

(2011) 12 CAL CK 0094
In the Calcutta High Court
Case No : C.O. 3839 of 2011

M/s. Eastern Chemical Industries

APPELLANT

Vs

M/s. Fona Rubber Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 — Section 12, 3, 8
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11
Constitution of India, 1950 — Article 226, 227, 323B
West Bengal Land Reforms and Tenancy Tribunal Act, 1997 — Section 10, 2, 6, 7, 8

Citation : (2012) 2 CHN 417

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Hirak Mitra, Mr. Dipankar Chakraborty, Mr. Sandip Deb and Mr. K.A. Bhaduri, for the Appellant; Ashok Banerjee, Mr. Pramit Kr. Roy, Advocate and Mr. Hiranmoy Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Justice Dipankar Datta

1. A suit for eviction of the opposite party no.1 from the suit property instituted by the petitioner, on the ground of reasonable requirement, was dismissed on September 26, 2006 by the trial Court. The petitioner preferred an appeal, which succeeded. Decree for eviction and recovery of khas possession was passed on December 4, 2008. The opposite party no.1 carried the appellate decree in second appeal before this Court. While admitting the appeal under Order 41 Rule 11, Civil Procedure Code, Hon"ble Division Bench of this Court on May 8, 2009 stayed execution of the eviction decree. The appeal is pending.

2. In course of proceedings before the subordinate Courts, the opposite party no.1 did not claim that the suit property is a thika property and, thus, a civil suit would not lie in terms of the provisions contained in the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (hereafter the Thika Act).

3. It was only during pendency of the second appeal before this Court that the opposite party no.1, for the first time, claimed that the decretal property is a thika property and raised a dispute before the Controller u/s 8 of the Thika Act in respect of status of the decretal property. On or about October 15, 2010, the Officer-In-Charge, Tangra Regional Thika Tenancy Office, Government of West Bengal, issued a notice calling upon the petitioner to attend hearing on October 19, 2010 without fail with all supporting documents in respect of premises no. 77/1, Christopher Road, Kolkata- 700 046 in connection with Misc. Case No. 30 of 2010, which was registered on the application of the opposite party no.1.

4. After the aforesaid notice was issued by the said Officer-in-Charge, an application was filed by the opposite party no.1 in connection with its pending second appeal. A direction upon the Controller to dispose of the dispute raised by it was prayed for and till such time order is passed by the Controller on such dispute, it was also prayed that further proceedings of the second appeal may be stayed. A learned Judge of this Court disposed of the said application by order dated April 25, 2011. His Lordship was of the view that hearing of the second appeal ought to be adjourned till disposal of the dispute raised by the opposite party no.1 before the Controller and, accordingly, ordered stay of further proceedings of the second appeal.

5. The petitioner challenged the order dated April 25, 2011 before the Supreme Court by filing a special leave petition. By an order dated August 8, 2011, such petition was disposed of on consent of the parties. The order impugned was set aside and the second appeal pending before this Court was directed to proceed in accordance with law. It was further directed that proceedings in Misc. Case No. 30 of 2010 before the Controller should also proceed independently and on its own merits. It was observed that if before disposal of the second appeal Misc. Case No. 30 of 2010 is disposed of, it would be open to the opposite party no.1 to take appropriate steps in the light of the order that may be passed. Similarly, it was observed that if the second appeal is disposed of earlier to disposal of Misc. Case No. 30 of 2010 and the judgment is adverse to the opposite party no.1, it would not foreclose its remedy under the Thika Act.

6. Soon after disposal of the special leave petition, the petitioner filed a petition before the Controller objecting to maintainability of the dispute raised before him by the opposite party no.1. The grounds of objection are similar to the grounds raised in the SLP before the Supreme Court. The Controller heard the parties on the point of maintainability and by order dated November 16, 2011 disposed of the petition by holding that "the question of maintainability will be taken up at the time of passing decision in respect of the entire matter".

