupy the demised premises till date.
4. The Cantonment Act 1924, under which the initial lease deed was executed, has been repealed by the Cantonment Act 2006. Section 125 of the Act of 2006 empowers the Central Government to make rules to

provide for conditions on which properties vested in a Cantonment Board may be transferred by sale, mortgage, lease or exchange. Under Section 63 of the Act of 2006, the Board has to manage any property entrusted to its management by the Central Government, subject to the rules made by the Central Government under Section 346 of the Act of 2006. In exercise of powers conferred by the Section 280 of the now repealed Act of 1924, the Central Government had framed Rules known as Cantonment Land Administration Rules, 1937 (hereinafter referred to as CLA Rules 1937). After the said Act was repealed, the Central Government in exercise of its powers under Section 346 of the Act of 2006 framed the Cantonment Land Administration Rules 2021 (hereinafter referred to as CLA Rules of 2021). Under Rules 17 of the CLA Rules of 2021, it has been provided that subsisting Cantonment leases given under earlier Act shall continue to be governed under the said Rules and conditions of the lease deed. The subsisting lease with renewal terms can be considered for renewal or otherwise, in accordance with the instructions issued by the Central government from time to time, including such instructions as pertain to submissions of on-line application for renewal of lease as well as processing thereof, and the renewal of lease deed shall be executed on the proforma given in Schedule IV.

5. The learned Counsel for the petitioner has also submitted that the CLA Rules of 2021 have been issued in supersession of the CLA Rules of 1937, but these Rules of 2021 do not govern those subsisting leases which had been in operation under the CLA Rules of 1937 and because the lease deed of the disputed property was subsisting and in operation at the time when CLA Rules of 2021 came into force, the CLA Rules of 1937 are applicable with respect to the disputed property. Rule 6 of CLA Rules of 1937 defines Class B-3 land as that land which has been held by any private person under the provisions of CLA Rules of 1937 or may be presumed to be held under the provisions of Cantonment Board Act 1899 or 1912 or under any executive order previously in force, subject to conditions under which the Central Government has reserved to themselves the propriety

rights in the soil. Rule 9 of CLA Rules of 1937 vests the management of all category 'B' lands with the Military Estates Officer, now called the Defence Estates Officer. Under Rule 8 of CLA Rules of 1937, the Standard Table of Rent has to be prepared by the respondent No.3 - the Defence Estates Officer in consultation with the Collector which is suitable for application on lands held for agricultural and non-agricultural purpose having regard to situation of site in the Cantonment, nature of soil and rates charged for adjacent agricultural lands or building sites in the neighborhood.

6. It has further been submitted that since a number of leases were granted under the CLA Rules of 1937 which had either expired or were expiring, therefore, the Government of India issued a policy vide its order dated 10.03.2017 which has been referred to herein above, by which all the leases under the CLA Rules of 1937, whose full term had expired or was expiring before 21.12.2018, were extended. The last such extension of lease was made by a letter dated 30.01.2024. It is the case of the petitioners that their lease had expired on 24.10.2023 lastly, but they continued to be in possession of the property in question and are using it for residential purposes. The respondent No.3 by a letter dated 08.12.2023, had issued a demand notice to the petitioners demanding rent at the rate of Rs.77,05,669/- per annum. Another demand notice had been issued on 19.02.2024 in pursuance of interim policy dated 30.01.2024 demanding a total of Rs.91,63,857/- to be paid within a period of 90 days for the purpose of processing the issue of execution of the lease deed up to 31.12.2024, failing which the petitioners would be deemed to be un-authorized occupants of the land in question and would be liable for eviction under the provisions of Public Premises (Eviction of Un-authorized Occupant) Act 1971. Upon payment of the amount demanded by the impugned demand notice dated 19.02.2024, the petitioners would only be entitled to an extension of the lease up to 31.12.2024.
7. It has been argued that since extension of the lease has been granted under the policy notified on 10.03.2017, it is not a renewal of lease as contemplated under the CLA Rules of 1937 and that as per the

provisions of Rule 16 of the CLA Rules of 1937, the annual lease rent fixed under Rule 19 can be revised only at the time of renewal of the lease and not while extending the lease, as the terms of the lease can be modified only on renewal of lease.

