

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
(Appellate Side)

M.A.T. 1212 of 2021

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I.A. No. CAN/1/2021

Indian Oil Corporation Limited

Vs.

Anchit Agarwal & Ors.

With

M.A.T 1230 of 2021

+

I.A. No. CAN 2 of 2021

Indian Oil Corporation Limited

Vs.

Anchit Agarwal & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Kausik Chanda

For the Appellants : Mr. Tilak Kumar Bose, Sr. Adv.
Ms. Vineeta Meharia, Adv.
Mr. Amit Meharia, Adv.
Mr. Puspendu Chakraborty, Adv.
Ms. Madhurima Halder, Adv.
Ms. Paramita Banerjee, Adv.
Ms. Subika Paul, Adv.
Ms. Amrita Das, Adv.

For the Respondent nos. 1 & 7 : Ms. Sutapa Sanyal, Adv.
Mr. Debrup Bhattacharya, Adv.
Mr. Tirthankar Dey, Adv.
Mr. Diptamoy Talukdar, Adv.
Mr. Sujit Bhunia, Adv.

For the U.O.I : Mr. Subit Majumdar, Adv.
Mr. Amit Kumar Roy, Adv.

For the State in (MAT 1212 of 2021)	: Mr. Amitesh Banerjee, Ld. Sr. Standing Counsel Mr. Suddhadev Adak, Adv.
For the State in (MAT 1230 of 2021)	: Mr. Md. T.M. Siddiqui, Adv. Mr. Nilotpal Chaterjee, Adv.
Heard On	: 21.01.2022, 27.01.2022, 23.02.2022, 03.03.2022, 04.03.2022, 10.03.2022, 14.03.2022, 20.05.2022, 06.06.2022
CAV On	: 13.06.2022
Judgment On	: 07.07.2022

Arijit Banerjee, J.:

1. MAT 1230/2021 is an appeal from the judgment and order dated August 10, 2018, whereby W.P. No. 17722(W) of 2005 was disposed of. M.A.T 1212 of 2021 is an appeal from the judgment and order dated September 3, 2021, whereby the application of the respondent no. 6 in the writ petition (appellant before us) for review of the judgment and order dated August 10, 2018, was dismissed. The two appeals were taken up for hearing together along with connected applications as they involve the same facts and points of law.

2. I propose to deal first with MAT 1230 of 2021.

In re: M.A.T. 1230 of 2021

3. The writ petitioner claims to be the owner of Premises No. 151, Bidhan Sarani, Kolkata (in short, 'the said premises').

4. In the year 2005, the writ petitioner filed W.P. No. 17722(W) of 2005 before a learned Single Judge of this Court. The writ petition contained several prayers. However, before the learned Single Judge, the writ petitioner gave up all prayers save and except prayer (a) as was recorded by the learned Single Judge by an order dated December 20, 2005. Prayer (a) of the said writ petition reads as follows:-

“a) A declaration be issued by this Hon’ble Court 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 said Act of 1981 or under the Act of 2001”.

5. The writ petition came up before the learned Single Judge on August 10, 2018. The learned Judge rejected the point of maintainability of the writ petition raised by the learned Advocate for the respondent no. 6 in the writ petitions (appellant before us). In doing so the learned Judge relied on a decision of this Court in the case of **Amit Basu v. The controller & Ors. Reported at (2014) 2 High Court Cases (Cal) 584 = 2014 (3) CHN (Cal) 89**. Having rejected the point of maintainability of the writ petition on the strength of the aforesaid decision, the learned Judge passed an order in terms of prayer (a) of the writ petition which has been extracted above, on the strength of the decision of a Special Bench of this Court in **Lakshmimoni Das & Ors v. State of West Bengal & Ors. Reported at 1987(2) CLJ 53**.

6. Being aggrieved, the respondent no. 6 in the writ petition (in short 'TOL') moved an application for review of the said judgment and order which was registered as RVW 157 of 2018. The review application was dismissed by a judgment and order dated September 3, 2021, which is the subject matter of challenge in the other appeal.

