

(2023) 07 CAL CK 0024
In the Calcutta High Court
Case No : W.P.L.R.T No. 76 Of 2022

Nawal Sultania & Anr.

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 05-07-2023

Acts Referred:

Code of Civil Procedure, 1908 — Order 41 Rule 24, Order 41 Rule 27
West Bengal Thika Tenancy (Acquisition and Regulation) Rules, 2004 — Rule 5(3)(1)(a)
West Bengal Thika Tenancy (Acquisition and Requisition) Act, 2001 — Section 2(13),
2(14), 2(15), 4, 12
West Bengal Premises Tenancy Act, 1997 — Section 6, 7(2), 16

Citation : (2023) 07 CAL CK 0024

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Arindam Banerjee, P.K. Jewrajka, Arpita Saha, Pooja Jewrajka, T.M. Siddiqui, A. Banerjee, Ashok Kumar Banerjee, Asif Hussain, Labani Pan

Final Decision : Dismissed

Judgement

Debangsu Basak, J

1. Writ petitioners have assailed the order dated May 17, 2022 passed by the West Bengal Land Reforms and Tenancy Tribunal in OA No. 393 of 2015 (LRTT).
2. By the impugned order, the learned Tribunal has dismissed the original application being OA No. 393 of 2015 filed by the writ petitioner. The appellants had approached the learned Tribunal under Section 12 of the West Bengal Thika Tenancy (Acquisition and Requisition) Act, 2001 assailing the order in original dated December 31, 2014 of the Thika Controller dismissing the application of the appellants seeking declaration that the properties in question were vested with the State under the provisions of the West Bengal Thika Tenancy (Acquisition and Requisition) Act, 2001 and that the appellants were thika tenants in respect of the properties concerned.
3. Learned advocate appearing for the writ petitioners has submitted that, the

appellants entered into possession of the immovable property concerned by virtue of a written agreement dated September 20, 1997. He has referred to such written agreement. He has submitted that, although the written agreement claims that license was granted to the writ petitioners in respect of the immovable property concerned, in effect, the writ petitioners were tenants under the private respondents. He has contended that, the private parties executed subsequent documents and such documents, according to him, established that a tenancy had been given to the writ petitioners by the landlord, in respect of the immovable property concerned. He has contended that, the terms of the written agreement permitted the writ petitioners to construct structures on the immovable property concerned. The writ petitioners had constructed permanent structures on the property concerned.

4. Learned advocate appearing for the writ petitioners has referred to the provisions of the Act of 2001. He has referred to Section 4 of the Act of 2001 and contended that, with effect from January 8, 1982, lands governed by the Act of 2001 vested in the State free from all encumbrances. He has contended that, by reason of the deeming fiction created under Section 4 of the Act of 2001, and in the factual matrix as obtaining in the present case, the writ petitioners became thika tenants under the private respondents and that the land comprised in the thika tenancy stood vested with the State.

5. Learned advocate appearing for the writ petitioners has drawn the attention of the Court to the definition of "pukka structure" defined in Section 2 (13) of the Act of 2001 and also to the definition of "thika tenant" defined in Section 2 (14) thereof. He has contended that, referring to the terms and conditions of the written agreement entered into between the private parties that the land in question is a thika land and that the writ petitioners are thika tenants in respect of such land. Since the land in question was vested with the State under the provisions of the Act of 2001, the private respondents have lost all right title and interest in respect of the same. He has contended that, subsequent to the writ petitioners having entered the property in question lawfully by virtue of the written document, they had constructed pukka structure on the property concerned. Construction of structure had brought the land in question under the purview of the Act of 2001.

