

08 **04.07.
2022**

Ct. No. 04

Ab

WPLRT 61 of 2022
Farida Begum and another
Vs.
The State of West Bengal and others.

**Mr. Bhaskar Prosad Banerjee,
Mr. Surendra Kumar Sharma.**
... for the petitioners

**Mr. Chandi Charan De,
Mr. Anirban Sarkar.**
... for the State.

**Mr. Supratim Dhar,
Mr. Dhananjay Nayak.**
... for the private respondent.

The instant writ petition arises from a judgment and order dated 11th February 2022 passed by the West Bengal Land Reforms and Tenancy Tribunal in OA 127 of 2010 (LRTT) by which the matter was remanded to the Thika Controller, Howrah to decide afresh.

The writ petitioners claimed to be the absolute owners and possessors of the suit property. It is a specific case of the writ petitioners that a lease was executed and registered on 24th December 1957 by their predecessor in favour of one Rosulan Bibi for a period of ten years as Thika Praja. The entry made in the RS Record of Right would also reveal that the said Rosulan Bibi was holding the property as Thika Praja. It is a specific case of the writ petitioners that after the expiry of the lease by efflux of time, the thika right was surrendered and the possession was handed over by the said lessee in favour of the predecessor in interest of the present writ petitioners.

Subsequently, a suit was filed before the Civil Court seeking declaration of title as well as correction of the Record of Right. The said suit was decreed ex parte and the title of the writ petitioners was declared and the correction was directed to be made in the Record of Right. It was categorically held that the property is not comprised in thika and, therefore, it does not come within the purview of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981. Such ex parte decree is still alive and has not been set aside in a validly instituted proceeding.

It is contended by the learned Advocate for the private respondent that a title suit being no. 49 of 2009 has been filed before the 3rd Court of learned Civil Judge (Junior Division), Howrah praying for decree of declaration that the ex parte decree passed in Title Suit No. 7 of 1991 is fraudulent, illegal and void one and, therefore, not binding upon the private respondent. The said suit is still pending.

The facts emanate from the respective pleadings leaves no ambiguity in our mind that the said ex parte decree passed in Title Suit No. 7 of 1991 is still operative and binding upon the parties unless the same is set aside by passing a decree in the later suit. Subsequently, an approach was made to the Thika Controller by the private respondent claiming his title by virtue of a Will executed by the alleged erstwhile lessee and the Thika Controller disposed of the proceeding directing the record to be corrected and declaring the status of the property as 'thika'.

It is beyond cavil of doubt that after promulgation of the Calcutta Thika Tenancy (Acquisition and Regulation)

Act, 1981, the power was not conferred upon the Thika Controller to declare the status of a person as thika tenant and, therefore, Civil Court's jurisdiction in this regard was not taken away. However, the position is changed after the repeal of the said Act of 1981 with the replacement of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001. Section 5(3) of the said Act bestowed power upon the Thika Controller to decide the dispute as to the status of a person in such capacity, which necessarily and/or impliedly excludes the jurisdiction of the Civil Court.

The decree passed by the Civil Court during the interregnum i.e. between the period when the Act of 1981 was in vogue and the period by which the same was replaced by the Act of 2001 cannot be termed to be bad or void as the jurisdiction of the Civil Court was impliedly excludes. Even an ex parte decree has its force akin to a contested decree unless set aside in a competent proceeding. The efficacy of the ex parte decree cannot be diminished having passed in absence of the defendant nor the decree passed on contest can be put at the higher pedestal than of the ex parte decree. There is no distinction assigned in the definition given to a decree under Section 2(2) of the Code of Civil Procedure and, therefore, the contention of the private respondent that the ex parte decree has no legal efficacy cannot be entertained.

Admittedly, the predecessor in interest of the present private respondent was a party in the said suit and, therefore, the decree passed therein, though ex parte, binds him and he cannot wriggle out from the same so long the same is operative, subsisting and has not been set aside in a validly instituted proceeding. The entry

made in the Record of Right has a presumptive value of possession but such presumption is not static or rigid and depends upon the rebuttal having shown thereto. The Record of Right is maintained for the purpose of collection of land revenue having no nexus or impact on the title of a person over the said property.

The entry made in the Record of Right can neither creates any title into a person nor extinguishes such right. The entry in the Record of Right cannot have an edge over the decree passed by the Civil Court having jurisdiction in this regard and, therefore, such erroneous recording does not create any right into the private respondent nor the authority should ignore the decree of the Civil Court by giving primacy to the entry made in the Record of Right over the decree of the Civil Court.

We do not find any justification in the observations of the Tribunal in remanding the matter to the Thika Controller to decide whether the private respondent is a thika tenant or the property is comprised in thika.

As indicated above, the power and jurisdiction of the Thika Controller was conferred when the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 was promulgated, which was conspicuously absent in Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981. It is no longer *res integra* that during subsistence of the Act of 1981, the Civil Court has jurisdiction to declare the status of a person and having declared so, it is not open even to a Thika Controller to controvert the same. The statutory authority is bound by the decree passed by the Civil Court so long it is operative, subsisting and in force.

We, thus, find that the Tribunal committed error in

remanding the matter to the Thika Controller for deciding the status of the private respondent or the property as thika by overlooking the decree of the competent Civil Court.

The order impugned is, thus, set aside. The order of the Thika Controller is also set aside.

The writ petition is, thus, disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)