

CASE NO.:
Appeal (civil) 7091 of 2001

PETITIONER:
Narayan Chandra Ghosh & Others

RESPONDENT:
Kanailal Ghosh & Others

DATE OF JUDGMENT: 16/11/2005

BENCH:
B.N.AGRAWAL & A.K.MATHUR

JUDGMENT:
J U D G M E N T
WITH

CIVIL APPEAL NO. 7092 OF 2001

Narayan Chandra Ghosh

\005..Appellant

Versus

Kanailal Ghosh & Others

\005.Respondents

B.N.AGRAWAL, J.

These appeals by the defendants arise out of common judgment rendered by the High Court in second appeals. The short facts are that the plaintiffs filed two suits, viz., Title Suit Nos. 125 of 1978 and 146 of 1977 for eviction of defendants. Both the suits relate to eviction of defendants from different portions of a house. The former suit related to eviction from three rooms and the latter from one room. In both the suits, the plaintiffs were thika tenants whereas defendants were Bharatias. The grounds for eviction disclosed in the suits were default, causing nuisance by the defendants and bona fide need of the plaintiffs for the premises in question as number of their family members had substantially increased. When the suits were filed, The Calcutta Thika Tenancy Act, 1949 (hereinafter referred to as 'the 1949 Act') was in force. During the pendency of the aforesaid suits, The Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 (hereinafter referred to as 'the 1981 Act') was promulgated and as, according to the plaintiffs, the said suits abated under Section 19 of the 1981 Act, the plaintiffs filed another suits giving rise to Title Suit Nos. 35 of 1983 and 22 of 1983 for eviction of defendants from the aforesaid four rooms stating therein the same grounds for eviction.

Defendants contested the claim for eviction on grounds, inter alia, that the subsequent suits were not maintainable as earlier suits did not abate under Section 19 of the 1981 Act. They denied all the grounds for eviction.

In support of their respective cases, both the parties led oral and documentary evidence and upon conclusion of trial, the learned Munsiff held that the suits were maintainable as the earlier suits abated under Section 19 of the 1981 Act. So far as the grounds for eviction are concerned, the trial court decreed the suits only on the ground of bona fide necessity as, in its opinion, the plaintiffs failed to prove the other grounds. Challenging the decrees of the trial court, when appeals were preferred, the lower appellate court upheld the decree for eviction in relation to three rooms but reversed the same in relation to one room and thereby dismissed suit for eviction in relation to the same. Against the aforesaid decision, two appeals were preferred before the High Court, one by the plaintiffs and other by the defendants. High Court upheld decision of the lower appellate court affirming eviction decree in relation to three rooms. So far as decree of the lower appellate court dismissing the eviction suit in relation to one room is concerned, the same has been reversed and the decree for eviction in relation to same passed by the

trial court has been restored. Hence, these appeals by special leave.

Mr. Bhaskar Prasad Gupta, learned Senior Counsel appearing in support of the appeals raised various points but for the disposal of the appeals, only two points are relevant. Firstly, it has been submitted that earlier two suits filed by the plaintiffs did not abate under Section 19 of the 1981 Act, as such both the suits were liable to be dismissed on the ground that the same were not maintainable. Secondly, it has been submitted that the High Court was not justified in interfering with the finding of fact in relation to one room in a second appeal. On the other hand, Mr. S.B.Sanyal and Mr. Vijay Hansaria, learned Senior Counsel appearing for the respondents in their respective appeals, submitted that present suits were maintainable as earlier two suits abated under Section 19 of the 1981 Act. Mr. Vijay Hansaria, appearing in support of the judgment of the High Court in relation to one room, submitted that the High Court was quite justified in reversing judgment rendered by lower appellate court and confirming the decree for eviction passed by the trial court.

