* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Order reserved on: 27 April 2023**
Order pronounced on: 09 May 2023

\+ ARB.P. 567/2022, I.A. 16339/2022 (Delay in Rej.), I.A. 21040/2022 (E.H.), I.A. 409/2023 (Direction)

S.S. CON-BUILD PVT LTD ..... Petitioner
Through: Mr. Kunal Tandon, Mr. Saurabh Dev, Ms. Madhavi Khare, Advs.

versus

DELHI DEVELOPMENT AUTHORITY ..... Respondent

Through: Mr. Dayan Krishnan, Sr. Adv. with Mr. Sanjay Katyal, SC with Ms. Chand Chopra, Mr. Anish Dhingra, Mr. Nakul Ahuja, Mr. Sukhrit Seth, Mr. Nihal Singh and Mr. Gautam Yadav, Advs. for DDA

AND

\+ O.M.P.(I) 6/2022, I.A. 12690/2022 (E.H. Disposal of Pet)

M/S S. S. CON - BUILD PVT. LTD. ..... Petitioner
Through: Mr. Kunal Tandon, Mr. Saurabh Dev, Ms. Madhavi Khare, Advs.

versus

DELHI DEVELOPMENT AUTHORITY THROUGH ITS VICE CHAIRMAN ..... Respondent
Through: Mr. Dayan Krishnan, Sr. Adv. with Mr. Sanjay Katyal, SC with Ms. Chand Chopra, Mr. Anish Dhingra, Mr. Nakul Ahuja, Mr. Sukhrit Seth, Mr.

Nihal Singh and Mr. Gautam Yadav, Advs. for DDA

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

O R D E R

1. Since these two petitions under Sections 9 and 11 of the **Arbitration and Conciliation Act, 1996**[1] between the parties emanate from a common dispute and were heard together, they are being disposed of by this common judgment.

2. In the Section 9 petition, the petitioner had sought reliefs in respect of a notice dated 29 May 2018 issued by the **Delhi Development Authority**[2] raising a demand of Rs.25,41,16,487/- towards purported arrears of ground rent. Additionally, an interim order of protection was sought in respect of the communication dated 25 February 2020 issued by the DDA determining the **Lease Deed dated 10 May 2007**[3]. The petition under Section 11 of the Act seeks constitution of an Arbitral Tribunal in terms of the provisions contained in the Lease Deed and which contemplates the resolution of disputes by way of arbitration.

3. For the purposes of disposal of the present petitions, the following essential facts may be noticed. On 10 May 2007, a plot admeasuring 6085 sq. meters bearing Plot No.-1, BG-I and BG-II, Paschim Puri, New Delhi, came to be leased to the petitioner. Undisputedly, the grant was by way of a perpetual lease. In terms of

[1] The Act
[2] DDA
[3] Lease Deed

the provisions of the Lease Deed, the petitioner was liable to pay ground rent @ 2.5% of the premium and which roughly translated to Rs.2.50 crores annually. During the tenure of the lease, the petitioner on 12 January 2015 applied for the conversion of the leased premises from leasehold to freehold. The aforesaid application is stated to have been made in terms of an order dated 14 February 1992 read with a Circular dated 21 January 1993 issued by the Ministry of Urban Development (Lands Division) in the Union Government. Along with the said application, the petitioner also deposited Rs.3,46,08,283/- as conversion charges. The petitioner is also stated to have been informed of being in arrears in the sum of Rs. 5,32,09,406/- towards ground rent and interest accrued thereon. According to the petitioner, while the application for conversion was pending, it had deposited a further sum of Rs. 7 crores towards outstanding ground rent along with interest accrued thereon by 29 August 2016.

4. It was the case of the petitioner that in terms of a Circular dated 07 September 2005, the petitioner was liable to pay ground rent only till the submission of the conversion application. In the course of consideration of the said conversion application, DDA appears to have undertaken a computation exercise with respect to the total monies which according to it was liable to be paid for the purposes of conversion from leasehold to freehold. In terms of a Demand Notice of 29 May 2018, DDA found that the petitioner was liable to pay Rs. 25,41,16,487/- towards balance conversion charges, ground rent and interest accrued thereon. The said demand notice was followed by a Show Cause Notice dated 26 October 2018 calling upon the petitioner

to explain why its application for conversion be not rejected since it had failed to clear outstanding dues. The petitioner in response to the same, questioned the computation exercise as undertaken by DDA on various grounds. Thereafter, DDA came to issue yet another Show Cause Notice to the petitioner on 29 July 2019 calling upon the petitioner to show cause why its lease be not determined consequent to its failure to clear all outstanding liabilities. Upon receipt of the said notice, the petitioner in terms of its letter dated 08 August 2019 reiterated its objection to the computation of arrears by DDA. On 11 November 2019, DDA proceeded to issue a final Show Cause Notice yet again calling upon the petitioner to clear all outstanding dues. The respondent, thereafter, appears to have approached the Lieutenant Governor for approval of its proposal to cancel the lease. That approval came to be granted by the Lieutenant Governor as a consequence of which on 14 January 2020 the lease came to be determined. The petitioner was informed of the termination of the lease by way of Letter of 25 February 2020.

5. It thereafter appears to have filed W.P.(C) 3644/2022 before this Court assailing the Demand Notice dated 29 May 2018 as well as the Determination Notice dated 25 February 2020. The said petition came to be disposed of on 03 March 2022 with the observation that DDA would treat the writ petition as a representation and pass appropriate orders thereon. On 02 March 2022, DDA issued an Office Memorandum seeking to clarify its earlier policy document of 07 September 2005 with it being provided that in case any deficiency is found in respect of a conversion application, the applicant would be

required to pay the ground rent throughout irrespective of the date of submission of that application. The aforesaid OM has been challenged by the petitioner by way of W.P.(C) 5127/2022 which remains pending on the board of this Court. On 28 July 2022, DDA acting upon the directions issued on the first writ petition and which had been disposed of, proceeded to reject the representation of the petitioner. Significantly, that order has not been assailed by the petitioner.

6. Mr. Krishnan, learned senior counsel appearing for the DDA, has opposed the present petitions raising various objections including that of the disputes being non- arbitrable. According to Mr. Krishnan, the **Public Premises (Eviction of Unauthorised Occupants) Act, 1971**[4] and the adjudicatory mechanism set up thereunder extends to all disputes that may arise in respect of public premises. The PP Act, according to Mr. Krishnan, constitutes a complete code in relation to matters pertaining to resumption of possession of public premises as well as for eviction of persons in unauthorised occupation. Mr. Krishnan inviting the attention of the Court to Sections 4, 5, 8 and 9 of the PP Act submitted that since the enactment constitutes a special all-encompassing code in relation to public premises, it is the adjudicatory mechanism as statutorily created thereunder which is liable to be considered to be the solitary and exclusive remedy available to parties and no reference to arbitration would be permissible. Learned senior counsel also placed reliance upon Section 15 of the PP Act and which debars courts from exercising jurisdiction

[4] PP Act

or entertaining any suit or proceedings in respect of matters enumerated therein as being indicative of the legislative intent to create a special forum for adjudication of all disputes that may arise in respect of public premises and thus being yet another factor which would establish that the reference to arbitration as sought by the petitioner is misconceived. It was contended that since the PP Act envisages all disputes that may arise from and out of any action taken under the said statute being statutorily mandated to be tried and adjudicated only in accordance with the procedure prescribed therein, the disputes raised in the present petition cannot be referred for consideration of an Arbitral Tribunal.

7. Mr. Krishnan placed reliance in this respect upon the judgment rendered by the Court in **M/s. Fortune Grand Management Pvt. Ltd. v. Delhi Tourism & Transport Development Corporation**[5] where while considering the question of arbitrability of disputes arising from the PP Act, the Court had held as under:-

> "**15.** I may however state that the question as far as this Court is concerned is not res integra. A Division Bench of this Court in Fabiroo Gift House v. India Tourism Development Corp. referring to Section 15 of the PP Act as under:
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> > "15. Bar of jurisdiction.— No court shall have jurisdiction to entertain any suit or proceeding in respect of—
> >
> > (a) the eviction of any person who is in unauthorised occupation of any public premises, or
> >
> > (b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 5A, or
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> > (c) the demolition of any building or other structure made, or ordered to be made, under section 5B, or

[5] 2016 SCC OnLine Del 2366

[(cc) the sealing of any erection or work or of any public premises under section 5C, or]

(d) the arrears of rent payable under sub-section (1) of section 7 or damages payable under sub-section (2), or interest payable under sub-section (2A), of that section, or

(e) the recovery of—

(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5A, or

(ii) expenses of demolition under section 5B, or

(iii) costs awarded to the Central Government or statutory authority under sub-section (5) of section 9, or

(iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority."

16. Held that a claim for recovery of arrears of rent payable under Section 7(1) or damages payable under Section 7(2) or interest payable under Section 7(2A) of the PP Act cannot be subject matter of arbitration. Another Division Bench of this Court in Harjit Singh v. Delhi Development Authority also held that the kind of disputes which as per the terms of the perpetual lease deed were to be arbitrated by the Lieutenant Governor could not be subject matter of arbitration; it was held that the dispute insofar as it related to eviction of the petitioner from the public premises has to be decided by the statutory authority under the PP Act and only the dispute which was not covered by the PP Act could be adjudicated in accordance with the arbitration clause in the agreement between the parties.

17. On an interpretation of the arbitration clause in Exclusive Motors Pvt. Ltd. v. India Tourism Development Corporation 2009 SCC OnLine Del 1739, a Single Judge of this Court held the matters within the jurisdiction of PP Act to be not arbitrable. LPA No. 589/2009 preferred thereagainst is found to have been withdrawn on 13th November, 2013. Following the aforesaid judgments, I have in Nuurrie Media Ltd. v. Indian Tourism Development Corp. Ltd. held that there could be no arbitration with respect to the disputes covered under the PP Act.

18. The same view was also taken by me in Airports Authority of India v. Grover International Ltd. that a tenant/lessor of a public premises upon its tenancy/lease being determined, cannot before the public authority has had an opportunity to initiate proceedings

for eviction under the PP Act, rush and raise the dispute of validity of termination in a Court or in arbitration proceedings and invite adjudication thereon and contend that the same is maintainable for the reason of the proceedings under the PP Act having not been initiated till then. It was further held that if the public authority does not initiate the proceedings under the PP Act, the termination in any case would be of no avail whether it be valid or invalid and if proceedings under the PP Act are initiated then the invalidity of the termination has to be set up as a defence in the said proceedings only and cannot be subject matter of adjudication before any other fora. It was reasoned that under Section 5 of the PP Act, the satisfaction, to be accorded whether a person is an unauthorized occupant or not is of the Estate Officer and not of any other fora and that if it were to be held otherwise, it would frustrate the jurisdiction of the Estate Officer. Reliance was placed on Ashoka Marketing Ltd. v. Punjab National Bank (1990) 4 SCC 406 holding the PP Act to be a special legislation enacted to deal with the mischief of rampant unauthorized occupation of public premises.

19. Mention may lastly be made of the judgment of the Division Bench of this Court in India Trade Promotion Organisation v. International Amusement Limited (2007) 142 DLT 342, it was held by referring to Section 2(3) of the Arbitration Act that Section 15 read with Sections 5 and 7 of the PP Act confers exclusive jurisdiction on the Estate Officers appointed under Section 3 of the said Act to deal with applications under Sections 5 and 7 of the PP Act and that the PP Act being a special Act which also prescribes the complete procedure for adjudication of proceedings under the PP Act is a complete code in itself and proceedings under Sections 5 and 7 of the PP Act cannot be made subject matter of arbitration. The said reasoning was not interfered with by the Supreme Court and as far as this Court is concerned, is binding. In fact, as far back as in Kesar Enterprises v. Union of India the Division Bench of this Court had also observed that Arbitrator will have no jurisdiction in matters in view of Sections 7 and 15 of the PP Act.

20. As far as the contention, of the Estate Officer Sh. Piyush Agarwal being biased is concerned, I am of the view that no such ground also is open to the petitioner. Against the order of the Estate Officer, the remedy of statutory appeal before the District Judge is available and even if the order of the Estate Officer were to be found to be biased, the same can be corrected therein."

