

**indira Devi Rajak Vs. Thika Controller and ors.**

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**Court :** Kolkata

**Decided On :** Jul-06-1999

**Reported in :** (2000)1CALLT588(HC)

**Judge :** Altamas Kabir and ;Prodyot Kumar Sen, JJ.

**Acts :** Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981 - Sections 6, 6(1 and 3), 7, 7(1 and 2), 8, 11 and 13;; [Constitution of India](#) - Articles 226 and 227;; [West Bengal Land Reforms Act, 1955](#) ;; Uttar Pradesh State Universities Act - Section 68

**Appeal No. :** Civil Appellate Jurisdiction, C.A.N. No. 4501 of 1999 and M.A.T. No. 1711 of 1999

**Appellant :** indira Devi Rajak

**Respondent :** Thika Controller and ors.

**Advocate for Pet/Ap. :** Mr. Gopal Mukherjee and ;Mrs. Anima Chakraborty (Das), Advs.;Mr. Debashis Kar Gupta, Adv.;Mrs. Smritikana Mukherjee, Adv.

**Judgement :**

**A. Kabir, J.**

1. While considering the application for stay filed in the appeal, with consent of the parties, the appeal itself is taken up for hearing and final disposal.

2. This appeal is directed against an order passed by the learned Single Judge on 10th May, 1999, dismissing the appellant's writ petition on the ground that an alternative remedy under section 13 of the Calcutta Thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981, was available to the petitioner.

3. In order to appropriate the order passed by the learned Single Judge, it is necessary to give a brief background of the facts leading to the filing of the writ application.

4. The appellant/petitioner appears to have purchased the property in question by a registered conveyance dated 22nd May, 1990 from one Sri Jahar Shaw, who had purchased the same from one Debi Charan Shaw. The property is situate at 50, Madan Biswas Lane, Salkia, Police Station--Golabari, under the Jurisdiction of the Howrah Municipal Corporation. It appears further that the appellant /petitioner's name has been duly mutated in the records of the Howrah Municipal Corporation and she is also paying rates and taxes in respect thereof to the said Corporation.

5. It appears that subsequent to the purchase of the said property by the appellant/petitioner, certain applications were made before the Thika Tenancy Controller, Howrah, claiming that the land in question was a thika tenancy and that the appellant/petitioner had, therefore, not acquired any right, title and Interest In the said property having particular regard to the provisions of sub-section (1) of section 6 read with sub-section (2) of section 7 of the above mentioned Act.

6. The matter was taken up for consideration by the Thika Tenancy Controller, Howrah, on 8th November, 1998 and on subsequent dates. By his order dated 29th January, 1999, the Thika Tenancy Controller, Howrah, recorded that the lands in question had been recorded in the Revisional Settlement record-of-rights as thika tenanted lands, and, therefore, came under the purview of the Calcutta Thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981 (hereinafter referred to as 'the said 1981 Act').

7. On the basis of the above, the Thika Controller, Howrah proceeded to determine the question of the validity of the conveyances by which both Jahar Shaw and the appellant/petitioner acquired title to the land in question and after

referring to the provisions of sub-section (1) of section 7 and sub-section (3) of section 6 of the above Act, he declared the said documents to be void and also declared that the same would have no effect whatsoever.

8. Pursuant to his declaration, the Thika Controller, Howrah, directed that the premises in question would stand vested in the State of West Bengal and that the interest of the existing Bharatias in the said premises would be protected. The said order and/or decision of the Thika Tenancy Controller, Howrah, was challenged by the appellant/petitioner by way of a writ proceeding, being W.P. No. 3710(W) of 1999. As indicated hereinabove. the writ application, which was Initially admitted for further consideration on 5th April, 1999, was dismissed by the order passed on 10th May, 1999 on the ground that the appellant/petitioner had an alternative remedy available to her under section 13 of the said Act.

9. Appearing in support of the appeal as also the application for stay, Mr. Mukherjee, learned Advocate, submitted that the Thika Tenancy Controller, Howrah, exceeded the jurisdiction vested in him in arriving at a decision on the basis of the entries In the R.S. record-of rights, that the property in question comprised a thika tenancy. He also submitted that the Thika Controller, Howrah, had further exceeded his Jurisdiction in declaring the two conveyances of Jahar Shaw and Debl Charan Shaw to be void. Mr. Mukherjee submitted that the two questions which the Thika Controller. Howrah, sought to decide, were beyond the Jurisdiction vested In him and the said questions could only be answered by the Civil Court in a properly constituted suit. In support of hts submissions, Mr. Mukherjee firstly referred to and relied upon a Single Bench decision of this court in the case of Kutubuddin Ahmed v. The State of West Bengal & Others, reported in 1981(1) CHN 254, wherein while considering the provisions of the [West Bengal Land Reforms Act, 1955](#), wherein there are provisions similar to those with regard to the jurisdiction vested in the authority in the 1981 Act, it was observed that the Revenue Officer had to proceed on the basis of the registered documents, and he could not himself usurp the functions of the Civil Court and investigate the title and then decide as to whether or nor the deeds were invalid or inoperative in law.