Thus, the main question to be considered in the present appeals is as to whether the earlier suits abated under Section 19 of the 1981 Act? In this regard, it would be necessary to refer to the history of the legislation. The 1949 Act was enacted for making better provision relating to the law of landlord and tenant in respect of thika tenancies in Calcutta. The expression "thika tenant" has been defined under Section 2(5) of the 1949 Act to mean a person who holds a land under a lease or otherwise under another person on payment of rent and has erected structure thereon or acquired by purchase or gift any structure on such land for residential, manufacturing or business purpose. The expression "Bharatia" has been defined under Section 2(1) of the 1949 Act to mean any person by whom, or on whose account, rent is payable for any structure or part of a structure erected by a thika tenant in his holding. Under Section 3 of 1949 Act, three grounds for eviction of Thika tenant have been enumerated, namely, (I) using the holding in such a manner so as to render it unfit; (II) bona fide necessity of the landlord for the holding; and (III) in a case of lease, other than for residential purpose, expiry of the period of lease. Under Section 5 of the 1949 Act, procedure has been provided for eviction of thika tenant by the landlord by filing an application for ejectment before Controller appointed by the State Government as defined under Section 2(2) of the 1949 Act. At this stage, it would be useful to refer to the provisions of Sections 2(1), 2(2), 2(5), 3 and 5 of the 1949 Act which read thus:

"2(1) "Bharatia" means any person by whom, or on whose account, rent is payable for any structure or part of a structure erected by a Thika tenant in his holding.

2(2) "Controller" means an officer appointed as such by the State Government for an area to which this Act extends and includes any officer appointed by the State Government to perform all or any of the duties imposed or to exercise all or any of the powers conferred by this Act, on the Controller.

2(5) "thika tenant" means any person who holds, whether under a written lease or otherwise, land under another person, and is or but for a special contract would be liable to pay rent, at a monthly or at any other periodical rate, for that land to that another person and has erected or acquired by purchase or gift any structure on such land for a residential, manufacturing or business purpose and includes the successors in interest of such person, but does not include a person \026

(a) who holds such land under that another person in perpetuity; or

(b) who holds such land under that another person under a registered lease, in which the duration of the lease is expressly stated to be for a period of not less than twelve years; or

(c) who holds such land under that another person and uses or occupies such land as a khattal.

3. Grounds on which a thika tenant may be ejected. \026

(1) Notwithstanding anything contained in any other law for the time being in force or in any contract, a thika tenant shall,

subject to the other provisions of this Act, be liable to ejectment from his holding on one or more of the following grounds and not otherwise, namely:-

- (i) on the ground that he has used the land comprised in his holding in a manner which renders it unfit for any of the purposes mentioned in clause (5) of section 2;
- (ii) except during any period limited by a registered lease under which a thika tenant may hold the land comprised in the holding and subject to the provisions of sub-sections (2), (3) and (4), on the ground that the land is required by the landlord for his own occupation;
- (iii) when he holds the land comprised in the holding under a registered lease for a purpose other than a residential purpose, on the ground that the term of the lease has expired.

(2) No landlord shall be deemed to require the land comprised in the thika tenant's holding for his own occupation if he has a house of his own in the city in which such land is situated and the accommodation available in such house is, in the opinion of the Controller, reasonably sufficient for him and his family.

(3) Where the landlord requires the land comprised in the thika tenant's holding for his own occupation and the Controller is of opinion that such requirement may be substantially satisfied by ejecting the thika tenant from a part only of his holding and allowing him to continue in occupation of the rest, then, if the thika tenant agrees to such occupation, the Controller shall make an order accordingly and fix the proportionate rent for the portion remaining in the occupation of the thika tenant.

(4) Where the thika tenant has erected or acquired a pucca structure for a residential purpose on the land comprised in his holding, no order for ejectment shall be made against him except in respect of such part, if any, of such land as does not appertain to the pucca structure.

5. Proceedings for ejectment. \026 (1) Notwithstanding anything contained in any other law for the time being in force a landlord wishing to eject a thika tenant on one or more of the grounds specified in section 3 shall apply in the prescribed manner to the Controller for an order in that behalf and, on receipt of such application, the Controller shall, after giving the thika tenant a notice to show cause within thirty days from the date of service of the notice why the application shall not be allowed and after making an inquiry in the prescribed manner either allow the application or reject it after recording the reasons for making such order, and, if he allows the application, shall make an order directing the thika tenant to vacate the holding and, subject to the provisions of section 10, to put the landlord in possession thereof.

