IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19325 of 2013

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Khas Mahal Citizen Welfare Society, A Society duly registered under the Societies Registration Act, 1860, having its registered Office at Budh Murti Baldeo Sahay Path, Kadamkuan, through its General Secretary Syed Irfan Ahmed S/o Late Syed Masood Ahmed, residing at Baldeo Sahay Path, Kadamkuan, P.S-Kadamkuan, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The Hon'ble Chief Minister, through the Chief Secretary, Government of Bihar, Patna.
4. The Chief Secretary, Government of Bihar, Patna.
5. The District Magistrate-cum-Collector, Patna.
6. The Addl. Collector, Revenue, Patna.
7. The Circle Officer, Patna Sadar, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate
Mr. Jitendra Kishore Verma, Advocate
Mr. Nikhil Agrawal, Advocate
Mr. Anil Kumar Sinha, Advocate

For the Respondent/s : Mr. Devendra Kumar Sinha, AAG-2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V. JUDGMENT

Date: 08-10-2015

The petitioner is a registered society under the Societies Registration Act, 1860 having its office and works at Budh Murti Baldeo Sahay Path, Kadamkuan in the town and district of Patna and has filed this writ petition through its General Secretary praying for a writ in the nature of certiorari for quashing the Bihar Khas Mahal Policy, 2011 (hereinafter referred to as '2011 Policy') published in the Bihar Gazette Extraordinary on 8.4.2011, copies of which are placed at Annexure-5 and 6. The petitioner also prays to declare such of the provisions of the policy to be invalid and void insofar as it seeks to interfere with the lease(s) entered under the Bihar Government Estates (Khas Mahal) Manual, 1953 (hereinafter referred to as 'the Khas Mahal Manual'). The petitioner also questions the applicability of the '2011 Policy' on the lease(s) which had been executed under the old 'Khas Mahal Manual'. Though the petitioner while questioning the '2011 Policy' as to its applicability on the lease(s) entered in between the private individual and the state under the old 'Khas Mahal Manual' has also prayed for quashing the '2011 Policy' but when the matter has been taken up for consideration Mr. Chitranjan Sinha, learned senior counsel appearing on behalf of the petitioner has submitted that he shall not be pressing the relief regarding quashing of the '2011 Policy' but would be restricting his reliefs as to the applicability thereof insofar as the '2011 Policy' is sought to be applied on the lease(s) entered in between the parties under the 'Khas Mahal Manual' is concerned as well as for a declaration that the '2011 Policy' in no manner can be applied on the leases entered under the 'Khas Mahal Manual'.

In substance the petitioner seeks a declaration that the '2011 Policy' is prospective in operation and can only be applied to fresh lease(s) executed between the parties after the policy came into operation but can not be made applicable to a lease entered between the parties under the ‘Khas Mahal Manual’, be it a lease in perpetuity or a lease for fixed period with clause of renewal.

Mr. Sinha referred to the lease deeds present at Annexure-2 series to submit that whereas the lease present at page 31 is a lease in perpetuity holding good from generations to generations with full rights of transfer and construction of buildings and structures, the other lease present at page 36 is for a period of 30 years or until a new settlement is made. He submits that the permanent lease at Clause-7 vests right in the lessor to annul the lease in case of breach of any of the conditions. Referring to the second lease, it is submitted that there is a renewal clause at Clause-13 which vests power in the government to renew the lease for further 30 years on a request made and also to increase the rent but which would not exceed double the amount of previous rent.

Mr. Sinha next referred to Clause-21 of the ‘Khas Mahal Manual’ to submit that although a power of resumption is vested in the government subject to certain conditions but Clause-22 specifically provides that in case the lessee objects to the resumption, the possession can only be taken through the process of the Civil Court. With reference to the decision of this Court reported in **1989 PLJR 402 (Jaleshwar Mistry vs. State of Bihar)** (paragraph-9) and

1995(1) PLJR 585 (Gait Public Library & Institute vs. State of Bihar) (Paragraph-18, 25 and 28), it has been submitted that the legal position stands explained and confirmed.

