

(2012) 04 CAL CK 0111
In the Calcutta High Court
Case No : W.P.L.R.T. 110 of 2011

Kolay Properties (P) Ltd.

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 — Section 10(2), 10(3), 11, 11(1), 2(5)
Calcutta Thika Tenancy (Acquisition and Regulation) Rules, 1982 — Rule 3
Calcutta Thika Tenancy Act, 1949 — Section 10A
Constitution of India, 1950 — Article 141
Limitation Act, 1963 — Section 5

Citation : AIR 2012 Cal 188 : (2012) 2 CALLT 268 : (2012) 3 CHN 255

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Mrinal Kanti Sinha, J

Bench : Division Bench

Advocate : Saktinath Mukherjee, Mr. Sumit Talukdar, Mr. Amiya Narayan Mukherji, Mr. Dip Narayan Mukherji, Mr. Ashoke Kr. Majumdar and Mr. Dipayan Kundu, for the Appellant;Ashesh Kr. Bhattacharyya, Ms. Pratima Mishra, For the Respondent Nos. 4-10, Mr. Chandi Charan De, For the State (appearing in W.P.L.R.T. 110 of 2011), Mr. Tapan Kumar Mukherjee and Mr. Nilotpal Chatterjee For the State (appearing in W.P.L.R.T. 109 of 2011), for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—Both the writ petitions have been filed assailing the common judgment and order dated 30th March, 2011 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. No. 2576 and 2577 of 2009. In these writ petitions several important issues relating to the concept of Thika Tenancy have been raised for consideration and adjudication by this Court. We have heard the writ petitions analogously since both the writ petitions arise out of a common judgment and order passed by the learned Tribunal. From the records, we find that one Biswanath Pal was the owner of 14 Cottahs of land in respect of the premises in question. Out of the aforesaid 14 Cottahs, 5 Cottahs of land on the eastern portion of the premises in question was in occupation of K.

C. Ghosh & Company. The balance 9 Cottahs of land on the western portion of the said premises was let out to one Sripada Mitra in the year 1937. The said K. C. Ghosh & Company left the aforesaid 5 Cottahs of land on the eastern portion of the premises in question which was thereafter developed by the successor of Biswanath Pal namely, Ambar Nath Pal. The said owner namely, Ambar Nath Pal sold the remaining portion of the premises in question measuring about 8 Cottahs 12 Chittaks 20 Square feet to the petitioner Kolay Properties (P) Ltd. by executing Deed of Conveyance.

2. In the year 1971, Sripada Mitra died and thereafter a Partition Suit was filed being Title Suit No. 20 of 1972. The aforesaid partition suit was decreed in preliminary form on 8th March, 1975 and one Santosh Kumar Mitra was appointed as Receiver in respect of the property in question. Said Santosh Kumar Mitra, one of the sons of Late Sripada Mitra, being appointed as Receiver in the Partition Suit, being Title Suit No. 20 of 1972, filed a return on 26.06.1984 under the Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981 (hereinafter referred to as "1981 Act"), alleging that Sripada Mitra was a tenant since 1937 of bare land measuring about 8 Cottahs 5 Chittaks and 4 Square feet being the Western part of premises No. 4, Paul Street, Shyampukur, Kolkata and by erecting structure on the said plot of land Sripada became a Thika Tenant under the owner landlord Ambar Nath Pal.

3. Subsequently, one Sitangshu Mitra, one of the sons of the deceased Sripada Mitra, in or about 2008 filed an application before the Controller under the said 1981 Act claiming thika tenancy in respect of the properties under the State of West Bengal consequent upon the vesting of the same under the provisions of the said 1981 Act.

4. In view of such application the Thika Controller initiated Misc. Case No. 48 of 2008. In the said Misc. Case one Krishna Mitra, claiming to be a Co-sharer, filed a petition on 18.04.2008 alleging that the Kolay Properties (P) Limited claiming to be a purchaser from Ambar Nath Pal under a Sale Deed dated 07.10.2005 had forcibly entered into the subject premises and made construction on 07.04.2008.

