STATE OF U.P. AND ORS.

v.

LALJI TANDON (DEAD) THROUGH LRS.

NOVEMBER 3, 2003

[R.C. LAHOTI AND ASHOK BHAN, JJ.]

Transfer of Property Act, 1882—Government land given on lease for 50 years—Principal lease deed containing covenant for renewal—Assignee of original lessee exercising option for renewal—Execution of fresh lease deed incorporating all covenants of original lease, with option to seek renewal—Re-exercise of option for renewal—Grant of—Held: As in the fresh lease deed covenant for renewal has been referentially incorporated without any reservation, assignee entitled to one more renewal for fifty years and not thereafter.

Land Acquisition Act, 1894—Sections 4 and 6—Land owned by the State—Denial of renewal of lease as land acquired by the State—Correctness of— Held: Such land is beyond the purview of the Land Acquisition Act—Hence, cannot be denied renewal in the garb of acquisition notification and declaration.

Government land was given on lease for a term of 50 years to the original lessee. The lease contained a renewal clause conferring option on the lessee to seek renewal of lease for another term of 50 years. The term of 50 years ended in 1937. Lessee alienated his interest in the suit property to the respondent. Respondent-assignee of the original lessee exercised his option for renewal. State Government-lessor renewed the lease by executing fresh lease deed but belatedly on 20.02.1945. It incorporated all the covenants of the original lease including covenant of renewal. Respondent sought for renewal of the lease for another term of 50 years. State officials recommended renewal and also advised the renewal to be expedited. Government was issuing instructions to its officers generally directing them to renew such like leases. State Government did not renew the lease. Respondent filed a writ petition seeking writ of *mandamus*. High Court directed the State to renew the lease. Hence the present appeal.

Appellant-State contended that the respondent was entitled only for

A one renewal for a term of 50 years consistently with the covenant for renewal contained in the original lease executed in favour of the original lessee which right to renewal stood exhausted with the lease deed of 20.2.1945 on the expiry of 42 years 2 months and 20 days from the date of the lease; that the first renewal shall be deemed to have renewed all other covenants incorporating the rights and obligations between the lessor B and the lessee excepting the clause for renewal, else it would result in creating a lease in perpetuity; and that the land having been acquired by the State and also the respondent-State committed breach of the terms of the lease, there could be no renewal of lease.

C Dismissing the appeals, the Court

HELD : 1.1. In India, a lease may be in perpetuity. Neither the Transfer of Property Act nor the general law abhors a lease in perpetuity. Where the principal lease executed between the parties contains a covenant for renewal, its exercise is a unilateral act of the lessee, and the consent D of the lessor is unnecessary. Such lease is renewed in accordance with the said covenant and 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 E 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 lease deed executed as the extension of lease for the term agreed upon shall be a necessary consequence of the clause for extension. However, option for F renewal consistently with the covenant for renewal has to be exercised consistently with the terms thereof and, if exercised, a fresh lease deed shall have to be executed between the parties. Failing the execution of a fresh lease deed, 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 G may be. [84-H; 85-A-E]

1.2. In the instant case, the respondent is not claiming a lease in perpetuity or right to successive renewals under the covenant for renewal contained in the 1887 lease. Fresh lease executed on 20.2.1945 does not set out any fresh covenants, mutually agreed upon between the parties for H

the purpose of renewal. It incorporates all the covenants, provisos and stipulations as contained in the principal lease as if they had been repeated in full. Lease deed executed and also the conduct of the parties shows that at the end of the term appointed by the 1945 lease, i.e. 1987, the lessor did not exercise its right of re-entry but, the respondent exercised his option for renewal. The officials of the appellant-State recommended renewal and advised the State Government to expedite the renewal. The State Government was generally renewing such like leases by issuing general orders/instructions to its officers. Also at no point of time prior to the filing of the counter-affidavit, on the present litigation having been initiated, the State or any of its officers took a stand that the right of renewal, as contained in the principal deed of lease, having been exhausted by exercise of one option for renewal, was not available to be exercised again. Therefore, as the covenant for renewal has been referentially incorporated without any reservation in the lease deed of 1945 the exercise of option for renewal cannot be denied to the respondent. However, in the lease deed to be executed for a period of 50 years commencing May 20, 1987, the covenant for renewal need not be incorporated and, therefore, the term of the lease would come to an end on expiry of 50 years calculated from May 20, 1987. [88-B-H] A B C D

