

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CO 2676 OF 2024

ESPLANADE STORES & ANOTHER

VS

LIFE INSURANCE CORPORATION OF INDIA

For the Petitioners : Mr. Sk. Reazul Islam, Adv.

For LIC : Ms. Sanjukta Ray, Adv.

Last heard on : 15.07.2025

Judgement on : 21.08.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This revisional application is directed against the judgement dated March 7, 2024 passed by Learned Judge Bench-V, City, Civil Court at Calcutta in. Misc. Appeal number 23 of 2015. The fact of the case in short is that ;
 - a) The petitioner No.1/Applicant has inducted as a tenant in respect of one shop room, including attached go-down on the ground floor at Laxmi Insurance building, the premises No.7, Esplanade East, Kolkata – 700069 since April 1992. In terms of the deed of lease, the petitioners above named initially had paid the lease rent at the rate of ₹1100 per month to the Life Insurance Corporation of India, i.e the Opposite Party herein.
 - b) The said lease expired on 31st March, 1995, and it was renewed for a further term of 3 years with effect from April 1, 1995 at a monthly rent of ₹1375 i.e 25% enhancement over the existing rent of ₹1100/. Accordingly, a fresh deed of

lease was executed on the same terms and condition and after it expired on March 31, 1998 a further fresh lease was executed with the enhancement of rent of 25% over the existing rent of ₹1375.

- c) In the deed of lease of 1992, it was recorded that the said lease will be renewed every three years and on renewal, the monthly rent bill shall be enhanced at the rate of 25% of the existing rent and accordingly the present petitioners were paying the enhanced rate of rent pursuant to the terms of the agreement renewed after every three years.
- d) By a deed of lease dated 12 January 1999, the monthly rent was enhanced to ₹3900 with effect from April 1, 1998, with condition that on the expiry of the lease on 31st of March, 2001, the renewal for further period of three years will be granted upon enhancement of lease rent by 25% on the existing rent only on the ground that the municipal tax, repairing and maintenance cost and other allied expenditures of the said premises have been increased.
- e) The present petitioners before the expiry of the said lease on 31.3.2001 by a letter dated January 10, 2001, requested the LIC to renew the said lease for a further period of three years with effect from first April, 2001 in terms of the lease dated 12 January 1999. On August 10, 2001 the petitioners also met with the Estate Manager with a request for renewal upon enhancement of monthly rent by 25% over the existing rent of ₹3900 pursuant to a letter dated April 10, 2001 of the LIC with a request to meet the Estate manager for discussion and amicable settlement of revision of rent and execution of lease deed. It was informed to them that the fact of such meeting will be informed after discussion with their committee. In the meantime, they were allowed to

pay their monthly rent for the subsequent months at the same rate of ₹ 3900 per month.

- f) Accordingly the petitioners paid such monthly rent for the month of April, May, June and July 2001 at the rate of ₹3900, which was duly accepted by the LIC, issuing rent receipts to the petitioners. However, the LIC deferred the execution of the renewal of lease of deed, despite repeated request made by the petitioners and the Estate manager.
- g) All on sudden by a letter dated August 24, 2001, the petitioners were informed by the LIC about proposing enhancement of monthly rent at the rate of ₹15 per square ft. with effect from first April, 2001. Immediately, the petitioner No 2.went to the office of Estate Manager and requested to settle the rent in terms of the deed of lease dated 12 January 1999 as the rent was never fixed on the square feet basis.
- h) LIC vide their letter dated 27th November, 2001 asked the petitioner for their consent to the proposal made on their behalf for enhancement of rent and in reply dated 12 December 2001, challenged the enhancement as proposed and also alleged that the showroom was not repaired by LIC despite promise to repair and it was badly damaged due to old and dilapidated condition. The LIC by virtue of their letter dated December 20, 2001 refused to agree with the proposal to renew the lease with 25% enhancement and agreed to renew with revision of rent at the rate of ₹10 per sq. ft. in place of ₹15 per sq. ft. as proposed earlier and asked for their consent within December 31, 2001, and further intimate otherwise LIC shall determine the tenancy of the petitioner.

