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**DISPUTE RESOLUTION MECHANISM AVAILABLE UNDER A LEASE
AGREEMENT¹****INTRODUCTION**

The concept of lease and general laws governing it are mentioned under the Transfer of Property Act, 1882. However, post World War II due to the acute shortage of residential facilities in urban areas the general rules concerning the relationship between a landlord and tenant went under changes. Due to the same reason, lawmakers felt a need to protect tenants from heavy rents as well as forceful eviction from their premises. To regulate the landlord-tenant relationship and protect the tenants, several rent control statutes were introduced all around the country.

These rent control legislations were welfare legislation and they for achieving the purpose of their formulation empowered the specific courts to deal with disputes between landlord-tenant, doing so these legislations override the inconsistent provisions under the Transfer of Property Act as well as terms of the contract between landlord and tenant. The power to adjudicate given to specific courts under these legislations is generally exclusive and no other court can try these disputes.

The enactment of these legislatures gave birth to the question of whether tenancy disputes are arbitrable when the power to adjudicate has exclusively been vested in a public forum. To answer the same, we have to go through different judgments the apex court has passed over the time dealing the same.

Starting from the case of **Booz-Allen & Hamilton Inc v. SBI Home Finance Ltd & Others**

¹ Hansika Sharma, 4th year, Chanderprabhu Jain College of Higher Studies and School of Law.

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(Booz-Allen) to the recent case of **Vidya Drolia & Ors v. Durga Trading Corporation**, dispute resolution mechanism available under a lease has always been a topic of discussion in the apex court.

- **Booz-Allen & Hamilton Inc v. SBI Home Finance Ltd & Others** ²

In the case of **Booz-Allen & Hamilton Inc v. SBI Home Finance Ltd & Others** the question which arose in front of the supreme court of India was whether a dispute related to mortgage is arbitral. In this case, an application was filed under section 8 of the Arbitration and Conciliation Act dealing with the redemption of the mortgage.

While answering the question, the Supreme Court elaborated on the concept of “arbitrability of disputes” and what is the scope and nature thereof?

The court explained the three facets of arbitrability relating to the jurisdiction of the Arbitral Tribunal. The court determined that the basic principle is that every civil or commercial dispute, which can be decided by a court, is in principle amenable to arbitration followed by an exception in which jurisdiction of an arbitral tribunal is restricted by any statute.

It gave a list of examples of non- arbitral disputes and this list consists of the following-³

1. rights and liability issues giving rise to or arising out of criminal offenses;
2. matrimonial wrangles relating to divorce, judicial separation, restitution of conjugal rights, child custody;
3. guardianship matters;
4. insolvency and winding-up matters;
5. testamentary matters; and
6. Eviction or tenancy matters are governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or resolve the disputes.

It discussed “right in rem” and “right in personam” and held that all disputes relating to the right in rem are required to be adjudicated by courts and public tribunals. Therefore, as a lease

² Booz-Allen & Hamilton Inc v. SBI Home Finance Ltd & Others (2011) 5 SC 532

³ Booz-Allen & Hamilton Inc v. SBI Home Finance Ltd & Others (2011) 5 SC 532; para 22

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creates a right in rem, court and public tribunals should adjudicate on a dispute relating to the same. Explaining so, the Court stated that, “*generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to subordinate rights in personam arising from rights in rem have always been considered to be arbitrable.*”⁴

This judgment set out the precedent that tenancy disputes governed under rent control legislation are non-arbitrable and, therefore, such disputes are adjudicated by courts empowered under such rent control statute.

Therefore, the apex court held that the disputes relating to eviction and tenancy were not arbitrable.

- **Natraj Studios v. Navrang Studios**⁵

The case of Natraj Studios is one of the oldest cases in which the question that arose before the apex court was whether tenancy-related disputes are arbitrable when the power to adjudicate has been exclusively vested in a public forum.

This question was brought up by Section 28(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which vests exclusive jurisdiction in the Small Causes Court Act to deal with disputes related to protected tenants within the limits of Greater Bombay and nullifies any arbitration clause contained in any agreement executed between the parties.

While analyzing the scope and purpose of the Bombay Rent Act, the Supreme Court observed that such disputes between landlords and tenants can be exclusively tried by the Small Causes Court. Bombay Rent Act is welfare legislation that was enacted with the specific purpose of protecting tenants against harassment from landlords ensuring that the tenants are not deprived of the rights vested in them. Hence, special courts have been vested with exclusive jurisdiction to decide any tenancy-related disputes. This is a specific statutory intent and parties cannot be permitted to circumvent such legislative mandate through a private contract.