10. Mr. Mukherjee also referred to and relied upon a decision of this Court in the case of Mrs. Qoriser Johan v. Mohammed Yawoob, reported in 1982(2) CLJ 143, wherein it was observed that if in a suit, a question as to the applicability of the provisions of section 5 of the 1981 Act is raised, then the Court should frame an appropriate issue in that regard after giving the plaintiff an opportunity to add the State as a defendant in the suit, and, thereafter, dispose of the disputed issue.

11. Mr. Mukherjee submitted that the question raised in the proceedings before the Thika Tenancy Controller, Howrah, could, in terms of the aforesaid decision, be raised only before the Civil Court and not before the Controller himself.

12. On this point, Mr. Mukherjee lastly referred to and relied upon a decision of a learned Single Judge of this Court in the case of Shyamal Atta & Others, v. The Learned Thika Controller and Another, reported in 1999(1) CLJ 250. wherein the learned Single Judge held that the 1981 Act did not give any power to the Thika Controller to adjudicate upon whether a person is a thika tenant or not.

13. Mr. Mukherjee submitted further that the powers vested in the Thika Controller under section 13 of the above Act must be confined to the provisions of the Act wherein the Thika Controller had been given the authority to decide certain questions such as disputes relating to the existence of Bharatlas as contemplated under section 11 of the 1981 Act. Referring to the order passed by the learned Single Judge, Mr. Mukherjee urged that it was now well-established that the existence of an alternative remedy is not an absolute bar to the filing of a writ application, particularly when the authority acts without jurisdiction. Furthermore, since the writ application has been admitted at the initial stage and interim orders had been passed, it was no longer available to the respondents to submit that the writ application was not maintainable in view of the alternative remedy available to the appellant/petitioner under the Statute.

14. In support of his aforesaid submissions, Mr. Mukherjee firstly referred to and relied upon the decision of the Hon'ble Supreme Court in the case of Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya, Sttapur (U.P.) and Others, reported in AIR 1987 SC 2187, wherein it was observed that it is well-established that an alternative remedy is not an absolute bar to the maintainability

of a writ petition. When an authority has acted wholly without Jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy. The Hon'ble Supreme Court also observed that the order passed by the Vice-chancellor on review being a nullity, such an order could surely be challenged before the High Court by a petition under Article 226 of the Constitution and the High Court was not justified in dismissing the writ petition on the ground that an alternative remedy was available to the appellant/petitioner under section 68 of the U.P. State Universities Act.

15. Reference was also made to a Bench decision of this court in the case of Anil Kumar Panda v. State of West Bengal & Others, reported In : AIR1997 Cal125 . wherein the same principles have been reiterated.

16. Mr. Mukherjee urged that having regard to the above, the learned Single Judge ought not to have dismissed the writ application on the ground of alternative remedy available to the appellant/petitioner and that the order of the Thika Tenancy Controller, Howrah, ought to have been quashed.

17. Opposing the application and the appeal on behalf of the Thika Controller, Howrah, Mr. Debashis Kar Gupta urged that the Thika Controller, Howrah, had acted on the basis of the materials before him and that there was, therefore, no absence of Jurisdiction as contended by Mr. Mukherjee. Mr. Kar Gupta further urged that the entries in the R.S. record-of-rights clearly indicated that the property In question was a thika tenanted property and that, thereafter, the orders made by the Thika Controller, Howrah, flowed as a consequence of the fact that the property in question was recorded as thika tenanted property. Mr. Kar Gupta urged that any transaction entered into in respect of the property in question, after the enactment of the 1981 Act, was hit by the provisions of sub-section (2) of section 7 of the said Act and was. therefore, void by operation of law. Mr. Kar Gupta urged that the said fact had really been recorded by the Thika Controller, Howrah, although, the language in which it was recorded may not be very happy. Mr. Kar Gupta urged that the intention of the Thika Controller, Howrah, was very clear that the documents in question could not survive on account of the provisions of sub-

section (2) of section 7 of the 1981 Act.

18. Mr. Kar Gupta also submitted that the questions raised by the writ petitioner/appellant in the writ petition involve highly disputed questions of fact which could not have been gone into in the writ proceedings and the learned Single Judge very rightly relegated the parties to the provisions of the Statute, which provides for appeal against an order of the Thika Controller, Howrah, under section 13 thereof.

