IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL (STAMP) NO.12153 OF 2021
WITH
INTERIM APPLICATION NO.1358 OF 2021
IN
ARBITRATION APPEAL (STAMP) NO.12153 OF 2021
WITH
ARBITRATION APPEAL NO.83 OF 2024
WITH
INTERIM APPLICATION NO.11778 OF 2024
IN
ARBITRATION APPEAL NO.83 OF 2024

SHRADDHA KAMLESH TALEKAR
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Date: 2025.06.09 17:49:06 +0530

HLV Limited
(Formerly Known as Hotel Leela Venture Limited) ...Applicant
Versus
Airports Authority of India
Through Its Chairman ...Respondent

ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPLICATION NO.28 OF 2017
WITH
COMMERCIAL ARBITRATION APPLICATION NO.64 OF 2025
WITH
INTERIM APPLICATION (L) NO.1196 OF 2025
IN
COMMERCIAL ARBITRATION APPLICATION NO.64 OF 2025

HLV Limited
(Formerly Known as Hotel Leela venture Limited) ...Applicant
Versus
Airports Authority of India Through Its Chairman ...Respondent

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Mr. Rafique Dada, Senior Advocate *a/w. Mr. Vivek Menon, Mr. Ankoosh Mehta, Mr. Sarah Navodia, Mr. Advait Shukla, Mr. Alok Agrawal i/b. Cyril Amarchand Mangaldas, Advocates for Applicant.*

Mr. Ashutosh Kumbhakoni, Senior Advocate *i/b. Mr. Ajay Khaire a/w. Mr. Tamanna Bafna, Advocates for Respondent.*

CORAM	**:**	**SOMASEKHAR SUNDARESAN, J.**
Reserved on	**:**	**February 20, 2025**
Pronounced on	**:**	**June 9, 2025**

JUDGEMENT:

Core Controversy:

1. This bunch of proceedings essentially centre around one core question – whether disputes and differences relating to eviction and recovery of dues under lease deeds governing two parcels of land, fall within the scope of the arbitration agreements contained in the lease deeds, particularly in the light of the inherent deeming declarations and exclusions contained in the lease deeds.

Context and Factual Background:

2. Hotel Leela Venture, now HLV Ltd. ("***Leela***") and the Airports Authority of India, including the former International Airports Authority of India[1] ("***AAI***") have executed three lease deeds in respect of land owned by AAI in favour of Leela. The first two lease deeds dated October 19, 1983 and November 22, 1983 were for lease of two parcels of land admeasuring 9,000 square feet each ("***18,000 Land***") to enable Leela to construct a hotel and a flight kitchen. The lease was for a period until July 11, 2012 (i.e. 30 years).

3. Thereafter, on February 7, 1996, another lease deed was executed between the parties in respect of another parcel of land admeasuring 11,000 square metres

[1] *The IAAI merged into the AAI under the AAI Act.*

("***11,000 Land***") owned by AAI for Leela to construct a hotel wing on such land. This lease deed was for a period until March 31, 2024.

4. Under the lease deeds for the 18,000 Land, Leela was to pay the stipulated lease rent and 2% of the gross turnover of the business of running the hotel and flight kitchen. Under the lease deed for the 11,000 Land, Leela had to pay the *higher of*: (i) the amounts set out in the schedule to a supplemental agreement of the same date (February 7, 1996); and (ii) amounts equal to 7.5% of the turnover of the new hotel wing. Separately, certain private lands were to be amalgamated with the 18,000 Land.

5. Each of the lease deeds is near-identical in its terms. Each contains an arbitration clause, which makes an exception as to what is arbitrable. Prior in sequence to the arbitration clause, each lease deed contains another clause that explicitly provides that the land leased by AAI to Leela would be ***deemed*** to be public premises as defined in *The Public Premises (Eviction of Unauthorised Occupants) Act, 1971*[2] ("***Public Premises Eviction Act***"), regardless of the building constructed on the land.

6. The arbitration clause in each lease deed provides that all disputes and differences arising from, or in any way touching or concerning the lease deed are arbitrable. However, the arbitration clause in each lease deed explicitly excludes

[2] *There is an error in the title nomenclature for this legislation in some clauses of the lease deeds – the words in parenthesis in the contracts are "Unauthorised Occupants Eviction" instead of "Eviction of Unauthorised Occupants". However, there is no doubt about the legislation the parties had in mind and in other places it is accurately named.*

from arbitration any facet on which a decision is to be taken otherwise, or to which the Public Premises Eviction Act and rules made thereunder are applicable.

7. The arbitration clause provides for a unilateral appointment by the Chairman of AAI. Leela first applied[3] to this Court in respect of the lease deeds relating to the 18,000 Land, under Section 11 of the *Arbitration and Conciliation Act, 1996* ("***Arbitration Act***") to appoint an arbitrator since the AAI refrained from appointing an arbitrator. The first Section 11 Application was filed before any eviction proceedings were initiated by AAI. Another Application under Section 11 of the Arbitration Act in respect of the 11,000 Land was filed well after the eviction proceedings had commenced. These Applications (collectively, "***Section 11 Applications***") are also being disposed of by this common judgement.

8. Leela would like this Court to hold that an arbitration agreement being in existence, an arbitral tribunal must be constituted, leaving it to the arbitral tribunal to deal with all matters of jurisdiction. On the other hand, AAI would like this Court to hold that the disputes raised by Leela insofar as they relate to challenging the eviction and recovery of dues fall squarely out of the scope of the arbitration agreement. AAI's contention is based on the explicit deeming fiction contracted by the parties that 18,000 Land and the 11,000 Land are public premises, coupled with the exclusion of the subject of eviction and recovery of lease rental dues from the scope of the arbitration agreement.

