

DURGAH COMMITTEE, DURGAH KHAWAJA SAHEB, AJMER
THE DURGAH PROPERTIES LEASE RULES, 2014.

Ajmer, the _____, 2014

1. **Short title and commencement.**- (1) These rules may be called The Durgah Properties Lease Rules, 2014.
(2) They shall come into force on the date of their adoption by the Durgah Committee.
2. **Definitions.** – (1) In these rules, unless the context otherwise requires-
 - a) “Act” means the Durgah Khawaja Saheb Act, 1955 (No. 36 of 1955);
 - b) “agricultural purpose” means use of land for the purpose of growing crops;
 - c) “Bye-Laws” means the Durgah Khawaja Saheb Bye-Laws, 1958 made by the Durgah Committee, Ajmer in exercise of the powers conferred by Section 20 of the Durgah Khawaja Saheb Act, 1955;
 - d) “commercial activities” means business, trade, enterprise or such other activities undertaken for the purpose of making profit;
 - e) “educational purpose” means the purpose of imparting education or training for skill development and shall include running educational institutions, schools, colleges, universities or madarasas;
 - f) “health purpose” means running of hospital, dispensary, mutab or nursing home;
 - g) “land” means the durgah land and anything attached to the land except building and trees;
 - h) “lease” “lessor” and “lessee” shall have the same meaning as assigned to them under the Transfer of Property Act, 1882 (4 of 1882);
 - i) “lease year” means each successive periods of calendar months during the term ending after completion of one year of the commencement date;
 - j) “leased premises” means the land or the building leased out by the lessor to lessee;
 - k) “lease rent” means the amount payable by the lessee to the lessor including the charges for the fittings and fixtures attached to the land.

(2) Words and expressions used but not defined herein shall have the same meaning as assigned to them in the Act, and the Bye-Laws.

3. **Restriction on grant of lease in certain cases.-** (1) The Committee shall not give on lease any mosque, durgah, khanqah, graveyard or imambara:

Provided that no such restriction shall apply to the durgah land situated outside the main premises of the mosque, durgah, khanqah, graveyard or imambara;

4. **Procedure as to short duration lease of less than two years-** (1) The Nazim may give on lease durgah property, for any period of less than two years, on such terms and conditions as agreed upon by the parties.

(2) The Nazim shall invite applications from persons desiring to take the property on lease under sub-rule (1) by publishing a notice in the surrounding vicinity, distributing leaflets, pamphlets or beating of drums and pasting the said notice on any conspicuous place inside the Durgah Premises or any other public place, if the monthly rental income is less than Rs. 1000/- (Rupees one thousand only). Where the rental income is more than Rs. 1000/- (Rupees one thousand only), Nazim shall publish inviting bids in at least one leading national (Hindi, Urdu or English) newspaper and one regional or local newspaper containing the following details, namely:-

- (i) exact area or description and location of the durgah property;
- (ii) the purpose or object for which the property is required to be leased;
- (iii) the period for which the property is required to be leased;
- (iv) the minimum reserve price per square feet.

(3) The Nazim shall execute the lease of the property in favour of a person offering to pay higher lease rent.

- ✓ (4) The Member, Nazim or any staff of the Durgah Committee including their spouse, parents, children, brothers, sisters, spouses of brothers and sisters or children of brothers and sisters, shall not be eligible to apply for lease under this rule.

5. **Procedure for lease other than short duration lease-** Save as provided in rule 4 above relating to short duration lease, the Committee shall in all cases where lease of durgah property is required to be given for a period of more than two years but not exceeding thirty years, publish inviting bids in at least one leading national (Hindi, Urdu or English) newspaper and one regional or local newspaper containing the following details, namely:-

- (i) exact area or description and location of the durgah property;
- (ii) the purpose or object for which the property is required to be leased;
- (iii) the period for which the property is required to be leased;
- (iv) the minimum reserve price per square feet.

Provided that no such advertisement in newspapers shall be required for lease of durgah property whose lease rental income is less than Rs.1000/- (Rupees One Thousand only) per month and the Committee shall invite applications from persons desiring to take the property on lease by publishing a notice in the surrounding vicinity, distributing leaflets, pamphlets or beating of drums and pasting the said notice on any conspicuous place inside the Durgah Premises or any other public place

Provided further that the Member, Nazim or any Staff of the Durgah Committee including their spouse, parents, children, brothers, sisters, spouses of brothers and sisters or children of brothers and sisters, shall not be eligible to apply for lease under this rule.

