

Impact of COVID-19 Situation on Landlords and Tenancy Rights

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Abstract

To restrain the spread of the disruptive Coronavirus, the government of India is taking various bold steps. The government announced a lockdown all across the country on 24th March 2020. Because of the global pandemic, the way of living changed drastically all across the world. Many people lost their jobs, daily workers faced a huge financial crisis, and many businesses were affected. Subsequently, the tenants were also facing a huge financial crisis and could not pay their rents. The controversy which arose was whether the tenants will be spared from rental responsibility, and even if the tenants were spared, the landlords will face an immense loss of revenue. This article aims to discuss the laws that are prevailing on the tenancy and will draft a detailed comparative study of the foreign laws/measures taken for this issue.

Keywords

COVID-19, Property, Landlord, Tenant, Transfer of Property, Possession, Rent, Force Majeure.

Introduction

Under the rule of Prime Minister Narendra Modi, the Indian government on March 24th, 2020 declared a lockdown in the whole country to put a stop to the spread of Coronavirus which was declared as a 'Pandemic' by the World Health Organization on 11th March 2020. The whole country was not prepared for this kind of situation as it never happened before and everyone was quite bothered about the uncertain situation. Along with the loss, the country was also facing a recession and economic crisis. Many people lived outside their own house, and mostly in a rental house, for a job or education, etc and many of them came back to their own house due to the pandemic. The controversy arose when the tenants were facing a financial crisis and denied to pay rents, so the question is are these demands raised by the tenants legal? Do the tenants have any

statutory rights during this situation? This article aims to answer these above-raised questions and will give a detailed analysis regarding tenancy rights during this uncertain situation.

What are the general statutory rights of the Landlords & Tenants?

The definition of 'lease' is mentioned in the Transfer of Property Act under section 105¹. The definition expresses that whenever a transfer of an immovable property takes place in consideration of a price which the transferee promises to pay, either on a special occasion or periodically, to the transferor, to acquire the right of a property for a certain period, it is said to be a lease.²

The parties to such agreement are also known as lessor and lessee under the Transfer of Property Act, and these parties have some rights and liabilities which are mentioned under section 108³ of the Transfer of Property Act. This article will only cover the rights of the lessor and lessee.

Rights of the Lessor

1. The lessor has an ultimate right to recuperate the rent which is due/unpaid.
2. The lessor has a right to redeem the property after the expiry of the period which was agreed between the lessor and lessee in the lease agreement.
3. The lessor has a right to recover the cost of any damage caused to the property during the time of the lease.
4. The lessor can redeem the leased property if the lessee breaches the lease agreement.

Rights of the Lessee,

1. The Lessee or the tenant may claim the cost of any repair which the lessor or the landlord was supposed to do after receiving the notice of the same

¹Transfer of Property Act, 1882, Section 105, No.4, Imperative Legislative Council, 1882.

²Dignath Raj Sehgal, *Rights of Lessor and Lessee*, IPLEADERS, (May 1, 2021, 8:47 PM), <https://blog.ipleaders.in/rights-lessor-lessee-covid-19/>.

³Transfer of Property Act, 1882, Section 108, No.4, Imperative Legislative Council, 1882.

2. If there is no time specified in the lease agreement the lessee may collect any kind of benefit which can be gained from the leased property
3. A lessee can mortgage a leased property or can sub-lease the leased property
4. If any modification is made to the property during the lease period, that modification shall come under the lease

There is a separate kind of right which is mentioned under section 108(e)⁴ which deals with the rights of the parties to a lease agreement during an uncertain event, and that right will be discussed in details below.

How Indian legislation deals with the Relation between a Landlord and a Tenant?

In a study which was conducted in 1986 by the United Nations, it was estimated that in the entire world nearly 42% of the city residents are tenants due to the rapid increase in urbanization, especially in India the migration from villages to cities increased at a huge rate.⁵ And with the increase in tenancy, several issues regarding tenancy were also increased and to control and safeguard the rights of the tenant, the Rent Control and Regulation Act was enacted. This act also deals with the relationship between a landlord and a tenant. The relationship between a landlord and tenant is ruled based on the guarantee or assurance given by both the lessor and lessee in a legal document that needs to be in writing. This legal document is known as Lease Deed/ Leave and License Agreement. But leave and license agreements differ from lease agreements, lease agreements can be transferred and heritable but leave and license agreements can't be transferred and are not heritable.

