

**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

WPLRT/81/2024

***SRI SANTOSH AGARWAL AND ANR.
VS.
THE STATE OF WEST BENGAL AND ORS.***

For the Writ Petitioners: Mr. Supratim Dhar, learned Senior advocate
Mr. Dhananjay Nayak, Advocate

For the Respondent : Mr. Tapas Kumar Sinha, Advocate
Nos. 4, 5 & 6

Heard and Judgment on : April 24, 2025

DEBANGSU BASAK, J.

1. Order dated February 5, 2024 passed in OA 3133 of 2016 (LRTT) passed by the West Bengal Land Reforms and Tenancy Tribunal is under challenge in the present writ petition.
2. Learned senior advocate appearing for the writ petitioners submits that, admittedly, there was and still is a structure standing at premises No. 14/6 Turf Road, Kolkata. Consequently, premises No. 14/6 Turf Road, Kolkata cannot be construed to come within the purview of the Kolkata Thika Tenancy Act, 1949. He submits that, the same municipal number cannot be treated to be governed by the Act of 1949 as also by the West Bengal Premises Tenancy Act, 1997 at the same time.

3. Learned senior advocate appearing for the writ petitioners draws the attention of the Court to a will executed by the predecessor-in-interest of the writ petitioners and submits that such will which is of 1937 records that the subject premises contains a structure. Letters of Administration in respect of such will were issued by the Court.
4. Learned advocate appearing for the private respondents submits that, the will executed by the predecessor-in-interests of the writ petitioners is admitted by his clients. He submits that, he admits that, there is a structure standing in the subject premises. However, he submits that, the entirety of the subject premises is not covered by a structure. There is a vacant land in the subject premises which was let out to his clients where his clients erected a kutcha structure. Therefore, portion of the area of the subject premises which was let out to his clients in which his clients erected the kutcha structure, would come within the purview of the Act of 1949. In support of such contention he refers to the definition of thika tenancy as enshrined in Section 2(4) of the Act of 1949.
5. In the facts of the present case, Thika Controller proceeded to hold that premises No. 14/6, Turf Road, Kolkata is governed by the Act of 1949. Decision of the Thika Controller was assailed in an appeal. Appellate Authority concurred with such view. Being aggrieved, the writ petitioners preferred an original application before the learned tribunal being OA No. 3133 of 2016 (LRTT). Learned tribunal was pleased to concur with the view of the Thika Controller as affirmed by the Appellate Authority.
6. In **(2014) 2 Cal LT 498 [Amit Basu vs. The Controller & Ors.]** while dealing with the provisions of the Act of 1949, the co-ordinate Bench held as follows :-

"20. In the present case the enquiry report which was placed before the Tribunal clearly indicated that there were "10 rooms of pucca walls with asbestos and tin and tile roofs". These structures had been erected by the tenant according to the enquiry report. However, there is no material on record to indicate that the structures were erected after obtaining the necessary permission. The existence of even one pucca structure amongst several kutcha structures on a land will remove the land from the rigours of the thika tenancy Acts. Therefore, when the occupant or the returnee has submitted a return indicating that there are 10 rooms of pucca walls and that he had acquired the structures in 1953 pursuant to a conveyance, it is obvious that such a person could not be considered as thika tenant and the lands could not be considered to be thika lands. If the structures were there prior to the conveyance then the land could not be considered as thika land. Even assuming the structures were built by the so called thika tenant, the land cannot be considered as thika land because there is no material on record to establish that he had obtained the requisite permission from the municipal corporation before erecting a pucca structure. On a careful reading of the Act of 1949, the Act of 1981 and the Act of 2001 it is evident that only those persons who were thika tenants under the Act of 1949 would continue to be thika tenants under the later Acts. The returnees could not be considered as thika tenants under the Act of 1949 as

admittedly a pucca structure was conveyed to them by the owner by the conveyance executed in 1953.”

7. In **Amit Basu (supra)** the co-ordinate Bench held that, the existence of even one pucca structure amongst several kutcha structures on a land will remove the land from the rigours of the Thika Tenancy Acts.
8. In the facts of the present case, admittedly pucca structure was standing on the property concerned. There is also a suit for eviction pending. We are not concerned with the merits or demerits of the suit for eviction. Our enquiry is limited to whether the nature of tenancy of the private respondents herein is such that it is governed by the Act of 1949 or not.
9. To fall within the ambit of Act of 1949, the land in question must be a vacant land and must be let out to a person concerned where the person concerned may get to erect a kutcha structure. In the facts of the present case, the land comprises only one premises number. It is 14/6, Turf Road, Kolkata. Admittedly, a pucca structure stood at the time when the tenancy was created in respect of the vacant portion of the same premises. The pucca structure is standing today.
10. On the strength of the ratio of **Amit Basu (supra)** since a pucca structure stands on a portion of premises No. 14/6, Turf Road, Kolkata, the same cannot come within the purview of the Act of 1949 by reason of a tenancy created in respect of a portion of the same premises.
11. In such circumstances, we are of the view that the Thika Controller erred in holding that the tenancy of the private respondents was a thika tenancy. Consequently, the decision of the Thika Controller and all subsequent decisions concurring with such decision of the Thika Controller are set aside.

WPLRT/81/2024

12.WPLRT/81/2024 is accordingly **disposed of** without any order as to costs.

(Debangsu Basak, J.)

13.I agree.

(Md. Shabbar Rashidi, J.)

dd