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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE P.M.MANOJ

THURSDAY, THE 31ST DAY OF JULY 2025/9TH SRAVANA, 1947

O.P.(RC).NO.134 OF 2025

AGAINST THE ORDER DATED 19.05.2025 IN R.C.P.NO.134 OF 2020 OF III ADDITIONAL MUNSIFF COURT, ERNAKULAM (RENT CONTROL)

PETITIONER(S)/RESPONDENT:

M/S. MUSTHAFA & ALMANA INTERNATIONAL CONSULTANTS
0-307, 3RD FLOOR, SCK 01 BUILDING, SMART CITY SEZ,
INFOPARK P.O., ERNAKULAM DISTRICT, REPRESENTED
BY POWER OF ATTORNEY HOLDER K.P.JAYARAJ,
AGED 58 YEARS, S/O NANU PANICKER, TC 5/2534
GL ROAD, KOWDIAR P.O., THIRUVANANTHAPURAM,
PIN - 695003

BY ADV.SRI.S.SREEKUMAR (SR.)
BY ADV.SHRI.SASI M.R.
BY ADV.SMT.N.P.SILPA
BY ADV.SMT.DHARMYA M.S
BY ADV.SMT.KAVYA KRISHNAN
BY ADV.SRI.S.SAJIT SANAL

RESPONDENT(S)/PETITIONER:

SMARTCITY (KOCHI) INFRASTRUCTURE PVT. LTD.
HAVING ITS REGISTERED OFFICE AT SMARTCITY PAVILLION,
BRAHMAPURAM P.O., KOCHI, ERNAKULAM DISTRICT,
REPRESENTED BY ITS AUTHORISED SIGNATORY, JINU JOHN
JACOB, AGED 50 YEARS, COMPANY SECRETARY, RESIDING AT
KUZHITHATTIL HOUSE NO. 9, EASTERN VILLAS, CSEZ P. O.,
KAKKANAD - 682 037, PIN - 682303

BY ADV.SRI.T.KRISHNANUNNI (SR.)
BY ADV.SRI.VARGHESE K.PAUL
BY ADV.SMT.KASHMEERA ASHRAF
BY ADV.SMT.SNEHA DIVAKARAN P.
BY ADV.SMT.ANAMIKA SASIKUMAR
BY ADV.SMT.HAIN MARY TOMY

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BY ADV.SMT.JULLY SIJU
BY ADV.SRI.SAFEER BAWA A.S.

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON 28.07.2025, THE COURT ON 31.07.2025 DELIVERED THE FOLLOWING:

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"C.R."

J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

The challenge in this O.P(RC) is to the order dated 19.05.2025 passed by the Rent Control Court in R.C.P.No.134 of 2020 that was filed by the Smart City (Kochi) Infrastructure (P) Ltd [hereinafter referred to as the 'Developer'] seeking to evict the petitioner firm under Section 11 (2) (a) and (b) of the Kerala Buildings (Lease and Rent Control) Act, 1965 [hereinafter referred to as the 'KBLR Act']. The case throws up an interesting question regarding the interplay between the provisions of the Special Economic Zones Act, 2005 [hereinafter referred to as the 'SEZ Act'] and the provisions of the KBLR Act, especially in the context of the remedy of eviction of a defaulter tenant, available to a landlord under the KBLR Act. The brief facts necessary for a disposal of the original petition are as follows:

2. The developer had set up a Special Economic Zone [SEZ] for Information Technology [IT] and Information Technology Enabled Services [ITES] on 53.1809 hectares of land in Kakkanad Village. Towards this end, it had also entered into a registered lease agreement with the Government of Kerala under which it obtained possession and leasehold rights in respect of the land, together with the right to sub-

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lease portions of the land to entrepreneurs, as defined under the SEZ Act. The developer then approached the Central Government with a request for notifying the land as an SEZ, and approving it as a developer thereof. It is not in dispute that the SEZ was duly notified as such and that the developer too was approved by the Central Government.

3. The petitioner firm approached the developer with a request for space within the premises of the SEZ, and on the developer agreeing to provide the space to the petitioner firm on its qualifying to be an entrepreneur, applied to the Development Commissioner for the necessary approval to function as a unit in the SEZ. The said application was approved by the authorised committee under the SEZ Act, and the approval letter, containing the terms and conditions subject to which the approval was granted, was issued to the petitioner. One of the terms in the letter of approval was that the petitioner had to furnish a copy of the registered lease deed executed with the developer within six months from the issuance of the letter of approval. It is not in dispute in this case that the said registered lease deed was duly executed, and a copy furnished to the Development Commissioner for confirming the letter of approval.

4. Alleging that the petitioner had defaulted in the payment of sub-lease rent and other charges, the developer sent a demand

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notice for Rs.61,51,258.54 to the petitioner, and on the petitioner refusing to honour the demand, the developer filed the rent control petition before the Rent Control Court. Although the petitioner filed its objections to the petition, and also raised the issue of maintainability of the petition before the court below, the latter by order dated 30.08.2024 in I.A.No.4/2023 filed under Section 12 of the KBLR Act, proceeded to find the petition as maintainable and directed the petitioner to deposit the rent arrears. The said order was challenged by the petitioner before this Court in O.P(RC) No.162/2024 wherein this Court set aside the order of the Rent Control Court and remanded the matter for a fresh consideration of the issue of maintainability as a preliminary issue, after affording the parties an opportunity to adduce evidence before the court below. It is pursuant to the said remand that the order impugned in this original petition was passed by the Rent Control Court.

5. Before us, the learned Senior Counsel Sri. S. Sreekumar, assisted by Adv.Sri.M.R.Sasi, appearing on behalf of the petitioner, confined his submissions to the argument that the provisions of the SEZ Act have an overriding effect over those of the KBLR Act, and hence the rent control petition filed by the developer before the Rent Control Court was not maintainable. In particular, it was pointed out that under Section 42 of the SEZ Act, there was a statutory mandate to refer all disputes of a civil nature to the arbitrator appointed by the Central

Government, especially when the State Government had not designated any court, under Section 23 of the SEZ Act, to try suits of civil nature arising in the SEZ. Referring to the decisions of the Supreme Court in **Vidya Drolia & Others v. Durga Trading Corporation - [(2021) 2 SCC 1]**, and of the **Telangana High Court in Ranganath Properties Private Limited & Others v. Phoenix Tech Zone Private Limited & Others - [(2023) SCC Online TS 507]**, he would contend that the lease agreement entered into between the petitioner and the developer was an integral part of the letter of approval issued to the petitioner, and hence the dispute regarding payment of alleged arrears of rent had to be seen as a dispute of a civil nature arising in the SEZ. It is his further submission that the observations in **Vidya Drolia (supra)** regarding non-arbitrability, were rendered in the context of private arbitrations and cannot have any bearing on statutory arbitrations as provided for under the SEZ Act. That apart, the developer having subsequently informed the petitioner that it proposes to invoke the arbitration envisaged under the SEZ Act for the purposes of recovering the defaulted payments of rent and other charges, it was evident that the proper adjudicatory mechanism for disputes was as specified under the SEZ Act, and hence the respondent could not have approached the Rent Control Court for reliefs under the KBLR Act.