Syed Jaleel Zane v. *P. Venkata Murlidhar and Ors.*, AIR [1981] AP 328 and *Secretary of State for India in Council* v. *A.H. Forbes,* (1912) 17 IC 180, approved. E

State of U.P. and Ors. v. *Purshottam Das Tandon and Ors.*, [1989] Supp. 2 SCC 412, referred to.

Baker v. *Merckel,* [1960] 1 All ER 668 and *Green* v. *Palmer,* [1944] 1 All ER 670, referred to. F

Transfer of Property Act by Mulla , Ninth Edition, 1999, pp.1011, 1204, referred to.

2.1. The submission that the land having been acquired there could be no renewal of lease, cannot be accepted. It would be an absurdity to comprehend the provisions of the Land Acquisition Act being applicable to such land wherein the ownership or the entirety of rights already vests in the State. The notification and declaration under Sections 4 and 6 of the Land Acquisition Act for acquisition of the land i.e. the site below the bungalow are meaningless. It would have been different if the State would G H

have proposed the acquisition of leasehold rights and/or the superstructure standing thereon, as the case may be. But that has not been done. The renewal of lease cannot be denied in the garb of so called acquisition notification and declaration which have to be just ignored. [89-B-D]

Sharda Devi v. *State of Bihar,* **[2003] 3 SCC 128, referred to.**

2.2. The High Court held that the plea taken by the appellant-State that the respondent committed breach of the terms of the lease thus not entitled to renewal is not substantiated. Further, the exercise for option for renewal cannot be stalled on the ground that the lessor proposes to exercise right of re-entry on account of alleged breach when no steps were taken for exercising the right of re-entry till the option for renewal was exercised by the lessee. If the lessee is in breach and the lease entitles the lessor to re-enter, that right is available to be exercised without regard to the renewal of the lease. [89-D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4698-4700 of 1994.

From the Judgment and Order dated 30.7.91 of the Allahabad High Court in W.P. Nos.1551/90 and 3465 of 1989.

Subodh Markandeya and Ashok K. Srivastava for the Appellants.

The Judgment of the Court was delivered by

R.C. LAHOTI, J. The property in question is plot no.81/1-M area 5 acres (out of 98 bighas) in village Nasibpur, Bhaktiara, Chhail, District Allahabad, U.P. over which stands a bungalow bearing no. 241 Mor Road, Alllahabad. This property shall hereinafter be referred to as 'the suit property'. The ownership of the land vests in the State. The super-structure which is a bungalow seems to have been brought up by the lessee or his transferee, as stated hereinafter, and which is not very clearly borne out from the pleadings, also not very relevant for the issue at hand.

The land consisting in the suit property was given on fifty years lease to one J.W.Walsh. The lease contained a clause for renewal which, as far as ascertainable from the material available on record, and as found by the High Court, conferred an option on the lessee to seek renewal of lease for another term of 50 years and on such option being exercised before the expiry of

term of 50 years of the existing lease, the lessor shall "act upon forthwith and execute and deliver to the lessee upon his duly executing a counter part or renew the lease for the said premises for a further term of 50 years and with and subject to the same covenants conditions and provisions as are herein contained." A

