

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
IN APPEAL FROM THE DECREE PASSED IN ITS ORDINARY ORIGINAL
CIVIL JURISDICTION**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Uday Kumar**

**A.P.D. No. 120 of 2015
with
C.S. 245 of 1995
IA NO: GA/6/2016 (Old No: GA/1063/2016)**

**Hindustan Petroleum Corporation Limited
Vs
Santanu Mullick, Executor & Others**

For the appellant	:	Mr. Pradip Dutta, Sr. Adv., Mr. Chanchal Kr. Dutta, Adv., Mr. Nirmalya Dasgupta, Adv., Ms. Krishna Mullick, Adv.
For the respondents	:	Mr. Jishnu Saha, Sr. Adv., Mr. Ashok Kumar Awasthi, Adv., Mr. Aishwarya Kr. Awasthi, Adv.
Heard on	:	02.07.2025, 09.07.2025, 06.08.2025 & 03.09.2025
Reserved on	:	03.09.2025
Judgment on	:	10.09.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against the judgment and decree passed in C.S. 245 of 1995 which was instituted by the plaintiffs/respondents herein for specific performance of contract and in the alternative for vacant and peaceful possession of the suit premises at 3D, Camac Street, Kolkata and for *mesne* profits.

2. The claim for specific performance was given up by the plaintiffs/respondents. The suit was ultimately decreed, thereby directing eviction of the defendants/appellants as well as *mesne* profits.
3. Learned senior counsel for the appellant argues that the Civil Court did not have jurisdiction to decide the issue as to whether the suit property was a *Thika* land and whether the jural relationship between the parties was that of *Thika* tenant and *Bharatia* as well as to decide the suit for eviction of *Bharatia*.
4. Learned senior counsel further contends that at the juncture when the impugned judgment was passed, the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (hereinafter referred to as “the 2001 Act”) had come into force.
5. Under Section 5(3) thereof, as amended with effect from November 1, 2010 by the Amendment Act of 2010, 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.
6. Again, under Section 8(2) of the Act, in any question arises as to whether a person is a *Bharatia* under a particular *Thika* tenant, 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.

7. Sub-section (3) of Section 8 stipulates that any dispute regarding payment of rent by the *Thika* tenant to the State Government or by a *Bharatia* to a *Thika* tenant, or any case of eviction of *Bharatia*, shall be disposed of by the Controller in such manner as may be prescribed.
8. It is argued on behalf of the appellant that the question of *Thika* tenancy was specifically raised before the learned Single Judge and the learned Single Judge framed and decided such issue specifically, whereas Section 21 of the 2001 Act categorically debars the Civil Court from having jurisdiction to decide, or to deal with any question, or to determine any matter which by or under the 2001 Act, is required to be or has been decided or dealt with or which is to be or has been determined, by the Controller or the Appellate or other authorities specified in the provisions of the said Act and no order or judgment, as per the said Section, shall be passed or proceedings, including execution proceedings, commenced under the provisions of the 2001 Act shall be called in question in any Civil Court.
9. Thus, learned senior counsel for the appellant contends that the impugned judgment ought to be set aside on such ground alone.
10. The appellants rely on *Sri Lalit Kumar Bagla and Others v. Rajiv Kumar Podder and Others*, reported at (2016) 3 Cal LJ 281, where a Division Bench of this Court had held that Section 21 of the 2001 Act provides that no Civil Court shall have jurisdiction to decide or deal with any

question or to determine any matter, which, by or under the said Act, is required to be or has been decided or dealt with by the *Thika* Controller. Section 21, it was observed, makes it clear that no order or judgment passed or proceedings including execution proceedings commenced under the 2001 Act shall be called in question in any Civil Court. On such ground, the appeal before the said Division Bench was allowed.

- 11.** Learned senior counsel for the plaintiffs/respondents controverts the arguments of the appellants and submits that in view of the saving clause in Section 27 of the 2001 Act, proceedings pending at the date of commencement of the 2001 Act under the predecessor statute, that is, the Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981 (for short, “the 1981 Act”) would be saved from the provisions of the 2001 Act.
- 12.** In the present case, the suit was filed in the year 1995 whereas the 2001 Act came into force much later, with effect from March 1, 2003.
- 13.** It is argued that under the 1981 Act, although there was a bar to the Civil Court’s jurisdiction in matters in which the Controller had the power to adjudicate under Section 23, the Controller did not have the power to determine the question of whether a property is a *Thika* land and whether the relationship between the parties is that of a *Thika* tenancy as well as to decide suits for eviction against *Bharatias*. It is pointed out that there was no provision akin to Sections 5 and 8 of the 2001 Act in the 1981 Act.

