

**IN THE HIGH COURT AT CALCUTTA**  
**CIVIL APPELLATE JURISDICTION**  
**ORIGINAL SIDE**

BEFORE :

**THE HON'BLE JUSTICE SOUMEN SEN**

**And**

**THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY**

**A.P.O. 82 of 2021**

**Arising out of**

**A.P. No. 1276 of 2015**

**Amstar Investments Private Limited**

**vs.**

**Shree Shree Iswar Satyanarayanjee & Ors.**

For the appellant : Mr. Joy Saha, Sr. Adv.  
Ms. Urmila Chakraborty, Adv.  
Mr. Ishaan Saha, Adv.  
Mr. A. Choudhury, Adv.  
Ms. Meera Agarwal, Adv.

For the respondents : Mr. Ashoke Banerjee, Sr. Adv.  
Mr. Sakya Sen, Adv.  
Mr. Animesh Paul, Adv.  
Ms. Sormi Dutta, Adv.  
Ms. Haardikaa Rajder, Adv.

Hearing Concluded on : 14<sup>th</sup> July, 2023

Judgment on : 5<sup>th</sup> December, 2023

**Siddhartha Roy Chowdhury, J.:**

1. Challenge in this appeal is to the judgement and order passed on 8<sup>th</sup> June, 2021 by learned Single Judge, in an application being A.P. no. 1276 of 2015 under Section 34 of the Arbitration and Conciliation Act, 1996.
2. Briefly stated on 1<sup>st</sup> December, 1982 by virtue of registered deed of lease, to be expired by efflux of time, the appellant was inducted

as lessee in respect of the suit property by the respondents for a period of 15 years. After the efflux of time, in the year 1997, since the lessee did not vacate the premises, the lessor, following the clause of arbitration, as incorporated in the deed of lease, took out an application for appointment of an Arbitrator and accordingly the dispute was referred to arbitration under the Act of 1996, which was culminated into an award, passed by Learned Arbitrator, on 21.04.2019 directing thereby the lessee to quit and vacate the property in question and to deliver peaceful possession of the same to the lessor.

3. The lessee made an unsuccessful attempt to get the award reversed, in a proceeding under Section 34 of the Arbitration and Conciliation Act, 1996. Hence this intra court appeal.
4. Assailing the impugned judgement, Mr. Joy Saha, learned Senior Counsel, submits that the dispute between the so called lessor and lessee for all practical purposes is the dispute between the landlord and tenant. The lessee being the tenant in respect of a premises situated within the Municipal area of Howrah is subject to the West Bengal Premises Tenancy Act that extends certain statutory protection to a premises tenant against ejection and imposes certain statutory obligation upon the landlord to comply with. Such dispute could not have been brought within the arena of arbitration, it is not arbitrable.
5. According to Mr. Saha, learned Single Judge failed to appreciate this well settled principle of law and committed error while passing the impugned judgement.

6. It is adverted that the dispute between the landlord and tenant may be a subject matter of arbitration if it is governed by the Transfer of Property Act. The Transfer of Property Act has a public purpose no doubt and it regulates landlord tenant relationship and the arbitrator could be bound by the provisions of law. But dispute between landlord and tenant when is governed by Rent Control legislation it becomes non-arbitrable and it can only be adjudicated and enforced by the specified Court/Forum and none else. To buttress his argument Mr. Saha, learned Senior Counsel, places his reliance on the judgement of Hon'ble Supreme Court in ***Vidya Drolia and Others Vs. Durga Trading Corporation*** reported in **(2021) 2 SCC 1**.
7. It is further adverted by Mr. Saha that admittedly there is a registered deed of lease for the period of 15 years commencing from 01.11.1982 and such lease expired by efflux of time on 31.10.1997. The rent payable under the lease deed was Rs.1,100/- per month. Referring to Section 3 of the West Bengal Premises Tenancy Act, 1997, Mr. Saha submits that though document is a lease by nomenclature but for all practical purposes it is tenancy agreement governed by the West Bengal Premises Tenancy Act.
8. It is further contended by Mr. Saha, that award was passed on 21<sup>st</sup> April, 2015 subsequent to the expiration of the mandate of the arbitrator. Learned Arbitrator became functus officio and had no jurisdiction to pass the award. Therefore, learned Single Judge had no reason to uphold the award. It was done in the breach of statutory provision as well as in the breach of the judgement of

Hon'ble Supreme Court pronounced in NBCC Limited Versus J.G. Engineering Private Limited reported in (2010) 2 Supreme Court Cases 385.