6. *Per contra*, it is the submission of the learned Senior Counsel Sri.Krishnanunni, assisted by Adv.Sri.Varghese K. Paul that the

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impugned order of the Rent Control Court does not call for any interference. Relying the judgment of the Supreme Court in **Vidya Drolia (supra)** it is contended that the dispute with regard to arrears of rent, that enabled the developer to seek eviction of the petitioner for default in payment of rent arrears, was not arbitrable, and hence the provisions of the SEZ Act mandating a reference to arbitration would not operate to exclude the remedy available to the developer under the KBLR Act. It is further pointed out that the dispute redressal mechanisms provided under the SEZ Act can apply only to such disputes that have a nexus with the activities directly regulated by the said enactment, and not to disputes that stem from a lease agreement that is independently entered into between the petitioner and the developer.

7. We have considered the rival submissions and perused the pleadings in this case and have also gone through the precedents relied upon by either side. At the outset, we deem it apposite to notice the reasons that weighed with the Rent Control Court to reject the argument of the petitioner regarding the arbitrability of the dispute and the overriding effect of the SEZ Act, and to decide the issue of maintainability of the rent control petition against the petitioner. The findings on the non-arbitrability of the dispute between the parties is contained in paragraphs 13 to 19 of the impugned order and read as follows:

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"13. The first contention of the respondent is that in view of exhibits A8 and A9, there is a clear provision for resolving the dispute between the parties by an Arbitrator, hence the present petition is only liable for referring to arbitration and this court lacks jurisdiction. This can be answered first.

14. Article 14 of exhibit A8 sub lease deed provides for dispute resolution. As per Article 14.1, it provides that all disputes, claims, controversies, and disagreements in connection with this deed shall be resolved by the parties through mutual consultations as provided therein. Article 14.2 provides that if the dispute is not resolved or if parties fails to reach an amicable settlement, then within a period of 15 days, either party may issue a written notice to other party as mentioned in Article 14.1 and then the dispute shall be subjected to arbitration as laid out in Article 14.3. As per Article 14.3 of sub-lease deed, it specifically provided that all the disputes shall be referred to and finally resolved by arbitration in accordance with the Arbitration and Conciliation Act, 1996. The forum of arbitral tribunal, the procedure to be followed in such matters are also specifically provided in Article 14.3 and 14.4 of sub-Lease deed. Therefore, it can be seen that in case of any dispute between the parties, such dispute shall be referred to an Arbitrator under the provisions of Arbitration and Conciliation Act, 1996. Further as per Article 14.4, it specifically provides that within 15 days from the date of expiry of the consultation period referred to in Article 14.3, either of the parties may invoke arbitration by appointing an arbitrator and serving the notice of arbitration upon the other party and other party shall within 15 days from receiving the notice of arbitration appoint its arbitrator. But in the instant case, either of the parties had not invoked arbitration by appointing an arbitrator following the above procedure as per the said Article. The counsels for either side has also no case that an arbitrator has been appointed so far. At the same time, it is relevant to note that, Article 13 of exhibit A8 provides that subject to Article 14.3, the Courts of Kochi will have exclusive jurisdiction to preside over the disputes arising over this deed. Thus, having perusing exhibits A8 and A9, it can be seen that in the sub-Lease deed, the parties voluntarily made an arbitration clause for resolving their dispute with respect to any of the clause contained in the sub lease agreement, and the parties have not chosen to resolve their issues by appointment of an Arbitrator. In this context, on conjoint reading of these two articles, and upon considering the intention of either of the parties, since they had not invoked arbitration, which led to waiving of such a right as per the deed, thus this Court has jurisdiction by virtue of Article 13.

15. Now it is necessary to ascertain whether the provisions of the KBLR Act are excluded by the provisions of the Arbitration and Conciliation Act, 1996. It is well settled in law that the arbitration proceedings are not applicable to the matters coming under the KBLR Act. The learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in **Vidya Drolia & others v. Durga Trading Corporation reported in 2019 KHC 4417**, in para 18 held that; "*So far as Booze Allen (supra) is concerned, we have already extracted paragraph 36. Sub-Paragraph (vi) of the paragraph makes it clear that only those matters that are (i) governed by special statutes, (ii) where the tenant enjoys statutory protection against eviction and, (iii) where only specified courts are conferred jurisdiction to grant eviction or decide disputes are cases where the dispute between landlord and tenant can be said to be non- arbitrable*".

16. The learned counsel for the petitioner also placed reliance on the decision of the Hon'ble Supreme Court in **Vidya Drolia & others v. Durga Trading Corporation** reported in **2020 KHC 6711**. In paragraph 21 of the said Judgment, the Hon'ble Supreme Court held as follows.

"Paragraph 21 - Booz Allen & Hamilton Inc. draws a distinction between actions in personam, that is, actions which determine the rights and interests of parties themselves in the subject matter of the case, and actions in rem which refer to actions determining the title of the property and the rights of the parties not merely amongst themselves but also against all the persons at any time claiming an interest in that property. Rights in personam are considered to be amenable to arbitration and disputes regarding rights in rem are required to be adjudicated by the courts and public tribunals. The latter actions are unsuitable for private arbitration. Disputes relating to subordinate rights in personam arising from rights in rem are considered

to be arbitrable. Paragraph 36 of the judgment in Booz Allen & Hamilton Inc. refers to certain examples of non- arbitrable disputes and reads:

"36. The well-recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offenses; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding- up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and **(vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes**." It was also held that, "an arbitration agreement between two or more parties would be limpid and inexpedient in situations when the subject matter or dispute affects the rights and interest of third parties or without presence of others, an effective and enforceable award is not possible. Prime objective of arbitration is to secure, adjust, fair, and effective COURT resolution of disputes, without unnecessary delay and with least expense, is crippled and mutilated when the right and liabilities of persons who have not consented to arbitration are affected or the collective resolution of the disputes by including non-parties is required. Arbitration agreement as an alternative to public fora should not be enforced when it is futile, ineffective, and would be a no result exercise". Further in para 49, it was held that, "In View of the aforesaid, we overrule the ratio laydown in Himangni Enterprises and hold that landlord- tenant disputes are arbitrable as the transfer of property act does not forbid or for arbitration. However, landlord, tenant disputes covered and governed by rent control legislation would not be arbitral 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 space specified court/forum, and not through arbitration".

17. By reliance on the above decision in Vidya Drolia case, the Division Bench of the Kerala High Court in **Girindra Global Hospitality and Another v. Manappuram Hotels(P) Itd and Others** reported in **2022(5) KHC 684** held that, "*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, and also held that in eviction or tenancy matters given by special statutes and when the tenant enjoys statutory protection, only the specified court has been conferred jurisdiction.*"