The original deed of lease though very material for ascertaining the covenants thereof, including the one for renewal, has not been placed on record by either party. The High Court has in its impugned judgment observed that the suit property has changed hands but the document is certainly available with the State-appellant, and in the facts and circumstances of the case, the State ought to have produced the lease or its copy to assist the Court in arriving at a just decision, but the same was not done in spite of several opportunities having been allowed for the purpose and though the State had filed a counter-affidavit followed by two supplementary-affidavits. The High Court has chosen to draw an adverse inference against the State without expressly stating so, as its observation indicates, (to quote) "Initial lease deed has not been placed on record by either party. It would be fair to assume that the State should be in possession of the same. The condition whether renewal was permissible only once must be in the initial lease deed but unfortunately it has not been placed before us. In our opinion it was for the State to have filed a copy thereof if it wanted to rely upon such a term. That having not been done despite several opportunities availed by it when filing supplementary counter affidavit we can safely conclude that really no such term was contained in the initial lease deed. We have no hesitation, therefore, in rejecting the contention of the State that the lease was renewable only once". This is the most crucial part of the controversy and we will revert back to the same after completing the narration of facts. B C D E F

Walsh alienated his interest in the suit property to Lalji Tandon, the respondent-plaintiff, who has died during the pendency of the proceedings and whose LRs have been brought on record; however, for convenience, we will refer to the respondent Lalji Tandon, succeeded by his LRs., as 'the respondent'. G

The respondent, having stepped into shoes of Walsh, the original lessee, sought for renewal of the lease consistently with covenant for renewal as contained in the original lease. The State Government agreed for renewal and the renewed lease deed came to be executed on February 20, 1945. It seems that the State Government was agreeable to renew the lease for a term of 50 H

A years but by February 20, 1945, the day on which the renewed lease came to be executed, a period of 42 years, 2 months and 20 days had remained available out of the 50 years of the second term and therefore the term of the renewed lease as recited therein is "42 years, 2 months, 20 days". This lease has been placed on record. Covenant - 2 thereof is very crucial and the same is extracted and reproduced hereunder:

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> "It is hereby mutually convenanted and agreed by and between the lessor and the lessee that the obligations hereunder shall continue throughout the term hereby created and shall be binding on their respective successors-in-interest in the demised premises that they will perform and observe the several convenants provisos and stipulations in the aforesaid lease expressed *as fully as if the same convenants provisos and stipulations had been herein repeated in* full with such modifications only as are necessary to make them applicable to this demise and *as if the name of the parties hereto had been substituted for those in the aforesaid lease* provided always that the building referred to in the aforesaid lease having been erected the lessee shall not be under any obligation to erect another."
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> (underlining by us)

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Proceeding on an assumption (the correctness whereof is the core of the controversy and shall be dealt with shortly hereinafter) that the renewed lease incorporated all the covenants of the original lease including the covenant for renewal, the respondent sought for renewal of the lease for yet another term of 50 years. The Collector of the District recommended renewal. The Board of Revenue also directed the renewal to be expedited. The Government had also issued instructions to all the Commissioners and District Magistrates generally directing them to renew such like leases. However, the State Government set over the renewal which led to the respondent filing a writ petition in the High Court of Allahabad which was disposed of at the admission stage itself by order dated 19.4.1989. The Division Bench passed the order in the following terms :

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> "The grievance of the petitioner is that in spite of the judgment of this court in the case of *Purshottam Dass Tandon and Ors.* v. *State of Uttar Pradesh and Ors.*, [1987] Allahabad Law Report, page 92 and confirmed by the Supreme Court, the respondents are not renewing the lease of the petitioner. The prayer is that a writ in the nature of *mandamus* be issued to the respondents to do so. The respondents

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shall endeavour to renew the lease of the petitioner in accordance with the aforesaid judgment as soon as possible." A

With these observations, this petition is dismissed summarily."

