
(2013) 11 CAL CK 0036
In the Calcutta High Court
Case No : C.O. No. 3509 of 2009

Mridul Kumar Singha

APPELLANT

Vs

Sri Netai Charan Nandi and Others

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2014) 1 WBLR 729

Hon'ble Judges : Asim Kumar Ray, J

Bench : Single Bench

Advocate : Siddhartha Banerjee, for the Appellant; Gautam Chakraborty, Ms. Pratima Roy Chowdhury and Ms. Soma Bera, for the Respondent

Final Decision : Dismissed

Judgement

Asim Kumar Ray, J.—This revisional application is directed against the order dated 24th June, 2009 passed in Misc. Case No. 60 of 2005 by Controller, Kolkata Thika Tenancy pertaining to premises No. 11A, Roy Charan Paul Lane, Kolkata-700 046 thereby dismissing an application preferred by the petitioner challenging the maintainability of the proceeding at the instance of the opposite parties herein. The factual background leading to the presentation of this revisional application in a nutshell is that opposite parties made a petition of complaint dated 7/8th March, 2001 contending that they are the bharatias in respect of respective portion of the premises No. 11A, Roy Charan Paul Lane, Kolkata-700 046 which is a thika property. The thika tenants have executed a sale deed without due process of law thereby transferring the said premises in favour of the petitioner. Such transfer is an unlawful transfer. Necessary legal steps are required to be taken against such illegal transfer of such thika property.

2. Petitioner on receipt of communication dated 20th February, 2006 issued by Controller, Kolkata Thika Tenancy entered appearance in the proceeding. He filed an application praying for necessary directions upon the opposite parties to serve him with a copy of the petition of complaint. It was supplied to him. On receipt of the said copy the petitioner took out an application challenging the

maintainability of the proceeding. The opposite parties filed affidavit in objection. The Controller, Kolkata Thika Tenancy heard both sides and passed the order impugned. In that backdrop, this is the revisional application.

3. Mr. Siddhartha Banerjee, learned advocate appearing for the petitioner took me to the annexures of the revisional application and has submitted that the complaint before the Controller, Kolkata Thika Tenancy was submitted on 7th March, 2001 and the same was taken for consideration by affixing diary No. 458/2001 dated 8th March, 2001. He has contended further that the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (hereinafter referred to as the Act, 2001) got the assent of President of India and came into force on and from 1st March, 2003. The petition of complaint dated 7/8th March, 2001 filed before the Controller, Kolkata Thika Tenancy inviting adjudication regarding validity of a document was outside the scope and purview of the jurisdiction of the Controller. The opposite parties had chosen a wrong forum and a quorum-non-judice to agitate their grievances by preferring the petition of complaint. The Controller, Kolkata Thika Tenancy was absolutely bereft of any jurisdiction to try or entertain the said petition of complaint.

4. Mr. Banerjee referred to Section 27 of the Act, 2001 and has contended that the proceeding initiated by the opposite parties before the Controller, Kolkata Thika Tenancy may be continued or enforced as if the Act, 2001 had not been passed. He has contended that the order impugned is illegal as the Controller cannot exercise his jurisdiction in terms of the provisions laid down in Section 6(2) read with Section 5(4) of the Act, 2001. He has relied on a decision reported in Indira Devi Rajak Vs. Thika Controller and Others,) and has contended that the validity of the document in question is to be decided only by a Civil Court having requisite jurisdiction over the subject matter.

5. Mr. Goutam Chakraborty, learned advocate appearing for the opposite parties at the very outset fairly submitted that the proceeding was initiated mistakenly before the Controller, Kolkata Thika Tenancy but he has contended that Section 27(2)(b) and Section 27(2)(d) of the Act, 2001 are to be read together. Section 27(2)(b) has a direct link to Section 27(2)(d) as it is used "in respect of any such..." He has contended further that the repeal does not contemplate either a substantive common law or statutory right, but merely the procedure prescribed to secure the enforcement of the right, the right itself is not annulled but remains in existence and enforced by applying the new procedure. In pending cases, although instituted under the old act the new procedure is to be adopted. This is a general rule that the amended law relating to procedure operates retrospectively.