18. In **Suresh Shah v. Hipad Technology India Private Ltd.** reported in **2021 (1) SCC 529**, the division bench of the Hon'ble Supreme Court held that, "*The disputes arising under the Rent Acts will have to be looked at from a different view point and therefore not arbitrable in those cases. This is for the reason that notwithstanding the terms and conditions entered into between the landlord and tenant to regulate the tenancy, if the eviction or tenancy is governed by a special statute, namely, the Rent Act the premises being amenable to the provisions of the Act would also provide statutory protection against eviction and the courts specified in the Act alone will be conferred jurisdiction to order eviction or to resolve such other disputes. In such proceedings under special statutes the issue to be considered by the jurisdictional court is not merely the terms and conditions entered into between the landlord and tenant but also other aspects such as the bonafide requirement, comparative hardship etc. even if the case for eviction is made out. In such circumstance, the Court having jurisdiction alone can advert into all these aspects as a statutory requirement and, therefore, such cases are not arbitrable*." It was further held that, "insofar as eviction or tenancy relating to matters governed by special statutes where the tenant enjoys statutory protection against eviction whereunder the Court / Forum is specified and conferred jurisdiction under the statute alone can adjudicate such matters. Hence in such cases the dispute is non - arbitrable. If the special statutes do not apply to the premises /property and the lease/ tenancy created thereunder as on the date when the cause of action arises to seek for eviction or such other relief and in such transaction if the parties are governed by an Arbitration Clause; the dispute between the parties is arbitrable and there shall be no impediment whatsoever to invoke the Arbitration Clause. This view is fortified by the opinion expressed by the Co-ordinate Bench while answering the reference made in the case of Vidya Drolia wherein the view taken in Himangni Enterprises is overruled." In the case in hand, the tenanted premises is situated in premises notified

by the Government at Thrikkakara Municipality by way of notification dated 06.02.1996 with G.O. (Ms) 4/96/Housing dt.9/1/96 which comes within the jurisdiction conferred with this court. So far, there has been no Gazette notification explicitly revoking the applicability of the KBLR Act within the area designated as the SEZ in Thrikkakara Municipality, therefore, the provisions of the KBLR Act remain in force for buildings located within that region. Therefore, the respondent's claim that the SEZ notification overrides the KBLR Act lacks legal validity and is unsustainable.

19. The learned counsel for the respondent argues that by way of exhibit B10, the petitioner has issued notice invoking arbitration clause to the respondent, which shows that the petitioner has subjected themselves for the arbitration. But on perusing exhibit B10, it can be seen that the petitioner reserves their right to seek their claims and to recover the arrears. Even then, on the basis of the settled principles as discussed above, merely for the issuance of exhibit B10 notice, it cannot be seen that arbitration clause can be involved in a rent control petition. The contention of the respondent that by way of exhibit B4, the petitioner has issued mutual conciliation notice also in no way affect the maintainability of the present rent control petition filed under section 11(2) (b) of the KBLR Act. Thus, it can be very well found on the basis of settled position of law, that the proceedings under the KBLR Act are not arbitrable. Hence the parties in this proceedings cannot be relegated to arbitration proceedings. Therefore, the rent control petition is not hit by arbitration clause in Sub-lease deed dated 25.01.2017 executed between the parties and therefore issue No.1 is found in favour of the petitioner and it is answered accordingly."

8. Similarly, the findings that negative the arguments advanced regarding the overriding effect of the provisions of the SEZ Act are contained in paragraphs 20 to 31 of the impugned order, which read as follows:

"20. Issue No.2: Now the second contention regarding maintainability by the learned counsel for the respondent is with respect to the bar of this Court to try this case by virtue of Sections 23, 42 and 51 of the SEZ Act. So it is apposite to extract the relevant provision for convenience;

Section 23 reads thus,

"23. Designated Courts to try suits and notified offences: (1) The State Government, in which the Special Economic Zone is situated, may, with the concurrence of the Chief justice of the High Court of that State, designate one or more courts-

(a) to try all suits of a civil nature arising in the Special Economic Zone; and

(b) to try notified offences committed in the Special Economic Zone.

(2) No country, other than the court designated under sub-section (1), shall try any suit or conduct the trial of any notified offence referred to in that sub-section: PROVIDED that the courts, in which any suit of a civil nature in a Special Economic Zone had been filed before the commencement of this Act, shall continue to try such suit after such commencement:

PROVIDED FURTHER that the courts, in which any trial of any notified offence is being conducted before the commencement of this Act, shall continue to conduct the trial of such offence after the commencement of this Act:

PROVIDED ALSO that the courts competent to try any notified offence, before the commencement of this Act, shall conduct the trial in respect of such offence after the commencement of this Act until the courts have been designated under sub-section () and all such cases relating to such trials shall thereafter be transferred to such courts so designated which shall conduct the trial from the stage at which such cases were so transferred."

Section 42 reads thus:

"(1) Not withstanding anything contained in any other law for the time being in force, if, (a) any dispute of civil nature arises among two or more entrepreneurs or two or more developers or between the entrepreneur and a developer in the special economic zone; and
(b) the Court or the courts to try suits in respect of such disputes had not been designated under Section 1 of Section 23, such dispute shall be referred to arbitration."
PROVIDED that, that no dispute shall be referred to arbitration on or after date of designation of the court or courts under Sub Section 1 of Section 23." Sub Section 2 of Section 42 states that "where a dispute has been referred to arbitration, under Sub Section 1, the same shall be settled or decided by the Arbitrator to be appointed by the Central Government."

Section 51 reads as follows;

"*51. Act to have overriding effect: The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*"

21. In this context, it is also necessary to note that the petition schedule building is situated in a Special Economic zone covered under the SEZ Act. If so, as per section 23 of the SEZ Act, it provides that the state government, in which the special economic Zone is situated, may with the concurrence of Chief Justice of the High Court of that state, designate one or more courts to try all suits of a civil nature arising in the special economic zone and no court, other than the designated court shall try any dispute or conduct the trial of any such cases. Even then, it is admitted by both counsels before this court that, no such designated courts were constituted so far. So, then it comes to section 42 of the SEZ Act. From a bare perusal of Section 42 as referred to above, it can be seen that in case of any dispute, which comes within the special economic zones, like the place where the petition schedule building is situated, such dispute shall be referred to arbitration since no courts were constituted. Sub Section (2) of the Section 42 of the SEZ Act 2005 also COUR provides that an Arbitrator shall be appointed by the Central Government in this regard. At the time when the matter was heard, the learned counsel for both sides have no case that an Arbitrator was appointed so far by the Central Government in view of Sub Section (2) of Section 42 of the SEZ Act 2005. Also, the learned counsel for both the parties did not place any notification to the notice of this court stating that an arbitrator has been so appointed by the Central Government in view of Sub Section (2) of Section 42 of the SEZ Act. Hence contention in that aspect cannot be entertained.

22. In this circumstance, it is pertinent to note that the Section 11(1) of the KBLR Act starts with a non-obstante clause. Similarly, Section 42 of the SEZ Act also starts with a non- obstante clause. The rent control matters and the law to be made comes under the concurrent list under the Constitution of India. On the other hand, the Special Economic Zones Act 2005 comes under the Union list under the Constitution of India. So, when there arises a dispute between two Acts, i.e one comes under the concurrent list and another one comes under the Union list, the law made under the Union list will prevail. Therefore, according to the learned counsel for the respondent, the provisions of the SEZ Act, 2005 will prevail over the KBLR Act and therefore, according to him, the provisions of the KBLR Act will not be applicable to the instant case and therefore, this rent control court has no jurisdiction to entertain an application filed u/S 11(2) (b) of the Act and hence, liable for dismissal.

23. In support of the case, the learned counsel for the respondent placed reliance on the decision of the Hon'ble Kerala High Court in **Jayalakshmi v. Union of India** reported in **2006 KHC 175**, wherein it was held that, "*if both statutes provides for eviction operate under the same field and the Public Premises Act being an Act passed by the Parliament has to prevail over the rent control court in view of Article 254(1) of the Constitution of India. The assent of the President obtained for the rent control act will not give it an overriding effect over the Public Premises Act since the non-obstante clause in the rent control act can override only those enactments which were already in force on the date of commencement of the rent*

control act and they do not include the public premises act, which was enacted subsequent to the rent control act". But even then, it is pertinent to note that in above decision, the central act as well as the state act provides for eviction, which operates in under the same field, but as far as the instant case is concerned, in the SEZ Act, there is apparently no provision provided for eviction proceedings as contemplated in the special enactment, KBLR Act.