7. We have heard learned Advocates of the parties at length. The short point urged on behalf of the appellant is that the learned Single Judge did not have jurisdiction to entertain the writ petition in view of the provisions of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (in short 'the 1997 Act'). Mr. Tilak Bose, learned Senior Advocate appearing for the appellant drew our attention to various provisions of the 1997 Act and in particular Sections 6, 7 and 8 thereof which read as follows:-

“6. Jurisdiction, power and authority of Tribunal.- Subject to the other provisions of this Act, the Tribunal shall, with effect from such date as may be appointed by the State Government by notification in this behalf, exercise jurisdiction, power and authority in relation to-

- (a) ¹[any order] made by an Authority under a specified Act;
- (b) an application complaining inaction or culpable negligence of any Authority under a specified Act;
- (c) an appeal against an order of the Mines Tribunal appointed under Section 36 of the West Bengal Estates Acquisition Act, 1953;

²[(d) applications relating to matters under any provision of a specified Act or matters relating to any constitutional validity of any Act under the provisions of a specified Act;]

(e) adjudication of matters, proceedings, cases and appeals which stand transferred from the High Court and other Authorities to the Tribunal in accordance with the provisions of the Act.

1. Substituted by the West Bengal Act 7 of 2001 for “an order in original” (w.r.e.f 3.8.1998).

2. Substituted, *ibid* (w.r.e.f. 3.8.1998) for the following:

“(d) adjudication of disputes and applications relating to matters under any provisions of a specified Act involving interpretation of any provision of the Constitution or of validity of a specified Act or of any other law for the time being in force;”.

7. Exercise by Tribunal of jurisdictions, power and authority

exercisable by Court.- Save as otherwise expressly provided in this Act, the Tribunal shall, with effect from the date appointed by the State Government under Section 6, exercise all the jurisdiction power and authority exercisable immediately before that day by any Court including the High Court, except the writ jurisdiction under Articles 226 and 227 of the Constitution exercised by a Division Bench of the High Court, but excluding the Supreme Court, for adjudication or trial of disputes and applications

relating to land reforms and matters connected therewith or incidental thereto and other matters arising out of any provision of a specified Act.

8. Exclusion of jurisdiction of Courts.- On and from the date from which jurisdiction, power and authority become exercisable under this Act by the Tribunal, the High Court, except where that Court exercises writ jurisdiction under Articles 226 and 227 of the Constitution by a Division Bench, or any civil Court, except the Supreme Court, shall not entertain any proceeding or application or exercise any jurisdiction, power or authority in relation to adjudication or trial of disputes or applications relating to and reforms or any matter connected therewith or incidental thereto or any other matter under any provision of a specified Act.”

8. Mr. Bose submitted that upon the 1997 Act coming into force, all courts excepting the Supreme Court and the High Court’s Division Bench exercising writ jurisdiction under Articles 226 and 227 of the Constitution, lost jurisdiction to entertain any matter touching the provisions of a “specified Act”. Specified Act has been defined in Section 2(r) of the 1997 Act. The West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (in short the ‘2001 Thika Act’) is one of the Acts specified in Section 2(r) of the 1997 Act. Mr. Bose argued that since the writ petitioner was seeking a declaration that the said premises does not come within the purview of the 2001 Thika Act and does not stand vested in the State of West Bengal either under the Calcutta Thika Tenancy Act, 1981 or the 2001 Thika Act, the Single Judge of the High Court could not have entertained the writ petition.

The West Bengal Land Reforms and Tenancy Tribunal (in short 'the Tribunal') had exclusive jurisdiction to entertain the writ petitioner's grievance.

9. Mr. Bose relied on the decision of the Hon'ble Supreme Court in the case of ***State of West Bengal v. Ashish Kumar Roy & Ors reported at (2005) 10 SCC 110***. However, it may not be necessary to refer to the said judgment for the purpose of deciding the present appeal.

10. Mr. Bose relied on the decision of the seven Judge bench of the Hon'ble Supreme Court in the case of ***L Chandra Kumar v. Union of the India 1997(3) SCC 261*** and submitted that the Tribunals within the meaning of Articles 323A and 323B of the Constitution of India are meant to Act as Courts of first instance in respect of matters specified in the statute under which the Tribunals have been constituted and the High Court (except a Division Bench exercising jurisdiction under Articles 226/227 of the Constitution) lacks the jurisdiction to decide such matters.