5. The learned Thika Controller finally disposed of the aforesaid Misc. Case being No. 48 of 2008 upon specifically declaring that the legal heirs of Late Sripada Mitra represented by the Receiver Santosh Kr. Mitra, since deceased, were Thika Tenants in respect of the premises in question being western portion of 4, Paul Street with effect from 18th January, 1982. The learned Thika Controller further directed the Kolay Properties (P) Ltd. to handover vacant possession of the premises in question to the applicants before the learned Thika Controller within 60 days from the said order failing which the said Kolay Properties would be treated as trespasser.

6. Challenging the aforesaid order of the learned Thika Controller, two applications being O.A. No. 2576 of 2009 and O.A. No. 2577 of 2009 were filed before the West Bengal Land Reforms and Tenancy Tribunal. The application

being O.A. 2576 of 2009 was filed by Ambar Nath Pal (Successor of Biswanath Pal) and the other application being O.A. 2577 of 2009 was filed by the Kolay Properties (P) Ltd. The petitioners in respect of the aforesaid applications challenged the order of the learned Thika Controller on the grounds that the learned Thika Controller erroneously held that the property in question is a thika tenanted property ignoring the fact regarding existence of Pucca structure over the land in question. It was also submitted on behalf of the petitioners that the learned Thika Controller did not consider that even the Kolkata Municipal Corporation denied the property in question as a thika tenanted property. It has been specifically urged on behalf of the petitioners before the learned Tribunal that the learned Thika Controller wrongfully and illegally ignored the entries made in the inspection book on the basis of the enquiry report of the appropriate officer.

7. It has been submitted on behalf of the petitioners that the enquiry officer by the report dated 7th March, 1986 stated that the rooms in respect of the structure in question over the said land are brick built wooden shaded in the ground floor and therefore, the said structure over the land in question cannot be said to be Kutcha structure. The petitioners herein submitted before the learned Tribunal that the property in question cannot be a thika property since the structure in question over the land is not a Kutcha structure.

8. The petitioners while challenging the order of the learned Thika Controller before the learned Tribunal also alleged that Late Santosh Kr. Mitra submitted the return after the stipulated period on 26th June, 1984 and the learned Thika Controller illegally accepted the same.

9. The learned counsel representing the private respondents strongly opposed the aforesaid contentions made on behalf of the petitioners. The learned counsel on behalf of the private respondents submitted that the learned Thika Controller upon considering the materials on record rightly held that the structure over the land in question was Kutcha in character and therefore, it cannot be said that the property in question is not thika tenanted property. It was also submitted on behalf of the private respondents before the said learned Tribunal that the learned Thika Controller by accepting the return had condoned the delay which the said Thika Controller was entitled to do under the Calcutta Thika Tenancy (Acquisition & Regulation) Rules, 1982 (hereinafter referred to as "1982 Rules"). Upon considering the submissions of the learned counsel of the respective parties and also considering the evidence and materials on record learned Tribunal specifically held that the structure erected over the land in question was not a Pucca or durable structure.

10. The learned Tribunal also held that the return filed by Late Santosh Kr. Mitra should be treated as a valid return. The learned Tribunal, therefore, accepted the findings of the learned Thika Controller and dismissed the applications filed by the petitioners herein.

11. Assailing the judgment and order passed by the learned Tribunal, Mr. Saktinath Mukherjee, learned senior counsel of the petitioners submitted that the learned Tribunal failed to appreciate that the learned Thika Controller had no jurisdiction to go into the question whether the land is a thika land or not before 1st November, 2010 since Sub Section 3 of Section 5 of West Bengal Thika Tenancy (Acquisition & Regulation) Act, 2001 (hereinafter referred to as "2001 Act") was amended with effect from 1st November, 2010.

