

**IN THE HIGH COURT AT CALCUTTA
IN APPEAL FROM AN ORDER PASSED IN ITS
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

A.P.O. No. 76 of 2021

GA NO. 4 OF 2024

GA NO. 5 OF 2024

TILAK RATAN REALTORS PVT. LTD. & ANR.

VS.

THE KOLKATA MUNICIPAL CORPORATION & ORS.

For the Appellants : Mr. Anindya Kumar Mitra, Sr. Adv.
Mr. Sakya Sen, Adv.
Mr. Deepnath Roy Choudhury, Adv.
Mr. Tanay Agarwal, Adv.
Mr. Shivam Bhimsaria, Adv.
Ms. Akansha Singhania, Adv.

For the Respondent : Mr. Achintya Kumar Banerjee, Adv.
Ms. Era Ghose, Adv.

Hearing Concluded on : November 21, 2024,

Judgement on : December 12, 2024

DEBANGSU BASAK, J.:-

1. Appellants have assailed the judgement and order dated April 21, 2021 passed in WPO 579 of 2018, a writ petition filed by them.

2. By the impugned judgement and order dated April 21, 2021,

learned Single Judge has dismissed the writ petition of the appellants seeking mutation of a property as the owner thereof after

imposing costs of Rs. 25 lakhs to be paid by the appellants to the West Bengal State Legal Service Authority, Kolkata. Learned Single Judge has also directed the Registrar General of the High Court to initiate appropriate proceedings under Section 340 of the Code of Criminal Procedure, 1973 against the appellants.

3. Learned Senior Advocate appearing on behalf of the appellants has contended that, the appellants approached the High Court by way of a writ petition complaining of inaction on the part of the Kolkata Municipal Corporation (KMC) in not mutating the name of the appellant No. 1 as the owner of premises No. 15A, Armenian Street, Kolkata – 700001. He has referred to Section 183 of the Kolkata Municipal Corporation Act, 1980 and contended that, such provision makes it obligatory for the Municipal Commissioner to mutate the name of the purchaser. He has referred to the list of dates on the basis of which he has contended that, appellant No. 1 became the owner of the subject premises by virtue of a registered deed of conveyance.

4. Learned Senior Advocate appearing for the appellants has contended that, the KMC authorities as well as the Thika Controller had filed affidavits in the writ petition. In their affidavits such authorities had disclosed Misc. Case No. 26 of 2009 wherein, the

Thika Controller held that the subject property was a Khatal and therefore vested with the State.

5. Learned Senior Advocate appearing for the appellants has drawn the attention of the Court to the order of the Thika Controller dated January 28, 2011. He has contended that, the Thika Controller was approached for the purpose of declaring Thika Tenancy. In such proceedings it was nobody's case that, the subject land was a khatal. He has contended that, after the Thika Controller held that the land was not a thika land he ceased to have jurisdiction in Misc Case No. 26 of 2009 and could not have embarked upon an enquiry as to whether the subject land was Khatal or not.

6. Learned Senior Advocate appearing for the appellants has contended that, the order dated January 28, 2011 of the Thika Controller is null and void. He has contended that, learned Single Judge did not deal with the contention that the order of the Thika Controller was without jurisdiction. According to him, the authenticity of the certified copy of the order dated January 28, 2011 is doubtful since by a letter dated January 10, 2018 Thika Controller had confirmed that the original records of the subject premises were not presently available at his office. Since the original case records of the subject premises was not available at the office of the Thika

Controller , a copy of the order dated January 28, 2011 could not have been made over by the Special Revenue Officer on December 10, 2018. The original order dated January 28, 2011 was not produced but a copy thereof which had been certified to be a true copy by a Special Revenue Officer was produced. He has contended that, the original order dated January 2, 2011 of the Thika Controller should be directed to be produced in Court.

7. Learned Senior Advocate appearing for the appellants has submitted that, the writ petition was dismissed with costs assessed at Rs. 25 lakhs on the ground that the appellants suppressed the order dated January 28, 2011. He has contended that, in the facts and circumstances of the present case, question of suppression of the certificate of such order does not arise.

