

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

APPELLATE SIDE

PRESENT :-

THE HON'BLE JUSTICE SUBRATA TALUKDAR

AND

THE HON'BLE JUSTICE KESANG DOMA BHUTIA

MAT No. 778 of 2021

With

I.A. No. C.A.N. 1 of 2021

with

I.A. No. C.A.N. 2 of 2021

Tolaram (India) Limited &Anr.

VS.

The Union of India & Ors.

For the Appellants	: Mr. BikashRanjan Bhattacharya, Ld. Sr. Adv., Mr. DebashisKundu, Ld. Sr. Adv. Mr. R.N. Barik, Adv. Mr. A. Kundu, Adv.
For the Union Of India	: Mr. Y.J. Dastoor, Ld. A.S.G.I. Mr. Rudraman Bhattacharyya, Adv. Ms. Upama Bhattacharjee, Adv.
Hearing concluded on	: 10.09.2021
Judgment on	: 15.11.2021

Kesang Doma Bhutia, J:-

This Appeal arises impugning the order of dismissal passed by the Hon'ble Single Bench in the Writ Petition No. 8341 of 2021 on 04.08.2021.

The background facts leading to the filing of the present Appeal, in brief, are as follows:

That the subject property measuring 19 Bighas, 13 Cotthas and 14 Chitkas land is situated at B-15 Garden Reach Road, Kolkata 24 and was originally owned by Victory Jute Products Ltd., prior to Independence of India.

The Appellant no.1 obtained lease of such property from the original owner, a Pakistani National, for a period of 31 years at a monthly rent of Rs.6000/-, on the strength of a Lease Deed dated 24th November, 1958.

The subject property being owned by a Pakistani National was vested in the Custodian of Enemy Property for India under powers derived from the Defence of India Rules, 1962 and the orders made thereunder and later under the Enemy Property Act, 1968. However, the Appellant No.1 was permitted to retain the possession on payment of monthly rent in the office of the Respondent no.3.

For the first time, Custodian of Enemy Property for India, through Respondent No. 2 executed a formal lease agreement with Appellant No.1 for a period of 36 months fixing monthly rent at Rs.20,000/- on 1st January 2009 and subject to automatic extension for another 36 months on payment of advance enhanced rent @ 5% over the existing lease rent in the last month just before expiry of lease period. In this manner lease granted to the Appellant stood extended till December, 2020.

The Appellant, as per earlier practice and in view of Clauses 3 and 4 of the Lease Deed dated 01.01.2009, paid rent in advance for the month of January 2021, with usual increment on lease rent along with rent for the month of December, 2020, through cheques, which were duly credited to the account of the Respondents in the month of December 2020 itself.

However, the Appellants were taken by surprise when they received letter and notice dated 07.01.2021 from the respondent no.3, wherein they were informed that lease of the subject property was not extended by the concerned authority beyond 31.12.2020 as the property is placed for disposal u/s 8A of the Enemy Property Act. That they have wrongly acknowledged the rent for the month of January 2021 and returned payment made towards advance lease rent for the month of January 2021 vide letter dated 19.02.21.

Being aggrieved by letter and notice dated 07.01.2021 issued by respondent No. 3, the lessees/ appellants have moved the Hon'ble High Court under Writ Jurisdiction and have prayed for issuance of writ in the nature of Mandamus commanding the respondents and each one of them to forthwith cancel, set aside the impugned letter and notice dated 07.01.2021 and to treat the existing lease of the appellant No. 1 in respect of the subject property extended for a further period of thirty six months with effect from 01.01.2021 by accepting rents for the month of February, 2021 onwards. Also, Writ prohibiting the respondents from giving effect to the letter and notice dated 7th January, 2021 and a Writ in the nature of Certiorari.

The Hon'ble Single Bench after hearing both sides has been pleased to dismiss the WPA, with the findings that the property in question though an enemy property, is a public premise. The steps that have been taken by the respondent authorities for eviction of the appellant from the Public Premises is at a budding stage where the Estate Officer has not initiated any proceeding against the appellant for their eviction.

The Hon'ble Single Bench has further been pleased to hold that when the appellants can seek alternative and efficacious remedy under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the Writ Petition under Article 226 is not maintainable as petitioners/appellant have failed to show that there is a failure of

natural justice or the proceedings are wholly without jurisdiction or, *ultra vires* a statute or, that the petitioners have not sought for enforcement of any of their fundamental rights.

Being aggrieved by the order of dismissal, the Appellants have preferred this appeal where they have alleged that the impugned order suffers from illegality as the Hon'ble Single Bench limited itself by declaring the subject property to be Public Premises under the Act of 1971 overlooking Clause 4 of the Lease Deed dated 01.01.2009, which deals with the manner in which the lease period automatically stands extended and thereby failed to appreciate the entire gamut of the writ petition. The issues raised in the writ petition is beyond the scope and ambit of the Estate Officer and was squarely within the domain of Article 226 of the Constitution of India. Thus the Appellants have prayed for setting aside the order under challenge.

Counsel for the parties have been heard at length.

Petitioners by filing writ petition have challenged the letter and notice of the respondents dated 7th January 2021 and their decision not to extend the lease of the subject property to be illegal, mala-fide, arbitrary and beyond the terms and conditions of the Lease Deed dated 1st January 2009.

It is settled law that the existence of an alternative remedy is not an absolute bar to the maintainability of a writ petition under Article

226 of the Constitution. Writ Petition can be entertained in exceptional circumstances where there is:

- (a) A breach of fundamental rights;
- (b) A violation of principles of natural justice;
- (c) An excess of jurisdiction; or
- (d) A challenge to the vires of the statute or delegated legislation.

