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

WRIT PETITION NO. 8048 OF 2022
WITH
WRIT PETITION NO. 761 OF 2023

WRIT PETITION NO.8048/2022

Tejomay Apartments Condominium
an association of apartment owners
formed by deed of declaration registered
under the Maharashtra Apartment Ownership
Act, 1970 through its Secretary Shri Bhavesh
kumar Hasmukhrai Majithia, aged about 51
years, Occ.: Business, having its office
Plot No.128, Tejomay Apartments, Opposite
Jain Mandir, Farmlald Layout, Ramdaspeth,
Nagpur.

…. **PETITIONER.**

// **VERSUS** //

1. State of Maharashtra, through the Secretary, Ministry of Revenue and Forest, Madame Kama Road, Hutatma Rajguru Chowk, Mantralaya, Mumbai-32.

2. Joint District Registrar and Collector of Stamps, Nagpur City, New Administrative Building No.2, Wing, 3rd Floor, Divisional Commissioner Office Premises, Civil Lines, Nagpur.

3. The Sub-Registrar, Nagpur,

…. **RESPONDENTS.**

WITH

<u>WRIT PETITION NO.761/2023</u>

1. New Ramdaspeth Griha (Grah) Nirman Sahakari Sanstha Limited, Nagpur, a Society Registered under the Maharashtra Co-operative Societies Act, 1960 having its Office at Flat No.102, Abhinav Smruti, Plot No.T-8, Near R.S. Convent, Laxmi Nagar, Nagpur–440022, Tahsil and District – Nagpur, through its power of attorney holder Mrs. Juhi A.Laddha, Aged 36 years, Occupation : Business, Resident of 102, La Regalia, Canal Road, Ramdaspeth, Nagpur – 440 010.

2. M/s. Green India Infra, a firm registered under the Indian Partnership Act, 1932, having its registered office at 102, La Regalia, Plot No.94, Canal Road, Ramdaspeth, Nagpur-440 010,Tahsil and District: Nagpur acting through its Partner Mrs. Juhi A.Laddha, Aged 36 Years, Occupation : Business, Resident of 102, La Regalia, Canal Road, Ramdaspeth, Nagpur- 440 010.

…. <u>PETITIONERS.</u>

// **VERSUS** //

1. State of Maharashtra, through the Secretary, Ministry of Revenue and Forest, Madame Kama Road, Hutatma Rajguru Chowk, Mantralaya, Mumbai-32.

2. Joint District Registrar and Collector of Stamps, Nagpur City, New Administrative Building No.2, Wing, 3rd Floor, Divisional Commissioner Office Premises, Civil Lines, Nagpur.

3. The Sub-Registrar, Nagpur,

…. <u>RESPONDENTS.</u>

Shri Rahul Bhangde, Advocate for Petitioners.
Shri Birendra Saraf, Advocate General with Shri D. V. Chauhan, Sr. Advocate & G.P. a/b. Shri N.S. Rao, AGP for the respondent Nos.1 to 3.

CORAM : ANIL S. KILOR AND RAJNISH R. VYAS, JJ.
DATED : OCTOBER 14, 2025.

ORAL JUDGMENT : (Per : Anil S. Kilor, J)

1. Since the issue involved in both the petitions is common, both the petitions are heard together.

2. Heard.

3. **RULE**. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

4. The petitioner in Writ Petition No.8048 of 2022 is an Apartment Condominium seeking following reliefs:

> "*(i) hold and declare that Article 36 (Annexure-6) of the Maharashtra Stamp Act, 1958 in so far as the said provisions provides for levy of Stamp Duty on "renewal of a perpetual lease" is manifestly arbitrary and violative of Art. 14 and 300A of the Constitution of India.*
> *(ii) consequently direct the respondents to refund the amount of Rs.34,26,500/- being an amount paid by the petitioner towards stamp duty for renewal of lease for a further period of 30 years by indenture of lease dated 11.11.2021 (Annexure No.5) along-with interest at 12% p.a. from 11.11.2021 till refund.*

(iii) Grant any relief as this Hon'ble Court may deem fit and proper in the interest of justice."

The petitioners in Writ Petition No.761 of 2023 have also made similar prayer.