The observation made by the High Court holding out a hope from the State that it shall renew the lease at the earliest did not bring any results and consequently the respondent had to file another writ petition leading to the passing of the impugned order dated 30.7.1991. The short grievance raised by the respondent as a writ-petitioner before the High Court was that he was entitled for a renewal of lease for yet another term of 50 years, which the State having not done, the writ-petitioner was entitled to a *mandamus* directing the respondents (before the High Court) to renew the lease. However, the respondent was active in politics which was not to the liking of the then ruling party and therefore the State was creating obstacles in the renewal of the lease, pleaded the respondent as writ-petitioner in the High Court. B C

In the counter-affidavit filed on behalf of the State Government it was pleaded that the original lease was for a period of 50 years, renewable only once for a further term of 50 years, which right of renewal was exhausted on having been exercised once culminating into the execution of lease deed dated February 20, 1945. On the expiry of the term limited by the latter lease deed the respondent did not have any further right of renewal. D E

Another supplementary counter-affidavit sworn in by Shri Bira Ram, Naib Tahsildar was filed wherein an additional plea was raised that on 28.3.1987 the State of U.P. had issued a notification under Section 4 of the Land Acquisition Act, 1894 followed by declaration under Section 6 dated 31.12.1987 whereby the land was acquired by the State and therefore the renewal of lease was not legally possible. F

A third counter-affidavit sworn in by one Lateefullah was filed on April 1, 1991 raising yet another plea that the respondent was negotiating the sale of the leased land without prior sanction of the State Government which was in violation of the terms of the lease deed and so also the respondent was not entitled for any further renewal. G

In the decision dated 19.4.1989 referred to hereinabove, the High Court had made a reference to the case of *Purshottam Das Tandon and Ors.* and expected the State of U.P. to endeavour to renew the lease of the respondent herein in accordance with the aforesaid judgment as soon as H

A possible. It seems that Purshottam Das Tandon was holding lease of the land owned by the State on similar terms as was held by the respondent herein, excepting for the difference that the land held by Purshottam Das Tandon was nazul land while the land held by the respondent herein is government estate. Though this difference was pointed out at the time of hearing, however the learned counsel for the appellant State of U.P. was unable to point out B what difference it makes so far as the case for renewal is concerned if the covenants in the lease deeds held by Purshottam Das Tandon and the respondent herein respectively were identical. The decision of the Allahabad High Court in the case of *Purshottam Das Tandon and Ors.* is reported as AIR (1987) Allahabad 56. The Division Bench presided over by R.M. Sahai, C J. (as His Lordship then was) and who spoke for the Division Bench deals with the history of such like leases, the several government orders and instructions relating thereto and takes into consideration almost all the legal aspects relevant thereto excepting a few with which we will be elaborately dealing hereafter. The High Court held that the State Government was bound to renew the lease held by Purshottam Das Tandon in accordance with the D covenant for renewal. *The State of U.P. and Ors.* preferred special leave petition against the judgment of the Allahabad High Court which was dismissed on January 14, 1987 refusing to interfere with the decision of the High Court. The decision of this Court is reported as *State of U.P. and Ors.* v. *Purshottam Das Tandon and Ors.*, [1989] Supp. 2 SCC 412.

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The first submission of Shri Subodh Markandeya, the learned senior counsel for the State of U.P., has been that the respondent was entitled only for one renewal for a term of 50 years consistently with the covenant for renewal contained in the original lease executed in favour of John William Walsh dated May 10, 1887 which right to renewal stood exhausted with the F lease deed dated February 20, 1945 which came to an end on the expiry of 42 years 2 months and 20 days from the date of the lease, i.e. February 20, 1945. It was submitted that the first renewal evidenced by the lease deed dated February 20, 1945 shall be deemed to have renewed all other covenants incorporating the rights and obligations between the lessor and the lessee excepting the clause for renewal; else it would result in creating a lease in G perpetuity because every renewed lease shall have to incorporate the clause for renewal for 50 years as contained in the original lease deed which would mean endless renewals and hence a lease in perpetuity. We find it difficult to agree with Shri Markandeya in the facts and circumstances of this case.

H 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, Ninth Edition, 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, 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.

The issue - whether a right to a new lease consequent upon the option for renewal having been successfully exercised should again contain the covenant for renewal, is not free from difficulty and has been the subject matter of much debate both in England and in India. It would all depend on the wordings of the covenant for renewal contained in the principal lease, the intention of the parties as reflected therein and as determinable in the light of the surrounding relevant circumstances.

