

Form No. J(2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

WPLRT 171 of 2025

The State of West Bengal and others
Vs.
Sri Prabir Kumar Sarkar and others

With

WPLRT 172 of 2025

The State of West Bengal and others
Vs.
M/s. Eastern Switchgear & Electrical Company Pvt. Ltd.
and others

For the petitioners : Mr. Amal Kumar Sen, AAG,
Mr. Soumitra Bandyopadhyay, Sr. Govt. Adv.,
Mr. Priyabrata Batabyal

For the respondents : Mr. Arindam Banerjee, Sr. Adv.,
Mr. Gourav Purakayasta,
Ms. Atasi Sarkar,
Ms. Samarpita Mukherjee

For the KMC : Mr. Achintya Kumar Banerjee,
Mr. Gopal Chandra Das,
Ms. Ananya Das

Heard on : 03.12.2025

Judgment on : 03.12.2025

Sabyasachi Bhattacharyya, J.:-

1. Both the matters are taken up together for hearing, having arisen from the same order.
2. The present challenge arises out of an order passed by the West Bengal Land Reforms and Tenancy Tribunal, whereby the Tribunal reversed a decision of the concerned Thika Controller to the effect that the disputed property is a thika property.
3. Learned Additional Advocate General (AAG), appearing for the State/writ petitioners, contends that the impugned judgment is erroneous in law and on facts on several counts.
4. First, in the facts of the case, the respondent no.1/applicant had taken out an application for being declared a thika tenant before the Thika Controller on September 04, 1982 by filing 'A' form.
5. However, subsequently, the respondent no.1 sought to withdraw the same, upon which the Thika Controller, by exercise of the powers vested in the Controller under Section 5(3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (for short "the 2001 Act"), *suo motu* took up the matter on the basis of information received by him and that the property is a thika tenancy.
6. However, the Tribunal proceeded on the mistaken notion that since the application was sought to be withdrawn by the applicant/present respondent no.1, the Thika Controller acted without jurisdiction in proceeding *suo motu* in the matters, which was an error apparent on the face of the order of the Tribunal.

7. Secondly, it is contended that as on the date of expiry of the lease, that is, on May 08, 1982, the 1981 Act, that is, the Calcutta Thika and Other Tenancy and Lands (Acquisition and Regulation) Act, 1981 had already come into force. Thus, the previous bar under the 1949 Act, that is, the Calcutta Thika Tenancy Act, 1949, to applicability of the definition of thika tenancy to leases of more than 12 years, had been removed.
8. Hence, although the present lease was of more than 21 years, as on the date of expiry of the lease, by operation of the 1981 Act, since the bar had been removed, the land became a thika property.
9. It is next contended by the learned AAG that although in the lease deed produced before the Thika Controller by the respondent, the property was described as a vacant land with permission to the respondent/lessee to erect a construction thereon, from a subsequent copy of the deed filed before the Tribunal, it is seen that a handwritten interpolation “with structure” has been incorporated in the deed. It is submitted that the same did not find place in the original deed which was produced before the Controller.
10. Thus, since a vacant land had been handed over to the respondent at the time of grant of the lease, it is argued that the property is a thika property under the 1981 Act.
11. The learned AAG also cites *The Commissioner of Income-tax, Gujarat vs. M/s. A. Raman and Co.*, reported at AIR 1968 SC 49, for the proposition that the expression “information” in the context in which it occurs must mean instruction or knowledge derived from an

external source concerning facts or particulars, or as to law relating to a matter bearing on the assessment. It is relevant to note that the said judgment was delivered in the context of the Income Tax Act.

12. Learned senior counsel appearing for the respondents controverts the allegations of the writ petitioners and argues that no copy of the lease deed was filed with any interpolation at any point of time by the respondent. All along, the respondent's case was that the initial lease was granted on vacant land, with permission to the respondents/lessees to erect structure.
13. However, it is contended that even it is deemed that the Thika Controller initiated a proceeding *suo motu* on information under Section 5(3) of the 2001 Act, it was the incumbent duty of the Controller, under the self-same provision, to issue notices and give opportunity of hearing to all persons interested, which was not done in the present case, as borne out by the impugned order of the Thika Controller itself. After rejecting the application of the respondent to withdraw the respondent's application for declaration as a thika tenant, for passing orders on which the date was fixed, the Thika Controller directly proceeded to adjudicate the respondents to be thika tenants, thereby flouting the provisions of Section 5(3) of the 2001 Act.
14. Secondly, learned senior counsel places reliance on a coordinate Bench decision of this Court in the matter of *Amit Basu vs. The Controller & others*, reported at (2014) 3 CHN 89, where it was categorically held that on a careful reading of the Act of 1949, the Act

of 1981 and the Act of 2001, it was evident that only those persons who were thika tenants under the Act of 1949 would continue to be thika tenants under the later Acts.