12. Mr. Mukherjee submitted that in terms of Section 10A, right was granted to Thika Tenant to erect Pucca structure for residential purpose only with the previous permission of the controller and the controller may grant such permission only on an application made by the Thika Tenant. It has been specifically submitted on behalf of the petitioners that the Pucca business premises could not be treated as thika land under Calcutta Thika Tenancy Act 1949 (hereinafter referred to as "1949 Act") and also under the 1981 Act.

13. Referring to 1949 Act, Mr. Mukherjee submitted that there was no scope to erect Pucca structure for business purpose under the provisions of the said Act. Mr. Mukherjee submitted that the lands comprised in Thika Tenancies vested in the State under 1981 Act. It has been submitted on behalf of the petitioners that erection of Pucca structure under the State Government was permitted under 2001 Act with effect from 1st November, 2010 for residential, manufacturing and business purpose. Therefore according to the petitioners, there could not be any existence of Pucca structure for business purpose under the 1949 Act or subsequently under 1981 Act.

14. The learned counsel of the petitioners also referred to and relied upon the schedule of the plaint of the Partition Suit filed by the legal heirs of the original tenant Sripada Mitra, since deceased, wherein the structure was described as "partly Pucca structure and partly two storied wooden structure. The petitioners have also relied on the report of the Thika Inspector dated 7th March 1986 wherein it has been stated that in the ground floor rooms are brick built wooden shed and in the first floor wooden wall with tile and tin shed. However, there was no sanctioned plan for the structure. Privy and latrine were made by the C.M.D.A. now known as K.M.D.A.

15. The learned counsel representing the private respondents however, submitted that the property in question vested to the State and the legal heirs of original tenant Sripada Mitra, since deceased, became the Thika Tenants as per provision of Section 5 (6) of the said Act. The learned counsel of the private respondents further submitted that the petitioners herein got their names mutated wrongly and illegally and also obtained the sanctioned building plan in an illegal manner from the Kolkata Municipal Corporation Authorities.

16. It has also been submitted on behalf of the private respondents that the property in question vested in the State by operation of law under 1981 Act and therefore, the petitioners herein had no occasion to purchase the property in

question from the erstwhile owners in the year 2005. According to the private respondents, petitioners herein could not be the owners in respect of the lands in question.

17. The learned counsel of the private respondents also submitted that the structure in question has been specifically described in the return filed before the learned Thika Controller as hereunder :-

structures are made by Sal Posts and Sal Wood Scantlings and Paintingless.

18. The learned counsel of the private respondents categorically submitted that the structure in question was only two storied wooden structure situated on the land.

19. One other interesting point appears from the records that in the plaint of the Partition Suit being T.S. No. 20 of 1972, heirs of Late Sripada Mitra stated that the land in question is about 7 Cottahs with partly Pucca structure and partly wooden structure whereas in the return filed before the learned Thika Controller total land was mentioned as 9 Cottahs. The land in question is actually 8 Cottahs 12 Chittaks 20 Square feet. Therefore, the private respondents herein made contradictory statements and took inconsistent stand with regard to the actual area of the land in question.

20. Mr. Ashesh Bhattacharya, learned counsel of the private respondents submitted that in the present case only the bottom at plinth level of the structure was Pucca construction to protect the wooden structure from erosion due to contact of soil and ground water and as such, it was described in the schedule of the plaint as "partly Pucca and partly two storied wooden structure" but in reality it was wooden "math kotha" made of sal wood post and timber shed with tile/tin roof.

21. According to Mr. Bhattacharya, the Pucca construction at the bottom of the two storied structure would never qualify for the greater part of the total structure as Pucca.

22. Mr. Bhattacharya submitted that in the present case, neither the roof nor the floor, other than the floor at plinth level, was constructed with brick, stone or concrete and as such, at best the structure in question should be considered as "hut" as per definition provided in the statute and the tenants shall be considered Thika Tenants.

23. Mr. Mukherjee referred to and relied on a decision of the Full Bench of this Court in the case of Lakshmimoni Das and Others Vs. State of West Bengal and Others, and submitted that there can be no Pucca structure on thika lands prior to 01/11/2010 when the amendment of Sub Section 5 of Section 5 of the 2001 Act was given effect to.