Adverting to the '2011 Policy' which has been put to question in the present proceedings, it is submitted that Clause-1(ka) at Chapter-1 of the Policy relates to a renewal clause and provides that the same would be upon payment of 5 per cent of the market value of the property by way of *salami* and the annual rent would be increased and would be payable @ 0.5 per cent of the current market value of the property. He submits that the same provision is for residential as well as non residential leases but the stipulation for commercial leases is even more stringent. It is contended that Chapter-2 deals with violation of the lease conditions and paragraph-2(ka) provides that the lessees who have neither renewed their lease nor have paid the annual rent would be treated as trespassers and in their case a fresh lease would be offered to them under which they would have to pay a *salami* equal to the market value of the property at 2 per cent thereof in cases of residential and 5 per cent thereof in case of commercial leases by way of annual rent. The defaulters would be subjected to payment of interest on the arrears of rent @ 10 per cent. It is submitted that even when the provisions relate to renewal of the existing leases but the price fixed for such renewal is so excessive that practically the respondents are realizing the sale amount from the lease holders. Learned counsel has referred to Clause-21 of the Policy to submit that though the provision provides for management of the property as per the provisions of the Government Grants Act, 1895 but whereas Section-2 of the said Act ousts the applicability of the Transfer of Property Act, 1882, Section-3 of the Government Grants Act provides that the provisions, restrictions, conditions and limitations in any grant would be valid and would take effect as according to their tenor notwithstanding any rule of law, statute or enactment of the legislature to the contrary. He thus submits that in view of the provisions of the Government Grants Act, 1895 and its adoption under the '2011 Policy', the provisions thereunder cannot be made applicable to the existing lease(s). It is submitted by Mr. Sinha that the leases entered under the 'Khas Mahal Manual' cannot be interfered with under the '2011 Policy' nor the policy be permitted to make alterations in the nature of contract rather the appropriate remedy for the State in such circumstance would be, by way of a suit. Learned counsel in support of his argument has relied upon the judgment of the Supreme Court reported in **AIR 1986 SC 872 (Express Newspapers Pvt. Ltd. vs. Union of India)**; paragraph-79 to 87 and **AIR 1989 SC 997 (State of U.P. vs. Dharmander Prasad Singh)**; paragraph-15.

It is submitted that even when the 'Khas Mahal Manual' as well as the lease executed thereunder provided for recovery of rent as arrears of land revenue, under the '2011 Policy' the lease holders have been straightway declared as trespassers. It is submitted that the terms of a contract cannot be altered unilaterally. Learned counsel in support of his submission has relied upon the following judgments:

(i) (2004) 1 SCC 12 (Citi Bank N.A. vs. Standard Chartered Bank); paragraph-47

(ii) (2009) 7 SCC 545 (Sime Darby Engineering SDN. BHD. vs. Engineers India Limited); paragraph28

(iii) 2013(4) PLJR 783 (Sheo Prasad Sinha vs. State of Bihar); paragraph-3

Mr. Sinha has also referred to paragraph-5 of the '2011 Policy' to submit that whereas the original lease vests right in the lessee to make any transfers though any such transfer would be treated as a fresh lease subject to renewal after 30 years but the '2011 Policy' puts a restriction on such transfers. It is stated that whereas Clause-5 provides that any transfer without prior permission would be treated as illegal transfer and a violation of the condition, the provision underlying Chapter-3 relating to obtaining prior permission casts a burden on the lease holder to deposit 50% of the differential amount between the market value of the property or the sale price whichever is higher less the *salami* paid by the lease holder. With reference to

Chapter-4 it is submitted that absolute power has been vested in the government for resumption on the lease hold property without any protection to the lease holder. It is stated that it is on a mere opinion of the government regarding violation of the lease conditions that the government can not only cancel the lease but the Collector can also file an eviction proceeding before the Divisional Commissioner and against whose order an appeal would lie before the Member Board of Revenue. He thus submits that the provisions confer unbriddled power in the executive as vested in a court of competent civil jurisdiction even when the contest may involve determination of complicated issue of right, title and interest. Mr. Sinha next referred to Clause-17 of the Policy to submit that power has been vested in the government to remove the lease holders by resorting to the provisions of the Bihar Public Land Encroachment Act, 1956. Mr. Sinha concluding his argument as to the applicability of the '2011 Policy' on the lease(s) entered under the 'Khas Mahal Manual' has formulated the following points for adjudication:

(a) A policy decision cannot have a retrospective effect and would not apply to existing leases executed under the 'Khas Mahal Manual' until it is determined by a competent forum;

(b) There can be no unilateral alteration or modification of conditions of contract;

(c) The Government Grants Act does not permit interference with the existing leases;

(d) Any interference with the leases can only be done by the procedure prescribed under the Transfer of Property Act and not by an executive action;

(e) Clause-14 of the '2011 Policy' vests power in the Collector, the Commissioner and the Member Board of Revenue which are vested in a court of competent civil jurisdiction;

(f) Complicated issues of right, title and interest has been left open for adjudication by the Executive.

