

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**ON THE 21<sup>st</sup> OF NOVEMBER, 2023**

**WRIT PETITION No. 5007 of 2021**

**BETWEEN:-**

SHAMBHUDAYAL AGRAWAL S/O SHRI DWARKADAS AGRAWAL,  
1. AGED ABOUT 73 YEARS, OCCUPATION: BUSINESS 131, SHANTI  
NIKETAN COLONY (MADHYA PRADESH)

SMT. VIMLA BAI AGRAWAL W/O SHRI SHAMBHUDAYAL  
2. AGRAWAL, AGED ABOUT 70 YEARS, OCCUPATION: HOUSEHOLD  
131, SHANTI NIKETAN COLONY (MADHYA PRADESH)

SMT. EKTA W/O SHRI RAJKUMAR AGRAWAL, AGED ABOUT 40  
3. YEARS, OCCUPATION: HOUSEHOLD 131, SHANTI NIKETAN  
COLONY (MADHYA PRADESH)

**.....PETITIONER**

***(SHRI NITIN PHADKE, LEARNED COUNSEL FOR THE PETITIONER.)***

**AND**

THE INDORE MUNICIPAL CORPORATION THR. THE  
1. COMMISSIONER INDORE MUNICIPAL CORPORATION (MADHYA  
PRADESH)

2. THE COMMISSIONER INDORE MUNICIPAL CORPORATION  
(MADHYA PRADESH)

**.....RESPONDENTS**

***(SHRI PRADYUMNA KIBE, LEARNED COUNSEL FOR THE  
RESPONDENTS.)***

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*This petition coming on for hearing on admission this day, the  
court passed the following: :*

**ORDER**

1. The petitioners have filed the present petition challenging the

validity of the order dated 24.7.2020 passed by respondent No.2 whereby the renewal of the lease and mutation of their names has been rejected.

**2.** The facts of the case, in short, are as under :

**2.1** The petitioners are permanent residents of Indore. Respondent No.1 is a Municipal Corporation, a statutory body constituted under the provisions of M.P. Municipal Corporation Act, 1956. Respondent No.2 is the Commissioner of Indore Municipal Corporation (IMC). Both the respondents are the State within the meaning of Article 12 of the Constitution of India, hence amenable to the writ jurisdiction of this Court.

**2.2** A land measuring 13440 Sq.ft. situated at 40/1, Pardeshipura, Indore was originally granted on lease for 30 years by IMC to one Madanlal S/o. Shivbaksh. Later on, the said land was transferred to one V.V. Deshpande and it was further transferred to one Baldev Prasad S/o. Shivilal. Baldev Prasad transferred the said land along with the superstructure to Dwarkadas Agrawal i.e. father of petitioner No.1. Respondent No.1 transferred the lease dated 10.12.1979 in the name of Dwarkadas Agrawal for the remaining period of the lease up to 28.3.2009.

**2.3** According to the petitioners, Dwarkadas Agrawal executed a Will dated 12.4.1980 bequeathing the land and the superstructure in favour of his grandson – Ajay S/o. Shankarlal, son – Bholaram, and grandsons – Prakash and Manoj in the ratio of 50%, 20%, 20% and 10% respectively. Dwarkadas died on 12.1.1981 and accordingly the Will. According to the petitioners, the aforesaid legal heirs of

Dwarkadas Agrawal who became owners of the land and the superstructure by virtue of the Will transferred the rights in the name of petitioner No.1 vide gift-deed in the year 2016.

**2.4** In pursuant to the aforesaid gift deed, the petitioners applied 2.2.2019 before the IMC for renewal of the lease and mutation of their names in the municipal record. A public notice was published in two newspapers inviting objections. The petitioners have been depositing the municipal taxes regularly in respect of the property in question. Respondent No. 2 vide order No. 421/lease/2020 dated 24.7.2020 has rejected the application on the ground that the lease had already expired on 28.3.2009 and after the expiry of the lease the lessee had no right to execute the Will, therefore, the gift-deed is prima facie illegal for want of authority and legal right, hence the application for renewal and mutation has been rejected. Being aggrieved by the aforesaid order, the petitioners have filed the present petition before this Court.