8. The learned counsel for the petitioners has submitted that the Standard Table of Rents which has been prepared by the respondent No.3 has been purportedly prepared on the basis of the circle rate fixed by the District Magistrate which was applicable on the date of expiry of the lease. Since the respondents are only extending the terms of the expired lease up to 31.12.2024, there cannot be any change in the terms and conditions of the original lease and that any extension of the lease has to be on the same terms and conditions as the original lease and the lease rent cannot be increased exorbitantly by the respondents at the time of extension of the lease.
9. It has also been argued that as per the minutes of the meeting dated 25.09.2023 of the Board regarding fixation of Standard Table of Rents, the Standard Table Rent (S.T.R.) was fixed at Rs.566.70/- per square meters in an arbitrary manner on the basis of prevailing rates of the adjoining municipal lands. Such prevailing rates relate to sale deeds executed of properties adjoining the Cantonment Board under the control of Municipal Corporation of Lucknow. In case of the petitioners, only lease-hold rights are being given by the respondent No.3 Circle Rates have been taken into consideration to determine the market value of those lands which are subject matter of sale deeds by private citizens. The circle rates cannot be made applicable for determining the annual lease rent in respect of leases granted by the Cantonment Board/ Defence Estates Officer where no ownership rights are being granted to the lessee. Therefore, the Moolya Nirdharan Suchi prepared by the Collector, Lucknow in respect of adjoining areas cannot be relied upon.
10. The learned counsel for the petitioners has also submitted that that the impugned notices dated 08.12.2023 and 19.02.2024 are arbitrary and liable to be quashed for the reason that the rent of the premises has

been increased exorbitantly from Rs.50/- per annum to Rs.77,05,669/- per annum even for limited lease holds rights as are being extended up to 31.12.2024 and the Cantonment Board/Defence Estates Officer being instrumentality of State, which is the Welfare State, cannot act arbitrarily and contrary to the principles enshrined under Article 14 of the Constitution of India.

11. It has also been argued that similar petitions have been filed before the Delhi High Court which have been entertained and the Court had issued interim directions that during pendency of the petitions, no coercive action can be taken against the lessees therein. Similarly, this Court has passed an interim order dated 27.10.2021 in Writ-C No.27621 of 2021 (Onkar Prasad Bhardwaj Vs. Union of India and 3 Others) directing that no coercive action be taken against the lessees therein as long as they continue to pay old rent. Similar order has also been passed by this Court at Allahabad on 13.10.2023 in Writ-C No.34544 of 2023 (Smt. Vinita Bahuguna Vs. Union of India and 2 Others). It has been argued by the learned counsel for the petitioners that since this Court has granted interim orders in similar petitions pending at Allahabad, parity of such interim order be also be granted to the writ petitioners.
12. Shri S.B. Pandey, learned Deputy Solicitor General appearing for the respondent Nos.1 & 3 has stated that this Court may finally consider and dispose of this writ petition on the basis of arguments raised by the parties and he does not propose to file a counter affidavit.
13. In **Vishnu Traders Versus State of Haryana**: (1995) Supp SCC 461, the Hon'ble Supreme Court held that "*In the matters of interlocutory orders, principle of binding precedents cannot be said to apply. However, the need for consistency of approach and uniformity in the exercise of judicial discretion respecting similar causes and the desirability to eliminate occasions for grievances of discriminatory treatment requires that all similar matters should receive similar treatment except where factual differences require a different treatment so that there is assurance of consistency, uniformity,*

predictability and certainty of judicial approach.” However, the aforesaid principles would not apply where the earlier writ petitions are pending and the present Writ Petition is being decided finally.

14. Shri S.B. Pandey has submitted that admittedly, the lease of the petitioners had expired way back on 23.10.2023 as the initial lease was granted on 25.10.1933 for a maximum period of 90 years. The extension of the period of lease has been done on the basis of policy dated 10.03.2017. The petitioners having derived advantage on the basis of the policy dated 10.03.2017 cannot turn around and challenge such conditions of the policy which according to them cause undue hardship. They have to accept the policy in its entirety or forgo the benefits of the policy as a whole.
15. The scope of interference by this Court in exercise of its powers under Article 226 of the Constitution of India in the matters involving challenge to any State policy, is limited to examining whether the policy suffers from Wednesbury unreasonableness.
16. In **Tata Cellular v. Union of India**, (1994) 6 SCC 651 (77), the Hon’ble Supreme Court held: -

“77. ...Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

 - (i) *Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
 - (ii) *Irrationality, namely, Wednesbury unreasonableness.*
 - (iii) *Procedural impropriety.*

The above are only the broad grounds but it does not rule out addition of further grounds in course of time.”
17. In **Fruit Commission Agents Assn. v. Govt. of A.P.**, (2007) 8 SCC 511, it was held that: -

“14. Fixation of rent is an administrative function and the court cannot sit as a court of appeal over administrative decisions vide Tata Cellular v. Union of India [(1994) 6 SCC 651]. Hence the view taken by the High Court is correct.