24. The Full Bench of this Court in the case of Lakshmimoni Das & Ors.(supra) specifically held :-

56(b). Within the scope and ambit of S. 5 of the impugned Act only lands comprised in thika tenancies within the meaning of the Calcutta Thika Tenancy Act, 1949 comprising a kutcha structure and/or a pucca structure constructed for residential purpose with the permission of the Controller under the Calcutta Thika Tenancy Act, 1949 and khatal lands held under a lease shall vest and save as aforesaid no other land and structure vest under the impugned Act.

25. Mr. Mukherjee also relied on a decision of a Division Bench of this Court in the case of Sri Sri Satyanarayan & Ors. Vs. S. C. Chunder, reported in 2001 (3) CHN 641 wherein the Division Bench held :-

18. That even under the present law, a thika tenancy relates to kutcha structures primarily, has already been decided by a Division Bench of our Court to which one of us was a party.

26. In the present case admittedly, Pucca structure was never constructed for residential purpose with the permission of controller under 1949 Act and therefore, the predecessor-in-interest of the private respondents herein could not be a Thika Tenant under 1949 Act unless the structure erected on the land in question was a Kutcha structure.

27. The law laid down by the Full Bench of this Court in the case of Lakshmimoni Das & Ors. (supra) requires the existence of Kutcha structure as condition precedent for vesting of lands comprised in Thika Tenancies.

28. As mentioned hereinbefore property has been described in the Schedule to the plaint of the Partition Suit filed by the Mitras" as partly Pucca structure and partly wooden structure on a portion of the land. Partly Pucca and Partly two storied timber wood structure cannot be regarded as Kutcha structure within the meaning of 1981 Act. The enquiry officer in the report dated 7th March, 1986 also stated that the rooms are brick built having wooden wall with tile and tin shed.

29. Learned counsel representing the State respondents produced a copy of the aforesaid enquiry report dated 7th March, 1986 before this Court at the time of hearing of the matters. Relevant extracts from the said office report are set out hereunder :-

Ground floor : Rooms are brick built wooden shed.

First floor : Wooden wall, tile & tin shed

30. Structures were made by tenant. No sanction plan for structures was produced. Privy & Latrine were made by C.M.D.A. The aforesaid record shows that the construction was Kutcha. Learned counsel of the State respondents also adopted the arguments advanced on behalf of the private respondents.

31. Mutation of the property in question and sanction of the building plan by Kolkata Municipal Corporation Authorities indicate that the property in question was not a thika property. Admittedly, the property was not registered in the

record of Kolkata Municipal Corporation as a thika property. In the aforesaid circumstances and also scrutinizing the available materials on record we find neither any claim nor any evidence nor any consideration or finding about the existence of Kutcha structure on the subject property on the material date i.e. 18th January, 1982.

32. The decision of the Full Bench in Lakshmimoni Das & Ors. (supra) was in the context of 1981 Act. Referring to the definition of Thika Tenant under the provisions of 1949 Act, Mr. Bhattacharya submitted that the term "any structure" used in the definition of Thika Tenant cannot be given a restricted meaning by excluding the term Pucca structure from the said definition. Mr. Bhattacharya referred to a decision of Supreme Court in the case of Jnan Ranjan Sen Gupta & Ors. Vs. Arun Kr. Bose, reported in AIR 1975 SC 1994. In the aforesaid decision Hon"ble Supreme Court observed :-

9. We are also unable to accede to the contention that Section 2 (5) of the Act requires a thika tenant under the law to secure prior permission of the landlord for erection of structures on the land. As the preamble shows the Act is for making better provision relating to the law of landlord and tenant in respect of thika tenancies in Calcutta. It is a piece of beneficial legislation conferring certain rights upon the tenants. In dealing with such a provision of law we cannot read into the definition something which is not already there and the introduction of which will lead to imposing a restriction upon the rights of this class of tenants by judicial interpretation. This is not permissible in absence of express words to that effect or necessary manifest intendment. Besides, we do not find any vagueness or uncertainty in the definition clause. The submission is, therefore, of no avail.

