IN THE SUPREME COURT OF INDIA
EXTRAORDINARY APPELLATE JURISDICTION

Special Leave Petition (C) No.28782 of 2025

SMART CITY KOCHI INFRASTRUCTURE PRIVATE LIMITED

...PETITIONER (S)

VERSUS

M/S MUSTHAFA AND ALMANA INTERNATIONAL CONSULTANTS

...RESPONDENT (S)

O R D E R

The petitioner, in the private sector, based on a tripartite agreement, in which the State of Kerala was also a party, has set up a Special Economic Zone (SEZ) called the 'SmartCity SEZ'. The SEZ is approved by the Central Government and has been established on a land which has been leased out by the Government of Kerala to the petitioner for a period of 99 years. The respondent sought for establishment of a unit within the SEZ by way of a letter of approval obtained from the Central Government and a sub-lease was executed on 25.01.2017.

2. The unit was not set up, according to the petitioner, due to the lethargy of the respondent, while the respondent asserts various contingencies and defects which ought to have been cured by the petitioner; as reason for delay in establishment. The fact remains that, since 2017, the sub-leased premise has been remaining vacant and despite a supplementary agreement settling the disputes between the parties and the petitioner waiving a portion of the liability of the respondent insofar as rent and maintenance charges, no benefit has accrued to the petitioner or the respondent from the premises. The further lease of the premises has also been stayed by an interim order of the High Court in a writ petition which challenged the termination of lease. The present dispute arises from a Rent Control Petition (RCP) initiated by the petitioner against the respondent for eviction on the ground of arrears of rent.

3. Divergent opinions were rendered by the Rent Control Court and the High Court on the maintainability of the RCP. The issue agitated on maintainability was with respect to the interplay between the Special Economic Zones Act, 2005[1] and the Kerala Buildings (Lease and Rent Control) Act, 1965[2]. The impugned order found that, in the nature of

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[1] hereinafter referred to as 'the SEZ Act'
[2] 'the KBLR Act'

the dispute raised, what has to be looked at is the essence of the relationship between the petitioner and the respondent; if it be a pure and simple landlord-tenant relationship, necessarily the State legislation would prevail. But on the other hand, if it is a developer-entrepreneur relationship under the SEZ Act, then the dispute raised on termination would fall within the SEZ Act and the landlord-tenant relationship would only be incidental. The dispute with respect to non-payment of arrears of rent and other charges would be integral to the larger issue of whether the petitioner firm is entitled to continue under the SEZ Act as an 'entrepreneur'.

4. It was found that the land under the SEZ being deemed to be vested in the Central Government, the premises would fall under the definition of public premises and hence an eviction could be proceeded with under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971[3]. It was found that the reasoning in ***Vidya Drolia and Others v. Durga Trading Corporation***[4], which held the landlord-tenant

[3] 'the PPEUO Act'
[4] (2021) 2 SCC 1

disputes covered by rent control legislations, to be non-arbitrable, as not applying on the facts of the instant case.

5. We heard Sri V. Giri, learned Senior Counsel for the petitioner and Sri R. Basant, learned Senior Counsel for the respondent.

6. The rival contentions are necessarily on the applicability of the KBLR Act and the SEZ Act; the latter of which is said to be providing an arbitration, unique to resolve disputes arising in the SEZ Zones. True, the relationship between the developer of the SEZ Zone and the entrepreneur cannot be tied down to a mere tenancy arrangement, if the dispute occurs after the unit becomes operational. The fact remains that in the present case the unit has not become operational and despite an extension granted, as we will presently notice, the respondent has not been able to commence operations. The respondent has also been in arrears of rent, which alone was the reason for the eviction ordered, coupled with the factum of the unit having not become operational in the stipulated time.

7. There is also the finding of the High Court that the SEZ of the petitioner is constituted as a '*Township Authority*', as seen from the petitioner's website, which area is exempted from the provisions of the KBLR Act, by the State Government. This is refuted by the petitioner, asserting that the subject SEZ area has not been notified either as a '*Township* Authority', under Section 14 or an *'Industrial Township Authority*' under Section 15 of the Kerala Industrial Single Window Clearence Board and Industrial Township Act, 1999. The exemption from the KBLR Act is applicable only to Infoparks (Kerala), an SEZ established by the State Government. Whether the PPEOU Act applies is also debatable and whatever disputes arising otherwise, regarding rent, maintenance charges, damages etc. between the parties cannot be adjudicated either under the KBLR Act or the PPEUO Act.

8. We were of the opinion that the determination of the neat question of law as raised by the parties, would at this point be merely academic; since, as we noticed at the outset, no benefit as per the agreement has accrued to either of the parties, whether it be a landlord-tenant simpliciter or a developer-entrepreneur relationship. The sub-lease was executed in favour of the respondent by the petitioner on 25.01.2017. On breach occurring, the petitioner issued a termination letter at the first instance, pursuant to which, on

31.10.2018 there was an amicable settlement, by which a further agreement was executed on 31.10.2018, which is produced as Exhibit P12 in the O.P (R.C).

