

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

HON'BLE JUSTICE SUBRATA TALUKDAR

WP No. 20459 (W) of 2019

***Skyline Vanijya Pvt. Ltd. & Anr.
-Vs.-
The State of West Bengal & Ors.***

For the Petitioners : Mr. Arindam Banerjee
Mr. Ajay Agarwal
Mr. Zeeshan Haque

For the Respondents : Mr. Probal Kumar Mukherjee
Nos. 8 to 10 Mr. Arijit Bardhan
Mr. Salman Hasan

For the State/Respondents : Mr. Supratim Dhar

For the Respondent : Mr. Surya Prasad Chattopadhyay
Nos. 3,5,19,37,43,47 Mr. Arjun Samanta

Heard on : 12/12/2019

Judgment on : 25/09/2020

Subrata Talukdar, J:

Notwithstanding the sheer volume of this writ petition comprising 136 *Paragraphs, XLIX, Grounds*; and Annexures from Pages 96 to 539 covering two volumes, the points for consideration in law belie the bulk.

The points may be stated as follows:-

- a) Whether the Learned Thika Controller (for short the *Ld. TC*) was competent to exercise jurisdiction in issuing the order impugned dated 14th of March, 2019 *qua* the impugned proceedings under Section 5(3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (for short the 2001 Act)?
- b) Whether on the ground questioning the jurisdiction of the *Ld. TC* to pass the order impugned dated 14th of March, 2019, this writ petition under article 226 of the Constitution of India is maintainable?

By the order impugned dated 14th of March, 2019, the *Ld. TC* decided an application of the petitioners under Section 5(3) of the 2001 Act declaring all the premises in issue, except one, to be Thika Tenancies. Only in respect of one of the premises, being 8(H) Beltala Road, the *Ld. TC* decided that it does not come under the purview of the 2001 Act.

Before approaching the arguments of the writ petitioner, it would be useful to now discuss in brief the facts culminating in the impugned order dated 14th of March, 2019 of the *Ld. TC*. From *Paragraphs 1 to 36* of the writ petition there is a recital connected to the history of ownership, consolidation and division of the said premises in issue.

The petitioners claim to be the owners of the said premises and the present respondents claim to be the Thika Tenants. Needless to

reiterate that while the petitioners assert that there are no Thika Tenancies *qua* the said premises, the respondents make the counter claim that the said premises are governed by the 2001 Act.

At this juncture it would be relevant to notice the communication dated 1st July, 2014 from the Petitioner No.1 addressed to the *Ld. TC* which is self-explanatory and reads as follows:-

*“From:-
SKYLINE VANIJYA PVT. LTD.
22, Prince Anwar Shah Road,
Kolkata- 700033*

Date:

*01.07.2014
To
The Controller,
Thika Tenancy at Kolkata,
Government of West Bengal,
Survey Building, Alipore,
35, Gopal Nagar,
Kolkata- 700027*

Re: Application under Section 5(3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 in Respect of Premises Nos. 8A, 8B, 8C, 8D, 8E, 8F, 8G and 8H, Beltata Road, Kolkata-700026 and premises Nos. 28B, 28C and 28D, Townsend Road, Kolkata.

Dear Sir,

Please refer to our letter dated 20th March, 2014, a copy whereof is annexed herewith for your ready reference.

We have not received any reply from your end though nearly four months have already been elapsed.

Under such circumstances, we request you to be kind enough to consider the matter and decide the issue of Thika Tenancy immediately without any further delay, since we are unnecessarily held up though none of the aforesaid premises are affected by the provisions of the aforesaid Thika Tenancy Act.

Thanking you,

Yours faithfully,
SKYLINE VANIJYA PVT.

LTD.”

It would be now relevant to mention that connected to the communication dated 1st July, 2014 (supra) when the issue of determination of Thika Tenancies was pending before the Ld. TC, the petitioners approached the Hon’ble Court by filing a bunch of writ petitions which were disposed of by common orders. The common order dated 11th May, 2016 in one of the writ petitions, reads as follows:-

“W.P. No. 5160 (W) of 2016
Skyline Vanijya Private Limited & Anr.
Vs.
The Kolkata Municipal Corporation & Ors.