33. Mr. Bhattacharya further submitted that the aforesaid decision of the Supreme Court in the case of Jnan Ranjan Sengupta & Ors. (supra) was never brought to the notice of the Full Bench of this Court in the case of Lakshmimoni Das & Ors. (supra) and therefore, the Full Bench had no scope to consider the principles of law laid down by the Supreme Court in the aforesaid case of Jnan Ranjan Sengupta & Ors. (supra).

34. In the case of Jnan Ranjan Sengupta & Ors. (supra), Supreme Court considered the question whether a Thika Tenant is required to take the permission of the landlord when proceeding to erect any structure. The Supreme Court held that having regard to the definition of Thika Tenant no such condition of prior consent of the landlord can be introduced. The Supreme Court was not at all dealing with the question relating to the nature of the structure to be erected by the Thika Tenant. The Supreme Court was not dealing with the concept of Thika Tenant at all and was also not dealing with the character of the structure which can be put up by a Thika Tenant.

35. The learned Tribunal also held that the aforesaid decision of the Supreme Court in the case of Jnan Ranjan Sengupta & Ors. (supra) is not attracted in the

facts of the present case. The relevant extracts from the impugned judgment passed by the learned Tribunal are set out hereunder :-

In our opinion the case reported in Jnan Ranjan Sen Gupta and Others Vs. Arun Kumar Bose, is not attracted which empowers a tenant to erect a pucca structure for a residential purpose.

36. Quoting a passage from a decision out of the context is inappropriate and cannot be treated as a precedent. The decision cited by Mr. Mukherjee, learned senior counsel in the case of Jitendra Kumar Singh and Another Vs. State of U.P. and Others, is very much relevant. In the aforesaid judgment Hon"ble Supreme Court observed :-

53. Even otherwise, merely quoting the isolated observations in a judgment cannot be treated as a precedent dehors the facts and circumstances in which the aforesaid observation was made.

54. Considering a similar proposition in Union of India Vs. Dhanwanti Devi, this Court observed as follows : 9.....It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi.A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. ... It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution.

37. We are, therefore, also of the opinion that the aforesaid decision of the Supreme Court in the case of Jnan Ranjan Sengupta & Ors. (supra) has no manner of application in deciding the issues raised before us.

38. In the aforesaid circumstances, we hold that the structure in question over the subject plot cannot be held to be a Kutcha structure and therefore, the descendents of Late Sripada Mitra cannot be accepted as Thika Tenants in respect of the premises in question.

39. Mr. Mukherjee, learned senior counsel of the petitioners further submitted that in terms of Rule 3 of the Kolkata Thika Tenancy (Acquisition and Regulation) Rules 1982 every Thika Tenant occupying any land under a landlord shall furnish to the Thika Controller a return in Form-A within 240 days from the date of commencement of the Act. In the present case Late Santonsh Kr. Mitra, one of the sons of Late Sripada Mitra, being the Receiver in the partition suit filed a return beyond the prescribed time limit on 26th June, 1984.

40. Mr. Mukherjee submitted that the return should have been filed before the

learned Thika Controller within 240 days from the date of commencement of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001. Mr. Mukherjee relied upon Rule 3 of the Kolkata Thika Tenancy (Acquisition and Regulation) Rules 1982 in this regard.

Rule 3 (a) of 1982 Rules provides :-

every thika tenant, or tenant as the case may be, shall furnish to the Controller a return in Form A showing the particulars of his total land within two hundred and forty days from the date of commencement of the Act. The Controller may, on a written application from such thika tenant or tenant extend the date for furnishing the return by a period not exceeding sixty days:

Provided that the Controller may, on reasonable grounds, accept any return which may be filed by the thika tenant or tenants after the expiry of the prescribed time-limit.