24. The learned counsel for the respondent also placed reliance on the decisions of the Hon'ble Supreme Court in **Solidaire India Ltd v. Fair Growth Financial services Ltd and Ors** reported in **(2001) 3 SCC 71** and also in **Maruti Udyog v. Ram Lal and others reported in (2005) 2 SCC 638** which discusses about the effect of non-obstante clauses and it was held that, "*It is well settled that when both statutes containing non-obstante Clauses are special statutes, an endeavor should be made to give effect to both of them. In case of conflict, the later shall prevail*". The respondent also places his reliance on the decision of the Hon'ble Telugana High Court in **Ranganath Properties Private Limited v. Tech Zone Private Limited** reported in **2023 SCC Online TS 507**. In the light of the decisions cited by the learned counsel for the respondent, it can be seen the predominance of Central Acts over the State Acts and in case of disputes, the Acts promulgated under the Union List will prevail over the State law. Upon the settled propositions of law, only in case of conflict in two non-obstante clauses occurred, the effect shall be given to the Central enactment. But here in the instant case, it is to be noted that even the object and the whole provisions of the SEZ Act is silent and does not provide for the proceedings which are to be followed in case of eviction of tenants. The purpose of the SEZ Act provides only for the establishment, development, and management of the special economic zones for the promotion of exports and for matters connected therewith or incidental thereto and, not for provisions with regard to eviction of tenants. Further section 31 of the SEZ act, which provides for the constitution of authority under the said Act is also silent with regard to the provisions for eviction of tenants. Also, SEZ Act is not a subsequent enactment governing the same subject matter as provided in the KBLR Act. At the same time the preamble of BRC Act is to regulate the leasing of buildings and to control the rent of such buildings in the State of Kerala, which deals with solely the eviction of tenants on various grounds as enumerated in section 11 of the Act. Hence there is no case for conflict of non-obstante clauses as contended by the respondent in the present case.

25. Moreover, as discussed, there is no inconsistency with COURT O respect to the notwithstanding clause in section 42 of the SEZ Act with the notwithstanding clause in section 11 of the KBLR Act, and thus Section 51 of the SEZ Act can have no overriding effect over the KBLR Act. Besides these discussions, assuming for a moment, even if the SEZ provisions were found applicable to this proceeding, then the only remedy available is arbitration, due to the non-constitution of the designated courts under Section 23 of the SEZ Act. But as already found out, the settled position is that the arbitration proceedings are found not applicable to the disputes between landlord and tenants are concerned. Thus, in such a situation, the landlord as well as the tenant will become remediless and thus the very purport of the legislature in enacting the KBLR Act itself will fail. Moreover, under SEZ Act, the comparative hardships, bonafide requirements as in KBLR Act cannot be looked into.

26. Being so, when the petitioner and the respondent voluntarily entered into a lease deed containing various terms and conditions with respect to the tenancy and having all the characteristics of a tenancy and also considering the rights and liabilities of the parties to the sub-lease agreement and the different guidelines for transaction between them, they cannot be simply termed as a developer and entrepreneur. Since they voluntarily entered into a sub-lease agreement as referred to above, and having the characteristics of the transaction between them as landlord and tenant, they can only be termed as a landlord and tenant within the meaning as provided under the KBLR Act. Therefore, the contention raised by the learned COURT O counsel for the respondent in in that that aspect aspect is not also sustainable.

27. Furthermore, the Special Economic Zones Act, 2005, which primarily aims to promote exports and facilitate trade, falls under Entry 42 of the Union List (Inter-State Trade and Commerce) in the Seventh Schedule of the Constitution. In contrast, the Kerala Buildings (Lease and Rent Control) Act, 1965, regulates landlord-tenant relationships, which come under Entry 18 of the State List (Land Tenures, including the relationship of landlord and tenant). Matters related to eviction are also

addressed under Entries 6, 7, and 13 of the Concurrent List, allowing both Parliament and State Legislatures to legislate on the subject. However, the SEZ Act, 2005, does not contain any specific provisions governing landlord-tenant relations or eviction procedures. Consequently, there is no direct conflict between the SEZ Act and the Kerala Rent Control Act. In accordance with Articles 251 and 254 of the Constitution, a central law prevails over a conflicting state law. But in the absence of any express or implied inconsistency, as discussed in aforementioned paragraphs, particularly since the SEZ Act does not cover the subject of eviction, the KBLR Act, continues to remain applicable and operative within the SEZ areas in the state.

28. The learned counsel for the petitioner also places his arguments upon the doctrine of legislative indent by placing his reliance on the decision, **General Manager Telecom v. M. Krishnan and another** reported in **2009 (8) SCC 481**, in which it was held that specific law prevails over a general law and applying the said doctrine, the KBLR Act, being a specific law governing landlord-tenant relationship overrides general provisions in SEZ Act. Further Full bench of the Hon'ble Kerala High Court in **Pushpangadan N.P and Others v. Federal Bank Ltd. and Others** reported in **2011 (4) KHC 40**, it was held that the SARFEASI Act does not override the rights of tenants under the KBLR Act. It was further held that, "Parliament has exclusive power of legislation in respect of any matter falling under List I (Union List) in the Seventh Schedule of the Constitution of India. The State Legislature has exclusive power to make laws with respect to any matter in List II (State List) of the Seventh Schedule. Both Parliament and the State Legislature have power to make laws with respect to matters enumerated in List III (Concurrent List) of the Seventh Schedule. The Kerala Buildings (Lease and Rent Control) Act comes under Entry Nos. 6,7 and 13 of the Concurrent List. The Securitisation Act was enacted under Entry 45 of List I. The State Financial Corporations Act comes under Entry 43 of List I of the Seventh Schedule. There is no conflict between the Securitisation Act and the Kerala Buildings (Lease and Rent Control) Act. They operate in different fields. It is well settled that the question of repugnancy between the law made by Parliament and the law made by the State Legislature may arise only in cases: where both the legislations occupy the same field with respect to any of the matters enumerated in the Concurrent List. The Securitisation Act and the Kerala Buildings (Lease and Rent Control) Act were enacted respectively under List I and List III of the Seventh Schedule. They occupy different fields. Therefore, Art.254 of the Constitution does not apply and it cannot be held that the Kerala Buildings (Lease and Rent Control) Act is repugnant to the Securitisation Act and hence void. The Securitisation Act is not a later law with respect to the same matter as that of the Rent Control Act. There is no specific provision in the Securitisation Act affecting the operation of the Kerala Buildings (Lease and Rent Control) Act." Likewise, in the instant case, also, the SEZ Act being a Central Act does not contain any provision that impacts the operation of KBLR act, which is a self-contained code governing eviction of tenants. Both operates in different fields and thus the question of repugnancy between the law made by Parliament and the law made by the State Legislature may arise only in cases where both the legislations occupy the same field with respect to any of the matters enumerated in the Concurrent List. Therefore, Art. 254 of the Constitution does not apply and it cannot be held that the KBLR Act is repugnant to SEZ Act.

