

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

W.P.L.R.T. 109 of 2025

Md. Aslam Khan Lodhi and Ors.
Vs.
The State of West Bengal and Ors.

For the petitioners : Mr. Saptangshu Basu, Ld. Snr. Adv.,
Mr. Rajdeep Bhattacharya,
Mr. M.I.A. Lodhi,
Mr. Sourjya Ganguly, Adv.

For the respondent nos.
11 to 19 : Mr. Puspendu Chakraborty, Adv.

For the State : Sk. Md. Galib, Ld. Snr. Govt. Adv.,
Mr. Tarak Karan,
Mr. Manish Biswas, Adv.

Heard on : September 17, 2025.

Judgment on : September 17, 2025.

Sabyasachi Bhattacharyya, J.:

1. The present challenge has been preferred against a judgment passed by the Land Reforms and Tenancy Tribunal, thereby

affirming an order of the Thika Controller under the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001.

2. The Thika Controller, by the impugned order, turned down an application filed by the present petitioners claiming that the subject property is not a thika tenancy land and seeking an adjudication of the said question.
3. While dismissing the said application, the Thika Controller held that by a previous order dated August 31, 2010, the Thika Controller had already decided that the private respondent was a thika tenant in respect of the land.
4. The learned Tribunal affirmed such finding by coming to the conclusion that under the provisions of Section 5(3) of the 2001 Act, which was in force at the relevant point of time when the previous order was passed, the Thika Controller was very much empowered to decide the question as to whether a person is a thika tenant or not, and, as such, the same issue cannot be permitted to be re-agitated under the garb of an application to decide whether the land is a thika property or not.
5. Learned Senior counsel appearing for the petitioner places reliance on a coordinate Bench judgment in the matter of

Kolay Properties (P) Ltd. vs. The State of West Bengal & Ors. reported at *AIR 2012 CAL 188* in support of the proposition that the Thika Controller, under the original sub-section (3) of Section 5 of the 2001 Act as it stood prior to the amendment of 2010, was empowered only to decide as to whether a person was a thika tenant or not. The power to decide whether the land-in-question is a thika land or not was not vested in the Controller and as such, the declaration to that effect in the said matter was reopened by the Division Bench by holding that the Controller had ignored the fact that the structures erected were not kutcha structures.

6. Learned Senior counsel further places reliance on an unreported Coordinate Bench judgment of this court in the matter of *Debasish Banerjee vs. Maya Sarkar & Ors. (R.V.W. 278 of 2014 in connection with W.P.L.R.T. 153 of 2014)* where the said Division Bench relied on and reiterated the proposition laid down in *Kolay Properties (P) Ltd. (supra)*.
7. However, in his usual fairness, learned Senior counsel also cites another Coordinate Bench judgment in the matter of *Ballav & Sawoo (Calcutta Properties) Pvt. Ltd. & Ors. vs. The State of West Bengal & Ors. (W.P.L.R.T. 22 of 2018)* where

both the aforesaid Division Bench judgments were considered by another Coordinate Bench. The Coordinate Bench, however, arrived at a finding that prior to the 2010 amendment, the Thika Controller had the power to decide the issue as to whether a person is a thika tenant or not.

8. The Coordinate Bench, while coming to such finding, took into consideration the definition of “thika land” under Section 2 (15) of the un-amended 2001 Act as well as the definition of “thika tenant” under Section 2 (14) of the un-amended 2001 Act.
9. Learned Senior Government advocate, appearing for the State, contends that the learned Tribunal was justified in passing the impugned judgment, since under the un-amended provisions of the 2001 Act, the Thika Controller was empowered to decide as to whether a person is a thika tenant or not. It is submitted that such adjudication, by necessary implication, also took within its fold the question as to whether the concerned property was thika land or not, since unless there was a thika tenancy thereon, the land could not be characterized as a thika land.
10. The limited question which falls for consideration before us is the interplay between the amended provisions of Section 5(3)

of the 2001 Act with effect from November 1, 2010, as opposed to the said un-amended provision on and from the commencement of the 2001 Act on March 1, 2003.

11. As held in *Kolay Properties (supra)* and *Debasish Banerjee (supra)*, previously the Thika Controller was empowered only to decide as to whether a person is a thika tenant or not, as opposed to the amended provision, which additionally empowered the Thika Controller to decide the question as to whether a property is a thika land or not, upon giving opportunity of hearing to interested parties.
12. The un-amended provision of Section 5(3), as it prevailed between promulgation of the 2001 Act on March 1, 2003 and the amendment of 2010, which took effect from November 1, 2010, 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.”

13. After the amendment, Section 5(3) has taken the following shape:

“(3) If any question arises as to whether a person is a thika tenant or not or whether the land in question is thika land or

not, the Controller, either on his own motion or upon receiving any information, may, after giving the persons interested an opportunity of being heard and after examining all such documents and particulars as may be considered necessary, enquire upon and decide such question.”

14. Thus, there is a gulf of difference between the powers of the Controller pre-2010 amendment and post-2010 amendment. Previously, the Thika Controller was empowered to decide only the question as to whether a person is a thika tenant or not, without the additional power to decide whether the land-in-question is a thika land or not, the latter having been added by the amendment of 2010.
15. In order to understand the distinction between the un-amended and amended provisions of Section 5(3), we are to look at the definition of “thika land”, as provided in Section 2(15), which also stood amended by the 2010 amendment.
16. Prior to the 2010 amendment, Rule 2(15) defined “thika land” to mean 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 included open areas and roads on such land.

