

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 518 of 2023

**Deepak Kejriwal
Vs.
The State of West Bengal and others**

For the petitioner	:	Mr. Rupak Ghosh, Adv. Mr. Kuldip Mallick, Adv. Mr. Arun Kumar Upadhyay, Adv. Mr. Shaunak Sengupta, Adv. Mr. S. Ray, Adv. Mr. Debanjan Saha, Adv.
For the respondent nos. 2 to 7	:	Mr. Jaydip Kar, Sr. Adv. Mr. Kamal Kumar Chattopadhyay, Adv. Mr. Debdeep Sinha, Adv. Mr. Tarjir Ali, Adv.
Hearing concluded on	:	03.08.2023
Judgment on	:	16.08.2023

The Court:-

1. The petitioner has challenged a Circular dated August 18, 2022 and a communication dated January 31, 2023 made by the respondent no.1, fixing the rent payable for the first floor of the disputed property for renewal for a further period of fifteen years, at Rs.72/- per Sq.ft. per month.
2. The petitioner is carrying on a sole proprietorship business of manufacturing wooden and steel furniture as well as assembling

computer products in the name of M/s. Amit Industries at the disputed property, having office at Shilpa Bhawan, First Floor at 31, Black Burn Lane, Kolkata-700 012.

3. Respondent no.2, the West Bengal Small Industries Development Corporation Limited, acts for promotion and growth of Micro, Small and Medium Enterprises all over West Bengal by providing infrastructure on subsidized rates and extending marketing support to MSMEs.
4. In such backdrop, the petitioner alleges that an Allotment Letter dated September 2, 2003, was issued in favour of the petitioner on the basis of an application for allotment of an office space. In terms of the said letter, a short-term lease agreement was executed on September 29, 2003 in favour of the petitioner by the respondent no.2 for an area at the first floor of Shilpa Bhawan Commercial Complex. The petitioner had paid a sum of Rs.2,91,900/- as security deposit, equivalent to advance payment of six months' rental.
5. Subsequently, the respondent no.2 approached the petitioner for taking back a space of 1149 Sq.ft. out of the total 4865 Sq.ft. allotted initially. The petitioner, accordingly, handed over the said portion.
6. The lease period expired on September 28, 2018 and the petitioner applied for renewal of the same six months prior to the expiration of the lease-deed in terms of the renewal clause therein. The respondent no.2 replied thereto by a letter dated May 17, 2018 stating that its Board of directors had agreed to allow the petitioner to renew the 3716 Sq.ft. space for a further long term lease. It further mentioned that the

tenure of the lease shall be informed to the petitioner and shall be effective after the expiry of the short term lease on September 28, 2018. The petitioner replied thereto by a letter dated July 17, 2018 and gave a break-up of the schedule towards the payment of the lease premium.

7. However, the respondent no.2 did not accept the break-up.
8. The petitioner continued to pay rent at the previous rate after the expiry of its lease, which was accepted by the respondent no.2. It is alleged that the respondent no.2 also gave rebates in terms of the expired agreement.
9. However, upon negotiations, the respondent no.2 issued a letter on January 31, 2023 intimating the terms and conditions of renewal of lease deed on short term basis for 15 years, the rent for which was being enhanced to Rs. 72/- per Sq.ft. plus GST @18% along with payment of municipal tax and a further security deposit of Rs. 18,94,268/-. Outstanding dues were also claimed by the respondent no.2.
10. The petitioner has challenged such communication and the supporting Circular.
11. Learned counsel for the petitioner argues that Clause 5(vii) of the lease deed contains the renewal clause and provides that, should the lessee duly pay the installments of rent and interest and other dues and faithfully perform the conditions of the lease-deed, the lessee will be entitled to renewal of the demise for a further term of 15 years on such terms and conditions as may be agreed by and between the

parties upon the lessee giving notice of such intention for such renewal at least six months prior to expiration of the period of demise then subsisting.

- 12.** It is argued that the expression “renewal” was conferred as an entitlement of the petitioner by the said Clause. As such, the respondent no.2 is not entitled in law and as per the contract to refuse the same.
- 13.** It is submitted that the respondent no.2 has been vacillating on the count of the tenure of the lease. However, by its correspondence, it was given out by the respondent no.2 that it is agreeable to renewal of the lease. As such, the respondent no.2 cannot now resile from such position.
- 14.** Learned counsel for the petitioner contends that much after the expiry of the lease, the respondent no.2 went on accepting rents regularly from the petitioner and also went on giving rebates to the petitioner upon timely payment of such rent. Hence, the petitioner ought to be deemed to have remained in possession of the disputed property by ‘holding over’.
- 15.** It is next contended that the respondent no.2 acted arbitrarily, despite being a Government instrumentality, which contravenes all norms of law and settled judicial opinion.
- 16.** It is submitted that the respondent no.2 has placed reliance on the report of a private engineer. It is argued that the assessment by the said engineer has been made on the basis of the sale price and not rent. Moreover, the facilities of the premises which were taken as the

basis for such calculation were much more than that available in the petitioner's occupied premises.