8. Learned Senior Advocate appearing for the appellants has contended that, the order of the Thika Controller was without jurisdiction. He has pointed out that written notes of arguments were submitted before the learned Single Judge where the issue of jurisdiction of the Thika Controller was raised. He has referred to Section 5(3) of the the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 and contended that, Thika Controller has no jurisdiction to decide any question of existence of Khatal. He has relied upon ***All India Reporter 1968 Supreme Court 1186 (State***

of Madhya Pradesh and Others vs. Sardar D.K. Jadav) in such context.

9. Learned Senior Advocate appearing for the appellants has contended that, when jurisdiction is dependent upon the existence of a fact, such jurisdictional fact is required to be decided first.

10. Relying upon **All India Reporter 1965 Supreme Court 338 (Sri Athmanathaswami Devasthanam vs. K. Gopalaswami Ayyangar)** learned Senior Advocate appearing for the appellant has contended that, a Court or a Tribunal having no jurisdiction over the litigation cannot decide any question on merit. According to him, Thika Controller has no jurisdiction to decide the question as to whether subject premises was a Khatal or not. According to him, Thika Controller having held that the subject premises was not a Thika land, he ceased to have any jurisdiction to decide whether such land was a Bastu or a Karkhana or Khatal. In support of such contention, he has relied upon **2007 Volume 8 Supreme Court Cases 559 (Carona Ltd. Vs. Parvathy Swaminathan & Sons)**. Relying on **All India Reporter 1954 Supreme Court 340 (Kiran Singh and Others vs. Chaman Paswan and Others)** he has contended that, any order without jurisdiction is a nullity and such contentions can be set up whenever such order is sought to be relied upon.

11. Learned Senior Advocate appearing for the appellants has contended that, in Misc Case No. 26 of 2009 the only question therein was whether the claimants were thika tenants in respect of premises No. 15 A/H-2, 3, 4 and 5 Armenian Street and 15 B, Armenian Street or not. He has pointed out that such claimants did not make any claim that the setup was Khatal at such premises or that, such premises contained any Khatal. Since the only controversy was whether, such premises was a Thika Tenancy or not, on the Thika Controller finding that the premises was not a Thika land, he lost jurisdiction over the subject matter. He has relied upon **2015 Volume 6 Supreme Court Cases 412 (Foreshore Cooperative Housing Society Limited vs. Praveen D. Desai)** in support of his contentions.

12. Relying upon **2018 Volume 11 Supreme Court Cases 652 (Shivaji Balaram Haibatti vs. Avinash Maruthi Pawar)** learned Senior Advocate appearing for the appellants has contended that, no judicial forum can make out a new case and make findings dehors the pleadings of the parties. According to him, none of the parties had raised a claim that the subject premises was Khatal.

13. Learned Senior Advocate appearing for the appellants has contended that, subject land cannot be classified as a Khatal in view of the subject land not satisfying all the three conditions required to

make the subject land a Khatal within the meaning of the Act of 2001. He has referred to section 2 (5) of the Act of 2001 in support of such contention. He has contended that, inspection book of the municipal corporation is not a document admissible as evidence and could not be relied upon by the Thika Controller . He has relied upon **2011 Volume 2 Calcutta High Court Notes 36 (Padrone Marketing vs. Controller of Thika Tenancy)** in support of his contention.

14. Learned Senior Advocate appearing for the appellants has contended that, the entirety of the premises must be a Thika land or a Khatal for it to vest in the State under the Act of 2001. He has contended that, in the instant case, only 4 out of 8 huts had been held to be Khatal without any finding as to the balance. He has relied upon **2001 Volume 3 Calcutta High Court Notes 641 (Sri Sri Satyanarayan & Ors. Vs. S.C. Chunder)** and **2014 Volume 2 Calcutta Law Journal 401 (Amit Basu vs. The Controller & Others)** in support of his contentions.

15. Learned Senior Advocate appearing for the appellants has contended that, the existence of Khatal was not established before the Thika Controller . He has referred to the order of the Thika Controller in this regard. He has submitted that, no license to run a Khatal was obtained from the police authorities. Physical inspection

by the enquiry officer that had been disclosed in such proceedings do not satisfy the conditions for bringing the said premises within the purview of Khatal as defined in the Act of 2001. He has drawn the attention of the Court to the deed of conveyance dated June 14, 2018 and in particular to the schedule therein which does not describe such premises as a Khatal.