⁴ Booz-Allen & Hamilton Inc v. SBI Home Finance Ltd & Others (2011) 5 SC 532; para 23

⁵ Natraj Studios v. Navrang Studios (1981) 1 SCC 523

Observing the same court stated that “*the conferment of exclusive jurisdiction on certain Courts is pursuant to the social objective at which the legislation aims. Public policy requires that contracts to the contrary cannot be permitted. Therefore, public policy requires that the parties cannot be permitted to contract out of the legislative mandate which requires certain kinds of disputes to be settled by special courts constituted by the Act.*”

- **Himangni Enterprises v. Kamaljeet Singh Ahluwalia⁶**

Yet again, in this case, the apex court was of the view that the landlord and tenant disputes, which are governed under the Transfer of Property Act 1882, are not arbitrable since they differ with public policy.

Supreme Court stated that even in respect of premises to which the application of special Rent Act is exempted, the parties could not enforce arbitration, even though they had agreed to get their disputes concerning such premises adjudicated through arbitration.

It discussed that the Delhi Rent Act is a special act which deals with the cases relating to rent and eviction of the premises. By the virtue of section 3 of the Delhi Rent Act, the provisions of the Act do not apply to certain premises but the Supreme Court held that it does not mean that the Arbitration Act would apply to such premises conferring jurisdiction on the arbitrator to decide the eviction/rent disputes. *In such a situation, the rights of the parties and the leased property would be governed by the Transfer of Property Act and the suit would be tried by the civil court instead of an arbitrator.*

The Court held that the ratio laid down in Nataraj Studio and in Booz Allen is applicable for all eviction-related disputes notwithstanding whether the concerned premises is covered under rent control legislation or not. Even if the premise is governed under the Transfer of Property Act, any eviction-related suit would lie before the Civil Court and not before the Arbitrator.

All the above-mentioned judgments faced severe criticism about the approach of the court. The narrow interpretation of the Sections, Acts and the mindset of the uninvolved generation resulted in the matters being referred to a larger bench for reconsideration.

Yet another important case as per the topic is the case of Vidya Drolia and Ors v. Durga Trading Corporation. It is the recent and landmark case of the issue. The apex court in this

⁶ Himangni Enterprises v. Kamaljeet Singh Ahluwalia, (2017) 10 SCC 706

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judgment reversed the judgment of the Himangni case and stated that matters relating to tenancy dispute are arbitral as they are not forbidden or foreclosed by the Transfer of Property Act.

- **Vidya Drolia & Ors v. Durga Trading Corporation⁷**

In this case of Vidya Drolia & Ors v. Durga Trading Corporation, the apex court analyzed the correctness of the ratio laid down under the Himangni Enterprises as well as the judgments it relied upon i.e. Nataraj Studio and Booz Allen. The Court observed that both Nataraj Studio and Booz Allen and Hamilton dealt with licenses/tenancies which were protected under rent control legislations.

Supreme Court held that the tenancy-related disputes are not arbitrable and have to be adjudicated by a designated public forum. The statute itself prohibits any other forum to adjudicate such issues. However, no such prohibition is envisaged under the Transfer of Property Act and hence tenancy related disputes governed under the Transfer of Property Act cannot be deemed as non-arbitrable disputes.

The Court laid down a four-fold test on deciphering when the subject matter of a dispute in an arbitration agreement is not arbitrable. If the dispute falls under any of the following category, it will be a non-arbitrable dispute-

1. Subject matter of dispute relates to right in rem, that do not pertain subordinate right in personam that arises from right in rem.
2. Subject matter of the dispute affect the right of a third party and requires centralisation adjudication
3. Subject matter of dispute relates to sovereign and public interest functions of the state
4. Subject matter of dispute is non arbitrable as per mandatory statute(s).

The court discussed the landlord- tenant relationship and declared that any dispute arising from such relationship doesn't have *erga omnes* effect, which means it does not affect people at large also there Is no specific provision in the Transfer of Property Act which bars such disputes from arbitration and therefore any dispute arising out of landlord- tenant relationship, which has not

⁷ Vidya Drolia & Ors v. Durga Trading Corporation, Civil Appeal No. 2402 of 2019

been covered under special rent control legislation, are eligible to be resolved by Arbitration. After extensive analysis, the Court overruled the case of Himangni and stated that “*landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration.*”

CONCLUSION

From the cases above we can conclude that Supreme Court in its judgments has made it very clear that dispute between tenant and landlord is arbitral only when the subject matter is not covered under any rent control legislature.

So, for dispute to be incapable of arbitration, the following conditions are to be fulfilled-

1. Subject matter is governed by special statute,
2. Under special statute tenants enjoy statutory protection,
3. Such special statutes confer exclusive jurisdiction on specific courts to resolve a dispute,
4. Dispute arising affects the right of any third party,
5. Dispute arising affects right in rem,
6. Subject matter has any relation to sovereign and public interest functions of states, and
7. Mandatory laws have expressly barred any reference to arbitration.

Therefore, when the premises is not covered under any rent control legislature, dispute between landlord and tenant regarding the same cannot be called non- arbitral. However, for these disputes to be tried by an arbitral tribunal, there must be an arbitral clause in the lease agreement.