8. Mr. Krishnan further urged that the powers of the Estate Officer under the PP Act extends to the consideration of all questions that may

arise in connection with action initiated thereunder including the validity of determination of the lease. Mr. Krishnan submitted that this aspect stands duly highlighted in the decision of the Constitution Bench of the Supreme Court in **Ashoka Marketing Ltd. v. Punjab National Bank**[6] where the Apex Court had held as follows:-

> **"33.** Another submission that has been urged by Shri Ganguli is that the question whether a lease has been determined or not involves complicated questions of law and the estate officer, who is not required to be an officer well versed in law, cannot be expected to decide such questions and, therefore, it must be held that the provisions of the Public Premises Act have no application to a case when the person sought to be evicted had obtained possession of the premises as a lessee. It is true that there is no requirement in the Public Premises Act that the estate officer must be a person well versed in law. But, that, by itself, cannot be a ground for excluding from the ambit of the said Act premises in unauthorised occupation of persons who obtained possession of the said premises under a lease. Section 4 of the Public Premises Act requires issuing of a notice to the person in unauthorised occupation of any public premises requiring him to show cause why an order of eviction should not be made. Section 5 makes provisions for production of evidence in support of the cause shown by the person who has been served with a notice under Section 4 and giving of a personal hearing by the estate officer. Section 8 provides that an estate officer, shall, for the purpose of holding any enquiry under the said Act have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit in respect of the matters specified therein namely:
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> (a) summoning and enforcing the attendance of any person and examining him on oath;
> (b) requiring discovery and production of documents; and
> (c) any other matters which may be prescribed.
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> **34.** Rule 5(2) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, requires the Estate Officer to record the summary of evidence tendered before him. Moreover Section 9 confers a right of appeal against an order of the Estate Officer and the said appeal has to be heard either by the District Judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as

[6] (1990) 4 SCC 406

the District Judge may designate in that behalf. It shows that the final order that is passed is by a judicial officer in the rank of a District Judge.

35. A similar contention was raised before this Court in Maganlal Chhagganlal (P) Ltd. v. Municipal Corporation of Greater Bombay [(1974) 2 SCC 402 : (1975) 1 SCR 1] wherein the validity of the provisions of Chapter V-A of the Bombay Municipal Corporation Act, 1888 and the Bombay Government Premises (Eviction) Act, 1955 were challenged before this Court and the said contention was negatived. Alagiriswami, J. speaking for the majority, has observed as under : (SCC p. 423, para 17)

> "Even though the officers deciding these questions would be administrative officers there is provision in these Acts for giving notice to the party affected, to inform him of the grounds on which the order of eviction is proposed to be made, for the party affected to file a written statement and produce documents and be represented by lawyers. The provisions of the Civil Procedure Code regarding summoning and enforcing attendance of persons and examining them on oath, and requiring the discovery and production of documents are a valuable safeguard for the person affected. So is the provision for appeal to the Principal Judge of the city civil court in the city of Bombay, or to a District Judge in the districts who has got to deal with the matter as expeditiously as possible, also a sufficient safeguard as was recognised in Suraj Mall Mohta case [Suraj Mall Mohta & Co. v. A. V. Visvanatha Sastri, (1955) 1 SCR 448: AIR 1954 SC 545: (1954) 26 ITR 1]**"**

9. Learned senior counsel further submitted that the expansive jurisdiction of the Estate Officer and which would encompass all disputes that may be raised in relation to public premises stands reiterated by the Court on innumerable occasions. Some of the decisions which were cited for our consideration our noticed hereinafter. On whether the Estate Office can go into the question of

determination of lease, this Court in **Premlata Bhatia v. Union of India**[7]**,** had held as follows: -

> "**20.** I do not think that these observations and, particularly, the portions underlined could be construed to mean that the Estate Officer cannot go into the question of validity of cancellation of a lease or a licence. These observations were made in the context of the argument that though, ostensibly, the lease was terminated on the ground of non-payment of rent, the "real reason" behind the termination was the suspicion that Dr. Talwar had sublet the premises to Shri Batra. Repelling the legitimacy of raising such an argument *qua* the purported "real reason", the Division Bench merely observed that in the course of judicial review it was not permissible to go into such supposed "reasons". These observations do not mean and, indeed, cannot mean that cancellation of a lease or licence cannot be subjected to judicial review or that the Estate Officer cannot go into the question of validity of such cancellation in proceedings under the said Act. The learned Counsel for the petitioner referred to a decision of a Single Judge of the Karnataka High Court in the case of *Blaze and Central (P.) Ltd.* v. *Union of India*, AIR 1980 Karnataka 186 and in particular to the following (para 13):
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> > "The Act need not provide for all the minor details how an inquiry should be conducted by the Estate Officer. The Estate Officer must hold an inquiry as required under Section 4 of the Act, read with the Public Promises (Eviction of Unauthorized Occupants) Rules, 1971. Rule 5 of the Rules provides that the Estate Officer shall record the summary of the evidence before him and the summary of such evidence and any relevant documents filed before him shall form part of the of the proceedings. Exercise of the power under the Act is undoubtedly quasi-judicial. The petitioner has a right to be heard before the Estate Officer and if the right to be heard is to be a real right, which is worth anything, it must carry with it a right to know the evidence of the opposite side. The petitioner must therefore be told what evidence has been given or what statements the opposite side has made. In other words, to put it shortly, the petitioner must be given a fair opportunity to correct or contradict the statements recorded or the evidence collected in his presence or absence."
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> **21.** This discloses the nature and ambit of the inquiry to be held by the Estate Officer. Surely, the occupier is entitled to produce all

[7] 2003 SCC OnLine Del 947

evidence and urge all grounds to show that his/her occupation of the public premises is not unauthorised. It must also include the ground that in law and/or on facts there was no termination of the lease or licence. The Supreme Court also considered the scope and powers of an Estate Officer under the said Act. In *Ashoka Marketing Ltd.* v. *Punjab National Bank*, (1990) 4 SCC 406 the Supreme Court, while repelling the contention that the said Act would not apply to cases where the occupant sought to be evicted had obtained possession of the premises on the basis of a lease, observed as under:

> "33. Another submission that has been urged by Mr. Ganguli is that the question whether a lease has been determined or not involves complicated questions of law and the estate officer, who is not required to be an officer well versed in law, cannot be expected to decide such questions and, therefore, it must be held that the provisions of the Public Premises Act have no application to a case when the person sought to be evicted had obtained possession of the premises as a lessee. It is true that there is no requirement in the Public Premises Act that the estate officer must be a person well versed in law. But, that, by itself, cannot be a ground for excluding from the ambit of the said Act premises in unauthorised occupation of persons who obtained possession of the said premises under a lease. Section 4 of the Public Premises Act requires issuing of a notice to the person in unauthorised occupation of any public premises requiring him to show cause why an order of eviction should not be made. Section 5 makes provisions for production of evidence in support of the cause shown by the person who has been served with a notice under Section 4 and giving of a personal hearing by the Estate Officer. Section 8 provides that an estate officer, shall, for the purpose of holding any inquiry under the said Act have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the matters specified therein namely:
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> (a) summoning and enforcing the attendance of any person and examining him on oath;
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> (b) requiring discovery and production of documents; and
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> (c) any other matters which may be prescribed.
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> 34. Rule 5(2) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, requires the Estate Officer to record the summary of evidence tendered before

> him. Moreover, Section 9 confers a right of appeal against an order of the Estate Officer and the said appeal has to be heard either by the District Judge of the District in which the public premises are situated or such other judicial officer in that district of not less than ten years' standing as the District Judge may designate in that behalf. It shows that the final order that is passed is by a judicial officer in the rank of a District Judge."

22. These observations were made in the backdrop of the question whether a lease has been determined or not. The Supreme Court did not hold that such a question cannot be raised before the Estate Officer. On the contrary, it explained the powers and amplitude of inquiry by an Estate Officer and held that even though the Estate Officer may not be well versed in law, that, by itself, cannot be a ground for excluding from the ambit of the said Act premises in unauthorised occupation of persons who obtained possession of the said premises under a lease. It also observed that the additional safeguard was that the final order under the said Act would be of a judicial officer in the rank of a District Judge. Putting the observations of the Division Bench in the case of *Dr. K.R.K. Talwar* (supra) in the proper perspective, I am unable to agree with the contention of the learned Counsel for the respondents that once the Licence Deed had been cancelled, the same was not open to judicial review and it was not open for the officers and authorities under the said Act to go behind the cancellation order. However, this does not alter the result of this petition. I have already held that the cancellation of the licence was in order and have upheld the eviction order passed by the estate officer and the judgement of the Additional District Judge confirming the eviction of the petitioner.

23. In this view of the matter, it is not necessary for me to consider the other aspect of the conduct of the petitioner. Moreover, as regards the alleged conduct, it also appears that the respondents were also not very serious inasmuch as they chose to have the matter decided on merits rather than have their CM for vacation of Stay disposed of. Before parting with this case, it must be borne in mind that in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution, this Court does not sit as a Court of appeal. Normally, no interference with the judgment and order of the Additional District Judge in an appeal under Section 9 of the said Act is called for. Only under exceptional circumstances, such as where there are perverse findings or conclusions, violation of principles of natural justice, gross jurisdictional errors or errors in the decision making process, is interference called for. This is not one of those exceptional cases and, therefore, in any event, the reliefs prayed for cannot be granted."

10. A similar view was expressed by the Court in **Ocean Plastics and Fibres (P) Ltd. v. Delhi Development Authority and Anr.**[8]**,** as would be evident from the following extracts: -

> "**9.** The Division Bench of this Court in *Ambitious Gold Nib* undoubtedly held that the correctness or otherwise of the allegations of the DDA on the basis of which the determination of the lease has been effected is to be decided by the authority under the PP Act. It was further observed that whether the lessee had committed breach of the terms of the lease deed or not and whether the determination of the lease was legal or not are matters to be adjudicated by the concerned authority under the PP Act and cannot be gone into in exercise of writ jurisdiction. However, as far as the reliance by the petitioner on *Escorts Heart Institute* (supra) is concerned, the only question for adjudication therein was whether after determination of lease, proceedings for eviction before the Estate Officer are maintainable or whether a civil suit for eviction is required to be instituted. The Division Bench after adverting to the judgments of the Supreme Court in *Express Newspapers Pvt. Ltd.* v. *Union of India*, (1986) 1 SCC 133 and *Ashoka Marketing Ltd.* v. *Punjab National Bank*, (1990) 4 SCC 406 held that in accordance with the judgment of the Constitution Bench in *Ashoka Marketing Ltd.* (supra) observations in Express Newspapers Pvt. Ltd that a civil suit is required to be filed were not good law and the proceedings under the PP Act were maintainable. Though Ambitious Gold Nib was cited before the Division Bench but the Division Bench in para 9 of the judgment expressly held that it was not faced with the question of jurisdiction of the Estate Officer to decide whether there was any breach and whether there was valid and justified determination of the lease or not. It thus cannot be said that Escorts Heart Institute has also followed Ambitious Gold Nib on the said aspect.
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> **10.** Though the judgment of the Division Bench of this Court in *Ambitious Gold Nib* is sufficient for this Bench to dismiss this writ petition but I may notice that it was submitted before the Apex Court in *Ashoka Marketing Ltd.* also that the question, whether a lease has been determined or not involves complicated questions of law and the Estate Officer who is not required to be an officer well versed in law cannot be expected to decide such questions and it must be thus held that the provisions of the PP Act have no application to a case when the person sought to be evicted had obtained possession of the premises as a lessee. However the said

[8] 2012 SCC OnLine Del 804

submission was not accepted by the Apex Court and it was held that merely because the Estate Officer was not required to be a person well versed in law cannot be a ground for excluding from the ambit of the PP Act the premises in unauthorized occupation of persons who had obtained possession as lessee. The Apex Court held, that a combined reading of Section 4 (providing for issuance of a notice to show cause to the person in unauthorized occupation), Section 5 (providing for production of evidence in support of the cause shown by the noticee and giving of a personal hearing by the Estate Officer) and Section 8 (vesting in the Estate Officer for the purposes of holding an inquiry the same powers as are vested in a Civil Court) and Section 9 (conferring a right of appeal against an order of Estate Officer and which appeal has to be heard by the District Judge) showed that the final order that is passed in the proceedings under the PP Act is by a Judicial Officer of the rank of a District Judge; the same also suggested that the questions as to justification for determination of lease fall within the jurisdiction of the Estate Officer.

11. Undoubtedly a two Judges Bench of the Supreme Court subsequently in *Anamallai Club* v. *Govt. of Tamil Nadu*, (1997) 3 SCC 169 and which was not noticed in Ambitious Gold Nib, without referring to Ashoka Marketing Ltd. did observe that the Estate Officer under the PP Act cannot go into the correctness of the termination of the lease or adjudicate the same. However, in the light of the judgment of the Constitution Bench in *Ashoka Marketing Ltd.* and the judgment of the Division Bench of this Court in *Ambitious Gold Nib*, this Bench has to ignore the observation in *Annamallai* (supra). I may also mention that I have in judgment dated 28th January, 2011 in CS (OS) No. 1507A/2000 titled *Airports Authority Of India* v. *Grover International Ltd.* also held that the invalidity of termination has to be set up as a defence in proceedings under the PP Act and cannot be subject matter of adjudication before any other fora. Reference was made to the Division Bench of this Court in *Fabiroo Gift House* v. *ITDC*, 2003 (66) DRJ 243, also holding that such defences are adjudicable before the Estate Officer."

