

Dd 10 27.09.2023

WPLRT 68 of 2008

***Sri Sumit Kumar Das & Ors.
Vs.
The State of West Bengal & Ors.***

*Syed Nurul Arefin,
Mr. Rajesh Kumar Shau, Advocates
... .. For the Petitioners*

*Mr. Soumitra Bandyopadhyay,
Mr. Aniruddha Sen, Advocates
... .. For the State*

*Mr. Bhagbat Chaudhuri,
Mr. Uttam Kr. Mondal, Advocates
.. ...For the respondent no. 3*

1. The writ petition is directed against an order dated December 19, 2007 passed by the West Bengal Land Reforms and Tenancy Tribunal in OA (P) No. 2409 of 2005 (LRTT).
2. By the impugned order, the Tribunal upheld the decision of the Thika Controller dated July 15, 2005 holding that Premises No. 46/13 S. N. Banerjee Road and Premises No. 46/14 S. N. Banerjee Road, Kolkata fall within the purview of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001.
3. Learned advocate appearing for the writ petitioners submits that, the State submitted a report dated September 11, 2023 before this Court which was taken on record on September 13, 2023. He draws the attention of the Court to such report. He submits that, the authorities claimed to initiate proceedings under the

Act of 2001 in respect of the premises concerned on the basis of Form-A. He points out that, Form-A did not bear any receipt of any official. Moreover, Form-A was not signed. He submits that, the Controller acting under the Act of 2001 recorded in his order dated July 15, 2005 that, the proceeding was taken up on receipt of complaint filed by M/s. Fox & Mondal by their letter dated October 15, 2004 and one Mr. P.N. Mondal by his letter dated December 30, 2004.

4. Learned advocate appearing for the writ petitioners submits that, M/s. Fox & Mondal, Advocates submitted that they did not lodge any complaint individually. They did so on the basis of their client Mr. P. N. Mondal. Consequently, they were deleted as a party respondent from the proceeding by an order dated September 13, 2023. Consequently, according to him, there was no complaint before the Thika Controller for him to assume jurisdiction.

5. Learned advocate appearing for the writ petitioners submits that, the original owner of the property was one Jagadish Chandra Saha. The writ petitioners purchased such properties from Jagadish Chandra Saha. At the time of purchase M/s. City Supply Agency of which, Mr. P. N. Mondal claims to be a partner was not in actual physical possession. A suit was filed seeking declaration that the petitioners were in possession of the two premises. The suit was subsequently withdrawn.

6. Learned advocate appearing for the writ petitioners submits that, under the provisions of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001, few ingredients are required to be satisfied. The first ingredient is that the land must be given on rent. The other ingredient is that ground

rent needs to be paid by the tenant and that the tenant should erect the structure after taking of the tenancy. In the facts of the present case, according to him, such ingredients were not satisfied. He refers to the documents produced before the Thika Controller. He submits that, all the documents produced are not original documents. Therefore, Thika Controller erred in basing his finding on documents which were suspect to arrive at the finding that the properties concerned were governed by the Act of 2001.

7. Learned advocate for the writ petitioners submits that, the writ petitioners moved the Tribunal by way of OA (P) No. 2409 of 2005 (LRTT) in which the impugned order was passed. He submits that, the Tribunal erred in concurring with the view expressed by the Thika Controller. He submits that, the foundational basis for returning a finding that the property comprised in the proceedings were governed by the Act of 2001 were absent. Therefore, such findings are incorrect.

8. Learned advocate for the State refers to the report submitted and submits that, the Thika Controller and Tribunal took into account the documents produced in the proceedings.

9. Learned advocate appearing for Mr. P. N. Mondal submits that, his client is a partner of M/s. City Supply Agency. Mr. P. N. Mondal was a bharatia under Ramdhani Shaw. He refers to the rent receipt issued in favour of the M/s. City Supply Agency and submits that the same establishes possession of M/s. City Supply Agency at the premises. Moreover, it establishes the ingredients under the Act of 2001 to hold that there was a thika tenancy at the premises concerned and

that the property comes under the purview of the Act of 2001.

10. Learned advocate appearing for Mr. P. N. Mondal draws the attention of the Court to the report submitted on behalf of the State. He submits that, an inspection was carried by the Kolkata Municipal Corporation where Kolkata Municipal Corporation noted that the Shaws were the tenants under the Saha and that M/s. City Supply Agency was a bharatia under the Shaw. Consequently, again, he submits ingredients under the Act of 2001 stood satisfied.

11. The writ petition is directed against an order dated December 19, 2007 of the West Bengal Land Reforms and Tenancy Tribunal. The Tribunal, concurring with the view of the Thika Controller as recorded in its order dated July 15, 2005 that, the two premises concerned come under the purview of the Act of 2001.

12. Both the Thika Controller as well as Tribunal took into account various documents to arrive at the finding that the two premises concerned were governed by the Act of 2001.

13. We considered such documents which were made available by the report of the State. Such documents show that, Form-'A' albeit a photocopy thereof was available in the records of the Thika Controller, filed on September 13, 1982, in respect of the premises concerned. The Form-'A' was filed by the sons of Ramdhani Shaw. Sons of Ramdhani Shaw had submitted ground rent to the State Government as appearing from the deposit challans. Vouchers were issued by M/s. City Supply Agency in favour of the sons of Ramdhani Shaw and that there is a revenue receipt

with a signature thereon claiming receipt of the money claimed to be paid as rent.

14. It is the contention of the writ petitioners that the deposit challan for ground rent contains an endorsement that the acceptance was provisional and subject to verification of tenancy.

15. The deposit was made under the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 on July 15, 1985 when the adjudication of the vesting was not completed.

16. Therefore, there are documents to show that City Supply Agency was a bharatia under the Shaws. That apart, there is an inspection book of the Kolkata Municipal Corporation which records that, the Shaws were the tenants under the Saha and that M/s. City Supply Agency was a bharatia under the Shaws. The inspection book of the Kolkata Municipal Corporation contained such noting. It was made a third party.

17. The materials on record corroborate each other and allow the inference of thika tenancy in respect of the premises concerned.

18. Mr. P. N. Mondal was being represented by M/s. Fox and Mondal, Advocates at that material point of time before the Thika Controller. M/s. Fox and Mondal acting as Advocates addressed letters to the Thika Controller. There was a Form-'A' in the records of the Thika Controller and the complaint of Mr. P. N. Mondal at the material point of time. Therefore, it cannot be said that the Thika Controller acted in without jurisdiction in deciding the issue of the thika tenancy.

19. That apart, we find no reason to interfere with the concurrent findings of facts of two fact finding

authorities, in absence of a conclusive evidence being produced to negate return of such findings.

20. Therefore, it stands established that, Jagadish Chandra Saha let out the two properties to the Shaws who in turn, inducted M/s. City Supply Agency as bharatia.

21. There are materials on record to establish that structures were erected at the premises. Given the nature of the business carried at the premises concerned, inference of structure is not impossible.

22. Therefore, we do not think it appropriate to overturn the concurring finding of facts by two fact finding authorities on the basis of the materials made available on record today. No material is produced before us to establish anything to the contrary.

23. In such circumstances, we find no merit in the present writ petition.

24. WPLRT 68 of 2008 is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)