9. Refuting such contention of Mr. Saha, Mr. Ashoke Banerjee, learned Senior Counsel submits that the appellant made an attempt to acquire the status of a premises tenant by filing an application under Section 21 of the West Bengal Premises Tenancy Act, 1997 before the Additional Rent Controller, Howrah, but the competent authority refused to accede to the prayer made by the appellant.
10. The said order was never challenged. The appellant since failed to establish status of premises tenant within the meaning of Section 2(g) of West Bengal Premises Tenancy Act, 1997, the appellant is estopped from taking such plea before this Court. Having accepted the verdict of statutory authority in a proceeding under Section 21 of the WBPT Act, 1997, the appellant is estopped from claiming to be a tenant, governed under the Rent Act or West Bengal Premises Tenancy Act.
11. Mr. Banerjee further submits that in Para 8 of the statement of claim it is specifically adverted that the provision of West Bengal Premises Tenancy Act, 1997 has got no manner of application.
12. While answering the statement of claim, in Para 24 of the Statement of the Defense, the appellant did not challenge that the lease was given effect to, by virtue of a registered deed. As the lease came to an end by efflux of time on 31.10.1997, the provision of West Bengal Premises Tenancy Act cannot be pressed into service.

The parties would be governed under the Transfer of Property Act, 1882.

13. It is further contended by Mr. Banerjee that the appellant filed counterclaim before the learned Arbitrator and allowed the learned Arbitrator to decide the issues on merit. Therefore, having surrendered to the jurisdiction of Arbitration Tribunal, the appellant is estopped from propagating that learned Arbitrator has become functus officio and had no jurisdiction to pass the award.
14. It is further contended by Mr. Banerjee that arbitral Tribunal has the discretion to decide the issue of jurisdiction either at the preliminary stage or at the time of rendering the final award. The award therefore cannot be held to be bad in law. It is contended further that the parties consciously agreed to get all disputes addressed through arbitration. Therefore, the appellant cannot take the plea of non-arbitrability of the subject to avoid eviction. To buttress his argument Mr. Banerjee places is reliance on judgement of Hon'ble High Court of *Delhi in **Sri Pankaj Arora vs. AVV Hospitality LLP & Ors.*** reported in **AIR Online 2020 Del 1090**. But no law was decided therein.
15. It is vigorously argued by Mr. Banerjee that admittedly the appellant was inducted as lessee for a fixed period of 15 years. The lease got terminated by efflux of time. The lessee cannot be said to be entitled to any notice, terminating the tenancy and mere acceptance of rent would not amount to waiver of the termination of lease. Mr. Banerjee, placing his reliance on the judgement of Hon'ble Apex Court in ***Sri K.M. Manjunath vs. Sri Erappa. G. Dead***

**through LRS** reported in **2022 Live Law (SC) 561** submits that the jural relationship between the parties is to be governed under the Transfer of Property Act, 1882 and dispute has been set at rest, rightly by the learned Arbitrator and learned Single Judge rightly rejected the petition under Section 34 of the Arbitration and Conciliation Act.

16. It goes without saying that Arbitral Tribunal is private forum chosen voluntarily by the parties to adjudicate their disputes in place of public forum like court and tribunals, constituted under the laws of the country. Any dispute which can be decided by Court, be it civil or commercial, can be resolved by arbitration unless the jurisdiction of Arbitral Tribunal is excluded expressly or by necessary implications.

17. In **Booz Allan & Hamilton Inc. vs. SBI Home Finance Ltd.** reported in **(2011) 5 SCC 532** Hon'ble Supreme Court held :-

*“36. The well-recognized examples of non-arbitrable disputes are : (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.”*

18. In **Vaidya Drola vs. Durga Trading Corpn.** reported in **(2021) 2 SCC 1** Hon'ble Apex Court held :-

*“79. Landlord-tenant disputes governed by the Transfer of Property Act are arbitrable as they are not actions in rem but pertain to subordinate rights in personam that arise from rights in rem. Such actions normally would not affect third-party rights or have erga omnes affect or require centralized adjudication. An award passed deciding landlord-tenant disputes can be executed and enforced like a decree of the civil court. Landlord-tenant disputes do not relate to inalienable and sovereign functions of the State. The provisions of the Transfer of Property Act do not expressly or by necessary implication bar arbitration. Transfer of Property Act, like all other Acts, has a public purpose, that is, to regulate landlord-tenant relationships and the arbitrator would be bound by the provisions, including provisions which enure and protect the tenants.*

*80. In view of the aforesaid, we overrule the ratio laid down in Himangni Enterprises and hold that landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration.”*

19. Therefore, question that calls for consideration is whether the landlord tenant relationship between the parties in this case is to be governed under the Transfer of Property Act, 1882 or under the West Bengal Premises Tenancy Act, 1997 or 1956.