(g) The renewal clause is arbitrary for it fixes excessive amount for renewal of the leases without any guidelines.

Mr. Devendra Kumar Sinha, learned Additional Advocate General No. 2 has appeared on behalf the State to contest the prayer of the petitioner made in this application. With reference to the lease in perpetuity present at Annexure-2 series he submits that Clause-1 to 6 thereof casts certain obligations on the 'lessee' and even though the lease is from generation to generation with full right of transfer etc. but a failure on the part of the 'lessee' to perform the obligations so cast under the lease, would vest power in the State as a 'lessor' to take appropriate action as per Clause-7 for breach / non observance of the covenants as per the procedure provided thereunder. He submits that absolute power is vested in the State as a 'lessor' to annul the lease and after expiry of one month notice communicating such annulment, to take possession of the premises together with the structure. He submits that in a similar manner the second lease which is a permanent lease executed for a period 30 years and also forms part of Annexure-2 series in its Clause-13 while providing for renewal on the terms and conditions stipulated thereunder also vests right to re-enter the premises in the event of non-renewal of the lease upon expiry of 30 years. It is thus submitted that the lease on which the petitioner seeks to rely in itself provides the mode and manner of re-entry either on account of violation or upon expiry of the period and which right of re-entry was always vested in the State. Referring to the '2011 Policy' impugned in the writ petition he submits that the petitioner can have no grievance for it is only upon happening of an event as provided under Clause-7 of the lease in perpetuity and Clause-13 of the periodical lease and where a fresh lease has to be entered that it has to be done as per the procedure provided under the '2011 Policy'. He summarizes to submit that where it would be a case of execution of a fresh lease either upon its expiry or annulment of the previous lease, by reason of violation of the conditions of lease, that the fresh lease would be in terms of the provisions of the '2011 Policy'.

It is further submitted that in the aforementioned circumstances where the challenge is not to the validity of the '2011 Policy' as a whole rather when the petitioner only seeks to challenge its applicability on the old leases executed under the 'Khas Mahal Manual' then it is a matter to be deliberated in individual cases and cannot be governed by a straitjacket formula.

Responding to the plea of excessive delegation on the executive as to the adjudicatory functions provided under Chapter-4 of the '2011 Policy' it is submitted with reference to the judgments of this Court reported in **1979 BBCJ 259 (Ram Krit vs. State) and 1984 PLJR 709 (Anandi Prasad vs. Nandan Das)** that the power of the statutory authority under any special enactment to the exclusion of the Civil Court, stands recognized and thus there is absolutely no illegality in conferring powers of resumption over the lease hold property on the Collector, Divisional Commissioner and the Member Board of Revenue. He submits that this Court while considering similar provisions under the Bihar Consolidation of Holding and Prevention of Fragmentation Act has upheld the power of the statutory authority and similarly in a matter arising under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 which under Section 43 ousts the jurisdiction of Civil Court, the powers of the statutory authority has been upheld by this Court in the judgment reported in **AIR 1988 Patna 160 (Dhaka Singh vs. Baleshwar Prasad Singh)**.

It is the argument of Mr. Sinha appearing on behalf of the

State that a complete procedure for determination of the lease has been provided under the ‘Khas Mahal Manual’ and until such time that any action is taken by the State to impose the provisions of the ‘2011 Policy’ on leases executed thereunder without determination of those leases or before its expiry, the petitioner can raise no grievance nor can have any cause to maintain the writ petition.