Whether the Thika Controller has already declared the subject property or any part of it to be thika property, will be indicated by him in writing within two weeks of communication of this order. In that case, he need not make a determination whether the property is thika or not, afresh. This is in interpretation of my order dated 4th May, 2016 in W.P. No. 363 of 2016 (Dwarkapati Developers Pvt. Ltd. & Ors. -Vs.- Kolkata Municipal Corporation & Ors.).

The writ petitioners claim to be the owners of parcels of land. They purchased it under several deeds of conveyance 2 dated 27th September, 2006. The schedules to the conveyances state that the parcels of land are situated at 8A to 8F, Naresh Mitra Sarani and 28 B & C, Sakharam Ganesh Dauskar Sarani.

Before it is conclusively determined that the property is thika, the names of the petitioners cannot be mutated in the records of the Corporation.

Subject to what is stated in the first paragraph of this order, the Thika Controller will positively

determine whether the subject property is thika or not, after dealing with the maintainability application, upon hearing the interested parties and by a reasoned order within three months from the date of communication of this order and forthwith communicate its decision to the parties.

The Thika Controller will also supply certified copies of all materials on record to any party requesting for the same within one week of making the request and before the hearing in relation to the above determination.

If the Kolkata Municipal Corporation has mutated the names of certain persons as thika tenants in relation to properties not declared as thika property by the Thika Controller in terms of paragraph one of this order and pending determination whether the property is thika or not, they are obliged to revise its mutation upon hearing the interested 3 parties and by a reasoned order within one month of communication of this order.

The latter exercise has to be carried out by the Kolkata Municipal Corporation first. Upon receiving the report or decision from the Controller of Thika Property in terms of this order, the respondent Corporation will once again proceed to revise or update its records, upon hearing the interested parties by a reasoned order within a reasonable time and forthwith communicate its decision to the parties. All the papers are before this court.

Affidavits were not invited. The allegations contained in the petition are deemed not to have been admitted.

This writ application is accordingly disposed of.

Urgent certified photocopy of this order, if applied for, be given to learned advocates for the parties upon compliance of all requisite formalities.”

Further connected to the order dated 11th May, 2016 (supra) the petitioners approached the *Ld. TC* by a letter dated 18th May, 2016 for supply of certified copies of documents lying with the records of the *Ld. TC* for complete compliance of the solemn order dated 11th May, 2016.

It would be relevant at this juncture to quote the contents of the communication dated 18th May, 2016 which, *inter alia*, reads as follows:-

Date: 18.05.2016

“Dear Sir,

Re: W. P. No. 5160 (W) of 2016

Skyline Vanijya Private Limited & Anr.

The Kilkata Municipal Corporation & Ors.

My Client: Skyline Vanijya Private Limited & Anr.

Enclosed please find a server copy of the order dated 11th May, 2016 passed by the Hon’ble Justice I.P. Mukherji in the above matter for your ready reference and note that in such order His Lordship The Hon’ble Justice I.P. Mukherji has directed you to supply certified copies of all materials on record to any party requesting for the same within one week of making the request and before the hearing in relation to the above determination.

You are requested to kindly supply me with urgent Xerox certified copies of all order sheets from day one along with all documents and pleadings filed by any of the parties including all Form A filed and challans filed with you in respect of the above premises within one week of receiving this letter and before the hearing in relation to the above determination.

Pursuant to any in compliance with the directions passed by His Lordship The Hon’ble Justice I. P. Mukerji on 11th May, 2016 in the above matter.

I on behalf of my aforementioned client do undertake to bear any pay all necessary costs, charges and expenses for the same, which kindly assess and intimate me so that the same may be deposited.

Kindly acknowledge receipt.

*Yours faithfully,
(Arundhati Mukherjee)
Advocate”*

Expressing dis-satisfaction with the steps taken by the *Ld. TC qua* the communication dated 18th May, 2016 (*supra*), the petitioners filed separate applications connected to the previous bunch of writ petitions. The separate applications were disposed of by common orders dated 20th of July, 2016. The order dated 20th of July, 2016 in one such application is reproduced below for the benefit of this discussion:-

“W.P. No. 5158 (W) of 2016
Skyline Vanijya Private Limited & Anr.
 Vs.
The Kolkata Municipal Corporation & Ors.
Mr. Abhrajit Mitra
Mr. Jishnu Chowdhury
Mr. Satadeep Bhattacharya ... for the petitioners

Re.: CAN 7056 of 2016

An affidavit of service is on record.

