

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

W.P.L.R.T. 22 of 2018

IA NO: CAN/1/2018 (Old No: CAN/4112/2018)

Ballav & Sawoo (Calcutta Properties) Pvt. Ltd. & ors.

VS.

The State of West Bengal & ors.

For the Petitioners : Mr. Sambhunath De,
Mr. B. K. Samanta

For the State : Mr. Chandi Charan De,
Mr. Supratim Dhar

For the respondent
no.4 : Mr. B. N. Ray,
Ms. Shetparna Ray

Hearing on : 15.06.2023

Judgment on : 15.06.2023

DEBANGSU BASAK, J.:-

1. The writ petition is directed against an order dated February 27, 2018 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. No.393 of 2010.

2. Learned advocate appearing for the writ petitioners submits that the learned Tribunal failed to appreciate that, the invocation of jurisdiction of the Controller, by the private respondent was without any basis. At that material point of time, the Controller did not possess requisite jurisdiction to decide as to whether or not the private respondent was a thika tenant and the land was a thika land. In support of such contention, he relies upon **2011(3) CHN (CAL) 534 (Sabita Rani Majilya vs. State of West Bengal)** and **2012(3) CHN 255 [Kolay Properties (P) Ltd. Vs. The State of West Bengal and ors.]**. He submits that, a Special Leave Petition was carried against **Kolay Properties (P) Ltd. (supra)** which was dismissed on merits by the Hon'ble Supreme Court on March 14, 2023. Therefore, according to him, the Controller erred in exercising jurisdiction which was not vested upon it in law. The Tribunal acted erroneously in returning a finding that the Controller acted within jurisdiction.

3. Learned advocate appearing for the writ petitioners submits that, none of the occupiers at the property concerned submitted any return with the Controller within the prescribed

time. They cannot be treated as thika tenants. Therefore, according to him, the land in question was not vested under the West Bengal Thika Tenancy (Acquisition and Regulation), Act, 2001.

4. Learned advocate appearing for the writ petitioners refers to the title to the immovable property. He submits that, initially, Calcutta Improvement Trust granted a lease in respect of the immovable property concerned to the predecessor-in-interest of the writ petitioners. Thereafter, Calcutta Improvement Trust conveyed the immovable property to the predecessor-in-interest of the writ petitioners. He points out that, there was a sanctioned plan in respect of the immovable property. The writ petitioners stepped into the shoes of the original owners.

5. Learned advocate for the writ petitioners submits that the respondent nos.4, 5 and 6 in the present writ petition did not submit any documents in support of their claim as 'bharatia' in respect of the immovable property. Moreover, the respondent nos.4, 5 and 6 submitted before the Officer-in-Charge, Cossipur Regional Office that, they were not in

possession of the immovable property. He relies upon the report of the Officer-in-Charge, Cossipur Regional Office in support of his contention of the absence of the private respondent in respect of the immovable property concerned.

6. Learned advocate appearing for the State submits that the immovable property concerned stood vested with the State initially under the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 1981 and subsequent thereto with the coming into effect of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 with effect from January 18, 1982. He submits that, thika land as defined under the Act of 2001 stood vested in view of Section 4 of the Act of 2001 with the State free from all encumbrances. He contends that land in question is a thika land. He refers to the contents of the report of the Officer-in-Charge, Cossipur Regional Office. He submits that, it would be apparent from the content of such report that, private respondents were inducted as 'bharatia' in respect of a land. Such 'bharatia' constructed structures on the land. The land as described in

such report fulfils the criteria of thika land described under the Act of 2001.

7. Learned advocate appearing for the respondent no.4 submits that, the respondent no.4 traces their right to occupy the property from Satish Chandra Ghosh. Respondent no.4 is out of the heirs of Satish Chandra Ghosh and requisite 'Form-A' was filed in 1984 with the appropriate authorities. Thereafter, in 2009, respondent no.4 approached the Controller for recording the respondent no.4 in respect of the thika tenant in terms of Section 5(3) of the Act of 2001.