[3] *Commercial Arbitration Application No. 28 of 2017 in respect of the 18,000 Land – filed on January 20, 2017; and Commercial Arbitration Application No. 64 of 2025 in respect of the 11,000 Land – filed on September 29, 2021*

9. AAI sought to evict Leela from the leased land, way back in 2017. By that time, the lease for 18,000 Land had well expired (in 2012). The lease for the 11,000 Land had not expired by then (it expired later in March 2024). However, Leela has remained in possession of the entire leased land till date.

10. In the *interregnum*, Leela also got a declaratory arbitral award in relation to the 11,000 Land that no amounts are payable in respect of such land. This award was set aside by a Learned Single Judge of the Delhi High Court with costs. The outcome was upheld by a Learned Division Bench of that Court for different reasons, with one paragraph in the impugned judgement being deleted. The Supreme Court upheld the view and a review petition too stood dismissed. The upshot is, that the declaration that nothing is payable in relation to the 11,000 Land has been emphatically struck down, but Leela continues to remain in possession of that piece of land.

11. The eviction proceedings initiated by AAI were under the special provisions of Chapter VA of *The Airports Authority of India Act, 1994* ("***AAI Act***"), on the premise that the leased land was "airport premises" – and not under the Public Premises Eviction Act in respect of the deemed "public premises". Chapter VA of the AAI Act had been introduced into the AAI Act in 2003. In the eviction proceedings, Leela filed applications under Section 8 of the Arbitration Act on the premise that the parties have an arbitration agreement that covers disputes and differences between them ("***Section 8 Applications***").

12. The Section 8 Applications were dismissed by the Eviction Officer. An order dated August 6, 2019 dismissed the Section 8 Application in respect of the 11,000 Land and an order dated May 5, 2021 dismissed the Section 8 Application in respect of the 18,000 Land (collectively, "***Impugned Orders***").

13. Statutory appeals[4] challenging the Impugned Orders have been filed by Leela under Section 37 of the Arbitration Act read with Section 28-K of the AAI Act ("***Statutory Appeals***"). Under Section 28-K of the AAI Act as amended by the Tribunal Reforms Act, 2021, a statutory appeal lies in the High Court and not before a tribunal that was meant to be constituted under the AAI Act. These two Appeals too are being disposed of along with the Section 11 Applications, by this common judgement.

14. To avoid prolixity, each and every step taken in the web of proceedings between the parties is not being reproduced in this judgement. A detailed List of Dates has been tendered by Leela in respect of each of the 18,000 Land and the 11,000 Land. Suffice it to say, that Writ Petitions have been filed and withdrawn by Leela. The Section 8 Applications were disposed of once, with a remand for provision of reasons. This led to the Section 8 Applications being heard afresh. In direct conflict with the stated desire to proceed to arbitration, Leela has filed a Commercial Suit in this very Court in respect of the 18,000 Land, seeking a declaration that the lease stood renewed for another 30 years by exchange of correspondence. Two sets of arbitration proceedings with varying outcomes took

[4] *Arbitration Appeal No. 83 of 2024 (in respect of the 18,000 Land) and Arbitration Appeal (L) No. 12153 of 2021 (in respect of the 11,000 Land).*

place in relation to the 11,000 Land. As stated earlier, an arbitral award declared that nothing was payable by Leela in respect of the 11,000 Land on the premise that the lease stood frustrated, but that has been firmly set aside.

15. AAI too filed amendment applications to enhance the recovery amounts claimed before the Eviction Officer. Various Interim Applications have been filed by the parties in the proceedings pending before this Court. Without getting bogged down by the intricate and strategic web of filings of various proceedings, in this judgement, the focus has been retained on what is relevant for purposes of determining the merits of the Statutory Appeals, and indeed, the merits of the Section 11 Proceedings.

Contentions of the Parties:

16. Mr. Rafique Dada, Learned Senior Counsel on behalf of Leela would contend that the lease deeds are not conventional leases but they constitute a joint venture agreement between the parties. He would also contend that private lands were amalgamated into the 18,000 Land, after which the 18,000 Land could have never retained the character of "airport premises" or "public premises". That apart, Mr. Dada would submit that on December 22, 2009, Leela made a request to AAI to renew the lease deeds for the 18,000 Land, which led to an offer dated March 31, 2011 (just before the expiry of the lease scheduled for July 11, 2012) from AAI, indicating a renewal for 30 years from April 1, 2011 to March 31, 2041 on the same terms and conditions as originally contracted. On September 29, 2011, Leela is said

to have confirmed an unconditional acceptance of such offer, which led to formation of a contract of renewal of lease. Since the proposal and acceptance entailed all the terms of the existing lease deeds being applicable, it is contended that such an extension is also bound by the arbitration agreement contained in the lease deeds. Mr. Dada would also point out that when such acceptance was conveyed by Leela to AAI, a nominee director of AAI was a member of the Board of Directors of Leela – the upshot being acquiescence by AAI.

17. About a year later, by a letter dated July 18, 2012, AAI stated to Leela that approval of the "Competent Authority" to the renewal was still awaited, and therefore, a temporary extension of six months was being granted. On July 24, 2012, Leela confirmed its acceptance of the letter dated July 18, 2012. Thereafter, multiple *ad hoc* extensions for periods ranging from three months to a year were granted by AAI between 2013 and 2015. On November 13, 2014, AAI is said to have revised the lease rentals for the 18,000 Land, which Leela alleges is contrary to the offer and acceptance of a 30-year extension on the same terms. By January 11, 2016, the last of the *ad hoc* extensions by AAI expired.

18. On September 27, 2016, AAI called upon Leela to vacate the land and hand it over by October 31, 2016 after restoring the floor space index ("***FSI***") entitlements on that land and clearing all outstanding dues. Mr. Dada would submit that this led to Leela invoking arbitration on October 27, 2016, and on failure of AAI to appoint an arbitrator, on January 20, 2017, a Section 11 Application was filed by Leela in respect of the 18,000 Land. However, even while the Section 11 Application was

pending, Mr. Dada would submit, on February 6, 2017, AAI initiated eviction proceedings before the Eviction Officer under the AAI Act and not under the Public Premises Eviction Act. The choice of legislation, Mr. Dada would indicate, has implications for the exceptions to the arbitrability as contended by AAI.