6. Learned advocate for the writ petitioners has referred to the sequence of events leading up to the writ petitioners filing an application under form A of the West Bengal Thika Tenancy (Acquisition and Regulation) Rules, 2004 before the Controller. He has contended that, initially the writ petitioners were put into possession in respect of the subject property by virtue of a written agreement dated September 20, 1997. Thereafter, the private parties had executed further agreements extending the period of tenancy of the petitioners. The writ petitioner No. 1 along with others had filed a suit for declaration and injunction before the learned civil judge (Junior Division) at Sealdah being Title Suit No. 299 of 2009. Another suit for declaration had been filed being Title Suit No. 70 of

2011. Subsequently, the private respondents had filed a suit for eviction which was registered as Title Suit No. 4 of 2012 renumbered as Title Suit No. 134 of 2016 for eviction of the writ petitioners from the property concerned. Writ petitioners had filed a written statement in the suit for eviction where they had pleaded that they were entitled to protection under the provisions of the West Bengal Premises Tenancy Act, 1997. The writ petitioners had sought to amend the written statement in order to enter a plea of thika tenancy. Such prayer for amendment had been rejected right up to the Hon'ble Supreme Court. Writ petitioners had obtained legal advice on September 1, 2012 and filed returns in Form A of the West Bengal Thika Tenancy (Acquisition and Regulation) Rules, 2004 before the Controller. Such applications had been rejected by the Controller on December 26, 2014. The writ petitioners had challenged the order dated December 26, 2014 of the Controller before the learned Tribunal. The writ petitioners had filed an application under order 41 rule 27 of the Code of Civil Procedure, 1908 seeking to bring on records documents before the learned Tribunal which was allowed.

7. Learned advocate appearing for the writ petitioners has submitted that, the suit for eviction was decreed on February 4, 2021 as against the writ petitioners. The writ petitioners had preferred an appeal therefrom and that such appeal is pending.

8. Learned advocate appearing for the writ petitioners has contended that, the order of the Controller cannot be sustained since, the Controller did not apply his independent mind to the facts of the case. The Controller had cut copied and pasted a substantial portion of the note of the Department filed before it, in the order dated December 26, 2014. Therefore, the writ petitioners had lost one adjudicating forum to canvas their points.

9. Learned advocate appearing for the writ petitioners has submitted that, the learned Tribunal in the impugned order dated May 17, 2022 took note of the fact that the Controller had cut, copied and pasted a substantial portion of the notes on argument in its order dated December 26, 2014. Despite the same, the Tribunal had proceeded to decide the issues on merit. The learned Tribunal had erred in not remitting the matter to the Controller for fresh hearing. He has contended that, the writ petitioners had limited their contentions to the failure of the Controller to apply his mind to the relevant issues and materials placed on record. According to him, the learned Tribunal after being satisfied that, the Controller had cut copied and pasted a substantial portion of the notes of the Department in its order, ought to have remitted the proceedings to the Controller for a fresh adjudication and erred in not doing so.

10. Learned advocate for the writ petitioners has contended that, the learned Tribunal could not have invoked the provisions of order 41 rule 24 of the Code of Civil Procedure, 1980 in deciding the issues between the private parties at the appeal stage, without issuing any notice with regard thereto and informing the private parties of its decision to do so. He has contended that, the writ

petitioners were never put on notice by the learned Tribunal that it would be deciding the issues between the parties to the proceedings finally.

11. Learned senior advocate appearing for the private respondents has supported the impugned order of the learned Tribunal. He has contended that, the writ petitioners were licensee under the direct respondents and that, the written document by virtue of which, the writ petitioners had come into possession of the immovable property would establish the same. He has contended that, the written document would establish that, the writ petitioners were never in exclusive possession of the immovable property concerned. No tenancy had been created in favour of the writ petitioners. Therefore, the provisions of the Act of 2001 were not attracted to the facts and circumstances of the present case. The Controller had rightly dismissed the application of the writ petitioners.

The Tribunal had rightly upheld the decision of the Controller.

12. Learned senior advocate appearing for the private respondents has contended that, the writ petitioner cannot be allowed to approbate and reprobate. He has contended that, the writ petitioners in the suit for eviction had filed a written statement where they had taken a categorical stand that the writ petitioners were protected under the provisions of the West Bengal Premises Tenancy Act, 1997. According to him, once the writ petitioners had accepted that the property in question was governed by the West Bengal Premises Tenancy Act, 1997, the question of the same immovable property becoming a thika land does not and cannot arise. He has pointed out that, the writ petitioners had attempted to amend the written statement filed in the suit for eviction. The amendment sought for by the writ petitioners were with regard to the pleading of West Bengal Premises Tenancy Act, 1997, by replacing it with plea under the Act of 2001. Such attempt had been rejected up to the Hon'ble Supreme Court stage. Therefore, the stand of the writ petitioners that, the property in question is governed by the West Bengal Premises Tenancy Act, 1997 continues to be binding upon the writ petitioners. The writ petitioners cannot be allowed to have a different stand in a different forum in respect of the same property.