29. In **M/S. Lulu Cyber Park Ltd vs M/S. Zeron Consulting (P) Ltd** reported in **Supreme (Online) (KER) 12747**, it was held by the Hon'ble Kerala High Court in para 18 that, "*18. That apart, as is evident from the "SEZ Act", only disputes of civil nature between "Entrepreneurs" and "Developers" would come within its ambit. The word "Developer" has been defined under it to be a person who has been granted a letter of approval by the Central Government under Section 10(3); while an Entrepreneur is described to be a person granted a letter of approval by the Development Commissioner under Sub Section 9 of Section 15 thereof. When the Statute then talks talks about disputes between these two categories of persons, it certainly presupposes a privity between them qua the activities of the SEZ. Zone, but will not bring into its ambit a dispute as presented herein, which is purely between a lessor and lessee, on the basis of a lease agreement. Therefore, on both these counts, the argument of Sri.Anantha Krishnan, that the "SEZ Act" alone would apply, deserves to be repelled and I do so without hesitation.*" Here also the dispute is purely which arises from exhibits A1, A8 and A9 as a lessor and lessee and not in the capacity between a developer and an entrepreneur.

30. Hence it can be seen that the issue of repugnancy under Article 254 of the Constitution arises only when both laws operate within the same subject matter

in the Concurrent List, which is not applicable in this case. Consequently, it is found that the KBLR Act, does not conflict with nor is it superseded by the SEZ Act. Further with respect to the contention of the respondent that SEZ Act is a self-contained exclusive code which regulates the activities within the Cochin Special Economic Zone is also not sustainable, since as per exhibit A4, the Cochin Special Economic Zone is one which comes under serial No.20, but the petitioner is seen separately scheduled as serial No.101 therein.

31. Furthermore with respect to the contention of the respondent that, since the dispute is between a developer and entrepreneur as per sections 3 and 4 of the SEZ Act, it is to be referred to arbitration. But as aforementioned, in this petition, the parties are not claiming as a developer and entrepreneur, but only as a lessor and lessee, which the exclusive purview of KBLR Act. Therefore, by applying the doctrine of harmonious construction, though nough the tenanted premises falls within a special economic zone, it can be seen that the operation of SEZ Act and KBLR Act are entirely different, and that the relief sought for in this petition is not one coming within the SEZ Act. Further, KBLR Act being a social welfare legislation has to be given a purposive interpretation. Thus, for the aforesaid reasons, the rent control petition is found maintainable and not hit by Sections 23, 42 and 51 of the SEZ Act. Hence, issue No.2 is also found in favour of the petitioner and it is answered accordingly."

9. Also of relevance are the discussions and finding of the Rent Control Court as regards non-applicability of the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 [hereinafter referred to as the 'PPEUO Act']. They read as under:

"32. Issue No.3: Now with respect to the issue of maintainability of rent control petition in view of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short PPEUO Act) is to be dealt with. The learned counsel for the respondent argues that the leasehold land on which the petitioner is set up is not privately owned and the petitioner has no vested right over the leasehold land. To the contrary, the learned counsel for the petitioner argues that invocation of PPEUO Act is wholly inapplicable in the present case, as the property in question does not qualify as a public premise under section 2(e) of the PPEUO Act and it is a private organization set up in special economic zone.

33. On going through the object of PPEUO Act, it can be seen that it is an Act to provide for the eviction of unauthorized occupants from public premises and for certain incidental matters. In section 2(g) of the PPEUO Act, it defines "unauthorized occupation", in relation to any public premises as 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 rent 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. Further section 3A of PPEUO Act provides for eviction from temporary occupation. Exhibit Al is the lease deed executed between the petitioner and the Government of Kerala, and that the period of lease as mentioned therein has not expired. The learned counsel for the respondent argues that as per GO (MS) No. 16/2024/ITD dated 05.12.2024, the cabinet has approved the recommendation for exit of TECOM, the parent company of petitioner, which held 84% of the share of the petitioner for default of Clause 7.2.2 of the Framework Agreement entered into in 2007, which is marked as exhibit B2. On perusal of the same, it reflects that the Government of Kerala hold only 16% of share in the venture. Though it is a published G.O, its proceedings has only just commenced and not obtained any finality, and also no exit plan as stated therein also so far formulated. So as of now, the petitioner cannot be termed to be in unauthorized occupation. And further mere apprehension of the respondent that the petitioner company will be dissolved in future is not a

ground to challenge the maintainability of this rent control petition.

34. Further, the contention of the learned counsel for the respondent is that eviction proceedings in a special economic zone is governed by the PPEUO Act, by placing reliance on decision, **Jayalakshmi v. Union of India reported in 2006 KHC 175**, in which it was held that PPEUO Act while over rent control legislation. Going through exhibit A2, as per notification No.S.O 464(E) dated 01.03.2011, it can be seen that the petitioner as a private organization who has proposed to set up a sector specific special economic zone for information technology and information technology enabled services. Also, by way of exhibit A3, a letter of approval dated 21.04.2008 obtained by the petitioner is also produced and a perusal of which Clause vii, states that the developer shall abide by all the local laws, rules, regulations, or bylaws in that area. On perusing exhibit A5 dated 16.12.2024, which is issued by the Assistant Development Commissioner of the petitioner, it is stated that the petitioner is a private special economic zone at Block 9, Kakkanad Village, Kanayannur Taluk, Ernakulam district, Kerala. Thus, by relying on exhibits A6 and A7, the learned Counsel for the petitioner argues that it was since the petitioner is a private special economic zone, the government of India is demanding for making payments as stated therein. So, a combined reading of above exhibits shows that the tenanted premises is a private special economic zone. Since the tenanted premises is in a private special economic zone, Article 297 of the Constitution of India is also inapplicable in this case. Accordingly, the contention that the provisions of CSEZ Allotment Manual, which applied to government controlled multi sector SEZs, is applicable to Cochin Special Economic Zone are also IGH inapplicable as the petitioner is a private SEZ.

35. As per section 2(e)(1) of PPEUO Act, 'public premises' means premises belonging to or taken on lease by or on behalf of Central Government and includes any such premises which have been placed by that Government. Further, as per section 2(e) (2) of PPEUO Act, the Central Government shall hold not be less than 51% of the paid-up share capital. But in this case, as per the GO (MS) No. 16/2024/ITD dated 05.12.2024 cited supra, it is the Government of Kerala who holds only 16% of share in the venture and the TECOM holds 84% share. Hence for that reason also, the tenanted premises cannot be termed as public premises under the PPEUO Act.

36. In the decision relied on by the petitioner in **Atma Ram Properties (P) Ltd. v. Allahabad Bank, (2004) 76 DRJ 412**, the Supreme Court held that the Public Premises Act is specifically designed to facilitate the eviction of unauthorized occupants from government-owned or controlled properties, and does not apply to disputes between landlords and tenants involving private property. Interpreting the statute through the Rule of Literal Construction, it is clear that the Act pertains only to public premises. Private tenancy issues, on the other hand, are governed by the KBLR Act. It would appear that both the scope and object of these acts are quite different from each other with the KBLR act, having wider application than PPEUO Act. Accordingly, the application of the PPEUO Act in the present matter is without legal foundation.