19. In sharp contrast, Mr. A.A. Kumbhakoni, Learned Senior Counsel on behalf of AAI would submit that the parties had consciously chosen to keep eviction from the leased land out of the scope of arbitration. He would contend that one need not even look to the statutory framework governing eviction proceedings, since by contract, the parties had resolved that the land in question was deemed to be "public premises", and thereby attract the Public Premises Eviction Act. In addition, the parties also expressly agreed that any dispute or difference that would fall within the scope of the Public Premises Eviction Act, would not be arbitrable, Mr. Kumbhakoni would submit. Therefore, he would contend, the parties contracted that such disputes would fall within the contracted exclusions to the arbitration agreement.

20. Mr. Kumbhakoni would submit that the choice by AAI to initiate eviction under the AAI Act and not the Public Premises Eviction Act, is a valid choice made well within the jurisdiction of the AAI Act. He would contend that the legislation governing eviction is hardly relevant for determination of whether the parties had agreed by contract to arbitrate about eviction. Once the parties had chosen to treat the land leased by AAI to Leela as public premises and thereby within the scope of the Public Premises Eviction Act and outside the scope of the arbitration agreement

between the parties, it is their contracting intention as expressed in writing at the time of executing the contract that would determine what the parties agreed was not arbitrable. In the result, he would submit, the Impugned Orders rejecting the Section 8 Applications deserve to be upheld, while the Section 11 Applications would need to be rejected insofar as they relate to eviction and recovery of lease rentals, on the premise that the subject matter of the dispute is not arbitrable.

Analysis and Findings:

21. Before embarking upon the analysis, it would be fruitful to list the proceedings (the Statutory Appeals and the Section 11 Applications) that have been tagged and heard for disposal by this judgement:

A) Arbitration Appeal No. 83 of 2024 – a statutory appeal under Section 37 of the Arbitration Act read with Section 28-K of the AAI Act, impugning rejection of the Section 8 Application in relation to the 18,000 Land;

B) Arbitration Appeal (St.) No. 12153 of 2021 – a statutory appeal under Section 37 of the Arbitration Act read with Section 28-K of the AAI Act, impugning rejection of the Section 8 Application in relation to the 11,000 Land;

C) Commercial Arbitration Application No. 28 of 2017 – an application under Section 11 of the Arbitration Act, seeking appointment of an arbitrator under the lease deeds for the 18,000 Land; and

D) Commercial Arbitration Application No. 64 of 2025 – an application under Section 11 of the Arbitration Act, seeking appointment of an arbitrator under the lease deed for the 11,000 Land.

22. As stated at the threshold, regardless of the web of pleadings and proceedings involved, the core issue that falls for consideration in these proceedings is whether the proceedings for eviction and recovery of lease rentals fall within the scope of the arbitration agreement between the parties.

23. Arbitration is a creature of contract. It is the parties' autonomy that creates the jurisdiction for arbitration. If the parties have agreed to bind themselves to resolving certain disputes by arbitration, only a provision of law that renders such an agreement illegal, can make that dispute non-arbitrable. However, if the parties had consciously excluded the scope of certain type of disputes from arbitrability in the very contract that houses the arbitration agreement, whether any statutory provision excludes arbitrability and which statutory provision excludes it, would be totally irrelevant.

24. To see the matter from this prism, it is vital to examine the arbitration agreement between the parties. Clause 35 in the lease deeds relating to the 18,000 Land and Clause 37 in the lease deed relating to the 11,000 Land are identical in terms. It would be useful to reproduce them below:-

> ***All disputes and differences*** *arising out of or* ***in any way touching or concerning this agreement*** *(****except these the decision whereof is otherwise herein before expressly provided for*** *or* ***to which the***

> ***Public premises (Eviction of Unauthorised Occupants) Act, 1971 and the rules framed thereunder which are in force or which may hereafter come into force are applicable****) shall be referred to the* ***sole arbitration of a person to be appointed by the Chairman of the Authority*** *or in case the designation of Chairman is changed or his office is abolished, by the person for the time being entrusted, whether or not in addition to other functions, with the functions of the Chairman, International Authority of India, by whatever designation such person may be called and if the Arbitrator so appointed is unable or unwilling to act to the sole arbitration of some other person to be similarly appointed and willingly to act as such arbitrator. It will be no objection to any such appointment that the Arbitrator so appointed is a servant of the Authority that he had to deal with the matters to which this agreement relates and that in the course of his duties as such servants of the Authority, he had expressed views on all or any of the matters in disputes or differences. The award of the arbitrator so appointed shall be final and binding on the parties. The Arbitrator may with the consent of the parties, extend from time to time, the time for making and publishing the award.*
>
> *[****Emphasis Supplied****]*

25. Even a plain reading of the foregoing would show that the parties had decided that disputes and differences on which the decision would otherwise be made (outside arbitration) would not be arbitrable. Likewise, disputes and differences to which the Public Premises Eviction Act and subordinate legislation under that law applies, would be outside the scope of the arbitration agreement.

26. Now, Clause 11 (in all lease deeds) provides as follows:-

> ***The said land*** *the building* ***shall be deemed to be public premises as defined in the Public Premises (Unauthorised Occupants Eviction) Act, 1971*** *notwithstanding the lessee has constructed a building on the said land.*
>
> ***[Emphasis Supplied]***

27. A plain reading of the foregoing would show that the parties had adopted, by contract, the mechanism of a deeming fiction in relation to the land leased by AAI to Leela. The parties had agreed that the land and the building constructed on it would be deemed to be "public premises" within the meaning of the term in the Public Premises Eviction Act regardless of Leela having constructed a private hotel on the land so leased. In other words, the parties agreed that for all purposes of their commercial relationship, the land forming subject matter of the lease deeds would be treated as "public premises". The cumulative effect of such an agreement to deem such land as "public premises", coupled with the exception in the arbitration agreement as to matters that shall not be arbitrable, is that the land would be treated as public premises and thereby attract the Public Premises Eviction Act, and thereby eviction from the land would not be arbitrable. In my opinion, a conjoint reading of the two provisions i.e. the deeming provision (Clause 11 of all three lease deeds) read with the arbitration provisions (Clause 35 in relation to the 18,000 Land lease deeds; and Clause 37 in the 11,000 Land lease deed) would point to the fact that the parties had explicitly decided that any dispute or difference

relating to eviction of Leela from the leased land was to be excluded from the scope of arbitration.

