

**RVW 157 of 2018
With
CAN 1 of 2018 (Old CAN 8846 of 2018)
With
CAN 2 of 2021
In
WPA 17722 of 2005**

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

**Indian Oil Corporation Limited
Vs.
Anchit Agarwal & Ors.**

For the Applicant in : Mr. S.N. Mookherji, Senior Advocate
RVW 157 of 2018 : Ms. Vineeta Meharia, Advocate
Mr. Amit Meharia, Advocate
Mr. Pushpendu Chakraborty, Advocate
Ms. Madhurima Halder, Advocate
Ms. Subika Paul, Advocate

For the State : Mr. Amitesh Banerjee, Senior Standing Counsel
Mr. Suddhadev Adak, Advocate

For the Respondents : Ms. Sutapa Sanyal, Advocate
RVW 157 of 2018 : Mr. Debrup Bhattacharjee, Advocate

Hearing concluded on : August 12, 2021

Judgment on : September 3, 2021

DEBANGSU BASAK, J.:-

1. Indian Oil Corporation Limited (IOCL) has applied for review of the judgement and order dated August 10, 2018 passed in **WPA**

17722(W) of 2005 (Anchit Agarwal Vs. The State of West Bengal and Ors.).

2. Learned Senior Advocate appearing for the IOCL has drawn attention of the Court to the judgement and order dated August 10, 2018. He has submitted that, the writ petitioner restricted the relief in the writ petition to prayer (a) of the writ petition. He has referred to **1987(2) Calcutta Law Journal 53 (Lakshmimoni Das vs. State of West Bengal)**. He has submitted that, on August 10, 2018, the law laid down by **Lakshmimoni Das (supra)** was no longer good law in view of the pronouncement of the Supreme Court in **2015(14) Supreme Court Cases 203 (Nemai Chandra Kumar & Ors Vs. Mani Square Ltd & Ors)**. He has referred to **2016 Volume 4 Calcutta High Court Notes (Calcutta) 190 (Shahi Enclaves Private Limited vs. The State of West Bengal & Ors.)**. He has drawn the attention of the Court to various paragraphs therein and submitted that, with the establishment of the West Bengal Land Reforms Tenancy Tribunal, the writ petition ought to have been transferred to the West Bengal Land Reforms Tenancy Tribunal for adjudication. He has contended that, the West Bengal Land Reforms Tenancy Tribunal is competent to decide prayer (a) of the writ petition to which, the writ petitioner confined other reliefs on August 8, 2018. According to him, the

Tribunal is competent to declare whether immovable property does not come within the definition of thika tenancy under the West Bengal Tenancy (Acquisition and Regulation) Act, 2001 or not or whether such land was a thika tenancy under the previous Act or not.

3. Referring to **Nemai Chandra Kumar & Ors (supra)** learned Senior Advocate appearing for the IOCL has submitted that, the Supreme Court has recalled **Nemai Chandra Kumar & Ors (supra)** on March 3, 2021. The Supreme Court has reserved judgement on the issue as to what constitutes a thika tenancy under the Act of 2001.

4. Learned Senior Advocate for the IOCL has submitted that, on August 10, 2018, when the order in the writ petition was passed, the Court had noticed **2014 (3) Calcutta High Court Notes (Calcutta) 89 (Amit Basu Vs. Controller)** and held that the writ petition was maintainable. He has submitted that, in **Shahi Enclaves Private Limited (supra)** the writ petition was directed against an order of the West Bengal Land Reforms and Tenancy Tribunal. In such context, the High Court has held that, the writ petition was maintainable. The fact scenario in the writ petition governing the present matter are different. Consequently, he has submitted that, the order dated August 10, 2018 should be reviewed.

5. Learned advocate appearing for the writ petitioners has questioned the maintainability of the review petition. She has submitted that, the writ petition was filed prior to 2010 when the West Bengal Land Reforms and Tenancy Tribunal was established. She has submitted that, the jurisdiction of the Controller to decide the issue raised in the writ petition from 2010. She has drawn the attention of the Court to paragraph 25 of ***Amit Basu (supra)***. She has contended that, there has been a change in definition of thika land. Such change has been introduced by the Amendment Act of 2010 and has been brought into effect from November 1, 2010. The Controller has been vested with the jurisdiction to decide whether a particular land was a thika tenancy or not only after the Amendment Act of 2010. She has drawn the attention of the Court to the fact that writ petition involved had been filed in 2005.