The arguments of Mr. Sinha has been responded to by Mr. Jitendra Kishore Verma and who with reference to the ‘2011 Policy’ more particularly paragraph-3 (ka) and 4(cha) thereof submits that a plain reading of the provisions would leave no room for confusion that the respondents are meddling with the rights guaranteed to the lessees under the provisions of the ‘Khas Mahal Manual’ and thus the argument of Mr. Sinha that there is no meddling with the old leases is not correct. Proceeding further Mr. Verma has referred to a notice issued to one of the lease holders present at Annexure-23 of the rejoinder to submit that the enforcement of the ‘2011 Policy’ on the old lease holders is apparent from the notice. It is contended that the expiry of a lease is not a breach of any condition and that its renewal has to be guided as per the conditions of the lease and in the present case since the lease has been executed as per the provisions underlying the ‘Khas Mahal Manual’ hence its renewal also has to be done as per the modalities provided thereunder and as per the covenants present in the lease. It is submitted that although there has been no default as such on the part of any of the lessee in payment of the rent rather it is wholly on account of the concerned authority in not accepting the rent that some of the lease holders may be in arrears of rent but then its recovery has to be in the manner prescribed in the lease and even if the respondents intend to determine the lease for such violation or any other violation, any follow up steps have to be taken as per the provisions of Clause-21 and 22 of the 'Khas Mahal Manual'.

It is contended that whereas the learned Additional Advocate General contends that any proposed action in respect of the lease holders under the 'Khas Mahal Manual' would be done as per the provisions provided thereunder and as per the lease conditions but a plain reading of the provisions underlying Chapter-4 of the '2011 Policy' would manifest that it attempts to bye pass the entire exercise by taking recourse to a summary manner of eviction on the orders of the Divisional Commissioner at the instance of the Collector. He submits that since the petitioner has questioned the '2011 Policy' only to the limited extent of its applicability on the leases executed under the 'Khas Mahal Manual' hence except where such lease stands determined by a competent forum that there can be any issue for its applicability but until such time that a determination of the lease executed under the 'Khas Mahal Manual' takes place by a competent Civil Court, no jurisdiction vests in the respondents to dispossess the lease holder or to interfere in any manner with their possession over the lease hold property on alleged grounds of either violation of lease conditions or expiry of lease or invocation of '2011 Policy'.

I have heard learned counsel for the parties and I have perused the materials on record.

Initially the petitioner endeavoured to question the '2011 Policy' in its entirety but has modified his relief as to the applicability thereof on the lease(s) entered in between the parties under 'the Khas Mahal Manual'. I would thus not delve into the issue as regarding the sustainability of the '2011 Policy' and would leave it open for discussion and adjudication in an appropriate case, should the occasion so arise. The issues raised as it presently stands seeks an answer whether the '2011 Policy' has a retrospective operation and covers lease(s) executed under the 'Khas Mahal Manual' also or has a prospective effect and would be only applicable to fresh lease(s) executed in between the parties after the invocation of the policy.

Though it is a matter of record yet I would like to highlight here that the nature of the land in question is 'Khas Mahal' i.e. Govt. Estate under the direct management of Government and the parties to the lease in consideration, is the State Government through the Collector as a lessor on the one part and the individuals, service providers etc. as a lessee on the other part.

The two kinds of lease(s) executed under ‘the Khas Mahal Manual’ as it reflects from the pleadings are in the nature of a lease in perpetuity and a lease for a fixed period with a condition of renewal. One of each such lease(s) is on record vide Annexure-2 series and the perpetual lease present at page-31 of Annexure-2 series at page-33 specifically provides that the piece of land leased out in favour of the lessee is perpetual and would continue from generation to generation with full rights of transfer as well as for erecting buildings and structure thereon subject to the conditions stipulated. The covenants are spelt out in the lease and Clause-7 thereof confers power on the lessor to annul the lease upon breach or non observance of any of the covenants by the lessee.

On the other hand the second kind of lease which is for a fixed period also forms part of Annexure-2 series at page-36 and at page 38 the period mentioned is 30 years with a clause of renewal. Clause 13 at page 41 reserves the right in the lessee of renewal on the expiry of the term of lease at an interval of every 30 years with equal right reserved in the government to increase the rent not exceeding double the amount of previous rent at every renewal but which would be subject to the same covenants and terms and conditions.