Learned Senior Counsel further submitted that an earlier writ petition filed by the respondent no. 1/ writ petitioner being C.R no. 3201 of 1981 in respect of the same property stood transferred to the learned Tribunal after the 1997 Act came into effect.

11. Learned Advocate for the writ petitioner / respondent naturally supported the impugned order. She submitted that the decisions of this Court in ***Jatadhari Daw & Grandsons v. Smt. Radha Debi & Anr. (1986) 1 CHN 21; Lakshmimoni Das etc. (supra) and Amit Basu v.***

Controller (*supra*), make it clear that land on which a petrol pump operates, is not a thika land and does not come within the purview of the 1981 Calcutta Thika Tenancy Act or the 2001 Thika Act. Consequently, such land did not vest in the State under either of the said two Acts. Hence, the learned Single Judge rightly allowed prayer (a) of the writ petition.

12. Ms. Sanyal further submitted that the writ jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India cannot be ousted by any statute. The Thika Controller was vested with the power of deciding the question as to whether or not a person is a Thika Tenant or whether or not a particular land is Thika land, by the amended sub-section 3 of Section 5 of the 2001 Thika Act which came into force on November 1, 2010. Prior to November 1, 2010, the Thika Controller had no jurisdiction to decide whether or not a particular land was Thika land. In 2005, when the present writ petition was filed, the Thika Controller did not have power to decide that question. The writ petitioner had to choose between a Civil Suit or a writ application and he chose the later. She submitted that the learned Single Judge had the jurisdiction to pass an order declaring that the petitioner's land was not Thika land.

13. Learned Counsel submitted that the appellant has no *locus standi* to maintain the present appeal. If anybody could be aggrieved by the order of the learned Single Judge, it would be the State. The State has not preferred any appeal and has accepted the order impugned in this appeal. Hence, the appeal should be dismissed.

14. I have considered the rival contentions of the parties.

15. The appellant has assailed the order of the learned Single Judge on the sole ground that the learned Judge lacked jurisdiction to entertain the writ petition on which the impugned order was passed. No argument was advanced by the appellant on the merits of the case as to whether or not the writ petitioner was entitled to an order in terms of prayer (a) of the writ petition. Learned Advocate for the writ petitioner tried to justify the impugned order on merits. We are not inclined to nor do we find it necessary to go into the merits of the writ petitioner's claim since we are of the view that the learned Judge did not have jurisdiction to entertain the writ petition, for the reasons indicated hereinafter.

16. The Constitution of India is the mother of all laws. Article 323-A of the Constitution contemplates constitution of Administrative Tribunals by the Parliament for adjudication of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the Territory of India or under the control of the Government of India or of any Corporation owned or controlled by the Government. Article 323-B of the Constitution provides for constitution of tribunals for other matters. Article 323-B(1) says that the appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints or offences with respect to all or any of the matters specified in Clause (2) with respect to which such Legislature has power to make laws. In the Explanation at the end of Article 323-B it is clarified that

in that article, “appropriate Legislature”, in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of Part XI of the Constitution. The matters specified in clause (2) of Article 323-B include rent, its regulation and control and tenancy issues including the right, title and interest of landlords and tenants. This is provided in sub-clause (h) under clause (2) of Article 323B, which was inserted by Section 2 of the Constitution (75th Amendment) Act 1993 with effect from May 15, 1994. It may be noted that Clause (3) of Article 323-B says that a law made under Clause (1) may- (a) provide for the establishment of a hierarchy of tribunals; (b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals; (c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals; (d) exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136 with respect to all or any of the matters falling within the jurisdiction of the said tribunals; (e) provide for the transfer to each such tribunal of any case pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment; (f) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals. Clause 4 of

Article 323B is a non-obstante clause which says that “the provisions of this Article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

17. It was in exercise of the power under Article 323B of the Constitution that West Bengal legislature promulgated the West Bengal Land Reforms and Tenancy Tribunal Act, 1997. The preamble to the said Act reads as follows:-

“An Act to provide for the setting up of a Land Reforms and Tenancy Tribunal in pursuance of Article 323B of the Constitution of India and for the adjudication and trial by such Tribunal of disputes, claims, objections and applications relating to, or arising out of, land reforms or tenancy in land and other matters under a specified Act and for matters connected therewith or incidental thereto.

