

THE HIGH COURT OF MEGHALAYA

WP(C)No.380/2014

Shri. Pawan Bawri,
S/o (L) J.N. Bawri,
R/o Oxford Hills, Rilbong,
Shillong, East Khasi Hills District,
Meghalaya

:::: Petitioner

-Vs-

1. Union of India represented by the
Secretary to the Govt. of India,
Ministry of Defence, New Delhi.

2. The Director General,
Defence Estates,
Ministry of Defence, New Delhi.

3. Shillong Cantonment Board, Shillong.

4. The Chief Executive Officer,
Cantonment Board, Shillong.

:::: Respondents

WP(C)No.382/2014

Shri. Pawan Bawri,
S/o (L) J.N. Bawri,
R/o Oxford Hills, Rilbong,
Shillong, East Khasi Hills District,
Meghalaya

:::: Petitioner

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4. The Chief Executive Officer,
Cantonment Board, Shillong.

:::: Respondents

BEFORE THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioners : Mr. HS Thangkhiew, Sr. Adv
Mr. N. Mozika, Adv

For the Respondents : Mr. SP Mahanta, Sr. Adv
Ms. S. Pde, Adv for respt.No.3 & 4

Date of hearing : **08.12.2014**

Date of Judgment & Order : **08.12.2014**

JUDGMENT AND ORDER (ORAL)

These two writ petitions relating with the same subject matter between the parties are taken up for disposal at this stage as agreed to and prayed for by the learned counsel appearing for the parties.

2. Heard Mr. HS Thangkhiew, learned senior counsel assisted by Mr. N Mozika, learned counsel appearing for the petitioners and Mr. SP Mahanta, learned senior counsel assisted by Ms. S Pde, learned counsel appearing for the respondents No.3 & 4.

3. The petitioner's father (L) J.N. Bawri was the lessee in respect of a plot of land being Holding No.60 CB (Cantonment Bazar, Shillong) having an area of about 80,200 sq.ft. vide the original lease dated 28.02.1945. The said original lease was for a period of 30 (thirty) years renewable at the option of the lessee for 90 (ninety) years. It is stated that the original lease deed dated 28.02.1945 for the said plot of land having Holding No.60 CB which was renewable for 90 (ninety) years in respect of Holding No.60 CB was surrendered by the petitioner's father (L) J.N. Bawri and as the original plot was carved into two plots namely i.e. (i) Holding No.60 CB/Sy No.15/94, having an area of about 17450 sq.ft. and (ii) Holding No.60 A CB/Sy No.15/95, having an area of about 62,750 sq.ft. in place of the original lease deed dated 28.02.1945, two separate lease deeds having the same date i.e. dated 07.02.1969 were executed between Shri. J.N. Bawri and the Cantonment authorities for the said two Holdings for the remaining period of the original lease i.e. original lease for 30 years was due to expire

on 13.02.1975. Copies of the new lease deeds dated 07.02.1969 are available at Annexure-1 & 2 respectively to the writ petition i.e. WP(C)No.380/2014. The said two new leases deed dated 07.02.1969 are started with the wordings *“Building lease for the terms of thirty years renewable at option of lessee up to ninety years. Two fresh lease in lieu of the original lease dated 28th February, 1945 was for 30 years with effect from 14th February 1945 in Scheduled VIII C.L.A. R 1937 which was surrendered by the lessee Shri. J.N. Bawri vide surrender deed registered in Book No.1, Vol. No.5, pages 136 to 137, being No.189 of 1968”*. It is nobody’s dispute that one of the terms and conditions of the new leases deed dated 07.02.1969 was clearly mentioned in Para III of the said new leases deed that *“PROVIDED ALSO that the Lessor will at the request and cost of the lessee at the end of the term of years hereby granted and so on from time to time thereafter at the end of each such successive further term of years as shall be granted execute to the lessee a new lease of the premises hereby demised by way of renewal for the term of thirty years but such renewed term of years/exceed in the aggregate the period of ninety years and such renewed leases shall be granted only at such rents within a percentage of enhancement of fifty per cent of the rent which shall have been reserved by the lease (either original or renewal immediately preceding the renewed lease) to be for as to the amount of the rent to be thereby reserved and as to the term to be thereby granted every renewed lease of the said premises hereby granted every renewed lease of the said premises hereby demised shall contain such of the covenants provisions and conditions in theses presents contained as shall be applicable.”*