11. Mr. Krishnan also drew the Court's attention to the decision in **UOI and Anr. v. Mohinder Pratap Soni & Ors**[9], where while expounding upon the domain of the Estate Officer, the Court had observed as follows: -

[9] 2016 SCC OnLine Del 2600

"**11.** It is unfortunate that inspite of the Constitution Bench in *Ashoka Marketing Ltd.* supra and the judgments of the Division Bench of this Court in *Ambitious Gold Nib Manufacturing Co. Pvt. Ltd. and Escorts Heart Institute and Research Centre Ltd.* supra and inspite of the attention of the counsels for the respondents having been drawn thereto, the counsel for the respondents in their respective written submissions continue to harp upon the *Express Newspaper Pvt. Ltd.* supra.

12. It is now settled law:

(i) that the correctness or otherwise of the allegations of public authorities such as the petitioner L&DO or the Delhi Development Authority (DDA) on the basis of which determination of lease is effected is to be decided by the Estate Officer under the PP Act.

(ii) that whether the lessee has committed breach of the terms of the lease deed or not and whether the determination of the lease was legal or not are matters to be adjudicated by the concerned authority under the PP Act i.e. the Estate Officer and cannot be gone into in exercise of writ jurisdiction and the public authorities as the L&DO or the DDA cannot be asked to resort to the civil suit instead of the PP Act for eviction of the occupants even if an ex-lessee after the lease has been determined;

(iii) that the observations of the Supreme Court in *Express Newspaper Pvt. Ltd.* supra that the public authority as the L&DO and the DDA is required to file a civil suit and the proceedings under the PP Act are not maintainable is not good law;

(iv) that merely because the Estate Officer under the PP Act is not required to be a person well versed in law cannot be a ground for excluding from the ambit of PP Act the premises in unauthorized occupation of persons who had obtained possession as lessee;

(v) that a combined reading of Sections 4, 5, 8 and 9 of the PP Act shows that final order that is passed in the proceedings under the PP Act is by the judicial officer of the rank of a District Judge; the same also suggests that questions as to justification for determination of lease fall within the jurisdiction of the Estate Officer.

13. Though I am in the facts of the present petitions concerned only with the question whether the adjudication of the validity of the grounds for determination of lease is within the domain of the

> Estate Officer and in which respect the law as aforesaid is well settled but I will be failing in my duty if do not refer to another judgment of the Division Bench of this Court in *DCM Ltd.* v. *Delhi Development Authority* (2013) 136 DRJ 688 holding that *bona fide* title disputes cannot be gone into under the PP Act. I have recently in *Dr. Shekhar Shah* v. *Government of Maharashtra* dealt with the said aspect and in the light thereof need to say anything more is not felt especially as I am here not concerned with any title dispute but with a dispute as to validity of determination of lease and on which the judgments in *Ashoka Marketing Ltd.* supra applied by the Division Benches of this Court are final."

12. It was in the aforesaid backdrop that Mr. Krishnan contended that disputes of which the petitioner seeks reference to arbitration would clearly fall within the exclusive jurisdiction of the Estate Officer and thus be non-arbitrable. On facts, it was pointed out that although the lease came to be determined by virtue of the order dated 28 July 2022, DDA has been unable to take further steps for the eviction of the petitioner under the PP Act in light of the interim orders granted on W.P.(C) 5127/2022 and earlier on account of the pendency of the W.P.(C) 3364/2022.

13. It was further urged that the petitioner seeks the reference of a dispute which is indelibly connected to the validity of the conversion policy of DDA as well as the OM of 02 March 2022. According to Mr. Krishnan since the conversion policy of DDA involves and includes an element of public policy, it would clearly not be arbitrable. According to Mr. Krishnan, the challenge raised by the petitioner and as embodied in W.P.(C) 3364/2022 and W.P.(C) 5127/2022 is itself indicative of the dispute being imbued by a public policy element. In view of the aforesaid, Mr Krishnan argued that the prayer for reference of disputes to arbitration is clearly untenable.

14. On the issue of matters of public policy being non-arbitrable, Mr. Krishnan placed reliance on the following observations as appearing in the decision of the Supreme Court in **Vidya Drolia & Ors. v. Durga Trading Corp.**[10]**: -**

> "**76.** In view of the above discussion, we would like to propound a fourfold test for determining when the subject-matter of a dispute in an arbitration agreement is not arbitrable:
>
> **76.1.** (*1*) When cause of action and subject-matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.
>
> **76.2.** (*2*) When cause of action and subject-matter of the dispute affects third-party rights; have *erga omnes* effect; require centralised adjudication, and mutual adjudication would not be appropriate and enforceable.
>
> **76.3.** (*3*) When cause of action and subject-matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable.
>
> **76.4.** (*4*) When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).
>
> **76.5.** These tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject-matter is non-arbitrable. Only when the answer is affirmative that the subject-matter of the dispute would be non-arbitrable.
>
> **76.6.** However, the aforesaid principles have to be applied with care and caution as observed in *Olympus Superstructures (P) Ltd.* [*Olympus Superstructures (P) Ltd.* v. *Meena Vijay Khetan*, (1999) 5 SCC 651] : (SCC p. 669, para 35)
>
> > "*35.* … Reference is made there to certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, which cannot be referred to arbitration. It has, however, been held that if in respect of facts relating to a criminal matter, say, physical injury, if there is a right to damages for personal injury, then such a dispute can

[10] (2021) 2 SCC 1

> be referred to arbitration (*Keir* v. *Leeman* [*Keir* v. *Leeman*, (1846) 9 QB 371 : 115 ER 1315]). Similarly, it has been held that a husband and a wife may refer to arbitration the terms on which they shall separate, because they can make a valid agreement between themselves on that matter (*Soilleux* v. *Herbst* [*Soilleux* v. *Herbst*, (1801) 2 Bos & P 444 : 126 ER 1376] , *Wilson* v. *Wilson* [*Wilson* v. *Wilson*, (1848) 1 HL Cas 538] and *Cahill* v. *Cahill* [*Cahill* v. *Cahill*, (1883) LR 8 AC 420 (HL)])."

15. It was then contended that the reference to arbitration would clearly amount to a bifurcation of causes of action which too would be wholly impermissible. The aforesaid submission was addressed in the backdrop of the challenge laid by the petitioner to the OM of 02 March 2022 by way of a writ petition which is still pending adjudication before this Court. According to Mr. Krishnan, since the validity of the action taken by the DDA against the petitioner specifically would also call in question the policy for conversion framed by it and the O.M.s' issued in connection therewith, there cannot be reference of a part of the dispute to arbitration and for the other to be agitated in the writ petition. Placing reliance on the judgment of the Supreme Court in **Sukanya Holdings v. Jayesh H Pandya and Anr.**[11], Mr. Krishnan argued that there can be no bifurcation of parts of a dispute and consequently no referral of particular facets of the dispute that exists.

16. It was further urged that the petition under Section 11 of the Act is clearly not maintainable since it was not preceded by a valid notice under Section 21 of the Act. According to Mr. Krishnan the only

[11] (2003) 5 SCC 531

document which could be read as enumerating the disputes which arise is a representation of the petitioner dated 13 September 2021. Mr. Krishnan further highlighted the fact that the prayers made in that representation would itself evidence and establish that the petitioner questions the action of DDA in relation to issues which are non-arbitrable.

17. Insofar as the petition under Section 9 of the Act is concerned, Mr. Krishnan submitted that even if this Court were to come to the conclusion that the disputes raised by the petitioner are arbitrable, none of the reliefs as claimed therein are liable to be granted. It was firstly submitted that insofar as prayers '(a)' and '(b)' as carried in that petition are concerned, the order dated 13 April 2022 passed upon W.P.(C) 5217/2022 clearly protects the petitioner from dispossession and are thus not liable to be countenanced. Insofar as the remainder relief is concerned, Mr. Krishnan submitted that those prayers would clearly not fall within the scope of protective relief, and which alone can be granted under Section 9 of the Act.

18. Controverting the aforesaid submissions, Mr. Tandon argued that a perusal of the various provisions of the PP Act would clearly indicate that the Estate Officer is not statutorily empowered to rule on the question of whether the petitioner is an unauthorized occupant. Mr. Tandon submitted that since the petitioner is questioning the very foundational fact, namely, of it not being liable to be treated as an unauthorized occupant, the issue which stands raised clearly falls outside the scope of the jurisdiction of the Estate Officer. The aforesaid submission was addressed in the backdrop of the land

having been leased to the petitioner in perpetuity and the assertion of the petitioner that its termination was illegal.

19. Elaborating his submissions on the aforesaid score, Mr. Tandon argued that the PP Act envisages initiation of proceedings based on the presumption that a person or a party is in unauthorized occupation of public premises. However, Mr. Tandon would contend that where a dispute is raised as to whether that person or party is in unauthorized occupation, the same clearly cannot be tried by the Estate Officer. It was further urged that while the respondent is entitled to raise various claims before the Estate Officer for eviction payment of arrears, ground rent and damages and various other allied issues, the petitioner cannot raise claims for refund, damages or any other declaration. In view of the aforesaid, it was his submission that since the disputes raised by the petitioner here would clearly travel beyond the scope of the authority conferred upon the Estate Officer, the objection of non-arbitrability is liable to be rejected.

20. Reliance in this regard was then placed on the decision rendered by a Division Bench of the Court in **DCM Limited v. Delhi Development Authority**[12] where the Court while ruling upon the extent of jurisdiction of the Estate Officer under the PP Act, had observed as under: -

> "**15.** The question which this Court has to address itself to is whether the impugned judgment, in concluding that by virtue of Section 15 of the Public Premises Act the jurisdiction of the Civil Court is barred, is erroneous. The provision reads as follows:

[12] 2013 SCC OnLine Del 1138

> "15. Bar of jurisdiction. No court shall have jurisdiction to entertain any suit or proceeding in respect of—
>
> (a) the eviction of any person who is in unauthorised occupation of any public premises, or
>
> (b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 5A, or
>
> (c) the demolition of any building or other structure made, or ordered to be made, under section 5B, or (cc) the sealing of any erection or work or of any public premises under section 5C, or
>
> (d) the arrears of rent payable under sub-section (1) of section 7 or damages payable under sub-section (2), or interest payable under sub-section (2A), of that section, or
>
> (e) the recovery of—
>
> (i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5A, or
>
> (ii) expenses of demolition under section 5B, or
>
> (iii) costs awarded to the Central Government or statutory authority under sub-section (5) of section 9, or
>
> (iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority."

16. Section 5 of the Act enables the Estate Officer, after issuing notice to an occupant, if he is satisfied that the public premises are in unauthorised occupation, to direct eviction through an order. The DDA argued — and the learned single judge accepted, that by virtue of the decision in *Ashoka Marketing* (supra), the jurisdiction to decide whether the premises were owned by the Government, or the concerned agency entitled to invoke the Act, was with the Estate Officer. This is on the premise that a submission in that regard had been rejected by the Supreme Court. The exact passage which dealt with the contention is reproduced for convenience:

> "Another submission that has been urged by Shri Ganguli is that the question whether a lease has been determined or not involves

complicated *questions of law* and the estate officer, who is not required to be an officer well versed in law, cannot be expected to decide such question and, therefore, it must be held that the provisions of the Public Premises Act have no application to a case when the person sought to be evicted had obtained possession of the premises as a lessee. It is true that there is no requirement in the Public Premises Act that the estate officer must be a person well versed in law. But, that, by itself, cannot be a ground for excluding from the ambit of the said Act premises in unauthorised occupation of persons who obtained possession of the said premises under a lease. Section 4 of the Public Premises Act requires issuing of a notice to the person in unauthorised occupation of any Public Premises requiring him' to show cause why an order of eviction should not be made. Section 5 makes provisions for production of evidence in support of the cause shown by the person who has been served with a notice under Section 4 and giving of a personal hearing by the estate officer. Section 8 provides that an estate officer, shall, for the purpose of holding any enquiry under the said Act have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit in respect of the matters specified therein namely: (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring discovery and production of documents; and (c) any other matters which may be prescribed. Rule 5(2) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, requires the estate officer to record the summary of evidence tendered before him. Moreover Section 9 confers a right of appeal against an order of the estate officer and the said appeal has to be heard either by the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the district judge may designate in that behalf. In shows that the final order that is passed is by a judicial officer in the rank of a district judge.

A similar contention was raised before this Court in *MaganlalChhagganlal (P) Ltd.* v. *Municipal Corporation of Greater Bombay*, [1975] 1 SCR 1

> wherein the validity of the provisions of Chapter VA of the Bombay Municipal Corporation Act,' 1888 and the Bombay Government Premises (Eviction) Act, 1955 were challenged before this Court and the said contention was negatived."