6. Mr. Chakraborty has further contended that this Court has no jurisdiction to take up this matter. The order impugned is an order passed under a specified Act i.e. West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 and any order made by an authority under a specified act is to be challenged before the Land Reforms and Tenancy Tribunal in view of the provisions laid down in West

Bengal Land Reforms and Tenancy Act, 1997 (hereinafter referred to as Act, 1997). He has referred to Section 2(r), Section 6 and Section 10 of the Act, 1997. Mr. Chakraborty took me to the provisions laid down in Section 6(2) and 7(2) of the Act, 2001 and the Kolkata Thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981 (hereinafter referred to as Act, 1981) respectively and has contended that Section 7(2) of the Act, 1981 does not specify as to who will decide the dispute like that of one which is in our hand. He has relied on decisions reported in Nani Gopal Mitra Vs. The State of Bihar, State of Madras Vs. Lateef Hamid and Co., Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, and Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc.,) to substantiate his submission.

7. It is an admitted fact that the petition of complaint dated 7th March, 2001 was entertained on 8th March, 2001. West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 came into force on 1st March, 2003. Therefore, the Act, 2001 was not in force on the date of acceptance of the complaint by the Controller, Calcutta Thika Tenancy. The order impugned reflects that the petition challenging the maintainability of the complaint dated 7/8th March, 2001 was dismissed with a finding that the Controller is empowered to deal with the subject matter in view of the provisions laid down in Section 6(2) read with Section 5(4) of the Act, 2001.

8. Relevant portion of Section 27 of the Act, 2001 may be placed hereunder for proper appreciation of the matter.

27. Repeal and savings.- (1) With effect from the date of commencement of this Act, the Kolkata Thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981 (West Ben. Act XXXVII of 1981), shall stand repealed.

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

(a) ***

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

(c) ***

(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.

9. Section 27 of the West Bengal Act, 2001 deals with the repeal and savings. Admittedly, the petition of complaint/proceeding being Misc. Case No. 60 of 2005 was initiated before the Act, 2001 came into force. Section 27(2)(b) and 2(d) like that of 2(a) and 2(c) are distinct, separate and complete. Those sub-sections are not linked with each other as the word "or" has been used at the end of each

clause.

10. The order impugned has been passed by Controller, Kolkata Thika Tenancy applying the jurisdiction claimed to have been vested by Section 6(2) read with Section 5(4) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001. The said act is a specified act as per Section 2(r) of the West Bengal Land Reforms and Tenancy Tribunal, Act, 1997. Section 6 of the Act, 1997 deals with jurisdiction, power and authority of tribunal. The tribunal shall exercise jurisdiction, power and authority in relation to any order made by an authority under a specified act. There is provisions regarding filing of application before the tribunal (Section 10 of Act, 1997). The order impugned has been challenged by filing the revisional application in hand instead of preferring an appeal before the West Bengal Land Reforms Tenancy Tribunal. It is a fact that the point of jurisdiction was not taken by the opposite parties at the threshold. The record speaks that revisional application was entertained ex parte and an interim order was passed. It is a fact too that subsequently the opposite party entered appearance and contesting this matter. Non-taking of the point of jurisdiction at the threshold does not take away the right of a party to agitate the said point in course of hearing of a matter.

11. Taking the spirit of Act, 1997 it is clear that the matter falls within the jurisdiction of West Bengal Land Reforms and Tenancy Tribunal. The petitioner instead of approaching the tribunal has come before this Court with this revisional application. This Court must not seat over the matter and interfere with the order impugned. The decisions cited by the learned advocates of the parties are of no help in this matter as the petitioner has chosen a wrong forum and quoram-non-judice for redress.

12. In the result, the revisional application stands dismissed. Interim order, if any is vacated.