A Division Bench decision of Andhra Pradesh High Court in *Syed Jaleel Zane* v. *P. Venkata Murlidhar and Ors.*, AIR (1981) AP 328, wherein Jeevan Reddy, J., as His Lordship then was, spoke for the Division Bench makes almost an exhaustive discussion of the relevant English and Indian Law available on the point and we express our respectful agreement with the exposition of law as made therein. We note with approval the following proposition of law laid down therein:-

(i) In India, the law does not prohibit a perpetual lease; clear and

A unambiguous language would be required to infer such a lease. If the language is ambiguous the Court would opt for an interpretation negating the plea of the perpetual lease;

(ii) To find an answer to the question whether a covenant for renewal contained in the lease deed construed properly and in its real B context, entitles the tenant to continue as long as he chooses by exercising the option of renewal at the end of each successive period of 5 years subject to the same terms and conditions depends on the deed of lease being read as a whole and an effort made to ascertain the intention of the parties while entering into the contract. No single clause or term should be read in isolation so C as to defeat other clauses. The interpretation must be reasonable, harmonious and be deduced from the language of the document;

(iii) The Court always leans against a perpetual renewal and hence where there is a clause for renewal subject to the same terms and conditions, it would be construed as giving a right to renewal for D the same period as the period of the original lease, but not a right to second or third renewal and so on unless, of course, the language is clear and unambiguous.

Another illuminating decision on the point is by Sir Ashutosh Mookerjee, J., speaking for the Division Bench of Calcutta High Court in Secretary of E State for India in *Council* v. *A.H. Forbes*, (1912) 17 IC 180. The Division Bench on a review of several English decisions held:-

"(1) A lease, which creates a tenancy for a term of years, may yet confer on the lessee an option of renewal.

F (2) If the lease does not state by whom the option is exercisable, it is exercisable (as between the lessor and lessee) by the lessee only, that is to say, a covenant for renewal, if informally expressed, is enforced only in favour of the lessee.

(3) The option is exercisable not merely by the lessee personally but G also by his representative-in-interest.

(4) If the option does not state the terms of renewal, the new lease will be for the same period and on the same terms as the original lease, in respect of all the essential conditions thereof, except as to the covenant for renewal itself.

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(5) There is no sort of legal presumption against a right of perpetual renewal. The burden of strict proof is imposed upon a person claiming such a right. It should not be inferred from any equivocal expressions which may fairly be capable of being otherwise interpreted. The intention in that behalf should be clearly shown; otherwise, the agreement is satisfied and exhausted by a single renewal. A B

(6) A covenant for renewal runs with the land.

(7) The position of a lessee, who has been always ready and willing to accept a renewal on proper terms, is the same in equity as if a proper lease had been granted. Where the covenant for renewal was still specifically enforceable at the commencement of a suit for ejectment against the lessee, the position of the lessee in equity is the same as if it had been specifically enforced." C

Green v. *Palmer*, [1944] 1 All ER 670, bears a close resemblance with the facts of the present case. There the parties had entered into a lease agreement for six months. One of the covenants in the lease read so—"The tenant is hereby granted the option of continuing the tenancy for a further period of six months on the same terms and conditions including this clause, provided the tenant gives to the landlord in writing four weeks' notice of his intention to exercise his option." The plea raised on behalf of the tenant was that the clause gave him a perpetual right of renewal. Uthwatt, J. of Chancery Division held — D E

".....the first thing one observes is that, in terms, there is granted to the tenant a single option exercisable only once upon the named event, and the subject-matter of that option is an option "of continuing the tenancy for a further period of six months on the same terms and conditions including this clause." To my mind, what that means is this : the tenant is to be allowed once, and once only, the opportunity of continuing the tenancy—continuing it for a further six months. Then we come to the critical words "on the same terms and condition including this clause." As I read it, that means there is included in the new tenancy agreement a right in the tenant, if he thinks fit, to go on for one further six months, and when you have got to that stage you have finished with the whole matter. In other words, it comes to this: "Here is your present lease. You may continue that, but I tell you, if you continue it, you continue it on the same terms as you were granted the original lease. You may continue it for a further 6 months F G H

A with the right to go on for another 6 months."