6. Invitation of bid for lease- Competitive bids shall be invited in all cases in which the rental income from the leased property is more than Rs.1000/-(Rupees One Thousand) per month and the durgah property shall be leased out to the highest bidder:

Provided that the bid shall in no case be less than the reserve price referred to in rule 7.

7. Reserve Price.- (1) The reserve price per square feet for lease of the durgah property shall not be less than 5% per annum of the market value of the property. 101

(2) The market value referred to in sub-rule (1) shall be the price fixed for registering a conveyance at the office of the Registrar or Sub-registrar.

8. Payment of security deposit.- (1) Upon the execution of lease, the lessee shall make payment of a security deposit of the amount based on the period of lease, as under, namely :-

- (i) three months lease rent on lease period of upto two years ;
- (ii) eleven months lease rent on lease period of more than two years and upto five years;
- (iii) eighteen months lease rent on lease period of more than five years and up to ten years; and
- (iv) twenty-four months lease rent on lease period of more than ten years and up to thirty years.

(2) The security deposit received under sub-rule (1) shall be kept in a nationalised Bank and the Committee may utilise the amount for development of durgah properties, with the sanction of not less than two-third of the members of the Committee.

9. **Registration of lease .-** (1) A lease for any period exceeding one year and up to thirty years shall be registered at the office of Registrar or Sub-registrar under whose jurisdiction the property is situated.

(2) The expenses towards registration of lease under sub-rule (1) shall be borne by the lessee.

10. **Lease rent-** (1) The lessee shall pay to the lessor for the leased premises lease rent in respect of each year of the term or renewal terms, as the case may be, payable in advance and without notice or demand, in monthly or annual installments as agreed upon between the parties, from the date of execution of the lease agreement.

(2) The lease rent tendered by the lessee on time by way of money order, if refused by the lessor in accepting or giving receipt, may be deposited before the office of the Durgah Committee/Nazim and the Lease rent shall be treated as validly deposited if deposited by the lessee within 15 days of such refusal by the lessor.

11. **Increase of lease rent per annum-** Every lease agreement shall contain a clause to the effect that there shall be an increase of lease rent every year by an amount of not less than 5% on the existing lease rent.

12. **Payment and recovery of lease rent.-** (1) All amounts payable by the lessee to the lessor pursuant to the lease of durgah property shall be deemed to be lease rent and be recoverable as lease rent by the lessor who shall have all rights against the lessee for default in any payment thereof.

(2) Lease rent shall be paid to the lessor without deduction or set-off, at the address of the lessor or to such other person or at such other address, as the lessor may from time to time, designate in writing.

(3) If the lessee continues to occupy the premises after the expiration or earlier termination of the lease, the lessee shall, subject to final orders passed in any proceedings, continue to pay lease rent for the period of such unauthorised occupation.

13. **Time limit for decision on proposal for lease by Nazim or the Committee-** The Nazim or the Committee, as the case may be, shall on receipt from the lessee of a proposal for grant of lease of durgah property which is complete in all respects, consider and give its decision on the proposal, within a period of thirty days.

14. **Submission of report by Nazim to the Central Government-** The Nazim shall give the status of all lease agreements executed between the lessor and the lessee to the Central Government as early as possible but not later than one month from the date on which the agreement of lease was so executed.

15. **Prohibition to assign, sub-lease or transfer durgah property-** The lessee shall not assign, sub-lease, pledge or transfer the lease or any interest therein or in any way part with possession of all or any part of the leased premises, or permit all or any part of the leased premises to be used or occupied by any other person:

Provided that the lease agreement entered into with any corporation or an agency of the Government in respect of durgah property shall be governed by the terms and conditions mutually agreed between the parties.

16. Grant of long term lease of upto thirty years in certain cases- (1) A Lease of any immovable durgah property exceeding two years period and extending up to thirty years may be granted with the approval of the Committee.

(2) The sanction for grant of lease under sub-rule (1) shall be given by the Committee unless a majority of not less than two-thirds of the member of the Committee present cast their vote in favour of such transactions. Provided further that where no such sanction is given by the Committee, the reason for doing so shall be recorded in writing.

