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India: Consequences Of Expiry Of Lease

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Article by [Sunil Tyagi](#) and [Anu Chowdhry](#)

ZEUS Law Associates



Under the provisions of Transfer of Property Act, 1882 ('TPA'), one of the grounds for termination of a lease is by efflux of time. To ensure clarity over their respective rights and entitlements, both lessors and lessees must be aware of the consequences of an expiry of lease due to efflux of time - especially of the different implications of choosing between an 'extension', 'renewal' or 'holding over' of a lease. These legal concepts apply to situations where a lessee is desirous of continuing to lawfully occupy the leased premises, even after expiry of the original lease period.

Renewal

When a Lease Deed for a fixed term contains a clause for renewal of the lease for a further fixed term, Parties erroneously assume that by having incorporated a renewal clause, the original Lease Deed would automatically stand renewed for such additional period upon expiry of the initial lease term. However, to give effect to a renewal clause under the original lease, a Lease Deed has to be executed afresh by the Parties, evidencing such renewal. Further, the Lease Deed for the renewed term should be duly stamped and registered. The nature of renewal of lease was highlighted in *Delhi Development Authority v Durga Chand Kaushish (1973)*, where the Hon'ble Supreme Court of India observed that a 'renewal' of lease is called so because it postulates the existence of a prior lease which generally contains a clause for renewal. In all other respects, a renewal is essentially a 'fresh' grant of lease by the lessor.

An interesting issue on whether a renewed lease would automatically entitle a lessee to obtain further renewals came up in *State of Uttar Pradesh & Others v Lalji Tandon (2003)*. In this case, the Lease Deed under dispute was for a period of 50 years and contained a clause for renewal for a further lease term of 50 years. The State Government contended that the lease was renewable only once for a further term of 50 years. That is, upon expiry of the renewed term, the right of renewal under the Lease Deed stood exhausted and the lessee would not be entitled to continue seeking further renewals. The apex court held that where an original Lease Deed contains a clause for renewal, and the Parties do renew the lease in accordance with such clause, whether or not the lessee would be entitled for further successive renewals shall depend on the facts and circumstances unique to each case. In such disputes, the courts would ascertain the intention of the parties and assess wording of relevant clauses of the Lease Deed.

Where the original Lease Deed contains a clause for renewal but the lessor fails to execute and/or get registered the 'fresh' grant of lease for the further lease term despite requests of the lessee, the aggrieved lessee may file a suit for specific performance of the renewal clause, provided the lessee is not guilty of having violated or breached any material terms of the original Lease Deed. To successfully secure a renewal of lease, lessees should exercise their option of renewal within the time period stipulated under the original Lease Deed.

Extension

Extension clauses - a distinct category of clauses that relate to consequences of expiry of a lease - are commonly incorporated in Lease Deeds. An extension clause entitles a lessee to opt for an additional lease term upon expiry of the initial lease term, on the same terms and conditions of the original Lease Deed, and is generally subject to increases in rent and security deposit. Ordinarily a lessor is not in a position to challenge or unreasonably deny an extension of lease which is validly sought by a lessee - the lessor is treated as having agreed to lease the property for the total duration contemplated under the original Lease Deed. Hence, the lessee's exercise of its option of extension of lease would not hinge on obtaining the lessor's assent.

Unlike a Lease Deed containing a renewal clause, a Lease Deed containing an extension clause would not terminate upon expiry of the initial lease term, in case the option to extend the lease has been duly exercised as per the terms and conditions of the original Lease Deed. In *Provash Chandra Dulai v. Bishwanath Banerjee (1989)*, Hon'ble Supreme Court of India held that a Lease Deed is not necessarily required to be executed afresh in order to give effect to an extension of the original lease. Rather, the original Lease Deed continues in force during the extended lease term, since an extension of lease is only a prolongation of the original lease. In *State of Uttar Pradesh & Others v Lalji Tandon (2003)*, the apex court similarly held that the principal lease would continue to be in force for the additional lease period agreed by the Parties.

Another vital difference between an 'extension' vis-a-vis 'renewal' of lease pertains to the stamp duty implications. In *Punjab*

National Bank v. Vijender Kumar & Another (2013), the Hon'ble Delhi High Court held that parties cannot rely on an extension clause to avoid payment of applicable stamp duty for the total lease term contemplated under the original Lease Deed, simply by paying stamp duty calculated on the basis of the initial lease term. To give effect to an extension clause, stamp duty is required to be paid in the first instance and calculated on the basis of the total lease term contemplated in the original Lease Deed. In contrast, as a 'renewal' of lease is a fresh lease in itself, the initial lease period cannot be clubbed with the renewed lease period for the purpose of levying stamp duty. As a 'fresh' Lease Deed for a renewed term is treated independent of the original Lease Deed, the two agreements would be chargeable to stamp duty independently as well.

Holding Over

Where parties rely on 'renewal' or 'extension' clauses for lease of the premises beyond the initial lease term, their rights and obligations arise from the written Lease Deed executed by them. However, there are also cases where in the absence of a written contract, a fresh lease is created by virtue of an implied agreement between the parties. It is common knowledge that on expiry of a lease, it is the duty of the lessee to hand-over vacant and peaceful possession of the property to the lessor. The expression 'holding over' applies to cases where a lessee retains possession even after expiry of the initial lease term. However, the mere act of retaining possession of the property would not necessarily or automatically create a new tenancy. Rather, there must be a bilateral act by the parties for creation of a new lease. The lessee's conduct of retaining possession of the leased premises and continuing full and timely payment of rent even after expiry of the original lease term would ordinarily indicate his desire to remain as a lessee. In most cases, the lessor's consent was indicated by conduct such as voluntarily accepting rent from the lessee. Upon receiving the lessor's consent, a fresh tenancy would stand created by virtue of an implied agreement between the parties, unless there is an agreement to the contrary. Such holding over would amount to a fresh tenancy even if the Parties decide to continue the tenancy on the same terms and conditions of their earlier lease.

Here a distinction must be drawn between lawful and unlawful possession of the premises by lessees after the lease term has expired. Whilst a lessee 'holding over' is a lawful occupant as he continues to retain possession with consent from the lessor, a lessee who continues to retain possession without consent (whether implied or explicit) from the lessor does so unlawfully and is a 'tenant at sufferance'. As no lawful tenancy stands created in favour of a tenant at sufferance, an aggrieved lessor is entitled to file a suit for eviction forthwith. However, to terminate an ongoing lawful tenancy, the lessor would first be required to give the lessee prior notice for termination and the relief of eviction may be sought when the lessee fails to vacate the premises beyond the notice period.

Unfortunately, courts in India are weighed down by frivolous litigation in matters of tenancy. A simple case of arrears of rent and ejection recently came up before the Hon'ble Supreme Court of India in December, 2014, in *Satendra Singh v Vinod Kumar Bhalotia*, where the apex court highlighted how the process of law was sought to be abused by the lessee by repulsing the lessor's attempts to recover possession of the premises. The lessee had continued to occupy the suit premises even after 32 years had elapsed since the expiry of the original lease agreement which had been executed for a lease term of only 11 months. In the words of the judiciary, 'nothing short of immediate and emergent measures are required to solve this crisis.'

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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