20. From the attending facts of the case it is admitted that a registered deed of lease was executed by and between the parties for a period of 15 years which came to an end by efflux of time on

31.10.1997. It is also admitted that the lessee had the obligation to pay a sum of Rs.1,100/- per month in terms of the deed of lease. The lessee did not deliver peaceful vacant possession of the property to the lessor after the termination of lease by efflux of time.

21. Section 3 of the West Bengal Premises Tenancy Act, 1956 enunciates that :-

*“3. (1) The provisions relating to rent and the provisions of section 31 and 36 shall apply to any premises held under a lease for residential purpose of the lessee himself and registered under the Indian Registration Act, 1908, where –*

*(a) such lease has been entered into on or after the 1<sup>st</sup> December, 1948, and*

*(b) such lease is for a period or not more than 20 years, and save as aforesaid nothing in this Act shall apply to any premises held under a lease for a period of not less than 15 years.*

*(2) Notwithstanding anything to the contrary contained in sub-section (1) but subject to sub-section (3) of section 4, this Act shall apply to all premises held under a lease which has been entered into after the commencement of the West Bengal Premises Tenancy (Amendment) Ordinance, 1965:*

*Provided that if any such lease is for a period of not less than 20 years and the period limited by such lease is not expressed to be terminable before its expiration at the option either of the landlord or of the tenant, nothing in this Act, other than the provisions relating to rent and the provisions of sections 31 and 36, shall apply to any premises held under such lease.”*

22. Upon plain reading of the aforesaid provision we can say :- “(i)

West Bengal Premises Tenancy Act, 1956 shall apply to all leases for

less than 15 years. (ii) Leases for 15 years or more, if for residential purpose and executed after 1<sup>st</sup> December, 1984 but before 14<sup>th</sup> August, 1965, when the West Bengal Ordinance VI of 1965 was promulgated, provisions as laid down under Section 31 and 36 of the West Bengal Premises Tenancy Act, 1956 shall apply. (iii) If lease for 15 years or more up to 20 years executed between 1<sup>st</sup> December, 1948 and 24<sup>th</sup> August, 1965, if for non residential purpose this Act will not apply. (iv) This Act will not apply for lease for more than 20 years if executed between 1<sup>st</sup> December, 1948 to 24<sup>th</sup> August, 1965. (v) This Act shall apply to lease executed after 24<sup>th</sup> August, 1965 terminable at the option of the lessor or leasee. (vi) This Act shall apply to lease executed after 24<sup>th</sup> August, 1965 for a period not less than 20 years. (vii) The lease executed after 24<sup>th</sup> August, 1965 for a period not less than 20 years some provisions of the Act will apply.

23. Though the appellant is claiming that the dispute between the parties is to be governed under the provision of West Bengal Premises Tenancy Act, 1997 but in our humble opinion the said Act since came into force with effect from 28<sup>th</sup> December, 1998 and amended from time to time, the West Bengal Premises Tenancy Act, 1956 should also have to be taken into consideration to determine the issue.

24. If we look at the issue taking lumen from Section 3 of the West Bengal Premises Tenancy Act, 1956 it would be found that the lease was admittedly for a period of 15 years which is less than 20 years and as such is to be governed under the West Bengal Premises Tenancy Act, 1956.

25. Section 3 of the West Bengal Premises Tenancy Act is unambiguously straight and narrow to hold that despite being inducted by a registered deed of lease but for a period of 15 years the lessee for all practical purposes is to be considered as tenant under the Rent Act and the dispute is to be governed in the light of the Premises Tenancy Act, 1997 and not under the Transfer of Property Act, 1882.