None appears for the respondents, although Mr. Mitra on instruction submits that they were hand delivered copies of the present application.

It seems from the submission made by Mr. Mitra that the Thika Controller did not supply the documents requested by the writ petitioners vide their letter dated 18th May, 2016. Thus there appears to be breach of the following directions contained in the order dated 11th May, 2016.

“The Thika Controller will also supply certified copies of all materials on record to any party requesting for the same within one week of making the request and before the hearing in relation to the above determination.”

The Thika Controller has fixed the hearing tomorrow at 12 noon.

In those circumstances, he will suitably adjourn the hearing tomorrow and fix another date of hearing not earlier than three weeks from tomorrow.

In the meantime the requisition made in the letter dated 18th May, 2016 should be complied with.

If no Form-A has been filed, the Controller should indicate so in his reply.

In that event, it will be open to the writ petitioners to take such steps as he or they may be advised.

This order is to be taken as one for clarification and implementation of the order dated 11th May, 2016.

All the papers are before this court.

Affidavits were not invited. The allegations contained in the petition are deemed not to have been admitted.

The connected application (CAN 7056 of 2016), is, accordingly disposed of.

No further application connected with this writ will be entertained by this court.

Leave is granted to the advocate on record for the applicant to communicate this order to the Thika Controller.

Urgent certified photo copy of this order, if applied for, be given to learned advocates for the parties upon compliance of all requisite formalities.”

The *Ld. TC* has now decided the issue of the existence of *Thika Tenancies qua* the said premises by the order dated 14th of March, 2019, except one (*supra*).

Ld. Counsel for the petitioners submit that the *Ld. TC* could not have so decided and the decision dated 14th of March, 2019 demonstrates a palpable error in the exercise of jurisdiction which requires correction by this Court sitting in writ jurisdiction.

Per contra, *Ld. Counsel* for the private respondents and *Ld. State Counsel*, submit that this writ petition is not maintainable since the *Ld. TC* exercised jurisdiction under a specified Act, viz. the 2001 Act. It is therefore submitted that any challenge to the order impugned dated 14th of March, 2019 should be carried by an aggrieved party not before the

Writ Court but, before the West Bengal Land Reforms and Tenancy Tribunal (hereinafter referred to for short as the *Ld. Tribunal*) in exercise of its jurisdiction conferred by the West Bengal Land Reforms and Tenancy Tribunal (*WBLRTT*) Act, 1997 (for short the 1997 Act).

Heavily relying on the authority of *In Re: Shahi Enclaves Private Limited vs. The State of West Bengal and Ors.*, reported in 2016 (4) CHN (CAL) 190, *Ld. Counsel* for the petitioners submit that an action questioning the wrongful assumption of jurisdiction by the *Ld. TC* is not barred before the Writ Court. It is submitted that the Writ Court must step in when there is *defect* in exercise of *jurisdiction* or *usurpation* of jurisdiction by an Authority or *Ld. Tribunal*. The law settled *In Re: L. Chandra Kumar vs. Union of India* reported in 1997 (3) SCC 261 connected to exercise of powers by the Hon'ble Division Benches of the High Court *qua* Articles 323A and 323B of the Constitution of India do not exclude the inherent jurisdiction exercisable by the Hon'ble Single Benches during instances when either *defect of jurisdiction* or, *usurpation of jurisdiction* by a statutory Authority is brought to the notice of the Writ Court. The relevant Paragraphs of *In Re: Shahi Enclaves* read as follows:-

“145. The Tenancy Tribunal Act does not exclude the jurisdiction of the Division Bench of the High Court under Articles 226 and 227 of the Constitution of India. On the other hand the writ jurisdiction of this Court is, as observed above expressly saved. The jurisdiction has to be exercised by a Division Bench and not the Single Bench. An order may, therefore, be challenged, by filing a writ petition in the High Court. The writ

petition would, however, have to be heard by a Division Bench.

149. In this case, it is manifest on the basis of the allegations in the written submissions in support of the return and the submissions made on behalf of the respondent No.2 that the ingredients of a thika tenancy were not there. Of course, it is well-settled that the prohibition will not lie only because of insufficiency of the statement of the cause of action in the pleading or because of insufficient proof of action. Prohibition will lie if the disclosed facts reveal lack of jurisdiction.