7. This order is under challenge in this revisional application under Article 227 of the Constitution of India.

8. At the threshold, Mr. Banerjee, learned senior advocate representing the opposite party no.1 objected to maintainability of the present application.

Inviting the attention of the Court to Section 12 of the Thika Act, he contended that the statute provides a remedy of appeal to the petitioner before the Land Reforms and Tenancy Tribunal (hereafter the Tribunal) if it considers to be aggrieved by the order dated November 16, 2011 passed by the Controller. In view of the alternative remedy of appeal that the Thika Act provides to the petitioner, he urged the Court not to exercise discretionary powers and to relegate the petitioner to the appellate forum.

9. Mr. Mitra, learned senior advocate representing the petitioner contended that the Controller acted illegally in deferring a decision of the point of maintainability till final decision on the dispute raised by the opposite party no.1. According to him, having regard to the admitted facts on record which unmistakably bear acceptance of relationship of landlord and tenant between the petitioner and the opposite party no.1 by the latter in proceedings before the civil Court, the Controller was not impeded in any manner to decide the point of maintainability on consideration of the submissions advanced by the parties and, therefore, reluctance of the Controller to decide the maintainability point first must be held to be a jurisdictional error and existence of an alternative remedy not being an absolute bar for entertaining an application under Article 227 of the Constitution where a question of jurisdiction is involved, he contended that the revisional application ought to be heard on its merits.

10. In course of consideration of the arguments of Mr. Mitra, the provisions of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (hereafter the Tenancy Tribunal Act) were being looked into by the Court. It appeared therefrom that the Thika Act is a "specified Act" in view of Section 2(r) thereof. Section 6 of the Tenancy Tribunal Act ordains that the Tribunal constituted thereunder would exercise jurisdiction, power and authority in relation to, inter alia, "any order made by an Authority under a specified Act". Section 7 of the Tenancy Tribunal Act further ordains that with effect from the date appointed by the State Government u/s 6, the Tribunal would exercise all the jurisdiction, power and authority exercisable immediately before that day by any Court including the High Court, except the writ jurisdiction under Article 226 and 227 of the Constitution exercised by a Division Bench of the High Court and the Supreme Court, for adjudication or trial of disputes arising, inter alia, out of any provision of a "specified Act". Section 8 of the Tenancy Tribunal Act also provides for exclusion of the jurisdiction of the Courts. In terms thereof, it is only the Division Bench of the High Court exercising writ jurisdiction under Articles 226 and 227 of the Constitution and the Supreme Court that are entitled to exercise jurisdiction, power and authority in relation to adjudication or trial of disputes relating to, inter alia, any provision of a "specified Act".

11. In view of the above provisions and since the order impugned happens to be one passed by an authority under a "specified Act", I had called upon Mr. Mitra to argue on the point of maintainability of this application before a single judge of this High Court exercising power conferred by Article 227 of the Constitution

without approaching the Tribunal under the Tenancy Tribunal Act.

12. In answer to the point, Mr. Mitra contended that the revisional application is well-nigh maintainable because the impugned order passed by the Controller is not one passed under a "specified Act". Elaborating his submission, he contended that on facts and in the circumstances of the present case, the Controller has to decide the point of maintainability raised by the petitioner on general principles of res judicata and issue estoppel taking into consideration the respective claims raised by the parties in the proceedings before the subordinate civil Courts and not in terms of the provisions contained in the Thika Act and, therefore, the order on the maintainability point cannot be comprehended to be an order under the Thika Act. He further argued that it is only an order passed on the merits of the dispute raised by the opposite party no.1 that can legitimately be challenged before the Tribunal u/s 6 read with Section 10 of the Tenancy Tribunal Act, whereafter an application either under Article 226 or Article 227 may lie before a Division Bench of this Court if a party is aggrieved by the order of the Controller. It was further contended that since the point raised by the petitioner before the Controller is that he has no jurisdiction to decide the dispute raised by the opposite party no.1 in view of the determination made by the first appellate Court based on the rival claims, there is no existence of the jurisdictional fact conferring jurisdiction on him to decide; hence Section 6 of the Tenancy Tribunal Act does not apply and if Section 6 does not apply, Sections 7 and 8 also do not apply.