28. In my view, the myriad objections and assertions that have been pressed into service on behalf of Leela, to challenge the Impugned Orders and to seek referral of disputes and differences in their entirety to arbitration, stand answered. Each of the propositions canvassed on behalf of Leela have been dealt with in the paragraphs that follow. It is important to make clear that nothing contained in this judgement is an expression of an opinion on merits of the disputes between the parties since the scope of the judicial consideration in these proceedings is purely a jurisdictional one as to whether eviction of Leela from the leased land can be subject matter of arbitration.

The Joint Venture Argument:

29. *First*, Leela's primary commercial contention is that the lease deeds are not conventional lease deeds but instruments that evidence a joint venture. The lease deeds are said to pose issues that cannot be adjudicated by an Eviction Officer under the AAI Act, who has limited power to conduct summary proceedings. To my mind, this contention i.e. the need to treat multiple lease deeds as a composite joint venture, does not present any consequence for these proceedings. That the commercial arrangement is one of a joint venture poses no conflict between the jurisdiction of the arbitrator and the jurisdiction of the Eviction Officer so long as the subject matter of the dispute is eviction. The parties have explicitly agreed in

the lease deeds as to what falls outside the jurisdiction of the arbitral tribunal. As explained above, eviction is clearly outside the scope of arbitration as a matter of contract.

30. Indeed, the lease rentals in relation to the 18,000 Land and the minimum guaranteed amount under the supplemental agreement relating to the 11,000 Land, entail payments based on the turnover of the respective businesses conducted on the leased land – the business of the hotel and and of the flight kitchen on the 18,000 Land and the business of the new hotel wing on the 11,000 Land. In fact, in relation to the minimum guarantee amounts payable under the supplemental agreement executed contemporaneously with the lease deed for the 11,000 Land, there have been two rounds of arbitration between the parties but those did not relate to eviction but related to payment of the minimum guaranteed amounts. That apart, an arbitral award holding that Leela needs to pay nothing on the 11,000 Land has been quashed and set aside in three concurrent findings all the way to the Supreme Court, which rejected a review petition too.

31. In the hearing before me, Leela has itself volunteered in writing in the List of Dates, that it had offered to give up the 11,000 Land. If anything, this would indicate that Leela was not averse to eviction from the 11,000 Land. Indeed, the disputes in relation to the 11,000 Land include the contention of AAI that FSI entitlements on such land has been utilised on the 18,000 Land; and the contention of Leela that AAI's delay in in approving building plans and the conditions it imposed when approving the plans, led to the building of a hotel wing unviable.

According to Leela this would necessitate examining evidence to assess damages, which the Eviction Officer cannot conduct.

32. None of these contentions, to my mind are of any consequence, when the parties' own sovereign agreement on what is arbitrable has excluded from its scope, anything that attracts the Public Premises Eviction Act, and the parties have explicitly agreed that the leased land would be deemed to be public premises for purposes of that very law.

33. Once the parties have consciously made a contractual choice to arbitrate on specific disputes, along with an integral conscious choice to exclude specific disputes from arbitration, it is their bounden duty to abide by the terms of their arbitration agreement. It was an integral and critical condition of contract that the land leased by AAI to Leela would be deemed to be public premises and that any facet of disputes and differences relating to eviction from public premises would stand excluded from arbitration. Therefore, the parties agreed that there is no arbitration agreement in existence in relation to the subject matter of eviction. In these circumstances, even if the wider commercial agreement between the parties was one of a joint venture, that proposition would by no means erode the agreed contractual position that disputes over eviction from the leased land is agreed as not being arbitrable.

Lease Rentals being Incidental:

34. *Second*, it has also been argued on behalf of Leela that the lease rental is ancillary to the lease deeds. This issue too does not lead to the analysis being any different insofar as the parties' explicit agreement on what they would not arbitrate on.

Existence of Arbitration Agreement:

35. *Third,* it is argued on behalf of Leela that the Eviction Officer has indeed returned a finding that an arbitration agreement is in existence. Once an arbitration agreement is in existence, Leela would submit, the Eviction Officer is bound to allow the Section 8 Applications. This purported error on the part of the Eviction Officer is attributed by Leela to the pre-2015 version of Section 8 being incorporated into the Impugned Orders. The submission is that the Eviction Officer applied the wrong standard when dealing with the Section 8 Applications. Further, the contention is, once the Eviction Officer arrived at a view that an arbitration agreement is in existence, what is covered by it and what is excluded from it, is a matter that ought to have been left to the arbitral tribunal. Towards this end, Mr. Dada would seek to rely on ***Vidya Drolia***[5] and submit that the refusal to refer the parties to arbitration can only be made when it is found that no valid arbitration agreement exists.

[5] *Vidya Drolia & Ors. vs. Durga Trading Corporation – (2021) 2 SCC 1*

36. I am afraid, I am unable to accept this contention. The term "existence" in relation to the arbitration agreement must necessarily relate to formal existence of an arbitration agreement in connection with resolution of the very same subject matter of the dispute as has been presented to the forum in which the Section 8 Application is filed. When a forum is approached by a party to an arbitration agreement in the teeth of the existence of an arbitration agreement, any other party to the arbitration agreement may file an application under Section 8. The forum must then examine if an arbitration agreement exists for purposes of resolving that subject matter of dispute presented to that forum. If it is found that the subject matter of the dispute brought before the forum is covered by an arbitration agreement, the application under Section 8 must be allowed. However, if it is found that there is no arbitration agreement in relation to the subject matter of the dispute that the forum is presented with, the application under Section 8 must be rejected.