17. It is, thus, submitted that the respondent-Authorities acted in an arbitrary manner to ask for such exorbitant rates from the petitioner, despite having continued to accept rents at the previous rates much after the expiry of the lease.
18. Learned counsel for the petitioner places reliance on *M/s. Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal and another*, reported at (1975) 1 SCC 70, for the proposition that where the State is dealing with individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with others. A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice, it was held by the Supreme Court.
19. Learned counsel for the petitioner next cites *Dwarkadas Marfatia and sons Vs. Board of Trustees of the Port of Bombay*, reported at (1989) 3 SCC 293. In the said judgment, the Supreme Court observed that corporations must act in accordance with certain Constitutional conscience and whether they have so acted, must be discernible from the conduct of such corporations. It was held that the contractual privileges are made immune from the protection of the Rent Act for the respondent because of the public position occupied by the respondent authority. Hence, its actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason, not

whimsically for any ulterior purpose. Being a public body even in respect of its dealing with its tenant, such bodies must act in public interest and an infraction of that duty is amenable to examination either in civil suit or in writ jurisdiction.

20. Learned counsel next cites *State of U.P. and others Vs. Lalji Tandon (Dead) through LRS.*, reported at (2004) 1 SCC 1. In the said judgment, the Supreme Court held that in case of extension, it is not necessary to have a fresh deed of lease executed; however, option for renewal consistently with the covenant for renewal has to be exercised consistently with the terms thereof, and a fresh deed of lease shall have to be executed between the parties.
21. Learned counsel lastly cites *Style (Dress Land) Vs. Union Territory, Chandigarh and another*, reported at (1999) 7 SCC 89, wherein it was observed by the Supreme Court that even the administrative orders are required to be made in a manner in consonance with the rules of natural justice, when they affect the rights of the citizens to the property or the attributes of the property. The Supreme Court deprecated arbitrary action on the part of the said authorities in the said judgment.
22. Learned senior counsel appearing for the respondents contends that the applicable statute, since the petitioners have held over even after expiry of the lease and have not been awarded any further renewal of the lease, is the West Bengal Government Premises (Tenancy Regulation) Act, 1976. In support of such contention, learned senior counsel cites *West Bengal Small Industries Development Corporation*

Limited and others Vs. Sona Promoters Private Limited and others, reported at (2020) 17 SCC 145.

23. Learned senior counsel for the respondents argues, by placing reliance on *National Sample Survey Organization and another Vs. Champa Properties Limited and another*, reported at (2009) 14 SCC 451, that if the lease period expires and the parties are not able to agree upon the increase in rent or terms of renewal, it is open to the landlord to initiate action for evicting the tenant.
24. The respondents next cite *State of West Bengal and others Vs. Calcutta Mineral Supply Company Private Limited and another*, reported at (2015) 8 SCC 655, where the Supreme Court distinguished between renewal and extension of lease. It was held that in case of extension, it is not necessary to have a fresh deed of lease executed, as the extension of lease for the term agreed upon shall be a necessary consequence of the clause for extension. However, option for renewal consistently with the covenant for renewal has to be exercised consistently with the terms thereof and, if exercised, a fresh deed of lease shall have to be executed between the parties. In the present case, no such deed has been agreed upon or executed, for which it cannot be said that renewal has taken place.
25. Learned senior counsel also places reliance on *Joshi Technologies International INC. Vs. Union of India and others*, reported at (2015) 7 SCC 728, for the proposition that in purely contractual matters, the extraordinary remedy of writ under Article 226 or Article 32 of the Constitution cannot be invoked. However, in a limited sphere, such

remedies are available only when the non-Government contracting party is able to demonstrate that it is a public law remedy which such party seeks to invoke, in contradistinction to the private law remedy simpliciter under the contract.