17. It would be apparent from the above extract, that what was considered and rejected was the contention that a "question whether a lease has been determined or not involves complicated *questions of law* and the estate officer, who is not required to be an officer well versed in law, cannot be expected to decide such question". The possibility of the respondent (in the Public Premises eviction proceeding) setting up a rival contention regarding title, did not engage the attention of the court. Furthermore, there is no provision in the Public Premises Act enabling an occupant to raise a counter claim seeking declaration that he is the true and lawful owner on substantive grounds, or even urging title by prescription or adverse possession. In these circumstances, it is held that mere issuance of a notice under Section 4 would not divest a civil court from exercising its jurisdiction. There could also be situations where even before a show cause notice is issued, the occupant might approach the court, seeking declaration of title, or seeking injunctive relief in respect of his possession. In such cases, ousting jurisdiction of the civil court can be only on the ground that an Estate Officer issues notice under Section 4. The unreasonableness of such conclusion is highlighted because, then, the character of the premises, i.e. whether it belongs to the concerned public agency, cannot be gone into. In other words, jurisdiction of the civil court to examine and decide on questions of title and incidental matters, is left to the contingency of issuance or otherwise of notice under Section 4.

18. In the light of the above discussion, it would now be necessary to discuss the case law relied on by the parties. In *Thummala Krishna Rao* (supra), the Supreme Court had occasion to deal with Sections 6 and 7 of the A.P. Land Encroachment Act, 1905. Like the Public Premises Act, the Andhra Pradesh enactment provided for summary procedure to evict unauthorised occupants. The Supreme Court dealt with a contention similar to the one urged by DCM in the present appeal, and observed that:

> "The summary remedy for eviction Which is provided for by Section 6 of the Act can be resorted to by the Government only against persons who are in unauthorized occupation of any land which is "the property of Government". If there is a bona fide dispute regarding the title of the government to

any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title.

What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. Facts, which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the Ordinary courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is hl occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bonafide claim to the property requiring an impartial adjudication according to the established procedure of law.

The conspectus of facts in the instant case justifies the view that the question as to the title to the three plots cannot appropriately be decided in a summary inquiry contemplated by sections 6 and 7 of the Act. The long possession of the respondents and their predecessors-in-title of these plots raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to the family of Nawab Habibuddio from whom the respondents claim to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adverse possession must be decided in a properly constituted suit. May be, that the Government may succeed in establishing its title to the property but, until that is done, the respondents cannot be evicted summarily."

A similar issue arose in *State of Rajasthan* v. *Padmavati Devi*, 1995 Supp (2) SCC 290, where the Supreme Court dealt with provisions of the Rajasthan Land Revenue Act, 1956. The Court first noticed the relevant provision and then the facts:

> "2. Under Section 91 of the Act a person in occupation of Government land without lawful authority is to be regarded as a trespasser and he can be summarily evicted from such land by the Tehsildar after serving on such person a notice requiring him to show cause why he should not be so evicted therefrom.
>
> 3. In the instant case, Section 91 of the Act has been invoked on the basis that the land is recorded as "Sawai Chak" in the revenue records for the year Samvat 2015 (1958 A.D.) and that in the ParchaKhatani dated February 9, 1953 that was given to Praduman Ojha, the husband of respondent No. 1, there is no mention of this land."

The Court then concluded that the summary procedure available for the Government could not oust the jurisdiction of the civil court to examine questions pertaining to title, claimed by an alleged unauthorized occupant, in a civil suit:

> "6. As noticed earlier Section 91 of the Act prescribes a summary procedure for eviction of a person who is found to be in unauthorised occupation of Government land. The said provisions cannot be invoked in a case where the person in occupation raises bonafide dispute about his right to remain in occupation over the land. Dealing with similar provisions contained in Section 6 of the Andhra Pradesh Land Encroachment Act, 1945, this Court in *Government of Andhra Pradesh* v. *Thummala Krishna Rao*, 1982 (3) SCR 500, has laid down that the summary remedy for eviction provided by Section 6 o the said Act could be resorted to by the Government only against persons who are in unauthorised occupation of any land which is the property of the Government and if the person in occupation has a bona fide claim to litigate he could not be ejected save by the due process of law and that the summary remedy prescribed by Section 6 was not the kind of legal process which is suited to an adjudication of complicated questions of title. For the same reasons,

> it can be said that summary remedy available under Section 91 of the Act is not the legal process which is suited for adjudication of complicated questions of title where the person sought to be evicted as an unauthorised occupant makes a bona fide claim regarding his right to be in possession. In such a case the proper course is to have the matter adjudicated by the ordinary courts of law."

It is not without significance that the Constitution Bench judgment in *Ashoka Marketing* (supra) and the judgment in Padmavati Devi were authored on behalf of the Court, by the same learned judge, Mr. Justice S.C. Agarwal. Furthermore, *Padmavati Devi* (supra) was by a 3 judge Bench. The decision in *Thummala Krishna Rao* (supra) thus stood approved by a-3 member judgment, after *Ashoka Marketing* (supra).

20. It can be seen from the above discussion that though the Supreme Court distinguished Thummala Krishna Rao, that was on account of the provisions of the Land Grabbing Act. It provided a complete code, which included appointment of a Special Judge, who had jurisdiction to decide all matters pertaining to land grabbing, including those "with respect to the ownership and title to, or lawful possession of" the lands in question. Thus, the remedies provided were comprehensive, and enabled the Special Court to expressly act as a Court, take evidence in deposition, and also exercise criminal jurisdiction. The concerned party made subject to the Act could also urge and seek ruling on the question of title. Having regard to these facts, the Court does not see any change in the law. The basic proposition that having regard to the limited nature of jurisdiction of the Estate Officer, bona fide title disputes cannot be gone into under the Public Premises Act, remains unchanged.

21. This Court is supported in its view with regard to the civil court's possessing jurisdiction in cases where serious or bona fide disputes of title exist, or have been raised which cannot be decided by the Estate Officer, by the views of the Madhya Pradesh High Court, Jharkhand High Court and Andhra Pradesh High Court (*Madhya Pradesh Electricity Board* v. *Badri Prasad*, AIR 2003 MP 256, *Shree Bajrang Hard Coke Manufacturing Corporation* v. *Ramesh Prasad*, AIR 2003 Jhar 17 and *PodduturiVasantha Reddy* v. *Estate Officer, Airports Authority of India NA.D.*, AIR 2010 AP 46). In Shree Bajrang Hard Coke, a Division Bench of the Jharkhand High Court, while considering the scope of Section 5 of the Public Premises Act, 1971, held that:

> "14. From what has been discussed and quoted above, it is abundantly clear that an authority under

the aforementioned Act has a very limited jurisdiction and it has to determine only a dispute that may arise, vis-a-vis a public premises. Upon an application made before it, it has to proceed in a summary disposal thereto. The question, as to whether the area formed part of the Royal Tisra Colliery or not, consequently making it a public premise is a question that becomes the focal point of the instant case and it, therefore, obviously involve determination/finding of fact. Undoubtedly, while attempting to come to such finding, the authority may be faced with complicated question of title as is involved in the instant case. The authority in the aforementioned case cannot be said to have the jurisdiction to embark upon the domain of the Civil Court for the purposes of adjudicating on a question of a complicated title, which can only be done by a Civil Court. It would be extremely unreasonable to allow a Court vested with summary procedure to give a finding, which can only be arrived at by a Civil Court having the necessary judicial competence.

19. …Now, under Section 5 of the aforementioned Public Premises (Eviction of Unauthorised Occupants) Act, 1971, it is clear that a Estate Officer after following the procedure required to be followed therein and after reaching to a conclusion that a person is in unauthorized occupation of a public premises, he may make an order of eviction. The catch words that cannot be lost track of in this provision are that, all that the Estate Officer is required to do is that he must come to a conclusion that a person is in occupation of an area which is already confirmed or which has already been declared to be a public premises. He cannot nor does he have the jurisdiction to identify a particular piece of property and then give a finding that, that piece of property is a public property. This power is vested only with a Court of competent civil jurisdiction and not in a statutory authority, such as Estate Officer, who has been conferred only with summary powers. If such Estate Officers are allowed to give such finding, it would amount to conferring them with the powers of adjudication and delivery of judgments within the meaning of Section 2(a) read with provisions of Order XIV of

> the Code of Civil Procedure and/or principles/provisions analogous thereto."

21. Mr. Tandon also relied upon certain observations as appearing in the order of the Supreme Court passed in **Escorts Heart Institute and Research Centre LTD. v. Delhi Development Authority & Ors** [13] in support of his submissions. Those are extracted hereinbelow:-

> "We are of the view that once the matter is *sub judice* in the suit, the appellant is not an encroacher on public land, but an allottee in pursuance to the allotment letters/lease deeds of the DDA; the leases have not expired by efflux of time; the only reason for termination is stated to be the breach of the lease qua the issue of amalgamation which is pending decision in the suit, any action under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 would not be appropriate. If the appellant ultimately fails in the endeavour, as in the suit or any other appeal arising therefrom then only the occasion would arise for the proceedings to be taken under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.
>
> We are, thus, of the view that the proceedings initiated under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 in pursuance of the notice dated 9.11.2005 are liable to be quashed with the aforesaid liberty to the DDA."

22. It may be noted that this Court in the course of the hearing which ensued on 16 January 2023, had an occasion to notice the provisions of Clause IV of the Lease Deed and which spoke of a decision taken by the lessor being final. The consequential issue which arose was whether the finality would also extend to an act of termination of the lease and thus fall in the genre of an 'excepted matter'. However, the aforesaid issue has been rightly explained by Mr. Tandon who pointed out that the finality clause stands restricted

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to the decision taken by the lessor in respect of asserted breaches of the covenants and conditions of the lease and would not apply to other aspects which are dealt with in Clause IV. This position was conceded to even on behalf of DDA.

23. From the submissions which have been addressed by learned counsels, the Court finds that the following two principal questions emerge for determination:

(a) Whether the disputes which may emanate from an allegation of unauthorized occupation of public premises and all other ancillary issues connected therewith could form subject matter of adjudication by an Arbitral Tribunal?

(b) Whether challenges relating to determination of a lease or the arrears of rent payable in respect of public premises are questions statutorily mandated to be determined by the Estate Officer exclusively and thus be excluded from the purview of arbitrability?

24. From the written submissions which have been filed, the Court notes that the petitioner essentially seeks referral of the following disputes: -

> "3. Primarily, there is a single dispute which requires adjudication / resolution i.e. Calculation / Examination of actual amount of ground rent payable by the Petitioner to the Respondent.
>
> 3.1 All other issues are consequential to the adjudication of the aforesaid issue; which are:
>
> (i) Whether the demand dated 25.09.2018 is correct, legal and valid?
> (ii) Whether the determination (which stems from the demand) is correct, legal and valid?

> Once an adjudication on the actual amount of ground rent payable by the Petitioner is made the aforesaid issues will automatically get decided."

As would be evident from the aforesaid extract of the written submissions and the description of the issues that arise, the dispute essentially revolves around the quantification of ground rent payable by the petitioner and the consequential determination of the lease itself.

25. In order to evaluate the nature of the jurisdiction which stands conferred upon an Estate Officer under the PP Act, the extent to which that statute could be said to construct a special and exclusive adjudicatory mechanism and thus debarring parties from seeking resolution of those questions by way of arbitration, it would firstly be relevant to refer to the previous legislative measures governing public premises and the principal objectives underlying the promulgation of the PP Act. It would be pertinent to recall that the PP Act was preceded by earlier enactments such as the **Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959** as well as the **Public Premises (Eviction of Unauthorised Occupants) Act, 1958.** Those enactments came to be struck down by different High Courts on various grounds of constitutional and legal invalidity. The PP Act came to be promulgated thereafter not only to overcome those decisions but in light of the felt imperative of the appropriate governments being empowered to take effective steps for ridding public premises of unauthorised occupants. It was thus an attempt of the legislature to introduce a validating legislation which would overcome the grounds of illegality as pointed out by various courts

and at the same time arming the government to take appropriate and speedy measures in respect of public premises. This is evident from its Statement of Objects and Reasons which is reproduced hereinbelow: -

> "**Statement of Objects and Reasons**. —The Public Premises (Eviction of Unauthorised Occupants) Act, 1958 was enacted to provide for a speedy machinery for the eviction of unauthorised occupants of public premises. Section 5 of the Act provides for taking possession of the public premises which are in unauthorised occupation of persons. Section 7 of the Act provides for the recovery of rent or damages in respect of public premises from persons who are in unauthorised occupation thereof. The Act, as it originally stood, did not debar the Government from taking recourse to civil courts to seek the aforesaid reliefs.
>
> **2.** In April, 1967, in *Northern India Caterers Private Ltd.* v. *The State of Punjab* (AIR 1967 SC 1581). The Supreme Court declared Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 (31 of 1959), void on the ground that the section is discriminatory and violative of article 14 of the Constitution, inasmuch as it conferred an additional remedy over and above the usual remedy by way of suit and provided two alternative remedies to the Government, leaving it to the unguided discretion of the Collector to resort to one or the other of the procedures. The object and procedure prescribed by the aforesaid 1958 Act being similar to those in the Punjab Act, there was a risk of the Central Act also being struck down by the Supreme Court if challenged, on similar grounds of discrimination. Subsequently, the Delhi High Court in *Hukum Chand* v. *S.D. Arya* (Reference No. l of 1968) declared Section 7(2) of the 1958 Act as ultra vires the Constitution. The High Court also observed that Section 5 of that Act must also be held to be tainted with same constitutional infirmity which was held to invalidate Section 5 of the Punjab Act referred to above. In order to overcome the decisions of the Supreme Court and the Delhi High Court, the 1958, Act was suitably amended by the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1968. By this Amendment Act, Civil Courts were precluded from entertaining any suit or proceeding in respect of the eviction of persons who are in unauthorised occupation of public premises and in respect of the recovery of the arrears of rent or damages from such persons.
>
> **3.** The vires of Public Premises (Eviction of Unauthorised Occupants) Act, 1958, as amended by the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1968, was again recently challenged by way of writ petitions in the Delhi High Court and certain other Courts. By a majority Judgment, the Delhi High Court in *P.L. Mehra* v. *D.R.*

Khanna (Civil Writ No. 431 of 1970) have held the whole of the Act as void under Article 13(2) of the Constitution as it was found to contravene Article 14 thereof. The Court also observed that as the Act of 1958, was void, the amending Act of 1968, was also ineffective. Similar views have also been held by the High Court of Allahabad and Calcutta. The Court decisions, referred to above, have created serious difficulties for the Government inasmuch as the proceedings taken by the various Estates Officers appointed under the Act either for the eviction of persons who are in unauthorised occupation of public premises or for the recovery of rent or damages from such persons stand null and void. It has become impossible for Government to take expeditious action even in flagrant cases of unauthorised occupation of public premises — and recovery of rent or damages for such unauthorised occupation. It is therefore, considered imperative to restore a speedy machinery for the eviction of persons who are in unauthorised occupation of public premises keeping in view at the same time the necessity of complying, with the provision of the Constitution and the judicial pronouncement, referred to above.