13. Learned advocate appearing for the State has referred to the materials on record and to the impugned order of the learned Tribunal. He has contended that, the land in question is not a thika land and not governed by the Act of 2001.

14. As has been noted above, the writ petition was directed against the impugned order of the learned Tribunal dated May 17, 2022. In its impugned order dated May 17, 2022, the learned Tribunal had noted that there were several undisputed facts between the private parties and proceeded to enumerate the same in the body of the impugned order.

15. The writ petitioners had been allowed to use and occupy the subject premises on and from September 20, 1997 by an unregistered written document dated September 20, 1997. Further unregistered written documents had been

executed between the private parties at almost 2 years intervals and the last of such a written document had been executed on September 6, 2007.

16. In the unregistered written documents, the writ petitioners had been described as licencees while the private respondents had been described as licensors. The unregistered written documents have alluded to a license being granted by the licensors to the licencees. The first unregistered written document dated September 20, 1997 has a clause being Clause 9 which speaks of hoardings to be present in the immovable property concerned in the possession of the licensors and that the possession thereof would remain with the licensors. Such position continued till the last written document between the private parties.

17. We have considered the written documents between the parties placed on record. Such documents have a clause which speaks of advertisement hoardings at the concerned premises to be under the possession of the licensors. Licensors had retained the right to change the advertisements put up the concerned hoardings. Written documents have also postulated the licencees obtaining a sub meter under the licensors for the purpose of electricity. Written documents read as a whole allows an inference that the licencees had not been put in exclusive possession of the concerned premises by the licensors and that there were pre-existing structures at the premises concerned prior to the licencees coming into licenced possession.

18. On a true and proper interpretation of the various clauses of the written documents executed between the private parties it can be held that the licencees had been granted a licensee of the property concerned for a limited period which was renewed from time to time. Licencees had never been in exclusive possession. Licensors had retained possession. There had been pre-existing structures at the property concerned. Interpretation of the six several written documents in the light of the Transfer of Property Act and the Act of 2001 had been undertaken by the learned Tribunal. Learned Tribunal had held that the written documents created a licensee and not a tenancy. We have no material placed before us to disagree with such interpretation.

19. The writ petitioners had filed a civil suit being Title Suit No. 299 of 2009 for declaration of their premises tenancy right over the immovable property against the private respondents. The writ petitioners had subsequently withdrawn such suit.

20. The writ petitioners had filed another civil suit being Title Suit No. 70 of 2011 claiming premises tenancy rights over the immovable property concerned. The writ petitioners had also withdrawn such suit.

21. The private respondents had filed Title Suit No. 4 of 2012 which was subsequently renumbered as Title Suit No. 134 of 2016 against the writ petitioners for eviction of the licencees and other reliefs in respect of the immovable property concerned. In such suit, the writ petitioners had filed a petition under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997

claiming themselves as premises tenants in respect of the immovable property concerned. This suit had been decreed against the writ petitioners for their eviction with other reliefs. The writ petitioners had preferred an appeal therefrom which is pending.

22. In the suit for eviction, the writ petitioners had filed a written statement claiming themselves to be tenants governed by the West Bengal Premises Tenancy Act, 1997 in respect of the immovable property concerned. The writ petitioners had applied for amendment of the written statement subsequent to their filing form A with the Controller seeking to enter in a plea of thika tenancy. Such a prayer for amendment had been refused by the Trial Court, on appeal by the Appeal Court and also by the Hon'ble Supreme Court.

23. The writ petitioners had therefore taken the stand that the premises concerned was governed by the Act of 1997 in three different civil suits; two filed by them and one against them. Having taken a stand of tenancy they cannot be allowed to take a different stand before a different forum. They cannot be allowed to approbate and reprobate at the same time.

24. On September 25, 2012, the writ petitioner No. 1 had submitted Form A claiming himself as a thika tenant in respect of the immovable property concerned with the Controller. The writ petitioners had thereafter jointly submitted another Form A with the Controller on October 31, 2012 claiming themselves as thika tenants in respect of the immovable property concerned. They had also filed a petition for accepting their Form A under Rule 5 (3) (1) (a) of the West Bengal Thika Tenancy (Acquisition and Regulation) Rules, 2004 which was disposed of by an order dated December 31, 2014.