Whereas it is expedient to provide for the setting up of a Land Reforms and Tenancy Tribunal and for adjudication and trial by such Tribunal of disputes, claims, objections and applications relating to, or arising out of, land reforms or tenancy in land and other matters under a specified Act and **for the exclusion of the jurisdiction of all courts except a Division Bench of the High Court exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India and the Supreme Court of India** in adjudication and trial of such disputes, claims, objections and

applications and for matters connected therewith or incidental thereto.” [Emphasis is mine].

18. The Preamble to the said Act makes the object of the Act amply clear which was to set up a tribunal for adjudication of disputes touching the provisions of a “specified Act” and for exclusion of the jurisdiction of all Courts excepting the Supreme Court of India and a Division Bench of the High Court exercising jurisdiction under Articles 226 and 227 of the Constitution, in respect of such disputes. Sections 6, 7 and 8 of the said Act have been set out hereinabove. Section 6 defines the jurisdiction, power and authority of the tribunal which would include the power to entertain applications relating to matters under any provision of a specified Act or matters relating to the constitutional validity of any provision of a “specified Act”. Initially the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 was included within the meaning of “specified Act”. By the West Bengal Land Reforms and Tenancy Tribunal (Amendment) Act 2005, with effect from March 1, 2005, the Calcutta Thika Tenancy (Acquisition and Regulation) Act 1981 was omitted and the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 was inserted in Section 2(r) of the 1997 Act.

19. Section 7 of the Act specifically provides that for adjudication or trial of disputes relating to land reforms and other matters arising out of any provision of a specified Act, the Tribunal shall exercise all the jurisdiction, power and authority exercisable immediately before the appointed date by any Court including the High Court except the writ jurisdiction under

Articles 226 and 227 of the Constitution exercised by a Division Bench of the High Court and excluding the Supreme Court. Section 8 of the Act ousts the jurisdiction of all Courts excepting the Division Bench of the High Court exercising jurisdiction under Articles 226 and 227 of the Constitution and the Supreme Court, in respect of matters which are covered by the tribunal's jurisdiction.

20. Before proceeding further, it may be noted that a challenge to the Constitutional validity of sub-clause (d) of Clause (2) of Article 323-A and sub-clause (d) of Clause (3) of Article 323-B of the Constitution, on the ground, that those sub-clauses totally exclude the jurisdiction of 'all courts' except that of the Supreme Court under Article 136 in respect of disputes referred to in Clause (1) of Article 323A or with regard to all or any of the matters specified in Clause (2) of Article 323B, reached the Hon'ble Supreme Court in the Case of ***L. Chandra Kumar v. Union of India (supra)***. The Supreme Court formulated the following issues:-

“(1) Whether the power conferred upon Parliament or the State Legislatures, as the case may be, by sub-clause (d) of Clause (2) of Article 323-A or by sub-clause (d) of clause (3) of Article 323-B of the Constitution, to totally exclude the jurisdiction of 'all courts', except that of the Supreme Court under Article 136, in respect of disputes and complaints referred to in Clause (1) of Article 323-A or with regard to all or any of the matters specified in clause (2) of Article 323-B, runs counter to the power of judicial review

conferred on the High Courts under Articles 226/227 and on the Supreme Court under Article 32 of the Constitution?

(2) Whether the Tribunals, constituted either under Article 323-A or under Article 323-B of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?

(3) Whether these Tribunals, as they are functioning at present, can be said to be effective substitutes for the High Courts in discharging the power of judicial review? If not, what are the changes required to make them conform to their founding objectives?”