4. Accordingly it is proposed to re-enact the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, as amended from time to time, after removing the vice which led to its having been declared as void. The law proposed to be re-enacted is being given retrospective effect from 16th September, 1958, the date on which the 1958 Act aforesaid came into force. It is also proposed to make a suitable validating provision providing that anything done or any action taken or purported to have been done or taken under the 1958, Act shall be deemed to be as valid and effective as if such thing or action was taken or done under the corresponding provisions of the proposed law.

5. The Bill seeks to achieve the above objects."

26. The Act itself, as is evident from its Statement of Object and Reasons, came to be promulgated in order to empower the appropriate governments to take expeditious action in respect of public premises and unauthorized occupation thereof. The enactment was prompted by the requirement of setting up a speedy machinery for eviction of persons found to be in unauthorized occupation of public premises. It is pertinent to note that the PP Act is not a general or omnibus statute pertaining to unauthorized occupation of premises. It is concerned principally and solely with *"public premises"*. Section 2(e) defines public premises as under:-

"**2.(e)** "public premises" means—

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by the Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,—

(i) any company as defined in Section 3 of the Companies Act, 2013 (18 of 2013), in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company,

(ii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 2013 (18 of 2013), or a local authority) established by or under a Central Act and owned or controlled by the Central Government,

(iii) any company as defined in clause (20) of Section 2 of the Companies Act, 2013 (18 of 2013) in which not less than fifty-one per cent of the paid-up capital is held partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary (within the meaning of that Act) of the first mentioned company and which carries on the business of public transport including metro railway.

Explanation.—For the purposes of this item, "metro railway" shall have the same meaning as assigned to it in clause (i) of sub-section (1) of Section 2 of the Metro Railway (Operation and Maintenance) Act, 2002 (60 of 2002);

(iiia) any University established or incorporated by any Central Act,

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961);

(v) any Board of Trustees or any successor company constituted under or referred to in the Major Port Trusts Act, 1963 (38 of 1963);

(vi) the Bhakra Management Board constituted under Section

79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when renamed as the Bhakra-Beas Management Board under sub-section (6) of Section 80 of that Act;

(vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory;

(viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and] religious function

(3) in relation to the National Capital Territory of Delhi—

(i) any premises belonging to the Council as defined in clause (9) of Section 2 of the New Delhi Municipal Council Act, 1994 (44 of 1994) or Corporation or Corporations notified under sub-section (1) of Section 3 of the Delhi Municipal Corporation Act, 1957 (66 of 1957), of Delhi, or any municipal committee or notified area committee;

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority, and

(iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory;

(iv) any premises belonging to, or taken on lease by, or on behalf of any Government company as defined in clause (45) of Section 2 of the Companies Act, 2013 (18 of 2013).

Explanation.—For the purposes of this clause, the expression, "State Government" occurring in clause (45) of the said section shall mean the Government of the National Capital Territory of Delhi.

(4) any premises of the enemy property as defined in clause (c) of Section 2 of the Enemy Property Act, 1968 (34 of 1968)."

27. As is evident from the aforesaid definition of public premises, it brings within its purview all premises belonging to or taken on lease or requisitioned by the appropriate government as well as by

government companies and statutory corporations established by the Union or respective State Governments. By virtue of Amending Acts 35 of 1984 and 36 of 2019, the scope of Section 2(e) was further widened to include premises belonging to or taken on lease by or on behalf of Universities, Institutes of Technology, Cantonment Boards, Municipal Corporations and other governmental entities enumerated in Section 2(e)(ii) and (3).

28. Sections 4 and 5 are principally concerned with eviction of unauthorised occupants from public premises. For the purposes of exercising jurisdiction under the PP Act, the Estate Officer proceeds on two basic postulates: (a) the subject matter of proceedings being public premises as defined and (b) the occupant being found to be in unauthorised occupation. The expression *"unauthorised occupation"* is defined in Section 2(g) as under: -

> "(*g*) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

29. As is manifest from the said definition, the moment a person is found to be in occupation of public premises without authority or even where its continuance in occupation is found to be unauthorized as a result of the grant or any other mode of transfer in terms of which the premises was occupied having either expired or being determined would be sufficient to commence proceedings under the PP Act. In terms of Section 7, the Estate Officer is additionally empowered to

draw proceedings in relation to computation and recovery of arrears of rent and damages for unauthorised occupation.

30. The PP Act has been consistently recognized as being a special statute governing public premises and the steps liable to be taken for eviction of unauthorised occupants. The interplay between the provisions of the PP Act and the Act directly fell for consideration before the Division Bench of the Court in **India Trade Promotion Organization v. International Amusement Limited**[14]. While dealing with the aforesaid question, the Court had observed as follows: -

> "**31**. The second submission of Mr. Arun Jaitley that the provisions of Arbitration and Conciliation Act would override the provisions of PP Act also cannot be accepted. The aforesaid position is apparent when we make a reference to the provisions of Clauses 27 and 28 of the licence agreement. In Clause 27 of the licence agreement it is clearly stipulated that the licence given to the IAL would be subject to the jurisdiction of the Estate Officer of ITPO who would have the power to exercise jurisdiction under the PP Act. Clause 28 of the agreement is an arbitration clause. It is a settled principle of interpretation of documents that harmonious construction should be adopted so as to reconcile all clauses and to give effect to them. It is also settled principle of interpretation of documents that in case of irreconcilable conflict between two clauses, the clause which is earlier should be given preference over a clause which is subsequent.
>
> **32.** If we apply the above principles in the present case, then we have to harmoniously read Clauses 27 and 28 of the licence deed to give effect to both of them. Harmonious reading of the two Clauses is possible if we hold that provisions of PP Act will apply to all matters referred to and specified by the special enactments and provisions of Arbitration Act including arbitration clause will apply to matters and disputes that cannot be subject matter of proceedings under the PP Act. Thus the arbitrator is entitled to adjudicate and decide claims other than those pending before the Estate Officer or raised under the PP Act. Disputes under the PP Act can be decided and adjudicated upon by the Estate Officer in

[14] 2007 SCC OnLine Del 981

terms of—1 Clause 27. If we hold that the two clauses are irreconcilable, then in terms of the second principle mentioned above, Clause 27 will apply.

38. Section 15 read with Sections 5 and 7 of the PP Act confers exclusive jurisdiction on the Estate Officer appointed under Section 3 of the aforesaid Act to deal with the applications under Sections 5 and 7. Section 15 of the PP Act bars and prohibits any Court from entertaining any suit or proceeding for eviction, etc. as provided under Clauses (a) to (e) therein. The general power of the Court under Section 9 of the Code of Civil Procedure, 1908 to entertain suit or proceedings is therefore ousted if a dispute raised falls in Clauses (a) to (e) of the aforesaid section. Sections 5 and 7 of the PP Act empowers an Estate Officer appointed under Section 3 to deal with applications for eviction of unauthorised occupants and applications for payment of rent and damages in respect of public premises. The Act also prescribes a procedure for filing an appeal by a person aggrieved by an order passed by the Estate Officer under Section 9 of the PP Act. The aforesaid Act is, therefore, a special Act which also prescribes complete procedure for adjudication of proceeding under the PP Act. The said Act is a complete code in itself. We do not think that proceedings under Sections 5 and 7 of the PP Act can be made subject matter of arbitration. The said enactment is a special legislation, whereby specific powers have been conferred on an Estate Officer to adjudicate and decide applications under Sections 5 and 7 of the PP Act. Courts have been prohibited and restrained from exercising jurisdiction over matters mentioned in Sections 5 and 7 of PP Act in view of Section 15 of the PP Act. Reading of Sections 5 and 7 makes it clear that it is the Estate Officer alone who has the sole and exclusive jurisdiction to decide applications under Sections 5 and 7 of the Said Act. The said jurisdiction conferred by the statute cannot by a contract be conferred upon an arbitrator or made subject matter of reference before an arbitrator. PP Act has given exclusive jurisdiction to an Estate Officer, who alone has authority to determine the specified disputes and matters and, therefore, these are not matters that can be referred to an Arbitrator. There cannot be waiver of statutory provisions. Contract must be within the legal framework. Parties cannot contract out of the statute. The matters on which an Estate officer has exclusive jurisdiction are not arbitrable and parties by a contract cannot agree to refer matters on which jurisdiction has been conferred and given to Estate Officer. Arbitrability of the claims covered by Sections 5 and 7 of PP Act is therefore excluded. We are fortified in our conclusion by the judgment of the Supreme Court in the case of Ashoka Marketing Limited v. Punjab National Bank, (1990) 4 SCC 406. In the said case the question arose whether the Rent Control Act

> which also a special Act will override the provisions of PP Act. It was held that the PP Act is a special statute relating to eviction of unauthorised occupants from public premises and will prevail over Delhi Rent Control legislation which is intended to deal with the general relationship of landlords and tenants in respect of premises other than Government premises. Rent Control legislation, it was held is also a special statute but was enacted earlier in point of time. However, both enactments are special statutes in relation to the matters dealt with therein and in such circumstances, it is the objective and purpose behind the two enactments, that determines which enactment will apply and given preference. The purpose and objective underlying the two Acts and intentment are conveyed by the language of the relevant provisions [See Shri Ram Narain v. The Simla Banking and Industrial Company Limited, 1956 SCR 603]. Applying the said principles in Ashoka Marketing (supra) it has been held that PP Act was enacted to control the rampant unauthorised occupation of public premises by providing machinery for eviction of persons in unauthorised occupation. The said enactment has a public purpose and interest. Special powers in this regard have been conferred under the enactment on the Estate Officer to deal with the problem of unauthorised occupation in premises belonging to Government, public companies and corporations controlled and owned by the Central Government. Same reasoning will equally apply to PP Act and Arbitration and Conciliation Act."

31. As would be evident from the aforesaid passages of that decision, the Court categorically held that matters which would be governed exclusively by the provisions of the PP Act could not be said to be arbitrable issues. It took note of the conferment of an exclusive jurisdiction upon an Estate Officer to adjudicate and rule upon all questions arising from or under the said enactment. It was also pertinently observed that the PP Act constitutes a complete code in itself and it would thus be wholly impermissible to countenance the submission that disputes which would otherwise fall within its ambit could be made subject matter of reference to arbitration.

32. It would be apposite to note that the respondent in the aforesaid noted decision, International Amusement Limited, came to assail the

said decision before the Supreme Court. That challenge stood negatived by the Supreme Court in **International Amusement Limited v. India Trade Promotion Organization**[15]**.** The appeal arose in the backdrop of International Amusement Limited having filed a petition under Section 11 of the Act for constitution of an Arbitral Tribunal and a learned Judge of the Court allowing the same albeit with the observation that while the appointed Arbitrator would be empowered to decide the dispute between parties, the proceedings under the PP Act which were pending would continue. The decision rendered on the petition under Section 11 also formed subject matter of a separate writ petition which too was heard and disposed of by the Division Bench while rendering its judgment in *India Trade Promotion Organization*. Insofar as the challenge against the order passed on the Section 11 petition is concerned, the same was accepted with the Division Bench holding that the disputes could not have been referred to arbitration. It was to the aforesaid extent that International Amusement Limited proceeded to appeal before the Supreme Court.

