



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.561/2024

<u>PETITIONER :</u>	Gaurav S/o Sunil Mutha, aged 33 years, Occu : Medical Practitioner, R/o 12, East High Court Road, Ramdaspath, Nagpur – 440010.
<u>...VERSUS...</u>	
<u>RESPONDENTS :</u>	1. The Nagpur Improvement Trust, Through its Chairman.
	2. The Executive Officer, Nagpur Improvement Trust.
	3. The Divisional Officer (South), Nagpur Improvement Trust.
	4. The Secretary-1, Estate Section, Nagpur Improvement Trust, Nagpur. All Having Office at Station Road, Civil Lines, Nagpur – 440001.
	Mr. Sunil Manohar, Senior Advocate a/b Mr. A.S. Manohar, Advocate for petitioner
	Mr. M.K. Pathan, Advocate for respondents

<u>CORAM :</u>	AVINASH G. GHAROTE
	AND
	ABHAY J. MANTRI, JJ.
<u>DATE :</u>	10/02/2025

ORAL JUDGMENT : (PER : AVINASH G. GHAROTE, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsels for the parties.

2. Heard Mr. Manohar, learned Senior Counsel for the petitioner. It is not disputed that the land bearing Khasra No.62 admeasuring 2.87 Hectares, Mouza Tarodi (Khurd), was granted on 5 lease, to one Abdul Rafiq by indenture of lease dated 19/06/1970 (pg.27) which was for a period from 19/12/1969 to 31/03/2000. The said lease-deed contained a renewal Clause - 3 under the terms of which the lessor/respondent covenanted that it will at the end of the term granted by the lease and so on from time to time thereafter, 10 at the end of successive further term of years as shall be granted at the request and cost of the lessee, execute to him a renewed lease of the said land for a term of 30 or 99 years, which was subject to enhancement of the rent which would not be not more that 50 % of the rent existing at the time of renewal for the grant of every 15 renewed lease. The said lease also contained Clause - 1 (j) which enjoined upon the lessee, in the case of transfer or assignment to deliver a notice of such assignment/transfer to the lessor for which there was no time-frame.

3. By way of a deed of transfer of leasehold rights, the original lessee Abdul Rafiq transferred the aforesaid land to Maniklal Motilal Mutha, the petitioner is his grandson, which deed is dated 14/10/1970 (pg.33). The transfer/assignment was intimated to Nagpur Improvement Trust (NIT), by communication dated 17/10/1970 in response to which the NIT by communication dated 16/11/1970 (pg.37) accepted the transfer/assignment on the same terms and conditions as contained in original lease dated 19/06/1970. By a communication dated 12/05/1999, the respondent No.1/NIT for the purpose of renewal of the lease for a further period of 30 years from 01/04/1999 and onwards, indicated what would be the ground rent and also indicated that the costs for the registration of the lease-deed would have to be borne by the lessee and so also the further renewal of the lease for the next 30 years period would be in terms of the norms prevailing at that point of time. The said communication also indicated that the renewal would come into effect from 01/04/1999 for which purpose stamp paper of Rs.100/- should be submitted. Clause -8 of the said communication indicated that the registration should be got done within a period of three months from the date of this communication. The communication

dated 18/03/2002 by Maniklal Mutha to NIT (pg.39) which is not
disputed by the learned Counsel for the respondent NIT, indicates a
request for renewal of the lease being made and also refers to the
communications dated 24/04/1998, 30/08/1999, 11/10/1999 and
several others and also the handing over of stamp paper of Rs.100/-. 5
There is also a reminder in this regard of said Maniklal Mutha dated
29/03/2003 to the NIT (pg.40). By the communication dated
09/04/2008 (pg.41) Maniklal Mutha was intimated by the NIT to get
the 7/12 extract of the land in question corrected by showing the NIT
as the owner and the said Maniklal Mutha as a lessee, consequent to 10
which only, the further action of renewal would be taken up. A
similar communication is dated 11/10/2021 addressed to the
petitioner (pg.55). On 17/01/2024 notice for termination of the
licence and for taking possession was issued by the NIT/respondent
No.1 (pg.63), which came to be withdrawn by the communication 15
dated 12/09/2024 (pg.64-A) on the ground that a fresh decision
would be taken after hearing.

4. By the impugned communication dated 27/09/2024
(pg.64-T) the lease in favour of the petitioner has been terminated on
account of breach of Condition No.3 of the lease-deed and the 20

Divisional Officer (South) is directed to take possession of the land in question by issuing a month's notice.