- 26.** It is argued that the renewal clause in the lease deed clearly stipulated that there has to be an agreement between the parties on the terms of the renewed lease. In the absence of any consensus between the parties, the said renewal clause cannot be said to have been invoked in the present case.
- 27.** It is argued that renewal, as per the clause, is not automatic.
- 28.** Learned senior counsel contends, by placing reliance on correspondence exchanged between the parties to indicate that the negotiations were going on but ultimately no consensus was arrived at regarding the rate of rent.
- 29.** It is argued by the respondents that the locale where the property is situated is well-connected and situated at the centre of the city. The assessment of rent made by the valuer appointed by the respondents is absolutely justified. It is argued that the suggested rent as proposed by the petitioner would take the rent even below the current rent which is being paid by the petitioner and, as such, is absurd.
- 30.** It is submitted that there is no violation of Article 14 of the Constitution of India, since the Circular-in-question regarding rent is applicable to all tenants and not restricted to the petitioner.

- 31.** It is argued that the writ petition is not maintainable in the present case, since the remedy sought by the petitioner is based purely on the terms of the contract.
- 32.** In reply, learned counsel for the petitioner reiterates that the option of renewal has been exercised in the present case by the petitioner and accepted by the respondents, as evident from the correspondence at page 71 of the writ petition. Moreover, rent has been continuously received by the respondents upon grant of rent receipts. Even rebate has been given in terms of the lease. As such, the respondents have, for all practical purposes, acted upon the renewal clause by accepting the offer of the petitioner.
- 33.** Hence, the respondents cannot now resile from such position and ask the petitioner to pay an exorbitant amount, in default, to leave the premises.
- 34.** For a complete adjudication of the matter, the renewal clause is required to be looked into first. The renewal clause is Clause 5(vii). The same is as follows:

“5(vii) Should the lessee duly pay the instalment of rent and interest and other dues, if any thereon and faithfully perform and observe the conditions herein on the part of the lease in that event the lessee will be entitled to renewal of the demise for a further term of 15 (fifteen) years on such terms and conditions as may be agreed by and between the parties hereto upon the lessee giving notice of such intension for such renewal at least 6 (six) months prior to expiration of the period demise then subsisting.”

- 35.** It is clear from the said clause that it has two components. The first is that the lessee will be entitled to renewal of the demise for a further term of fifteen years. The second component is that such renewal will be “on such terms and conditions as may be agreed by and between the parties”.
- 36.** Thus, the lessee has a right, upon giving notice of intention to renew, at least six months prior to expiration of the lease, of renewal of the demise. In the present case, the petitioner has exercised such option by seeking a renewal well within time. However, the expression “lessee will be entitled” is qualified by the phrase “on such terms and conditions as may be agreed by and between the parties”.
- 37.** Read in conjunction, the right of renewal is not unqualified, in favour of the lessee. The lessee, at best, has the right to seek a renewal, that too, if he applies prior to six months of expiry of the lease. However, after asserting such right, the lessee has to depend upon consensus for such right to ripen into a renewal. In the absence of any consensus between the parties on the terms and conditions of such renewal, it may very well be that the renewal never reaches fruition.
- 38.** In *Lalji Tandon (supra)*, cited by the petitioner, the relevant clause provided that the obligations under the said lease shall continue throughout the term thereby created and shall be binding on their respective successors-in-interest in the demised premises, that they will perform and observe the several covenants, provisos and stipulations in the aforesaid lease expressed as fully as if the same covenants, provisos and stipulations had been therein repeated in full,

with such modifications only as a necessary to make them applicable to the demise and as if the name of the parties thereto had been substituted for those in the aforesaid lease, provided always that the building referred to in the said lease having been erected, the lessee shall not be under any obligation to erect another.

- 39.** Hence, the renewal clause was explicit and left no option for any further negotiation or agreement. In such backdrop, the Supreme Court held that in the case of extension it is not necessary to have a fresh deed of lease executed as the extension of lease for the term agreed upon shall be a “necessary consequence of the clause of extension”. However, the renewal clause in the present case clearly provides for further exercise of option on the part of the parties before the renewal reaches fruition.
- 40.** In *M/s. Erusian Equipment & Chemicals Ltd. (supra)*, the Supreme Court stressed on a duty of the Government to mete out fair and equal treatment to all in consonance with the rules of natural justice.
- 41.** In *Dwarkadas Marfatia (supra)*, it was observed that statutory and public corporations must act in accordance with certain Constitutional conscience and whether they have so acted, must be discernible from the conduct of such corporations.
- 42.** However, in the present case, the dispute arises from the contract between the parties and the conduct of the parties thereafter. Nothing on record substantiates the allegations of arbitrariness, *mala fide*, unreasonableness or partiality in the act of the respondent-Authorities in asking for a hike in the rent.