For the sake of convenience the two covenants specifying the period present at page 38 and the renewal clause 13 present at page 41 are being reproduced for ready reference:

> "Now this indenture witnesseth that the lessor doth hereby demise unto the lessee all the lands and premises as specified in Part I of the schedule with those appurtenances. To hold the same unto the lessee from the 29th day of May 1980 for the term of 30 years or until a new settlement is made, whichever is earlier, yielding and paying therefore clear yearly rent of Rs. 24/- and the lessee thereby covenants with the lessor that he will perform and observe the terms and conditions set forth in the second part of the said schedule."

> "13. If three months prior to the expiration of the said term the lessee shall notify the Deputy Commissioner that he is desirous of taking new lease of the said premises and shall have duly observed and performed all the terms and conditions of this lease he shall on the expiry of the terms and conditions of this lease be entitled to an ultimated option of renewal of the lease of the said premises at an interval of every 30 years on the express condition that Government shall have the full right to increase the rate of rent not exceeding double the amount of the previous rent at every renewals but otherwise on the said terms and conditions and subject to the same covenants and agreements, including this covenant for renewals as are contains II in this lease. In the event of the lease not making a new lease as aforesaid on the

> expiry of the period of 30 years, the lessee shall not be entitled to any compensation for any building or structures or improvements erected or made by him upon the said premises, nor shall be entitled to dismantle or remove any such building or structures or improvements erected or made by him upon the said premises nor shall be entitled to dismantle or remove any such building or structures and the Deputy Commissioner may re-enter on the said premises and take possession of the land building or structures which shall thereupon vest absolutely in the lessor: But if the lessee wants the lease to be renewed it would be renewed provided of course he had fulfilled the terms and conditions of the lease and was prepared to pay if so desire by Government higher rent within the limit specified above.
>
> If however, Government wants to resume the land under clause 15 of the lease, they would have to pay compensation to the lessee as provided for under that clause."

A cursory glance at the two conditions relatable to renewal manifestly shows that even the fixed term lease in substance is in the nature of a perpetual lease to be renewed at an interval of every 30 years and the only right reserved in the government is to enhance the rent which would not exceed double the previous rent. The right to annul the lease upon breach of any covenant is again present.

As already indicated the parties to the lease is the State Government through the Collector as the lessor of the estate in question and on the other hand the individuals as the lessee to the lease. Now whereas the perpetual lease present at page 21 is dated 26th day of July, 1936 and is from generation to generation, the periodical lease awaits renewal in cases where the period has lapsed. While the fact situation remains thus that the State Government vide resolution dated 07.4.2011 published in the Gazette Extraordinary on 08.4.2011 has invoked the Bihar Khas Mahal Policy, 2011 which partially seeks to modify the Bihar Government Estate (Khas Mahal Manual), 1953. The '2011 Policy' manifestly does not proceed to repeal the 'Khas Mahal Manual' in its entirety but attempts to modify some of the provisions relatable to renewal, the consequences of violations of the covenants, the provision relating to seeking prior approval in case of transfer, the provisions relatable to resumption and miscellaneous provisions relatable to period of lease etc. The policy in clause-23 very clearly mentions that the issues which are sought to be regulated under the '2011 Policy' would be governed by the present policy and not by the provisions of 'the Khas Mahal Manual. Sub-clause kha of clause-23 further provides that in such of the subjects where the '2011 Policy' is silent, would continue to be governed by the provisions of the 'Khas Mahal Manual'. Clause 23 of the '2011 Policy' is luminescent of the fact that the subjects so discussed in the policy would have an overriding effect on identical provisions present in the ‘Khas Mahal Manual’. Apparently the ‘2011 Policy’ attempts to partially repeal the similar provisions present under the ‘Khas Mahal Manual’. Whether the State is within its jurisdiction to introduce such policy which attempts to partially modify the stipulations present in ‘the Khas Mahal Manual’ and whether the stipulations present in the ‘2011 Policy’ are onerous and arbitrarily loaded in favour of the State Government who happens to be the lessor, are issues of relevant considerations but since the petitioner has chosen to only question the policy insofar as it attempts to have a retrospective effect hence I would refrain from expressing any opinion on these issues, to be discussed in an appropriate proceedings but before parting on this issue I would not hesitate to mention that a policy decision is equally amenable to judicial review on the anvil of arbitrariness as also on the test of constitutionality as any other governmental decision and no immunity can be claimed.

