



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9215 OF 2016

The Brihan Mumbai Electric Supply &
Transport Undertaking

...Petitioner

V/s.

1.Life Insurance Corporation of India
2. The Estate Officer

...Respondents

Mr. Pralhad Paranjape with *Ms. Megha Vijan & Ms. Shweta More i/b. M/s. M.V. Kini & Co. for the Petitioner.*

Mr. Darryl Pereira with *Ms. Beverly Fernandes for Respondent No.1.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 5 OCTOBER 2026.

Judgment pronounced on: 21 OCTOBER 2026.

JUDGMENT:

1) The Petition is filed by Brihan Mumbai Electric Supply & Transport Undertaking (**BEST**) challenging judgment and order dated 20 June 2016 passed by the learned Principal Judge, City Civil Court, Mumbai, dismissing Appeal No.43 of 2015 filed by it and confirming the Order dated 31 July 2015 passed by the Estate Officer directing eviction of the Petitioner in respect of the land in question with further direction for payment of damages in respect of unauthorised occupation of the land.

2) In the development plan for city of Mumbai, some plots of land of the Respondent- Life Insurance Corporation (**LIC**) were reserved for BEST depots. For lifting of reservation on one of the reserved plots, LIC offered to grant lease of plot admeasuring 412 sq.mtrs on Survey No.102(part), CTS No.1339(part) and 1340(Part) of Village- Eksar, Borivali, Mumbai-400 103 to the Petitioner-BEST on payment of nominal rent. Accordingly, a lease deed was executed in favour of the Petitioner-BEST on 12 December 1989 in respect of the land in question for a period of 30 years commencing from 24 November 1977 for construction of a bus station. The lease entitled the Petitioner-BEST to seek renewal of lease for further period of 30 years on same conditions. The lease expired on 23 November 2007. Before expiry of the lease, the Petitioner applied for renewal thereof. However, by notice dated 21 September 2013, LIC terminated the lease and called upon the Petitioner to quit possession of the leased land. Since the Petitioner failed to handover possession of the leased land, the LIC initiated proceedings for eviction of the Petitioner under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (**PP Act**). The Estate Officer of LIC passed order dated 31 July 2015 directing eviction of the Petitioner under Section 5(1) of the PP Act with further directions for recovery of damages with interest under Section 7 of the PP Act. Accordingly, the Petitioner is directed to pay to the Respondent damages of Rs.1,26,597/- for the period from 1 December 2013 onwards. Aggrieved by order dated 31 July 2015 the Petitioner filed Appeal No.43 of 2015 before the City Civil Court. During pendency of the Appeal, the Petitioner returned possession of the land in favour of LIC on 20 July 2016 after ad-interim relief granted by the City Civil Court was not continued. City Civil Court has dismissed the Appeal of the

Petitioner by judgment dated 20 June 2016, which is the subject matter of challenge in the present Petition.

3) I have heard Mr. Paranjape, the learned counsel appearing for the Petitioner, who submits that City Civil Court has grossly erred in dismissing Petitioner's appeal in ignorance of its entitlement for lease for a period of 30+30 =60 years. He submits that the lease was executed in favour of the Petitioner in exchange of deletion of reservation in respect of some other land, which the Petitioner would have otherwise received on ownership basis. That therefore, this is not a simple case of a lease for a fixed tenure. That the Petitioner was required to pay lease rent of only Rs.1 per year recognising its right in respect of the reserved piece of land which is utilised and monetised by LIC. That termination of lease by the LIC is *ex facie* illegal and arbitrary. That the Petitioner cannot be treated as an unauthorised occupant, who has duly served notice for renewal of the lease. He relies on judgment of the Apex Court in *State of UP and Others V/s. Lalji Tandon (DEAD) through LRS.*¹ in support of his contention that it was obligatory on the part of the LIC to renew the lease. He submits that the Petitioner wants to utilise the land for the purpose of setting up an electric charging station for its buses. He submits that the Petitioner cannot be made to pay damages as determined by the Estate Officer. He prays for setting aside the impugned orders passed by the City Civil Court and by the Estate Officer.