17. Renewal of lease.- (1) No lease agreement shall contain a clause providing for automatic renewal.

(2) The Committee shall, while renewing the lease, give preference to the present lessee if such lessee participates in the bid and matches the highest bid.

18. Purpose and period of lease.- (1) The Nazim or the Committee, as the case may be, may give on lease any immovable durgah property for the purposes and for the period relating thereto as under, namely:-

- (i) for shops, residential buildings, hotels, restaurants, Inns, shopping malls; lease shall be granted for a period of up to five years;
- (ii) for cold storages, marriage halls or small industries, lease shall be granted for a period of up to ten years;
- (iii) for establishing and running of shopping malls, residential buildings, hotels, restaurants or Inns on Durgah Property; lease shall be granted for a period of up to thirty years;
- (iv) for establishing and running of educational institutions like schools, colleges, universities, hospitals, dispensaries, madarasa's or maktabas on Durgah Property; lease shall be granted for a period of upto thirty years;
- (v) for agricultural purposes, the lease shall be granted on year to year basis or until the life of the crop in case the crop has a life span of more than one year, but no lease for agricultural purposes shall be granted for a period exceeding three years in any case.

(2) The commencement date of the lease shall mean the date of execution of lease deed or the effective date of lease mentioned in the lease deed.

.9. Use and occupation of leased property.- (1) The lessee shall not use or permit to be used the leased premises or any part thereof for any other purpose other than the purpose agreed between the parties:

Provided that no durgah property shall be given on lease for purposes which are against sharia such as gambling or lottery or sale of liquor or other intoxicants.

(2) The lessee shall not build any structure on the leased premises without due approval of the Committee:

Provided that any structure built by the lessee without due approval of the Committee shall become the property of the Durgah Endowment and the lessee shall not be entitled to any compensation for the expenses incurred in building such structure.

(3) The lessee shall maintain the leased premises and keep the property in good order and condition and remove all debris and garbage from the leased premises.

20. Rights and Obligations of the lessor and lessee.- (1) The rights and liabilities of the lessee shall include the following, namely:-

(i) **Operation of leased premises.-** The lessee shall assume full responsibility for the operation and maintenance of the leased premises and for the repair or replacement of all fixtures located therein or thereon and to pay all expenses incurred in connection with such maintenance and operation of the leased premises:

Provided that the lessor may, upon failure to discharge such responsibility by the lessee under this clause, at its sole option and upon fourteen days prior written notice and without any obligation to the lessee, elect to perform such maintenance, repairs or replacement as the lessor may reasonably deem necessary or desirable.

(ii) **Access by lessor-** The lessee shall permit the lessor to enter the leased premises at any time outside normal hours in case of an emergency and otherwise, where such entry will not unreasonably disturb or interfere with the lessee's use of the leased premises.

(iii) **Lessee to carry out certain obligations.-** The lessee shall-

(i) promptly pay electricity charges, water charges or any cess, levies, duties, assessments, and license fees whatsoever whether municipal, school, provincial, parliamentary or otherwise;

(ii) upon the request of the lessor, promptly deliver to the lessor for examination all receipts for payment of such levies, duties, assessments and license fees;

(2) **Installation of fixtures or improvements.-** If any installation or repair work carried out by the lessee interferes with or damages the mechanical or electrical

systems or the structure of the leased premises, the lessee shall promptly repair or remove such installations or fixtures on the leased property at its own expense:

Provided that the lessee shall, if required by the lessor, remove any leasehold improvements or fixtures from the leased premises upon the termination of the lease.

(3) Alterations by lessee.- The lessee shall bear the cost for making any modification, additions or improvements including alterations to the exterior walls, roof, or other structural components of the leased premises made by the lessee:

Provided that the lessor shall perform any such work at the expense of the lessee as may be mutually agreed between the parties.

(4) Liens.- The lessee shall not create any lien or encumbrance on the leased premises under any circumstances including on the leasehold rights.

(5) Permission from local authorities.- The lessee shall, for the purpose of construction of any structure on the leased premises, take all necessary permission from the local authorities, after prior approval of the Committee.