4. It is admitted case of the parties that the term of the lease deed is renewable for the terms of 30 (thirty) years at option of lessee. Subsequently, upon the option of renewal having been exercised by the

lessee i.e. petitioner's father J.N. Bawri, the said lease in respect of Holding No.60 CB S/y No.15/94 was renewed by the respondents vide registered Deed of Indenture dated 02.07.1977 for a period of 30 (thirty) years w.e.f. 14.02.1975. Similarly, upon the option of renewal having been exercised by the lessee i.e. petitioner's father Shri. J.N. Bawri, the said lease in respect of Holding No.60A CB/Sy No.15/95 was also renewed by the respondents vide registered Deed of Indenture dated 02.07.1977 for a period of thirty years w.e.f. 14.02.1975. The petitioner's father Shri. J.N. Bawri, died on 18.01.2012. Before the death of his father i.e. lessee J.N. Bawri, there was a family settlement among the members of the family of Shri. J.N. Bawri; and under that family settlement, the aforesaid plots of lands i.e. Holding No.60 CB/Sy No.15/94 and Holding No.60A CB/Sy No.15/95 came to the share of J.N. Bawri i.e. petitioner's father. After the death of the petitioner's father, interest of his father i.e. J.N. Bawri in respect of the said Holdings, had come to the share of the petitioner under the family settlement.

5. During the lifetime of his father i.e. lessee J.N. Bawri, in the year 1993, his father submitted a building plan to the Cantonment authorities for constructing a residential-cum-commercial building in Holding No.60A CB on 15.12.1993. As there was no decision from the side of the Cantonment authorities regarding the said building plan submitted by the petitioner's father, the petitioner's father under his letter dated 27.05.1994, informed the respondents i.e. Cantonment authorities that since no action was taken within the statutory period under Section 181 of the Cantonment Act, 1924, the building plan shall deem to have been sanctioned by the Cantonment authorities. Thereafter Shri. J.N. Bawri started construction work in the accordance with the building plan and completed the construction. After, completing the aforesaid construction, the Cantonment authorities issued taxation bill on 26.09.2001 demanding an amount of Rs.5,56,812/-. It is the

case of the petitioner that since the building plan submitted by the petitioner's father, shall deem to have been sanctioned by the Cantonment authorities under Section 181 of the Cantonment Act, 1924, the said taxation bill demanding an amount of Rs.5,56,812/- is illegal. It is stated that Shri. J.N. Bawri also filed a civil suit being T.S. No.34 (H) 2002 in the Court of Munsiff, Shillong and the said suit is pending for disposal. While the said suit is pending, the Cantonment authorities issued order dated 28.01.2014 wherein and where-under, it is stated that Shri. Pawan Bawri had already paid rupees Five lakhs in the month of June, 2013 as part payment of taxes and vide his letter dated 28.06.2013, he is willing to pay the arrears of taxes in six installments provided the interest is calculated as simple interest and requested to issue the bills to him and also that a legal opinion was sought as regards to the demand of taxes from the Cantonment Board, legal adviser and vide his letter dated 09.07.2013 opined that Cantonment Board can go ahead and demand taxes. The Revenue section had calculated the demand of taxes in respect of 60A CB which works out to Rs.55,73,635/- (Rupees fifty five lakhs seventy three thousand six hundred thirty five) only and also that the Cantonment Board approved the mutation of lease hold rights of H. No.60 CB, Sy.No.15/94 and 60A CB, Sy.No.15/95 in the name of petitioner Shri. Pawan Bawri from that of (L) J.N. Bawri, subject to the payment of demand bills. The writ petitioner is assailing the said resolution of the Cantonment Board dated 28.01.2014 in WP(C)No.380/2014.