37. Further in **M/s. Jain Ink Manufacturing Company v. Life Insurance Corporation of India and Another** reported in **1980 COURT (4) SCC 435**, the Hon'ble Supreme Court held that, "*So far as the Premises Act is concerned it operates in a very limited field in that it applies only to a limited nature of premises belonging only to particular sets of individuals, a particular set of juristic persons like companies, corporations or the Central Government. Thus, the Premises Act has a very limited application. Secondly, the object of the Premises Act is to provide for eviction of unauthorised occupants from public premises by a summary procedure so that the premises may be available to the authorities mentioned in the Premises Act which constitute a class by themselves.*" It was further held that, "Thus, it would appear that both the scope and the object of the Premises Act is quite different from that of the Rent Act. The Rent Act is of much wider application than the Premises Act inasmuch as it applies to all private premises which do not fall within the limited exceptions indicated in S.2 of the Premises Act. The object of the Rent Act is to afford special protection to all the tenants or private landlords or landlords who are neither a Corporation nor Government or Corporate Bodies." Thus it can be seen that the KBLR Act is of much wider application than the PPEUO Act inasmuch as it applies to all private premises.

> 38. Last but not the least, it is to be noted that the respondent in paragraph 98 of objection filed by him to the rent control petition has admitted that, the petitioner instead of approaching the Rent Control Court issued a termination notice, which is an admission from the part of the respondent to subject to the jurisdiction of this court. Also, in paragraph 12 of the additional COURT objection filed by the the respondent respo to the rent control petition, he has admitted that the SEZ Act does not provide for the procedure of eviction in cases of default of rental dues. Thus, the contention of the respondent that the petitioner is to proceed in accordance with the provisions of PPEUO Act is not sustainable. Hence issue No.3 is also found in favour of the petitioner and it is answered accordingly.
>
> 39. The learned counsel for the respondent also raises a contention that the rent control petition is bad for non-joinder of necessary parties. But this issue was already decided in detail by this court in the order in IA No. 20/2025 filed for impleading Government of Kerala into this petition. The said IA was dismissed by this court vide separate order. Hence this issue is not dealt with herein."

10. On a careful consideration of the reasoning adopted by the Rent Control Court in the impugned order, we find that while the impugned order of the Rent Control Court is without doubt well articulated, we cannot agree with the findings therein that hold that the rent control petition preferred by the developer is maintainable. Our view in this regard flows from our approach to the problem in two stages viz. by asking the questions (i) whether the dispute between the parties is one that is inherently non-arbitrable? and, if not (ii) whether the provisions of the SEZ Act, and the dispute resolution mechanisms envisaged thereunder, would override and exclude the provisions of the KBLR Act? We proceed to answer the said questions as follows:

Re: Arbitrability of the dispute:

11. The Rent Control Court has placed considerable reliance on the decision of the Supreme Court in **Vidya Drolia (supra)** to find that the dispute between the parties was not arbitrable. While the said decision of the Supreme Court does indeed hold that landlord-tenant

disputes falling under the ambit of rent control legislations would be non-arbitrable, we feel it would be profitable to consider some of the other aspects pertaining to arbitrability of a dispute that were discussed in the said judgment. Initially, the court drew a distinction between adjudication of *actions in rem* and adjudication of *actions in personam*. Pointing out that the distinction between the two turns on their power as *res judicata*, the court observed as follows at paragraphs 48 and 49 which read as follows:

> "**48**. A judgment in rem determines the status of a person or thing as distinct from the particular interest in it of a party to the litigation; and such a judgment is conclusive evidence for and against all persons whether parties, privies or strangers of the matter actually decided. Such a judgment "settles the destiny of the res itself" and binds all persons claiming an interest in the property inconsistent with the judgment even though pronounced in their absence. 21 By contrast, a judgment in personam, "although it may concern a res, merely determines the rights of the litigants inter se to the res". Distinction between judgments in rem and judgments in personam turns on their power as res judicata, i.e. judgment in rem would operate as res judicata against the world, and judgment in personam would operate as res judicata only against the parties in dispute. Use of expressions "rights in rem" and "rights in personam" may not be correct for determining non-arbitrability because of the inter-play between rights in rem and rights in personam. Many a times, a right in rem results in an enforceable right in personam. *Booz Allen & Hamilton Inc.* refers to the statement by Mustill and Boyd that the subordinate rights in personam derived from rights in rem can be ruled upon by the arbitrators, which is apposite. Therefore, a claim for infringement of copyright against a particular person is arbitrable, though in some manner the arbitrator would examine the right to copyright, a right in rem. Arbitration by necessary implication excludes actions in rem.
>
> **49**. Exclusion of actions in rem from arbitration, exposits the intrinsic limits of arbitration as a private dispute resolution mechanism, which is only binding on 'the parties' to the arbitration agreement. The courts established by law on the other hand enjoy jurisdiction by default and do not require mutual agreement for conferring jurisdiction. The arbitral tribunals not being courts of law or established under the auspices of the State cannot act judicially so as to affect those who are not bound by the arbitration clause. Arbitration is unsuitable when it has *erga omnes* effect, that is, it affects the rights and liabilities of persons who are not bound by the arbitration agreement. Equally arbitration as a decentralized mode of dispute resolution is unsuitable when the subject matter or a dispute in the factual background, requires collective adjudication before one court or forum. Certain disputes as a class, or sometimes the dispute in the given facts, can be efficiently resolved only through collective litigation proceedings. Contractual and consensual nature of arbitration underpins its ambit and scope. Authority and power being derived from an agreement cannot bind and is non-effective against non-signatories. An arbitration agreement between two or more parties would be limpid and inexpedient in situations when the subject matter or dispute affects the rights and interests of third parties or without presence of others, an effective and enforceable award is not possible. Prime objective of arbitration to secure just, fair and effective resolution of disputes, without unnecessary delay and with least expense, is crippled and mutilated when the rights and liabilities of persons who have not consented to arbitration are affected or the collective resolution of the disputes by including non-parties is required. Arbitration agreement as an alternative to public fora should not be enforced when it is futile, ineffective, and would be a no result exercise."

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12. The court then went on to examine the circumstances under which non-arbitrability could be implied. At paragraphs 54 and 55 of the judgment, the court found that 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. In other words, when the statutory scheme suggests that there is no choice, the person who insists on a remedy must seek his remedy before the forum specified in the statute and before no other forum. The recourse to private arbitration would be shut out for such persons. Paras 54 and 55 read as under:

> "**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, 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 refeence was made to the doctrine of election in the following terms: (Transcore case (2008) 1 SCC 125, 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 anyone 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."
>
> **55.** Doctrine of election to select arbitration as a dispute resolution

> mechanism by mutual agreement is available only if the law accepts existence of arbitration as an alternative remedy and freedom to choose is available. There should not be any inconsistency or repugnancy between the provisions of the mandatory law and arbitration as an alternative. Conversely and in a given case when there is repugnancy and inconsistency, the right of choice and election to arbitrate is denied. This requires examining the "text of the statute, the legislative history, and 'inherent conflict" between arbitration and the statute's underlying purpose" with reference to the nature and type of special rights conferred and power and authority given to the courts or public forum to effectuate and enforce these rights and the orders passed. When arbitration cannot enforce and apply such rights or the award cannot be implemented and enforced in the manner as provided and mandated by law, the right of election to choose arbitration in preference to the courts or public forum is either completely denied or could be curtailed. In essence, it is necessary to examine if the statute creates a special right or liability and provides for the determination of each right or liability by the specified court or the public forum so constituted, and whether the remedies beyond the ordinary domain of the civil courts are prescribed. When the answer is affirmative, arbitration in the absence of special reason is contraindicated. The dispute is non- arbitrable."