17. After the amendment, the modified sub-section (15) of Section 2 provides that “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”.
18. Thus, the common underlying refrain of Section 2(15) of the 2001 Act, pre and post 2010 amendment, is that the character of a land as thika land would have to be defined “irrespective of the fact whether there is any claim of such tenancy or not”.
19. Thus, Section 2(15), both before and after the 2010 amendment, categorically dissociates the adjudication of whether the land is a thika land or not and the question as to whether a person is a thika tenant or not.
20. The use of the expression “irrespective of” brings about such dissociation between the adjudication of a thika tenancy and the adjudication of a thika land.
21. Thus, to find out the difference in legal position, pre and post amendment of Section 5(3), we are to take into account the definition of “thika land” under Section 2(15).

22. With the above dissociation, the boundaries of the powers of the Controller to adjudicate under Section 5(3), pre and post 2010 amendment, are more clearly demarcated and defined. Whereas previously the scope of adjudication was limited to whether a person is a thika tenant or not, which is person-specific and not land-specific, by the subsequent amendment of 2010, the further adjudication *vis-a-vis* the land-in-question, as to the characterization of the land as a “thika land” or not, has also been brought within the fold of adjudication by the Thika Controller.
23. Thus, although tangentially, the question as to whether the person is a thika tenant or not and an adjudication thereof involves the question as to whether the property is a thika land or not, the issue as to whether the property is a thika land is merely an incidental and sub-issue in an adjudication as to whether a person is a thika tenant or not. Hence, prior to the amendment of 2010, the Thika Controller’s scope of adjudication was limited to the person before it, with regard to whether such person is a thika tenant or not. Although incidentally touching upon the question as to whether the property is a thika land, such adjudication would not be

conclusive, not being directly and substantially in issue, insofar as the question as to whether the character of the land is a thika land or not.

24. The change brought about by the 2010 amendment, thus, additionally empowered the Thika Controller to directly and substantially adjudicate the wider issue of the character of the land as a thika land or otherwise.
25. Hence, applying such test to the judgments cited before us, we find that the view taken in *Kolay Properties (supra)* still reigns supreme, as reiterated in *Debasish Banerjee's case (supra)* as well.
26. With utmost respect to the Division Bench which passed the judgment in *Ballav & Sawoo (supra)*, the ambit of consideration in *Kolay Properties (supra)* was not restricted to whether a third party has a right to evict a thika tenant or not.
27. In paragraph 63 of *Kolay Properties (supra)*, the Division Bench clearly took into consideration the factor that before the amendment of sub-section (3) of Section 5 of the 2001 Act, the Controller had no right to decide whether the land-in-question is a thika land or not. The Division Bench, in such specific context, went on to observe that the Controller had declared

the private respondents as thika tenants in respect of the land-in-question ignoring the fact that the structures erected thereon were not kutcha structures.

28. Taking the said observation one step further, in the interregnum between the coming into force of the 2001 Act and the commencement of operation of the 2010 amendment thereto, if a question arose before a Thika Controller as to whether a person is a thika tenant or not, the scope of consideration would be only whether that specific person is a thika tenant in respect of the property, as opposed to another person or otherwise, as well as whether the nature of the structure on the land was kutcha or pucca.
29. However, the thika tenant could not have adjudicated as to whether the land-in-question is a thika land or not.
30. Seen from such perspective, applying the principles discussed above to the present case, we find that the previous adjudication was confined to whether the applicant before the Controller was a thika tenant or not. Such adjudication, thus, was limited to the said question and the said question alone, without the same being an adjudication on the issue as to whether the land-in-question is a thika land or not.

31. The present application before the Controller, filed by the writ petitioner herein, raised the issue not as to whether a particular person is a thika tenant or not but was of a wider amplitude, to the extent as to whether the land itself was a thika land or not.
32. As per our above discussion, since the question of whether a land is a thika land or not is to be decided irrespective of the fact whether there is any claim of thika tenancy on such land, the scope of consideration now before the Controller, on the application of the writ petitioner, is whether the land is a thika land or not, irrespective of the question as to whether a person claims a thika tenancy on the said property and/or such question has been previously adjudicated. In any event, since the Thika Controller did not have the power to decide such question prior to the 2010 amendment, the previous adjudication could not have taken within its conspectus the adjudication now sought in respect of the character of the land-in-question.
33. Hence, both the Thika Controller as well as the learned Tribunal erred in law in misinterpreting the interplay between the amendment of 2010 to Section 5(3) of the 2001 Act and

the pre-amendment position of the said Section on and from the promulgation of the 2001 Act till November 1, 2010, when the said amendment came into force.

34. Accordingly, W.P.L.R.T. No. 109 of 2025 is allowed on contest, thereby setting aside the impugned judgment dated May 20, 2025 passed by the West Bengal Land Reforms and Tenancy Tribunal, Fourth Bench, in OA No. 4040 of 2022 (LRTT) as well as the order dated October 13, 2002 passed by the Deputy Controller, Kolkata Thika Tenancy in Miscellaneous Case No. 58/2011 (RF) No. 44/2015).
35. The matter is remanded to the Thika Controller for the purpose of adjudication on merits of the dispute raised by the writ petitioner before it as to whether the disputed property is a thika land or not.
36. We make it clear that the merits of such issue have not been gone into by us and it will be open to the Thika Controller to decide the same independently and in accordance with law, upon giving ample opportunity to the parties of being heard and producing documents.
37. It is expected that such exercise shall be completed as expeditiously as possible, preferably within March 31, 2026.

38. There will be no order as to costs.

39. The parties and the Tribunal shall act on the server copy of this order, duly downloaded from the official website of this court.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)