5. It is the case of the petitioners that the respondents and the grandfather of the President of the petitioner association Shri K.V.Bramha after paying full market price (premium) executed a registered perpetual lease of the land in question i.e. 128, Farmland Layout, Ramdaspeth, Nagpur, in his favour. The period of the said lease was from 01/04/1947 to 31/03/1975 with a right of renewal.

6. The said lease was renewed on 25/06/1987 for the period of 30 years from 31/03/1975 till 31/03/2005. According to the petitioners, the document of renewal of lease executed on 25/06/1987 was not a registered document and no stamp duty was levied for the execution of the same.

7. After the expiry of the above referred period of lease on 31/03/2005, an application for renewal of the same was made. However, such request was not initially considered, but because of intervention of this Court, the petitioners were informed by the respondent No.3 that the

petitioners are liable to pay stamp duty for renewal of the lease. Feeling aggrieved by the same, on 07/11/2021 the petitioners submitted a representation to the respondents denying any liability of payment of the stamp duty for renewal of the lease. However, no decision was taken or communicated to the petitioner on such representation.

8. The petitioners on 11/11/2021 executed a Lease Deed for the period of 30 years from 31/03/2005 till 31/03/2035. The stamp duty was paid under protest by the petitioners under Article 36 read with Article 25 of the Maharashtra Stamp Act, 1958 (hereinafter referred to as "the Act of 1958") which provides for levy of stamp duty on renewal of lease also. Hence, the challenge is raised to Article 36 of the Act of 1958 in so far as it provides for payment of stamp duty at the time of each renewal of the perpetual lease.

9. We have heard Shri Bhangde, learned counsel for the petitioners and Shri Birendra Saraf, learned Advocate General for the respondents/State.

10. Shri Bhangde, learned counsel for the petitioners makes following submissions :

i) The lease which was executed in favour of father of the President of the petitioner association on 30/01/1948 was a perpetual lease, therefore, at the time of renewal it cannot be said that new right is created in favour of the petitioners.

ii) Since it was a perpetual lease renewal of such lease can be treated as a rent renewal agreement.

iii) Once the stamp duty was charged while executing the perpetual lease on the market valuation of the property, on each renewal the Government cannot claim stamp duty.

iv) Because the lease is perpetual this is a single transaction and therefore, once the stamp duty was paid on full market value, asking the petitioners to pay the stamp duty for renewal of the lease is illegal. Thus, Article 36 of the Act of 1958 is manifestly arbitrary and violation of Articles 14 and 310 of the Constitution of India.

11. On the other hand, the learned Advocate General argues as follows :

a) The nature of stamp duty is a tax, but it is a tax on the instrument and not on the transaction.

b) Continuation of the lease is not continuation of the transaction.

c) Renewal and extension both are different and cannot be equated. In renewal the terms and conditions can also be changed, whereas, in extension, the terms and conditions of the contract would remain same but the period is extends.

d) The renewal is a new instrument and therefore, the Government is entitled to charge stamp duty as per Articles 25 and 36 of the Act of 1958. To substantiate his contentions the learned Advocate General relied on the following judgments of the Hon'ble Supreme Court of India:

a) *Provash Chandra Dalui ..vs.. Biswanath Banerjee*, reported in **1989 Supp.(1) SCC 487**;

b) Hindustan Lever ..vs.. State of Maharashtra, reported in **(2004) 9 SCC 438**;

c) *State of U.P. ..vs. Lalji Tandon,*reported in **(2004)1 SCC 1**;

d) *Hardesh Ores (P) Ltd...vs.. Hede and Co.*, reported in **(2007) 5 SCC 614**;

e) *Renuka Seal..vs.. Sabitri Dey*, reported in **2007 SCC OnLine Cal 501**;

12. In light of the rival contentions, we have perused the record, relevant provisions and the authorities.

13. Since the challenge is raised to the constitutionality of the Article 36(iv) of the Act of 1958, it will be beneficial to refer to the relevant provisions of Article 36(iv), which read thus :

Description of Instrument	*Proper Stamp Duty*
36. LEASE, including under lease or sub-lease and any agreement to let or sub-let or any renewal of lease, -	
Where such lease purports to be -	
(i) to (iii) ….	
(iv) for a period exceeding twenty-nine years or in perpetuity, or does not purport for any definite period, or for lease for period exceeding twenty-nine years, with a renewal clause contingent or otherwise.	*The stamp duty as is leviable on a conveyance under clause (a), (b) or (c), as the case may be, of article 25, on 90 per centum of the market value of the property*

14. Having gone through the above provision, it is evident that for any lease instrument for a period extending twenty-nine years or in perpetuity or does not purport for any definite period, or for lease for period exceeding twenty-nine years, with a renewal clause contingent or otherwise, the stamp duty is leviable on a conveyance under clause (a), (b) or (c), as the case may be, of article 25, on 90 per centum of the market value of the property.