41. Mr. Mukherjee also referred to Rule 3 (a) of 2004 Rules (hereinafter referred to as 2004 Rules) which provides :-

every thika tenant shall furnish to the Controller a return in Form A, separately for each holding or tenancy, showing the particulars of occupation of such land in total, within two hundred forty days from the date of commencement of the Act. The Controller may, on a written application from such thika tenant, extend the date of furnishing such return by a period not exceeding sixty days :

Provided that the Controller may, on reasonable grounds, accept any return which is filed by a thika tenant after the expiry of the aforesaid time limit :

Provided further that the thika tenants who already have submitted return in Form A under the Kolkata Thika Tenancy (Acquisition and Regulation) Rules, 1982, shall not be required to submit any further return in that respect and such returns shall be deemed to have been submitted validly under these rules;

42. Mr. Mukherjee submitted that in the present case, no return was filed on behalf of any thika tenant under 1982 Rules and the return admittedly, filed out of time in 1984 could not be treated as valid return under the 1982 Rules. Mr. Mukherjee further submitted that in the aforesaid circumstances it cannot be said that the private respondents were not required to submit any further return under 2004 Rules as the return filed under 1982 Rules after the expiry of the prescribed time limit cannot attract the benefit of deeming provision under Sub-Rule (a) of Rule 3 of 2004 Rules.

43. The learned counsel of the private respondents however, submitted that there were sufficient reasons for acceptance of the return by the Thika Controller even at the belated stage. Mr. Bhattacharya, learned counsel of the private respondents submitted that proviso to Sub-Rule (a) of Rule 3 of 1982 Rules authorised the Controller to accept the return filed by the Thika Tenant after the expiry of the prescribed time-limit and therefore in the instant case, Controller

did not commit any error in accepting the said return after the expiry of the prescribed time limit.

44. Mr. Bhattacharya further submitted that the Controller was not required to pass any reasoned order for accepting the return after the expiry of the prescribed time-limit. Mr. Bhattacharya submitted that in the case of admission of appeal after the prescribed time-limit an application u/s 5 of the Limitation Act is required to be decided by a reasoned order since either of the parties to the appeal would be prejudiced with the decision relating to admission or rejection of such appeal.

45. Mr. Bhattacharya therefore, submitted that a written order is necessary while deciding the application u/s 5 of the Limitation Act. However, in the present case according to Mr. Bhattacharya no one would be prejudiced due to filing of return after the expiry of the prescribed time limit and therefore, a reasoned order was not required to be passed.

46. Mr. Mukherjee strongly disputed the aforesaid contentions made on behalf of the private respondents and submitted that in the present case Controller had no authority to accept any return after the expiry of the prescribed time limit without furnishing reasons.

47. Mr. Mukherjee referred to and relied on a decision in the case of Amaresh Das and Others Vs. State of West Bengal and Others, Mr. Mukherjee further submitted that in the present case there was no prayer for condonation of delay in filing the return by the Thika Tenant and the Thika Controller also did not pass any order condoning the delay.

48. In terms of first proviso to Rule 3 (a) of 1982 Rules, Controller may on reasonable grounds accept any return after the expiry of the prescribed time-limit. Therefore, the Controller is bound to furnish the reasonable grounds which persuaded him to accept the return after the expiry of the prescribed time-limit. The Division Bench of this Court also observed in the case of Amaresh Das & Ors. (supra) :-

15. It is now a settled law that the appeal is a creature of statute and if there is a period of limitation prescribed for preferring such appeal, no appeal can be entertained beyond the period of limitation unless the appellate authority is vested with the jurisdiction to condone the delay and, in exercise of such power, the appellate authority actually condoned such delay.....

19.....Question of condonation of delay is no doubt discretionary but where the heirs of the deceased respondents have not been substituted nor have any memorandum of appeal been served upon the heirs of the respondent and no separate application for condonation of delay has been filed and consequently the heirs of deceased respondent did not get any opportunity to know either the grounds of condonation of delay or the grounds mentioned in the memorandum of appeal, the delay could not be even impliedly condoned nor

could the appellate authority enter into the merits of the appeal.