14. In support of his submissions, learned senior counsel cites a Division Bench judgment of this Court in *Debasish Banerjee v. Maya Sarkar & Ors.*, reported at 2016 SCC OnLine Cal 6906 , in support of the proposition that Section 5(3) of the 2001 Act would not apply if the proceeding was initiated under the unamended provision of the 2001 Act.
15. Learned senior counsel for the plaintiffs/respondents next relies on *Sabita Rani Majilya v. State of West Bengal*, reported at (2011) 3 CHN 534, where, under similar circumstances, a Division Bench of this Court held that if a proceeding was initiated before the 2001 Act came into force on March 1, 2003, the provisions of the 2001 Act would not be applied and such proceeding initiated under the 1981 Act would be saved under Section 27(2) of the 2001 Act.
16. Thirdly, learned senior counsel for the plaintiffs/respondents cites a judgment of a learned Single Judge of this Court in the matter reported at *Chandra Devi Bothra and Ors. v. The State of West Bengal*, reported at MANU/WB/1037/2024, where the self-same principles were reiterated.
17. For a similar proposition, learned senior counsel also cites another decision of a learned Single Judge of this Court in the matter of *Bijoy Modi and Others v. Alauddin Ahmed and Another*, reported at 2021 SCC OnLine Cal 2338.
18. Learned senior counsel also cites *Nemai Chandra Kumar (D) thr. L.Rs. and Ors. v. Mani Square Ltd. and Ors.*, reported at (2022) 5 SCJ 413,

where the Supreme Court considered the expression “any structure” in the 2001 Act to adjudicate whether *pucca* structures would come within the fold of *Thika* tenancies.

- 19.** Accordingly, the respondents pray for dismissal of the appeal.
- 20.** Heard learned senior counsel for both the parties.
- 21.** The point involved in the appeal is extremely short – whether the learned Single Judge, acting as a civil court, had the jurisdiction to decide the suit in view of the bar under Section 21 of the 2001 Act.
- 22.** Out of the judgments cited by the plaintiffs/respondents, *Nemai Chandra Kumar (supra)*¹ is not directly germane on the issue at hand. The consideration there was whether a structure, to come within the purview of a *Thika* land, could be a *pucca* structure. While holding so, the Supreme Court observed *inter alia* that the appellants therein were not *Thika* tenants within the meaning of the 1981 Act since the structure-in-question was a *pucca* structure and the Act of 1981 was not operative in relation to the property-in-question because of the stay the order passed by the High Court. The consideration in the present case is rather different.
- 23.** Again, this Court does not find the co-ordinate Bench judgment in *Debasish Banerjee (supra)*² to be relevant either. In the said judgment, the court was considering the scope of power of the Controller under

1. Nemai Chandra Kumar (D) thr. L.Rs. and Ors. v. Mani Sware Ltd. and Ors., reported at (2022) 5 SCJ 413

2. Debasish Banerjee v. Maya Sarkar & Ors., reported at 2016 SCC OnLine Cal 6906

Section 5(3) of the 2001 Act. It was noted by the Division Bench that whereas the original unamended sub-section (3) of Section 5 stipulated that only questions as to whether a person is a *Thika* tenant or not are to be decided by the Controller, by virtue of the Amendment of the Act of 2010, effective from November 1, 2010, a wider expression “whether a person is *Thika* tenant or not and whether the land-in-question is a *Thika* land or not” was introduced which would not be applicable in the said case. Although, on the general issue of retrospectivity, the said decision may be relevant, but it does not apply to the issue involved in the present case at all.

- 24.** The Division Bench judgment in the matter of *Sri Lalit Kumar Bagla (supra)*³ cited by the appellants, is not germane either. In the said case, the Division Bench was merely reiterating the provisions and bar under Section 21 read with Section 5 of the 2001 Act but did not decide the question whether the bar under Section 21 of the said Act would be applicable in a suit already pending when the 2001 was enacted.
- 25.** Since, in the said case, the adjudication under Order XXI Rules 97 to 99 of the Code of Civil Procedure happened after the coming into force of the 2001 Act, it was held that the Civil Court did not have jurisdiction.
- 26.** However, the common refrain in all the other judgments cited by the private respondents, as indicated above, is that if a proceeding is

3. *Sri Lalit Kumar Bagla and Others v. Rajiv Kumar Podder and Others*, reported at (2016) 3 CalJ 281

initiated under the 1981 Act, the same would be saved within the contemplation of Section 27 of the 2001 Act, which came into force later.

