

(A.F.R)**HIGH COURT OF MADHYA PRADESH**
BENCH AT INDORE**Writ Petition No.22644 of 2017****Rakesh Jain**
Vs.
State of M.P., and others**Writ Petition No.22645 of 2017****Bahadur Singh**
Vs.
Kisan Kalyan & Krishi Vikas and others**&****Writ Petition No.22948 of 2017****Lokesh**
Vs.
Krishi Upaj Mandi Samiti and others

Shri A.S.Garg, Sr. Advocate and Shri A.S.Kutumbale, Sr. Advocate assisted by Shri Jitendra Verma Advocate for the petitioners in W.P.Nos.22644/17 & 22645/17.

Shri Vaibhav Jain, Advocate for the petitioner in W.P.No.22948/2017

Shri A.K.Sethi, Sr. Advocate assisted by Shri Kamal Nayan Airen, Advocate for the respondents No.2 to 4 in W.P.No.22644/2017 & other than State of M.P. In other two writ petitions

Ms. Sadhana Pathak, Government Advocate for the respondent / State in all the writ petitions.

WHETHER APPROVED FOR REPORTING;YES

Law laid down:

(I) Holding over and tenant at sufferance:

'Lease of immovable property' as defined under section 105 of the Transfer of Property Act, 1882 (for short, 'the Act of 1982) is a transfer of right to enjoy such property for certain time, express, implied or in perpetuity, in consideration of a price paid or promised or of money as the case may be entitling a lessee, a right to remain in possession and enjoyment to the exclusion of the possession and enjoyment of the lessor.

Section 111(a) provides for duration of lease of immovable property by efflux of time limited thereby.

However, section 116; Effect of holding over contemplates; If a lessee remains in possession after duration/determination of the lease and the lessor accepts the rent from the lessee or under-lessee or otherwise assents to his continuing in

possession, the lease, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased was granted.

After expiration/determination of the terms of lease, if the tenant remains in possession without consent of the lessor, he is a tenant at sufferance and is liable for eviction. However, if the tenant continues to be in possession with the consent of the lessor, he is a tenant holding over. Such consent should be defined suggesting that there is an offer of taking new lease evidenced by lessee remaining in possession of the property after his term was over and on other side, a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise. Of course, subject to the agreement to the contrary, i.e., agreement which settles the terms of the holding over.

In other words, if the lease agreement bears a clause for fixation of term of lease with renewal clause, there is no automatic renewal of the lease, instead is subject to the positive act for renewal in terms of the renewal clause.

(II) Madhya Pradesh Krishi Upaj Mandi (Allotment of Land and Structures of Market Committee/Board) Rules, 2009 provided for allotment of structure on 'licence', however, under rule 20 (1)(ii), the assignment of operation of certain facilities like canteen amongst others are exempted from purview of Rules and subject to the authority of the Managing Director. Hence, the discretion of the lessor is regulated by the circular/authority of the Managing Director dated 15/09/2010 (Annexure P/20) issued thereunder attracting the concept of equality and fairness under Article 14 and Article 19(1)(g) of the Constitution of India in the matter of renewal.

Significant paragraphs: 1 to 14

Reserved on: 28/03/2019

ORDER
(23/04/2019)

Rohit Arya, J.,

Regard being had to the similitude of the controversy involved in the W.P.Nos.22644, 22645 & 22948 of 2017, they

have been heard analogously and disposed of by this singular order.

For the sake of convenience, facts in Writ Petition No.22644 of 2017 have been dealt with.

Pursuant to the notice inviting tender dated 29/03/2006 (Annexure P/2) by respondent No.3, Krishi Upaj Mandi Samiti, Indore for allotment of shop to run canteen situated in their premises, petitioner had also participated and submitted his bid. The bid was accepted vide letter dated 15/06/2006 (Annexure P/3) as he was the highest bidder. A lease deed was executed on 08/01/2007 (Annexure P/4). Clause 9 provides for renewal thereof and the same is quoted below:

09. यह कि, किरायेदारी की अवधि आधिपत्य की दिनांक से तीन वर्ष के लिये रहेगी, जिसमें वृद्धि परिवर्तित परिस्थितियों के अनुसार किराये की दर का पुनर्विलोकन करते हुए प्रचलित शर्तानुसार कृषि उपज मंडी समिति आवंटन नियम 2005 अनुसार किया जा सकेगा।

As per terms and conditions thereof, initially the lease deed was executed for a period of three years.