16. Learned Senior Advocate appearing for the appellants has contended that, the order of the Thika Controller is vague and uncertain and cannot be made certain. He has contended that there is no positive finding that the subject premises is a Khatal.

17. Relying upon **2010 Volume 3 Supreme Court Cases 732 (Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and Others)** learned Senior Advocate appearing for the appellants has contended that, the finding of the learned Single Judge that, no jurisdictional error was committed by the Thika Controller in passing the order was unreasoned and therefore a nullity.

18. Learned Senior Advocate appearing for the appellants has contended that, his clients did not suppress the order dated January 28, 2011. Learned Single Judge has not found that such order was served or received by the appellants or that the appellants were aware of such order. He has contended that the Kolkata Municipal

Corporation Assessment Register which record private ownership of the premises as Bustee and not as Khatal is not referred to in the order of the Thika Controller dated January 20, 2011. No return showing that the land is a Khatal had been filed by any person. No order had been obtained by the appellants by suppression of the order dated January 28, 2011. No fraud having been committed on Court, the writ petition could not have been dismissed.

19. Learned Senior Advocate appearing for the appellants has contended that, in **2008 Volume 12 Supreme Court Cases 481 (K.D. Sharma vs. Steel Authority of India Limited)**, **2010 Volume 2 Supreme Court Cases 114 (Dalip Singh vs. State of Uttar Pradesh and Others)**, **2007 Volume 4 Supreme Court cases 221(A. V. Papayya Sastry and Others)**, and **1994 Volume 1 Supreme Court Cases 1 (S. P. Chengalvaraya Naidu vs. Jagannath)** the parties therein had obtained orders by fraud. The ratio laid down therein had been incorrectly applied by the learned Single Judge.

20. Learned Senior Advocate appearing for the appellants has contended that, in the facts and circumstances of the present case, the Court was not misled by nondisclosure of the order dated November 28, 2011 by the appellants. When the writ petition had

come for final hearing, all papers and materials were placed before the learned Single Judge.

21. Relying upon ***All India Reporter 1954 Supreme Court 340 (Kiran Singh and Others vs. Chaman Paswan and Others)*** learned Senior Advocate appearing for the appellants has contended that, the question of an order being without jurisdiction can be taken at any time when confronted with such order.

22. Learned Advocate appearing for KMC has contended that, premises No. 15, Armenian Street was divided into premises No. 15 A, and 15 B, Armenian Street. He has pointed out that the appellants claim that the appellant No. 1 purchased premises No. 15 A, Armenian Street and approached KMC for mutation of its name. KMC had required clearance of such premises from the authorities under the Thika Tenancy legislation. He has pointed out that, assessment records maintained by KMC shows that several hut premises situated on the subject land have been assessed as Bustee.

23. Learned Advocate appearing for KMC has contended that, initially a letter was issued by the assessment department addressed to the Thika Controller to obtain information whether land bearing No. 15 A, Armenian Street was recorded as a Khatal or not. In response thereto, KMC had received a copy of the order dated December 30, 2016 from the appellants wherein it was stated that

such premises did not come within the purview of the Act of 2001. The appellants had also submitted a copy of the letter received by them under the Right to Information Act. KMC had also received a letter from the Thika Controller which stated that the original case records of the subject premises were not presently available and that the authenticity of the order passed by the Thika Controller could not be verified. Thereafter, KMC authorities had written several letters to the Thika Controller requesting for information as to whether the subject premises came within the purview of the Act of 2001 or not. Subsequently KMC had received a copy of the order dated January 28, 2011 passed in Misc. Case No. 26 of 2009 by the Thika Controller .

24. Learned Advocate appearing for KMC has contended that, it would appear from the order dated January 28, 2011 passed by the Thika Controller in Misc. Case No. 26 of 2009 that, the appellants were parties to such proceedings and appeared therein through their advocate. He has contended that, the appellants were well aware of the proceedings before the Thika Controller and had participated therein.