Upon that footing, in the events which have happened, all the landlord was bound to do under this arrangement was to permit the tenant to occupy for a period not exceeding 18 months in the whole from the time when the original lease was granted."

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We find ourselves in full agreement with the view of the law taken in the decisions cited hereinabove. It is pertinent to note that the respondent is not claiming a lease in perpetuity or right to successive renewals under the covenant for renewal contained in the 1887 lease. The term of 50 years under the 1887 lease came to an end in the year 1937 and the option for renewal C was exercised by the respondent as assignee of the original lessee which exercise was honoured by the lessor State executing a fresh deed of lease belatedly on February 20, 1945. This lease deed does not set out any fresh covenants, mutually agreed upon between the parties for the purpose of renewal. Rather it incorporates, without any reservation, all the covenants, D provisos and stipulations as contained in the principal lease as if they had been herein repeated in full. Not only was a fresh deed of lease executed but the conduct of the parties also shows that at the end of the term appointed by the 1945 lease, i.e. in or around the year 1987, the lessor did not exercise its right of re-entry. On the other hand, the respondent exercised his option for renewal. The officials of the appellant State, i.e. the Collector and the E Board of Revenue, all recommended renewal and advised the State Government to expedite the renewal. The State Government was generally renewing such like leases by issuing general orders/instructions to its officers. At no point of time prior to the filing of the counter-affidavit, on the present litigation having been initiated, the State or any of its officers took a stand that the F right of renewal, as contained in the principal deed of lease, having been exhausted by exercise of one option for renewal, was not available to be exercised again.

Now that the covenant for renewal has been referentially incorporated without any reservation in the lease deed of 1945 the exercise of option for G renewal cannot be denied to the respondent. However, in the lease deed to be executed for a period of 50 years commencing May 20, 1987, the covenant for renewal need not be incorporated and therefore the term of the lease would come to an end on expiry of 50 years calculated from May 20, 1987. This view also accords with the view of the law taken in *Green* v. *Palmer* (supra).

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The other two pleas raised on behalf of the appellant State merit a short and summary burial. The appellant's plea that the land having been acquired there could be no renewal of lease has been termed by the High Court as 'ridiculous' and we find no reason to take a different view. Suffice it to refer to a recent decision of this Court in *Sharda Devi* v. *State of Bihar*, [2003] 3 SCC 128 wherein it has been held that the Land Acquisition Act, 1894 cannot be invoked by the Government to acquire its own property. It would be an absurdity to comprehend the provisions of the Land Acquisition Act being applicable to such land wherein the ownership or the entirety of rights already vests in the State. The notification and declaration under Sections 4 and 6 of the Land Acquisition Act for acquisition of the land i.e. the site below the bungalow are meaningless. It would have been different if the State would have proposed the acquisition of leasehold rights and/or the superstructure standing thereon, as the case may be. But that has not been done. The renewal of lease cannot be denied in the garb of so called acquisition notification and declaration which have to be just ignored.

Lastly, it was submitted that the respondent is in breach of the terms of the lease and hence not entitled to renewal. Firstly, the High Court has held the plea taken by the appellant State not substantiated. Secondly, exercise for option for renewal cannot be stalled on the ground that the lessor proposes to exercise right of re-entry on account of alleged breach when no steps were taken for exercising the right of re-entry till the option for renewal was exercised by the lessee. If the lessee is in breach and the lease entitles the lessor to re-enter, that right is available to be exercised without regard to the renewal of the lease.

For the foregoing reasons the appeals are held devoid of any merit and liable to be dismissed. May are dismissed accordingly. As the respondent has chosen not to appear we make no order as to the costs.

N.J. Appeals dismissed.