26. Section 3 of the West Bengal Premises Tenancy Act, 1997 enunciates :-

*“3. Nothing contained in this Act shall apply to—*

*(a) any premises owned by—*

*(i) the Central Government, or*

*(ii) any State Government, or*

*(iii) a Government undertaking or enterprise, or*

*(iv) a statutory body which is not a local authority, or*

*(v) a Cantonment Board constituted under the Cantonments Act, 1924, or*

*(vi) a local authority;*

*(b) any tenancy created by the Central Government or any State Government in respect of the premises taken on lease or requisitioned by that Government;*

*(c) any tenancy where the lease has been registered under the Registration Act, 1908, before or after the commencement of this Act;*

*(d) any premises rented to a foreign mission or international agency;*

*(e) any premises let out for residential purpose, not being a premises within the purview of clause (c), which carries more than—*

- (i) two thousand rupees as monthly rent in the areas included within the limits of the Calcutta Municipal Corporation or the Howrah Municipal Corporation, or
- (ii) one thousand rupees as monthly rent in other areas to which this Act extends;
- (f) any premises let out for non-residential purpose, which carries more than—
  - (i) ten thousand rupees as monthly rent in the areas included within the limits of the Calcutta Municipal Corporation or the Howrah Municipal Corporation, or
  - (ii) five thousand rupees as monthly rent in other areas to which this Act extends.”

27. Upon plain reading of the provision of Section 3 (f) it appears that premises let out for non residential purpose which carries more than ten thousand rupees as monthly rent in the area included within limits of Kolkata Municipal Corporation or the Howrah Municipal Corporation, the Act of 1997 shall not apply. Admittedly the property is situated within the limits of Howrah Municipal Corporation and the rate of rent is eleven hundred per month. Therefore, there is every reason to presume that the relationship between the parties is to be governed under the Rent Act or West Bengal Premises Tenancy Act and not under the Transfer of Property Act, 1882.

28. Hon’ble Supreme Court in **Ranjit Kumar Bose & Anr. Vs. Anannya Chowdhury & Anr.** reported in **AIR 2014 SC 1534** held:-

“8. In this case, there is an arbitration agreement in clause 15 of the tenancy agreement, which provides that any dispute regarding the contents or construction of the tenancy agreement or dispute arising out of the tenancy agreement shall be settled by arbitration in accordance with the

*provisions of the 1996 Act. But the words 'notwithstanding anything in any contract' in Section 6 of the Tenancy Act, will override the arbitration agreement in clause 15 of the tenancy agreement where a suit for recovery of possession of any premises has been filed by a landlord against the tenant. Such a suit filed by the landlord against the tenant for recovery of possession, therefore, cannot be referred under Section 8 of the 1996 Act to arbitration. In fact, sub-section (3) of Section 2 of the 1996 Act expressly provides that Part-I which relates to 'arbitration' where the place of arbitration is in India shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration. Section 6 of the Tenancy Act is one such law which clearly bars arbitration in a dispute relating to recovery of possession of premises by the landlord from the tenant. Since the suit filed by the appellants was for eviction, it was a suit for recovery of possession and could not be referred to arbitration because of a statutory provision in Section 6 of the Tenancy Act.*

*14. The High Court, therefore, was not correct in coming to the conclusion that as per the decisions of this Court in the aforesaid three cases, the Court has no alternative but to refer the parties to arbitration in view of the clear mandate in Section 8 of the 1996 Act. On the contrary, the relief claimed by the appellants being mainly for eviction, it could only be granted by the "Civil Judge having jurisdiction" in a suit filed by the landlord as provided in Section 6 of the Tenancy Act. The expression "Civil Judge having jurisdiction" will obviously mean the Civil Judge who has jurisdiction to grant the other reliefs: decree for arrears of rent, decree for recovery of arrears of proportionate and enhanced municipal taxes, a decree for mesne profits and a decree for permanent injunction claimed in the suit."*

29. Therefore, we are of the opinion that the subject matter is beyond the ambit of Arbitration and Conciliation Act, 1996.
30. It is vehemently argued by Mr. Banerjee that the appellant never raised this issue of non-arbitrability on the contrary took part in the proceeding from alpha to omega.
31. The calls for issue of non-arbitrability on jurisdictional question is a technical issue and Hon'ble Apex Court while deciding *Vidya Drolia (supra)* held that Arbitral Tribunal is the preferred first authority to determine and decide the question of non-arbitrability. The Court has been conferred with the power of second look on the aspect of non-arbitrability and it can be decided at the stage of challenge to the award or its enforcement. It is held:-

*"154 Discussion under the heading "Who Decides Arbitrability?" can be crystallised as under:*

*154.1. Ratio of the decision in Patel Engg. Ltd. 16 on the scope of judicial review by the court while deciding an application under Sections 8 or 11 of the Arbitration Act, post the amendments by Act 3 of 2016 (with retrospective effect from 23-10-2015) and even post the amendments vide Act 33 of 2019 (with effect from 9-8-2019), is no longer applicable.*