19. Mr. Kar Gupta submitted that the appeal was misconceived and was liable to be dismissed.

20. Mr. Kar Gupta urged that the appeal as liable to be dismissed also in view of the alternative remedy available to the appellant/petitioner. In support of his submissions, Mr. Kar Gupta referred to two decisions of the Hon'ble Supreme Court of India. The first of such decisions was rendered In the case of Union of India and Others v, M/S. Cottage Arts Emporium and Others, reported in : AIR 1992 SC2218 , wherein the Hon'ble Supreme Court had considered the question of alternative remedy in regard to a writ application, which had been filed by the respondents in the Special Leave Petition. It appears that during the pendency of the Special Leave Petition, in terms of various interim directions given, the Statutory Authority had concluded the adjudication proceeding, which was the subject matter of the writ application. The Hon'ble Supreme Court accepted the submissions made on behalf of the appellant that having regard to such adjudication, the writ application did not survive.

21. The second decision cited by Mr. Kar Gupta on this point is that of the Hon'ble Supreme Court in Shyam Kishore and Others v. Municipal Corporation of Delhi and another, reported in : AIR 1992 SC2279 . In the said decision, the Hon'ble Supreme Court observed that where- an alternative remedy is available, resort to Articles 226 and 227 should be discouraged, since a more satisfactory solution is available in the Statute itself.

22. Mr. Kar Gupta urged that having regard to the said two decisions of the Hon'ble Supreme Court, it could not be contended that the learned Single Judge

had erred in dismissing the writ application and directing the appellant/petitioner to take recourse to the provisions of appeal under section 13 of the 1981 Act.

23. Appearing on behalf of the Howrah Municipal Corporation, Mrs. Mukherjee submitted that the writ petitioner/appellant could not take advantage of the fact that her name had been mutated in the records of the Corporation, Inasmuch as, such mutation was effected on the basis of the last deed executed by Jahar Shaw wherein the fact that the land in question was thika tenanted property had not been indicated. Mrs. Mukherjee, in fact, adapted the submissions made on behalf of Mr. Kar Gupta and submitted that the writ application had been rightly dismissed as it did not call for any interference with the order passed by the Thika Tenancy Controller, Howrah. Mrs. Mukherjee submitted that the appeal was misconceived and liable to be dismissed.

24. We have carefully considered the submissions made on behalf of the respective parties and we are of the view that the Thika Tenancy Controller, Howrah, overstepped the jurisdiction vested in him under the provisions of the Statute. As will appear from the order-sheet itself, except for the entries in the R.S. record-of-rights, the Thika Tenancy Controller, Howrah, did not rely on any other document in assuming that the property in question was a thika tenanted property. While it is true that in the R.S. record-of-rights, the property may have been described as a thika tenanted property, the Thika Tenancy Controller, Howrah, in our view, ought not to have relied on such entries in arriving at a decision that the property in question was a thika-tenanted property since it is not well-established that the entries in the record-of-rights given rise only to a presumption of possession and cannot be relied upon as a document of title. Furthermore, in our view, the Thika Tenancy Controller, Howrah, exceeded the Jurisdiction vested in him in declaring the two deeds, referred to above, as void. This, in our view, comes within the purview of the Civil Court and could have been declared as void only by the Civil Court.

25. While sub-section (2) of section 7 of the 1981 Act indicates that any transaction entered into in respect of a thika-tenanted property after the coming into operation of the 1981 Act would be void, the same would have to be declared

as void not by the Thika Tenancy Controller, Howrah, but by the Civil Court. The Thika Tenancy Controller, Howrah. being a creature of the Statute, he has to confine himself to the powers vested in him by the Statute. There is nothing in the Statute to indicate that the Thika Tenancy Controller, Howrah, could adjudicate on the validity of a document of title, notwithstanding the provisions of sub-section (2) of section 7 of the 1981 Act.

26. On the question of alternative remedy, we have already indicated the view taken by the Hon'ble Supreme Court of India in the case of Dr. Smt. Kuntesh Gupta (supra). The decisions cited by Mr. Kar Gupta, in our view, will not have any application to the facts of this case, Inasmuch as, the Thika Controller, Howrah, acted without jurisdiction in passing the impugned orders.

We, therefore, have no hesitation in allowing the appeal.

The appeal is, accordingly, allowed. The order passed by the learned Single Judge is set aside and the writ petition is allowed. The orders passed by the Thika Tenancy Controller, Howrah, as Impugned in the writ petition, are hereby quashed.

The appeal and the application for stay are disposed of with the aforesaid observations. There will be no order as to costs.

**P.K. Sen, J.**

27. I agree.

28. Appeal allowed

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