37. This is precisely what the Impugned Orders have done. A finding that there is an arbitration agreement in the lease deeds does not mean that the very provisions of the arbitration agreement that exclude the type of disputes covered by it can be ignored. Having examined the existence of the arbitration agreement in the three lease deeds, I find that arbitration agreements do exist, but in relation to disputes and differences relating to eviction, the arbitration agreement does not exist on that subject since that falls in the exclusions. Therefore, they do not exist in relation to the subject matters contained in the exclusions.

38. In fact, Paragraph 27 of ***Vidya Drolia*** succinctly summarises the position in the following words:-

> *27* ***Arbitration being a matter of contract, the parties are entitled to fix boundaries as to confer and limit the jurisdiction and legal authority of the arbitrator****. An arbitration agreement can be comprehensive and broad to include any dispute or could be confined to specific disputes.* ***The issue of scope of arbitrator's jurisdiction invariably arises when the disputes that are arbitrable are enumerated or the arbitration agreement provides for exclusions as in case of "excepted matters"****. The arbitration agreement may be valid, but* ***the arbitral tribunal in view of the will of the parties expressed in the arbitration agreement, may not have jurisdiction to adjudicate the dispute.*** *The will of the parties as to* ***the scope of arbitration is a subjective act and personal to the parties.***
>
> *[**Emphasis Supplied**]*

39. Indeed, the parties have fixed boundaries and drawn lines to limit the jurisdiction and legal authority of the arbitral tribunal. They have agreed on a broadly worded clause to submit to arbitration, but they have also agreed in specifically-worded provisions, on the confines of keeping the specific dispute of eviction outside the scope of arbitration. Indeed, the will of the parties on the scope of arbitration is a subjective fact and the parties have exercised their sovereign and free contracting will to agree that the land leased by AAI would be deemed to be public premises and eviction from such land would not be arbitrable. That contract must be honoured, and no extent of pointing to inconvenience or inefficiency in resolution of the disputes and issues involved, can wish away the absence of an arbitration agreement for such subject matter. Indeed, Leela would not be without remedy outside arbitration and indeed, it is Leela that has filed a suit seeking a

declaration that the lease stands extended, thereby negating AAI's right to evict Leela.

40. The Court cannot re-write the contract between the parties, and but for this exclusion, the agreement itself may not have been contracted. Therefore, the contracted confines and boundaries have to be respected. Put differently, on the subject matter of eviction, the parties have explicitly agreed that the arbitration agreement does not exist. Therefore, there is nothing perverse in the Impugned Orders. The wrong version of Section 8 having been reproduced in the Impugned Orders is no consequence to the Statutory Appeals.

41. Likewise, it has been argued on behalf of Leela that all ingredients of Section 8 have been met and therefore the Impugned Orders could have never rejected the Section 8 Applications. Towards this end, relying on the ***Interplay Judgement***[6] four ingredients have been drawn out to state that when these are met, the Section 8 Applications ought to have been allowed. I am afraid, it is evident that two essential ingredients pressed into service by Leela do not exist. These two ingredients are, existence of the arbitration agreement and the matching of the subject matter of the action in question and the subject matter covered by the arbitration agreement. These two ingredients are sorely missing in the instant case. I have already discussed above, how the arbitration agreement in existence points to the non-existence of an arbitration agreement in relation to the subject matter of eviction. As a corollary, the requirement that the subject matter brought before the Eviction

[6] *In Re. Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899 – 2023 SCC OnLine SC 1666*

Officer can never match the subject matter of the arbitration agreement, which exists in relation to only those matters that are not excluded.

Extension of Lease by Correspondence:

42. *Fourth*, invoking Section 7 of the Arbitration Act, it is argued on behalf of Leela that Leela's request for extension of lease for the 18,000 Land was met with an offer of extension from AAI on the same terms for 30 years, which offer was in turn accepted by Leela, leading to the formation of a contract. Since the reference was to an extension on the same terms, the contention is that such an extension by exchange of letters included the arbitration agreement.

43. Without meaning to pronounce on merits, simply assuming for the sake of argument that this is a valid proposition, it does not take Leela's case any further. Although no lease renewal has been actually executed and registered, and although Leela agreed that pending approval of the Competent Authority, *ad hoc* extensions from time to time applied, it would still inexorably follow that the arbitration clause that would have been incorporated by reference by way of such correspondence, is still the very same arbitration agreement that excludes disputes over eviction from the deemed public premises from the scope of arbitration.

AAI Act is not the Public Premises Eviction Act:

44. *Fifth,* Leela contends that the exclusion to arbitrability carved out by the parties relates to the Public Premises Eviction Act and not the AAI Act, under which

the AAI has initiated the eviction proceedings. This is a red herring and again does not change the analysis made in this judgement.

45. When the AAI Act was amended in 2003 to include Chapter VA under which AAI is now proceeding to effect eviction from the leased land, Leela contends that the parties never chose to amend the lease deeds to replace references to the Public Premises Eviction Act with references to the AAI Act. The AAI Act also does not repeal the Public Premises Eviction Act insofar as it relates to airport premises. So also, Leela contends, the AAI Act does not have a provision of ouster of jurisdiction of other courts in the manner of the effect of the Public Premises Eviction Act. Consequently, the contention is that eviction under AAI Act is not covered by the exclusion from arbitration.

46. In my opinion, these contentions attempt to raise abstruse points which can at best be argued on merits in the final hearing of the eviction proceedings. They have no relevance to whether the Eviction Officer under the AAI Act has jurisdiction as a matter of law, and whether eviction is at all arbitrable.