9. On a plain reading of Exhibit P12, the respondent was granted further time to complete the fitting-out and interior works in accordance with the fit-out guidelines and obtain all necessary statutory approvals and commence their business operations from the premises on or before 30.04.2019 (Clause 5). It was categorically stated (in Clause 6) that there would be no further extension of the final date and if the respondent does not commence its operations from the date stipulated, the sub-lease deed and the settlement agreement would stand terminated and then the sub-lease rent and maintenance charges would be the liability of the respondent, as per the terms of sub-lease, from 15.11.2016 to 30.04.2019; the date on which either the unit has to commence operations or on failure, the termination would come into effect.

10. Admittedly, the operation did not commence on the final date stipulated and we would not go into the dispute as to whether it was a consequence of the failure of the respondent or due to the defects attributable to the petitioner. As of now, what is expedient in the interest of commerce and industry is that the premises should be used. Admittedly from 2019, by virtue of interim order in W.P. (C) No.6234 of 2020 passed on 02.03.2020, produced in the O.P. (RC) as Exhibit P16; the petitioner is restrained from leasing it to third parties. We would not endeavour in the facts and circumstances of this case to answer the question of law, which also is not necessary in the nature of the order we propose to pass. We leave the question of law open to be considered in an appropriate case.

11. The respondent has to necessarily vacate the premises, and the petitioner should be permitted to take over the same and sub-lease it to any worthy entrepreneur capable of operating a unit within the SEZ. The respondent has a claim that they have made improvements within the premises to establish the unit, and they have also brought in movables, which are still remaining in the premises. The respondent also submitted that they are not being allowed to enter the premises after 2019. We cannot but notice that there was no endeavour made by the respondent to enter the premises on sub-lease, by way of an order in the writ petition and the premise has been lying *in limbo* by virtue of the interim order passed.

12. Be that as it may, we are of the opinion that the petitioner should be entitled to remove the movables within the premises and insofar as the improvements made, an evaluation could be done by a suitable person, so as to enable a dispute resolution. Insofar as the petitioner is concerned, they have huge arrears of sub-lease rent and maintenance charges, which is due from the respondent.

13. In the above circumstances, to bring about a resolution of the dispute between the parties, while not encumbering the subject premises with the dispute, we appoint Hon'ble Mr. Justice K.M. Joseph, Former Judge, Supreme Court of India (Mobile No. +91 94470 90111) as the Arbitrator. The parties shall approach the Arbitrator and the monetary claims of the parties against each other shall be agitated in the Arbitration as constituted by us under the Arbitration and Conciliation Act, 1996. Learned Arbitrator would be entitled to fix his fees in consultation with both parties.

14. For the purpose of facilitating such Arbitration, we make the following directions: -

(i) The parties shall approach the learned Arbitrator within a period of two weeks from today, with a copy of this order and seek appointment of an Advocate Commissioner to supervise the removal of the movables belonging to the respondent from the leased out premises and also carrying out the evaluation of the improvements made in accordance with the fit-out guidelines, within the premises through a suitable expert as suggested by the parties; an Architect or Engineer qualified to assess the infrastructure developed if any and appointed by the learned Arbitrator. The remuneration of the Advocate Commissioner and the Evaluator shall be fixed by the learned Arbitrator and shall be shared by both parties.

(ii) Considering the fact that the premise is a Special Economic Zone, the petitioner shall facilitate the entry of two authorized representatives of the respondent and the Advocate Commissioner and the Evaluator, the latter two as appointed by the learned Arbitrator to enter the premises.

(iii) Various departments concerned with the SEZ are directed to allow such entry for the personal inspection of the premises, carrying out inventory and the removal of the movables from the premises, as approved by the Advocate Commissioner appointed by the learned Arbitrator.

(iv) On such facilitation being made possible, the petitioner shall approach the learned Arbitrator with notice to the respondent, and the entry into the SEZ shall be on such permission granted by the learned Arbitrator and the inventory, evaluation and removal of goods, shall be carried out within a period of two weeks from that date; extendable only by the learned Arbitrator.

(v) The vacant premises shall then be taken over by the petitioner.

(vi) The Writ Petition filed by the respondente, numbered as W.P. (C) No.6234 of 2020 shall stand closed.

15. The Advocate Commissioner shall file a report on the inventory of the movable goods taken out from the premises and the Evaluator shall file a report on the infra-structure developments, if any carried out by the petitioner, before the learned Arbitrator. The Evaluator shall specify the probable charges that would have been incurred by the respondent at the time the fitment was made.

16. Monetary claims shall then be filed before the learned Arbitrator, which shall include the sub-lease rent, the maintenance charges, any interest payable thereon as per the contract and any other claim for damages as made by the petitioner. Insofar as the respondent is concerned, the dispute shall include the sustainability of the termination which, as of now, can only be compensated by way of damages, if at all, any neglect or defect is found on the part of the petitioner. The respondent's monetary claim shall thus depend on the legality of the termination, which shall include the damages as hereinbefore stated and the infrastructure development carried out.

17. The Special Leave Petition is disposed of with the above directions.

18. Pending application(s), if any, shall stand rejected.

.. J.
(J. B. PARDIWALA)

.. J.
(K. VINOD CHANDRAN)

NEW DELHI;
SEPTEMBER 25, 2026.