27. Let us now consider the relevant provisions of the 2001 Act in the light of the above judgments.

28. Sections 5, 8, 21 and 27 of the 2001 Act are set out below:

“5. (1) Subject to the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, and the provisions of this Act, every thika tenant, occupying any land under a landlord on the date of commencement of this Act, shall occupy such land, on such terms and conditions as may be prescribed, directly under the State as if the State had been the landlord in respect of that land.

(2) Every thika tenant holding directly under the State under sub-section (1) shall be liable to pay to the State Government in the prescribed manner such revenue as may be determined.

(3) If any question arises as to whether a person is a thika tenant or not, the matter shall be decided by the Controller.

(4) The interests of the thika tenants holding directly under the State under sub-section (1) shall be heritable and shall not be transferable except inter se amongst the heirs and existing co-shares-interest and spouses or to the prospective heirs, with a prior permission of the Controller, subject to the provisions of sub-section (1) of section 6.

(5) The thika tenants holding directly under the State under subsection (1) shall be entitled to construct pucca structures in accordance with the building plans sanctioned under the Kolkata Municipal Corporation Act, 1980, and the rules made thereunder, or the Howrah Municipal Corporation Act, 1980, and the rules made thereunder, according as the land may be situated within Kolkata as defined in clause (9) of section 2 of the Kolkata Municipal Corporation Act, 1980, or Howrah as defined in clause (15) of section 2 of the Howrah Municipal Corporation Act, 1980, for—

(a) residential and business purposes for themselves and the Bharatias under them; and

(b) essential common facilities like common pathway, common bath, toilet, water supply, drainage, sewerage, lighting and similar other purposes:

Provided that the thika tenants holding directly under the State under sub-section (1), shall obtain a no objection certificate from the Controller before making any pucca construction or changing the nature, character and dimension of an existing structure on the land, irrespective of the area of the land.

(6) The thika tenant holding directly under the State under subsection (1), shall be liable to pay rent to the State Government at such rate and in such manner as may be prescribed.

...

8. *(1) This monthly and other periodical tenancies of the Bharatias in respect of the structures occupied by them on payment of rents to the thika tenants shall, with effect from the date of coming into force of this Act, be governed by the provisions of the West Bengal Premises Tenancy Act, 1956, in matters relating to the payment of rent by the Bharatias and their eviction by the thika tenants, the owners of the structures shall be deemed to be landlords and the Bharatias shall be deemed to be tenants under the said Act.*

(2) Any question as to whether a person is a Bharatia under a particular thika tenant, or where there is no thika tenant, in a particular thika land, shall be decided by the Controller.

(3) Any dispute regarding payment of rent by the thika tenant to the State Government or by a Bharatia to a thika tenant, or any case of eviction of Bharatia, shall be disposed of by the Controller in such manner as may be prescribed.

(4) A Thika tenant may, in default of payment of rent to the State Government, be evicted or otherwise penalised by the Controller-in such manner as may be prescribed.

(5) For the purpose of this section, the Controller shall exercise all such powers and perform such duties as are exercisable by a Rent Controller under the West Bengal Premises Tenancy Act, 1956.

(6) Notwithstanding anything contained in this Act or in the West Bengal Premises Tenancy Act, 1956, a Bharatia under a thika tenant shall be entitled to take separate electrical connection from the electricity supplying agency and separate water supply connection from the appropriate agency for his own use.

(7) A Bharatia shall be liable to pay rent to the thika tenant at such rate as may be prescribed.

(8) Where there is no thika tenant, a Bharatia shall be liable to deposit rent with the Controller of the area at such rate as may be prescribed.

...

21. *No civil court shall have jurisdiction to decide, or to deal with, any question, or to determine any matter, which, by or under this Act, is required to be, of has been decided or dealt with, or which is to be, or has been determined, by the Controller or the appellate or other authority specified in the provisions of this Act, and no order or judgment passed, or proceedings including execution proceedings commenced, under the provisions of this Act shall be called in question in any civil court.*

...

27. (1) *With effect from the date of commencement of this Act, the Kolkata Thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981, shall stand repealed.*

(2) *Notwithstanding the repeal of the said Act, such repeal shall not—*

(a) affect the previous operation of the said Act or anything duly done or suffered thereunder; or

(b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the said Act; or

(c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Act; or

(d) affect any investigation, legal proceeding or remedy, in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.”

29. The bar to jurisdiction of Civil Courts stems from Section 21 of the 2001 Act. The scope of such bar is not only in respect of past determinations or decisions of the Controller within his jurisdiction but also prospective disputes which the Controller or the Appellate Authority under the 2001 Act are empowered to determine and decide. Also, no order or judgment passed or proceedings including execution proceedings commenced under the provisions of the 2001 Act shall be called in question in any Civil Court by virtue of Section 21.