6. It is the submission of Mr. HS Thangkhiew, learned senior counsel appearing for the petitioners that the petitioners is now ready to pay the taxes amounting to Rs.55,73,635/- (Rupees fifty five lakhs seventy three thousand six hundred thirty five) only as per the said resolution dated 28.01.2014 in three installments if mutation of the lease hold rights of Holding No.60 CB, Sy. No.15/94 and Holding No.60A, Sy. No.15/95 in the name of

the petitioner from that of (L) J.N. Bawri is allowed/approved. Mr. SP Mahanta, learned senior counsel appearing for the respondents No.3 & 4 submits that if the petitioner is ready to pay the said taxes mentioned in the said resolution dated 28.01.2014, the mutation of the said lease hold rights Holding No.60 CB, Sy. No.15/94 and Holding No.60A, Sy. No.15/95 could be made. Accordingly, as agreed to by the parties, mutation of the said lease hold rights of Holding No.60 CB, Sy. No.15/94 and Holding No.60A, Sy. No.15/95 in the name of the petitioner from that of (L) J.N. Bawri, shall be effected/approved by the respondents subject to the payment of Rs. 55,73,635/- (Rupees fifty five lakhs seventy three thousand six hundred thirty five) only in three installments; and writ petition i.e. WP(C)No.380/2014 disposed of accordingly.

WP(C)No.382/2014:

7. It is stated that in terms of the renewable clause of the two lease deeds mentioned above, the petitioners had applied to the Cantonment authorities for renewal of the leases on 26.02.2005 and as there was no decision of the Cantonment authorities regarding the renewal of leases, the petitioner's father again sent several reminders dated 08.06.2007 and 29.09.2009. As the interest of the petitioner's father i.e. lessee in respect of the said Holdings had come to the petitioner because of the family settlement mentioned in the aforesaid paras, the petitioner again applied for the mutation of his name in the said two Holdings. In the aforesaid paras as agreed to by the parties, the Court had already made a direction that mutation shall be approved/effected by the respondents subject to the payment of taxes demanded by the Cantonment authorities under the said resolution dated 28.01.2014.

8. Learned senior counsel appearing for the petitioners also drawn the attention of this Court to the several instructions issued by the Principal Director, DE, Ministry of Defence for monitoring of expired leases, renewable or non-renewable. Some of the instructions of the Govt. of India, Ministry of Defence are available at Annexure-13 dated 25.06.2007 and Annexure-14 dated 12.09.2007 respectively. For easy reference, the said two instructions dated 25.06.2007 and 12.09.2007 are quoted hereunder:-

*“TIME BOUND/BY FAX
No.732/A/3/L/DE/2007
Govt. of India, Min. of Defence,
Dte.General of Defence Estates
Raksha Sampada Bhawan
Palam Road, Delhi Cantt-110010
Dated 25 June, 2007.*

To,

*The Principal Director, DE,
Ministry of Defence,
Southern/Northern/Eastern/Western/
Central Command, Pune/Jammu/Kolkata
Chandigarh/Lucknow.*

*Subject: REGARDING CALENDAR FOR MONITORING
OF EXPIRED LEASES: RENEWABLE AND NON
RENEWABLE.*

Reference: DGDE letter of even no. dt.18.06.2007.

2. With reference to letter under reference it is necessary that a Time Bound programme is chalked out for completing the exercise for renewal of leases where renewal sanction is to be accorded by the PDDE/Cantonment Board. While all attempts should be made to complete the exercise at the earliest, however, the same should in any case be completed in 6 months. Special monitoring of the renewals should be done both at the CB/DEO level and in the concerned Directorates to ensure compliance.

