

(1970) 09 CAL CK 0045

In the Calcutta High Court

Case No : Civil Revision Case No. 1993 of 1961

Smt. Tilak Pakhira and Others

APPELLANT

Vs

Satish Chandra Pradhan and Others

RESPONDENT

Date of Decision : 11-09-1970

Acts Referred:

Calcutta Municipal Act, 1951 — Section 594
Calcutta Thika Tenancy Act, 1949 — Section 1(2)
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1971 Cal 180

Hon'ble Judges : P.N. Mookerjee, J;Amiya Kumar Mookerji, J

Bench : Division Bench

Advocate : Syamacharan Mitter and Syama Prasanna Roy Chowdhury, for the Appellant; Apurbadhan Mukherjee and Kanan Kumar Ghosh for Opposite Party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Mookerjee, J.—This Rule was obtained by the petitioner tenant against a concurrent decision of the two courts below, allowing, in substance, the opposite party No. 1's application for evicting the petitioner from the disputed land.

2. The application was made u/s 5 of the Calcutta Thika Tenancy Act upon the allegation inter alia that the petitioner was a thika tenant under the said Act in respect of the disputed property under the opposite party.

3. In allowing the opposite party's application, the courts below have concurrently held that the petitioner's objection or defence to the opposite party's prayer on the ground that he was not a thika tenant under the Calcutta Thika Tenancy Act but had an agricultural tenancy, which entitled him to protection under the Bengal Tenancy Act, could not be accepted. They have concurrently found that the petitioner's tenancy was not an agricultural tenancy so as to attract the operation of the Bengal Tenancy Act That finding appears to have been arrived at on a consideration of the evidence before the courts below and,

in revision, it is not possible to interfere with the said concurrent finding. Upon that ground alone, therefore, the instant Rule would fail and may be discharged.

4. As, however, before us, the other question whether, to the instant case, the Calcutta Thika Tenancy Act would apply was fully argued before us and as our conclusion on the said question also would be in favour of the opposite party so as not to interfere with our earlier finding that the instant Rule would fail and must be discharged, we would record our said conclusion and base our decision of this Rule upon the said conclusion too.

5. The disputed land was included within the Tollygunge Municipality, as it was originally constituted. Thereafter, under an appropriate Notification, issued u/s 594 of the Calcutta Municipal Act, 1951, the area, comprised within the Municipality of Tollygunge, was included within Calcutta, as defined under the said Calcutta Municipal Act, and, under the said Section, Schedule I to the said Act was deemed to be amended accordingly. It was contended on behalf of the opposite party that, as a result of the above inclusion, the Calcutta Thika Tenancy Act became applicable to the disputed property. On behalf of the petitioner, reliance was placed, in particular, on a decision of this Court, reported in Shaffiuddin and Others Vs. Gopal Chandra Banerjee and Others, for the purpose of showing that, in spite of the said inclusion, the Calcutta Thika Tenancy Act would not be attracted to the areas, originally included within the Tollygunge Municipality.

6. For our present purpose, it is necessary only to refer briefly to the principles and statutory provisions, which have guided us in taking the view that, as a result of the above inclusion, the area under the Tollygunge Municipality became amenable to the applicability of the Calcutta Thika Tenancy Act, subject to certain reservations, not material in the present case, which will be stated hereinbelow. We proceed now to briefly record our reasons for our above view.

7. The Calcutta Thika Tenancy Act in Section 1(2) provides as follows:

"It extends to Calcutta as defined in cl. (1) of Section 3 of the Calcutta Municipal Act, 1923".

to quote only its relevant part The Calcutta Municipal Act of 1923, has, however, since been repealed and replaced by the Act of 1951. Section 608 of this latter Act, cl. (d), provides that "all references to, or to any chapter or section of the Calcutta Municipal Act. 1899 or the Calcutta Municipal Act, 1923, shall, as far as is possible, be construed as references to this Act or to its corresponding chapter or section." That immediately replaces the reference to Section 3(1) of the Calcutta Municipal Act of 1923 in the Calcutta Thika Tenancy Act, as quoted above, (vide Section 1(2)], by the corresponding Section 5(11) of the Calcutta Municipal Act. 1951, and, u/s 594, already quoted, the Municipality of Tollygunge having been included within Calcutta, Schedule I to the above Act, which was referred to in its relevant definition Section 5(11), must be deemed to be amended accordingly, the net result being that the definition of Calcutta, as

referred to in Section 1(2) of the Calcutta Thika Tenancy Act, would now include areas, originally included within the Municipality of Tollygunge.