25. Learned Advocate appearing for KMC has referred to the order dated January 28, 2011. He has submitted that, the Thika Controller on conclusion of the proceedings in Misc. Case No. 26 of

2009 has observed that the subject premises vested in the State with effect from January 18, 1982 free from all encumbrances. Thika Controller had directed such order to be communicated to KMC. He has referred to the findings recorded in the order dated January 28, 2011 passed by the Thika Controller. He has submitted that, the subject land comes within the purview of a Khatal and the subject land was correctly observed to have been vested with the State. Consequently, the appellants cannot be said to be the owners of the subject land and have no right to mutation in respect thereof.

26. Learned Advocate appearing for the KMC has contended that, the order dated December 30, 2016 purportedly passed by the Thika Controller is unsigned and undated. The same is in conflict with the decision of the Thika Controller dated January 28, 2011. Case number in which such decision dated December 30, 2016 had been taken is not disclosed.

27. Learned Advocate appearing for KMC has contended that, since the appellants did not challenge the order dated January 28, 2011 passed by the Thika Controller, they should not be heard on such subject. In any event, as on the present date, challenge to the order dated January 20, 2011 passed by the Thika Controller is barred by limitation.

28. Learned Advocate appearing for the KMC has contended that, in the affidavit in opposition filed by KMC, the issue of the appellants deliberately suppressing the proceedings in the order passed in Misc. Case No. 26 of 2009 was raised. He has contended that, the appellants did not approach the writ court with clean hands.

29. Learned Advocate appearing for KMC has contended that, the appellants filed an application being GA No. 4 of 2024 for producing additional evidence. From the documents annexed to such application, the written objection on behalf of the objectors both of whom are directors of the appellant No. 1 filed before the Thika Controller in Misc. Case No. 26 of 2009 has been disclosed. Therefore, the appellants were aware of Misc. Case No. 26 of 2009 and had deliberately not brought such fact to the notice of the writ court in the writ petition.

30. Learned Advocate appearing for KMC has contended that, although, the appellants contended that they were not aware of the order dated the January 28, 2011 nonetheless, the claim in the writ petition is that such order was corrected, modified and rectified on December 30, 2016. According to him, such stand was contradiction in terms.

31. Learned Advocate appearing for KMC has relied upon ***All India Reporter 1987 Calcutta 326 (Lakshminoni Das and***

Others vs. State of West Bengal and Others) for the proposition that, Khatal would also stand vested under the Act of 2001, with the State.

32. On the issue of suppression of material facts, learned Advocate appearing for KMC has relied upon **2024 INSC 46 (*Kusha Duruka vs. The State of Odisha*), Civil Appeal No. 6169 of 2024, Civil Appeal No. 3821 (*Kanoria Energy and Infrastructure Limited vs. Avishek Gupta & Ors.*)** and **2024 Volume 8 Supreme Court Cases 712 (*Mahakali Sujatha vs. Branch Manager, Future Generali India Life Insurance Company Limited and Another*)**.

33. Learned Senior Advocate appearing for the appellants has distinguished the authorities cited on behalf of the KMC. He has contended that, none of the ratio of such authorities apply in the facts and circumstances of the present case.

34. On the basis of the rival contentions of the parties, the following issues have fallen for consideration in this appeal: –

- (i) is the order dated January 28, 2011 passed in Misc. Case No. 26 of 2009 a nullity ?
- (ii) are the appellants entitled to the relief of mutation as prayed for in the writ petition ?

(iii) were the appellants guilty of suppression of any material fact before the learned Single Judge ?

(iv) to what relief or reliefs are the parties entitled to ?

35. Appellant No. 1 has claimed ownership of premises No. 15 A, Armenian Street, Kolkata by virtue of the registered deed of conveyance dated June 14, 2008.

36. Appellants in the writ petition have claimed that, subsequent to the purchase, they approached KMC for mutation. KMC authorities have not decided the application for mutation finally. Appellants in their writ petition have claimed that, KMC authorities allegedly required clearance under the Thika Tenancy legislation. Accordingly, appellants had made searches in the office of the Thika Controller whereupon they came to learn of the order dated December 30, 2016 passed by the Thika Controller in respect of the subject premises. Appellants had applied for and obtained the certified copy of the order dated December 30, 2016. Appellants had also applied before the State Public information Officer of the Thika Controller by a letter dated February 6, 2018 to which a response dated February 27, 2018 was issued by which it was stated that, records of the subject premises were presently not available. Thereafter, appellants had written a letter dated March 5, 2018 to KMC authorities requesting for mutation. By a letter dated May 8,

2018, KMC authorities had enquired at the office of the Thika Controller as to the status of the subject premises.