13. What is significant for the purposes of the instant case, however, is that under Section 42 of the SEZ Act, in the absence of any designated court under Section 23 to try the dispute, the dispute between an entrepreneur and a developer in the SEZ has to be referred to arbitration and decided by the arbitrator to be appointed by the Central Government. In other words, for an entrepreneur and developer, whose activities are regulated by the SEZ Act, arbitration is not an optional alternative to a statutorily prescribed adjudication mechanism; it is the sole adjudication mechanism mandated by the statute. It is against the backdrop of the said statutory scheme, therefore, that we must examine whether the dispute between the entrepreneur and the developer in the instant case is inherently non-arbitrable for any other reason.

14. Towards that end, it would suffice for us to merely refer to paragraphs 79 and 80 of the judgment in **Vidya Drolia (supra)** that highlights the distinction between landlord-tenant disputes governed by

the Transfer of Property Act and similar disputes covered and governed by the rent control legislations, and clarifies that while the former are arbitrable, the latter are not. The said paragraphs read as under:

> "**79.** Landlord-tenant disputes governed by the Transfer of Property Act are arbitrable as they are not actions in rem but pertain to subordinate rights in personam that arise from rights in rem. Such actions normally would not affect third-party rights or have *erga omnes* affect or require centralized adjudication. An award passed deciding landlord-tenant disputes can be executed and enforced like a decree of the civil court. Landlord-tenant disputes do not relate to inalienable and sovereign functions of the State. The provisions of the Transfer of Property Act do not expressly or by necessary implication bar arbitration. Transfer of Property Act, like all other Acts, has a public purpose, that is, to regulate landlord- tenant relationships and the arbitrator would be bound by the provisions, including provisions which enure and protect the tenants.
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> **80.** In view of the aforesaid, we overrule the ratio laid down in *Himangni Enterprises v. Kamalijeet Singh Ahluwalia – [(2017) 10 SCC 706]* and hold that landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration."

15. As can be seen from the above, landlord-tenant disputes covered and governed by rent control legislations would not be arbitrable because a specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. However, the above observations have to be read in the context in which they were made. Not all tenancies are covered and governed by rent control legislations and it is only those 'pure tenancy' agreements, wherein the creation of the tenancy is the sole purpose of the agreement and brings into existence the landlord-tenant relationship between the parties, that can be seen as covered and governed by rent control legislations and therefore non-arbitrable. There may be myriad circumstances where a notional landlord-tenant relationship comes into existence as incidental to the main relationship between the parties, as

in the instant case where it was only because the petitioner firm qualified to be an entrepreneur that it had to, and could, enter into a lease agreement with the developer for the premises in question. In such cases, there is no creation of special rights and obligations in respect of the tenancy. There were only special rights and privileges made available to the petitioner firm when it satisfied the eligibility conditions for qualifying as an entrepreneur under the SEZ Act. Once the petitioner firm was so approved as an entrepreneur, it had to be allotted space within the notified SEZ premises as part of the privileges envisaged for an entrepreneur under the SEZ Act. The lease agreement entered into between the petitioner firm and the developer thereafter was only incidental to the completion of the formalities relating to the approval of the petitioner, and towards formally conferring the status of an entrepreneur on it. In that sense, the permission given to the petitioner to occupy the premises was only a privilege accorded to the petitioner for so long as it continued to be an 'entrepreneur', which privilege could be withdrawn at any time if it committed a breach of any statutory condition or obligation under the SEZ Act and Rules. The 'tenancy' that came into being was thus not covered and governed by any rent control legislation but was rather one that arose as incidental to the petitioner's status as an entrepreneur and governed by the provisions of the SEZ Act and Rules. Axiomatically, the dispute regarding payment of rent and other charges, had also to be seen as stemming from the relationship of

entrepreneur and developer, and hence, to be adjudicated through the statutory arbitration as mandated by Section 42 of the SEZ Act.

Re: Interplay between the SEZ Act and the KBLR Act:

16. As for the interplay between the provisions of the SEZ Act and the KBLR Act, the former is a central legislation traceable to Entry 41 of List I of the VIIth Schedule to the Constitution of India whereas the latter is a State legislation traceable to Entry 18 of List II therein. There can therefore be no repugnancy as envisaged under the Constitution of India between the provisions of the two statutes unless they cover the same field. In that context, it is trite that if the dominant intention of the two statutes is different and they cover different subject matters, then merely because the two statutes refer to some allied or cognate subjects, they cannot be seen as covering the same field. On the facts before us, when an aspect of tenancy that is apparently covered by both statutes is examined for the purposes of determining the statute that will govern the tenancy, we have to first determine whether the essence of the relationship between the parties is one of landlord-tenant so as to bring it within the ambit and coverage of the rent control legislation? If, on the other hand, the essence of the relationship between the parties is not that of landlord-tenant, but of developer-entrepreneur under the SEZ Act, then the dispute in question would fall within the scope of the SEZ Act, even if there is an incidental aspect of landlord-tenant relationship involved. We might in this

context draw an analogy with the doctrine of pith and substance, that is employed to determine the constitutional validity of a statute by examining whether the legislation entrenches into an area earmarked for a different legislature. The doctrine mandates that, if on a scrutiny of the statute in question, it is found that the statute is in substance on a matter assigned to the legislature enacting the statute, then that statute as a whole must be held to be valid notwithstanding any incidental encroachment upon matters beyond its competence. On the facts of the instant case, we would think that since the tenancy in question was merely incidental to the primary relationship of the parties as developer and entrepreneur under the SEZ Act, an adjudication of rent arrear disputes between the parties that fall within the scope of that Act, would have to be in accordance with the provisions of that Act. This is because even if one statute partially covers an area occupied by another statute, albeit in a different context and to achieve a different purpose, it cannot be seen as a repugnancy, and the attempt of a Court must be to see whether there is room or possibility for both enactments to apply. In fact, it is only if there is no such room or possibility that a repugnancy will arise. [**Rajiv Sarin & Another v. State of Uttarakhand & Ors – [(2011) 8 SCC 708]; KT Plantation Pvt. Ltd. & Anr. v. State of Karnataka – [(2011) 9 SCC 1]]**. The above aspect has been made clear in the SEZ Act through Section 51 thereof that clearly provides for the overriding effect of the provisions of that Act over anything inconsistent contained in any other

law for the time being in force.

17. It might also be relevant to note at this juncture that as per Ext.P5 G.O., the State Government had outlined its policy regarding setting up of SEZ's in the State, and in connection with the requirement of obtaining approvals and clearances under various State legislations, it was clarified that SEZ's will be notified as Industrial Areas under the Kerala Industrial Single Window Clearance Board and Industrial Township Area Development Act, 1999. It was also made clear that where the area of the SEZ was large enough the State government would declare the SEZ's as Industrial Townships under the 1999 Act so as to enable the SEZ's to function as self-governing autonomous municipal bodies. Acting in furtherance of the above policy, the State government has vide G.O.(Rt) No.23/2003/ID dated 07.01.2003 (SRO No.43/2003) declared the Cochin Special Economic Zone as an Industrial Area for the purposes of the 1999 Act. The SmartCity Kochi Masterplan, as available in the respondent's website, and an extract of which is produced by the appellants as Ext.P28, describes the SEZ as an Industrial Township and this description also finds mention in Ext.P11 sub-lease deed entered into between the appellant and the respondent, where the latter is referred to as the “Township authority”. The above aspects assume significance because Section 17 of the 1999 Act clearly states that the KBLR Act, 1965 shall not apply to any premises belonging to the Industrial Township authority under Section

15 of the 1999 Act. It is clear therefore that under the scheme of SEZ's as regulated by the SEZ Act and the allied State legislations, leased premises within the SEZ are not covered or governed by the KBLR Act, 1965.