4) *Per contra*, Mr. Pereira, the learned counsel appearing for the LIC opposes the Petition submitting that there was no right created in favour of the Petitioner-BEST to seek renewal of lease. That the lease has

1 (2004) 1 SCC 1

expired on 23 November 2007 and the same has been validly terminated on 21 September 2013. That the Petitioner-BEST became unauthorised occupant in respect of the land after termination of the lease. In support of his contention that there can be no automatic renewal of lease, he relies on judgments of the Apex Court in *Hardesh Ores (P) Ltd. Vs. Hede and Company*² and *Bharat Petroleum Corporation Ltd. Vs. Rama Chandrashekhar Vaidya and Anr.*³. He submits that the Petitioner did not use the leased land for over 35 years and has ultimately surrendered possession of the land. That the Petitioner has shown willingness to surrender the land by letter dated 13 April 2012. That the land is required to the Respondent for housing requirement of its own staff. He prays for dismissal of the Petition.

5) Rival contentions urged on behalf of the parties now fall for my consideration.

6) The Petitioner is aggrieved by dismissal of its appeal by the City Civil Court thereby confirming the order for eviction and for payment of damage rent passed by the Estate Officer on 31 July 2015. The transaction of lease between the parties was executed as an exchange arrangement under which the Plaintiff gave up its right in respect of the reserved plot of land and instead accepted lease on nominal rent of Rs.1/- per year for a period of 30 years in respect of the land admeasuring 412 sq.mtrs at Village-Eksar, Borivali. The land was leased for a tenure of 30 years by LIC almost free of cost since LIC secured deletion of reservation in respect of another plot, which has been utilised for construction of staff quarters. Towards further recognition of Petitioner's

2 (2007) 5 SCC 614

3 2014(4) Mh.L.J. 69

right to occupy the leased land, LIC agreed for a stipulation where BEST could have sought renewal of lease on expiry of 30 years on same terms and condition. The relevant renewal clause in the Lease Deed reads thus:

1. If the Lessee shall be desirous of having the Lease hereby granted renewed for a further terms of 30 years the Lessee shall at least three months before the expiration of the terms hereby granted give to the Lessor in writing a notice of its intimation to take such renewed lease and the Lessor shall upon receiving the such notice and if there shall not at the time of such request by any existing breach, non-performance or non-observance of any of the covenants on the part of the Lessee and conditions herein contained grant to the Lessee a fresh lease of the demised land for a further term of 30 years from the expiration of the term hereby granted on the same terms and conditions as are contained herein.

7) After the first tenure of lease expired on 23 November 2007, the Petitioner applied for renewal of lease by letter dated 13 April 2007. The Respondent did not respond to the renewal letter. It is only on 28 August 2013 that the LIC refused to accept request for renewal of lease in respect of the concerned land. There was similar request in respect of another piece of land which was accepted by the LIC and lease in respect of another land was renewed on fresh conditions of lease for a period of 10 years. The Petitioner accordingly accepted renewed lease in respect of another plot. Letter dated 28 March 2013 would indicate that the Petitioner did not have any right *per se* to secure lease in respect of 30 years and renewal of lease was subject to conditions as well as corresponding action on the part of the LIC.

8) The main reason why LIC did not renew the lease in respect of the concerned land is failure on the part of the BEST to utilise the same. The Petitioner admittedly did not construct bus depot in the concerned land and retained mere vacant possession thereof for 30 long years. Since there was no progress in use of the land for operation of its depot, the

LIC sought return of the possession of the leased land by letter dated 28 March 2013. It appears that the Petitioner was also not interested in renewal of lease in respect of the land in question. It submitted a composite letter dated 13 April 2012 in respect of the two lands. The BEST sought renewal of lease in respect of another land for 30 years but showed willingness to handover the plot admeasuring 412 sq.mtrs, which was lying vacant at Vallabh Nagar at Borivali. Relevant part of the Petitioner's letter reads thus:-

Under the circumstances, I request your authority to reconsider our request and convey your consent to renew the lease for further period of 30 years on the same terms and conditions as agreed by the Undertaking under letter dated 24.10.2008. In the meantime proposal for surrendering the plot measuring 412 sqm which is presently lying vacant at Vallabh Nagar to the LIC Authority is being processed for approval of our Competent Authority i.e. BEST Committee

9) Thus, it appears that the Petitioner did not need the plot. It kept the same vacant for over 35 years without utilising the same and showed willingness to return the same to LIC. In that view of the matter, action of the LIC in terminating the lease and branding the Petitioner as unauthorised occupant in respect of the plot does not suffer from any serious flaw. The Principal Judge, City Civil Court has rightly dismissed the Appeal filed by the Petitioner *qua* the eviction aspect.