37. Appellants have made both the KMC authorities as well as the Thika Controller party respondents in the writ petition that they filed which resulted in the impugned judgement and order. In such writ petition, KMC authorities as well as Thika Controller have stated that, the subject premises stood vested under the provisions of the Act of 2001. A proceeding being Misc Case No. 26 of 2009 under the provisions of the Act of 2001 was initiated in respect of the subject premises in which the Thika Controller has passed the order dated January 28, 2011.

38. Appellants have acknowledged that there was a proceeding under the Act of 2001 in respect of the subject premises being Misc. Case No. 26 of 2009 and that they had participated therein. After the order dated January 28, 2011 passed in Misc. Case No. 26 of 2009 was produced through affidavit filed on behalf of KMC authorities as well as the Thika Controller, the appellants have taken a stand in their affidavit in reply that, the manager of theirs who was dealing with the subject proceedings in respect of the subject land left his job and that, the director who was looking after it, lost track of the proceedings.

39. At the very least, that there was a proceeding under the Act of 2001 in respect of the subject land and that the appellants as well as the vendor of the property from whom the appellant No. 1 had purchased the subject land were represented in such proceeding is established. Such fact stands established, inter alia, from the contents of the order dated January 28, 2011 passed in Misc. Case No. 26 of 2009 as well as the affidavits filed by the appellants in the writ petition.

40. Thika Controller had initiated proceedings under the Act of 2001 being Misc. Case No. 26 of 2009 in respect of the subject land on the basis of requests made by occupants of such premises. Thika Controller had considered the materials placed before him in such proceedings and came to a finding that, although the subject land was not a Thika land and but nonetheless, it was a Khatal and therefore vested with the State under the Act of 2001.

41. Appellants despite participating in the proceedings which resulted in the order dated January 28, 2011 passed in Misc. Case No. 26 of 2009 have claimed that they were not aware of such order prior to the filing of the writ petition. They had however become aware of such order during the pendency of the writ petition when such order was produced both by the KMC authorities as well as by

the Thika Controller through affidavits filed on their behalf. Appellants had chosen not to assail such order.

42. Appellants have raised a point of authenticity with regard to the order dated January 28, 2011 passed in Misc. Case No. 26 of 2009. Certified copy of the order dated January 28, 2011 passed in Misc. Case No. 26 of 2009 had been produced by the KMC authorities before the learned Single Judge. Thika Controller who is a party to the writ petition has not disputed the authenticity of the order dated January 28, 2011 passed in Misc. Case No. 26 of 2009. The learned Single Judge has accepted the existence of the order dated January 28, 2011 passed in Misc. Case No. 26, 2009.

43. Appellants have relied upon the order dated December 30, 2016 claimed to be passed by the Thika Controller in respect of the subject premises. The order dated December 30, 2016 does not contain any case number in which the same had been passed. At least, it has not alluded to Misc. Case No. 26 of 2009. Thika Controller has not accepted that the order dated December 30, 2016 was passed by him.

44. Consequently, we are of the view that the point of authenticity with regard to the order dated January 28, 2011 passed in Misc. Case No. 26 of 2009 that has been sought to be raised on behalf of the appellants is without any substance. That is the order

of the Thika Controller who has accepted its authenticity. It is an order passed in a proceeding in which the appellants had participated. No cogent material has been placed before the learned Single Judge or before us to doubt its authenticity.

45. The order dated January 28, 2011 passed in Misc. Case No. 26 of 2009 has held that the subject land stood vested in the State free from all encumbrances. The vesting has been recognised to be under the Act of 2001 as a Khatal. Consequently, the vesting in the State had occurred with effect from January 18, 1982.

