

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

WPA 1043 of 2024

**Calcutta Airport English High School (H.S.) & Anr.
Vs.
Union of India & Ors.**

For the Petitioner:	Mr. Kishore Dutta, Sr. Adv., Mr. N. Bhattacharjee, Adv. Ms. Sunita Shaw, Adv. Mr. Soumen Chatterjee, Adv.,
For the Union of India:	Mr. Nilanjan Bhattacharjee, Adv., Ms. Sabita Roy, Adv.
For the Respondent Nos. 2-5:	Mr. Anup Kanti Poddar Ms. Khusboo Ruia, Adv. Ms. Gargi Mukhopadhyay
Hearing Concluded on:	12.04.2024
Date:	16.05.2024

SUVRA GHOSH, J. :-

1. The prayers of the writ petitioners are as hereunder.
 - a. *A Declaration do issue declaring that the petitioner school is having uninterrupted right of exclusive use, possession and enjoyment of the land and building constructed thereon so long*

the school would run as per order dated 22nd September, 1989 passed by this Hon'ble Court in Civil Order No. 7567 (W) of 1987.

- b. *A Writ of and/or in the nature of Mandamus do issue directing the respondents to act according to law and to forthwith cancel and/or set aside and/or rescind and/or withdraw the purported eviction notice dated 29th March, 2023 followed by another eviction notice dated 10th November, 2023 and all proceedings relating thereto and/or thereunder.*
- d. *A Writ of and/or in the nature of Mandamus do issue directing the respondent authorities to forthwith grant extension of lease period for a further 30 years on the original terms and condition as contained in the original lease deed executed on 25th November, 1991.*
- e. *A Writ of and/or in the nature of Mandamus do issue directing the respondent authorities to forthwith withdraw and/or cancel the e-mail dated 22nd December, 2022 determining the standard prevailing land rate at Rs. 3,22,39,849.60p. per annum excluding applicable GST and requiring the petitioner school to submit its willingness to pay the same.*

2. It is contended on behalf of the petitioners that the petitioner-school started functioning from September, 1953. The building of the school was in a dilapidated condition and was located in the alignment of the new terminal building proposed to be constructed by the Airport Authority sometime in

1987 for which the school building was required to be demolished and relocated. The International Airport Authority of India issued a notice upon the school on 24th August, 1987 directing the latter to hand over vacant possession of the barrack accommodation in the western side of the school premises within 30 days from the date of receipt of the notice, without providing any alternative accommodation for rehabilitation of the school. The notice was challenged by the school in a writ petition being Civil Order No. 7567 (W) of 1987. Several orders were passed by this Court in the said writ petition. The Court directed that the school building would not be demolished until alternative accommodation was provided to rehabilitate the entire school. Pursuant to the direction of the Court, land was allotted for construction of a new school building on lease for 30 years on the basis of a token licence fee of Re. 1 per annum. The Court directed that the land would vest in the International Airport Authority of India but the school building constructed thereon would belong to the school and so long the school would be run, the school would pay rent @ Re. 1/- per month to the authority and would be entitled to exclusive use, possession and enjoyment of the land and building. The Court directed inter alia that the lease deed should contain a clause that in the event the school building was taken over under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971, alternative equivalent and convenient accommodation ought to be provided to the school near the Airport at the cost of respondents.

3. Deed of lease was executed by and between the parties on 25th November, 1991 and the said clause besides other directions of the Court were

incorporated in the deed which described the school building as a public premises as defined under the Act of 1971.