49. In the present case, return filed in Form-A by Late Santosh Kr. Mitra after the prescribed time-limit could not be accepted by the Thika Controller without furnishing the reasonable grounds. Undisputedly, the Controller has power to accept any return after the expiry of the prescribed time-limit but such acceptance should be only on reasonable grounds as specifically provided in proviso to Rule 3 (a) of 1982 Rules. Delay in filing the return is to be condoned by the Controller after filing of an application for condonation of delay and assigning reasonable grounds as provided in the proviso to Sub-Rule (a) of Rule 3 of 1982 Rules.

50. Mr. Mukherjee also urged before this Court that the thika controller had no jurisdiction to go into the question whether the land in question is thika land or not before November 1, 2010. In the present case, the Thika Controller decided the matter on 22nd October, 2009 when Sub-Section 3 of Section 5 was not amended. Before amendment said Sub-Section 3 of Section 5 of 2001 Act was as under :-

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

51. The aforesaid Sub-Section 3 was substituted with effect from November 1, 2010 as hereunder :-

(3) If any question arises as to whether a person is athika 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.

52. Mr. Mukherjee referred to a decision of a Division Bench of this Court in the case of Indira Devi Rajak Vs. Thika Controller & Ors., reported in 1999 (2) CHN 311, wherein the said Division Bench specifically held that the controller has no jurisdiction to go into the question of title and declare a deed to be void. By the Amendment Act of 2010 and with effect from 1st November, 2010, old Sub-Section 3 of Section 5 of 2001 Act was substituted by new Sub-Section 3 so as to empower the Thika Controller additionally to decide whether the land in question was thika land or not. The aforesaid power was not in existence prior to 1st November, 2010 when the Thika Controller decided the subject matter of dispute in relation to the property in question. The Thika Controller decided the dispute on 22nd October, 2009 when the substituted Sub-Section 3 of Section 5 of 2001 Act was not in existence.

53. The petitioners herein are also very much aggrieved by the order of the learned Thika Controller who directed restoration of possession and the said direction of the Thika Controller was also not interfered with by the learned

Tribunal. The Thika Controller has directed the petitioners Kolay Properties to restore possession of the said property to the private respondents namely, Mitras and the learned Tribunal has affirmed the same.

54. Mr. Mukherjee submitted that the learned Thika Controller is not entitled to pass any order for restoration of possession against Kolay Property who admittedly, is neither a Thika Tenant nor a Bharatia.

55. Mr. Mukherjee submitted that the Controller is not a Court but a statutory authority with extremely limited and precisely defined power.

56. Mr. Mukherjee further submitted that there was no question of adjudicating the dispute between Kolay Property on the one hand and the alleged Thika Tenant on the other.

57. Mr. Mukherjee submitted that the Thika Controller or the Tribunal could not direct restoration or recovery of possession against Kolay Property who is claiming an independent title.

58. The provisions relating to restoration of possession are Sections 10(2), 10(3) and 11 (1) (f) of the 2001 Act. The said provisions deal with the relationship between a Thika Tenant and a Bharatia, order for restoration of possession and enforcement thereof. The said provisions do not relate to a dispute between a third person claiming an independent title and the person claiming Thika Tenancy. If such a third person has allegedly dispossessed an alleged Thika Tenant then neither the Controller nor the Tribunal has any jurisdiction to deal with the same. This is precisely the ratio of the decision of this Court in Smt. Munia Debi Shaw Vs. Jugalkishore { 1991 (2) CHN 18 } wherein it has been held that if a third person claiming to be the owner dispossesses an alleged Bharatia, the Thika Controller has no jurisdiction to adjudicate the same. By analogy, if a so-called Thika Tenant is dispossessed by a third person claiming an independent title the Thika Controller cannot assume jurisdiction which clearly has not been assigned to him by the legislature. Smt. Munia Debi Shaw Vs. Jugalkishore (supra) was decided under the provisions of the 1981 Act. Under the 1981 Act there were specific provisions for restoration of possession and enforcement of order for restoration of possession under Sections 11 (2), 11(3) and 12 (f). Retention of identical provisions under Sections 10 (2) and 10 (3) with Section 11 (1) (f) in the 2001 Act without any attempt to alter the law declared in Smt. Munia Debi Shaw Vs. Jugalkishore (supra) reflects legislative approval of the judicial pronouncement in Smt. Munia Debi Shaw Vs. Jugalkishore (supra).