6. Learned advocate appearing for the writ petitioners has referred to ***2014 (1) Calcutta High Court Notes 544 (Bhandardaha Beel Matsyajibi Samabay Samity Ltd & Ors. Vs. State of West Bengal & Ors)***. She has submitted that, in a given context, a writ petition is maintainable. According to her, the writ petition in the present case is maintainable. The writ petition had been filed in 2005 when the Controller did not have the jurisdiction to decide the issues

raised in the writ petition. Referring to the review petition, learned advocate appearing for the writ petitioner has submitted that, no ground has been made out for review. She has submitted that, even if there is a wrong finding or a wrong law being applied, the same does not allow a review. In the facts of the present case, the basis of review being ***Lakshmimoni Das (supra)*** being held not to good law and no longer survives with the recalling of the judgement and order of ***Nemai Chandra Kumar & Ors (supra)***. In support of her contentions she has relied upon ***1997 Volume 4 Supreme Court Cases 478 (Dokka Samuel Vs. Dr. Jacob Lazarus Chelly)*** and ***2006 Volume 4 Supreme Court Cases 78 (Haridas Das Vs. Usha Rani Banik (Smt) & Ors)***.

7. Learned Senior Advocate appearing for the IOCL has relied upon ***2008 Volume 1 Calcutta High Court Notes 442 (Maruti Real Estate Pvt. Ltd. & Anr Vs. Life Insurance Corporation of India & Ors)*** and submitted that, the power of review under Article 226 of the Constitution of India is not limited by Section 114 or Order 47 Rule 1 of the Code of Civil Procedure, 1908.

8. The writ petitioner had filed WP No. 17722 (W) of 2005 on September 9, 2005. The writ petition had various prayers. The writ petitioner gave up all the prayers save and except prayer (a) of the writ

petition. That the writ petition had been limited to prayer (a) was recorded by an order dated December 20, 2005.

9. By the surviving prayer in the writ petition subsequent to the order dated December 20, 2005, the writ petitioner has sought a declaration that Premises No. 151, Bidhan Sarani, Kolkata does not come within the purview of the Act of 2001 and does not stand vested and never stood vested in the State of West Bengal either under the Act of 1981 or under the Act of 2001.

10. The writ petition had been taken up for final hearing on August 10, 2008 in presence of the parties to the writ petition. IOCL had been represented on that date. At the hearing of the writ petition, reliance had been placed on **Amit Basu (supra)** and **Lakshmimoni Das (supra)** to contend that, an immovable property of the nature as involved in the present writ petition cannot be declared as a thika tenancy and that the writ petition was maintainable.

11. On August 10, 2018, **Lakshmimoni Das (supra)** had been held to be not good law in **Nemai Chandra Kumar & Ors (supra)**. However **Nemai Chandra Kumar & Ors (supra)** has been recalled on March 3, 2021. As on date, therefore, **Lakshmimoni Das (supra)** holds the field. On August 8, 2018 **Lakshmimoni Das (supra)** had been followed. In the facts of the present case, therefore, it cannot be

said that there is a need to review the judgement and order dated August 10, 2018 in view of the overruling of **Lakshmimoni Das (supra)**.

12. The scope of review under Section 114 and Order 47 Rule 1 of the Code of Civil Procedure, 1908 has been considered by the Supreme Court in the context of a Civil Suit in **Haridas Das (supra)** and **Dokka Samuel (supra)**. The Division Bench of our Court in **Maruti Real Estate Pvt. Ltd. & Anr (supra)** has held that Section 114 or Order 47 Rule 1 of the Code of Civil Procedure, 1908, in terms does not apply to an application for review in the writ jurisdiction.

13. **Bhandardaha Beel Matsyajibi Samabay Samity Limited & Anr (supra)** has considered a writ petition challenging a tender notice issued by the District Land and Land Reforms Officer, Murshidabad. It has held that, the impugned tender notice was issued for the purpose of settling tank fisheries. Such tender notice had nothing to do with agrarian reforms. The District Land and Land Reforms Officer issued the tender notice not in exercise of his powers or in discharge of his functions under a Specified Act under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997. Therefore, it had held that, the West Bengal Land Reforms and Tenancy Tribunal could not entertain a challenge against such tender notice. It had

found the writ petition challenging the tender notice to be maintainable.

14. In the facts of the present case, prayer (a) of the writ petition relates to a declaration that premises No. 151, Bidhan Sarani, Kolkata does not come within the purview of the Act of 2001 and that such immovable property did not stand vested in the State of West Bengal either under the Act of 1981 or under the Act of 2001. Section 6 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 has specified the jurisdiction, power and authority of the Tribunal established thereunder. It has stipulated that, the Tribunal shall, with effect from such date as may be appointed by the State in the notification on that behalf exercise jurisdiction, power and authority, in relation to, inter alia, any order made by an authority under a Specified Act. Section 2(r) of the Act of 1997 has defined the Specified Act. It has included the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 therein as Clause (vii). The Act of 2001, therefore, is a Specified Act within the purview of the Act of 1997. Section 2(b) of the Act of 1997 has defined an Authority to mean an officer or authority or functionary exercising powers or discharging functions as such under a Specified Act.

15. The West Bengal Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010 has introduced various amendments to the Act of 2001. It has substituted sub-section (3) of Section 5 with effect from November 1, 2010. By such substitution, it has vested the Controller with the jurisdiction to decide the question as to whether a person is a thika tenant or not or whether the land in question is a thika tenant or not.