47. The proceedings adopted by AAI are under the statutory provisions available under the AAI Act. The reference to the Public Premises Eviction Act in the lease deeds, both in the deeming position contracted by the parties and in the provision of exclusion from the arbitration, enables identification of the leased land as public premises in the context of eviction proceedings. The effect of these provisions is that eviction from the leased land stands excluded from the arbitration agreement.

Once it is clear that eviction is excluded from arbitrability, in my opinion, it does not matter which other provision or forum is available in law to enable eviction. So long as eviction is not covered by arbitration, the availability of a new provision of law that came into force after the execution of the lease deeds for effecting eviction, cannot become unavailable to AAI to pursue eviction. The reference in the lease deeds is to the Public Premises Eviction Act with the objective of excluding eviction from the scope of arbitration. At that stage, it was not possible to have envisaged to refer to Chapter VA of the AAI Act, since it did not exist. What the provisions clearly point to is that the parties intended to exclude eviction from the leased land from arbitration.

48. Towards this end, Mr. Kumbhakoni is precisely right in submitting that to discern the contracting intent of the parties when interpreting the contract, regard must be had to the position in fact and in law as prevailing at the time of execution of contract. By choosing the reference to the Public Premises Eviction Act, what the parties achieved in the lease deeds is the recording of what is not arbitrable. That is all that matters for purposes of dealing with the Section 8 Applications. Merely because the parties chose to exclude eviction and related recoveries from arbitrability by reference to the Public Premises Eviction Act, it would not follow that the AAI is estopped from utilising other powers specially made available in the AAI Act to effect eviction. Such a reading is absurd to say the least. When the objective of the contract is achieved – to exclude eviction from arbitration, it would not mean that the exclusion from arbitration would present a legal handicap to AAI,

forcing it not to avail of special powers conferred by Parliament to achieve the same objective.

49. Therefore, whether it is the Public Premises Eviction Act or the AAI Act that is the correct legislation for AAI to utilise, is a question that is not relevant to the accuracy of the decision under Section 8 of the Arbitration Act. Once it is clear that eviction is not amenable to arbitration, any appropriate forum – any other than an arbitral tribunal – would be available for eviction. For the reasons set out above, in my opinion, the arbitration agreement is not in existence insofar as it relates to eviction and related recoveries. Therefore, the scope of eviction and related recoveries being outside the scope of arbitration, no fault can be found with either the AAI or with the Impugned Orders on the premise that it was the AAI Act that was invoked and not the Public Premises Eviction Act.

50. Notably, despite being a party that asserts the existence of an arbitration agreement (for which the Section 8 Applications have been filed), Leela has conducted itself inexplicably and cynically by filing Commercial Suit No. 1375 of 2019 in this very Court seeking declaratory reliefs on the very same subject matter. That suit is pending. What is inexplicable is that the very party that asserts that the dispute is arbitrable has filed a suit. The upshot is that the kitchen sink is being thrown by Leela at the situation, to somehow or the other remain in possession of the leased land, and continue to enjoy the land without paying revised leased rentals linked to current market prices, and worse, to continue to be in possession despite the very lease periods having expired in respect of each of the leases.

51. Every possible forum has been tapped, and a maze of proceedings has been created, as a result of which, with concurrent strands of dispute resolution are being pursued. Meanwhile, Leela remains entrenched in the leased land despite expiry of the lease periods. Indeed, the Suit seeks specific performance of the purported extension of the lease by 30 years over the 18,000 Land, by way of correspondence. However, going purely by Leela's own position that the arbitration agreement is extremely wide and that the dispute is arbitrable, Leela ought not to have even contemplated the Suit if it were sincere about its contentions on the existence of arbitration agreement in relation to eviction. In my opinion, the filing of the Commercial Suit by itself undermines Leela's position. If it was genuinely of the view that the arbitration agreement is so wide that it brings within its coverage any facet relating to the lease deeds, and that too in the teeth of the exclusion, it would follow that the arbitration agreement, with its exclusion, would cover the correspondence over the extension of the lease.

52. I leave it at that and say nothing more so as to not wade into merits at this stage. Indeed, the Eviction Officer has not made any comment on the filing of the Suit in the analysis contained in the Impugned Orders, but it would be inappropriate not to take judicial notice of the approach to this litigation by Leela.

Leased Land and "Airport Premises":

53. *Sixth*, Leela has come up with a novel argument to contend that the leased land does not at all constitute "airport premises". In this regard, it is Leela's

contention that the AAI Act would not at all have jurisdiction. In my opinion, it would be necessary to examine this argument on merits, because the Statutory Appeals are being pressed not only under Section 37 of the Arbitration Act but also in reliance on Section 28-K of the AAI Act. The latter provision now provides for a statutory appeal to the High Court – the institution of a tribunal to hear appeals against orders of Eviction Officer has been replaced by the Tribunal Reforms Act, 2021, with a statutory appeal now lying before the High Court.

54. The Impugned Orders, in my opinion, rightly note that the definition of the term "airport premises" as contained in Section 28-A(a) would cover any premises belonging to an airport. The term "premises" is defined as any land or building or part of a building including a garden, grounds and outhouses connected to such building, and any fittings to such building, for more beneficial enjoyment of the building. Chapter VA of the AAI Act enables eviction of unauthorised occupants of such "airport premises".

55. It must be remembered that the definitions set out in Section 28-A of the AAI Act, as is the norm for statutory definitions, provides meanings "unless the context otherwise requires". It is now trite law that definitions have to be purposively and contextually construed such that the context in which a defined term is used does not inflict violence to the legislative objective of the provision in which the definition is used. If the language of the definition presents an incongruity to the context in which the defined term is used, a departure from the language defining the defined term is permitted, and a commonsensical meaning of the term in a

manner that subserves the purpose of the legislation may be adopted, abandoning the defined language. It is truly trite law that the interpretation of the language in a definition must not be repugnant to the legislative objective or be made in a manner that is likely to defeat the purpose of the legislation itself[7].