To stay away from the stamp duties and other charges of registration, the parties to a rent agreement signs the agreement for 11 months because under the Registration Act, 1908⁶ It is compulsory to register the rental agreement if the agreement is for 12 months or more.

⁴ Transfer of Property Act, 1882, Section 108(e), No.4, Imperative Legislative Council, 1882.

⁵ GLASS REPORT, https://www.un.org/waterforlifedecade/pdf/glaas_report_2012_eng.pdf, (last visited May 1, 2020, 8:40 PM).

⁶ Registration Act, 1908, No. 16, Legislative Department, 1908.

What is the Irresistible Force under the Indian Laws?

The term 'irresistible force' means an incident that cannot be stopped by human power. In law, this force can also be termed as "Force Majeure". This clause is usually used to solve any dispute which occurred due to any unexpected event. Now the question arises why there will be a dispute because of an unexpected event? Many times due to an unexpected event the parties to the contract fail to perform their contractual duties due to the unexpected future event which is out of any reasonable control. The primary motive of this clause is to protect the party (who is performing) from any repercussions on which he/she has no control. The 'Force Majeure' clause is ruled by the Indian Contract Act, and it is mentioned under Section 56⁷ of the Contract Act. But in the case of *Raja Dhruv v. Raja Harmohinder Singh*⁸, where the appellant took a lease on land in undivided Punjab to perform agricultural activities and after the partition in India the leased lands fell under the Pakistan territory and the appellant migrated to India and filed a complaint to refund the rent, as it became impossible to perform his part of the contract, the court held that the 'Force Majeure' clause cannot be applied in lease deeds as this clause is governed by Indian Contract Act, and contract act does not deal with lease agreements. So, this article will only deal with the force majeure clause which is mentioned under the Transfer of Property Act; the force majeure clause in the Transfer of property act is dealt with under section 108(e) of the Act. The force majeure clause is described as 'irresistible force' under section 108(e) of the Transfer of Property Act. To satisfy section 108(e) of the TP Act there are three essential conditions that need to be fulfilled they are:

1. The property should cause to become considerably or indelibly unfit
2. There must an “irresistible force”
3. The decision of the lessee must be communicated with the lessor to make the agreement invalid.

Can Covid-19 be deemed as an Irresistible Force?

⁷ Indian Contract Act, 1872, Section 56, No. 9, Imperative Legislative Assembly, 1872.

⁸ *Raja Dhruv v. Raja Harmohinder Singh*, 1968 AIR 1024.

Before answering the above-raised question, this article will analyze the interpretation of the term "irresistible force" by the Indian Judiciary.

In the case of *Courts of Ward Dada Siba Estate & Another v. Raja Dharam Deb Chand*⁹, the plaintiff along with other things owned five squares of land in Kangra District. The deputy commissioner of that district published a notice which made a formal invitation offering to provide the land on lease for the period of 1 month. The plaintiff accepted the offer and became the possessor of the land as a lessee. The land was taken on lease for agricultural purposes. Some riots took place near that land and the lessee left that place due to which he was unable to harvest crops. The plaintiff demanded a refund of the lease for this reason. The Punjab and Haryana High court held that section 108(e) of the Transfer of Property Act cannot be applied in this case because the incident didn't fall under the ambit of "irresistible force" and didn't make the land indelibly unfit for agriculture.

In the case of *Vidyawati Bhargava v. VIII Addl. District Judge*¹⁰ Kanpur, a land that was under dispute was demolished by the Municipal Corporation and the Allahabad High court held that the demolition didn't take place due to some 'irresistible force' and hence section 108(e) cannot be applied in this case.

From the above interpretation made by the judges, it is quite clear that one condition needs to be fulfilled to apply the provision of section 108(e) of the Transfer of Property act and the condition is the property must be "wholly destroyed" or "rendered substantially or permanently unfit". The difficulty arises when it needs to be proved that COVID makes the property "substantially or permanently unfit", and to prove this, the Judiciary needs to expand its interpretation of the meaning of the term "irresistible force" to assist the parties of a lease agreement in a pandemic situation. So, to interpret whether COVID falls under the ambit of "irresistible force" few issues shall be taken into consideration:

⁹ *Courts of Ward Dada Siba Estate & Another v. Raja Dharam Deb Chand*, AIR 1961 P H 143.

¹⁰ *Vidyawati Bhargava v. VIII Addl. District Judge*, 2002 SCC Online All 470.