15. As such, the Division Bench observed that 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.
16. By placing reliance on such observation, it is argued by the respondents that the position as on the date of the grant of the lease and of coming into force of the 1981 Act would have to be considered. Keeping such fact in view, it is evident from the Form 'A' which was submitted by the respondents, a copy of which has been handed over by the State today in Court, that the property was described on the date of such application, that is, on September 04, 1982 to be land with structures in the shape of factory sheds and office buildings. Furthermore, under the column "Details of Structures", it was mentioned that the property comprised of factory sheds with brick walls.
17. It is argued that it is now well-settled that even if there is a single *pucca* construction, as held in *Amit Basu (supra)* as well, the property cannot comprise of a thika tenancy.
18. Only upon the change of law with the introduction of the 2010 Amendment in the 2001 Act was the concept of *pucca* structures incorporated within thika properties. However, the law applicable in the present case would be the 1949 Act, since the vacant land was let

out to the respondent in 1961 and the *pucca* structures were constructed before coming into force of the 1981 Act, when the 1949 Act was prevalent.

19. Learned senior counsel also places reliance on *Nemai Chandra Kumar (D) Thr. Lrs. And others vs. Mani Square Ltd. and others*, reported at 2022 SCC OnLine SC 920, where the view of a Division Bench of this Court was affirmed, to the effect that the position as on the date of the coming into force of the 1981 Act would be germane for assessment of a thika tenancy and if a person was not a thika tenant under the 1949 Act, the same position would sustain even under the 1981 Act regime.
20. It is further contended that in *Mani Square (supra)*, it has been categorically held that by a consistent line of judgments over five decades prevalent in West Bengal, it was well-settled that to comprise of a thika tenancy, a structure had to be a *kutchha* structure, till the introduction of *pucca* structures into thika tenancies was introduced by the 2010 Amendment of the 2001 Act. Since, in the present case, the very form 'A' declaration shows that a *pucca* structure was built on the vacant land, the property went outside the ambit of the definition of thika tenancy as per the *Mani Square (supra)* judgment as well as the judgment rendered by the coordinate Bench in *Amit Basu (supra)*. Thus, it is argued that in any event, the property could not be labelled as a thika tenancy.
21. Upon a careful consideration of the arguments of the parties, we find that there is nothing on record to indicate that any interpolated

document was placed on record before the Tribunal by the respondent. Rather, the respondent as well as the Tribunal have all along proceeded on the premise that the lease of over 20 years given to the respondent was in respect of a vacant land.

22. By operation of the 1981 Act, which was promulgated simultaneously with the repeal of the 1949 Act, the legal position came into being that if a person was a thika tenant during the 1949 Act regime, he would be entitled to be called a thika tenant even under the 1981 Act while if the converse position prevailed prior to the coming into force of the 1981 Act, the same would continue after such promulgation.
23. In paragraph no. 110 of *Mani Square (supra)*, the Hon'ble Supreme Court took into consideration all the relevant judicial pronouncements and held that repeal and simultaneous re-enactment is to be considered as re-affirmation of the old law.
24. As such, going by the said principle and the proposition laid down in *Amit Basu (supra)*, there cannot be any manner of doubt that since the respondent was not a thika tenant during the 1949 Act regime, before the coming into force of the 1981 Act on November 02, 1981, the character of the property and the tenancy of the respondent remained the same after repeal of the 1949 Act and simultaneous enactment of the 1981 Act.
25. In view of the 'A' form itself clearly disclosing that there was already a factory shed and office buildings comprised of *pucca* structures with brick built walls on the date of promulgation of the 1981 Act, there cannot be any manner of doubt that the property had *pucca*

structures and as such fell outside the pale of the definition of 'thika tenancy'.

26. Insofar as the question of the Thika Tenancy Controller having *suo motu* initiated the proceeding is concerned, the respondent is justified in contending that even if otherwise it could be construed that the information derived by the Thika Controller was on the premise of the application in the form of 'A' form filed by the respondent itself (though such application itself was sought to be withdrawn), still, sub-section (3) of Section 5 categorically provides that the Controller has to give the persons interested an opportunity of being heard and only after examining all documents and particulars as may be considered necessary, enquire upon and decide such question.
27. In the present case, the concerned date on which the order of the Controller was passed was fixed for passing orders on the application of the respondent to withdraw its application for being declared as a Thika Controller and, as such, by no stretch of imagination was any hearing given to the respondent or any other person concerned as such after the initiation of the proceedings *suo motu*. On the date fixed for passing orders on the respondents' withdrawal applications, the Thika Controller rejected the same and outright proceeded to adjudicate the property as a thika tenancy, without granting any opportunity of hearing to the interested persons.
28. Thus, the State's contention on such count cannot also be accepted.
29. In view of the above, we find no reason to interfere with the judgment of the learned Tribunal which, in our opinion, correctly took into

consideration the extant law as well as the attending factual matrix of the case.

30. Accordingly, WPLRT 171 of 2025 and WPLRT 172 of 2025 are dismissed on contest, thereby affirming the judgment dated March 22, 2024 passed by the Fourth Bench, West Bengal Land Reforms and Tenancy Tribunal in O.A. 754 of 2022 (LRTT).
31. There will be no order as to costs.
32. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

AD-10&11
TN