It was further extended by respondent No.3 for one year vide letter dated 06/10/2009. Petitioner before expiry of lease period had applied for renewal of the lease deed. However, respondent No.3 vide letter dated 02/06/2010 (Annexure P/5) without consideration passed an order calling upon the petitioner to handover vacant possession of the canteen to respondent No.3 after expiry of extended period, i.e., from 01/07/2009 to 30/06/2010, on 10% increase of annual lease rent.

Against order dated 02/06/2010, the petitioner had preferred W.P.No.7346/2010 and a Division Bench of this Court while disposing of it on 09/06/2010 with protection against dispossession relegated the petitioner to prosecute the appeal already filed before the Managing Director. The relevant portion of the order reads as under:

“Having heard learned counsel for the petitioner and having regard to the fact that the petitioner has already approached to the Managing Director by filing an appeal we deem it proper to dispose of this petition directing the first respondent Managing Director, M.P. Marketing Board, Bhopal to consider and decide the petitioner's appeal on merits on or before 09/07/2010.

Till the petitioner's appeal is decided by the first respondent, the second respondent shall not take possession of the canteen in question from the petitioner in pursuance to the letter dated

02/06/2010 (Annexure P/7) and shall not create any third party rights on the canteen in question.”

The appellate authority vide order dated 09/07/2010 (Annexure P/10) in turn remanded the matter back to the respondent No.3 for consideration of the application for renewal of the lease deed in accordance with law.

The respondent No.3 upon reconsideration has dismissed the application on 03/08/2010 (Annexure P/11).

Thereafter, the petitioner preferred an appeal under section 19 of the M.P.Krishi Upaj Mandi (Allotment of Land and Structure) Rules, 2010 before the Managing Director.

The appeal was dismissed on 05/10/2015 (Annexure P/21) relying upon clause (14) of the letter/circular of the Managing Director dated 26/12/2008. For ready reference clause (14) is quoted below:

“(14) किसी भी प्रकार के विवाद को निपटाने का अधिकार मण्डी समिति को रहेगा जो ठेकेदार पर बंधनकारी होंगे।

The appellate authority was of the view that under the aforesaid letter/circular of the authority, the Krishi Upaj Mandi Samiti was the sole authority to deal with and decide the cases for renewal of lease. Hence, the order dated 03/08/2010 refusing to renew the lease did not merit consideration. Consequently, appeal was dismissed.

Thereafter, the petitioner approached this Court by filing W.P.No.7570/2015 and the same was disposed of by a coordinate Bench alongwith bunch of writ petitions lead case being W.P.No.7374/2015 (Lokesh s/o Omprakash Patel Vs. Krishi Upaj Mandi samaiti, Indore and others) decided on 21/2/2017 relegating the petitioners therein to avail the alternate remedy of revision under section 59 of the Act before the State government. Thereafter, the State Government has dismissed the revision petition by the impugned order dated 17/07/2017.

The petitioner has challenged legality, validity and propriety of the orders dated 17/07/2017 passed by the respondent No.1/State Government (Annexure P/1), order dated 05/10/2015 (Annexure P/21) passed by respondent No.2 and order dated 03/08/10 (Annexure P/11) passed by the respondent No.3.

2. It appears that the Managing Director, Krishi Upaj Mandi Samiti, in exercise of the powers under rule 20(1)(ii) of the Madhya Pradesh Krishi Upaj Mandi (Allotment of land and structures) Rules 2009 read with rule 3(2) of the Rules of 2009, has issued a letter/authority on 15/09/2010 (Annexure P/20). Relevant part whereof quoted below :

“भूमि एवं संरचना आवंटन नियम, 2009 (यथा नियम 2000) के लागू होने के पश्चात् ऐसे प्रकरण समक्ष में आ रहे हैं जिनमें पूर्व के नियमों में मण्डी प्रांगण में भूमि/संरचना आवंटन के लिये किए गए अनुबंध अनुसार कार्यवाही न करते हुए अनुबंधों को निरस्त कर नये नियमों में आवंटन की कार्यवाही के विज्ञापन जारी किए गए हैं। वर्ष 2009 में नियमों के लागू होने के उपरांत मण्डी समितियां निम्नलिखित सिद्धान्तों के अनुसार भूमि एवं संरचना आवंटन की कार्यवाही करेंगे।