4. Learned counsel for the petitioners has submitted that the petitioners applied for extension of the lease by a letter issued on 19th January, 2021 in reply to which the authority, by a letter dated 16th April, 2021, requested the petitioners to apply for such renewal in the prescribed format attached to the letter, which was duly applied for by the petitioners on 28th April, 2021. By a letter issued on 2nd August, 2022, the authority expressed its disagreement to renew the lease at licence fee of Re. 1/- per month and claimed normal rent/ licence fees applicable for Kolkata Airport. The standard prevailing land rate for the school was calculated at Rs. 3,22,39,849.60 plus applicable GST and consent of the school for payment of the amount was sought. The school expressed its inability to pay such exorbitant amount which was followed by several correspondences/meetings between the parties. The authority served a notice upon the school on 29th March, 2023 requesting the latter to quit, vacate and deliver peaceful possession of the demised premises on or before 31st March, 2024. The letter was followed by a demand notice issued on 17th April, 2023 claiming land rental for the period 1st April, 2023 to 31st March, 2024. Further notice was issued by the authority on 10th November, 2023 requesting the school to vacate and deliver peaceful possession of the premises by 31st March, 2024. In expressing its inability to pay the enhanced rent, the school requested the authority to relocate the school in the vicinity of the Airport if extension of lease was not feasible. Learned counsel has placed reliance on

the authorities in Krishna Ram Mahale v/s. Shobha Venkat Rao reported in (1989) 4 Supreme Court Cases 131, The W.B. State Fishermen's Co-operative Federation Limited and Anr. v/s. Kolkata Municipal Corporation and Ors. reported in 2003 SCC Online Cal 379, Union of India and Another v/s. Ashok Kumar Aggarwal reported in (2013) 16 Supreme Court Cases 147 and Enkon Private Ltd. v/s. Hooghly River Bridge Commissioners & Ors. reported in 2017 SCC Online Cal 9473 in support of his contention.

5. The respondents have refrained from using any affidavit in this matter. Learned counsel for the respondent nos. 2-5 has submitted that the lease was granted for a period of 30 years and did not contain any renewal clause. The lease admittedly expired on 2nd March, 2021. In the earlier writ petition, this Court directed execution of lease for a period of 30 years which was complied with by the respondents. Since the authority is involved in the business of aviation and not school business they have refused to grant further extension of the lease. The petitioners are in unauthorised occupation of the premises in question and do not deserve any order in their favour. This respondent undertakes not to evict the petitioners from the premises in question without taking recourse to law.
6. Learned counsel has placed reliance on the provision laid down under section 28D and 28F of the Airports Authority of India Act, 1994 and has submitted that the authority shall take recourse to the said provision in evicting the petitioners and the petitioners shall be at liberty to prefer an appeal before the appropriate forum under section 28K of the Act in the event they are aggrieved by the order of eviction. It is the prerogative of the

authority to consider the request for extension of the lease as made by the petitioners and the petitioners have no vested right for such extension. Since the land is required for a larger public purpose, the question of extension of lease does not arise.

7. Speaking for the Union of India, learned counsel for the Union of India has submitted that the footfall in the Airport has increased manifold than the time when the lease was executed and the land in question is required by the authority for aviation purposes. Passengers of domestic flights in the pre covid times were 2 lakhs which has enhanced to 4 lakhs in the post covid period. Passengers taking international flights have also increased to about 88 thousand from the pre covid count of about 40 thousand. The land being required for the interest of the public at large, the lease granted to the school cannot be extended.
8. I have considered the rival contention of the parties and material on record.
9. It is not in dispute that deed of lease was executed in favour of the petitioners by the Airport Authority of India on 25th November, 1991 for a period of 30 years in compliance with the order passed by this Court in Civil Order no. 7567 (W) of 1987. Token licence fee of Re. 1/- per annum was decided pursuant to the order of the Court. The Court directed that the land would vest in the airport authority and the school building constructed thereon would belong to the school. The lease has admittedly expired on 2nd March, 2021.