56. The leased land is land belonging to the AAI. Leela's contention is that the land in question had not been acquired for airport-related purposes such as passenger facilities or aircraft operations. Once leased for a hotel, Leela would contend, the land would automatically get excluded from the term "airport premises". I am unable to agree with this argument. Evidently, Chapter VA of the AAI Act was introduced in 2003 to enable premises belonging to an airport to be regained from those who are occupying it without authorisation. Treating the very land as not being "airport premises" for no reason other than the land having been leased to Leela, is absurd to say the least. The absurdity is writ large in the premise that a lessee who overstays the lease cannot be evicted, only because he is a lessee.

57. It must not be forgotten that the land leased to Leela by AAI is, among others, for the purpose of running a flight kitchen and indeed constructing and running a hotel in close proximity to the airport. The leased land is located near the airport. Flight kitchen services are a vital ancillary element for the airline industry. Section 12(3)(f) of the AAI Act explicitly provides that one of the functions of AAI is to establish and maintain hotels, restaurants and restrooms *at* or *near* airports. Leela seeks to sparse this language to say all other provisions of Section 12(3) use

[7] *K.V. Muthu vs. Angumuthu Ammal – AIR 1997 Supreme Court 628 – to cite just one judgement on the point.*

the word "at" while this provision alone uses "at or near" and therefore, land "at" the airport is a class distinct from land "near" the airport. To my mind this splitting of hairs on Leela's behalf is symptomatic of throwing the kitchen sink at the problem. The submission inflicts violence to the plain, simple and commonsensical meaning of the provisions contained in Section 12(3)(f) of the AAI Act.

58. Premises owned by AAI are premises that the public exchequer has paid for. Such premises are public premises. The parties consciously agreed that the land leased for the hotel and the flight kitchen would be treated as public premises. The law governing public premises and eviction of unauthorised occupants was always applicable to the land leased to Leela by AAI. In 2003, the AAI Act was amended to empower the AAI to directly exercise powers to evict unauthorised occupants. The availability of a new law is of no import to the non-existence of an arbitration agreement insofar as eviction is concerned – I have already dealt with this issue above. To now inflict violence to the beneficial provisions of Chapter VA of the AAI Act, aimed at achieving a wider public purpose of ensuring that private parties whose leases have expired, do not squat on the AAI's land, is unacceptable.

59. The objective and purpose of Chapter VA of the AAI Act is to enable smooth eviction of unauthorised occupants from public premises owned by the AAI. The right to occupy the 18,000 Land and the 11,000 Land flowed from the lease deeds. Leela is itself not keen to retain the 11,000 Land, and has asserted in its submissions filed in this Court that it has often offered to return the same. As regards the 18,000 Land, Leela has been the beneficiary of *ad hoc* extensions from

time to time and is *prima facie* in occupation, without authority of a lease deed. Whether it has a contract for extension on the same terms for another 30 years, and that too when admittedly such extension has not yet been granted sanction by the Competent Authority, is a matter that can squarely be determined by the Eviction Officer when he hears the matter on merits.

60. At this stage, it is simply the exercise of jurisdiction by the Eviction Officer that has been challenged and has been kept hanging since 2017, with Leela paying rates contracted in the 1980s and 1990s. The leases were for 30 years and as of now, have all expired. This is precisely the situation that Chapter VA empowers the AAI to deal with. Therefore, to split hairs about profound and deep differences between land "*at*" the airport and land "*near*" the airport is *prima facie* a self-serving strategic initiative to continue squatting on land at old expired rates, and resisting paying lease rentals at current market rates. The legislative purpose of Chapter VA is to free public resources and the land that indeed belongs to AAI and for which it is the public exchequer that has funded its purchase. The interpretation canvassed by Leela would vitiate and obliterate the very purpose of the legislation. Therefore, I have no hesitation in rejecting this absurd contention.

Effect of Amalgamating Private Land:

61. *Seventh*, Leela's contention is that since private lands have been amalgamated into the AAI land, the land leased by AAI has ceased to have the character of public premises. This too has to be stated to be rejected. If land is

amalgamated for purposes of its development, it would not follow that the lease deed and its terms would cease to exist. The amalgamation of the private lands with the leased land is a conditional permission given pursuant to the lease but that does not take away the character of the portion of land owned by a public authority and leased to Leela. In the very same lease deed, the parties positively contracted AAI's land leased to Leela shall be deemed to be public premises for purposes of the Public Premises Eviction Act. Merely because some other portions of land are amalgamated, it would not follow that AAI would lose its ownership of the land leased to Leela. That portion of the land shall remain owned by AAI and shall remain public premises and also airport premises. Therefore, this is yet another red herring that detracts from the core issue, and I have no hesitation in rejecting it.

Costs to Follow the Event:

62. At this stage, the Impugned Orders have only had to contend with whether the Eviction Officer is without jurisdiction, and that too primarily on account of the arbitration clause in the lease deeds. All the contentions being raised by Leela are contentions that can be raised in response to the show cause notice for eviction issued by the Eviction Officer. On the basis of the Section 8 Applications, the matter has not progressed for close to a decade – the eviction proceedings began in 2017. In fact, in relation to the 11,000 Land, the Section 11 Application has been filed by Leela only in 2021.

63. Meanwhile the proceedings have meandered on the docket of this Court until these matters were tagged and kept for final hearing on February 20, 2025. All through this period, Leela has continued to enjoy the usage of the premises on expired lease rental terms and despite the expiry of the very lease periods. On the basis of a statement that no precipitate steps would be taken pending these proceedings, the enjoyment of the land by Leela has continued without revision to the lease rentals and that too way beyond the expiry of the lease periods.

64. In these circumstances, for the reasons set out above, I have no hesitation in dismissing these Appeals filed under Section 37 of the Arbitration Act, and hereby uphold the Impugned Orders that dismissed the Section 8 Applications. Leela is at liberty to proceed to arbitration on any facet of the lease deeds other than eviction from the leased land. Needless to say, the Eviction Officer shall conduct the final proceedings on eviction on merits, uninfluenced by the observations made in this judgement, which is restricted to testing the veracity of the challenge laid to the Impugned Orders under Section 37 of the Arbitration Act read with Section 28-K of the AAI Act.