(2) No order allowing an application under sub-section (1) shall be made in a case where compensation is payable under the proviso to section 4 unless and until the amount of compensation so payable has been either paid to the thika tenant or deposited with the Controller."

It may be also useful to refer to the provisions of Sections 10 and 10A of the 1949 Act which read thus:

"10. Consequences of the determination of interests of thika tenants in certain cases. \026 (1) Notwithstanding anything to the contrary contained in any contract, on the determination of the interest of a thika tenant in the land comprised in a holding as a result of ejectment from the holding of, or of surrender or abandonment of the holding by, the Thika tenant, or otherwise, any structure standing upon such land and existing on the date of such determination shall vest in the

landlord.

(2) When any structure standing on any holding of a Thika tenant vests in the landlord under sub-section (1) otherwise than as a result of ejectment of the Thika tenant from the holding on the ground specified in clause (ii) of sub-section (1) of section 3, any Bharatia in possession of such structure or any part thereof, shall without any application being made be entitled to continue in such possession and shall be deemed to be a tenant in respect of such structure or part thereof, as the case may be, within the meaning of the West Bengal Premises Tenancy Act, 1956, holding under the landlord on the terms and conditions on which such Bharatia had been holding immediately before such structure vested in the landlord:

Provided that nothing in this sub-section shall prevent either the landlord or such Bharatia so deemed to be a tenant holding under the landlord, from proceeding under the West Bengal Premises Tenancy Act, 1956, for fixing the standard rent payable in respect of such structure or part thereof, as the case may be.

10A. Right of thika tenant to erect pucca structures. \026 (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, but subject to the provisions of sub-sections (2) and (3), a thika tenant using the land comprised in his holding for a residential purpose may erect a pucca structure on such land for such purpose with the previous permission of the Controller.

(2) On an application made by a thika tenant in this behalf, the Controller may grant him permission to erect a pucca structure, if the Controller is satisfied that the thika tenant \026

(a) is using the structure existing on the land comprised in his holding for a residential purpose,

(b) intends to use the pucca structure to be erected on such land for a similar purpose, and

(c) has obtained sanction of a building plan to erect the pucca structure from the municipal authorities of the area in which such land is situated.

(3) No thika tenant shall be entitled to eject a Bharatia from the structure or part thereof in the possession of the Bharatia for the purpose of erecting a pucca structure :

Provided that the thika tenant may by providing temporary alternative accommodation to a Bharatia obtain from him vacant possession of the structure in his possession on condition that immediately on the completion of the construction of the pucca structure the thika tenant shall offer the Bharatia accommodation in the pucca structure at a rent which shall in no case exceed by more than twenty-five per centum the rent which the Bharatia was previously paying."

Section 10(1) of the 1949 Act lays down that upon ejectment of a thika tenant, his interest in the holding shall be determined and the structures standing thereon shall vest in the landlord. Sub-section (2) of Section 10 of the 1949 Act lays down that in case the order of eviction is on grounds (i) and (iii) of Section 3(1) of 1949 Act, in that eventuality, the Bharatia who is in possession of the structure shall be entitled to continue in such possession and shall be deemed to be a tenant in respect of such structures within the meaning of the West Bengal Premises Tenancy Act, 1956 (in short 'the Premises Tenancy Act') in which he is residing and shall be holding the same under the landlord on the terms and conditions on which such Bharatia had been holding immediately before the structures vested in the landlord. Under proviso to Section 10(2) of the 1949 Act, the landlord or the Bharatia would be entitled to make an application for fixation of standard rent in respect of such structure under the provisions of the Premises Tenancy Act and to that extent only the provisions of the said Act were made applicable. According to sub-section (3) of Section 10A of the 1949 Act no thika tenant shall be entitled to eject a Bharatia from the structure for the purpose of erecting a pucca

structure but in case he intends to erect pucca structure, in the premises in which a Bharatia is residing, he is required to provide temporary alternative accommodation to the Bharatia before obtaining possession for the purposes of putting pucca structure thereon and after completion thereof, such Bharatia shall be entitled to be put in possession of the pucca structure on payment of rent which shall in no case exceed more than 25% of the rent which the Bharatia was previously paying.

