

18.06.2026

Sl. No. 8

Ct.No. 39

Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 747 of 2025

With

CAN 1/2025

Saibal Mukherjee and Ors.

Vs

Smt. Kalpana Mullick and Ors.

Mr. Sounak Bhattacharya

Mr. Sounak Mondal

Ms. Bipasha Bhattacharyya

...for the petitioners

1. Affidavit of service, filed by the petitioners in court today, is taken on record.
2. Despite service, none appears on behalf of the respondents at the time of call.
3. By filing this revisional application under Article 227 of the Constitution of India, the petitioners/defendants have challenged the impugned order being no. 74 dated 27.01.2025 passed by learned Civil Judge (Junior Division) Additional Court at Sealdah, in Title Suit no. 37 of 2016.
4. By the order impugned, the Trial Court, *inter alia*, has observed while deciding a preliminary issue as follows:-

Firstly, the suit has been filed by the plaintiffs for recovery of possession contending therein that the Defendants

are trespassers in the suit premise as such a suit for eviction of a trespasser is not barred under the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 and also not hit by Sec. 8(3) or Sec. 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 upon reliance of the decisions in the case of (2020) 02 CAL. CK 0081 and Md. Jamil Akhter Vs. Abdul Mojid reported in 2011(1) CLJ (Cal) 308; and

Secondly, *the suit would not be thrown out as being not maintainable at this stage without trial as the contrary claims of the parties are required to be decided after adducing evidence and upon consideration of the documents produced by the parties.*

5. It is submitted by learned counsel appearing on behalf of the petitioners that the suit is not maintainable as the Defendants are thika tenants and they have been declared Thika tenants by the competent authority.
6. It is further submitted that there is specific bar to entertain the suit by the Civil Court when dispute arises regarding question of Thika tenancy or Thika property and same is hit by the Section 8 (3) read with Section 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001. Learned counsel also relies upon Section 5 (3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001.

7. Before entering into the merit of the case, this court would prefer to quote Section 5 (3) herein for ready reference and convenience to decide the case in hand.

8. Section 5 (3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 read as follows:

“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.”

9. Having heard the submission, on perusal of the order impugned and after considering the materials on record, this Court finds that when there is a dispute regarding whether a person thika tenant or not or whether any land in question is thika land, the controller is the competent authority to decide the case but the contention of the plaintiffs in the suit and defendants in the written statements are contrary to each other.

10. A suit for eviction of the trespassers from the suit premises can be decided by the

Civil Court. The Civil Court has a jurisdiction to decide the issue upon leading evidence by the parties as the suit instituted by the plaintiffs is for recovery of possession from trespassers and same is not hit by Section 8(3) read with Section 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001. Views taken by the Hon'ble Court in the aforesaid relied judgments are squarely applicable in the present facts and circumstances of this case. Both the aforesaid provisions created a bar in maintaining a suit between the Thika Tenant and Bharatia before the Civil Court without reference to the suit for eviction of trespassers. As such, this court is of the view that the suit filed by the plaintiffs is well maintainable before the Civil court.

11. Consequently, there is no error or illegality in the order impugned. It calls for no interference.
12. Accordingly, the revisional application being **C.O. 747 of 2025** is **dismissed** without order is to costs.
13. Consequently, the application being **CAN 1/2025** is, thus, disposed of.

14. All parties shall act in terms of the copy of this order duly downloaded from the official website of this Court.
15. Urgent certified photocopy of this order, if applied for, be supplied to the parties taking all legal formalities.

(Ajay Kumar Gupta, J.)