- i) Later on a notice to quit dated March 15, 2003 was served upon the Learned Advocate, directing them to vacate and deliver the peaceful vacant possession of the tenancy to the LIC on the expiry of last day of April, 2003. Subsequently, a complaint was filed before the estate officer, LIC praying for an order of eviction against the present petitioner.
- j) The Estate Officer passed the order No. 132 dated 31st March, 2015 for eviction under Section 51(1) of the public premises (Eviction of Unauthorised Occupants) Act 1971 and challenging the same the present petitioners filed an appeal under Section 9 of the public premises, eviction of unauthorised Occupants Act 1971 before the Learned Chief Judge, Civil Court at Calcutta being. Misc. Appeal No. 23 of 2015. The petitioner's father obtained an order of stay with condition to deposit ₹1, 01, 400 with LIC as area rent and deposit of ₹15, 00,000 towards damages before the registrar City Civil Court at Calcutta.
- k.) During pendency of the appeal, the petitioners also paid to the LIC a total amount of ₹1, 27, 74, 132 only as occupancy charges up to the month of March, 2024, and after contested, hearing the Learned Judge Vth Bench Civil Court at Calcutta dismissed the said Appeal after affirming the order No. 132 dated 31st March, 2015.

Being aggrieved by this instant revisional application has been filed.

- 2.** It is the contention of the Learned Advocate representing the petition that at the time of execution and registration of the said deed of lease dated 12.1.1999 the LIC beyond the knowledge and consent of the petitioners inserted in between the lines before the word 25%. "not less than", in

paragraph (d) which contains the renewal clause and the petitioner No.2, the sole proprietor being an old illiterate widow could not notice such change in the said lease deed and signed the same in a routine manner.

3. It is further contended that the notice issued was not valid since after expiry of the period of lease, the present petitioners paid the rent for the month of April, May, June and July at the rate of ₹3900, which was accepted by the LIC after issuing rent receipts and thereby they became the tenant under the LIC and appropriate notice was to be served upon them for eviction in terms of section 105 and 106 of Transfer of property Act 1882. It is contended that where a covenant for renewal exists, its exercise is of course, a unilateral acts of the lessee and the consent of the lessor is immaterial .In this regard, the Learned Advocate relied upon a decision reported in¹ **State of U.P & Ors vs Lalji Tandon** (dead) through Lrs .

4. It is further argued that section 5 (1) held mandatory on the part of the estate officer to pass eviction order with reasons which must be cogent and palpable, unless it manifest from the plain reading of the order. In this regard relied upon a decision reported in² **Basant Pran & Co.vs R.C Walia**. Further argument advanced that the Estate Officer failed to fix the fair rent, as applied by the petitioner, and relied a decision reported in³ **Khivraj Chordia and ors . vs Esso Standard Eastern Inc.** paragraph 16,that the Court had jurisdiction in case of difference of opinion to fix what is fair and equitable rent. Another decision relied upon by the learned

¹ (2004) 1 SCC 1

² 2014(1) CHN 675

³ AIR Madras 374

advocate reported ⁴**Rampur Engineering Co. Ltd. Vs State & Ors.**, where there was an agreement between Lessor and Lessee that the lessor has a right to have the lease renewed, after expiry the lessor could not refuse to renew lease .Thus prayed for setting aside the order of the Appellate court.

5. Per contra, the Learned Advocate, appearing on behalf of LIC submit that the petitioners are running a liquor shop from the suit shop room, which is situated in a very lucrative position and at a prime location of the city and a meagre amount was charged as a lease rent by the LIC who are government organisation and a non-profit earning institution. It is contended that it was the decision of the committee to enhance the rent and accordingly the petitioners were asked for settlement of the rental amount which they failed and ultimately notice dated 19th of August 2003 was issued which was not replied by the petitioners. Subsequently, a notice to quit vacate and deliver peaceful possession was served, which also was not complied with and therefore, on and from September 2003, he became the unauthorised occupier and accordingly damages were charged. The learned Counsel has relied upon a decision⁵**Jiwan Das versus life insurance Corporation of India and another** reported in to substantiate that power of public authorities to initiate action under Section 5 (1) and 2(g) after terminating tenancy by notice under section 106 of T. P. Act without assigning any reasons will not consider as violative of article 14 of the Constitution.