Conclusion:

18. The upshot of the above discussions is that we are of the view that the remedy chosen by the respondent to evict the petitioner firm was not one that was available to it in law. As per the scheme of the SEZ Act, the dispute regarding non-payment of arrears of rent and other charges has to be seen as integral to the larger issue of whether the petitioner firm is entitled to continue in the SEZ as an 'entrepreneur.' Accordingly, its entering into a tenancy agreement with the developer has to be seen as one of the conditions for the grant of the letter of approval to the petitioner firm, a breach of the terms of which agreement would have a bearing on the approval granted to the petitioner firm, and could possibly entail a cancellation thereof. On such cancellation, the petitioner firm would be considered as an ‘unauthorised occupant’ of the premises within the SEZ, which would answer the description of public premises under the PPEUO Act owing to the lands in question being vested in the Central Government for administrative purposes, and the developer could then proceed to evict it in accordance with the provisions of the PPEUO Act. Thus, this is not a case where the developer stands deprived of a remedy of eviction. It

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would only be required to follow a different procedure for such eviction. Axiomatically, the reasoning in **Vidya Drolia (supra)** for holding landlord-tenant disputes covered by rent control legislations as non-arbitrable, will not apply to the facts of the instant case.

We therefore allow this O.P (RC) by setting aside the impugned order of the Rent Control Court and by dismissing R.C.P.No.134 of 2020 filed before that court as not maintainable.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
P.M.MANOJ
JUDGE

prp/

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APPENDIX OF O.P.(RC).NO.134/2025

PETITIONER'S EXHIBITS:

Exhibit P1	**TRUE COPY OF THE RENT CONTROL PETITION DATED 17.08.2020.**
Exhibit P2	**TRUE COPY OF THE OBJECTION DATED 12.01.2023**
Exhibit P3	**TRUE COPY OF THE GAZETTE OF INDIA NOTIFICATION DATED 01.03.2011**
Exhibit P4	**TRUE COPY OF RELEVANT PAGES OF SPECIAL ECONOMIC ZONES UNDER THE ADMINISTRATIVE CONTROL OF THE DEVELOPMENT COMMISSIONER, COCHIN SPECIAL ECONOMIC ZONE**
Exhibit P5	**TRUE COPY OF THE ABSTRACT OF G. O. (RT) NO. 576/2003/ID OF INDUSTRIES (J) DEPARTMENT TRIVANDRUM DATED 17.06.2003 WITH READABLE COPY.**
Exhibit P6	**TRUE COPY OF THE FRAMEWORK AGREEMENT DATED 13.05.2007 ENTERED INTO BETWEEN GOVERNOR OF KERALA, INFOPARKS KERALA, TECOM AND RESPONDENT**
Exhibit P7	**TRUE COPY OF LEASE DEED DATED 23.02.2011 BETWEEN THE GOVERNOR OF KERALA AND THE RESPONDENT**
Exhibit P8	**TRUE COPY OF LETTER OF APPROVAL DATED 21.04.2008**
Exhibit P9	**TRUE COPY LETTER OF APPROVAL DATED 21.12.2015 ISSUED BY GOVERNMENT OF INDIA, MINISTRY OF COMMERCE AND INDUSTRY, DEPARTMENT OF COMMERCE**
Exhibit P10	**TRUE COPY OF THE EXTENSION OF LETTER OF APPROVAL DATED 23.11.2016**
Exhibit P11	**TRUE COPY OF THE SUB- LEASE DEED DATED 25.01.2017**
Exhibit P12	**TRUE COPY OF THE SETTLEMENT AGREEMENT CUM AMENDED SUB-LEASE DEED DATED 01.09.2018**
Exhibit P13	**TRUE COPY OF THE ACCOUNT STATEMENT SENT BY THE RESPONDENT VIDE E-MAIL DATED 08.08.2019**
Exhibit P14	**TRUE COPY OF THE TERMINATION NOTICE DATED 24.01.2020**
Exhibit P15	**TRUE COPY OF THE E-MAIL DATED 31.01.2020 ATTACHING STATEMENT OF ACCOUNTS WITH BANK TRANSFER RECEIPT DATED 31.01.2020**

Exhibit P16	TRUE COPY OF THE LETTER DATED 11.02.2020 WITH THE ENDORSEMENT 'PERMANENT PASSES CANNOT BE PROCESSED AS THE LEASE HAS BEEN TERMINATED'
Exhibit P16(a)	TRUE COPIES OF THE TEMPORARY ACCESS CARDS WITH THE ENDORSEMENT 'LEASE TERMINATED,' ISSUED BY SMARTCITY (KOCHI) INFRASTRUCTURE PVT. LTD. TO THE STAFF OF M/S. MUSTHAFA & ALMANA, INTERNATIONAL CONSULTANTS
Exhibit P16(b)	TRUE COPY OF THE E-MAIL DATED 26.05.2021 FROM MS. SUSHAMA
Exhibit P17	TRUE COPY OF THE INTERIM ORDER DATED 2ND MARCH 2020 IN W.P.(C).NO.6234/2020
Exhibit P18	TRUE COPY OF THE NOTICE DATED 20.09.2022 ISSUED BY THE RESPONDENT
Exhibit P19	TRUE COPY OF THE NOTICE DATED 21.10.2022 ISSUED BY THE RESPONDENT
Exhibit P20	TRUE COPY OF THE ARGUMENT NOTE DATED 06.04.2024
Exhibit P21	TRUE COPY OF THE ORDER DATED 30.08.2024 IN I.A.NO.4/2023 IN R.C.P.NO.134/2020 ON THE FILE OF RENT CONTROL COURT, ERNAKULAM
Exhibit P22	TRUE COPY OF THE ORDER DATED 17.10.2024 IN R.C.P.NO.134/2020 ON THE FILE OF RENT CONTROL COURT, ERNAKULAM
Exhibit P23	TRUE COPY OF THE ORDER DATED 05.11.2024 IN O.P.(RC).NO.162/2024
Exhibit P24	TRUE COPY OF THE ADDITIONAL OBJECTION DATED 02.12.2024
Exhibit P25	TRUE COPY OF THE REPLY ARGUMENT DATED 29.03.2025
Exhibit P26	TRUE COPY OF THE ORDER DATED 19.05.2025 IN R.C.P.NO.134/2020 ON THE FILE OF THE RENT CONTROL COURT, ERNAKULAM
Exhibit P27	TRUE COPY OF G.O.(RT.)NO.23/2003/ID DATED, THIRUVANANTHAPURAM, 7TH JANUARY 2003 AND G.O.(RT)NO.1135/2000/ID DATED: THIRUVANANTHAPURAM, 20TH OCTOBER 2000
Exhibit P28	TRUE COPY OF THE SMARTCITY KOCHI MASTERPLAN FEATURES AS PUBLISHED ON THE OFFICIAL SMARTCITY KOCHI WEBSITE

//TRUE COPY//

P.S. TO JUDGE