15. Admittedly, the lease involved in the present matter is perpetual lease with a clause of renewal on expiry of lease period. Clause (3) of the lease provides renewal of the lease which says that "*The lessor further covenants that he will at the end of the term hereby granted and so on from time to time thereafter, at the end of each 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 years*".

16. The first lease was executed for the period from 01/04/1947 till 31/03/1975. Thereafter the renewal was for thirty years from 31/03/1975 till 31/03/2005 and second renewal was from 31/03/2005 to 31/03/2035.

17. The above referred Article 36 of the Act of 1958 was substituted w.e.f. 07/05/2005 by the Maharashtra Act No.XXXII of 2005. Therefore, at the time of first renewal no stamp duty was levied, however, after substitution of Article 36 and since the instrument in question is covered by Article 36 (iv), the stamp duty was levied at the time of renewal of the instrument in question.

18. The Hon'ble Supreme Court of India in the case of *Hindustan Lever* (supra) has held thus :

> "*22. The Court held that the thing which is made liable to stamp duty is the instrument". It is not a transaction of purchase and sale. which is struck at. it is the "instrument whereby the purchase and sale are effected which is struck at. It is the "instrument" whereby any property upon the sale thereof is legally or equitably transferred and the taxation is confined only to the instrument whereby the property is transferred. If a contract of purchase or sale or a conveyance by way of purchase and sale. can be, or is, carried out without an instrument, the case would not fall within the section and no tax can be imposed. Taxation is confined to the instrument by which the property is transferred legally and equitably transferred.*"

19. It is evident from the above referred observation that the taxation is confined to the instrument.

20. In the matter at hand, the instrument in question is an instrument whereby the lease was renewed. If the dictionary meaning of word "Extension" and "Renewal" as per Black's Law Dictionary, 9th Edition is considered and appreciated, it is evident that "extension" is 'continuation of the same contract for a specified period'. Whereas, "renewal" is 'the recreation of a legal relationship or the replacement of an old contract with a new contract, as opposed to the mere extension of a previous relationship or contract.'

21. The Hon'ble Supreme Court of India in the case of *Provash Chandra* (supra) has held as under :

> "*14. It is pertinent to note that the word used is 'extension' and not 'renewal'. To extend means to enlarge, expand, lengthen, prolong, to carry out further than its original limit. Extension, according to Black's Law Dictionary, means enlargement of the main body; addition of something smaller than that to which it is attached; to lengthen or prolong. Thus extension ordinarily implies the continued existence of something to be extended. The distinction between 'extension' and 'renewal' is chiefly that in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulated act. In other words, the word 'extension' when used in its proper and usual sense in connection with a lease means a prolongation of the lease. Construction of this stipulation in the lease in the above manner will also be consistent when the lease is taken as a whole. The purposes of the lease were not expected to last for only 10 years and as Mr A. K. Sen rightly pointed out the schedule specifically mentioned the lease as "for a stipulated period of 20 years". As these words are very clear, there is very little for the court to do about it.*"

22. The Hon'ble Supreme Court of India in the case of *State of U.P. .v. Lalji Tandon* (supra) has held as under :

> ***"13.*** *In India, a lease may be in perpetuity. Neither the Transfer of Property Act nor the general law abhors a lease in perpetuity. (Mulla on the Transfer of Property Act, 9th Edn., 1999, p. 1011.) Where a covenant for renewal exists, its exercise is, of course, a unilateral act of the lessee, and the consent of the lessor is unnecessary. (Baker v. Merckel [(1960) 1 All ER 668 : (1960) 1 QB 657 : (1960) 2 WLR 492 (CA)] , also Mulla, ibid., p. 1204.) Where the principal lease executed between the parties containing a covenant for renewal, is renewed in accordance with the said covenant, whether the renewed lease shall also contain similar clause for renewal depends on the facts and circumstances of each case, regard being had to the intention of the parties as displayed in the original covenant for renewal and the surrounding circumstances. There is a difference*

between an extension of lease in accordance with the covenant in that regard contained in the principal lease and renewal of lease, again in accordance with the covenant for renewal contained in the original lease. 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 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. Failing the execution of a fresh deed of lease, another lease for a fixed term shall not come into existence though the principal lease in spite of the expiry of the term thereof may continue by holding over for year by year or month by month, as the case may be."

