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**(2004) 02 CAL CK 0026**  
**In the Calcutta High Court**  
**Case No : W.P.L.R.T. No. 29 of 2003**

Dulal Chandra Bayen

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 23-02-2004

**Acts Referred:**

Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 — Section 5(3)  
Constitution of India, 1950 — Article 226, 227

**Citation :** (2004) 2 CALLT 147

**Hon'ble Judges :** Aniruddha Bose, J;Aloke Chakrabarti, J

**Bench :** Division Bench

**Advocate :** Ashoke Banerjee and D. Bhattacharya, for the Appellant; Tapan Kumar Mukherjee and D. Ghosh, for the Respondent

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## **Judgement**

Aloke Chakrabarti, J.—This writ petition was filed challenging the judgment and order passed by the West Bengal Land Reforms and Tenancy Tribunal, whereby the earlier writ petition filed by the present petitioner, was dismissed.

2. Facts relevant for deciding the present proceeding are that originally one Durga Bala Acooli, predecessor-in-interest of the respondent No. 2 was the owner of the disputed premises being No. 18/1. Ramesh Mitra Road, Kolkata. Ratan Chandra Bayen, predecessor-in-interest of the petitioner was inducted as thika tenant in respect of the land in the said premises, whereupon his son Birendra Chandra Bayen constructed temporary structure on the said land for carrying on motor repairing workshop. The respondent No. 2 realised rent in respect of the land against receipt. Petitioner along with respondent Nos. 3 to 9 became thika tenant of the said land by way of succession from the aforesaid predecessor-in-interest. After the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 came into operation, petitioner's predecessor-in-interest Birendra Chandra got his name enrolled as thika tenant for the said land and the petitioner also deposited rent in respect of the said land in the office of the Thika Controller, Kolkata. Municipal records were also amended showing the

Government of West Bengal as owner of the land and the petitioner, owner of the structure standing thereon.

3. Respondent No. 2 claimed himself to be the owner and landlord of the said premises and filed Eviction Suit against the petitioner's predecessor-in-interest on the alleged ground of default of payment of rent since October, 1986 as also on the ground of building and rebuilding. Petitioner was also added respondent No. 4 in the said suit. Written Statement was filed in the said suit denying that the tenancy was governed by the West Bengal Premises Tenancy Act and the thika tenancy was claimed. The said predecessor-in-interest of the petitioner died during pendency of the suit. Petitioner raised preliminary objection against maintainability of the suit on the ground of the bar created under the provisions of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 but final determination of the said issue was postponed till the hearing of the suit by an order dated 8th August, 1990 in Civil Revision case being C.O. No. 2670 of 1990. Though predecessor-in-interest got his name enrolled as thika tenant by filing return on 4th October, 1989, the respondent No. 2 submitted representations against the enrolment of the name of the petitioner's predecessor-in-interest as thika tenant before the Thika Controller of Kolkata. Respondent No. 2 moved writ petition before this Court challenging the inaction on the part of the thika Controller for not disposing of the said representations expeditiously whereupon, a learned single Judge of this Court disposed of the said writ petition directing the Controller, thika tenancy, to consider and dispose of the said representations after giving the representationist (being the respondent No. 2 here) and the present petitioner an opportunity of being heard by a reasoned order.

Accordingly, Thika Tenancy by an order dated 8th December, 1993 held that the petitioner is not a thika tenant but a premises tenant. Challenging the said order, the petitioner along with other heirs of his predecessor-in-interest preferred an appeal before the learned Additional District Judge, 7th Court at Alipore taking a preliminary point regarding the jurisdiction of the Controller to decide such a dispute concerning determination of the status of the parties which is exclusively in the domain of Civil Court, The appeal was dismissed and the said Appellate order was challenged by the petitioner in a writ petition being C.O. No. 4556(W) of 1997 which was subsequently transferred to the West Bengal Land Reforms and Tenancy Tribunal and was renumbered as T.A. No. 211 of 2002. The said writ application was also dismissed by the learned Tribunal and challenging the said order, the present writ petition was filed.

4. Heard Mr. Ashok Banerjee, learned counsel for the writ petitioner and Mr. Tapan Kumar Mukherjee, learned counsel for the private respondents.

5. On behalf of the writ petitioner, it is contended that question of status of the parties can be decided only be a Civil Court and not by Thika Controller acting under the provisions of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981. An alternative argument, was also advanced that even if the Thika Controller had the power to decide whether the petitioner is a thika tenant or not

but in any event, he could not decide that the petitioner is a premises tenant in respect of the said property. Reliance was placed on the judgment in the case of *Shyamal Atta v. State of West Bengal* reported in 1999 CriLJ 250 and *Indra Debt Rajak v. Thika Controller* reported in 1999(2) CriLJ 79. In support of other contentions of the learned counsel for the petitioner reliance was also placed on the judgment in the case of *Smt. Krishnawati Vs. Shri Hans Raj*, and *Chikkam Koreswara Rao Vs. Chikkam SubbaRao and Others*, .

6. On behalf of the private respondents Mr. Mukherjee, learned counsel, contended that Tribunal passed the impugned order under the direction of the Division Bench of this Court which reached a finality having not been appealed against and therefore, the said order cannot be challenged before this Court any further in respect of authority of the Tribunal. Reliance was placed on the judgment in the case of *Lakshmi Shanker Srivastava Vs. State (Delhi Administration)*, reported in 1998 (1) CLJ 251.

7. Considering aforesaid contentions, we find that predecessor-in-interest of the petitioner was accepted as a Thika Tenant and municipal records also show such position. The respondent No. 2 approached the Thika Controller for cancelling the order recording Thika Tenancy. No provision has been shown to us empowering Thika Controller to entertain such an application after declaration of Thika tenancy. Under Section 5(3) this appeared to be within powers of Thika Controller when a question arises as to whether a person is a Thika tenant or not . But after such declaration is made and no appeal is taken against such order, the application of respondent No. 2 for cancellation of recording Thika tenancy or a second application for deciding a dispute u/s 5(3) does not appear to be maintainable under the said Act.

8. Contention has further been made by the private respondents that the findings as regards status of the appellant as recorded in the orders passed in the Civil Suit are binding and therefore, the appellant has to be treated as premises tenant. In this respect, we find that such findings have not been arrived at declaring the status of the appellant in a Civil Suit, but findings, if any, arrived at on interlocutory applications by passing interlocutory orders in the suit filed under the West Bengal Premises Tenancy Act is not declaration of status.

9. With regard to the contention of the private respondents that the Thika Controller passed judgment in terms of the direction of the Division Bench and therefore, cannot be assailed here, is also not acceptable as Division Bench only directed a decision on the representation and the order of the Division Bench does not indicate that it came to a finding as regards authority of the Thika Controller to decide the status of the appellant and therefore, the direction has to be taken into consideration as a direction for deciding the representation in accordance with law. Admittedly, the law does not permit such decision as regards status of the appellant as to whether he is a premises tenant or not so far the jurisdiction of the Thika Controller dealing with Thika tenancy matter and therefore, such finding cannot stand.

Therefore, the writ petition is allowed and the impugned judgment of the Thika Controller, appellate order and the Tribunal's order impugned herein are hereby quashed.

Anirudha Bose, J.

10. I agree.