As I have already noted that it is the attempt of the respondents to retrospectively apply the policy which has irked the petitioner to question the same and the reasons are apparent.

The renewal clause present at chapter-1 now requires a lease holder to get the lease renewed upon payment of 5 per cent of the market value of the leased property by way of a ***salami*** as also to pay an annual rent at the rate of 0.5 per cent of the market value. The same conditions apply to residential as well as the non residential leasehold properties. Insofar as the commercial lease holds are concerned, the ***salami*** has been enhanced to 10 per cent and the annual rent has also been enhanced to 5 per cent. Chapter-2 of the Policy deals with the consequences of breach and treats the lease holder as trespassers who are required to pay double the arrears of rent together with 10 per cent interest. Chapter-3 restrains the lease holders from making any transfer without prior permission. Chapter-4 deals with resumption and vests power on the Divisional Commissioner to pass appropriate orders in eviction proceedings initiated at the instance of the Collector. Chapter-5 is a residuary power dealing with the value of the land, the term of the lease, the manner of eviction of the trespassers and also provides that the management of the Khas Mahal land would be as per the provisions of the Government Grants Act, 1895. Demonstrably the modified conditions attempts to alter the different covenants of the lease document including the period, the renewal clause, the determination clause, the resumption and penal clause, the process of eviction as well as imposition of penalty. The issue is whether the State Government as a lessor of a lease agreement can be permitted to unilaterally alter the conditions of lease without the consent and to the detriment of the lessee.

Law is well settled on this issue and it is only in the circumstances where all the parties to a contract unanimously agree to a substitution or modification in the covenants / terms and conditions of the contract that it can be carried out and no act of novation, rescission or alteration of a contract can be done unilaterally at the instance of a single party to the contract. In the present context, merely because the State Government as a lessor, is in a position to exhort pressure on the lessees to kneel down at their dictates, it does not mean that they are clothed with any special power to act arbitrarily and *de hors* the lawful procedure. A policy decision normally is adopted by a State to effectuate welfare measures and thus has to withstand the test of arbitrariness and is to be in conformity with the constitutional safeguards. It thus cannot be anti people.

The '2011 Policy' apparently seeks to modify and alter the conditions of the lease by novation unilaterally, which is clearly impermissible and the State Government as a lessor of the property is prohibited to do so in the garb of a policy decision. In fact the judgment of the Supreme Court rendered in the case of **Sime Darby Engineering** (supra) is a case where a contractual clause was sought to be altered in the light of a policy decision and when at paragraph-28 of the judgment the Supreme Court has held that any policy decision cannot change the contractual clause more particularly where the policy decision has come into effect subsequent to the contract. It was held that since the policy decision came into effect in 2005 whereas the contract was entered in the year 2004 hence the policy decision could not in any way override the contract conditions entered in between the parties.

The judgment of the Supreme Court rendered in the case of **Citi Bank** (supra) at paragraph-47 has clearly held that any novation, rescission or alteration of a contract under Section 62 of the Indian Contract Act can only be done with the agreement of both the parties to a contract and cannot be done unilaterally. It would only lead to multiplication of case laws to refer to any other judgment on the settled legal position that the parties to a contract are bound by the covenants present therein. The legal position so settled, by itself answers the issue raised by the petitioner that the '2011 Policy' cannot be made applicable to the lease(s) entered in between the parties prior thereto nor it can be given a retrospective effect.

The argument of learned Additional Advocate General that the moment the periodical lease has expired that the renewal thereof has to be in terms of the '2011 Policy' also does not bear substance for the simple reason that in view of the stipulation present in the lease controlling the renewal clause, the said lease survives for the renewal purposes and which renewal has to be done in conformity with the stipulations so provided in the lease itself and cannot be altered by taking recourse to the '2011 Policy'.

