

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

O.P.NO.787 OF 2018

P.Prabhakar

Petitioner

-VS-

1.The Commissioner of GST & Central Excise
Government of India
Newry Towers, 12th Main Road,
2nd Avenue, "L" Block,
Anna Nagar,
Chennai - 600 040.

2.The Deputy Commissioner
Office of the Deputy Commissioner
GST & Central Excise
Ponneri Division
Chennai Outer Commissionerate
No.40, A-1, 100 Feet Road,
Mugappair,
Chennai - 600 037.

Respondents

PRAYER: Petition filed under Section 11 (6) of the Arbitration & Conciliation Act, 1996, seeking to appoint an independent Sole Arbitrator to hear and decide the dispute in respect of dispute arose in the Lease Agreement dated 01.03.2017 between the petitioner and the respondents.

For Petitioner : Mr.V.Sivakumar

For Respondents : Mr.S.R.Sundar
for Ms.R.Hemalatha

ORDER

This Original Petition is filed by the petitioner seeking to appoint a Sole Arbitrator to hear and decide the dispute arose out of the Lease Agreement dated 01.03.2017 between the petitioner and the respondents.

2. The facts leading to the case on hand is that the respondents, who are Central Government Departments, entered into a Lease Agreement with the petitioner / landlord, on 01.03.2017. The rent paid by the respondents is very meagre. Fixation of fair rent falls within the domain of the respondents, which is based on the rate fixed by the Central Public Works Department. The petitioner is unable to get enhanced rentals as well as to claim damages also as the respondent is a Government department. Therefore, as per the arbitration clause in the Lease Agreement, the petitioner seeks appointment of an Arbitrator.

3. On notice, Mr.S.R.Sundar for Ms.R.Hemalatha, learned counsel appears on behalf of the respondents and would submit that the in view of the judgment of the Hon'ble Supreme Court in **NATRAJ STUDIOS (P) LTD. VS. NAVRANG STUDIOS [1981 (1) SCC 523]** the issue involved in this original petition cannot be referred to arbitration. The learned counsel for the respondents would further rely on a judgment of this Court in **M/S.HEALTH CARE PHARMACY VS. DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES [W.P.NO.14743 OF 2017 DECIDED ON 22.12.2017]** for the same proposition of law.

4. Heard the submissions made on either side and perused the materials available on record.

5. It is well settled that in the cases of matters "in rem", the arbitration cannot be invoked. In the instant case, the petitioner is entitled to file a petition for enhancement of rent under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. In case the respondents fail to vacate and commit willful default, the petitioner is entitled to evict the respondents under Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. It is also the apprehension of

the petitioner that the respondents, being a Government Agency, they may rely on the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and also on the basis of arbitration clause will raise objections with regard to maintainability of the eviction petition filed under the above mentioned provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

6. In this regard, it is relevant to extract paragraphs 17, 18 and 24 of the judgment of the Hon'ble Supreme Court in **NATRAJ STUDIOS (P) LTD. VS. NAVRANG STUDIOS [1981 (1) SCC 523]** which reads as under:

"17. The Bombay Rent Act is a welfare legislation aimed at the definite social objective of protection of tenants against harassment by landlords in various ways. It is a matter of public policy. The scheme of the Act shows 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 which nullify the rights conferred on tenants by the Act cannot be permitted. Therefore, public policy requires that parties cannot also be permitted to contract out of the

legislative mandate which requires certain kind of disputes to be settled by special courts constituted by the Act. It follows that arbitration agreements between parties whose rights are regulated by the Bombay Rent Act cannot be recognised by a Court of law.

18. Thus exclusive jurisdiction is given to the Court of Small Causes and jurisdiction is denied to other Courts (1) to entertain and try any suit or proceeding between a landlord and a tenant relating to recovery of rent or possession of any premises, (2) to try any suit or proceeding between a licensor and a licensee relating to the recovery of licence fee or charge, (3) to decide any application made under the Act and, (4) to deal with any claim or question arising out of the Act or any of its provisions. Exclusive jurisdiction to entertain and try certain suits, to decide certain applications or to deal with certain claims or questions does not necessarily mean exclusive jurisdiction to decide jurisdictional facts also. Jurisdictional facts have necessarily to be decided by the Court where the jurisdictional question falls to be decided, and the question may fall for decision before the Court of exclusive jurisdiction or before the Court of ordinary jurisdiction. A person claiming to be a landlord may sue his alleged tenant

for possession of a building on grounds specified in the [Rent Act](#). Such a suit will have to be brought in the Court of Small Causes, which has been made the Court of exclusive jurisdiction. In such a suit, the defendant may deny the tenancy but the denial by the defendant will not oust the jurisdiction of Court of Small Causes. If ultimately the Court finds that the defendant is not a tenant the suit will fail for that reason. If the suit is instituted in the ordinary Civil Court instead of the Court of Small Causes the plaint will have to be returned irrespective of the plea of the defendant. Conversely a person claiming to be the owner of a building and alleging the defendant to be a trespasser will have to institute the suit, on the plaint allegations, in the ordinary Civil Court only. In such a suit the defendant may raise the plea that he is a tenant and not a trespasser. The defendant's plea will not straightaway oust the jurisdiction of the ordinary Civil Court but if ultimately the plea of the defendant is accepted the suit must fail on that ground. So the question whether there is relationship of landlord and tenant between the parties or such other jurisdictional questions may have to be determined by the Court where it falls for determination-be it the Court of Small Causes or the ordinary Civil Court. If the jurisdictional question is

decided in favour of the Court of exclusive jurisdiction the suit or proceeding before the ordinary Civil Court must cease to the extent its jurisdiction is ousted.

24. In the light of the foregoing discussion and the authority of the precedents, we hold that both by reason of S.28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and by reason of the broader considerations of public policy mentioned by us earlier and also in *Deccan Merchants Cooperative Bank Ltd. v. M/s. Dalichand Jugraj Jain & Ors.* (supra), the Court of Small Causes has and the Arbitrator has not the jurisdiction to decide the question whether the respondent-licensee-landlord is entitled to seek possession of the two studios and other premises together with machinery and equipment from the appellant-licensee-tenant. That this is the real dispute between the parties is abundantly clear from the petition filed by the respondents in the High Court of Bombay, under S. 8 of the *Arbitration Act* seeking a reference to Arbitration. The petition refers to the notices exchanged by the parties, the respondent calling upon the appellant to hand over possession of the studios to him and the appellant claiming to be a tenant or protected licensee in respect of the

studios. The relationship between the parties being that of licensor-landlord and licensee-tenant and the dispute between them relating to the possession of the licensed-demised premises, there is no help from the conclusion that the Court of Small Causes alone has the jurisdiction and the Arbitrator has none to adjudicate upon the dispute between the parties.

7. As per the dictum laid down by the of the Hon'ble Supreme Court in the judgment cited supra, the matters which are *in rem* are to be decided by the Special Courts which are constituted for the purpose of deciding such issues.

8. It is affirmed by the learned counsel for the respondents that they, being tenants, will not take shelter under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

9. In fact, the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, is applicable only against those under unauthorised occupation of the public premises and not against lawful persons. Therefore, the Public Premises (Eviction of Unauthorised Occupants) Act,

29.01.2019

: Yes/No

: Yes/No

Non speaking order

TK



WEB COPY

M.GOVINDARAJ, J.

TK



O.P.NO.787 OF 2018

WEB COPY

29.01.2019