

Smt. Santi Rani Dalal Vs. Thika Tenancy Controller and ors.

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Court : Kolkata

Decided On : Apr-24-1996

Reported in : (1996)2CALLT247(HC)

Judge : Nikhil Nath Bhattacharjee, J.

Acts : Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981; ;
[Constitution of India](#) - Article 226; ;[Calcutta Thika Tenancy Act, 1949](#)

Appeal No. : C.O. No. 15618(W) of 1994

Appellant : Smt. Santi Rani Dalal

Respondent : Thika Tenancy Controller and ors.

Advocate for Def. : Indrajit Mandal, Adv. for Private Respondent Nos. 6 to 9

Advocate for Pet/Ap. : M.M. Mallick, Adv.; Nilima Das, Adv.

Disposition : Application dismissed

Judgement :

Nikhil Nath Bhattacharjee, J.

1. In this writ application the petitioner has prayed for a declaration that the Civil Court's Judgments and decrees passed in the self-same matter from the Munsif Court upto the Supreme Court are nullity and has also prayed for stay of the

concerned Title Execution case No. 10 of 1985 pending before the Second Court of Munsif at Sealdah. It may be stated at the outset that the said Title Execution case has since been disposed of by delivery of possession on the eviction of the petitioner and on that ground alone the writ petitioner has become infructuous.

2. The writ petitioner filed title suit No. 496 of 1970, renumbered as 88 of 1978 for declaration of Thika Tenancy in the suit property and the private respondents filed Title Suit No. 396 of 1969, renumbered as 87 of 1976 for eviction of the licensee being the writ petitioner. The two suits were heard analogously and on 10th March, 1976 the learned 2nd Munsif, Sealdah dismissed the suit of the writ petitioner and decreed the suit of the private respondents for eviction. The writ petitioner filed title appeal No. 470 of 1976 and 471 of 1976 against the judgments and decrees of the learned Munsif. On 20th July, 1980 the said title appeals were dismissed and the judgments and decrees of the learned Munsif were confirmed. The writ petitioner instituted second appeals being S.A. No. 271 of 1986 and S.A. No. 272 of 1986 and on 13th July, 1991 Ajit Kr. Nayek, J. dismissed the second appeals affirming the judgment of the Courts below.

3. The writ petitioners preferred special leave application and on 20th November, 1992 the Hon'ble Supreme Court of India dismissed the Special Leave Petition and granted time till 30th June, 1993 for vacating the premises by the writ petitioner subject to her filing of an undertaking. The undertaking was filed. However, the writ petitioner preferred a review application and the Hon'ble Supreme Court on 4th March, 1994 dismissed the said review application.

4. It is the contention of the petitioner that since under the provisions of Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 all matters relating to Thika Tenancy will be governed by the provisions of the new Act, the judgment and decrees passed by the Munsif Court and the first appellate Court relating to Thika Tenancy were nullity. But it appears that the 'only pending proceedings under the [Calcutta Thika Tenancy Act, 1949](#) were to abate on the passing of the Calcutta Thika Tenancy (Acquisition & Regulation) Act, 1981 which came into force w.e.f. 18th January; 1982. Decree for eviction and appeal are not to be treated as abated under the new Act. Accordingly, the decree for eviction passed against the

writ petitioner did not abate. However, since the petitioner challenged the decree of eviction passed against her upto the level of the Supreme Court which dismissed the special leave application and thereafter also the review application, there can be no question of treating the successive concurrent decrees of the Civil Courts to be nullity, particularly when it is the settled principle of law that writ Court cannot issue writs of Certiorari against Judgment and orders passed by the High Court in another jurisdiction, vide 0044/1966 : [1966]3SCR744 , for to say of against the Judgment of the Supreme Court.

5. For the reasons aforesaid the writ application fails and is dismissed subject to a cost of 200 G.Ms, to be paid by the writ petitioner to the contesting respondents No. 6 to 9.

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