10) Mr. Paranjape has strenuously contended that the Petitioner had right to have the lease renewed in terms of the contractual stipulations. However, in the subsequent letter issued in the year 2012, the Petitioner emphatically showed willingness to return the land. Thus, the Petitioner itself was not interested in renewal of the lease. Therefore, reliance by Mr. Paranjape on judgment of the Apex Court in ***State of UP and Others V/s. Lalji Tandon*** (supra) is not of much relevance. On the other hand,

reliance by Mr. Pareira on judgment of the Apex Court in ***Hardesh Ores (P) Ltd*** (Supra) is relevant in which it is held that there cannot be automatic renewal of lease and renewal of lease requires execution of some documents by the lessor. In the present case, lease has not been renewed by the Respondent-LIC and in that sense the Petitioner has rightly been directed to be evicted.

11) There is yet another reason why this Court is not inclined to grant any relief *qua* eviction aspect in favour of the Petitioner. The Petitioner's initial tenure of lease was upto 23 November 2007. If it was to succeed in securing further lease for another tenure of 30 years, the same would have expired on 22 November 2037. By now, period of 19 years out of second tenure of lease has already expired. Even if Petitioner's right of renewal of lease is to be theoretically accepted, it would get to use the land for only 11 more years. Whether it would be expedient for Petitioner to incur expenses on setting up charging facility when the land can be used for only 11 years is highly debatable.

12) As observed above, the Petitioner has returned the possession of the land on 27 October 2016 and by now, period of 10 years has already elapsed. Though the Petitioner has remained in possession of the land for 9 long years after expiry of the lease, it did not utilise the land for any purpose. Mr. Paranjape submitted that the plot is needed by the Petitioner for erecting electric charging station. However, considering the fact that the tenure of only about 11 years is left even in respect of renewed period of lease, it is highly questionable as to whether the Petitioner would be interested in spending on infrastructure for setting up electric charging station. Therefore, it would not be in the interest of the Petitioner to insist on getting back the plot of land.

13) Coming to the aspect of damage rent, it appears that the Estate officer has directed payment of damage rent of Rs. 1,26,597/- per month. The amount of damage rent assessed for the period from 1 December 2013 to 31 July 2015 alongwith interest is Rs. 27,31,330.28. Considering the unique facts and circumstances of the present case, where LIC had executed lease in favour of the Petitioner upon securing ownership in respect of another reserved piece of land, in my view, order of the Estate Officer directing payment of damage rent of Rs.1,26,597/- deserves to be set aside. It is well-known fact that Petitioner-BEST is suffering from severe financial crisis. It cannot be saddled with liability to pay damage rent even though it was not able to put the land for any use. It would otherwise be unjust enrichment for LIC to earn out of the land, which it had agreed to lease out to the BEST for 30+30 years on nominal rent of Rupee 1/-. It is contended by Mr. Paranjape that the land was triangular in shape and was unfit for operation of a bus depot. The Petitioner thus has not secured any benefit out of retention of possession of plot in question. It would therefore be appropriate to relive the Petitioner of burden to pay damage rent to LIC.

14) In view of the above discussion, the eviction of the Petitioner deserves to be upheld. However the direction for payment of damage rent and interest in the order dated 31 July 2015 deserves to be set aside. Thus, limited relief deserves to be granted in favour of the Petitioner-BEST. The Petition succeeds in part and I proceed to pass the following order:

- (i) Judgment dated 20 June 2016 passed by the City Civil Court in Appeal No.43 of 2015 and order of the Estate

Officer are partly set aside to the limited extent of direction of payment of damage rent and interest.

- (ii) While maintaining the Orders *qua* the aspect of eviction, the order directing payment of damage rent or interest by the Petitioner-BEST is set aside and it is directed that the Petitioner-BEST shall not be liable to pay any damage rent or interest to the LIC.

15) With the above directions, the Writ Petition is partly allowed and **disposed of**. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]