13. Next, Mr. Mitra contended that the parties have been litigating under the West Bengal Premises Tenancy Act, 1956 (hereafter the Premises Tenancy Act) through out the course of the proceedings before the subordinate civil Courts and it is not now open to the opposite party no.1, after having suffered the eviction decree passed thereunder, to contend at this distant point of time that it is a bharatia under the State Government and, therefore, the Premises Tenancy Act would not apply. He reiterated that principles of issue estoppel and res judicata would apply and based thereon, the Controller ought to have ruled on the point of maintainability of the dispute raised by the opposite party no.1 in favour of the petitioner.

14. In support of his submissions, Mr. Mitra placed reliance on the decisions of the Supreme Court reported in Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another, , Raza Textiles Ltd. Vs. Income Tax Officer, Rampur, Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, and Surya Dev Rai Vs. Ram Chander Rai and Others,

15. Per contra, Mr. Banerjee contended that every order of the Controller passed under the Thika Act, which is a "specified Act", may be subjected to challenge before the Tribunal in terms of the Tenancy Tribunal Act if a party is aggrieved thereby and, therefore, this Court instead of interfering with the order under challenge ought to direct the petitioner to approach the Tribunal for redress of its grievance, if any. According to him, the contention of Mr. Mitra that the objection

regarding maintainability raised by the petitioner ought to be decided only on general principles of law and not with reference to any provision of the Thika Act is misconceived. Reference was made to Section 3 of the Thika Act ordaining that it would override other laws. He contended that the Thika Act would have effect notwithstanding anything inconsistent therewith in any decree or order of a Court. Obviously, therefore, the effect of the decree passed by the civil Court has to be tested in the light of the Thika Act by the Controller and the question of absence of the jurisdictional fact for a decision does not arise. Relying on the decision of the Supreme Court reported in *State of West Bengal Vs. Ashish Kumar Roy and Others*, , he asserted that none other than the Tribunal can entertain a grievance in respect of the order impugned and that this Court ought not to entertain the present application.

16. This Court has heard learned senior advocates for the parties and considered the decisions cited at the bar.

17. The preamble of the Tenancy Tribunal Act says that it has been enacted in pursuance of Article 323B of the Constitution of India. Explosion of dockets in the High Courts and the anxiety of the State to dispense quick justice to the people of the nation were the pressing reasons that resulted in introduction of Part XIV-A in the Constitution paving the way for creation and constitution of various tribunals under the constitutional scheme. The various tribunals set up under Articles 323A and 323B of the Constitution are supposed to be the Courts of first instance in respect of the areas of law for which they have been constituted. In view of the statutory mandate in the Tenancy Tribunal Act that any order passed by an authority under a "specified Act" can be challenged only before the Tribunal at the first instance and jurisdiction of the High Court under Articles 226 and 227 of the Constitution exercised by a judge sitting singly would stand excluded, in effect, the various tribunals are acting as substitutes of single benches of High Courts.

18. Bearing in mind the object and purpose for which the Tribunal has been constituted, this Court now proceeds to decide the contentious issue.

19. Prior to amendment effected from August 3, 1998 by the West Bengal Act No. 7 of 2001, clause (a) of Section 6 of the Tenancy Tribunal Act read as follows: "an order in original made by an Authority under a specified Act". With the amendment, the words "an order in original" have been substituted by the words "any order". The legislative intendment consequent upon introduction of the amendment is clear: any order, whether it is original or appellate, interim or final, that has been made by an officer or authority or functionary exercising powers or discharging functions as such under a "specified Act" [see Section 2(b) of the Tenancy Tribunal Act] has to be challenged by any person aggrieved thereby before the Tribunal. The Thika Act is covered by the definition of "specified Act" [Sec 2(r) of the Tenancy Tribunal Act]. The Controller is one who is comprehended within the meaning of Section 2(b) of the Tenancy Tribunal Act and who, in terms of the Thika Act, has to exercise powers and discharge