46. Proceedings being Misc. Case no. 26 of 2009 before the Thika Controller which has resulted in the order dated January 28, 2001 was for the purpose of declaration that the subject land was vested with the State as Thika land since, Thika Tenancy existed at the subject land. Proceeding was not for the purpose of declaration that the subject land was a Khatal within the meaning of the Act of 2001 as has been rightly pointed out on behalf of the appellants.

47. In the course of the proceedings while seeking to decide the issue as to whether, there were Thika Tenancies in respect of the subject land or not, Thika Controller had found the land to be a Khatal within the meaning of the Act of 2001. As on January 28, 2011, when the Thika Controller had passed the order dated January 28, 2011 in Misc. Case no. 26 of 2009, it did not have

jurisdiction under the Act of 2001 to declare any land to be a Khatal or to decide the issue as to whether the land was Khatal or not. It however had the jurisdiction to decide Thika Tenancy under the Act of 2001.

48. *Sardar D.K. Jadav (supra)* has considered the provisions of the Madhya Bharat Abolition of Jagirs Act, Samvat, 2008 and whether the Commissioner could enquire claims under Section 5 (c) thereof. It has held that, under Section 17 of the Act, dispute decided by the Commissioner was not within its jurisdiction. It has also held that, jurisdiction of an administrative authority depends upon a preliminary finding of fact High Court is entitled, in a proceeding for a writ, to determine upon its own independent judgement whether or not that finding is correct. In the facts and circumstances of the present case, the order of the Thika Controller which is claimed to be without jurisdiction by the appellants, has not been challenged by the appellants in a writ petition even though being aware of the same at least during the pendency of the writ petition. Moreover, the Thika Controller has jurisdiction to determine whether the subject land was a thika land or not and such ambit of jurisdiction has not been disputed by the appellants also.

49. *Sri Athmanathaswami Devasthanam (supra)* has held that, where a civil court had no jurisdiction over the suit, it cannot

decide any questions on merit. Once the court had come to the conclusion that it had no jurisdiction over the matter, it had to return the plaint. In the facts and circumstances of the present case, the Thika Controller had the jurisdiction to decide whether the subject land was a thika land or not. It had taken into consideration all relevant facts and arrived at a finding that the subject land was a Khatal and not a thika land.

50. Carona Ltd (supra) has held as follows: –

“27. Stated simply, the fact or facts upon which the jurisdiction of a court, a tribunal or an authority depends can be said to be a “jurisdictional fact”. If the jurisdictional fact exists, a court, tribunal or authority has jurisdiction to decide other issues. If such fact does not exist, a court, tribunal or authority cannot act. It is also well settled that a court or a tribunal cannot wrongly assume existence of jurisdictional fact and proceed to decide a matter. The underlying principle is that by erroneously assuming existence of a jurisdictional fact, a subordinate court or an inferior tribunal cannot confer upon itself jurisdiction which it otherwise does not possess.”

51. Kiran Singh (supra) has held that, a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. In the facts and circumstances of the present case, the vesting of the subject land had occurred under the provisions of the

Act of 2001 as the land was a Khatal. The Thika Controller in a proceeding, in order to determine as to whether the subject land was a Thika land or not, arrived at the finding that, the land was a Khatal and had vested in the State and that, the subject land was not a Thika land. Thika Controller had the jurisdiction to decide as to whether or not the subject land was a Thika land. It had decided such issue. Therefore, the order dated January 28, 2011 of the Thika Controller cannot be said to be without jurisdiction.

52. *Foreshore Cooperative Housing Society Ltd (supra)* has considered the meaning of the word jurisdiction and held that, if an authority lacked jurisdiction, the same cannot be vested upon such authority by consent or by waiver.

53. *Shivaji Balaram Haibatti (supra)* has held that, Court cannot record any finding on issues which are not part of the pleadings. It is also held that, any finding recorded on an issue dehors the pleadings is without jurisdiction.