Therefore, this court is required to examine whether the impugned letter and notice dated 07.01.2021 is in violation of the Clause (4) of the Lease Deed and the same is illegal, arbitrary and mala-fide or beyond jurisdiction.

In order to decide such issue, it is necessary to reproduce Clause (4) of the lease agreement of the subject property executed in between the Appellants/Writ Petitioners and the Respondents on 01.01.2009. Further, to understand the real implication of Clause (4), it needs to be read in conjunction with Clause (3) of the agreement.

Clause (3) of the agreement reads as follows:

The rent hereby reserved i.e. Rs.20,000/- (twenty thousand) shall automatically be increased by 5% every three years as contemplated in the West Bengal Premises Tenancy Act, 1997.

Clause (4) of the agreement reads as follow;

The lease hereby granted albeit shall initially continue for a period of 36 months from the commencement hereof. In the event the lessee do deposit, in the last month before expiry of this lease the enhanced rent, in advance hereby agreed simultaneously with the rent for the last month of the lease, the lease hereby granted shall stand renewed for a further period of 36 months commencing from the date of expiry of this lease on same terms and in the similar manner in the event of deposit of enhanced rent in advance in the last month of extended lease, the lease shall be extended hereafter shall stand automatically renewed for a further period of 3 years and so on in recurrence.

From these two clauses of the lease agreement, it becomes clear the lease is subject to automatic extension on the lessee fulfilling the conditions as mentioned in those two clauses of the agreement.

The documents which the appellants have filed show that they have duly complied with the conditions as mentioned in Clauses (3) and (4) of the agreement, just a month before the expiry of lease on 31.12.2020. More so, such facts stand also corroborated by the contents of the impugned letter of the Respondents dated 07.01.2021.

Further, if the Respondents desired not to extend the lease of the subject property, then they could have informed or served the Appellants with a notice expressing their intention, before the

Appellants could exercise the conditions imposed by Clauses (3) and (4) of the agreement. Once the Petitioners/Appellants were allowed to exercise the options for extension of lease as per agreement and duly complied with those conditions provided in those two clauses of the agreement, then the respondents acting on their whims cannot go beyond the terms and conditions of the agreement by issuing the impugned letter and notice alleging the subject property is under disposal and as such the lease stands determined.

Therefore, this Court find the impugned letter and notice dated 07.01.2021 to be inconsistent with the written terms and conditions for extension of the lease agreement executed between the parties. From the copy of the Bank Statement filed by the Appellants, it appears that advance rent for the month of January 2021, with usual enhancement of 5% of existing rent paid by the Appellants, was duly credited to the account of the Respondents in the month of December 2020 itself.

Therefore, the respondents are precluded from asserting that they have wrongly acknowledged the advance rent paid for the month of January 2021. The very facts permitting the Appellants to exercise the options contained in Clause (4) of the agreement and accepting advance rent for the month of January 2021 in the month of December, gives rise to the deemed fiction of extension of the lease for another 36 months on the accepted terms and conditions.

That apart, from several correspondence that were exchanged between the parties after institution of the writ petition, it appears that the respondents have initiated eviction proceeding against the Appellants on the ground of being unauthorized occupants.

Rule 14 of the Enemy Property Rules 2015, deals with unauthorized occupants and reads as follows:

If any occupant of the enemy property repeatedly defaults in payment of rent or refuses to pay rent, the District Authority, in consultation with the Custodian, may take steps to terminate the lease or evict the occupant forthwith in accordance with the Public Premises (Eviction of Unauthorized Occupants) Act, 1971:

Provided that before evicting a person or terminating the lease under this rule, a notice shall be issued to the occupant:

Provided further that it may be open to the custodian to initiate criminal proceedings against such occupation under the relevant laws for the time being in force.

Rule 14 B provides- *The mention of particular matters in these rules shall not be held to prejudice or affect the general application of the Public Premises(Eviction of Unauthorized Occupants)Act,1971 with regard to the effect of the disposal of immovable enemy property, being*

the public premises and custodian being the estate officer under that Act.

The expression “unauthorized occupation” in relation to any public premises means the occupation by a person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant, or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

As per Rule 14 of Enemy Property Rules, 2015 a person or an entity becomes an unauthorised occupant, if the occupant is a habitual defaulter in payment of rent. Clause (17) of the Lease Deed too postulates that lease will be determined, if lessee fails to pay rent for consecutive three months in one calendar year.

But, it is not the case of the Respondents that Appellants are habitual defaulters in payment of rent. Therefore, Appellants cannot be categorized as a defaulter to attract the definition of an unauthorized occupant as contemplated by Rule 14 of the Enemy Property Rules, 2015 or, as a ground for eviction of the Appellants as provided in Clause 17 of the lease agreement.

Having regard to the discussion made above, this Court holds the impugned letter and notice dated 07.01.2021 issued by the

respondents to be arbitrary and inconsistent with the terms and conditions of the Lease Deed and assumption of jurisdiction by the Estate Officer to be statutorily void, for which the relief sought by Appellants are amenable to the jurisdiction under Article 226 of the Constitution.

The impugned order under challenge is hereby set aside. The Appeal with connected applications too stands disposed of accordingly with no order as to costs.

The Writ Petition Shall return to the Hon'ble Single Bench to be heard in merits.

MAT No.778 of 2021 along with **I.A. No.C.A.N. 1 of 2021** and **I.A. No. C.A.N. 2 of 2021** are accordingly **disposed of**.

There will be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree,

(Subrata Talukdar, J.)

(Kesang Doma Bhutia, J.)

Later

Ld. Counsel, Mr. Rudraman Bhattacharyya, appearing for the Respondents/Union of India prays for stay of operation of the order.

Stay of the order prayed for is considered and refused.

(Subrata Talukdar, J.)

(Kesang Doma Bhutia, J.)