21. Unforeseen damage and destruction.- If during the period of lease, the leased premises or any part thereof is damaged by fire, lightning, tempest, structural defects or acts of God or by any unforeseen perils, the following provisions shall apply, namely:-

(i) If as a result of such damage the leased premises are rendered partially unfit for occupancy by the lessee, the lease rent shall abate in the proportion to that part of the leased premises rendered unfit for occupancy by the lessee.

(ii) Notwithstanding anything contained in clause (i) above, if in the opinion of the lessor's architect or engineer given within sixty days of the happening of damage, the leased premises is incapable of being rebuilt, repaired or restored with reasonable diligence within one hundred and eighty days after the occurrence of the damage, then either the lessor or the lessee may opt to terminate the lease by giving to the other party a notice in writing within fifteen days of such opinion of the lessor's architect or engineer:

Provided that upon notice by either party, lease shall terminate from the date of such damage and the lessee shall immediately surrender the leased premises and all interest therein to the lessor and the lease rent shall be apportioned and shall be payable by the lessee only up to the date of the damage and the lessor may thereafter re-enter and repossess the leased premises.

- (iii) If the leased premises are capable with reasonable diligence of being rebuilt, repaired or restored within one hundred and eighty days of the occurrence of such damage, then the lessor shall proceed to rebuild, restore or repair the leased premises within the said period of one hundred and eighty days plus any additional period caused by strikes, lock-outs, slow-downs, shortages of material or labour, acts of God, acts of war, inclement weather or other occurrences which are beyond the reasonable control of the lessor, and the lease rent shall abate in the manner provided for in clause (i) above until the leased premises have been rebuilt, repaired or restored.

22. Default.- (1) Each of the following events shall constitute an event of default, namely :-

- (i) all or any part of the lease rent is not paid by the lessee after it become due for such payment;
- (ii) the lessee fails to observe, perform or keep each and every of the covenants, agreements and conditions and fails to rectify or remedy the failure even after one month's notice by the lessor requiring the lessee to so remedy, correct, desist or comply;
- (iii) the lessee builds any structure on the land or building without prior sanction or approval of the Committee; or
- (iv) non-payment by the lessee of lease rentals or lease considerations for three consecutive months.

(2) Upon the occurrence of one or more of the events referred to in sub-rule (1), the lessor may, at its option-

- (i) be entitled to the full amount of the lease rent due and payable;
- (ii) have no obligation to refund the security deposit which shall be deemed to be forfeited in favour of the Durgah Endowment.
- (iii) seize and sell such goods and equipment of the lessee and may apply the proceeds thereof to all lease rent to which the lessor is then entitled under the lease:

Provided that any such sale may be effected by public auction or otherwise, and either in bulk or by individual item, as the lessor in its sole discretion may decide;

Where any property is sold, the sale proceeds shall after deducting the expenses relating to removal, sale and such other expenses, the amount, if any, due to State Government or a local authority or a corporate

authority on account of arrears of rent, damages or costs, be paid to such person, as may appear to the Committee to be entitled to the same.

- (iv) terminate the lease by giving one months notice and the lessee shall pay to the lessor lease rent for the unexpired portion of the term had it not been terminated.

23. Surrender of leased property on expiration or termination of lease.-

(1) Upon expiration or termination of the lease, the lessee shall immediately surrender possession of the leased premises and all leasehold improvements in substantially the condition in which the lessee is required to maintain the leased premises excepting only reasonable wear and tear, and upon surrender, all right, title, and interest of the lessee in the leased premises shall cease.

(2) If after the expiration or termination of the lease, the lessee continues to occupy the leased premises, it shall be treated as an encroachment and such encroachment shall be removed in accordance with the extant rules.

(3) The lessor may remove and sell or otherwise dispose of any leasehold improvements, equipment or any other property of the lessee left on the leased premises by the lessee after the termination of the lease as given under Rule 22 (2)(iii) above.

24. Notice.- Any notice under these rules shall be given in writing and sent by registered mail or by speed post and delivered to the lessor at his address; and to the lessee, personally or at the leased premises.

25. Successors and assigns.- Subject to the specific provisions contained in these rules to the contrary, the lease shall be for the benefit of and be binding upon the successors and assigns of the lessor and the heirs, executors and administrators and the permitted successors and assigns of the lessee.
