

Lalta Prosad Jaiswal and ors. Vs. Controller, Calcutta Thika Tenancy and ors.

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Court : Kolkata

Decided On : Mar-08-2005

Reported in : (2005)3CALLT365(HC),2005(3)CHN125

Judge : Dilip Kumar Seth and ;Soumitra Pal, JJ.

Acts : Calcutta Thika and other Tenancies and Land (Acquisition and Regulation) Act, 1981 - Sections 6, 6(1), 6(3), 7(1), 7(2) and 18A;

Appeal No. : M.A.T. No. 2962 of 1999

Appellant : Lalta Prosad Jaiswal and ors.

Respondent : Controller, Calcutta Thika Tenancy and ors.

Advocate for Def. : Wasef Ali Mondal, Adv.

Advocate for Pet/Ap. : Ashok Banerjee and ;Tarit Baran Roy, Adv.

Judgement :

D.K. Seth, J.

1. Section 6(3) of the Calcutta Thika and other Tenancies and Land (Acquisition and Regulation) Act, 1981 prescribes that the interests of thika tenants and

tenants of other lands holding directly under the State under Sub-section (1) shall be heritable and shall not be transferable except inter se amongst the heirs and existing co-shares interest or to the prospective heirs, subject to the provisions of Sub-section (1) of Section 7.

2. Section 6(1) prescribes the incidence of tenancies in respect of lands vested in the State under the 1981 Act.

3. Section 7(1) permits the thika tenants and tenants of other lands holding directly under the State to let out in whole or in part structures existing on, or constructed after, the date of commencement of the 1981 Act on such lands but not any vacant land or any part thereof. Whereas Sub-section (2) prescribes that any transfer or agreement for transfer, whether oral or in writing, in contravention of the provisions of Sub-section (3) of Section 6 or Sub-section (1) of Section 7 shall be of no effect whatsoever and the land and structure shall stand vested in the State in accordance with the prescribed procedure. Section 18A prescribes for penalty on account of contravention of the provisions of Sub-section (1) of Section 6 of the Act as an offence punishable with imprisonment for a term which may extend to 5 (five) years and also with fine which may extend to Rs. 10,000/- (Rupees ten thousand). But under Sub-section (2) cognizance of any offence can be taken by the Court only on complaint made in writing by the Controller or by an officer authorized by him in this behalf.

4. In this background Mr. Ashoke Banerjee, learned Senior Counsel raised the question as to whether the Thika Controller is competent to issue a notice under Sub-section (2) of Section 7 read with Section 18A when the property is claimed to be a property outside the purview of the 1981 Act. Relying on the decision in *Shayamal Atta v. State of West Bengal and Anr.*, 1999(1) CLJ 250, he contended that the Controller cannot decide the title nor can decide the question as to whether a person is a thika tenant or not. He also relied upon a Division Bench decision in *Indira Devi Rajak v. Thika Controller*, 1999(2) CLJ 79 : 1999(II) CHN 311, in order to contend that whether a transfer is void and is of no effect or not cannot be decided by the Thika Controller. It can only be done by the Civil Court. On this proposition he submits that the notice is void and the Thika Controller

cannot assume jurisdiction.

5. The learned Counsel for the respondent/Thika Controller on the other hand relied on the decision in *Md. Iqbal v. Abdul Rashid*, 2000(1) CLJ 157, to contend that a notice can be issued by the Thika Controller in order to decide as to whether there has been any infraction of Sub-section (2) of Section 7 in order to ascertain the liability under Section 18A. He also relied on a decision in *S.G. Credit & Properties Pvt. Ltd. v. C.M.C. and Ors.*, 2004(2) CLJ (Cal) 13 passed by one of us (Soumitra Pal, J.) sitting singly. Therefore, there is no infirmity in the order passed by the learned Single Judge.

6. After having heard the learned Counsel for the parties, we do not think that there is any infirmity in the order passed by the learned Single Judge; but however having regard to the proposition raised before us we would like to decide the question eloquently argued by Mr. Banerjee.

7. Section 6(1) prescribes incidences of thika tenancy hereinbefore and only permits transfer among the persons mentioned in Sub-section (3) thereof. Whereas Section 7(2) renders any transfer in contravention of Section 6(3) or letting out of vacant land in contravention of Section 7(1), which permits letting out of the structure but not the vacant land, void and of no effect and consequent vesting of such property in the State.

8. The scheme of Section 7(2) clearly indicates that the voidness and ineffectiveness of such transfer to be automatic. This is not dependent on any decision of the Thika Controller. In the whole scheme of the Act there is no provision to empower the Thika Controller to decide the effect of the contravention of Section 6(3) or Section 7(1), as the case may be, except making a complaint under Section 18A. Therefore, it cannot issue a notice for the purpose of holding as to whether the transfer was void or not or is of no consequence. But at the same time it cannot be overlooked that if it is brought to its notice it can ascertain as to whether there was a void transfer for the purpose of vesting or for lodging complaint under Section 18A; but such a question is dependent on the decision as to whether the transfer is void or is of no effect. If the Thika Controller cannot determine as to whether a person is a thika tenant or not then, it cannot be said

that it cannot issue such a notice for the sake of ascertaining as to whether it comes within the jurisdiction of the Thika Controller or not. In case a defence is taken by the person to whom the notice is issued that he is not a thika tenant in that event the Thika Controller cannot determine the said question. But it does not denude the Thika Controller from issuing any notice when information comes to it for the purpose of ascertaining any contravention of Section 6(3) or Section 7(1) in order to lodge complaint. Since no transfer is permitted therefore, the Thika Controller can act on the basis of any information received by it and issue notice. But as soon a defence is taken that the person is not a thika tenant the Controller cannot proceed with the same unless and until there is a decision by a competent Civil Court. The Thika Controller is powerless even to lodge a complaint under Section 18A when the nature of the tenancy is disputed unless and until the issue is decided by a Civil Court.

9. The decision by the learned Single Judge in Shayamal Atta (supra) was echoed by the Division Bench in Indira Devi Rajak (supra) which seems to be correct proposition. The decision in S.G. Credit & Properties Pvt. Ltd. (supra) was altogether on different sphere dealing with different question with regard to the scope of mutation or the transfer by the Calcutta Municipal Corporation which has no bearing on the present issue. Similarly the decision in Md. Iqbal (supra) is wholly inapplicable in the context of the present case since in the present decision as to whether an agreement which was followed when executed would become void subsequently due to operation of law which is a proposition with which we are not concerned.

10. In the circumstances we do not propose to interfere with the order passed by the learned Single Judge and grant liberty to the appellant to file an objection bringing on record the materials supporting his claim that he was not a thika tenant in respect of the said property nor the transferor was a thika tenant. If such objection is taken the Thika Controller shall drop the proceedings and refer the parties for a decision of the Civil Court if not already decided.

11. The appeal is thus disposed of.

12. There will be no order as to costs.

13. Urgent xerox certified copy of this order, if applied for, be given to the parties, on priority basis.

Soumitra Pal, J.

14. I agree.

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