**3.** The respondents have filed the reply by submitting that the writ petition under Article 226 of the Constitution of India is not maintainable. The respondents have also denied the Will dated 12.4.1980 for want of probate u/s. 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. The respondents have also denied the execution of the gift-deed. It is further submitted that the building permission was granted on 26.12.1980, but the petitioners have no right to apply for renewal of the lease. It is submitted that the lease was determined in the year 2009 and under the M.P. Municipal Corporation (Transfer of Immovable Property) Rules, 1994 (hereinafter referred to as "Rules of 1994" for short), there is no such provision for

renewal of the lease. Since the lease had already stood determined in the year 2009, therefore, the provisions of M.P. Municipal Corporation (Transfer of Immovable Property) Rules, 2016 (hereinafter referred to as “Rules of 2016” for short) will not apply. The respondents have placed reliance on the judgment passed by the apex Court in the case of ***Delhi Development Authority V/s. Anant Raj Agencies Pvt. Ltd. : (2016) 11 SCC 406*** on the point that there cannot be an automatic renewal of the lease in favour of the original lessee once it stands terminated by efflux of time and the lessee becomes unauthorized occupant and he could not have executed the gift-deed in favour of the petitioners. It is submitted that the respondents shall proceed to obtain the possession from the petitioners under M.P. Lok Parisar (Bedakhli) Adhinyam, 1974 after the dismissal of this writ petition.

4. Shri Nitin Phadke, learned counsel appearing for the petitioners, submits that respondent No.2 being the Commissioner of IMC has no authority to reject the application submitted by the petitioners. Rule 17 of the Rules of 2016 provides the procedure for renewal of the lease, under which, after the expiry of the period of the lease, the power of renewal of the lease shall be vested in the Council. The word 'Council' is defined in Section 2(e) of the Rules of 2016 which means “Municipal Corporation Council” under the M.P. Municipal Corporation Act, 1956, therefore, the matter is liable to be remanded back to the respondents to place the matter of lease before the Council. It is further submitted that even after the expiry of the period of the lease, the application for renewal of the lease may be received with a compounding fee of Rs.1,000/- per year for which the petitioners are

ready to deposit.

5. Shri Pradyumna Kibe, learned counsel appearing for the respondents submits that there is no such “Municipal Corporation Council” in the M.P. Municipal Corporation Act, 1956. There is an ambiguity in the definition of 'Council' in the Rules of 2016. under section 80 of the Municipal Corporation Act,1956 there is only one Council i.e. in the name of “Mayor in Council”. The Commissioner being a Chief Executive Officer is competent to decide the application for renewal. Shri Kibe, however, submits that the provisions of the Rules of 2016 will not apply because the lease in question had already been determined in the year 2009 when the Rules of 1994 were in force, in which, there was no provision for renewal of the lease. Shri Kibe learned counsel relying on the judgment passed by the apex Court in the case of Delhi Development Authority (supra) in which the Apex Court has specifically answered the issue – whether the original lessee has acquired any right in respect of the property in question after termination of the lease by efflux of time in absence of the renewal of the lease by Delhi Development Authority, and the apex Court has answered the same in favour of the Delhi Development Authority. The Apex Court also held that there is no automatic renewal of the lease of the property in question in favour of the original lessee and in the absence of renewal of the lease the status of the original lessee in relation to the property in question is that of an unauthorized occupant and has no right, title or interest to transfer the same. Therefore, in view of the above, in the present case, when the lease had already expired in the year 2009, the lessee had no right to execute the gift-

deed in favour of the petitioner/s. Hence, the writ petition is liable to be dismissed.

After having heard the learned counsel for the parties at length, in my considered opinion the petitioners have no case and Writ Petition is liable to be dismissed .