21. The aforesaid issues were answered by the Hon’ble Supreme Court in paragraph 99 of the reported judgment which reads as follows:-

“99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323-A and Clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic

structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. **It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.** Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

22. ***In State of West Bengal v. Asis Kumar Roy (supra)*** the Supreme Court clarified that the observations in Paragraph 99 of the reported judgment in ***L. Chandra Kumar’s case (supra)*** amount to ‘law declared’ within the meaning of Article 141 of the Constitution. The Supreme Court also negated the contention raised by the respondent before it that the West

Bengal Land Reforms and Tenancy Tribunal, is not a tribunal within the meaning of Article 323-B of the Constitution.

23. What indubitably follows from the above discussion is that for adjudication of any dispute which touches any provision of a 'specified Act', one must approach the tribunal at the first instance and all other civil Courts including the High Court excepting the Division Bench exercising writ jurisdiction under Articles 226/227 of the Constitution, have lost the power and jurisdiction to entertain such dispute. The prayers made in the writ petition were as follows:-

“a) A declaration be issued by this Hon'ble Court 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 said Act of 1981 or under the Act of 2001;

B) Declaration that Section 4 of the West Bengal Land Reforms and Tenancy Tribunal Act. 1997 which allows the State Government to retain executive control over the judiciary is ultra vires the Constitution of India.

C) In the alternative, a declaration be issued that the West Bengal Thika Tenancy (Acquisition & Regulation) Act, 2001 and its various provisions are ultra vires the Constitution;

d) Appropriate writs in the nature of declaration be issued declaring Sections 2 (b) 2 (7) and 2 (14) West Bengal Thika

Tenancy (Acquisition & Regulation) Act, 2001 are *ultra vires* the Constitution of India by striking down the same;

e) Appropriate writs in the nature of declaration be issued declaring Section 4 of the Act as *ultra vires* the Constitution of India by striking down the same;

f) Declaration to the effect that Sections 7, 25, 26 & 27 of the Act of 2001 are *ultra vires* the Constitution of India and are liable to be struck down;

g) A writ and/or writs in the nature of mandamus do issue commanding and/or directing the respondents and specially the respondent no. 6 to disclose the amount of rent deposited by them with the Controller appointed under the Calcutta Thika Tenancy (Acquisition & Regulation) Act, 1981 and to pay balance amount of rent due and payable in terms of the indenture of Lease to the petitioner directly and on failure to show cause or to show sufficient cause the Rule to be made herein be made absolute;

h) A writ and/or writs in the nature of mandamus do issue commanding and directing the respondents and each of them to show cause or to show sufficient cause as to why the respondent no. 5 being the Controller appointed under the Calcutta Thika Tenancy (Acquisition & Regulation) Act, 1981 and all amendments made thereunder should not be directed to pay the rent received by him in terms of the indenture of lease in respect of premises no.

151, Bidhan Sarani, Kolkata with accrued interest thereon @ 12% p.a. to the petitioner and on failure to show cause or to show sufficient cause rule to be made herein be made absolute;

i) A writ or writs in the nature of mandamus do issue commanding and/or directing the respondents to show cause or to show sufficient cause as to why they should not be directed to go on paying lease rent in respect of premises no. 151, Bidhan Sarani, Kolkata to the petitioner month by month and on failure to show cause or to show sufficient cause rule to be made herein be made absolute;

j) A writ or writs in the nature of mandamus do issue commanding and/or directing the respondent no. 6 to pay the arrears of Corporation Tax which is outstanding with interest accrued thereon and also to pay all dues of the Corporation tax, municipal taxes and rats, whatsoever in Future in accordance with the Lease agreement in respect of Premises no. 151, Bidhan Sarani, Kolkata;

k) A writ or writs in the nature of Certiorari commanding and directing the respondents to certify and transmit the records relating to the matter for conscionable justice;

i) Declaration that the provisions of the West Bengal Thika Tenancy (Acquisition & Regulation) Act 2001 which permits the state Government to appoint a Controller from the Officer of the Indian Administrative Service and the West Bengal Civil Service