25. The writ petitioners had filed an appeal under Section 12 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 against the order dated December 31, 2014 which was dismissed with costs by the impugned order dated May 17, 2022.

26. One of the contentions of the writ petitioners has been that, the appeal before the Tribunal was limited to the Controller not applying its mind in view of the Controller in its impugned order dated December 31, 2014 had cut, copied and pasted a major portion of the notes of the Department and the Tribunal proceeded to dispose of the appeal on merits without issuing notice under order 41 rule 24 of the Code of Civil Procedure, 1908 to do so.

27. In the appeal before the Tribunal, the writ petitioners had applied under order 41 rule 27 of the Code of Civil Procedure 1908, for producing additional evidence which was allowed. The writ petitioners had relied upon such documents at the hearing. The writ petitioners had, therefore, invited the learned Tribunal to enter into the merits and decide thereon which the learned Tribunal did. The documents that the writ petitioners had sought to rely upon in the appeal had been taken on record and considered by the learned Tribunal while passing the impugned order. Learned Tribunal had decided on the merits of the

controversy between the contesting parties after framing issues with regard thereto. Learned Tribunal had invited the parties before it to address on the scope and ambit of Order 41. Learned Tribunal had found that the impugned order was not devoid of independent reasoning. Independent of the reasoning contained the impugned order before it, learned Tribunal considered the merits of the rival contentions and delivered a well-reasoned order which is impugned before us.

28. A Tribunal established under a statute is not circumscribed by the procedure prescribed under the Code of Civil Procedure, 1908 when the statute incorporating it is silent as to its applicability to a proceeding before it. However, the principles of the Code of Civil Procedure, 1908 can be applied by a Tribunal established under a statute to regulate the procedure of the proceedings before it where either the statute incorporating it or the rules framed regulating the procedure before it, is silent.

29. In the facts of the present case, the Tribunal had dealt with an appeal under Section 12 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001. The Tribunal had been established under the provisions of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997. Section 6 of the Act of 1997 has specified the jurisdiction, power and authority of the Tribunal established under the Act of 1997. Section 16 of the Act of 1997 has empowered the Tribunal to take evidence on oath and has provided that, the same powers as vested in a civil court under the Code of Civil Procedure, 1908 shall be available to the Tribunal in respect of the 7 matters specified therein. The Act of 1997 has not ousted the applicability of the Code of Civil Procedure, 1908 in its entirety. A Tribunal exercising jurisdiction under the Act of 1997 has the power as that of a civil court in respect of the matters specified in Section 16. In addition thereto, should the Tribunal exercising jurisdiction under the Act of 1997 need to apply any principles of the Code of Civil Procedure, 1908, it can do so. A Tribunal exercising jurisdiction under the Act of 1997 is however not bound by the provisions of the Code of Civil Procedure, 1908 save and except the 7 matters specified in Section 16 of the Act of 1997.

30. So far as the claim for thika tenancy is concerned, it has to be noted that, such claim is being made at the behest of persons who had taken a definitive stand of premises tenancy under the governing premises tenancy laws, at the relevant point of time, in three civil suits. They had done so on legal advice. They had applied to shift their stand from a plea of premises tenancy to one of the thika tenancy in the eviction suit which they were not allowed to even by the Hon'ble Supreme Court, on their approach. State has not claimed that the premises concerned is a thika land.

31. Definitions of "pucca structure" under Section 2 (13), "thika tenant" under Section 2 (14) and "thika land" under Section 2 (15) of the Act of 2001 have to be considered in a factual matrix of an individual case to arrive at the finding whether the provisions of the Act of 2001 stand attracted or not. In this case no

tenancy has been created in favour of the writ petitioners. They had been licencees all along. The contentions of the writ petitioners with regard to thika tenancy had been negated by the learned Tribunal. We have found no ground to take a different view. Learned Tribunal had imposed costs for dishonest stand and rightly so.

32. In such circumstances we find no merit in this writ petition.

33. W.P.L.R.T No. 76 of 2022 is dismissed.

34. I agree.