3- ऐसी भूमि एवं संरचना जिका आवंटन एक निश्चित अवधि के लिये कर दिया था तथा वह अवधि समाप्त हो गई है, तो इस अवधि के नवीनीकरण की कार्यवाही पूर्व के नियमानुसार तथा पूर्व में संपादित लिखित अनुबंध के आधार पर की जाएगी। इसका आशय यह है कि लिखित अनुबंध में जो भूमि अथवा संरचना के आवंटन के समय अनुबंध निष्पादित किए गए थे, का नवीनीकरण का प्रावधान है तो उस प्रावधान के अनुसार ही आगामी कार्यवाही की जाएगी।

The respondent No.3 had allotted 32 structures (shops) to other persons alike the petitioner vide resolution dated 30/05/2006 (Annexure P/7) and their lease deeds were also executed under Madhya Pradesh Krishi Upaj Mandi (Allotment of Land and Structure of Market Committee/Board) Rules, 2005.

It further appears that on 17/06/2014, the respondent No.3 after expiry of duration resolved to renew lease of 32 structures (supra) (Annexure P/12 colly.) for 30 years purportedly with the strength of the letter/authority of the Managing Director dated 15/09/2010 (Annexure P/20) allotted by respondent No.3 in the year 2006 as aforesaid.

3. Shri A.S.Garg, learned senior contends that:

(A) (i) clause (9) of the original lease dated executed on 08/01/2007 (Annexure P/4) in favour of petitioner to run the 'canteen' provides for renewal of lease after expiry of the lease duration in accordance with Rules of 2005;

(ii) sub-rule (4) of rule 9 of 2005 Rules provides for renewal of lease may be for 30 years on conditions stipulated thereunder keeping in mind revised rates of lease rent, etc.,

(iii) the original lease was executed for the period from 01/07/2006 to 30/06/2009 and thereafter extended for a period of one year from 01/07/2009 to 30/06/2010;

(iv) though sub-rule (3) of rule 3 of Rules of 2009 provides that allotment of land or structure shall be made on 'licence' generally for a period of thirty years and not on lease;

but under rule 20; certain classes of structures are exempted from applicability of the rules. Clause (ii) of sub-rule 20(1) provides the assignments of operation of certain facilities like 'canteen' amongst others are subject to the decision of the Managing Director and the same shall be final in regard to deciding such category.

(v) therefore, in terms of clause (3) of circular/authority of the Managing Director (respondent No.2) dated 15/09/2010 (Annexure P/20) quoted above in exercise of rule 20(1)(ii) of the 2009 Rules, the lease in question deserves to be renewed under 2005 Rules as per clause (9) of the original lease agreement;

(B) the rejection of application dated 29/05/2010 vide order dated 03/08/2010 (Anexure P/11) passed by the respondent No.3 is patently illegal being in violation of the statutory circular/authority dated 15/09/2010 issued by the Managing Director;

(C) rejection of appeal by respondent No.2

by the impugned order dated 05/10/2015 (Annexure P/21) is also in ignorance and contrary to the circular/authority dated 15/09/2010;

respondent No.2 committed patent illegality having justified the order impugned on the basis of clause (14) of the letter/circular dated 26/12/2008 for more than one reasons; **(i)** the lease, after renewal has remained in existence upto 30/06/2010 which was renewed on 06/10/2009 after coming into force of 2009 Rules on 25/05/2009;

(ii) the aforesaid letter/circular dated 26/12/2008, in fact, had lost its efficacy and had no application to the lease, instead the new circular/authority of the Managing Director dated 15/09/2009 issued under clause (ii) of sub-rule (1) of rule 20 of Rules, 2009 governed the field for renewal of lease;

(D) since the petitioner continues to be in possession and regularly paying the lease rent uptill now without violating any of the terms and conditions of the lease, there is an implied consent by acquiescence on the part of respondent No.3 for continuation of lease from year to year as 'lease holding over' within the meaning of section 116 of the Transfer of Property Act, 1882.