3. Regarding leases where renewal is to be carried out under orders of the MoD/DGDE, in the first instance, kindly furnish all necessary details under which proposals have been initiated seeking orders of the competent authority. In respect of cases where the proposals are yet to be initiated, it may be ensured that the exercise is completed within the next 3 months. Cases where a policy decision is required e.g. Cantt. Code leases, we have taken up the matter with MoD for issue of necessary

policy guidelines which will be intimated as soon as they are finalized.

4. But the important thing is to ensure that all leases expiring in the next six months are immediately identified and necessary action taken for their renewal well in time so that defence land is not allowed to be occupied without due authority and payment of appropriate rent/premium. For this purpose it is proposed that a rolling calendar may be adopted by each Cantonment Board/DEO identifying all such leases expiring within the next 6 months, fixing the time frame for completing the actions required to be taken for their renewal immediately on expiry of the leases. In respect of leases to be sanctioned under orders of the DGDE/PDDE/Cantonment Boards the following calendar may be adopted:

CALENDAR FOR RENEWAL OF LEASES

| | | |
|----|--------------------------|--|
| 1. | 6 months before expiry | Identification of leases and leases be asked for their willingness to renew the leases |
| 2. | 5 months before expiry | Proposals initiated to the PDDE/DGDE for orders |
| 3. | 2 months before expiry | Sanctions accorded |
| 4. | Within 1 month of expiry | Execution of lease agreements |

5. The above calendar should be a rolling calendar reflecting the position of every ensuing 6 months' spell so that all leases are renewed in time. Cases where there are problems like ongoing litigation, non-availability of leases, etc. etc, special efforts be made in such cases to overcome the problems. If necessary, such cases may be referred to the higher authorities for advice/directions well in time. Similarly cases of breach of lease terms have to indentified separately and cases initiated for condonation/regularization of the breach or determination if warranted, well in time so that all action can be completed in the time frame given above.

6. Leases which do not have a renewal clause would require orders of the Ministry of Defence either for continuation of the lease or for determination of the lease and taking back the leased land. Some of these cases may require prior Cabinet approval as per the PMO's instructions. These cases involving grant of fresh leases, would therefore have to be identified separately, so that orders of the Govt. for grant of fresh leases can be obtained before the leases expire. Proposals in such cases should be initiated at least a year before the expiry.

7. To ensure that the leases are renewed in time, a suitable proforma, working as well as monitoring, may be devised at the Directorate under intimation to this Dte. General. The monitoring of leases should be an essential part of the inspection of the concerned Inspecting Officers. A monthly report separately in respect of cases of leases that are expired and those that are due to expire giving the status of their renewal and action taken as per the above calendar may be furnished to this Directorate General by the 10th of each month by FAX.

8. The performance of the field officers in this matter should be one of the criteria in evaluating their overall performance.

Sd/-
(Sh. O.P. Mishra)
Addl. Director General,
Defence Estates

TIME BOUND/PAC MATTER
No.723/A/3/L/DE/2007
Dte. General Defence Estates
Govt. of India, Ministry of Defence,
Raksha Sampada Bhawan
Palam Road, Delhi Cantt-110010
Dated 12 Sep 2007.

To,

The Principal Director, DE,
Ministry of Defence,
Western/Eastern/Central/Northern/Southern
Command, Chandigarh/Kolkata/Lucknow/Jammu/
Pune

Subject: Renewal of expired leases.

Reference: DGDE letter of even no. dt.25.06.2007.

2. Instructions were issued vide letter under reference for carrying out a time bound exercise for the renewal of expired leases. From the data of expired leases received with reference to the Audit Para under examination by the PAC it would appear that necessary cognizance has not been taken of the above instructions as no feed back in the form of monthly reports has been received about the progress achieved.