30. However, to examine the span of the bar, we are inevitably to look into the powers of the Controller, since the bar is inextricably tied up with the powers of the Controller and would operate only if the Controller has the power in the first place.

31. Section 5(3) of the 2001 Act, as it originally stood, vested the Controller with the powers to decide the question whether a person is a *Thika* tenant or not.
32. By the 2010 Amendment, which came into force on and from November 1, 2010, the scope of the powers of the Controller was broadened by including the question as to whether the land-in-question is a *Thika* land or not, which is of much wider purport than it originally stood. To determine the question whether a person is a *Thika* tenant or not, it is not necessarily required to enter into the determination as to whether the land is a *Thika* land at all. There may be instances where the character of the land as a *Thika* land is admitted but the only question involved is whether a particular person is a *Thika* tenant in respect of such land, which was the limited scope of consideration earlier.
33. However, after November 1, 2010, the Controller has been vested with the power to decide all questions, not only as to whether a person is a *Thika* tenant or not but also whether the land-in-question is a *Thika* land or not.
34. Sub-section (2) of Section 8 of the 2001 Act empowers the Controller to decide the question as to whether a person is a *Bharatia* under a particular *Thika* tenant, whereas sub-section (3) of Section 8 vests the Controller with the power, *inter alia*, to dispose of any case of eviction of a *Bharatia*.

- 35.** Hence, Section 21, read with Sections 5 and 8, of the 2001 Act categorically debars the Civil Court from entering into any dispute of the nature as indicated in Sections 5 and 8.
- 36.** In the present case, the suit court framed certain issues before deciding the suit. Issue (i) was whether the defendant is a *Thika* tenant in respect of the suit property under the provisions of the Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981. Also, the suit court took up for adjudication and decided the relief of grant of eviction against the defendant/appellant, which claimed to be a *Bharatia*.
- 37.** Thus, there cannot be any manner of doubt that the specific powers of the Controller, as vested under Sections 5 and 8 of the 2001 Act, were exercised by the suit court in the present case. The question which arises is whether the provisions of the 2001 Act, including the bar to jurisdiction under Section 21 thereof, would be attracted in the present case at all.
- 38.** Section 27 (1) of the 2001 Act repeals the 1981 Act whereas Section 27 (2) provides the saving clause.
- 39.** The provisions of Section 27(2) of the 2001 Act are specific in such respect. Clause (d), *inter alia*, saves from repeal any legal proceeding or remedy in respect of any right, privilege, obligation, liability, etc. acquired, accrued or incurred under the 1981 Act. It further provides that any such legal proceeding or remedy may be instituted, continued or enforced as if the 2001 Act had not been passed.

- 40.** In the present case, admittedly, the suit was instituted in the year 1995, when the 2001 Act had not been enacted, the date of notification of the 2001 Act being March 1, 2003, although amendments were brought in different provisions of the Act later.
- 41.** Importantly, Clause (a) of sub-section (2) of Section 27 of the 2001 Act saves the previous operation of the 1981 Act “or anything duly done or suffered thereunder” whereas Clause (b) protects any “right, privilege, obligation or liability acquired, accrued or incurred under the said Act”.
- 42.** It is reflected in the impugned judgment of the suit court that the very plinth of the defendant’s argument was that the suit premises was vested with the State of West Bengal under the provisions of the 1981 Act and the subsequent amendments thereto. In the light of such contention, Issue no. (i) was framed in the form as indicated above, the focus being on whether the defendants are *Thika* tenants under the provisions of the 1981 Act. Hence, it was the admitted stand of the defendant/appellant that its rights in respect of the property had accrued under the 1981 Act, which are squarely saved from repeal by Clauses (a) and (b) of Section 27(2) of the 2001 Act.
- 43.** Also, on the date when the suit was filed, the 2001 Act had not come into force, thus, attributing the character of a “legal proceeding or remedy under the 1981 Act” to the said suit, which are protected from the operation of the 2001 Act by dint of Section 27(2)(d) of the 2001 Act.