65. Considering that the disputes in question are commercial disputes, and factoring in the nature of the pleadings and contentions on the law, and in view of my assessment of the lack of reasonableness in some of the contentions raised on behalf of Leela and the resultant continuance of enjoyment of expired leasehold land by Leela, in my opinion, it would be most appropriate that costs should follow the event. Taking a holistic view of the matter, and factoring in the time spent in

the matter in having to deal with the nature of the contentions that have enabled such prolonged enjoyment of the leased land, Leela is directed to pay to AAI, costs in the sum of Rs. 10 lakhs within a period of four weeks from the date of uploading this judgment on the website of this Court.

Conclusions and Directions:

66. In the result, it would be appropriate to summarise my findings thus:

a) The arbitration agreements executed between AAI and Leela, which are contained in the lease deeds, do not cover within their ambit, the subject matter of eviction of unauthorised occupation by Leela of the leased land, and recovery of associated rent and damages;

b) The parties had explicitly agreed to the position that the land leased to Leela would constitute public premises despite the construction of the building for conduct of business of the hotel and flight kitchen. Therefore, one need not look beyond the contract and into legislation to determine if eviction is excluded from the scope of arbitration;

c) The reference to the Public Premises Eviction Act in each of the lease deeds leads to the identification of the class of disputes and differences for their exclusion from coverage by arbitration. The reference to the said legislation has the effect of affirming the parties' consensual commitment by contract that eviction and related recoveries would fall outside the

scope of arbitration. This is not a provision by which AAI is obliged not to avail of statutory powers to effect eviction of unauthorised users of the land;

d) The introduction of Chapter VA in the AAI Act is a new power granted by Parliament after execution of the lease deeds, to enable a public authority such as the AAI to recover its premises being used by persons without authority. Eviction and recovery of lease rentals from public premises being outside the scope of arbitration, whether some other legislation is utilised is of no consequence to the core issue arising in these proceedings. That legislative purpose and objective of the AAI Act is being undermined by the contentions and arguments about such land not being "airport premises" which is neither relevant nor in consonance with the committed contractual position that the land leased to Leela by AAI constitutes public premises;

e) There was no requirement to amend the lease deeds to replace references to Public Premises Eviction Act with references to the AAI Act. Such a course of action was totally unnecessary since what is achieved by the provisions of the lease deeds is to exclude eviction and recovery from arbitration;

f) Both the leases – for the 18,000 Land and the 11,000 Land – have expired. *Prima facie*, the continued occupation of the land is unauthorised and squarely brings the matter within the jurisdiction of

Chapter VA of the AAI Act. This has no implication for the arbitration agreements, which in any case, provided for eviction of the land under the then applicable law, to be outside the scope of arbitration;

g) Whether or not one could hold that the lease for the 18,000 Land was extended for another 30 years on the same terms without any revision and on the same terms and conditions, is a facet of the matter that can be eminently argued by Leela before the Eviction Officer when attempting to show cause in reply to Eviction Officer's notice. *Prima facie*, the parties not having actually executed and registered a new lease deed, and the parties having accepted the *ad hoc* short term extensions of the lease, and the last extension has expired;

h) The filing of the Suit by Leela seeking a declaration that the extension of lease for another 30 years has been granted, undermines Leela's submissions about the dispute being arbitrable. On the contrary, it signals an attempt to litigate across forums, with the hope to continue the *status quo* and thereby prolong the enjoyment of the leased land at outdated lease rentals and that too beyond the expiry of the contracted lease periods;

i) Past arbitrations in relation to the minimum guaranteed amounts payable under the lease for the 11,000 Land have nothing to do with eviction proceedings. In fact, the Delhi High Court has had occasion to stricture

and impose costs on Leela when setting aside an arbitral award confirming that no amounts are payable by Leela in relation to the 11,000 Land – that position attained finality after approach to the Supreme Court;

j) In any event, it is Leela's case that it is ready and willing to hand over the 11,000 Land and therefore it should not have any issue with handing the same over. Any dispute or difference relating to implications of utilisation of FSI entitlements on such land and damages therefor, can indeed be subjected to arbitration;

k) Eviction proceedings shall be conducted by the Eviction Officer in question with due dispatch and if necessary, on a day-to-day basis in accordance with law. Leela is directed to participate in the proceedings to enable completion of the same expeditiously;

l) All disputes and differences other than those relating to eviction and recovery of lease rentals are amenable to arbitration. Considering that this component of the disputes are covered by the arbitration agreement in existence, no useful purpose would be served by keeping the Section 11 Applications pending and alive. In these circumstances, such components of disputes and differences (other than eviction and related dues) are hereby referred to arbitration by Justice (Retd.) Sanjay V. Gangapurwala, former Chief Justice of Madras High Court and this

Court. The parties shall approach the Learned Arbitral Tribunal within a period of one week of the upload of this judgement on the website of this Court to take instructions on how to proceed further in the matter; and

m) Considering the nature of the contentions raised and the implications of long-term protection secured on an interim basis, and considering the quality of the contentions raised by the losing party, costs must follow the event. The costs imposed above shall be honoured by Leela within a period of four weeks from the upload of this judgement on the Court's website.

67. With the aforesaid directions, both the captioned Appeals filed under Section 37 of the Arbitration Act read with Section 28-K of the AAI Act; and both the Section 11 Applications are hereby finally disposed of. Interim Applications, if any, in each of the Statutory Appeals and each of the Section 11 Applications shall also stand disposed of.

68. Learned Senior Counsel on behalf of the Appellant/Applicant requests for a stay on the operation of this order. Since the matter has been pending for quite some time, the Eviction Officer is requested not to fix the next date within the next four weeks.

69. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN J.]