33. The Supreme Court in the course of consideration of that challenge ultimately found that the clause in the contract was merely an expert determination provision as opposed to an arbitration agreement. Upon arriving at that conclusion, the challenge as laid by International Amusement Limited came to be dismissed. What emerges from the aforesaid discussion is that the opinion and conclusions as rendered by the Division Bench in *India Trade Promotion Organization* and insofar as they related to the interplay

[15] (2015) 12 SCC 677

between the Act and the PP Act were neither overruled nor interfered with or held to be an incorrect enunciation of the legal position.

34. The issue of whether disputes which would otherwise fall within the ambit of the PP Act could be referred to arbitration again fell for determination before the Court in *Fortune Grand Management*. Answering the said question, the learned Judge observed as follows: -

> "**15.** I may however state that the question as far as this Court is concerned is not res integra. A Division Bench of this Court in Fabiroo Gift House v. India Tourism Development Corp. referring to Section 15 of the PP Act as under:
>
> > "15. Bar of jurisdiction.— No court shall have jurisdiction to entertain any suit or proceeding in respect of—
> >
> > (a) the eviction of any person who is in unauthorised occupation of any public premises, or
> >
> > (b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 5A, or
> >
> > (c) the demolition of any building or other structure made, or ordered to be made, under section 5B, or
> >
> > [(cc) the sealing of any erection or work or of any public premises under section 5C, or]
> >
> > (d) the arrears of rent payable under sub-section (1) of section 7 or damages payable under sub-section (2), or interest payable under sub-section (2A), of that section, or
> >
> > (e) the recovery of—
> >
> > > (i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5A, or
> > >
> > > (ii) expenses of demolition under section 5B, or
> > >
> > > (iii) costs awarded to the Central Government or statutory authority under sub-section (5) of section 9, or

> (iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority."

16. Held that a claim for recovery of arrears of rent payable under Section 7(1) or damages payable under Section 7(2) or interest payable under Section 7(2A) of the PP Act cannot be subject matter of arbitration. Another Division Bench of this Court in Harjit Singh v. Delhi Development Authority also held that the kind of disputes which as per the terms of the perpetual lease deed were to be arbitrated by the Lieutenant Governor could not be subject matter of arbitration; it was held that the dispute insofar as it related to eviction of the petitioner from the public premises has to be decided by the statutory authority under the PP Act and only the dispute which was not covered by the PP Act could be adjudicated in accordance with the arbitration clause in the agreement between the parties.

17. On an interpretation of the arbitration clause in Exclusive Motors Pvt. Ltd. v. India Tourism Development Corporation 2009 SCC OnLine Del 1739, a Single Judge of this Court held the matters within the jurisdiction of PP Act to be not arbitrable. LPA No. 589/2009 preferred there against is found to have been withdrawn on 13th November, 2013. Following the aforesaid judgments, I have in Nuurrie Media Ltd. v. Indian Tourism Development Corp. Ltd. held that there could be no arbitration with respect to the disputes covered under the PP Act.

18. The same view was also taken by me in Airports Authority of India v. Grover International Ltd. that a tenant/lessor of a public premises upon its tenancy/lease being determined, cannot before the public authority has had an opportunity to initiate proceedings for eviction under the PP Act, rush and raise the dispute of validity of termination in a Court or in arbitration proceedings and invite adjudication thereon and contend that the same is maintainable for the reason of the proceedings under the PP Act having not been initiated till then. It was further held that if the public authority does not initiate the proceedings under the PP Act, the termination in any case would be of no avail whether it be valid or invalid and if proceedings under the PP Act are initiated then the invalidity of the termination has to be set up as a defence in the said proceedings only and cannot be subject matter of adjudication before any other fora. It was reasoned that under Section 5 of the PP Act, the satisfaction, to be accorded whether a person is an unauthorized occupant or not is of the Estate Officer and not of any other fora and that if it were to be held otherwise, it would frustrate the jurisdiction of the Estate Officer. Reliance was placed on

> Ashoka Marketing Ltd. v. Punjab National Bank (1990) 4 SCC 406 holding the PP Act to be a special legislation enacted to deal with the mischief of rampant unauthorized occupation of public premises.
>
> **19.** Mention may lastly be made of the judgment of the Division Bench of this Court in India Trade Promotion Organisation v. International Amusement Limited (2007) 142 DLT 342, it was held by referring to Section 2(3) of the Arbitration Act that Section 15 read with Sections 5 and 7 of the PP Act confers exclusive jurisdiction on the Estate Officers appointed under Section 3 of the said Act to deal with applications under Sections 5 and 7 of the PP Act and that the PP Act being a special Act which also prescribes the complete procedure for adjudication of proceedings under the PP Act is a complete code in itself and proceedings under Sections 5 and 7 of the PP Act cannot be made subject matter of arbitration. The said reasoning was not interfered with by the Supreme Court and as far as this Court is concerned, is binding. In fact, as far back as in Kesar Enterprises v. Union of India the Division Bench of this Court had also observed that Arbitrator will have no jurisdiction in matters in view of Sections 7 and 15 of the PP Act."

35. The arbitrability of disputes and which may otherwise form the subject matter of determination under special statutes and adjudicatory fora constituted thereunder has been eloquently explained by the Supreme Court in *Vidya Drolia*. While dealing with the said question, the Supreme Court in *Vidya Drolia* held as under: -

> "**50.** Sovereign functions of the State being inalienable and non-delegable are non-arbitrable as the State alone has the exclusive right and duty to perform such functions. [Ajar Raib, "Defining Contours of the Public Policy Exception — A New Test for Arbitrability", Indian Journal for Arbitration Law, Vol. 7 (2018) p. 161.] For example, it is generally accepted that monopoly rights can only be granted by the State. Correctness and validity of the State or sovereign functions cannot be made a direct subject-matter of a private adjudicatory process. Sovereign functions for the purpose of Arbitration Act would extend to exercise of executive power in different fields including commerce and economic, legislation in all forms, taxation, eminent domain and police powers which includes maintenance of law and order, internal security, grant of pardon, etc. as distinguished from commercial activities, economic adventures and welfare activities. [*Common Cause* v. *Union of India*, (1999) 6 SCC 667 : 1999 SCC (Cri) 119

and *Agricultural Produce Market Committee* v. *Ashok Harikuni*, (2000) 8 SCC 61.] Similarly, decisions and adjudicatory functions of the State that have public interest element like the legitimacy of marriage, citizenship, winding up of companies, grant of patents, etc. are non-arbitrable, unless the statute in relation to a regulatory or adjudicatory mechanism either expressly or by clear implication permits arbitration. In these matters the State enjoys monopoly in dispute resolution.

51. Fourth principle of non-arbitrability is alluded to in the order of reference [*Vidya Drolia* v. *Durga Trading Corpn.*, (2019) 20 SCC 406] , which makes specific reference to *Vimal Kishor Shah* [*Vimal Kishor Shah* v. *Jayesh Dinesh Shah*, (2016) 8 SCC 788 : (2016) 4 SCC (Civ) 303] , which decision quotes from *Dhulabhai* [*Dhulabhai* v. *State of M.P.*, (1968) 3 SCR 662 : AIR 1969 SC 78] , a case which dealt with exclusion of jurisdiction of civil courts under Section 9 of the Civil Procedure Code. The second condition in *Dhulabhai* [*Dhulabhai* v. *State of M.P.*, (1968) 3 SCR 662 : AIR 1969 SC 78] reads as under : (AIR p. 89, para 32)

> "*32.* … (*2*) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.
>
> Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not."

52. The order of reference [*Vidya Drolia* v. *Durga Trading Corpn.*, (2019) 20 SCC 406] notes that *Dhulabhai* [*Dhulabhai* v. *State of M.P.*, (1968) 3 SCR 662 : AIR 1969 SC 78] refers to three categories mentioned in *Wolverhampton New Waterworks Co.* v. *Hawkesford* [*Wolverhampton New Waterworks Co.* v. *Hawkesford*, (1859) 6 CB (NS) 336 : 141 ER 486] to the following effect : (*Hawkesford case* [*Wolverhampton New Waterworks Co.* v. *Hawkesford*, (1859) 6 CB (NS) 336 : 141 ER 486] , ER p. 495)

> "There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy : there, the party can only proceed by action at common law. But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it."

53. *Dhulabhai case* [*Dhulabhai* v. *State of M.P.*, (1968) 3 SCR 662 : AIR 1969 SC 78] is not directly applicable as it relates to exclusion of jurisdiction of civil courts, albeit we respectfully agree with the order of reference [*Vidya Drolia* v. *Durga Trading Corpn.*, (2019) 20 SCC 406] that Condition 2 is apposite while examining the question of non-arbitrability. Implied legislative intention to exclude arbitration can be seen if it appears that the statute creates a special right or a liability and provides for determination of the right and liability to be dealt with by the specified courts or the tribunals specially constituted in that behalf and further lays down that all questions about the said right and liability shall be determined by the court or tribunals so empowered and vested with exclusive jurisdiction. Therefore, mere creation of a specific forum as a substitute for civil court or specifying the civil court, may not be enough to accept the inference of implicit non-arbitrability. Conferment of jurisdiction on a specific court or creation of a public forum though eminently significant, may not be the decisive test to answer and decide whether arbitrability is impliedly barred.

54. Implicit non-arbitrability is established when by mandatory law the parties are quintessentially barred from contracting out and waiving the adjudication by the designated court or the specified public forum. There is no choice. The person who insists on the remedy must seek his remedy before the forum stated in the statute and before no other forum. In *Transcore* v. *Union of India* [*Transcore* v. *Union of India*, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] , this Court had examined the doctrine of election in the context whether an order under proviso to Section 19(1) of the Recovery of Debts Due to Banks and Financial Institutions Act,

1993 ("the DRT Act") is a condition precedent to taking recourse to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the NPA Act"). For analysing the scope and remedies under the two Acts, it was held that the NPA Act is an additional remedy which is not inconsistent with the DRT Act, and reference was made to the doctrine of election in the following terms : (*Transcore case* [*Transcore* v. *Union of India*, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] , SCC p. 162, para 64)

> "*64.* In the light of the above discussion, we now examine the doctrine of election. There are three elements of election, namely, existence of two or more remedies; inconsistencies between such remedies and a choice of one of them. If any one of the three elements is not there, the doctrine will not apply. According to *American Jurisprudence*, 2d, Vol. 25, p. 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to *Snell's Principles of Equity* (31st Edn., p. 119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application."

58. Consistent with the above, observations in *Transcore* [*Transcore* v. *Union of India*, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] on the power of the DRT conferred by the DRT Act and the principle enunciated in the present judgment, we must overrule the judgment of the Full Bench of the Delhi High Court in *HDFC Bank Ltd.* v. *Satpal Singh Bakshi* [*HDFC Bank Ltd.* v. *Satpal Singh Bakshi*, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] , which holds that matters covered under the DRT Act are arbitrable. It is necessary to overrule this decision and clarify the legal position as the decision in *HDFC Bank Ltd.* [*HDFC Bank Ltd.* v. *Satpal Singh Bakshi*, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] has been referred to in *M.D. Frozen Foods Exports (P) Ltd.* [*M.D. Frozen Foods Exports (P) Ltd.* v. *Hero Fincorp Ltd.*, (2017) 16 SCC 741 : (2018) 2 SCC (Civ) 805] , but not examined in light of the legal principles relating to non-arbitrability. The decision in *HDFC Bank Ltd.* [*HDFC Bank Ltd.* v. *Satpal Singh*

Bakshi, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] holds that only actions in rem are non-arbitrable, which as elucidated above is the correct legal position. However, non-arbitrability may arise in case of the implicit prohibition in the statute, conferring and creating special rights to be adjudicated by the courts/public fora, which right including enforcement of order/provisions cannot be enforced and applied in case of arbitration. To hold that the claims of banks and financial institutions covered under the DRT Act are arbitrable would deprive and deny these institutions of the specific rights including the modes of recovery specified in the DRT Act. Therefore, the claims covered by the DRT Act are non-arbitrable as there is a prohibition against waiver of jurisdiction of the DRT by necessary implication. The legislation has overwritten the contractual right to arbitration.

68. Statutes unfailingly have a public purpose or policy which is the basis and purpose behind the legislation. Application of mandatory law to the merits of the case do not imply that the right to arbitrate is taken away. Mandatory law may require a particular substantive rule to be applied, but this would not preclude arbitration. Implied non-arbitrability requires prohibition against waiver of jurisdiction, which happens when a statute gives special rights or obligations and creates or stipulates an exclusive forum for adjudication and enforcement. An arbitrator, like the court, is equally bound by the public policy behind the statute while examining the claim on merits. The public policy in case of non-arbitrability would relate to conferment of exclusive jurisdiction on the court or the special forum set up by law for decision making. Non-arbitrability question cannot be answered by examining whether the statute has a public policy objective which invariably every statute would have. There is a general presumption in favour of arbitrability, which is not excluded simply because the dispute is permeated by applicability of mandatory law. Violation of public policy by the arbitrator could well result in setting aside the award on the ground of failure to follow the fundamental policy of law in India, but not on the ground that the subject-matter of the dispute was non-arbitrable.