54. *Padrone Marketing (supra)* has considered an order of the Additional Thika Controller as affirmed by the West Bengal Land Reforms Tenancy Tribunal to the effect that, the subject property was a Thika Property in view of the existence of Khatal as recorded in the inspection book of Kolkata Municipal Corporation and thus vested in the State. In the facts and circumstances of that case, the

Division Bench has found that, nobody claimed the subject property to be a Khatal. Division Bench has also held that, unless the subject land is held in monthly or other periodical tenancy for being used or occupied as a Khatal, the same cannot vest in the State in terms of Section 4(b) of the Act of 2001. It has also held that, inspection book relied upon by the Additional Thika Controller is not a public document and therefore cannot be relied upon as a document for evidence in the eye of law.

55. *Sri Sri Satyanarayan & Ors. (supra)* has dealt with decrees of dismissal of a suit on appeal. It has held that, if in a tenancy comprising a host of kutcha structures, there comes up even one pucca structure the Thika Tenancy Act loses its applicability. It has also held that, before assuming jurisdiction, a Thika Controller, if necessary by local enquiry, must come to the conclusion that each and every structure comprising in the tenancy is kutcha. Unless such enquiry has been made and the jurisdictional fact is ascertained, no tenancy can be held to be a Thika Tenancy.

56. In *Amit Basu (supra)*, the Division Bench has found that the enquiry report which was placed before the Tribunal clearly indicated that there were 10 rooms of pucca walls. Consequently, the Division Bench has held that the Tribunal erred in concluding that the lands are Thika lands.

57. *Lakshminoni Das and Others (supra)* has held that, a Khatal can also stand vested in the State under the Thika Tenancy Law.

58. *Secretary and Curator, Victoria Memorial Hall (supra)* has emphasized the need for recording reasons in an administrative as well as a judicial order. It has also held that, absence of reasons in any administrative or judicial order renders the order indefensible/unsustainable particularly when such order is subject to further challenge before a higher forum. It has also noted that, recording of reasons is a principle of natural justice and that it ensures the transparency and fairness in the decision making.

59. *Kiran Singh (supra)* has held that, the defence that an order is without jurisdiction can be taken at any time when a party is confronted with such order.

60. In a proceeding for declaration that the subject land was a Thika Land and therefore, had stood vested with the State, Thika Controller is called upon to decide such an issue. In deciding such issue, it has the jurisdiction to find out the nature of the subject land. Finding the nature of the subject land so as to arrive at decision on the issue of Thika Tenancy is within the scope and ambit of the jurisdiction that a Thika Controller has been empowered under the Act of 2001. In the facts and circumstances of the present

case, while deciding the issue as to whether, the subject land was a Thika Land or not within the meaning of the Act of 2001, Thika Controller had found that the land to have been vested with the State as a Khatal. It has therefore decided the issue of Thika Tenancy on the touchstone of a finding of fact as to the nature of the land and its legal status. A decision on the nature of the land and its legal status on the anvil of Thika Tenancy of subject land within the meaning of the Act of 2001 is well within the jurisdiction of the Thika Controller as it stood prior to the amendment introduced to the Act of 2001.

61. *Lakshminoni Das and Others (supra)* has recognised that, a Khatal stands vested with the State under the Thika Tenancy Law. Thika Controller by his order dated January 28, 2011 has merely noted the factum of vesting by operation of law. His order has not declared the land as a Khatal and cannot be construed to be so.

62. The decision dated January 28, 2011 passed in Misc. Case No. 26, 2009 has not been assailed by the appellants despite knowledge of the same at least during the pendency of the writ petition. The appellant have therefore accepted the decision of the Thika Controller dated January 28, 2011 passed in Misc. Case No. 26 of 2009 that the subject land is not a Thika land. Appellants have also accepted the view of the Thika Controller that the land was

already vested with the State as a Khatal by operation of law. We are therefore not in a position to allow the appellants to raise the issue of nullity of the order dated January 28, 2011 passed in Misc. Case No. 26 of 2009 successfully.

63. Consequently, the first issue is answered in the negative and as against the appellants.

64. By reason of the vesting of the subject land with the State under the Act of 2001, on and from January 18, 1982, the appellant No. 1 had no right, title and interest in respect of the subject property to pass on to the appellant No. 1 on June 14, 2008. Appellant No. 1 has not obtained any right, title and interest in respect of the subject property by virtue of the registered deed of conveyance dated June 14, 2008 or at all. No right has therefore accrued to the appellants to apply for mutation.