(E) Learned senior counsel further contends that the respondent No.3 Krishi Upaj Mandi, i.e., Market Committee was created by Krishi Upaj Mandi Adhiniyam, 1972 (Act No.24 of 1973) and constituted under section 7 of the Act, it is local authority for the purpose of this Act **[State of M.P., Vs. Krishi U.M.Samiti, 1999 (1)]**

JLJ 189 (SC), relied upon]. As such, Krishi Upaj Mandi is an instrumentality of the 'State' falling within the scope of Article 12 of the Constitution of India and, therefore, amenable to writ jurisdiction under Article 226 of the Constitution of India, on a complaint about discrimination in the matter of renewal of lease in violation of Article 14 and Article 19(1)(g) of the Constitution of India. The respondent No.3 cannot apply different yardstick in the matter of non-renewal of lease of the petitioner vis-a-vis renewal of lease of 32 structures in the same market area in the year 2014 after coming into force of 2009 Rules.

With the aforesaid submissions, learned senior counsel prays for a direction to respondents for renewal of the lease of the petitioner in accordance with Rules, 2005 by virtue of circular/authority of the Managing Director dated 15/09/2009 (Annexure P/20).

4. *Per contra*, Shri A.K.Sethi, learned senior counsel for the respondents No.2 to 4 contends that after expiry of the original lease period and even the extended period of one year, i.e., on 30/06/2010, the petitioner in all fairness ought to have delivered possession of the canteen to the respondent No.3 in terms of communication made to the petitioner vide letter dated 02/06/2010 (Annexure P/). The petitioner does not have vested right, muchless; legal right to continue in possession and run the canteen *albeith* by paying rent. His status is that of a tenant in sufferance with no right to continue in possession and run the canteen. He is liable for eviction.

Under 2009 Rules, the allotment of land or structure ought to be made on 'licence' though generally for a period of thirty years but, in no case on lease.

Petitioner cannot be permitted to raise the complaint of discrimination seeking protection under Article 14 and Article 19(1)(g) of the Constitution of India in the matter of renewal of

lease of land or structure. The relationship of lessor and lessee is governed by the terms of lease. Hence, the respondent No.3 though is a local authority for the purpose of this Act but, is not amenable to writ jurisdiction for the relief of renewal of lease as claimed.

The circular/authority of the Managing Director dated 15/09/2009 (Annexure P/20) has no application to the case of the petitioner. Respondent No.3 since has decided to allot the structure/canteen in question by inviting tenders for augmentation of more revenue (rental value), the petitioner is always free to apply for tender and participate in the bidding.

With the aforesaid submissions, learned senior counsel prays for dismissal of the writ petition.

5. Heard.

6. In the backdrop of the factual matrix in hand and upon consideration of the rival contentions, the controversy involved in the case revolves around entitlement of renewal of lease of the structure/canteen in question, regard being had to the provisions contained under Rules, 2009.

7. 'Lease of immovable property' as defined under section 105 of the Transfer of Property Act, 1882 (for short, 'the Act of 1982) is a transfer of right to enjoy such property for certain time, express, implied or in perpetuity, in consideration of a price paid or promised or of money as the case may be entitling a lessee, a right to remain in possession and enjoyment to the exclusion of the possession and enjoyment of the lessor.

Section 111(a) provides for duration of lease of immovable property by efflux of time limited thereby.

However, section 116; Effect of holding over contemplates; If a lessee remains in possession after duration/determination of the lease and the lessor accepts the rent from the lessee or under-lessee or otherwise assents to his continuing in possession, the lease, ***in the absence of an agreement to the contrary***, renewed from year to year, or from month to month, according to the purpose for which the property is leased was

granted.

8. Shri Garg learned senior counsel on the one hand, submits that petitioner's enjoys the status of 'lessee' with ***lease holding over*** within the meaning of section 116 of the Act of 1882 and Shri Sethi learned senior counsel on the other hand, contends that payment of rent without consent by respondent No.3 after determination/duration of the lease period reduces the status of the petitioner as *tenant at sufferance* without any right to continue; liable for eviction under law.

Therefore, it becomes expedient to deal with the contentions so advanced to ascertain the status of the petitioner.

Distinction between 'lease holding over' and 'tenant at sufferance' is no more *res integra* as by now law is well settled.