- 43.** As such, the judgments cited above, although authorities on general propositions, are not relevant in the context.
- 44.** In *Style (Dress Land) (supra)*, the Supreme Court reiterated that even administrative orders are required to be made in a manner in consonance with the rules of natural justice when they affect the rights of the citizens to the property or the attributes of the property. In the present case, no violation of natural justice is borne out by the records. The respondents, in tune with the renewal clause, entered into prolonged negotiations with the petitioner but the parties could not arrive at a consensus regarding the rate of rent.
- 45.** It cannot be said, on a *prima facie* reading of the materials produced by the respondents, that the rate of rent sought by the respondents is demonstratively absurd.
- 46.** A certain basis, substantiated by reports of experts in the field, has been provided by the respondents, just as the petitioner, to substantiate their respective claims of the market rate of rent in the area.
- 47.** However, it is beyond the scope of the writ court to enter into a factual assessment of the fair rent payable in the area. In any event, the renewal clause in the present case does not provide for any particular rate of rent but leaves the same entirely to the agreement between the parties.
- 48.** Either there is an agreement or not. There cannot be any mid-way solution, where the court can interfere and impose its own views regarding the rate of rent which ought to be charged by the lessor.

- 49.** Insofar as the negotiations are concerned, at no point of time did the parties reach consensus *ad idem*.
- 50.** Much stress has been placed by the petitioner on Annexure P-8 at page 71, which is a letter dated May 17, 2018 issued by the respondent no.1 in favour of the petitioner. In the said communication, it was conveyed that the Board of Directors of the Corporation had agreed to allow the petitioner to renew the 3716 Sq.ft. building space at Shilpa Bhawan, first floor for a further term on 'long term' basis. However, it was also stated clearly that "after finalization of the rate and tenure", the same will be communicated to the petitioner. The petitioner wrote on July 17, 2018 to the respondents indicating that the petitioner agreed to enter the lease agreement "with mutually agreed terms". The petitioner, in fact, enclosed a rent calculation sheet for the ready reference and necessary consideration of the respondents, thus, leaving the matter wide open for further negotiation.
- 51.** On July 23, 2018, the respondent-Authorities intimated the petitioner that the break-up of schedule towards payment of lease premium shown by the petitioner in its letter could not be accepted by the respondents.
- 52.** Thus, during the entire period during which the petitioner held over possession, the parties were continuing their negotiations. In fact, the respondents had all along maintained their stand regarding the proposed rent and had never agreed to the rent proposed by the

petitioner. Thus, there was no agreement between the parties for the purpose of fructifying the proposed renewal.

- 53.** In view of the above circumstances and on a plain reading of the contemporaneous correspondence, it cannot be said, by any stretch of imagination, that the respondents granted a renewal or acceded to the petitioner's proposal for renewal at any point of time. Thus, merely by permitting the petitioner to hold over the property during the period of negotiation, the respondents did not acquiesce to the offer of renewal on the petitioner's terms.
- 54.** Thus, the petitioner's argument that the respondents had agreed to a renewal does not hold good ground. In fact, in view of the judgments cited by the petitioner, it is clear that in case of renewal, a fresh deed has to be executed, upon agreement being entered into between the parties, unlike a mere extension. The relevant clause in the lease deed clearly contemplates a renewal, that too, upon mutually agreed terms and conditions having been consented to by the parties. In the absence of any such consensus, the argument of the petitioner that the respondents have agreed to a renewal at the previous rates, cannot be accepted.
- 55.** At best, the petitioner can be said to have held over the property. The respondents, in fact, acted fairly in not insisting upon enhanced payment during the period of negotiations but accepted occupation charges (by whatever name called) by issuing receipts, at the previous rate. However, merely by acceptance of the occupation charges and calling it 'rent', as the petitioner continued its occupation, does not

amount to a renewal of the lease between the parties. In such circumstances, since there was no consensus *ad idem* between the parties, it cannot be said that there was any renewal at all.

56. The respondents, at no point of time, agreed to the previous rates being finalized for a renewal of the lease.
57. Inasmuch as the rates proposed by the respondents are concerned, there is nothing palpably absurd or exorbitant in the said rates to strike down the same under Article 226 of the Constitution of India.
58. No part of the conduct of the respondents can be labelled as arbitrary or violative of Article 14 of the Constitution of India and, as such, no interference is called for.
59. Accordingly, WPO No.518 of 2023 is disposed of by holding that there was no renewal of lease deed between the petitioner and the respondents. The petitioner, at present, is holding over the property and it will be open to the respondents to initiate legal action for eviction of the petitioner from the property in due process of law, as contemplated under the governing statute.
60. There will be no order as to costs.
61. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)