151. When there is defect of jurisdiction or usurpation of jurisdiction, this Court is duty bound to interfere, in exercise of its extraordinary power of judicial review under Article 226 of the Constitution. If Courts were to refuse relief under Article 226 and refuse a writ of prohibition in an appropriate case of patent want of jurisdiction, as in this case, where there cannot possibly be any thika tenancy on the face of the averments in the pleadings in support of the return filed by the respondent No.2, the Courts would, to quote Mr. Sudhish Pai from his book 'Working of the Constitution – Checks and Balances' "be guilty of abdication of their jurisdiction and powers".

The petitioner therefore submits that since the declaration of the said premises by the *Ld. TC* amounted to a defect in exercise of its jurisdiction, this Writ Petition assailing the said impugned order dated 14th March, 2019 is maintainable.

Ld. Counsel for both the Private and State Respondents submit that the petitioners themselves sought an active adjudication from the *Ld. TC* by filing an application under Section 5(3) of the 2001 Act. The powers of the *Ld. TC* under the 2001 Act are wide enough to enable the

Ld. TC to conclude an investigation *qua* Thika Tenancies under the 2001 Act and, if so, make a Declaration in relation thereto.

It is argued that Section 6 of the 1997 Act empowers the *Ld. Tribunal* to examine *any* order of *any* authority arising out of and/or connected to a specified Act and, the 2001 Act is one such specified Act. The functions of the *Ld. TC* fall within the domain of a specified Act, i.e. the 2001 Act, with the challenge thereto statutorily reserved for consideration by the 1997 Act before the *Ld. Tribunal*.

It is submitted that following the statement of law made in *L. Chandra Kumar vs. Union of India* and the decision reported in 2016 (4) CHN (CAL) 127 at Paragraphs 5, 12 and 20 thereof (*In Re: Ashok Kumar Roy*), the decision of the *Ld. TC* can be challenged before the *Ld. Tribunal* and, again only thereafter it would be subject to further carriage of proceedings before the Hon'ble Division Bench.

Having heard the parties and considering the materials placed, this Court finds that the exercise of jurisdiction by the *Ld. TC* culminating in the order dated 14th of March, 2019 did not happen in a vacuum. Starting from the communication of the petitioners dated 1st July, 2016 (*supra*), to the adjudication by the Hon'ble Court of a bunch of writ petitions on the 11th of May, 2016 (*supra*), followed by the further communication of the petitioners dated the 18th of May, 2016 (*supra*) and thereafter the disposal of the bunch of applications by the Hon'ble Court by its solemn orders dated 20th of July, 2016, it would be amply evident that the petitioners submitted to and actively sought a judicial determination from the *Ld. TC* in exercise of powers under Section 5(3)

of the 2001 Act on the primary issue as to whether the said premises were *Thika Tenancies* or not.

Having invited such adjudication throughout and, the Hon'ble Court having granted assent to the statutory position that the *Ld. TC* could proceed in exercise of its jurisdiction under the 2001 Act, the petitioners cannot be now permitted to reprobate after having approbated all along. This Court reminds itself that the Hon'ble Court by its orders dated 11th May, 2016 and 18th May, 2016 (*supra*) opined on the course of adjudication to be adopted by the *Ld. TC* which was directed to be in accordance with the principles of natural justice, thereby accepting the fundamental position that the *Ld. TC* is the designated statutory Authority to arrive at a finding on existence of *Thika Tenancies* under the 2001 Act.

This Court finds it necessary now to discuss the well-established distinction between *want of jurisdiction* and/or *defect in exercise of its own jurisdiction* by a statutory Authority. This Court respectfully notices the proposition propounded *In Re: Shahi Enclaves* (*supra*) but, finds that such proposition is distinguishable in the facts of the present case. This Court neither discovers any *want of* nor *usurpation of jurisdiction* by the *Ld. TC* in declaring or, refusing to declare a *Thika Tenancy* in exercise of its exclusive jurisdiction under the 2001 Act, more so at the invitation of and/or the application of the petitioner under Section 5(3) of the 2001 Act sustained by back-to-back orders of the Hon'ble Court which have attained finality.