16. The issues that have been raised in the writ petition are such that they come within the purview of Section 5(3) of the Act of 2001. Subsequent to November 1, 2010 the Controller has the jurisdiction to decide the issues raised in the writ petition. The writ petition has however been pending since its filing in 2005 till the disposal of the same on August 10, 2018. The issue of maintainability of the writ petition had been kept open by the order dated December 20, 2005.

17. The order dated August 10, 2018 had decided the issue of maintainability of the writ petition on the basis of ***Amit Basu (supra)***. As has been noted above, ***Amit Basu (supra)*** has found a writ petition to be maintainable where a challenge was thrown to a tender notice by the District Land and Land Reforms Officer. In that case, the issues

involved in the writ petition were not within the purview of Section 5(3) of the Act of 2001.

18. In 2005, when the writ petition had been filed, the Controller was not vested with the jurisdiction to decide the issue as to whether a person is a thika tenant or whether a land in question is under thika tenancy or not. Such power has been vested with the Controller with effect from November 1, 2010. Nothing has been placed before the Court to suggest that, Section 5(3) of the Act, 2001 has retrospective effect. Section 21 of the Act of 2001 has barred the jurisdiction of the Civil Court to decide or to deal with any question or to determine any matter which is required to be or has been decided or dealt with by the Controller or the Appellate Authority. However, a statute cannot be read to mean that, the right of any citizen to approach a High Court under Article 226 of the Constitution stands extinguished. Section 21 is bar to Civil Court's jurisdiction and does not and cannot affect Article 226 of the Constitution of India. Existence of statutory alternative remedy is not an absolute bar to the maintainability of writ petition. When a statute provides an alternative remedy, the High Court exercises self-imposed restraint in entertaining writ petition on an issue which can be dealt with by a designated authority by statute to decide such issue. Notwithstanding

the existence of a statutory alternative remedy, a writ petition is maintainable for the enforcement of any fundamental right or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or where the vines of an Act is under challenge.

19. The right to approach a High Court under Article 226 of the Constitution of India, that is to say the power of judicial review vested in the High Courts, cannot be said to be abrogated or abridged by a statutory provision designating an alternative forum even if such remedy can be said to be effective and efficacious.

20. On the date, when the writ petition had been filed, the writ petitioner had two forai to ventilate the grievances. One was the Civil Court and the other the Writ Court. The petitioner had chosen to approach the writ Court. The introduction of Section 5(3) to the Act of 2001 by the Amendment Act of 2010 cannot be construed to denude the jurisdiction of the High Court under Article 226 over a subject governed by Section 5(3) of the Act of 2001 particularly when a writ petition over such issue was pending at the time of introduction of Section 5(3) into the Statute book.

21. As has been noted above, the writ petition had been pending since 2005 till August 10, 2018 when it was disposed of. The

provisions of the Act of 2001 as it stands today, does not permit the High court to remit the writ petition to the Controller for decision. The Act of 2001 has not provided for transfer of pending proceedings to a designated forum unlike, for example, the provisions of the Recovery of Debts due to Banks and Bankruptcy Act, 1993. The issue as to whether by virtue of Section 21 of the Act of 2001 pending suits become barred by law or not has not arisen for decision in the facts of the present case and therefore need not be decided. Since the writ petition has been pending for a long period of time, every endeavour should be made by the High Court to decide the issues raised on merits particularly when, it cannot be said that the High Court did not have the jurisdiction to entertain the writ petition as on the date of its filing and that, subsequent thereto the jurisdiction of the High Court stood denuded. It would not be in the interest of justice to exercise self imposed restraint and require the writ petitioner or IOCL to have the issue of thika tenancy decided by the Controller.

22. ***Lakshmimoni Das & Ors. (supra)*** has held that, only lands comprised in thika tenancy within the meaning of the Calcutta Thika Tenancy Act, 1949 comprising a Kuccha structure or a pucca structure constructed for residential purpose with the permission of the Controller under the Calcutta Thika Tenancy Act, 1949 and Khatal

land held under a lease shall vest in the State. Save and except those specified types, no other land and structure has vested in the State. In the facts of the present case, by a lease deed dated September 12, 1969, premises No. 151, Bidhan Sarani Kolkata had been demised to IOCL for a period of 21 years. IOCL has claimed that the land stands vested with the State as the lease was a thika tenancy and has stopped payment of the lease rentals consequent upon which, the writ petition was filed. In view of ***Lakshmimoni Das & Ors (supra)*** holding the field so far as thika tenancies are concerned, the subject premises cannot be said to be vested with the State under the Act of 2001 or the lease deed to be a thika tenancy.

23. In such circumstances, I find no merit in the review petition. RVW 157 of 2018 along with all connected applications are dismissed without any order as to costs. Department will note the disposal of the writ petition also.

[DEBANGSU BASAK, J.]