8. It is true that, as noted in the decision above-cited, in Section 610 of the Calcutta Municipal Act of 1951, it was specifically stated that "Except as in this Act otherwise expressly provided, nothing in this Act shall be deemed to affect the provisions of any other enactment." It may, however, be reasonably contended that when, on a reference to this new Act, the amending Act of 1951, the extent and application of the Calcutta Thika Tenancy Act was being extended to areas, not originally covered thereby, it would not be a case of affecting the provisions of the said enactment, as mentioned in the said Section 610. But, even assuming that that would be so, it is plainly a case of express provision, so far as the enlargement of the area within the definition of "Calcutta" is concerned by reason of the inclusion of the Tolly-gunje Municipal areas within the said area by the appropriate notification u/s 594 of the Calcutta Municipal Act, 1951, and what follows thereafter does not depend on anything under the Calcutta Municipal Act but arises on the Calcutta Thika Tenancy Act itself, inasmuch as, once Calcutta, as mentioned in Section 1 (2) of the Calcutta Thika Tenancy Act, includes the area within the Tollygunge Municipality by virtue of the above extended or enlarged definition, the said Act becomes applicable to the said area by its own force by reason of the said Section 1(2) of the said Act, which defines the local limit of applicability of the said statute.

9. An argument was made before us,--and that was accepted by this Court in the decision, quoted above,--that the above deeming provision under the Calcutta Municipal Act, 1951 (vide Section 594) must be limited to matters under the said Act or, in other words, must be understood to have been made only for purposes of the same. It is, however, pertinent to point out in this connection that, under the Calcutta Municipal Act, 1923,--as under the Calcutta Municipal Act, 1951,--the definition of "Calcutta", as given in the definition section, opens with the words "for the purposes of this Act", but, in spite of the same, the said definition was adopted and accepted for purposes of the Calcutta Thika Tenancy Act, [vide Section 1(2)] by reference to the said definition. The purpose theory, therefore would not prevent the application of the Calcutta Thika Tenancy Act to the included area of the Tollygunge Municipality within Calcutta by the notification u/s 594 of the Calcutta Municipal Act, 1951, and by consequential amendment of the relative Schedule I and the definition of Calcutta in Section 5(1) of the Calcutta Municipal Act, 1951, and the decisions of the Supreme Court, reported in *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, and *State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others*, would be already distinguishable. The Privy Council decision in the case of AIR 1931 149 (Privy Council) also would be distinguishable in view of the express provision, contained in Section 608 of the Calcutta Municipal Act. 1951, quoted above.

10. We must, however, make one clarification in the matter. It is well-known

that, unless the statute is retrospective, it would not affect vested rights. In the Calcutta Municipal Act, 1951, there is nothing, so far as the present matter is concerned, to make the Act retrospective. The vested rights, therefore, or, rights, acquired or accrued before the coming into operation of the said Act, would not be affected by its relative provision, and the enlargement of the local jurisdiction of Calcutta Thika Tenancy Act under the said new Act of 1951 would not affect any accrued or vested rights in the area, since brought, under the said new Act of 1951, within "Calcutta", as contemplated in the said statute. The vested or accrued rights, if any, therefore, would not be affected by this change or enlargement of local jurisdiction or applicability of the Calcutta Thika Tenancy Act. Reference in this connection may be made to the decision of this Court, reported in Jotiram Khan v. Janaki Nath Ghose 20 CWN 258 = (AIR 1916 Cal 861). In the instant case, however, it is plain from the records that the petitioner cannot lay any claim to any such vested or accrued right so as to defeat or limit the application of the Calcutta Thika Tenancy Act.

11. In the above view, we hold that the Calcutta Thika Tenancy Act would apply to the instant case and the argument in support of the petitioner's contention that the said Act would not apply, on the authority of the decision of this Court (1965) 69 Cal WN 842, cannot be accepted. With respect, we may point out that, although, even in the said case, the ultimate decision may well be held to be correct in the facts of that case, having regard to the principle, already mentioned by us, that vested or accrued rights cannot be defeated by the above extension or enlargement of local jurisdiction of the Calcutta Thika Tenancy Act, the view that the said Act would not have an enlarged local jurisdiction by reason of the including of the Tollygunge Municipality within "Calcutta" by an appropriate notification u/s 594 of the Calcutta Municipal Act, 1951, cannot be supported.

12. In the premises, this Rule will fail and it will be discharged.

13. There will be no order as to costs.

Amiya Kumar Mookerji, J.

14. I agree.