76. In view of the above discussion, we would like to propound a fourfold test for determining when the subject-matter of a dispute in an arbitration agreement is not arbitrable:

> **76.1.** (*1*) When cause of action and subject-matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.
>
> **76.2.** (*2*) When cause of action and subject-matter of the dispute affects third-party rights; have *erga omnes* effect;

require centralised adjudication, and mutual adjudication would not be appropriate and enforceable.

76.3. (*3*) When cause of action and subject-matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable.

76.4. (*4*) When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

76.5. These tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject-matter is non-arbitrable. Only when the answer is affirmative that the subject-matter of the dispute would be non-arbitrable.

76.6. However, the aforesaid principles have to be applied with care and caution as observed in *Olympus Superstructures (P) Ltd.* [*Olympus Superstructures (P) Ltd.* v. *Meena Vijay Khetan*, (1999) 5 SCC 651] : (SCC p. 669, para 35)

> "*35.* … Reference is made there to certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, which cannot be referred to arbitration. It has, however, been held that if in respect of facts relating to a criminal matter, say, physical injury, if there is a right to damages for personal injury, then such a dispute can be referred to arbitration (*Keir* v. *Leeman* [*Keir* v. *Leeman*, (1846) 9 QB 371 : 115 ER 1315]). Similarly, it has been held that a husband and a wife may refer to arbitration the terms on which they shall separate, because they can make a valid agreement between themselves on that matter (*Soilleux* v. *Herbst* [*Soilleux* v. *Herbst*, (1801) 2 Bos & P 444 : 126 ER 1376] , *Wilson* v. *Wilson* [*Wilson* v. *Wilson*, (1848) 1 HL Cas 538] and *Cahill* v. *Cahill* [*Cahill* v. *Cahill*, (1883) LR 8 AC 420 (HL)]).

77. Applying the above principles to determine non-arbitrability, it is apparent that insolvency or intracompany disputes have to be addressed by a centralised forum, be the court or a special forum, which would be more efficient and has complete jurisdiction to efficaciously and fully dispose of the entire matter. They are also

> actions in rem. Similarly, grant and issue of patents and registration of trade marks are exclusive matters falling within the sovereign or government functions and have *erga omnes* effect. Such grants confer monopoly rights. They are non-arbitrable. Criminal cases again are not arbitrable as they relate to sovereign functions of the State. Further, violations of criminal law are offences against the State and not just against the victim. Matrimonial disputes relating to the dissolution of marriage, restitution of conjugal rights, etc. are not arbitrable as they fall within the ambit of sovereign functions and do not have any commercial and economic value. The decisions have *erga omnes* effect. Matters relating to probate, testamentary matter, etc. are actions in rem and are a declaration to the world at large and hence are non-arbitrable.
>
> **78.** In view of the aforesaid discussions, we overrule the ratio in N. Radhakrishnan [N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72 : (2010) 1 SCC (Civ) 12] inter alia observing that allegations of fraud can (sic cannot) be made a subject-matter of arbitration when they relate to a civil dispute. This is subject to the caveat that fraud, which would vitiate and invalidate the arbitration clause, is an aspect relating to non-arbitrability. We have also set aside the Full Bench decision of the Delhi High Court in HDFC Bank Ltd. [HDFC Bank Ltd. v. Satpal Singh Bakshi, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] which holds that the disputes which are to be adjudicated by the DRT under the DRT Act are arbitrable. They are non-arbitrable.
>
> **80.** In view of the aforesaid, we overrule the ratio laid down in Himangni Enterprises [Himangni Enterprises v. Kamaljeet Singh Ahluwalia, (2017) 10 SCC 706 : (2018) 1 SCC (Civ) 82] and hold that landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. <u>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.</u>"

36. *Vidya Drolia* embodies an elaborate discussion on the factors which would be germane for the purposes of considering when legislations could be said to exclude resolution of disputes by way of arbitration. While dealing with the aforesaid question, it was held that where statutes create special rights or liabilities and provide for the

determination thereof by specified courts or tribunals which are conferred exclusive jurisdiction, the same would be a factor which would clearly be of significant consequence and indicative of the legislative intent of rendering those disputes non-arbitrable. While *Vidya Drolia* does observe that a provision ousting the jurisdiction of the civil court may not be solely determinative, it goes on to explain that the same would be a factor which would have to be accorded due importance and weightage. It was further held that non-arbitrability would stand established and evidenced where parties are essentially barred from waiving the adjudicatory mechanism as constructed by statutes and seek resolution thereof by a private tribunal. The implicit prohibitions contained in a statute creating special rights or liabilities and envisaging adjudication of all questions connected therewith by a designated tribunal or authority was again explained to be a decisive factor which would be of immense import in answering the question of non-arbitrability.

37. Viewed in light of the aforesaid principles, the Court finds that the occupation of public premises is a subject matter which appears to be exclusively administered and governed by the provisions of the PP Act. The occupation of public premises either by way of a lease or other instruments and questions relating to the occupant being liable to be recognized as authorized to occupy the same are regulated, governed and controlled by the special provisions contained in the PP Act. The PP Act constructs and puts in place a special mechanism in respect of eviction of unauthorised occupants from public premises. The PP Act embodies an unblemished and unambiguous legislative

intent to regulate public premises separately and in accordance with the provisions of that statute.

38. The said enactment in terms of Section 15 ousts the jurisdiction of all other courts in respect of eviction of persons from public premises and other aspects in relation thereto. That provision reads as under: -

> "**15. Bar of jurisdiction**.—No court shall have jurisdiction to entertain any suit or proceeding in respect of—
>
> (*a*) the eviction of any person who is in unauthorised occupation of any public premises, or
>
> (*b*) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under Section 5-A, or
>
> (*c*) the demolition of any building or other structure made, or ordered to be made, under Section 5-B, or
>
> (*cc*) the sealing of any erection or work or of any public premises under Section 5-C, or
>
> (*d*) the arrears of rent payable under sub-section (1) of Section 7 or damages payable under sub-section (2), or interest payable under sub-section (2-A), of that section, or
>
> (e) the recovery of—
>
> (i) costs of removal of any building, structure or fixture or goods, cattle or other animal under Section 5-A, or
>
> (ii) expenses of demolition under Section 5-B, or
>
> (iii) costs awarded to the Central Government or statutory authority under sub-section (5) of Section 9, or
>
> (iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority."

39. It is thus manifest that disputes in relation to eviction, arrears of rent, payment of damages are all issues which are statutorily ordained to be tried only in accordance with the procedure prescribed under the

PP Act and by the adjudicatory authorities designated thereunder. The provisions of that statute undoubtedly appear to be indicative of the parties being debarred from seeking resolution of those disputes by way of arbitration. The PP Act creates special rights and liabilities in favour of contracting parties. It also constructs a special adjudicatory mechanism for resolution of disputes and which is statutorily anointed with exclusivity. Contracting parties thus cannot assert a waiver of jurisdiction or claim resolution of disputes falling within the ambit of the PP Act to be resolved by way of arbitration.

40. Undisputedly, the petitioner claims rights and interests in the subject property by virtue of a lease which came to be executed in its favour by DDA. Upon that lease being determined, the petitioner could fall within the ambit of Section 2(g) of the PP Act. Once it is admitted that the property is a public premises and is occupied by a person who is asserted to be in unauthorized occupation, the provisions of the PP Act would immediately come into play and the significant jurisdictional bars would become operational. The Court also bears in mind that the principal dispute as delineated by the petitioner itself pertains to its liability to pay ground rent, the demands raised in connection therewith and the validity of the determination of the lease. All the aforesaid questions would undoubtedly fall within the domain of the PP Act. The Court additionally draws sustenance for its conclusions recorded hereinabove from the decisions rendered by the Court in *Fortune Grand* and *India Trade Promotion Organisation*.

41. That then takes the Court to consider the issue of the extent of the jurisdiction which the Estate Officer could exercise under the PP

Act and whether the disputes which stand raised by the petitioner would fall outside its purview. As was noticed hereinabove, the petitioner has assailed the quantification of ground rent, the demand raised in connection therewith and the ultimate determination of the lease itself. It was contended by Mr. Tandon that these disputes are not envisaged to be adjudged by the Estate Officer and thus they are arbitrable.

42. Mr. Tandon, had placed for the consideration of the Court, the decision of the Supreme Court in *Escorts Heart Institute* as well as of a Division Bench of this Court in *DCM Ltd.* to contend that since the Estate Officer proceeds on the premise of public premises being in unauthorised occupation, it would clearly not be empowered to examine or adjudicate on the disputes which stand raised by the petitioner. According to Mr. Tandon, the restrictions on the extent of authority which stands conferred upon the Estate Officer were aspects which were duly noted in both *Escorts Heart Institute* as well as *DCM Ltd.*

43. In order to ascertain the correctness of the aforesaid submission, the Court firstly notices the order of the Supreme Court in *Escorts Heart Institute*. *Escorts Heart Institute* was based on a prior suit which had been instituted by the appellant before it seeking a declaration with respect to the validity of an order passed by the respondents as well as a decree of permanent injunction restraining DDA from dispossessing the appellants from the suit property. An interim injunction came to be granted on that suit and which was made absolute during the pendency thereof. The appellant had thereafter

also filed a petition under Section 9 of the Act in which two interim protection orders were granted. The proceedings under the PP Act came to be initiated thereafter. The show cause notice issued under Section 4 of the PP Act was assailed by the appellant by filing a writ petition which originally came to be dismissed by a learned Single Judge. The said judgment was thereafter assailed in a Letters Patent Appeal in which an order came to be passed to the effect that while the Estate Officer would be permitted to continue proceedings under the PP Act, no final orders would be passed. It was the aforesaid order which came to be challenged by the appellant before the Supreme Court. The order passed in *Escorts Heart Institute* would appear to suggest that the principal ground for initiation of proceedings under the PP Act was a merger which came to be affected with the respondents contending that the same amounted to a violation of the terms of the perpetual lease. It was the aforesaid view as taken by the respondents which had been assailed in the pending suit. It was in light of the interim order that operated on that suit which led the Supreme Court to observe that while the matter remains sub judice, *Escorts Heart Institute* could not be viewed to be an encroacher on public land. It was consequently observed that while the issue of amalgamation/merger was pending consideration in the suit, it would be inappropriate to permit the continuance of proceedings under the PP Act.

44. *Escorts Heart Institute* thus clearly is a decision which turned on its own peculiar facts. In any view of the matter, this Court finds itself unable to discern any principle flowing from that decision which

may possibly be read as buttressing the propositions of law as were canvassed by Mr. Tandon. It may only be observed that *Escorts Heart Institute* does not lay down any universal principle that proceedings under the PP Act relating to a proposed termination of lease or drawl of proceedings under Section 4 cannot be adjudged by the Estate Officer.

45. *DCM Ltd.*, on the other hand, was a decision which came to be rendered in the context of the appellant questioning the very title of the appropriate government over the suit premises. In fact, and as would be evident from a reading of the introductory parts of that judgment, *DCM Ltd.*, had in fact instituted a suit claiming a declaration that it was the owner in possession. Proceeding to deal with the question of whether a dispute with respect to title could be considered by the Estate Officer, the Court in *DCM Ltd.* held as follows: -

> "**15.** The question which this Court has to address itself to is whether the impugned judgment, in concluding that by virtue of Section 15 of the Public Premises Act the jurisdiction of the Civil Court is barred, is erroneous. The provision reads as follows:
>
> > "15. Bar of jurisdiction. No court shall have jurisdiction to entertain any suit or proceeding in respect of—
> >
> > (a) the eviction of any person who is in unauthorised occupation of any public premises, or
> >
> > (b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 5A, or
> >
> > (c) the demolition of any building or other structure made, or ordered to be made, under section 5B, or

(cc) the sealing of any erection or work or of any public premises under section 5C, or

(d) the arrears of rent payable under sub-section (1) of section 7 or damages payable under sub-section (2), or interest payable under sub-section (2A), of that section, or

(e) the recovery of—

(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5A, or

(ii) expenses of demolition under section 5B, or

(iii) costs awarded to the Central Government or statutory authority under sub-section (5) of section 9, or

(iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority."