15. As we have held in S. C. Chandra v. State of Jharkhand [(2007) 8 SCC 279] the judiciary should exercise restraint and should not ordinarily encroach into the legislative or executive

domain. In our opinion fixing of the rent is an executive function and hence the judiciary cannot interfere with the same except on Wednesbury principles. There is broad separation of powers under the Constitution and ordinarily one organ of the State should not encroach into the domain of another. Montesquieu's theory of separation of powers (XIth Chapter of his book The Spirit of Laws) broadly applies in India too."

(Emphasis added)

18. Having considered the arguments raised by the learned counsel for the parties, this Court has gone through the relevant CLA Rules of 1937 and of 2021. In the CLA Rules of 2021, which have replaced the CLA Rules of 1937, it has been mentioned that all subsisting leases given under Cantonment Codes of 1989 and 1912 and Cantonment Land Administration Rules 1925 and 1937, shall continue to be governed under the said Rules and the conditions of the lease deed. Therefore, in so far as the applicability of CLA Rules of 2021 are concerned, they may not be applicable to the case of the petitioners as their lease was admittedly subsisting till 24.10.1923. However, the Rules of 1937 which have been relied upon by the learned counsel for the petitioners themselves say that all leases shall be governed by the Standard Table of Rents to be prepared by the Military Estates Officer/ Defence Estates Officer. The Standard Table of Rents has to be prepared in consultation with the Collector and shall be compiled taking into account the situation of the site, the nature of the soil and the rates charged for adjacent agricultural land or for building sites in the neighborhood.
19. We have gone through the Resolution of the Board as recorded in the Minutes of the meeting of the Board, a copy of which has been filed as Annexure No.14 to the writ petition. The said meeting was attended by a representative of Collector Lucknow, representative of Nagar Nigam Lucknow, representative of Defence Estates Officer, Lucknow Circle, Lucknow Cantt representative of Head Quarters Madhya U.P. Sub-area Lucknow Cantt and representative of Chief Executive Officer Lucknow Cantt and it was pointed out that Lucknow being the biggest city of U.P. with an increasing population and advantageous

and healthy environment and being the hub of commercial activities, the land values have increased exponentially. The Cantonment land is perhaps the best located in Lucknow city with well connected roads and amenities. It can be assessed on the valuation based on sales data/ Moolyankan Soochi, site survey and other relevant information gathered in this regard. Since Cantonment land belongs to the Government of India, Ministry of Defence and no part of it can be sold to anyone, hence no sales data was available to decide the fair market value of land but rates/value of land situated in the vicinity of Cantt area as assessed by the Collector are mentioned in the Moolyankan Soochi issued by the Collector, Lucknow and it can be taken into account. The Standard Table of Rents was last revised in July, 2022 and was valid till 30.06.2023 and it had now to be re-fixed/ revised for the years 2023-2024.

20. To arrive at a realistic value of land in the Cantonment, it has been divided into four zones and one subsidiary zone. The disputed property in this writ petition falls in Zone-I. This Zone comprises of Restaurants, Banks, Post Office, Hospitals and Commercial areas with wide roads. It is adjacent to the Railway Station and such localities of Lucknow Municipal Corporation as Mall Avenue, Abadi Kabristan and Vikramaditya Marg, which are some of the most posh areas of the Lucknow city. The Collector in the Circle Rate notified on 15.12.2015 had notified Mall Avenue at Rs.21,500/- per sq. mts., Abadi Kabristan at Rs.16,500/- per sq. mts. and Vikramaditya Marg at Rs.30,000/- per square meter. The average rate of all such localities was calculated at Rs.22,666.66/- per sq. mt. The average cost of land being so determined for this Zone-I, the Standard Table Rent for Zone-I for residential areas was taken on that basis as 2.5% of the market value of such land. It was fixed at Rs.566.70/- per sq. mts. The petitioners' property is undoubtedly residential and, therefore, 2.5% of Rs.22,667/- came out to be Rs.566.70/- per sq. mts.
21. The CLA Rules of 1937 and that of 2021 all refer to grant and renewal of leases on the basis of instructions issued by the Central Government from time to time. The Central Government had issued a

policy on 10.03.2017 laying down the conditions for extension of leases till a new policy is finalized. The petitioners have taken benefit of this policy and their lease which admittedly expired on 24.10.2023, had been extended up to 31.12.2023 i.e for a period of 69 days on the basis of Standard Table of Rents. Rs.14,56,688/- has been demanded as outstanding dues in the Notice issued in December, 2023. The petitioners were given a calculation sheet which is enclosed with the Notice dated 08.12.2023 which clearly specifies that Standard Table Rent rate at the rate of Rs.566.70/- per sq. mts. having been determined, the rent of Rs.13,597.4400/- sq. mts. would be Rs.17,05,669/- per annum and consequently for 69 days, Rs.14,56,688/- only has been demanded.