⁴ AIR 1982 Allahabad 396

⁵ 1994 supp (3) SCC 694

6. Another decisions relied upon reported in⁶ **Lachhman Dass versus Santokh Singh** where it was observed by the Hon'ble Supreme Court that when Rent Controller and Appellate Authority under Section 15 (2) of the act on appreciation of evidence found that High Court in exercise of revisional jurisdiction erred in taking a different view and setting aside, the concurrent finding.
7. The decisions relied upon as reported in⁷ **Dalhousie Exchange and another versus LIC and others** it was held that issuance of the notice to quit and the initiation of proceedings under the 1971 act by the LIC is for public purpose. It is further argued that the petitioner entered in to such lease agreement in the year 1999 and cannot raise objection after expiry of the period of the lease pertaining to any terms and condition of such lease. Furthermore the LIC throughout retained their discretion to renew the lease and under no circumstances the petitioner can dictate the terms and condition of the Authority pertaining to the rate of rent or of the renewal of the lease. Accordingly, it is submitted that this revisional application is to be dismissed with cost.
8. Having heard both the Learned Advocates of the parties and on careful perusal of the materials on record, the admitted facts appears are that the life Insurance Corporation of India being the owner and landlord of the suit property Lakshmi Insurance Building situated at No.7, Esplanade East, P.S Here Street, Kolkata- 69 which is a public premises within the meaning of the definition as laid down in section 2(e) 2 (ii) of the Public Premises

⁶ 1995 Law suit (SC) 650

⁷ 2023 SC online CAL 771

(Eviction of Unauthorised Occupants Act, 1971) and the petitioner No.2 is the proprietor of petitioner No.1 Esplanade stores and the store was a monthly tenant under LIC in respect of a portion measuring about 1939 sq. ft. on the ground floor of the building as described above at a monthly rental Rs. 1100/- per month since 1992 with a renewal clause after every 3 years. The said lease expired on 31.3.1995 and further renewed w.e.f 1st April, 1995 and after expiry of such period got renewed for a further term of 3 years w.e.f 1.4.1998. So admittedly, vide such agreement the amount was enhanced to Rs 3900/-, which expired on the last day of March 2001 and the revised rate of rent was due on and from 1st April 2001. It is also a fact that LIC called the petitioner No. 2 vide their letter dated April 10, 2001, and July 19,, 2001 but the petitioner No.2 did not respond and subsequently vide a letter dated August 24, 2001, LIC proposes to revise rent at the rate of ₹15 per sq. ft. per month with effect from 1st April 2001. The reason for enhancement was also communicated to the petitioner No.2. The dispute cropped up with this issue of enhancement of rent at the rate as proposed by LIC. The stand of the petitioner regarding receiving rent for 4 months it is to be construed as holding over, it is seen that before expiry of the lease LIC gave notice to take steps and since the negotiation was going on, the petitioner was allowed to pay rent for these months and it cannot create a new tenancy.

9. It is the stand of the petitioner No.2 that since they paid the enhanced rate on previous occasion at the rate of, 25% on the existing rent, the LIC cannot demand such excess amount as a rent .After some communication the LIC made a further offer of rent revision on December 20, 2001 at the

rate of 10 per sq.ft. per month but present petitioner did not respond and expressed unwillingness to increase rent with effect from April 1st 2001. The pertinent question falls for consideration is that as to whether rate of rent of a monthly tenant to be fixed at the behest of a tenant and or whether landlord is bound by the desire of a tenant regarding fixation of a rent.