*154.2. Scope of judicial review and jurisdiction of the court under Sections 8 and 11 of the Arbitration Act is identical but extremely limited and restricted.*

*154.3. The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the Arbitral Tribunal is the preferred first authority to determine and decide*

*all questions of non-arbitrability. The court has been conferred power of "second look" on aspects of non-arbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34(2)(a) or sub-clause (i) of Section 34(2)(b) of the Arbitration Act."*

32. Therefore, we are of the view that the appellant is competent enough to raise the issue of non-arbitrability before the Court where the award of arbitration was challenged and we fail to inspire ourselves to accept the proposition of Mr. Banerjee, learned Senior Counsel, that the appellant is estopped from raising the issue of non-arbitrability at the appellate stage.

33. Even if it is assumed to be correct that the appellant made an unsuccessful attempt before the Rent Controller, Howrah to establish its status as a premises' tenant by filing an application under Section 21 of the West Bengal Premises Tenancy Act, 1997 the same should be considered in the light of Section 11 of the Code of Civil Procedure or in the light of Section 115 of the Evidence Act as an estoppel by conduct.

34. It is trite law that there can be no estoppel against a statute. Hon'ble Supreme Court has settled this principle in a catena of judgments, starting as early as 1955. In **Thakur Amar Singhji v. State of Rajasthan** reported in **AIR 1955 SC 504** Hon'ble Supreme Court held as follows :-

*"....We are unable on these facts to see any basis for a plea of estoppel. The letter dated 28.11.1953 was not addressed to the petitioner; nor does it amount to any assurance or undertaking not to resume the jagir. And even if such*

*assurance had been given, it would certainly not have been binding on the Government, because its powers of resumption are regulated by the statute, and must be exercised in accordance with its provisions. The Act confers no authority on the Government to grant exemption from resumption, and an undertaking not to resume will be invalid, and there can be no estoppel against a statute.”*

35. Rule of estoppel cannot override the provision of law and the statutory provision as laid down under Section 3 of the West Bengal Premises Tenancy Act, of both 1956 and 1997, makes it clear that the contractual relationship between the parties is governed under the West Bengal Premises Tenancy Act and not under Transfer of Property Act, 1882.

36. A Constitution of Bench of the Hon’ble Apex Court in ***Electronics Corpn. of India Ltd. v. Secy. Revenue Deptt., Govt. of A.P.*** reported in **AIR 1999 SC 1734** also upheld this principle and held as follows :-

*“21. There are two short answers to this contention. In the first place, there can be no estoppel against a statute.....”*

37. In ***A.P. Dairy Development Corpn. Federation v. B Narasimha Reddy*** reported in **AIR 2011 SC 3298** Hon’ble Apex Court held :-

*“40.....The State, being a continuing body can be stopped from changing its stand in a given case, but where after holding enquiry it came to the conclusion that action was not in conformity with law, the doctrine of estoppel would not apply.”*

38. With the risk of repetition we would say that the lease expired by efflux of time on 31<sup>st</sup> October, 1997. On 27<sup>th</sup> September, 2004 the

lessor issued notice calling upon the lessee to deliver possession of the property.

39. Hon'ble Supreme Court in ***Namburi Basava Subrahmanyam vs. Alapati Hymavathi and Ors.*** reported in **(1996) 9 SCC 388** held :-

*“The nomenclature of the document is not conclusive. The recitals in the document as a whole and the intention of the executant and acknowledgment thereof by the parties are conclusive.”*

40. Having considered the recital of the deed of lease executed by and between the parties, in the light of the provision laid down under Section 3 of the West Bengal Premises Tenancy Act, we are of the view that the appellant is a tenant within the meaning of West Bengal Premises Tenancy Act, 1997. Therefore, he is entitled the statutory protection as given under the said Act. The lessor and lessee for all practical purposes in this case are to be considered as landlord and tenant within the meaning of the West Bengal Premises Tenancy Act, 1997.

41. The dispute of landlord and tenant under such circumstances, cannot be subject matter of arbitration and thus cannot be decided by an arbitral tribunal. Hence, the award should not be allowed to remain in force. Consequently, we set aside the judgement impugned. The award passed by the Arbitral Tribunal is set aside.

42. The appeal is thus disposed of along with the application, if any, however, without any order as to cost.

43. Urgent photostat copy of this judgement, if applied therefor, be supplied to the parties upon compliance of requisite formalities.

I Agree,

**(Siddhartha Roy Chowdhury, J.)**

**(Soumen Sen, J.)**