16. Section 5 of the Act enables the Estate Officer, after issuing notice to an occupant, if he is satisfied that the public premises are in unauthorised occupation, to direct eviction through an order. The DDA argued — and the learned single judge accepted, that by virtue of the decision in **Ashoka Marketing** (supra), the jurisdiction to decide whether the premises were owned by the Government, or the concerned agency entitled to invoke the Act, was with the Estate Officer. This is on the premise that a submission in that regard had been rejected by the Supreme Court. The exact passage which dealt with the contention is reproduced for convenience:

"Another submission that has been urged by Shri Ganguli is that the question whether a lease has been determined or not involves complicated *questions of law* and the estate officer, who is not required to be an officer well versed in law, cannot be expected to decide such question and, therefore, it must be held that the provisions of the Public Premises Act have no application to a case when the person sought to be evicted had obtained possession of the premises as a lessee. It is true that there is no requirement in the Public Premises Act that the estate officer must be a person well versed in law. But, that, by itself, cannot be a ground for excluding from the ambit of the said Act premises in unauthorised occupation of persons who

obtained possession of the said premises under a lease. Section 4 of the Public Premises Act requires issuing of a notice to the person in unauthorised occupation of any Public Premises requiring him' to show cause why an order of eviction should not be made. Section 5 makes provisions for production of evidence in support of the cause shown by the person who has been served with a notice under Section 4 and giving of a personal hearing by the estate officer. Section 8 provides that an estate officer, shall, for the purpose of holding any enquiry under the said Act have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit in respect of the matters specified therein namely: (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring discovery and production of documents; and (c) any other matters which may be prescribed. Rule 5(2) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, requires the estate officer to record the summary of evidence tendered before him. Moreover Section 9 confers a right of appeal against an order of the estate officer and the said appeal has to be heard either by the district judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the district judge may designate in that behalf. In shows that the final order that is passed is by a judicial officer in the rank of a district judge.

A similar contention was raised before this Court in **Maganlal Chhagganlal (P) Ltd. v. Municipal Corporation of Greater Bombay, [1975] 1 SCR 1** wherein the validity of the provisions of Chapter VA of the Bombay Municipal Corporation Act,' 1888 and the Bombay Government Premises (Eviction) Act, 1955 were challenged before this Court and the said contention was negatived."

17. It would be apparent from the above extract, that what was considered and rejected was the contention that a "question whether a lease has been determined or not involves complicated *questions of law* and the estate officer, who is not required to be an officer well versed in law, cannot be expected to decide such question". The possibility of the respondent (in the Public Premises eviction proceeding) setting up a rival contention

regarding title, did not engage the attention of the court. Furthermore, there is no provision in the Public Premises Act enabling an occupant to raise a counter claim seeking declaration that he is the true and lawful owner on substantive grounds, or even urging title by prescription or adverse possession. In these circumstances, it is held that mere issuance of a notice under Section 4 would not divest a civil court from exercising its jurisdiction. There could also be situations where even before a show cause notice is issued, the occupant might approach the court, seeking declaration of title, or seeking injunctive relief in respect of his possession. In such cases, ousting jurisdiction of the civil court can be only on the ground that an Estate Officer issues notice under Section 4. The unreasonableness of such conclusion is highlighted because, then, the character of the premises, i.e. whether it belongs to the concerned public agency, cannot be gone into. In other words, jurisdiction of the civil court to examine and decide on questions of title and incidental matters, is left to the contingency of issuance or otherwise of notice under Section 4.

18. In the light of the above discussion, it would now be necessary to discuss the case law relied on by the parties. In **Thummala Krishna Rao** (supra), the Supreme Court had occasion to deal with Sections 6 and 7 of the A.P. Land Encroachment Act, 1905. Like the Public Premises Act, the Andhra Pradesh enactment provided for summary procedure to evict unauthorised occupants. The Supreme Court dealt with a contention similar to the one urged by DCM in the present appeal, and observed that:

> "The summary remedy for eviction Which is provided for by Section 6 of the Act can be resorted to by the Government only against persons who are in unauthorized occupation of any land which is "the property of Government". If there is a bona fide dispute regarding the title of the government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title.
>
> What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed

> and the consideration whether the claim of the occupant is bona fide. Facts, which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the Ordinary courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is hl occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bonafide claim to the property requiring an impartial adjudication according to the established procedure of law.
>
> The conspectus of facts in the instant case justifies the view that the question as to the title to the three plots cannot appropriately be decided in a summary inquiry contemplated by sections 6 and 7 of the Act. The long possession of the respondents and their predecessors-in-title of these plots raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to the family of Nawab Habibuddio from whom the respondents claim to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adverse possession must be decided in a properly constituted suit. May be, that the Government may succeed in establishing its title to the property but, until that is done, the respondents cannot be evicted summarily."

A similar issue arose in **State of Rajasthan v. Padmavati Devi, 1995 Supp (2) SCC 290**, where the Supreme Court dealt with provisions of the Rajasthan Land Revenue Act, 1956. The Court first noticed the relevant provision and then the facts:

> "2. Under Section 91 of the Act a person in occupation of Government land without lawful authority is to be regarded as a trespasser and he can be summarily evicted from such land by the Tehsildar after serving on such person a notice requiring him to show cause why he should not be so evicted therefrom.

> 3. In the instant case, Section 91 of the Act has been invoked on the basis that the land is recorded as "Sawai Chak" in the revenue records for the year Samvat 2015 (1958 A.D.) and that in the ParchaKhatani dated February 9, 1953 that was given to Praduman Ojha, the husband of respondent No. 1, there is no mention of this land."

The Court then concluded that the summary procedure available for the Government could not oust the jurisdiction of the civil court to examine questions pertaining to title, claimed by an alleged unauthorized occupant, in a civil suit:

> "6. As noticed earlier Section 91 of the Act prescribes a summary procedure for eviction of a person who is found to be in unauthorised occupation of Government land. The said provisions cannot be invoked in a case where the person in occupation raises bonafide dispute about his right to remain in occupation over the land. Dealing with similar provisions contained in Section 6 of the Andhra Pradesh Land Encroachment Act, 1945, this Court in **Government of Andhra Pradesh v. Thummala Krishna Rao**, **1982 (3) SCR 500**, has laid down that the summary remedy for eviction provided by Section 6 o the said Act could be resorted to by the Government only against persons who are in unauthorised occupation of any land which is the property of the Government and if the person in occupation has a bona fide claim to litigate he could not be ejected save by the due process of law and that the summary remedy prescribed by Section 6 was not the kind of legal process which is suited to an adjudication of complicated questions of title. For the same reasons, it can be said that summary remedy available under Section 91 of the Act is not the legal process which is suited for adjudication of complicated questions of title where the person sought to be evicted as an unauthorised occupant makes a bona fide claim regarding his right to be in possession. In such a case the proper course is to have the matter adjudicated by the ordinary courts of law."

It is not without significance that the Constitution Bench judgment in **Ashoka Marketing** (supra) and the judgment in Padmavati Devi were authored on behalf of the Court, by the same learned judge, Mr. Justice S.C. Agarwal. Furthermore, **Padmavati**

> **Devi** (supra) was by a 3 judge Bench. The decision in **Thummala Krishna Rao** (supra) thus stood approved by a-3 member judgment, after **Ashoka Marketing** (supra).
>
> **20.** It can be seen from the above discussion that though the Supreme Court distinguished Thummala Krishna Rao, that was on account of the provisions of the Land Grabbing Act. It provided a complete code, which included appointment of a Special Judge, who had jurisdiction to decide all matters pertaining to land grabbing, including those "with respect to the ownership and title to, or lawful possession of" the lands in question. Thus, the remedies provided were comprehensive, and enabled the Special Court to expressly act as a Court, take evidence in deposition, and also exercise criminal jurisdiction. The concerned party made subject to the Act could also urge and seek ruling on the question of title. Having regard to these facts, the Court does not see any change in the law. The basic proposition that having regard to the limited nature of jurisdiction of the Estate Officer, bona fide title disputes cannot be gone into under the Public Premises Act, remains unchanged.
>
> **22.** For the above reasons, it is held that the impugned judgment, inasmuch as it holds that the Court was divested of jurisdiction by reason of Section 15 of the Public Premises Act, cannot be upheld……..."

46. As would be evident from a reading of the principles laid down in *DCM Ltd,* it clearly appears to be an authority for the proposition that bona fide title disputes cannot be gone into or adjudicated upon by the Estate Officer under the PP Act. However, and inarguably, in the present case, the petitioner does not question or challenge the title of DDA over the leased property. It does not assert an independent right of ownership over the premises nor does the petitioner set up a competing title over the leased premises. In fact, and as would be evident from the disputes of which reference is sought, the question of title does not even remotely arise. It may only be noted that while an Estate Officer may not be entitled to go into questions of competing ownership, all other issues of determination which relate to the

occupation of such premises and questions incidental thereto would clearly fall within the exclusive province of the Estate Officer.

47. The Court is thus of the firm opinion that not only are the disputes of which reference is sought covered under the ambit of the PP Act, they would undoubtedly fall within the parameters of the authority conferred upon the Estate Officer. In the absence of any question having been raised with respect to the title of DDA over the leased premises, it cannot possibly be accepted that the dispute falls outside the scope of the PP Act.

48. The Court notes that the submissions addressed on lines noted above were clearly misconceived since the petitioner undisputedly claims possessory rights solely on the basis of a lease executed in its favor by DDA. Even if that lease be a perpetual grant, in light of the stipulations relating to termination incorporated therein, it was clearly determinable. This was therefore not a conferment of absolute title on the petitioner or for that matter a permanent divestment of ownership rights by DDA.

49. While closing, the Court deems it apposite to notice the principles which were laid down by the Constitution Bench of the Supreme Court in *Ashoka Marketing Ltd*. and which cogently elucidated on the extent of authority conferred on the Estate Officer under the PP Act. It becomes pertinent to note that the argument that a question relating to the validity of termination of a lease would not fall within the remit of the Estate Officer came to be specifically

negatived as would be evident from the following passages of that decision:-

> "**33.** Another submission that has been urged by Shri Ganguli is that the question whether a lease has been determined or not involves complicated questions of law and the estate officer, who is not required to be an officer well versed in law, cannot be expected to decide such questions and, therefore, it must be held that the provisions of the Public Premises Act have no application to a case when the person sought to be evicted had obtained possession of the premises as a lessee. It is true that there is no requirement in the Public Premises Act that the estate officer must be a person well versed in law. But, that, by itself, cannot be a ground for excluding from the ambit of the said Act premises in unauthorised occupation of persons who obtained possession of the said premises under a lease. Section 4 of the Public Premises Act requires issuing of a notice to the person in unauthorised occupation of any public premises requiring him to show cause why an order of eviction should not be made. Section 5 makes provisions for production of evidence in support of the cause shown by the person who has been served with a notice under Section 4 and giving of a personal hearing by the estate officer. Section 8 provides that an estate officer, shall, for the purpose of holding any enquiry under the said Act have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit in respect of the matters specified therein namely:
>
> (a) summoning and enforcing the attendance of any person and examining him on oath;
> (b) requiring discovery and production of documents; and
> (c) any other matters which may be prescribed.
>
> **34.** Rule 5(2) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, requires the Estate Officer to record the summary of evidence tendered before him. Moreover Section 9 confers a right of appeal against an order of the Estate Officer and the said appeal has to be heard either by the District Judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years' standing as the District Judge may designate in that behalf. It shows that the final order that is passed is by a judicial officer in the rank of a District Judge.
>
> **35.** A similar contention was raised before this Court in Maganlal Chhagganlal (P) Ltd. v. Municipal Corporation of Greater Bombay [(1974) 2 SCC 402 : (1975) 1 SCR 1] wherein the validity of the

provisions of Chapter V-A of the Bombay Municipal Corporation Act, 1888 and the Bombay Government Premises (Eviction) Act, 1955 were challenged before this Court and the said contention was negatived. Alagiriswami, J. speaking for the majority, has observed as under : (SCC p. 423, para 17)

> "Even though the officers deciding these questions would be administrative officers there is provision in these Acts for giving notice to the party affected, to inform him of the grounds on which the order of eviction is proposed to be made, for the party affected to file a written statement and produce documents and be represented by lawyers. The provisions of the Civil Procedure Code regarding summoning and enforcing attendance of persons and examining them on oath, and requiring the discovery and production of documents are a valuable safeguard for the person affected. So is the provision for appeal to the Principal Judge of the city civil court in the city of Bombay, or to a District Judge in the districts who has got to deal with the matter as expeditiously as possible, also a sufficient safeguard as was recognised in Suraj Mall Mohta case [Suraj Mall Mohta & Co. v. A. V. Visvanatha Sastri, (1955) 1 SCR 448: AIR 1954 SC 545: (1954) 26 ITR 1] "

50. The Court, for reasons aforenoted, holds that the disputes of which reference is sought are non-arbitrable. In light of the aforesaid conclusions and since the Court has come to find that the disputes raised cannot form subject matter of arbitration, the other objections as urged by and on behalf of the respondents need not be answered.

51. Accordingly, and for all the aforesaid reasons, the Court finds that the Section 11 petition merits dismissal. Since the Court has found that the disputes cannot be subject to resolution by way of arbitration, the question of grant of protective measures as claimed in the Section 9 petition must meet a similar fate. This, though needless to state, would be without prejudice to the rights of the petitioner to

assail the action of the respondent by initiating proceedings as may be otherwise permissible in law.

52. Accordingly, ARB. P. 567/2022 and O.M.P.(I) 6/2022 along with the pending applications shall stand dismissed.

YASHWANT VARMA, J.

MAY 09, 2023
Bh/neha