59. Section 11 (1) (f) of 2001 Act is a procedural provision and no substantive power has been given to the Controller to restore possession from a third-party. Section 11 of 2001 Act can be compared with Section 57 of W.B.L.R. Act. There is no substantive provision in 2001 Act authorising the Thika Controller to decide the title of a third person in the property in question. In the present case, the Thika Controller has no right to decide the title of a third-party in the property in question and therefore cannot also direct the third-party to restore possession

when it has been specifically alleged that the said third-party has dispossessed the Thika Tenants. Section 11 (1) (f) of 2001 Act is set out hereunder :-

11 (1) (f). enforcing or executing orders (including an order for restoration of possession) as if such orders were decrees of a civil court.

60. Therefore, in terms of Section 11 (1) (f) Controller is entitled to enforce or execute such order or orders which the said controller is entitled to pass under the substantive power granted by the statute. In the present case, the Thika Controller has no power and/or authority to decide the title of a third-party in the property in question and therefore the said Thika Controller cannot direct the third-party to restore possession when it has been alleged that the said third-party had dispossessed the Thika Tenant.

61. On behalf of the private respondents, learned Counsel Mr. Bhattacharya submitted that even before amendment of Sub-Section 3 of Section 5 of 2001 Act Controller was authorised to decide whether a person is a Thika Tenant or not. However, it is not in dispute that before the amendment of said Sub-Section 3 of Section 5 of 2001 Act Controller had no right to decide whether the land in question is thika land or not. The Controller has declared the private respondents as Thika Tenants in respect of the lands in question ignoring the fact that the structures erected thereon were not a Kutcha structure. Furthermore, the said private respondents filed the return in Form-A under Rule 3 of 1982 Rules after the expiry of the prescribed time-limit when the said Controller had no authority to accept the said return in absence of any application for condonation of delay and also without furnishing reasonable grounds in view of the specific provisions of said Rule 3 of 1982 Rules.

62. In any event, the Thika Controller has not been empowered under the statute to decide the title of a third person in the property in question and also to direct the said third person to restore possession when the said third person had dispossessed a Thika Tenant. In the present case also the petitioners had dispossessed the private respondents who are claiming themselves as Thika Tenants in the property in question. The Controller, therefore, had no authority to direct the petitioners to restore possession when the said Controller was not empowered by the statute in this regard.

63. For the reasons discussed hereinbefore, we are of the opinion that the findings of the learned Thika Controller are erroneous and therefore, the order passed by the said learned Thika Controller cannot be sustained in the eye of law. Accordingly, the aforesaid order passed by the learned Thika Controller stands quashed. For the identical reasons, the impugned judgment and order passed by the West Bengal Land Reforms and Tenancy Tribunal in the applications being O.A. No. 2576-2577 of 2009 on 30th March, 2011 also cannot be sustained in the eye of law and the same is, therefore, set aside.

64. Both the writ petitions thus, stand allowed.

65. In the facts of the present case, there will be however, no order as to costs.

66. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Mrinal Kanti Sinha, J.

67. I agree.

LATER :

68. After pronouncement of the judgment, the learned Counsel representing the respondent nos. 4 to 10 prays for stay of the operation of the said judgment and order which is, however, opposed by Mr. Saktinath Mukherjee, learned senior counsel representing the petitioner.

69. We also find no reason to grant such stay. Accordingly, the prayer for stay is refused.