

(2011) 06 CAL CK 0021
In the Calcutta High Court

Case No : W.P.L.R.T. No. 249 of 2008 with W.P.L.R.T. No. 250 of 2008

Sabita Rani Majilya

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 14-06-2011

Acts Referred:

Calcutta Thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981 — Section 27, 5, 6
Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 — Section 27, 27(2), 5(3)
Calcutta Thika Tenancy (Acquisition and Regulation) Rules, 1982 — Rule 3

Citation : (2011) 3 CHN 534

Hon'ble Judges : Pratap Kumar Ray, J;Md. Abdul Ghani, J

Bench : Division Bench

Advocate : Puspendu Bikash Sahoo, Dhiman Kumar Sengupta, Sudhakar Biswas and Prasanta Bishal, for the Appellant; Sukumar Bhattacharya, Shyamal Kumar Das, Rajtilak Ghosal and Piyali Shaw for the respondent No. 5, Fazlul Haque and Ziaul Islam for the State, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—Heard learned Advocates appearing for the parties.

2. Assailing the judgement and order dated 4th November, 2008 passed in O.A. No. 528 of 2008 (LRTT) with O.A. No. 529 of 2008 (LRTT) by the West Bengal Land Reforms and Tenancy Tribunal, these writ applications has been filed. Those are taken up for hearing analogously.

3. Learned Tribunal below considered different points raised in the original application filed assailing the order passed by Thika Controller determining right of respondent No. 5 herein as a thika tenant and mutation of name of the alleged thika tenant and correction of record of rights accordingly.

4. In the writ application, a positive question has been raised about the jurisdiction of Thika Controller to decide thika tenancy right of any person who

allegedly filed the return under the Calcutta Thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981. By the said Act of 1981, the Calcutta Thika Tenancy Act, 1941 was repealed. Under the earlier Act of 1941 as well as the Act of 1981, there is no provision for determination of thika tenancy right by adjudicating lis in between the owner and the alleged thika tenant, by the Thika Controller. Such power of adjudication to determine thika tenancy has been brought in statute being Act of 2001 which is named as the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001. The relevant section is section 5(3) which was substituted with effect from 1st November, 2010 by the West Bengal Amendment Act XXV of 2010. Sub-section (3) of section 5 reads such:-

5. Incidents of tenancies in respect of lands vested in the State.

(3) If any question arises as to whether a person is thika 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 particular as may be considered necessary, enquire upon and decide such question.

5. Since there was no provision earlier to adjudicate thika tenancy right, Civil Court had the jurisdiction to determine it. It appears from the document as filed before us particularly the order-sheet of Thika Controller with reference to Case No. G-47 to 51 of 1982-83 that the concerned case was initiated on the basis of the return filed by respondent No. 5 in terms of Rule 3(a) of the Calcutta Thika Tenancy (Acquisition and Regulation) Rule, 1982. The relevant provision of Rule 3 reads such:-

3. Terms and conditions of occupation of land directly under the State u/s 6(1).-- Every thika tenant and any tenant in respect of other lands which vest u/s 5, occupying any land under a landlord on the date of commencement of the Act, shall occupy such land directly under the State on the following terms and conditions:

(a) 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 extend the date for furnishing the return by a period not exceeding sixty days:

6. The condition-precedent of filing the return is vesting of the land u/s 5 Chapter II of the said Act, 1981 to the State. u/s 6 of the said Act, 1981, thika tenant's occupancy status came under the State in view of vesting of land u/s 5 of the said Act. Since from the records, it appears that the proceeding initiated in the year 1982-83, on the basis of the return filed by respondent No. 5 and adjudication made declaring respondent No. 5 as a thika tenant by the Thika Controller though Thika Controller at the relevant time had no jurisdiction under the Act 1981 to adjudicate the issue, the impugned order before the learned

Tribunal passed by the Thika Controller on 31st January, 2008 is an order without jurisdiction and, as such, it was nullity and has no effective force. Jurisdiction goes to the root of the matter. The jurisdiction to adjudicate the thika tenancy right by the Thika Controller was granted under West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 by sub-section (3) of section 5 in the following language "if any question arises as to whether a person is a thika tenant or not, the matter shall be decided by Controller". The said provision came into effect from 1st March, 2003 vide Notification No. 513-L: Ref/12S-36/95- Part II dated 24th February, 2003 published in the Calcutta Gazette Extra-Ordinary Part I dated 25th February, 2003. By Section 27 of the said Act of 2001 with effect from the commencement of said Act, 2001 that is 1st March, 2003, the Calcutta Thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981 was repealed and proceedings initiated prior to coming into effect the said Act, 2001 under the said Act, 1981 were saved, by a non-obstante clause under sub-section (2) of section 27 of the said Act of 2001. Section 27 of the said Act, 2001 reads such:

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) affect the previous operation of the said Act or anything duly done or suffered thereunder; or

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

c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Act; or

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."

7. Since in the instant case, return filed under Act, 1981 by the alleged thika tenant, respondent No. 5 and a case started registering the case of the year 1982-83, though the adjudication made subsequently after 1st Mach, 2003 declaring the respondent No. 5's status as thika tenant, but as the proceeding as was initiated under the Act, 1981, such proceeding was saved under sub-section (2) of section 27 of Act, 2001, as such the impugned decision before the learned Tribunal below passed by the Thika Controller was nothing but a decision exercising power to adjudicate an issue which never was vested to him under the statute, namely, the said Act, 1981.

8. Having regard to the aforesaid reasoning that the point of jurisdiction was not urged before the learned Tribunal below, we are considering the said point in the writ jurisdiction for the sole reason that the point goes to the root of the matter about the jurisdiction of the Thika Controller. It appears that the learned Tribunal below, though under the law, even if no question raised about the jurisdiction of Thika Controller, when was bound to consider the jurisdiction issue, did not consider it and thereby the impugned order of this writ application passed by learned Tribunal below has suffered gross illegality. Learned Tribunal before deciding the question ought to have adjudicated the jurisdiction of Thika Controller.

9. Having regard to the aforesaid finding, the order of learned Tribunal below is not legally sustainable. It is set aside and quashed.

10. On the said reasoning and finding, the orders and decisions as were impugned before the learned Tribunal below assailing the order/decision of Thika Controller with reference to the case, as already quoted above, stands set aside and quashed.

11. The writ application is allowed.

12. In view of quashing of the order/decision of Thika Controller adjudicating the right of respondent No. 5 as a thika tenant and confirmation of the same by learned Tribunal below which since has been set aside and quashed, it is needless to say that all steps as taken on the basis of the adjudication adjudicating the status as thika tenancy right by correction of record of rights and mutation of name of respondent no. 5 in the records, will stand set aside and quashed.

13. Before parting with the matter it is noted that one Hon''ble Judge of this Court sitting singly has decided the point about jurisdiction of Thika Controller by holding, inter alia, that under the said Act, 1981 Thika Controller has no power or authority to decide thika tenancy right in the case under cause-title Shayamal Atta & Ors. vs. State of West Bengal, The Ld. Thika Controller & Ors. reported in 1999 (1) CLJ 250 .

14. This judgement will also cover adjudication of W.P.L.R.T. 250 of 2008. The said writ application is allowed on the aforesaid judgement passed in W.P.L.R.T. No. 249 of 2008.

15. Let xerox certified copy of this order, if applied for, be given to the learned Advocates appearing for the parties expeditiously.

Md. Abdul Ghani, J.

16. I agree.