In the case of **Kai Khushroo Bezonjee Capadia Vs. Bai Jerbai Hirjibhoy Warden and another, AIR (36) 1949 Federal Court 124**, it has been held as under:

"On the determination of a lease , it is the duty of the lessee to deliver up possession of the demised premises to the lessor. If the lessee or a sub-lessee under him continues in possession even after the determination of the lease, the landlord undoubtedly has the right to eject him forthwith; but if he does not, and there is neither assent nor dissent on his part to the continuance of occupation of such person, the latter becomes in the language of English law a tenant on sufferance who has no lawful title to the land but holds it merely through the laches of the landlord. If now the landlord accepts rent from such person or otherwise expresses assent to the continuance of his possession, a new tenancy comes into existence as is contemplated by S.116 Transfer of Property Act, and unless there is an agreement to the contrary, such tenancy would be regarded as one from year to year or from month to month in accordance with the provisions of S. 106 of the Act. As S.116 T.P.Act expressly mentions an under-lessee, defendants No.2 and 3 would obviously come within the purview of the section, and it is not disputed that they did continue in possession after the lease expired by lapse of time. If, therefore, it is established on the facts of this case that the plaintiff assented to the continuance of possession of defendants 2 and 3 in respect to the demised premises by acceptance of rent or otherwise, these defendants would certainly acquire the status of tenants under S. 116 T.P.Act."

(Emphasis supplied)

The said judgment has been followed in *catena* of cases by

the Hon'ble Supreme Court and various High Courts, viz., **Ganga Dutt Muraka Vs. Kartik Chandra Das and others, IR 1961 SC 1067, Bhawanji Lakshamshi and others Vs. Himatlal Jamnadas Dai and others, AIR 1972 SC 819, Badrilal Vs. Municipal Corporation of Indore, AIR 1973 SC 508, Shanti Prasad Devi and another Vs. Shankar Mahto and others, AIR 2005 SC 2905.**

Therefore, it can safely be concluded that after expiration/determination of the terms of lease, if the tenant remains in possession without consent of the lessor, he is a tenant at sufferance and is liable for eviction. However, if the tenant continues to be in possession with the consent of the lessor, he is a tenant holding over. Such consent should be defined suggesting that there is an offer of taking new lease evidenced by lessee remaining in possession of the property after his term was over and on other side, a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise. Of course, subject to the agreement to the contrary, i.e., **agreement which settles the terms of the holding over [(Dasarathi Kumar Vs. Sarat Chandra, AIR 1934 Calcutta 135, referred to)].**

In other words, if the lease agreement bears a clause for fixation of term of lease with renewal clause, there is no automatic renewal of the lease, instead is subject to the positive act for renewal in terms of the renewal clause.

9. In the instant case, the lease was initially for a period of three years from 01/07/2006 to 30/06/2009. It was further extended by virtue of clause (9) of the lease agreement from 01/07/2009 to 30/06/2010. Thereafter, there is no renewal of lease as well explicit from the communication dated 02/06/2009 (Annexure P/8) and 03/08/2010 (Annexure P/11).

Therefore, the continuance of the petitioner over the lease premises though on payment of lease rent but, without consent of respondent No.3, is that of a **tenant at sufferance but not a tenant holding over or tenant at will.**

10. Now, following two questions arises for amenability of writ

jurisdiction in the context of renewal of lease in the obtaining facts and circumstances of the case.

(i) Whether, the claim for renewal of lease is in the domain of common law and is subject to discretion of the lessor?

(ii) Whether, such non-renewal of lease can be adjudged on the touchstone of Article 14 and Article 19(1)(g) of the Constitution of India invoking writ jurisdiction?

11. The relevant provisions of the Krishi Upaj Mandi Adhiniyam, 1972 are quoted below:

“section 2(g) defined **“Market”** means the area for which a market is established under section 4;

section 2(h) **“Market area”** means the area for which a market is established under section 4;

section 2(i) **“market committee”** means a committee constituted under section 11”;

Chapter III deals with Constitution of Market Committees and inter alia section 7(1) provides for Establishment of Market Committee and its incorporation; for every market area, there shall be a Market Committee having jurisdiction over the entire market area; (2) Every Market Committee shall be a body corporate by the name specified in the notification under section 4. It shall have perpetual succession and a common seal and may sue and be sued in its corporate name and shall subject to such restrictions as are imposed by or under this Act, be competent to contract and to acquire, hold, lease, sell or otherwise transfer any property and to do all other things necessary for the purposes of this Act.

Second proviso relevant for the purposes of this writ petition reads as under:

“Provided further that no immovable property shall be transferred by way of sale, lease or otherwise in a manner other than the manner prescribed in the rules made by State Government for the purpose.”

Section 11 provides for Constitution of Market Committee.

It is expedient to reiterate Rules occupying the field at different points of time and relevant for the purpose of disposal of this writ petition.