[Executive] without any fixed tenure be declared ultra vires null and void;

m) Declaration that Sections 2, 5, 8, 9, 10, 11, 13, 14 and 21 of the West Bengal Thika Tenancy (Acquisition & Regulation) Act, 2001 is ultra vires the Constitution of India;

n) Declaration that Section 4 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 which allows the State Government to retain executive control over the judiciary is ultra vires the Constitution of India;

o) Direction upon the State Government to appoint a Controller from the West Bengal Higher Judicial Service with a fixed tenure in office and such appointment be made in consultation with the Hon'ble Chief Justice of the Hon'ble High court at Calcutta;

p) Rule NISI in terms of prayers above;

q) Rules NISI be made absolute if no cause and/or insufficient cause is shown;

r) The Administrative member be restrained from taking any part of the judicial decision, making, adjudication of matters and/or from pronouncing any judgement and/or order;

s) Injunction restraining the Thika Controller from proceeding with or hearing or disposing of any matter before it;

t) Ad-interim order in terms of prayers above;

u) Costs of and incidental to this application be paid by the respondents;

v) Such further or other order or orders be made and direction or directions be given as to this Hon'ble Court may deem fit and proper.”

24. It will be seen that validity of various Sections of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 and the West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 were challenged as being *ultra vires* the Constitution of India. Both the aforesaid statutes are Acts specified in Section 2(r) of the 1997 Act. Hence, in our view, the writ petitioner ought to have approached the Land Tribunal as the jurisdiction of the learned Single Judge stood ousted for the reasons discussed above.

25. Perhaps in a desperate attempt to save the writ petition from being thrown out at the threshold on the ground of want of High Court's jurisdiction, the writ petitioner abandoned all prayers except prayer (a). However, in our view, the learned Single Judge did not have jurisdiction even to adjudicate the issue as to whether or not the premises in question stood or stands vested in the State of West Bengal under the 1981 Act or under the 2001 Act since such adjudication would also touch the provisions of a 'specified Act'.

26. It was argued on behalf of the writ petitioner that the decision in ***Jatadhari Daw (supra)*** and ***Lakshmimoni Das (supra)*** have made it clear

that land on which a petrol pump operates is not a Thika land and does not come within the purview of either the 1981 Thika Act or the 2001 Thika Act.

27. However, this is an argument on merits. The Tribunal has exclusive jurisdiction to decide, after considering the nature and character of the property in question and the decisions governing the field, whether or not the writ petitioner's property is a Thika property.

28. The point of locus standi argued by the respondent/ writ petitioner has no merit at all. The writ petitioner had impleaded the appellant herein as a respondent in the writ petition obviously because the appellant was claiming to be a Thika Tenant. The learned Single Judge by passing the impugned order has negated such contention of the appellant. Hence, the appellant is entitled to feel aggrieved and assail such order in appeal.

29. The learned Judge held the writ petition to be maintainable solely relying on the decision of a Division Bench of this Court in the case of **Amit Basu V. Controller (supra)**. The opening sentence of the judgment in that case makes it clear that the Division Bench was hearing a writ petition filed against a judgment and order of the Land Tribunal, in exercise of jurisdiction expressly saved by the relevant Sections of the 1997 Act. The issue as to whether or not a learned Single Judge has jurisdiction to entertain a writ petition touching the provisions of the Thika Act, was not there at all before that Division Bench.

30. In the result, this appeal succeeds. The judgment and order impugned in this appeal is set aside. This will not prevent the respondent/writ

petitioner from approaching the West Bengal Land Reforms and Tenancy Tribunal with the prayers that were made in the writ petition filed before the learned Single Judge.

31. M.A.T 1230 of 2021 with I.A. No. CAN/2/2021 is accordingly disposed of.

In re: M.A.T. 1212 of 2021

32. Since we have allowed MAT 1230 of 2021 holding that the parent order dated August 10, 2018, was bad in law as being without jurisdiction, we have to necessarily allow this appeal also holding that the order dated September 3, 2021, whereby the learned Single Judge dismissed the review petition is also bad in law.

33. M.A.T 1212 of 2021 with I.A. No. CAN/1/2021 is accordingly disposed of.

34. There will be no order as to costs.

35. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Arijit Banerjee, J.)

I agree.

(Kausik Chanda, J.)