1. Is there any relation between the failure of paying the rent and the Pandemic situation? If this issue is raised, the party needs to give evidence that he/she failed to pay the rent due to the Pandemic situation.
2. Can the 'irresistible force' clause be read with other rules present in the agreement? The reason behind raising this issue to check whether there is any contradiction in the agreement itself.
3. Is the 'irresistible clause' mentioned in the agreement? If the clause is mentioned in the agreement then the parties must abide by that clause and no new clause can be added to that agreement.

How Indian Judiciary observe this dispute?

In *Standard Retail Pvt. Ltd. v. M/S. G.S. Global Corp & others*¹¹ The petitioners entered into a shipment contract with a South Korean contract, where the respondents needed to supply some steel products to Mumbai from South Korea. The petitioners demanded a termination of the contract due to the Pandemic and as the 'force Majeure clause was mentioned in the contract the respondents also terminated the contract but only for a reasonable period, but the issues that were raised are 1) the "applicability" of the "force majeure" clause in the present contract, 2) Inducement of the third party in the 'force Majeure clause, 3) can both the parties invoke the 'force Majeure clause. The Bombay High Court held that no party can avoid their contractual obligation to make any kind of payment on the ground of pandemic/lockdown situation and refused to grant relief to the party seeking protection on the ground of COVID-19 pandemic, even if the party faced economic damages during the lockdown period.

Recently a post went viral on WhatsApp stating that the Supreme Court passed a judgment that made it compulsory for the tenants to pay the rents. But this is not true, the Supreme Court in *Pawan Pathak Prakash v. Bar Council of India*¹² held that the Bar Council of India should take into

¹¹ *Standard Retail Pvt. Ltd. v. M/S. G.S. Global Corp & others*, Commercial Arbitration Petition(l) No. 404 of 2020

¹² *Pawan Pathak Prakash v. Bar Council of India*, Writ Petition(Civil) No. 109409 of 2020

consideration the current situation and assist them with financial assistance. This petition is not considered under Article 32 of the Indian Constitution and is dismissed “accordingly”.

In *Ramanand v. Dr. Girish Soni*¹³, the Delhi High Court referring to the principles of *Energy Watchdog v. CERC*¹⁴ The case held that the tenant can demand suspension or waiver of rent if it was mentioned in the lease agreement and the decision regarding suspension of rent varies from agreement to agreement. The Delhi Court also interpreted the various meaning of the term "Force Majeure"

How has this pandemic affected tenancy rights across the world?

Every country is trying their best to protect the real estate sector, especially in this pandemic situation.

China¹⁵

Local Governments in China laid down various guidelines to deal with the impact of COVID-19 on Small, Medium and Micro enterprises to increase sustainability. The rent of enterprises affected badly due to the pandemic was reduced up to 50%. The landlords, who reduced the rent of small, medium, and micro enterprises, were provided with subsidies.

United Arab Emirates

In the UAE, the property registration fees were reduced keeping in mind the situation and welfare of the people. UAE also increased 5% loan value ratios for mortgage loans.

Australia

It was officially announced by the authorities that no one should face any kind of eviction, and the landlords and tenants must make a mutual agreement on paying rent during the pandemic situation.

¹³ Ramanand v. Dr. Girish Soni, RC. Rev. 447/2017

¹⁴ Energy Watchdog v. CERC, (2017) 14 SCC 80

¹⁵ Convent US Law, <https://www.conventuslaw.com/report/china-special-series-regarding-the-legal-impact-of-2/>, (last visited May 1, 2020, 9:10 PM).

France

The Government of France has elevated an operation that will safeguard the commercial lease agreement to avoid recession in the incident of nonpayment of the lease during a health crisis.

Are there any feasible solutions to this dispute?

“Every problem has a creative Solution”- Donna Karan

To avoid any kind of dispute in the future, where there is a possibility of an unexpected event, the parties to a lease agreement must keep a few things in their mind. When entering into a lease agreement the parties must look into the rights and duty portions effectively, there must be a 'force Majeure clause included in the lease agreement. The most effective way to solve such disputes is to make a mutual agreement based on the current situation and financial condition and that agreement must be beneficial to both parties. Cooperation is a very necessary tool during these times.

Conclusion

The whole world's economy has been disrupted by this Pandemic. The developing countries are affected largely. Many companies faced an economical crisis during the pandemic. The 'irresistible force' clause needs to be more specific and must be interpreted correctly by the Indian Judiciary. India must take New York as an example where dispossession proceedings were suspended due to the ongoing health crisis all across the world. People need to understand the current situation and need to be a little empathetic and cooperate with each other to settle disputes effectively as well as efficiently.