In exercise of the powers under sub-section (i) and clause (xiii) and (xxxii) of sub-section (2) of section 79 read with sub-section (2) of Section 7 and sub-section (2) of Section 9 of the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972, the State Government had framed Madhya Pradesh Krishi Upaj Mandi (Allotment of Land and Structure of Market Committee/Board) Rules, 2005 (for short, 'the Rules, 2005).

Rule 3(1) empowers the Market Committee/Board for allotment of its land or structure and under sub-rule (2) provides the purpose for which the allotment of structure can be made. **Canteen** is one of the purposes under subrule (2)(iv).

Rule 5 provides the mode of allotment, viz., through auction or inviting tenders. Rule 6 provides for fixation of premium of rent, Rule provides for lease rent.

Rule 10 provides the allotment of land/structure on rent: Sub-rule (3) is relevant and quoted below:

“(3) Any structure except storage godown, may be allotted initially for a period of three years which may be renewed as per changed circumstances. Fixation of rent shall be governed by the provisions of sub-rule (4) of rule 9.”

“Rule 9. Allotment of land or structure to the highest bidder in Auction/Tender.-

(1)

(2)

(3)

(4) After expiry of lease period, which shall not be more than 30 years, the lease may be renewed on a written application by the lessee as per the changed circumstances after taking into consideration the prevalent market rent. The annual lease rent shall be fixed by the market committee/Board with the prior approval of the Managing Director.

Provided that the lessee shall have to apply in writing to the market committee of the Board, as the case may be for renewal of the lease before 30 days of expiry of lease period:

Provided further that in case of non-renewal of the lease, the land or structure shall be taken back in possession by the market committee or the Board, as the case may be, instalment within 60 days after expiry of the lease period.”

(Emphasis supplied)

The aforesaid Rules,2005 have been repealed by the

Madhya Pradesh Krishi Upaj Mandi (Allotment of Land and Structures of Market Committee/Board) Rules, 2007.

The State Government further repealed Rules of 2007 in the year 2009 in exercise of the powers conferred under sub-section (1) and clause (xiii), (xxxii) and (xxxiii-a) of sub-section (2) of Section 79 read with sub-section (2) of Section 7 and sub-section (2) of Section 9 of the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 known as Madhya Pradesh Krishi Upaj Mandi (Allotment of Land and Structures of Market Committee/Board) Rules, 2009 published in the Madhya Pradesh Gazette dated 25/05/2009. Relevant provisions quoted below:

“2. Definitions:

... ..
 (h) **“Structure”** means any building or structure in the market yard or sub market yard and includes a shop, shop-cum-godown, godown, warehouse, cold storage, shed, weigh bridge, platform, chabutara, toilet, petrol/diesel pump, rest house, **canteen**, soil-testing laboratory and clinic held or owned by market committee;

Rule 3: General principles of allotment:-

(1) No land or structure of a market committee shall be allotted except the manner as provided in these rules.

(2)

(3) Allotment of land or structure shall be made on 'licence' generally for a period of 30 years and not on lease.

(4)”

20. Exemptions.(1)Notwithstanding anything contained in these rules, these rules shall not apply to:

Relevant for the purpose of this writ petition is rule 20(1)(ii). The same is quoted below:

(ii) Assignment of operation of certain facilities like canteen or electronic weigh bridge on contract, canteen, electronic weighing bridge, agri-clinik, public utility toilet, farmer's rest house and STD/PCO, however the decision of the Managing Director shall be final in regard to deciding this category.

21. Repeal and Savings.- The Madhya Pradesh Krishi Upaj Mandi (Allotment of Land and Structures of Market Committee/Board) Rules 2007 and all other rules and orders on this subject, in force immediately prior to the commencement of these rules shall stand repealed as from the date of commencement of these rules:

Provided that in respect of land or structures allotted on rent, licence or lease, prior to the commencement of these rules, these rules shall come into effect only on the expiry of the present agreements relating to them.”

(Emphasis supplied)

2009 Rules came into force with effect from 25/05/2009. Rule 2(h) defines "structure" including 'canteen'. Though sub-rule (3) of rule 3 of Rules, 2009 contemplates that allotment of land/structure shall be made on 'licence' generally for a period of thirty years and not on lease, however, rule 20 exempts applicability of Rules to certain facilities like canteen, etc., provided under rule 20(i)(ii). However, the decision of the Managing Director shall be final in regard to deciding the category.