6. The lease of the land admeasuring 13440 Sq.ft. was initially allotted to Madanlal and thereafter the same was transferred to V.V. Deshpande, Baldev Prasad, Dwarkadas Agrawal. Dwarkadas Agrawal executed his Will in favour of his son and grandsons who further executed the gift-deed in favour of the present petitioners in the year 2016. Admittedly, the period of lease had expired on 28.3.2009. On the basis of the gift-deed the petitioners submitted an application for renewal of the lease and for mutation of their names in the municipal record. The application was submitted to the Commissioner (respondent No.2 herein). The IMC issued the public notice dated 14.2.2020 in the newspapers to invite objections from the public, but no objection was received. On the date of expiration of the lease in question , the Rules of 1994 were in force, in which, there was no such provision for renewal of the lease. Even in the M.P. Municipal Corporation Act,1956 there is no such provision for renewal of the lease. Section 80 of the Act only provides for disposal of the property by way of sale, or lease in accordance with the Rules. Under sub-section (2) of Section 80, the Commissioner is competent to transfer a property by way of lease with the sanction of the Mayor in Council, but there is no provision for renewal of the lease. Therefore, the lease which had come to an end on 28.3.2009, the lessee thereof became an

unauthorized occupant. Since the original or subsequent allottee has lost the status of the lessee, therefore, he has no right to even execute the gift-deed of the the lease land because of acquiring the status of encroaches / illegal occupant.

7. Last time the lease was transferred in the name of Dwarkadas Agrawal for the remaining period up to 28.3.2009. Thereafter, Dwarkadas Agrawal executed a Will on 24.4.1980 in the name of his four grandsons, but they did not apply for mutation, therefore, they could not become lessee of the land of the Municipal Corporation. Even their names were not mutated in the municipal record. The last lessee – Dwarkadas Agrawal expired on 12.1.1981, therefore, the lessee as well as the lease both had perished in the years 1981 and 2009 respectively. Hence, the legatees of Dwarkadas Agrawal lost the right to execute the gift-deed of the lease-land. Therefore, as held by the apex Court in the case of Delhi Development Authority (supra), after the determination of the lease, the lessee loses the right to transfer the lease-land and becomes unauthorized occupant.

8. The contention of Shri Nitin Phadke, learned counsel for the petitioners, is that under the Rules “the Council” is competent to consider the application for renewal and the Commissioner has wrongly rejected the application for want of authority. Shri Kibe, learned counsel for the respondents, is right in submitting that the provisions of the Rules of 2016 do not apply in the present case because the lease had already expired in the year 2009 before the Rules of 2016 came into force. Even otherwise, as per definition of 'Council' u/s. 2(e) of the Rules of 2016, there is no such body in the name of

“Municipal Corporation Council” in the Indore Municipal Corporation.

9. As per Rule 17-A, an application for renewal of the lease may be submitted in the last year of the period of expiry of the lease, but four months before the date of expiration. It further provides that after the expiry of the date, the application for renewal of the lease may be received with compounding charges of Rs.1,000/- per year. The word 'may' is used in Rule 17 of the Rules of 2016, therefore, it is not mandatory for the Corporation to receive the application for renewal of the lease after the expiry of the period. Even otherwise, the petitioners have not deposited the compounding charges along with the application for renewal of the lease which was admittedly submitted after the expiry of the lease-period.

10. Rule 23 of the Rules of 2016 is a repeal and saving clause and as per Proviso, anything done or any action taken under the rules so repealed shall be deemed to have been done or taken under the corresponding provision of these rules until not inconsistent with the provisions of these rules. As held above, in earlier repealed Rules, there was no such provision for renewal of the lease. Therefore, the right of renewal cannot be treated to be saved by way of a repeal and saving clause.

11. The last contention of Shri Nitin Phadke, learned counsel for the petitioners, is that the matter be remanded back to the respondents for deciding the application for renewal by the council as the Commissioner is not the competent authority to decide the applicant of renewal of the lease. By way of this petition, the petitioners are not seeking relief of remand but rather seeking the relief of quashment of



the order dated 24.7.2020 passed by respondent No.2, Commissioner and a direction to the respondents for renewal of the lease and for mutation of their names in the municipal record. As held above, the petitioners cannot claim renewal of the lease on the basis of the gift-deed executed after the expiry of the lease-period. Therefore, this Court does not find any right in favour of the petitioners to claim renewal of the lease and mutation of their names in the municipal record. No case for interference is made out.

**12.** Accordingly, this petition deserves to be and is hereby dismissed. As stated in the return, the respondents shall be free to initiate the proceedings under the M.P. Lok Parisar (Bedakhli) Adhinyam, 1974. No order as to cost.

**( VIVEK RUSIA )  
JUDGE**

Alok/-