- 10.** Furthermore whether a tenant can insist to continue with the tenancy with the rent to be fixed by the tenant, even after termination of the tenancy. In the decision as relied upon by the Learned Advocate of the petitioner in ***Rampur engineering Company Limited versus State and others (supra)***. Where it was observed that the term

“that on expiry of the period of lease, it can be renewed for a further period of 30 years on the same terms and conditions, unequivocally conferred upon the plaintiff, the right to have the lease renewed for a further period of 30 years on the same terms and conditions, after the expiry of the first period of 30 years. The right conferred on the plaintiff by this clause was indefeasible and if the plaintiff asked for the renewal, the government could not refuse it. The defendant State acted illegally in refusing to renew the grant for a further period of 30 years from 10 May 1972”.

- 11.** Therefore, from the above, it is apparent that the specific clause was mentioned in the first agreement which was to be followed in the second

agreement. In the instant case in a specific term in clause (d) of the agreement dated January 12 99, it was mentioned that:

“the lessor may consider granting a fresh lease for a further period not exceeding three years on written request made, therefore by the lessee at least two calendar months prior to the expiry of the current lease on terms and conditions already agreed upon at an enhanced monthly rental of not less than 25% of the rental agreed upon in the current lease, and such fresh leaves shall be entered at lessee’s cost.” Hence the above decision is distinguishable on the score that LIC retained the discretion to renew the lease”.

12. In the decision as relied upon by the learned advocate of the petitioner in ***State of UP and others versus Lalji Tandon through LRS (supra)*** the dispute cropped up was almost similar in nature with this case where the original government lease contained a renewal clause for a further term of 50 years and subject to the same covenant conditions and provisions as are here in contained it was held

‘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 said case it did not set out any fresh covenant, mutually agreed upon between the parties for the purpose of renewal. Rather it incorporated, without any reservation, all the covalence, providers and stipulations as contained in the principal as if they had been repeated in full. In the instant case, though a clause for renewal exists , but the discretion retained with the LIC to allow it or not, and therefore, the facts and circumstances are not similar that of the case relied upon and hence distinguishable.

13. The interesting part in this case is that the deed dated 12 January 1999, was executed and registered by the parties and the petitioner enjoyed the terms and conditions of the said lease for the entire period but after expiry of such period took the plea that beyond her knowledge, LIC inserted the phrase 'not less than' before the word 25% in the renewal clause which under no circumstances, can be accepted. The petitioner NO2 .also failed to substantiate such claim before the estate officer by adducing any cogent and sufficient evidence. Therefore, the Estate Officer as well as the learned appellate court have rightly observed that there is no reason to assume that it was inserted after execution of the agreement as alleged. The Court cannot be oblivious of the fact that the petitioner No.2 is the proprietor of the petitioner No.1 and hence the procurement of her signature on the said Deed by taking advantage of her illiteracy ,concealing terms and conditions has got no basis and beyond acceptance.

14. Further point argued by the learned advocate of the petitioner that the notice issued terminating tenancy by the estate officer was not sufficient as

it is devoid of any reason which is a sine qua none. Accordingly a decision has been relied upon passed in ***Basant Pran and Company Vs RC Walia (Supra)***. The factual aspect of the said judgement was, after a lapse of 35 years, the show cause notice which was issued under Section 4 of the Act of 1971 after termination of tenancy on the expiry of 31 August 1963 was held to be arbitrary and not maintainable. It was observed that there was no existence of any reason as to why, after a lapse of 35 years, an eviction proceeding should be initiated on the basis of a letter dated 22 July 1963, terminating the tenancy on the expiry of the month of August, 1963. It was held by a Coordinate Bench of this court that section 5 of the Act of 1971, makes it mandatory on the part of an estate officer to record his reasons before making an order of eviction, directing that the public premises in question to be vacated. In the instant case the Estate officer upon considering the plaint along with the documents annexed was of the preliminary opinion that the suit premises were in unauthorised occupation and hence notice to show cause upon petitioners herein was issued in Forms No. A,D and F on 29.11.2006 and the show cause Notices conveyed the preliminary opinion of the Estate Officer regarding his unauthorised occupation of the suit premises , regarding the liability to pay the arrears of rent ,regarding the liability to pay the damages with effect from 1.10.2003 against which separate replies were filed by the petitioner.