- 44.** Hence, seen from all perspectives, the suit and the rights of parties urged in the suit under the 1981 Act were protected under the saving clause as embodied in Section 27 (2) of the 2001 Act and the suit would be deemed to continue under the 1981 Act irrespective of the said Act being otherwise repealed. Thus, the provisions of the 2001 Act, including the bar to jurisdiction of the civil courts under Section 21, read with Sections 5 and 8, of the said Act would not be applicable.
- 45.** As such, the sole argument of the appellant, on the ground of non-maintainability of the suit due to lack of inherent jurisdiction of the civil court, fails.
- 46.** This Court would be failing in its duty if an interesting argument made in reply by the appellant is not dealt with. Learned senior counsel for the appellant, in reply, argues that the even the 1981 Act contained a similar provision as Section 21 of the 2001 Act, in the form of Section 23 of the 1981 Act.
- 47.** However, with respect, such argument is absurd, since a provision barring the jurisdiction of the Civil Courts in matters which the authorities under the particular Act are empowered to do has necessarily to be connected to the powers exercisable by the authorities under the said Act in the first place.
- 48.** Throughout the 1981 Act, there is no provision similar to Section 5(3) or Section 8(2) of the 2001 Act which empowers the *Thika* Controller either to decide or determine whether a person is a *Thika* tenant or whether a property is a *Thika* land and/or to decide disputes, including

eviction suits, between a *Thika* tenant and a *Bharatia*. Thus, the bar contained in Section 23 of the 1981 Act is restricted only to the matters in which the Controller or the Appellate Authority under the said Act has the power to determine or decide and/or deal with.

49. During arguments, learned senior counsel for the appellants has also raised a question as to what would then be the effect of Section 23 of the 1981 Act, if the Controller does not have the power to decide the issues of *Thika* tenancy or the character of a *Thika* land and/or eviction suit between *Thika* tenants and *Bharatia*.
50. Such question is answered in the 1981 statute itself. Several powers have been vested in the Controller under the said Act. For example, under Section 11(3), the Controller shall, after giving the *Thika* tenant and *Bharatia* an opportunity of being heard, direct the *Thika* tenant to reconstruct similar accommodation and restore possession to the *Bharatia* in the event of subsequent non-existence of the structure or a part thereof. Such power is in consonance with the stipulation in Section 11(1) to the effect that the tenancy of a *Bharatia* shall not extinguish merely by virtue of non-existence of the structure subsequently.
51. Section 18 of the 1981 Act empowers the Controller, for the purpose of any enquiry under the said Act, to enter and inspect any premises, etc. Again, Section 12 confers on the Controller all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the matters as enumerated therein, such as summoning and

enforcing the attendance of witnesses, requiring the discovery and production of any document or record, receiving evidence on affidavits, etc. Thus, there are several provisions in the 1981 Act itself which vests certain powers of adjudication/determination on the Controller. The bar to jurisdiction under Section 23 of the 1981 Act is restricted only to matters which the Controller or the Appellate Authority have been empowered to decide in the first place. Thus, such bar would operate only in respect of the powers given to the Controller or the Appellate Authority, some of which have been discussed above, and no further.

- 52.** Hence, a Civil Court, for example, could not under the 1981 Act entertain an application for reconstruction of a similar accommodation and restore possession to the *Bharatia* in the event of subsequent non-existence of the structure. However, in the absence of any power being vested in the Controller under the 1981 Act to decide questions as to whether a person is a *Thika* tenant or as to whether a property is a *Thika* land and/or to decide eviction suits between *Thika* tenants and *Bharatias*, the bar of Section 23 of the 1981 Act would not be attracted. Thus, in view of the absence of any express or implied bar, the Civil Court would have exclusive jurisdiction to determine such issues and decide such suits in terms of Section 9 of the Code of Civil Procedure.
- 53.** Hence, the argument of the appellants is not sustainable in law.
- 54.** In view of the above discussions, we find there to be no merit in the appeal.

- 55.** Accordingly, A.P.D. No. 120 of 2015 is dismissed on contest, thereby affirming the judgment and decree dated January 28, 2015 passed in C.S. 245 of 1995.
- 56.** There will be no order as to costs.
- 57.** GA/6/2016 (Old No. GA/1063/2016) stands disposed of accordingly.
- 58.** The interim order granted earlier stands vacated.
- 59.** A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

Later:

After the above judgment is passed, learned counsel appearing for the respondent submits that respondent no. 1(c), Smt. Sandhyashree Goptu, passed away during pendency of the appeal. Since her heirs are already on record, such demise does not have any effect on the above judgment. However, the factum of such death is hereby recorded. The deletion of the name of the deceased respondent no. 1 (c) shall be duly depicted in the decree to be drawn up.

Learned counsel appearing for the appellant seeks a limited stay of the judgment in view of the appellant operating a petrol pump from the suit

premises and the running of the same being apprehended to be disrupted in view of the above judgment. Accordingly, stay of operation of the above judgment is granted till October 31, 2025.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)