8. First contention raised on behalf of the writ petitioners is the jurisdiction of the Controller to decide the issue as to whether of the respondent no.4 was a thika tenant in respect of the property concerned.

9. Section 5(3) of the Act of 2001 was amended with effect from November 1, 2010 by the West Bengal Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010. Prior to the amendment, Section 5(3) of the Act of 2001 was as follows:

“.....(3) if any question arises as to whether the person is a thika

tenant or not, the matter shall be decided by the Controller.”

10. In 2009 when respondent no.4 approached the Controller, he was guided by the unamended provision of Section 5(3) of the Act of 2001 as obtaining at that material point of time.

11. Construing Section 5(3) of the Act of 2001, as obtaining at that material point of time, it cannot be said that, the Controller was without jurisdiction to decide the issue as to whether or not, the respondent no.4 was a thika tenant.

12. Next issue is, according to us, whether or not the land in question can be said to be a thika land and therefore vested with the State under the provisions of the Act of 2001.

13. Thika tenancy was initially governed by the Act of 1981. The same was repealed and substituted by the Act of 2001.

14. In the Act of 2001, thika land is defined as follows:-

“Section 2(15) – “thika land”
means any land comprised in and appurtenant to, tenancies of thika tenant irrespective of the fact whether

there is any claim of such tenancy or not and includes open areas and roads on such land.”

15. Thika land takes into consideration tenancies of thika tenant. A thika tenant is designed in Section 2(14) of the Act of 2001 which is as follows:-

“2(14) “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 gift any structure including pucca structure, if any, on such land] for residential, manufacturing or business purpose, and includes the successors-in-interest of such persons but excludes any resident of a structure forfeited to the State under sub-section (2) of section 6 of this Act irrespective of the status, he may have enjoyed earlier;”

16. In our understanding, for a land to comprise as a thika land, there must be a thika tenancy in respect of such land. A thika tenant can erect or acquire by purchase or gift any structure including a pucca structure on such land.

17. The report of the Officer-in-Charge, Cossipur Regional Office of which, heavy reliance was placed on behalf of the writ petitioners, describes the land to be a thika land in view of all indices required for a land to become a thika land obtaining in the immovable property concerned.

18. **Sabita Rani Majilya (supra)** considered an order of the learned Tribunal relating to determination of a right of a thika tenant by the Thika Controller and mutation of the name and correction of the record of rights accordingly. In the facts of that case, the Court found that the proceedings for declaring the status as a thika tenant was initiated in the year 1982-83 and an adjudication was made by the Controller acting under the Act of 1981. Controller then, was without the jurisdiction to decide such an issue.

19. In the facts of the present case, the approach for declaring the respondent no.4 as thika tenant was made in

2009 when, the Act of 2001 was in operation of supersession of Act of 1981.

20. In **Kolay Properties (P) Ltd. (supra)**, the issue was whether a Thika Controller was empowered under the statute to decide title of a third person in respect of the property in question and to direct such third person to restore possession when such third person dispossessed the thika tenant. In such factual matrix, the High Court found that, the Controller erred in passing such an order with regard to a third party. Again, in the facts of the present case, respondent no.4 cannot be said to be a third party vis-à-vis the Act of 2001, when he appears from the report of the Officer-in-Charge, Cossipur Regional Office as also from the order of the Controller to be a thika tenant.

21. A Special Leave Petition against **Kolay Properties (P) Ltd. (supra)** was carried to the Hon'ble Supreme Court. Such petition for Special Leave to Appeal was disposed of by an order dated March 14, 2023, with the Hon'ble Supreme Court not finding any reason to interfere therein.

22. In the facts of the present case, the Original Application directed against the order of the Controller was dismissed. In view of the discussions recorded above, we find no reason to interfere with the impugned order.

23. **W.P.L.R.T. 22 of 2018** along with IA NO: CAN/1/2018 (Old No: CAN/4112/2018) are **disposed of**.

24. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

25. I agree.

(Md. Shabbar Rashidi, J.)