3. Guidelines have already been issued to expedite renewal of the leases. While reiterating the said guidelines and instructions for renewal of leases, the necessity for taking all necessary and practical steps for the same is again emphasized. The attempt should be to ensure that minor breaches of the lease terms or such lacunae do not stand in the way of the renewal of the lease wherever options have been exercised according to the terms of the lease. However, it has to be kept in mind that liabilities on the existing lessees on account of any statutory or administrative orders being violated would continue to be operative even after renewal of the lease. These too, should therefore not be allowed to become an obstacle for renewal. If the circumstances so require, a specific mention may be made while according the sanction for renewal about continuation of such liabilities and that the mutations/breaches would not be deemed to have been condoned on account of such sanction for renewal.

4. The following actions may please be taken and be personally supervised by the PDDEs:-

i) All leases in Sch. VII of CLAR 1937 and Sch. VI of CLAR 1925 which are pending for renewal be taken up immediately

for finalization. For this purpose the PDDEs may visit the DEOs/Cantonment Boards where large number of cases are pending to facilitate early completion of the task. In the case of remaining Cantonment Boards/DEOs, they may be directed to report to the Directorate with all necessary documents so that the exercise can be completed. The above exercise may be completed within 3 months and a fortnightly report furnished to this Directorate General, Cantonment wise and DEO wise indicating details of leases which are expired and those in which renewal sanctions have been accorded and the present stage of implementation of the sanctions. It may be ensured that the reports are received in the Dte. General within 2 days of each fortnight without fail.

ii) A similar review of agricultural leases and leases of a commercial type like Petrol outlets, Cinemas, Banks, etc. should also be carried out and necessary proposals for further continuance wherever warranted be forwarded within one month.

iii) Instructions had been issued that inspection of the Offices of the Cantonment Boards and the DEOs should be carried out regularly. Monitoring of renewal of leases is one of the items in the inspection proforma of each of the officers. Progress achieved in renewal of leases vis-à-vis the last inspection may be examined and a report in this regard may be furnished within a week in respect of each office.

iv) It may also be brought to the notice of all concerned that the performance of the individual officers, including the supervisory officers at the Command level, relating to clearance of the pending renewal of leases cases would be specifically mentioned in the annual confidential reports. For this purpose, necessary targets may be fixed starting from the current year.

Sd/-
(Sh. O.P. Mishra)
Addl. Director General
for Director General
Defence Estates"

9. Learned senior counsel Mr. SP Mahanta appearing for the respondents No.3 & 4 is not denying the said instructions. The calendar for renewal of leases are mentioned in the said instruction dated 25.06.2007, under that calendar, sanctions for renewal should be completed within two months before expiry. Mr. SP Mahanta, learned senior counsel appearing for the respondents No.3 & 4 contended that the renewal of leases will be only

after the mutation. As stated above, the Court had already made a direction that mutation in the name of the petitioner in Holding No.60 CB, Sy. No.15/94 and Holding No.60A, Sy. No.15/95, shall be subject to the payment of the outstanding tax i.e. 55,73,635/- (Rupees fifty five lakhs seventy three thousand six hundred thirty five) only. This Court is not oblivious of the limited jurisdiction in the matter of leases between the parties and the leases between the parties are to be settled among the parties. But in the present case, the Cantonment authorities, as per the calendar for renewal of leases mentioned in the said instruction dated 25.06.2007 has not decided the question if sanction is to be granted for renewal of the leases in the present case within the period mentioned in the instruction. Mr. SP Mahanta, learned senior counsel for the respondents No.3 & 4 submits at the Bar that for sanctions to the renewal of the leases, necessary permission should be obtained from the Ministry of Defence, Govt. of India and for obtaining the permission, it will take some months. Accordingly, in these factual backdrop, the respondents are directed to take necessary instructions/permission preferably within a period of 6 (six) months for renewal of the leases, if necessary.

10. With the above observations and directions, these writ petitions are allowed.

JUDGE

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