22. It is clear from the demand notice dated 08.12.2023 that Rs.566.70/- per sq. mts. per annum has been determined as rent for the lease hold property which falls in Zone-I. This Court does not find fixation of such rent per sq. mts. per annum as arbitrary, looking into the area where the property is situated which is M. G. Road, the main lifeline of the city of Lucknow. The petitioners do not dispute that the property falls in Zone-I. The petitioners also do not dispute that the Circle Rate has only been taken as a determinative factor for market value of land of the area adjacent to land under the administration of Lucknow Municipal Corporation and it is not the market value which is being demanded but only 2.5% of such market value has been demanded for lease hold rights to be granted/extended for a period of one year.
23. The lease rent fixed by a Resolution passed in a Minutes of the meeting of the Board which was attended by a representative of Collector Lucknow, representative of Nagar Nigam Lucknow, representative of Defence Estates Officer, Lucknow Circle, Lucknow Cantt representative of Head Quarters Madhya U.P. Sub-area Lucknow Cantt and representative of Chief Executive Officer Lucknow Cantt, after taking into consideration the location of the land, the connectivity and the amenities available nearby, thereafter fixing 2.5% of the average circle rate of lands situated nearby which

was assessed in the year 2015, does not at all appear to be arbitrary or unreasonable.

24. The CLA Rules of 1937 and that of 2021 all refer to grant and renewal of leases on the basis of instructions issued by the Central Government from time to time. The Central Government had issued a policy on 10.03.2017 laying down the conditions for extension of leases till a new policy is finalized. The petitioners have taken benefit of this policy and their lease which admittedly expired on 24.10.2023, had been extended up to 31.12.2023 i.e for a period of 69 days on the basis of Standard Table of Rents. Rs.14,56,688/- has been demanded as outstanding dues in the Notice issued in December, 2023. The petitioners were given a calculation sheet which is enclosed with the Notice dated 08.12.2023 which clearly specifies that Standard Table Rent rate at the rate of Rs.566.70/- per sq. mts. having been determined, the rent of Rs.13,597.4400/- sq. mts. would be Rs.17,05,669/- per annum and consequently for 69 days, Rs.14,56,688/- only has been demanded.
25. This Court is also of the considered opinion that Article 14 of the Constitution of India which has been invoked by the learned counsel for the petitioners without explaining as to how the same would apply in their case, would not be applicable as the decision for determining the annual rent cannot be said to be arbitrary for such a huge piece of land situated in Zone-I as is being enjoyed by the petitioners.
26. Moreover, admittedly the lease of the petitioners expired on 24.10.2023, they have continued to enjoy the property only because of policy of extension as notified on 10.03.2017 by the Central Government. It was for the Central Government to decide the conditions for extension of an already expired leases. If the petitioners are not willing to deposit the lease rent as determined by the impugned demand notices, they are free to vacate the property as they have not been forced to get their lease extended. They have voluntarily remained in the property on the basis of extension of lease as aforesaid on the basis of conditions mentioned therein. The Central

Government being the lessor has determined the value for the land it owns in the Lucknow Cantonment in Zone-I and it has offered that land on lease on conditions determined by it on the basis of market value of adjoining land in the city. The petitioners being lessees are free to accept or reject the offer but they cannot place conditions on such offer to their liking only on the basis of alleged undue hardship being faced by them.

27. This Court finds no good ground to invoke the concept of Welfare State and Article 14 of the Constitution of India in such a matter where the dispute between the petitioners and the Government is regarding fixation of lease rent of 1,46,362 sq. feet land regarding which the 90 years lease of the petitioners has come to an end and the Government has fixed the new rate of lease rent on relevant considerations, which do not suffer from wednesbury unreasonableness. On the contrary, continuance or extension of lease of Government lands at the old rates of lease rent fixed more than 90 years ago would be against the interest of the public at large and that would be arbitrary and unreasonable.
28. In view of the observations made herein above, we find no good ground to entertain this petition. Hence, the instant writ petition is hereby **dismissed**.

[Subhash Vidyarthi, J.] [Sangeeta Chandra,J.]

Order Date :- 16.04.2024

-Amit K-