functions as provided therein. The point of maintainability of the dispute raised by the opposite party no.1 before the Controller has to be decided by him in accordance with law. If he finds that the dispute raised by the opposite party no.1 is not maintainable, he is duty bound to pass an order upholding the objection raised by the petitioner. Similarly, he is also entitled in law to overrule the objection for good reason. Ultimately, the Controller would have to either uphold the objection or overrule the same. A decision on the maintainability aspect would necessitate the Controller to rule on its own jurisdiction. Whatever be the decision of the Controller, it remains an order made by an authority under a "specified Act". However, the Controller being the sole repository of power in terms of the Thika Act to decide a dispute of the nature raised by the opposite party no.1 including the point of maintainability of such dispute, any order - either final or interim - would be an order passed by him in the discharge of functions statutorily entrusted to him by the Thika Act. Mr. Mitra's contention that challenge to the impugned order is entertainable by a judge of this Court sitting singly since the point of maintainability raised by the petitioner is not be decided by virtue of the provisions of the Thika Act but by virtue of the general principles is without merit and unacceptable since on a true and proper interpretation of the Tenancy Tribunal Act, there is no room for such distinction being made by the Court on any principle of statutory interpretation. Equally unmeritorious is the contention that an order, not on the merits of the dispute, would be amenable to the jurisdiction of a single judge exercising power of superintendence or writ powers. The words "any order" in Section 6(a) are wide enough to embrace an order on the merits of the dispute as well as an order passed in overruling a demurer. In terms of Section 8 of the Thika Act, any question as to whether a person is a "bharatia" under a particular "thika tenant" or whether a property is a "thika property" or not has to be decided by the Controller within the four corners of the Thika Act. It is inconceivable that in deciding the point of maintainability raised by the petitioner, the order passed by the Controller would not be an order passed by an authority under a "specified Act". The contention that the impugned order is not an order under the Thika Act has been urged to be rejected.

20. It is settled law that no court or tribunal can assume jurisdiction in respect of a subject matter, which the statute does not confer on it. If the fact on which jurisdiction depends is decided erroneously and then the court or tribunal exercises jurisdiction to decide, the order so passed would be vitiated for error of jurisdictional fact rendering the order ultra vires and bad. Mr. Mitra, therefore, is right in his contention that by deciding the jurisdictional fact wrongly, the Controller cannot confer jurisdiction on himself. However, the question as to whether the jurisdictional fact has been rightly decided or not would arise only when the Controller decides on the point of maintainability. Presently, in his wisdom, he has deferred his decision on the point of maintainability. As and when the Controller gives his final decision on the point of maintainability and even if he is found to have decided the jurisdictional fact wrongly and usurped a

jurisdiction not conferred by statute, his order is open to examination by the Tribunal at the first instance if an approach is made in terms of the provisions of the Tenancy Tribunal Act. The Article 227 jurisdiction of the single judge of the High Court cannot be invoked on the specious ground that the jurisdictional fact has been decided wrongly, for Sections 7 and 8 of the Tenancy Tribunal Act stare at the face and create a bar to exercise of jurisdiction.

21. The decisions cited by Mr. Mitra have been looked into. Principles of law laid down therein do not admit of any doubt. However, none of the decisions are on the point involved in this revisional application and, therefore, do not come to the rescue of the petitioner.

22. This Court, therefore, is unable to accept the argument of Mr. Mitra that the present application under Article 227 of the Constitution can be entertained by a judge of this Court exercising Article 227 jurisdiction sitting singly. The revisional application against the order dated November 16, 2011 of the Controller is not maintainable. The same stands dismissed without order for costs.

23. Photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.