23. The Hon'ble Supreme Court of India in the case of *Renuka Seal* (supra) has held as under :

*"**24**. In all those citations, it was held that the concept of renewal of lease and the concept of extension of lease are not synonymous. "To extend" means to enlarge, expand, lengthen, prolong to carry out further than its original limit. In other words, "extension" means enlargement of the main body; addition of something smaller than that to which it is attached; to lengthen or prolong. Thus, extension ordinarily implies the continued existence of something to be extended. But "renewal of lease" means creation of a new lease which creates a fresh right and obligation between the contracting parties. Thus, once a renewed lease comes within the scope of Section 107 of the Transfer of Property Act, such a lease can be made only by registered instrument.*

***32.** In our considered view, renewal of lease can be made only through a bilateral process, as renewal cannot be effected unless one exercises the option pursuant to the renewal clause and the other accepts such proposal for renewal. We very often find that the parties are also required to settle their new terms and conditions before renewal of the lease. Of course, it cannot be denied that renewal can also be made on the terms and conditions already agreed upon between the parties in the original registered lease deed. But in any event, when renewal is effected by a bilateral process on fresh terms and conditions to be settled between the parties after the expiry of the original lease period, it creates a new lease creating fresh relationship between the parties and under such circumstances it requires registration of a deed for renewal of lease.*

***33.** The extension of lease, however, can be made through an unilateral process, inasmuch as, such extension is made on the option of one of the* *parties to the lease, as the party on the other part had and/or has no option but to accept the option for renewal exercised by the said party and to extend the said lease as per the provision contained in the original registered lease deed."*

24. The Hon'ble Supreme Court of India in the case of *Samantha .vs.. State of A.P.,* reported in **(1997) 8 SCC 191** has held as under :

> *"115.The lease being a transfer of an interest in the land or a right to enjoy such property during subsistence of lease, its transfer stands prohibited. It is well-settled position of law, by a catena of decisions of this Court, that renewal of lease is in reality a fresh grant of lease, though it is called a renewal because it postulates the existence of a prior lease. It has been brought out from record that some of the respondent-companies have got transfer of mining lease in their favour from the individual lessees. This Court in Victorian Granites (P) Ltd. v. P. Rama Rao [(1996) 10 SCC 665 : JT (1996) 9 SC 303] has held that the transfer of mining leases by an individual in favour of a company is void and in effect, would defeat the object of Article 39(b) of the Constitution and would nullify the object of distributive justice of the largess of the State to accord economic justice to individuals to improve socio-economic status and to secure dignity of persons. Therefore, the transfer of lease or renewal of mining lease in favour of some of the respondents is void as it defeats the constitutional and statutory objectives."*

25. The Allahabad High Court in the case of *Gopal Swarup Chaturvedi .vs.. State of U.P.& Ors.,* reported in **(2006) SCC OnLine ALL 1157** has held as under :

> *"11. Renewal of a lease is nothing but a grant of a fresh lease. The Hon'ble Supreme Court in Delhi Development Authority v. Durga Chand Kaushish MANU/SC/0329/1973 : AIR 1973 SC 2609, has held that while considering such an issue the terms and conditions incorporated in the lease have to be examined as a*

whole and effect has to be given to each and every term incorporated therein. The Court observed that it is called a renewal simply because it postulates the existence of a period lease which generally provides for renewal as of right. In all other respects it is really a fresh lease. Renewal is merely used to enable the Government to given preference to the previous permit holders who are to be treated on a different footing from the new applicants.

