

Sheikh Rahman Vs. the State of West Bengal and ors.

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Court : Kolkata

Decided On : Jan-07-1997

Reported in : (1997)1CALLT463(HC)

Judge : Altamas Kabir, J.

Acts : Calcutta Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 1981 - Section 4; ;[Calcutta Thika Tenancy Act, 1949](#); ;[West Bengal Premises Tenancy Act, 1956](#) - Section 17(2) and 17(2A); ;[Constitution of India](#) - Article 226

Appeal No. : W.P. No. 63 of 1995

Appellant : Sheikh Rahman

Respondent : The State of West Bengal and ors.

Advocate for Def. : Arun Mitra, Adv. for Respondent No. 5 and ;Pranit Chandra Das and ;Anita Ghosh, Adv.

Advocate for Pet/Ap. : D.P. Adhikary and ;Subrata Mukherjee, Adv.

Disposition : Petition dismissed

Judgement :

Altamas Kabir, J.

1. In this writ application the petitioner has challenged the order dated 28th April, 1994, passed by the Controller, Calcutta Thika Tenancy, in a proceeding initiated by him on the basis of a direction given by a learned Judge of this court on 21st December, 1993, in Matter No. 1169 of 1993.

2. In the said matter, which was a writ petition filed by the petitioner herein, a dispute had been raised as to whether the respondent No. 5 was a Thika tenant or not in respect of premises No. 14, Syed Sally Lane, Calcutta. The learned Judge who heard the matter was of the view that the said dispute could not be resolved in a writ proceeding and, accordingly, directed the Thika Controller to decide the said question after going through the history of the case including the suit before the City Civil Court, Calcutta.

3. From the order passed by the Thika controller it appears that the petitioner herein had contended that the predecessor in interest of the private respondent No. 5 was or a Thika tenant of the premises in question, inasmuch as, there was a corrugated shed on the land in question as would appear from the old Assessment Department Records of the Calcutta Municipal Corporation. It appears that it was also contended on behalf of the petitioner that he purchased the land in question, along with the structures thereupon, by a sale-deed executed in 1976, but through inadvertence the existence of the structures on the land had not been included in the deed and such omission was subsequently rectified by a deed of rectification executed in 1988.

4. As far as the case of the private respondent is concerned, it was urged that in various proceedings in the

Civil Courts, including Ejectment Suit No. 430 of 1981 before the learned 5th Judge, City Civil Court at Calcutta, it had been held that the private respondent No. 5 was a thika tenant and that the petitioner herein had purchased only the land comprising the aforesaid premises.

5. On the strength of such evidence, as also the conveyance executed in favour of the petitioner here in 1976 and the subsequent deed of rectification executed in 1988, the Thika Controller came to the finding that the private respondent No. 5 was a thika tenant of the premises in question and that the right of the petitioner in the land in question had vested in the State after the enactment of the Calcutta Thika Tenancy (Acquisition & Regulation) Act, 1981.

6. Appearing in support of the writ petition, Mr. D.P. Adhikari, learned Advocate, urged that while deciding the matter the Thika Controller had failed to take into consideration the extracts from the Municipal Register which showed that there were structures on the land even before the predecessor in interest of the private respondent No. 5 was inducted into the premises. Mr. Adhikari also urged that the Thika Controller had erred in law in not taking into consideration the provisions of Section 4 of the 1981 Act which provides that the provisions of the said Act would have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or in any custom, usage or agreement or in any decree or order of a court, tribunal or other authority. Mr. Adhikari urged that having regard to the said provision, it must be held that the effect of all previous decisions in the Civil Courts and the findings of the said courts had been rendered nugatory and a fresh adjudication was required to be made under the provisions of the new Act regarding the status of the private respondent No. 5. Mr. Adhikari urged further that in view of such provisions a direction had been given by this court in the earlier writ proceedings filed by the petitioner for a fresh adjudication to be made by the Thika Controller regarding the status of the respondent No. 5 regarding his claim that he was a Thika Tenant of the land in question.

7. On behalf of the State it was urged that since a decision had been arrived at by the Thika Controller pursuant to a direction given by this court in the earlier writ application and since there was no illegality in the said order, this court should not interfere with the said order in a proceeding under Article 226 of the Constitution.

8. Appearing for the private respondent No. 5, Mr. Arun Mitra, learned Advocate, also urged that in the absence of any irregularity or illegality in the order of the Thika Controller, the writ court should not ordinarily interfere with the decision arrived at by the said Authority.

9. Mr. Mitra also submitted that the effect of Section 4 of the 1981 Act was not to obliterate the effect of the findings of the Civil Courts in earlier proceedings and such findings could be relied on for the purpose of corroboration as supporting evidence.

10. Mr. Mitra urged that since the predecessor-in-interest of the writ petitioner had filed a suit against the respondent No. 5 before the learned Judge, 9th Bench, City Civil Court at Calcutta for a money claim on the ground that the private respondent No. 5 was a thika tenant of the land in question, it was no longer open to his successor-in-interest to claim otherwise.

11. Furthermore, it was pointed out by Mr. Mitra that in an ejectment suit filed by the petitioner against the private respondent No. 5 before the learned Judge, 5th Court, City Civil Court, Calcutta, being Ejectment Suit No. 430 of 1981, a defence had been taken in proceedings under Section 17(2) and Section 17(2A)(b) of the [West Bengal Premises Tenancy Act, 1956](#), that there was no relationship of landlord and tenant between the petitioner herein and the said defendant since the private respondent was a Thika tenant, and that had been upheld by the learned court and a finding had been arrived at that the father of the private respondent No. 5 was a Thika tenant in respect of the premises in question and the right of the landlord having vested to the State under the 1981 Act, there was no relationship of landlord and tenant between the petitioner and the private respondent No. 5 herein. Mr. Mitra pointed out that the suit had been dismissed on that ground and no further steps had been taken in the matter by the petitioner herein.

12. Apart from the above, Mr. Mitra also pointed out that having regard to the Money suit filed in 1969 by the predecessor-in-interest of the petitioner herein, the conveyance executed in favour of the petitioner in 1976 gives a true picture of the state of affairs and the subsequent Deed of rectification executed in 1988 was an after-thought. Mr. Mitra urged that the writ petition was, therefore, devoid of merit and was liable to be dismissed.

13. Having considered the submissions made on behalf of the respective parties, I am unable to accept the submissions of Mr. Adhikary that by virtue of the provisions of Section 4 of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, the effect of the judgments and decrees of the Civil Courts in earlier proceedings stood negated. What in fact is provided for in the said section is that the provisions of the said Act would have application notwithstanding any other law for the time being in force or any decree or order of a court. I am of the view, that what was meant was that even if any decree or order of a court adversely affected any of the provisions of the Act, the provisions of the Act would continue to have an overriding effect over such decrees and orders.

14. Apart from the above, it must also be indicated that the respondent No. 5 herein successfully set up a defence of being a Thika tenant in the eviction suit filed against him and the court came to a definite finding in the 17(2) proceedings that the said respondent was a Thika tenant of the premise in question. I am in agreement with Mr. Mitra that such evidence could be taken into consideration by the Thika Controller in deciding the issue as to whether the respondent No. 5 was a Thika tenant or not of the premises in question.

15. Having regard to the above and since I find no illegal or irregularity in the order of the Thika Controller impugned in the present writ application, I see no reason to interfere with the same.

16. The writ petition is, accordingly, dismissed. There will be no order as to costs.

17. All parties are to act on a signed copy of the operative part of this judgment of the usual undertaking.

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