12. Now turning to the facts in hand, initially lease was granted for a period of three years, from 01/06/2007 to 30/07/2009. The said period was further extended by respondent No.3 for one year vide letter dated 06/10/2009 after coming into force of 2009 Rules and the lease period remained in existence thereafter upto 30/06/2010. Clause (9) of the original lease agreement dated 08/01/2007 (Annexure P/4) contains renewal clause after completion of three years lease period in accordance with Rules, 2005. Rule 9(4) provides for renewal of lease for a maximum period of thirty years.

The Managing Director under clause (3) of the circular/authority dated 15/09/2010 (Annexure P/20) has specifically ruled that in case of existing lease upon its completion of term of lease, shall be renewed as per the then existing rules [2005 Rules, in the instant case].

The market committee (respondent No.3) as such is statutorily obliged to comply with the aforesaid directions of the Managing Director under 2009 Rules in terms of second proviso to section 7 of the Adhinyam, 1972.

As such, petitioners are held entitled for consideration for renewal of lease in terms of clause (9) of the original lease agreement read with sub-rule (4) of rule 9 of 2005 Rules as there is no denial of the fact that the respondent No.3 has renewed lease of 32 structures in the year 2014 after coming into force of 2009 Rules (Annexure P/12 colly.) on principle of parity.

There is no material on record to justify singling out petitioners and deny their legitimate claim of renewal of the structure in question subjecting them to typical hostility and

depravity violating fundamental rules under Article 14 and Article 19(1)(g) of the Constitution of India.

The contention of respondents No.2 to 4 to draw distinction between the 'shops' and 'canteen' in the context of renewal of lease under the circular/authority of the Managing Director dated 15/09/2010 is more of desperation than substance for more than one reasons; rule 2(h) does not contemplate distinction between 'shop' and 'canteen'. It only defined structure or building inclusive of shop and canteen. Likewise, the circular/authority dated 15/09/2010 of the Managing Director also does not speak of shop and canteen and only refers the 'structure' or 'building' as provided for under the Rules.

The respondent No.3 has divested the element of discretion at the time of renewal of lease and resorted to selective discrimination in the case of petitioners; an ante thesis of rule of law in transgression of concept of equality. In fact, the exercise of such discretion must be on the touchstone of Article 14 and Article 19(1)(g) of the Constitution of India and the reasons must be fair and reasonable in the public interest [**2018 (12) SCC 756 Ajar Enterprises Private Limited Vs. Satyanarayan Somani and others** referred to].

Since the Managing Director has passed the circular/authority on 15/09/2009 in exercise of the statutory powers under 2009 Rules, the respondent No.3 is required to adhered to the same in the matter of renewal of lease.

13. Law is well settled in that behalf that if an act is to be done in a particular manner under the statutory provision, the same has to be done in accordance with that manner and not otherwise [**AIR 1964 SC 358(State of U.P. Vs. Signhara Singh, referred to)**].

14. The questions are answered accordingly. All the writ petitions succeed and are hereby allowed. The impugned order dated 03/08/2010 (Annexure P/11) is in ignorance of statutory circular/authority of the Managing Director dated 15/09/2009. Hence, the same is held to be in excess of authority and jurisdiction. Hence, cannot be sustained in the eyes of law,

therefore, set aside;

Managing Director (respondent No.2) while deciding the appeal by the impugned order dated 05/10/2015 (Annexure P/21) has also ignored the circular/authority dated 15/09/2009 (supra) and illegally tried to justify the impugned order relying upon the circular dated 26/12/2008 which had lost efficacy after coming into force of 2009 Rules. Hence, the said order also suffer from illegality, therefore, set aside.

The State Government while dismissing the revision petition on 17/072017 (Annexure P/1) has acted mechanically. The same also cannot withstand in the eyes of law. Accordingly, set aside. Bearing in mind the directions of the Managing Director in the statutory circular/authority dated 15/09/2009, the respondent No.3 is directed to consider claim of petitioners for renewal of lease of the structure in question (canteen) in possession of the petitioners, under clause (9) of the original agreement read with rule 9(4) of 2005 Rules on the same considerations as in the case of renewal of lease of 32 other structures had been made vide Annexure P/12 (colly.).

The entire exercise shall be completed within a period of one month from the date of production of certified copy of order by the petitioners.

A copy of this order be placed in the connected writ petitions.

(Rohit Arya)
Judge
23-04-2019

b/-