In this context I am tempted to usefully refer to a judgment of the Supreme Court rendered in the case of **Magma Leasing and Finance Ltd. vs. Potluri Madhavi Lata** since reported in **(2009)10 SCC 103**. The apex court while considering an issue whether an arbitration clause present in a lease ended therewith has, after referring to a large number of decisions, held in paragraph 14 as follows:

> "…….. Merely because the contract has come to an end by its termination due to breach, the arbitration clause does not get perished nor is rendered inoperative; rather it survives for resolution of disputes arising "in respect of" or "with regard to" or "under" the contract. ………"

The proposition of law so laid down by the Supreme Court in context with the "arbitration clause", in my opinion would apply on all fours even in the case of the "renewal clause" present in the fixed period lease and which would bind the parties to the contract.

In fact this Court in a catena of judgments has held that renewal of lease under 'the Khas Mahal Manual' is almost automatic and until the lessee is found guilty of violation of conditions of lease, it has to be renewed. Reference in this regard is made to a few of such judgment reported in **1988 PLJR page 12 (Manmohan Lal Bhagat vs. Stae of Bihar) and page 440 (Deba Jyoti Dutta vs. State of Bihar)**.

In my considered opinion, whereas the perpetual lease cannot be subjected to any interference by the State under the '2011 Policy' even the periodical lease in its renewal clause has the attributes of a lease in perpetuity for it provides for a periodical renewal subject only to enhancement of rent which cannot be more than twice the previous rent. Thus except that such renewal is conditional on enhancement of rent which again cannot be more than twice the previous rent, there is no other option available to the lessor for refusal to grant renewal. In these circumstances, the State Government as a lessor cannot take recourse to a policy decision to override the right of renewal vested in a lessee by alteration of such a term which action besides being onerous and prejudicial to the lessee, is also loaded heavily in favour of the lessor.

A complaint has been made on behalf of such of the lease holders through the petitioner regarding non acceptance of the renewal fee by the State with an intent and purpose of rendering them a defaulter to the covenants present and thus preparing a ground for his ouster. In my opinion, this would be a rather arbitrary action on the part of the State Government as a lessor in not accepting the annual rentals and/or the renewal fee with an intent to render the lessees 'defaulters' under the 'Khas Mahal Manual' and 'trespassers' under the '2011 Policy'. The State is under a duty to act fairly in contractual sphere and cannot be permitted to indulge in such theatrics with intent to defeat the rightful claim of the lessees.

The judgments rendered in the case of **Jaleshwar Mistry and Gait Public Library** (supra) are few of the judgments on the issue that any resumption on the lease hold property could only be through the process of Civil Court and even if the period of lease has expired, yet the status of the lease holder would be juridical in nature. The issue that a lessee of an expired lease cannot be termed a 'trespasser' over the lease hold property was considered and upheld by this Court in a Bench decision reported in **1996(2) PLJR 621** (**M/s. Hindustan Petroleum Corporation Ltd. Vs. State of Bihar**). The Bench while being critical of a similar stand taken by the State has held in paragraph-29 that a lease holder of an expired registered lease cannot be called either a 'trespasser' or an 'encroacher' and in paragraph-31 has held that a lease in between the 'State' and an individual is not a mere contract but constitutes a transfer of interest in land and creates a right *in rem*.

I have already discussed some of the covenants of the lease present at Annexure-2 series and certainly it is not in the nature of simple contract rather it is in the nature of transfer of interest in land and creates a vested legal right in the lease holder to the exclusion of others. The contractual obligations cast on the parties to the lease exercised under the 'Khas Mahal Manual' would bind the parties until the lease is determined by a competent forum. The State as a lessor in such circumstances can neither refuse acceptance of rentals nor can refuse a renewal.

In my considered opinion in the circumstances discussed hereinabove and taking into consideration the covenants present in the existing lease executed in between the State and the lessees under the 'Khas Mahal Manual', any attempt by the State to impose the conditions present in the '2011 Policy' would be an act of arbitrariness, in teeth of the judicial precedent and a blot on the State's action in the contractual sphere.

For the reasons aforementioned, this Court even while reserving its opinion as regarding the merits of the '2011 Policy' does deem it fit and proper to hold that the '2011 Policy' can not be made applicable to the pre existing lease(s) entered in between the State as a lessor and the individual / juristic person on the other hand as a lessee and the right of the parties under such lease(s) would continue to be governed by the provisions of the 'Khas Mahal Manual' and the covenants present in the lease(s).

The writ petition is accordingly allowed.

S.Sb/-

(Jyoti Saran, J)

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A.F.R.