12. In Gajraj Singh and others v. State Transport Appellate Tribunal and others MANU/SC/0116/1997 : AIR 1997 SC 412, the Hon'ble Supreme Court explained that renewal is a fresh grant, though it brings life to the previous lease or licence granted as per the existing appropriate provisions of the statute and though it is not a vested or accrued right, an application for renewal has to be dealt with according to the law in operation after compliance with the preconditions. There is a distinction between the right acquired or accrued and a privilege, hope and expectations to get a right. However, a right to apply for renewal and to get a favourable order would not be deemed to be a right accrued, unless some positive acts are done.

13. In Pravash Chandra Dalul and another v. Viswanath Banerjee and another MANU/SC/0422/1989 : AIR 1989 SC 1834:1990 (16) ALR 26 (Sum), the Hon'ble Supreme Court dealing with a case under the provisions of Calcutta Thika Tenancy Act, 1949, explained the distinction between extension and renewal of lease, observing that extension merely means prolongation of the lease where renewal means a new lease.

14. Similar observations that renewal is nothing but a fresh lease between the parties have been made by the Courts as is evident from the judgments in Dasarathi Kumar v.Sarat Chandra Ghose and another MANU/WB/0222/1933 : AIR 1934 Cal 135; Mahadeb Ram Kahar v. Tinkori Roy MANU/WB/0181/1954 : AIR 1954 Cal 539, and Chotey Lal v. Sheo Shankar MANU/UP/0363/1950 : AIR 1951 All 478.

15. The word 'renewed' has been used by the legislature in the provisions of section 116 of the Transfer of Property Act, 1882 and it had been interpreted by the Courts time and again as grant of fresh lease.

16. In Kai Khushro Bezonjee Capadia v. Bal Jerbal Hirjibhoi Warden AIR 1949 PC 129, the Federal Court considered the provisions of section 16 of the Transfer of Property Act, 1882 and explained the meaning of 'renewed', observing that it is nothing but a new lease drawn into existence by the bilateral act of the lessor and lessee.

17. Renewal has been given the meaning in various Dictionaries as to begin again, to repeat, to make again, to substitute new for, to acquire again, to restore, re-establish, to set up again, bring back into use or in existence, to take up again or recommence, to replace by some new or fresh thing of the same kind or a fresh supply. Thus, renewal of lease is nothing but a grant of lease for a fresh period.

18. In R.M. Mehta v. HPFM Co. Ltd. MANU/TN/0427/1975 : AIR 1976 Mad 194, the Madras High Court considered a similar issue and placed reliance upon the Dictionary meaning of the "renewal of lease" given in Ballentine's Law Dictionary 2nd Edn. wherein it has been defined as under:--

"There is a distinction between a stipulation in a lease to renew it for an additional term and one to extend it. In that stipulation, to re-new requires the making of a new lease, while stipulation to extend does not."

19. Thus, in view of the above, the inescapable conclusion that follows is that renewal of lease means grant of a fresh lease."

26. From the above referred observations made by the Hon'ble Supreme Court of India and Allahabad High Court, it is evident that the concept of renewal of lease and the concept of extension of lease are not synonyms. To extend means to enlarge, expand, lengthen, prolong, to carry out further than its original limit. In other words, 'extension' means enlargement of the main body; addition of something smaller than that to which it is attached; to lengthen or prolong. Thus extension ordinarily

implies the continued existence of something to be extended. The extension of lease can be made through unilateral process. Such extension is made on the option of one of the parties to the lease, as per the provision contained in the original registered lease deed.

27. It is further evident that renewal of lease means creation of new lease which creates a fresh right and obligation between the contracting parties. Thus, once a renewed lease comes within the scope of Section 107 of the Transfer of Property Act, such a lease can be made only by registered instrument. The renewal of lease can be made only through bilateral process, as renewal cannot be effected unless one exercises the option pursuant to the renewal clause and the other accepts such proposal for renewal. While renewing the lease the parties are at free-will to settle their new terms and conditions or can also be made on the terms and conditions already agreed upon between the parties in the original registered lease deed.

28. Having held so, the arguments made by the learned counsel for the petitioners that since the lease in question is a perpetual lease, no fresh right is created in favour of the petitioners on renewal but it can only be treated as rent renewal agreement, cannot be accepted and accordingly it is rejected.

29. In the circumstances, we have no hesitation to hold that the petition lacks any merit. Accordingly, we pass the following order:

Both the writ petitions are **dismissed**. Rule stands discharged. No order as to costs.

(RAJNISH R. VYAS, J) (ANIL S. KILOR, J)

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