5. Condition No.3 in the original lease-deed dated 19/06/1970 reads as under :

“The lease will be initially for 30 years only. The lesser further covenants that it will at the end of the term hereby granted and so on from time to time thereafter, at the end of successive further term of years as shall be granted at the request and cost of the lessee, execute to him a renewed lease of the said land for the term of thirty or ninety nine years.”

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6. A reading of the above clause, would indicate that all that is contemplated therein is granting a right to the lessee to get the lease renewed from time to time at the end of each successive further term of years at the cost of the lessees. The communications on record, dated 18/03/2002 and onwards indicate that at no point of time the lessee ever indicated that he was not willing to get the lease renewed at his cost. In fact, the communication dated 18/03/2002 (pg.39) refers to the communications dated 24/04/1998, 30/08/1999 and 11/10/1999, by which a request for execution of the renewed lease-deed has been made, for which a stamp paper of Rs.100/- is also claimed to have been handed over to the NIT. It

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would therefore be apparent that Clause-3, can never be the ground for claiming that there is a breach of the conditions of the lease by the petitioner or for that matter his predecessor. It is equally necessary to note that Mr. Pathan, learned Counsel for the NIT does not deny that Mr. Maniklal Mutha has continuously paid the ground rent, to the NIT for all these years, and there is no default on that ground. 5

7. Though Mr. Pathan, learned Counsel for the NIT contends that there is a breach of Clause -8 of the communication dated 12/05/1999 (pg.38) on account of the lease not being having got executed within a period of three months from the date of the aforesaid communication, what we find is that the receipt of the communications of the years 1999, 2002 and 2004 by Maniklal Mutha for execution of the renewal of the lease, are not disputed, as these find place in para 6 of the impugned order dated 27/09/2024 (pg.64 -V). This would clearly indicate that the said Maniklal Mutha was throughout ready to get the lease-deed executed and registered in his favour. 10 15

8. It is also necessary to note that the original lease dated 19/06/1970 did not cast any such obligation upon the original lessee and the communication dated 16/11/1970, also accepted the assignment on the same terms and conditions, as contained in the original lease dated 19/06/1970. It is also necessary to note, that 5 impugned order dated 27/09//2024 in para 6 (pg.64-V) categorically records that Mr. Maniklal Mutha had paid the enhanced ground rent and also the renewal charges, which would indicate, that the execution of the renewed lease-deed, was now to be done by the NIT, as all that was required by the lessee was to pay the enhanced 10 ground rent, the lease renewal charges and the deposit of the stamp paper, which already stood done by Maniklal Mutha. We, therefore, find that the rejection of the claim of the petitioner for grant of a renewed lease based upon Clause-8 of the communication dated 12/05/1999 (pg.38) is clearly unjustified and unwarranted in law. It 15 would also be necessary to record that the NIT, was itself aware that there was an incorrect recording of its name in the 7/12 extract, as is indicated by the communication dated 09/04/2008 (pg.41) and though it was the responsibility of the NIT to get it corrected by showing it to be the owner of the property in question, it transferred 20

the obligation to do so upon the lessee, which indicates the reason for the delay in the matter which is also reflected from the communication dated 11/10/2021 (pg.55).

9. We are therefore not willing to agree with the contention of Mr. Pathan, learned Counsel for the respondents/NIT that the rejection of the claim for execution of a renewed lease on the same terms and conditions, as contained in the original lease dated 19/06/1970 though on enhanced rent, was justified. 5

10. Though it is also contended by Mr. Pathan, learned Counsel for the NIT that a plea of alternate remedy is available, under Section 108 -A (3) of the Nagpur Improvement Trust Act, 1936 to the State Government, we find that the State Government controls the Nagpur Improvement Trust. Having heard the learned Counsels fully, we do not deem it appropriate to now relegate them to the alternate remedy, as that by itself does not prevent the Court from exercising its jurisdiction. 10 15

11. We, therefore, quash and set aside the impugned order dated 27/09/2024 (pg.64-T) and hold that the petitioner is entitled to renewal of the lease on the same terms and conditions as

contained in the original lease dated 19/06/1970, however, subject to enhanced rent, as indicated by Clause- 3 of the original lease-dated 19/06/1970. The writ petition is, therefore, allowed in the above terms. Rule is made absolute in the aforesaid terms. No order as to costs.

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(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

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