It would be relevant at this juncture to quote the relevant application of mind by the *Ld. TC* evident from the order impugned dated 14th March, 2009 which, reads as follows:-

“The Calcutta Thika Tenancy Act, 1949 defines a “thika tenant” means any person who holds, whether under a written lease or otherwise, land under another person, and is, or but for a special contract, would be, liable to pay rent at a monthly or any other periodical rate for that land to that another person, and has erected or acquired by purchase or gift any structure on such land for residential, manufacturing or business purpose, and includes the successors-in-interest of such persons, but does not include a person –

(a) Who holds such land under that another person in perpetuity

Or

(b) Who holds such land under that another person under a registered lease, in which the duration of the lease is expressly stated to be for a period of not less than twelve years; or

(c) Who holds such land under that another person and uses or occupies such land as a khattal.

As per Calcutta Thika & Other Tenancies and Lands etc. Act, 1981 “thika tenant” means any person who occupies, whether under a written lease or otherwise, land under another person, and is, or but for a special contract, would be, liable to pay rent at a monthly or any other periodical rate for that land to that another person, and has erected or acquired by purchase or business purpose, and includes the successors-in-interest of such persons.

W.B. Thika Tenancy (Acquisition and Regulation) Act, 2001 defines a thika tenant in section 2(14): “thika tenant” mans any person who occupies, whether under a written lease or otherwise, land under another person, and is, or but for a special contract, would be, liable to pay rent at a monthly or any other periodical rate for the land to that another person, and has erected or acquired by

purchase or gift any structure including pucca structure if ay on such land for residential, manufacturing or business purpose and includes the successors-in-interest of such persons.

Therefore on has to satisfy the following criteria for being a thika tenant.

- I. *One has to occupy land under another person.*
- II. *He has to pay rent to that person.*
- III. *He has to erect or acquire the structure on the land.*

Going through the documents available before this Court it is revealed that Manujendra Dutta issued rent receipts to the thika claimants for 'land' upto the year 1976. These rent receipts for 'land' to the claimants constructed prove that the claimants constructed the structure. Till 1976 these claimants satisfy all the criterias mentioned in I to III. Above; therefore undoubtedly they were the thika tenants upto 1976. After compromise petition with Roy Chowdhurys, Manujendra Dutta stopped taking rent from his sub-lessees but the sub-lessees were not evicted from the subject premises. No new contract was made with these thika claimants. There is no proof before this Court in support of the fact that the status of the claimants changed within a period from 1976 to 18/01/1982. The status of these claimants/occupants remain as thika tenant till 18/01/1982 i.e. till the date of vesting."

Apropos the above discussion this Court finds it relevant to rely upon the decision of a Hon'ble Division Bench of the Court In Re: Hindustan Copper Limited vs. Putcha Parvathisem & Ors. (FMA 1102 of 2015 with CAN 3449 of 2015 – unreported which, inter alia, reads as follows:-

"The point on curability or, otherwise, of a Court erroneously assuming a jurisdiction it never had and, on the obverse, exercising a jurisdiction in error, has been lucidly discussed In Re: Bipin Behary Law Vs. Mohit Kumar Pal and others, AIR (29) 1942 Calcutta 496, as follows:-

“... When a Judge has no inherent jurisdiction over the subject-matter of a suit the parties cannot by their mutual consent convert it into a proper judicial process, but where a Judge is competent to try a cause and the parties join issue and go to trial on the merits, the defendant cannot subsequently dispute his jurisdiction upon grounds that there were irregularities in the initial procedure, which if objected to at the time would have led to the dismissal of the suit. ...”

To the mind of this Court, therefore, it would be a legally unfamiliar exercise to retract from the above recorded settled position of facts and law without requiring the petitioner to follow the statutory challenge before the *Ld. Tribunal*.

This writ petition thus fails as not maintainable.

W.P. No. 20459 (W) of 2019 stands accordingly **dismissed**.

Notwithstanding the dismissal, the petitioner shall be entitled to take all points on merits before the *Ld. Tribunal*.

Parties are permitted to act on a server copy of this order downloaded from the official website or this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Subrata Talukdar, J.)

Later:-

Stay of operation of this order is
prayed for by Mr. Zeeshan Haque, *Ld.* Advocate for the petitioner.

The prayer for stay is considered and refused.

(Subrata Talukdar, J.)