10. The petitioners requested the authority to extend the lease for another 30 years for smooth running of the institution in reply to which the authority by a letter issued on 22nd August, 2022, invited consent of the school to pay the normal land licence fees applicable for the NSCBI Airport, Kolkata for further renewal of the lease agreement. In other words, the authority conceded to the request of the school for extension of the lease subject to payment of land licence fees by them which was assessed at Rs. 3,22,39,849.60/- per annum. Upon expressing their unwillingness/inability to pay such enhanced lease rent, the petitioners were slapped with a notice to vacate the premises on 29th March, 2023 upon turning down their request for renewal of the lease.
11. Learned counsel for the Airport Authority of India has submitted that there was no provision for extension of the lease in the deed of lease beyond the period of 30 years and the land occupied by the school was required by the authority for their business.
12. There is a recital in clause 4 (f) of the deed of lease (pg-81 of the writ petition) that “The lessee shall be entitled to remove any materials/installations/equipments brought by the lessee in the demised premises within 30 (thirty) days of the expiry of the lease, unless extended” This indicates that there was a provision for extension of the lease in the deed. Of course, grant of such extension ought to be the prerogative of the authority, Also, clause 4 (c)(i) and (ii) (pg-80 of the writ petition) incorporated in the deed in compliance with the order of this Court is relevant:- Clause 4(c) (i) “The said land and the building thereon shall be

deemed to be a public premises as defined in The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 notwithstanding that the lessee has constructed any further structure on the said land/building. (ii) In the event the school building is taken over under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 the respondents was provided to the lessor alternative, equivalent and convenient accommodation to the school near the airport at the cost of the respondents, ie, the lessor”.

13. In view of the said covenant recorded in terms of the order of this Court, since the respondents have decided not to extend the lease any further, they are at liberty to take necessary steps for eviction of the school under the Act of 1971 subject to providing alternative equivalent convenient accommodation to the school near the airport at their cost. In this connection, I am inclined to place reliance on the authorities referred to by the petitioners which unanimously hold that occupiers of a property cannot be evicted therefrom without taking recourse of law even if such occupation is illegal/unauthorised. In fact, the Airport Authority has undertaken not to evict the petitioners from the premises in question without taking recourse of law.
14. Learned counsel has drawn the attention of this Court to section 28D of the Airports Authority of India, Act, 1994 which deals with eviction of unauthorized occupants from an airport premises. In view of the direction of this Court as referred to earlier, the school building is deemed to be a public premises as defined under the Act of 1971 and the Airport Authority is at liberty to initiate proceedings for eviction of the petitioners therefrom under

the said Act upon providing alternative equivalent convenient accommodation to the school near the airport at the cost of the authority. In the alternative, it is open for the airport authority to extend the period of lease upon payment of licence fees of Re. 1 /- per annum as decided by this Court earlier. There being no provision for enhancement of licence fee in tune with the prevailing land rate, such claim is not in consonance with the order passed by this Court as well as terms of the deed. So the question of claiming such enhanced lease rent does not arise, far less the question of willingness of the school to pay the same.

15. This Court is not oblivious of the fact that the airport authority may require the land occupied by the school for their aviation business. This Court, in its wisdom, has dealt with the said issue in the earlier order and directed incorporation of the eviction clause in the deed. However, it is pertinent to record that the airport authority agreed to extend the period of lease subject to the school paying enhanced licence fee. It was only upon the school's inability/refusal to pay such fees that the authority felt the urge to extend the business by utilizing the land allotted to the school. Had the school agreed to the proposal of the authority to pay the enhanced rent, the authority would have extended the lease and the "urgent need" expressed by them would have been shelved.

16. In the above conspectus, this Court is inclined to hold that the respondents/airport authority be directed to consider extension of the lease upon the school continuing to pay lease rent @ Re. 1 /- per annum or in the alternative, take necessary steps under The Public Premises (Eviction of

Unauthorised Occupants) Act, 1971 for eviction of the petitioners from the premises in question upon providing alternative equivalent convenient accommodation to them at the cost of the airport authority in terms of the deed.

17. The writ petition being W.P.A. 1043 of 2024 is accordingly disposed of.
18. The notices issued on 29th March, 2023 and 10th November, 2023 be set aside.
19. There shall however be no order as to costs.
20. Since no affidavit is invited, the allegations contained in the writ petition are deemed not to have been admitted.
21. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)