65. In such circumstances, no right had accrued in favour of the appellants to apply for or obtain mutation in respect of the subject premises on the strength of the registered deed of conveyance dated June 14, 2008 or otherwise, KMC authorities have not breached any right of any of the appellants by not considering the application for mutation made by the appellants in respect of the subject premises.

66. The second issue therefore is answered in the negative and as against the appellants.

67. The appellants had participated in Misc. Case No. 26 of 2009. It had suppressed such proceedings as also its participation therein in the writ petition. Appellants have tried to mislead the learned Single Judge by claiming ownership of the subject land without alluding to Misc. Case No. 26 of 2009 and their participation therein. Even if we have to accept the specious plea of the appellants that they were not aware of the order dated January 28, 2011 passed in Misc. Case No. 26, 2009, still they had an obligation to come with clean hands to the writ court and inform the writ court that there was a proceeding under the Act of 2001 pending before the Thika Controller, if not anything else. Pendency of a proceeding under the Act of 2001, whatever may its worth, is a relevant fact for the purpose of consideration of a writ petition relating to refusal or failure to consider an application for mutation in respect of the property over which the Act of 2001 may apply subject to the decision of the Thika Controller.

68. Learned Single Judge has found the appellant to be guilty of suppression of the proceeding being Misc. Case No. 26, 2009 and their participation therein. Learned Single Judge has also held that, the appellants were guilty of producing an order dated December 30, 2016 in respect of the subject property while no such order existed in any records.

69. Learned Single Judge has given reasons as to the findings of suppression as also making false statements to the Court knowing them to be false by the appellants.

70. ***Kusha Duruka (supra)*** has observed that, suppression of material facts from the Court of Law is actually plain fraud with the Court. A litigant who has attempted to pollute the stream of justice or who has touched the pure fountain of justice with tainted hands is not entitled to any relief interim or final. These observations have been made after noticing that materialism has overshadowed the core ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, mis-representation and suppression of facts in the Court proceedings.

71. ***Mahakali Sujatha (supra)*** has in the context of a contract of insurance held that, what is material facts which requires disclosure before entering into a contract for insurance is not the final and that the same would depend upon the nature and extent of the coverage of risk under a particular type of policy.

72. In ***Kanoria Energy and Infrastructure Limited (supra)***, the Supreme Court has found that the appellant had adopted an adventurous approach filing document to explain the conduct of

suppression of facts. It has held that such a conduct was present and imposed cost on the appellants.

73. It has been contended on behalf of the appellants that, the appellants did not take benefit of any order on the basis of the so called suppression. No interim order had been passed in the writ petition. The writ petition had been finally disposed of after completion of affidavits. Therefore, there was no question of the appellants having suppressed any material fact.

74. With respect, we are unable to accept such a contention. Appellants have the obligation as any litigant to come to Court with clean hands. In the facts and circumstances of the present case, appellants have singularly failed to do so. It has suppressed the proceedings under the Act of 2001 being Misc. Case No. 26 of 2009 and their participation therein in the writ petition. The explanation sought to be given in the affidavit-in-reply by the appellants, before the learned Single Judge, after being costed with such fact on behalf of the Corporation and the State, is specious at the very least. Appellants have sought to explain not disclosing such relevant and material fact in the writ petition on the ground that the manager who looked after such proceedings had left the job. Particulars of such manager and the alleged leaving of the job was not stated. It is

preposterous to suggest that such an important proceeding had gone out of the site of the appellants.

75. In view of the discussions above, third issue is answered in the affirmative and as against the appellants.

76. Appellants have not advanced any argument on the quantum of cost impost by the learned Single Judge. No argument has also been advanced so far as the direction on the learned Registrar General to initiate proceedings under Section 340 of the Criminal Procedure Code.

77. In such circumstances, time to comply with the directions contained in the impugned judgement and order is extended for a period of seven days from date.

78. The fourth issue is answered accordingly.

79. APO No. 76 of 2021 along with GA No. 4 of 2024 and GA No. 5 of 2024 are disposed without any order as to costs.

[DEBANGSU BASAK, J.]

80. I agree.

[MD. SHABBAR RASHIDI, J.]