

(1979) 03 CAL CK 0013
In the Calcutta High Court
Case No : C.R. No. 56 of 1976

Indo Burma Forest Syndicate

APPELLANT

Vs

Nitai Charan Haldar

RESPONDENT

Date of Decision : 12-03-1979

Acts Referred:

Calcutta Thika Tenancy Act, 1949 — Section 30

Citation : AIR 1979 Cal 219

Hon'ble Judges : Ram Krishna Sharma, J; Murari Mohan Datt, J

Bench : Division Bench

Advocate : Tarun Kr. Chatterjee, for the Appellant; Haripada Roy, for the Respondent

Final Decision : Allowed

Judgement

M.M. Dutt, J.—The petitioner in this Rule, has challenged the propriety of the Order dated August 30, 1975 of the 12th Court of the Additional District Judge, Ali-pore affirming the order of the Thika Controller, Calcutta, holding that as the land comprised in the tenancy of the opposite party belongs to the Government, the Calcutta Thika Tenancy Act, 1949 does not apply in view of Clause (a) of Section 30 of the said Act.

2. The petitioner, who is the landlord of the opposite party, the thika tenant, brought a proceeding u/s 9 (2) of the Calcutta Thika Tenancy Act, 1949 praying for entering on the holding, inter alia, alleging that the opposite party, the thika tenant, had voluntarily abandoned his holding without notice to the petitioner and without arranging for payment of rent as it fell due. The opposite party entered appearance in the proceeding and contested the same by filing a written objection. The principal defence of the opposite party was that as the land comprised in the tenancy was Khas Mahal land of the Government, the provisions of the Calcutta Thika Tenancy Act were not applicable in view of Clause (a) of Section 30 of the Act. The learned Thika Controller upheld the said contention of the opposite party and dismissed the application of the petitioner u/s 9 of the

Calcutta Thika Tenancy Act On the ground that it was not maintainable. On appeal, the learned Additional District Judge also took the same (view) as that of the learned Thika Controller and dismissed the appeal preferred by the petitioner. Hence this Rule.

3. It is not disputed that the land comprised in the tenancy of the opposite is Khas Mahal land and the petitioner is the permanent lessee under the Government. It is also not disputed that the petitioner is the landlord of the opposite party in respect of the land appertaining to the tenancy. Section 30 of the Calcutta Thika Tenancy Act provides as follows :--

"Nothing in this Act shall apply to--

(a) Government lands,

(b) any land vested in or in the possession of--

(i) the State Government;

(ii) a Port authority of the major port; or

(iii) a railway administration; or

(iv) a Local authority; or

(c) any land which is required for carrying out any of the provisions of the Calcutta Improvement Act, 1911 (Beng. Act V of 1911)."

4. The expression "Government lands" in Clause (a) of Section 30 means lands belonging to the Government. The question is whether by Clause (a), it has been intended by the legislature that all lands in respect of which the Government is the proprietor should be exempted from the operation of the Calcutta Thika Tenancy Act. Under Sub-section (2) of Section 1, the Act "extends to Calcutta as defined in Clause (11) of Section 3 of the Calcutta Municipal Act, 1923 and such suburbs of Calcutta as may have been or may hereafter be notified u/s 1 of the Calcutta Suburban Police Act, 1866 and are not included within Calcutta as so defined and also to the municipality of Howrah," It is common knowledge that in Calcutta, the Government is the ultimate proprietor of all lands, but the Act has been made applicable to Calcutta. So it is apparent that it is not the intention of the legislature that the Act would not apply to lands of which the Government is the proprietor. After the enactment of the West Bengal Estates Acquisition Act, 1953, the State Government became the owner of all lands of Howrah and other districts. If Clause (a) is strictly interpreted to mean that it will not apply to lands belonging to the Government, then, after the enactment of the West Bengal Estates Acquisition Act, 1953 lands situate within the Municipality of Howrah will be excluded from the operation of the Calcutta Thika Tenancy Act. The Act has been amended from time to time, but Sub-section (2) of Section 1 has not been amended by the legislature even after the enactment of the West Bengal Estates Acquisition Act, 1953. The Act, therefore, still applies to thika tenancies within the Municipality of Howrah. It is, therefore, obvious that it is not the intention of

the legislature that the Act will not have any application to all lands of which the Government is the proprietor. In this connection, we should take notice of the preamble to the Act, namely, that it is "An Act to make better provision relating to the law of landlord and tenant in respect of thika tenancies in Calcutta". The Act regulates the law of landlord and tenant in respect of thika tenancies in Calcutta and Howrah. In our opinion, it is in that context Clause (a) of Section 30 should be interpreted and if so interpreted, Clause (a) will apply where the Government is the landlord or the tenant. By virtue of Sub-clause (i) of Clause (b), where the State Government is in possession of the land, the Act will not also apply. Even where the Government is not the owner, but takes on lease a land and thereafter leases it out to a thika tenant, still the Act will not apply, for the land will be regarded as Government land within the meaning of Clause (a).

5. In the instant case, the Government is no doubt the proprietor of the disputed land, but it has settled the same with the petitioner by way of permanent lease. In the circumstances, in our opinion, it is difficult to hold that the disputed land partakes the character of Government land within the meaning of Clause (a) of Section 30. The disputed land is situate in Dihi Panchanna gram where all lands are Khas Mahal lands. For the reasons given above, we are unable to hold that the legislature intended that thika tenancies created by the lessees of Khas Mahal lands stand outside the purview of the Calcutta Thika Tenancy Act. In our view that was not the intention of the legislature. The Act, therefore, is applicable to thika tenancies of Khas Mahal lands, the Government having no connection with such tenancies.

6. For the reasons aforesaid, we set aside the order of the learned Additional District Judge and of the learned Thika Controller and sent the case back to the learned Thika Controller with the direction to dispose of the application of the petitioner on merits and in accordance with law.

7. The Rule is made absolute, but there will be no order for costs.

Sharma, J.

I agree.