

15 24.01.2022

Ct-08

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SA 262 of 2017
with
I.A No. CAN 1 of 2016 (Old CAN No. 3304 of 2016)
CAN 2 of 2019 (Old CAN No. 12065 of 2019)

Salauddin Chowdhury
Vs.
Yaqub Ali Khan & Ors.

Mr. Tanmoy Roy
... For the Appellant

Mr. Achinta Kumar Banerjee
Mr. Dipankar Ghosh
... For the K.M.C

Mr. Ayan Bodal
Mr. A. Basu
... For the K.M.C

We have heard the learned counsel appearing for the parties.

The appeal was allowed on the ground that the defendants have raised an issue before the trial court that the property is a thika tenanted property and by virtue of Section 21 of the **West Bengal Thika Tenancy (Acquisition and Requisition) Act, 2001** it has to be decided by the Thika Controller.

We feel that merely by raising a plea by a party the court would not decline to examine the documents and evidence and it is only after such examination if the court is of the view that there are facts strongly suggesting that the property could be a thika property may refer the dispute to the Thika Controller for final adjudication. The onus is on the party who alleges ouster of jurisdiction. [See. **Hooghly Building and Investment Co. Ltd. vs. Janab Syed Asghar Hussain Ismail** reported in **2015 (1) CLJ (Cal) 107, Suchita Ruia and Ors. Vs. Vikash**

Fabrics Pvt. Ltd. and Ors. reported in **2016(5) WBLR (Cal) 370**]. Alternatively, the court may adjourn the hearing of the lis and send the particular issue to the Thika Controller for a decision on merit.

In the instant case, the Kolkata Municipal Corporation did not produce any assessment roll. The assessment roll is vital evidence. Kolkata Municipal Corporation was made a party in this proceeding.

In view of the above, the matter is sent to the Thika Controller under the **West Bengal Thika Tenancy (Acquisition and Requisition) Act, 2001** to decide within two months from date whether the property in question is a thika property and after such decision is taken, the record of the said proceeding should be sent to the court of the Additional District Judge, Sealdah, within two weeks thereafter for a final decision on the merits of the appeal.

The appeal shall be heard afresh on such findings received from the Controller.

In the event, the Controller decides that it is a thika tenanted property, the impugned order shall revive and there may not be any necessity of final adjudication on this issue unless such decision is set aside in accordance with law.

With the above direction, the appeal and the applications being CAN 3304 of 2016 and CAN 12065 of 2019 are disposed of.

There will be no order as to costs.

(Uday Kumar ,J.)

(Soumen Sen, J.)