The form B that is the order under subsection (1) of section 5 of the Act of 1971 as found from the petition manifest the reasons as to why and under

what circumstances the said Notice are to be issued which was of 31st March 2015.

15. In the case of Dalhousie Exchange and Anr. V LIC & Ors. in paragraph 44 the Hon'ble Supreme court observed ;

'44. For the reasons, as for this Court is of the considered view that issuance of the notice to quit and the initiation of proceedings under the 1971 act by the LIC is for public purpose. Such action cannot be said to be violative of the right to equality guaranteed under Article 14 of the Constitution. The right of the applicants to carry on any occupation, trade or business guaranteed under Article 19 (1) (g) of the constitution, in the considered view of this court, cannot be stretched that far so as to curtail the power of the public authority under 1971 act to determine the tenancy lease and to evict and occupant from a public premises for using the same to its best advantage, which is as observed herein before is for a public purpose'.

16. In the aforesaid decision it was further observed that LIC being a Public Authority and performs its duties and carries out its transactions for the benefit of public and not for private profit and therefore is not precluded from making more profit for the public benefit by letting it out its property at a prevailing market rate of rent. In the instant case the petitioner entered into an agreement with certain terms and conditions which was duly registered and the same contained a clause for enhancement .The

petitioner did not agree and ultimately after a series of communication the LIC agreed to reduce the rate of rent but the said rate was also not accepted by the petitioner on various ground as a result the LIC had to terminate the tenancy and issued Notice to quit which not complied and hence became unauthorised occupier and liable to pay damages. So the enhancement of rent by the LIC after expiry of the previous period of lease cannot be said to be arbitrary more so when the said terms were accepted by the petitioner by entering into a registered agreement.

17. The last stand taken by the petitioner regarding fixation of fair rent reliance has been put to the case of Khivraj **Chordia (supra)** where the observation of Hon'ble Supreme Court passed in Full Bench, Madras High Court reported in ⁸ were considered . In that case it was held "The Court had jurisdiction in case of difference of opinion to fix what is fair and equitable rent". In that contention the Supreme Court held "if the intention was to leave the enhancement to the subjective determination of the lessor, the clause would have more aptly said "such enhancement as the lessor shall determine". The further observation made in this regard that the word fair and equitable must be given their due meaning and proper effect. In the instant case there was no such clause where from it can be interpreted that the lessor must first determine what it considers to be fair and equitable enhancement. Rather the stipulation in clause (d) mandated the lessee should have made a request for renewal for consideration of the lessor and in default the lessor will be free to take possession. It is pertinent to take note that LIC after being requested by the petitioner to reduce rate of rent

⁸ ILR (1927) 50 Mad,595

acted upon and reduced from Rs. 15/- to Rs. 10/- per sq. ft. which was not accepted. So the petitioner although tried to compel the O.P. to fix rent as per agreement as into on Jan.12, 1999 which is not permissible in the eye of law.

18. Furthermore, the decision as relied upon by the learned counsel appearing on behalf of the Opposite Party in **Lachhman Dass versus Santokh Singh (supra)** where The High Court set aside the concurrent findings of the authorities below holding that it was not established that the respondent had acquired or was in possession of reasonably sufficient accommodation which rendered him liable to be evicted from the demised premises ,and observed taking note of the decision of⁹ **State of Kerala v K.M Charia Abdullah & Co.** that when the legislature confers a right to appeal in one case and a discretionary remedy of revision in another ,it may be deemed to have created two jurisdictions different in scope and content. Further took note of the case of ¹⁰**Neta Ram v Jiwan Lal** here it was observes that the revisional jurisdiction of the High Court do not include the power to reverse concurrent findings without showing how those findings are erroneous.

19. Therefore after assessing the entire facts and circumstances this court finds no reason to interfere with the judgement and order of the Learned Appellate court affirming the order of the Estate officer .

20. Hence this revisional application stands dismissed.

⁹ (1965) 1 SCR,604

¹⁰ AIR 1963 SC 499

21. The order passed by the learned Bench-V, City, Civil Court at Calcutta in.

Misc. Appeal number 23 of 2015, City Civil Court is hereby affirmed.

22. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)