From the aforesaid provisions, it becomes plain that under the 1949 Act, procedure was specifically provided for ejectment of a thika tenant by making an application for ejectment before the Controller but not for ejectment of a Bharatia by a thika tenant. For ejectment of a Bharatia, only a suit for ejectment could be filed by a thika tenant before a Civil Court in case, he wanted to evict a Bharatia. As Legislature of the State of West Bengal was contemplating legislation providing therein for the acquisition of interest of landlords in respect of lands comprised in thika tenancy and certain other tenancies, pending its enactment, a further legislation was enacted which was named The Calcutta Thika Tenancy Stay of Proceedings (Temporary Provisions) Act, 1978 (hereinafter referred to as 'the 1978 Act') which came into force on 19th July, 1978 and continued to remain in force for a period of three years and six months from the date of its commencement. This legislation was enacted to provide for temporary stay of proceedings for ejectment of thika tenants and Bharatias holding under thika tenants. It would be necessary to refer to the provisions of Sections 3, 4 and 5 of the 1978 Act which read thus:-

"3. Stay of proceedings for ejectment of Thika tenants. - Notwithstanding anything contained in the Calcutta Thika Tenancy Act, 1949, or in any other law for the time being in force, -

- (a) all applications for ejectment of Thika tenants,
- (b) all appeals from orders made on such applications, and
- (c) all proceedings in execution of orders for ejectment of Thika tenants.

under the provisions of the Calcutta Thika Tenancy Act, 1949, which are pending at the date of commencement of this Act or which may be made, preferred or commenced after such date but before the expiry of this Act, in respect of any land which is not a 'vacant land' within the meaning of the Urban Land (Ceiling and Regulation) Act, 1976, shall be stayed for the period during which this Act continues in force.

4. Stay of suits and proceedings against Bharatias. \026 No thika tenant shall, while this Act continues in force, commence, or continue with, any suit, appeal or proceedings in execution of orders, for ejectment of any Bharatia and all pending suits, appeals or proceedings in execution of orders, for ejectment of a Bharatia shall remain stayed.

5. Saving of limitation. \026 In computing the period of limitation prescribed by any law for the time being in force for an application for the ejectment of a thika tenant or for such a suit against a Bharatia or for an appeal from an order or decree made on such application or suit or for the execution of an order or decree for ejectment of a Thika tenant or a Bharatia, as the case may be, the period during which this Act continues in force shall be excluded."

Under Section 3 of the 1978 Act, all proceedings for ejectment of thika tenant initiated under the 1949 Act, irrespective of its stage, meaning thereby whether it was pending before the original authority or in appeal or in execution, were required to be stayed during the period of enforcement of the 1978 Act and no further proceeding could be initiated after its commencement. Under Section 4 of the 1978 Act a thika tenant was injuncted to commence any proceeding or continue such proceeding for ejectment of any Bharatia and all such proceedings if commenced stood stayed. Section 5 of the 1978 Act provided that in computing the period of limitation for making an application for ejectment of a thika tenant or for filing a suit against a Bharatia or for filing an

appeal or for levying execution of an order or decree for ejectment of a thika tenant or a Bharatia, as the case may be, the period during which 1978 Act continued to remain in force had to be excluded.

Immediately after the 1978 Act expired, The Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 (hereinafter referred to as 'the 1981 Act') was enacted which came into force with effect from 18th January, 1982. The said Act was enacted for the acquisition of interests of landlords in respect of lands comprised in thika tenancy and certain other tenancies. According to Section 5 of the 1981 Act, with effect from the date of commencement of said Act, interest of the landlords in lands, inter alia, comprised in and appurtenant to tenancies of thika tenants including open areas, roads, passages, tanks, pools and drains vested in the State free from all incumbrances but the vesting did not in any manner affect rights enjoyed by thika tenants and Bharatias. By virtue of Section 6 of the 1981 Act, in spite of vesting, the thika tenant was entitled to continue in occupation of the said land, on such terms and conditions as may be prescribed, directly under the State as if the State had been the landlord in respect of that land and he would be liable to pay land revenue directly to the State. Under Section 7 of the 1981 Act, a thika tenant was not entitled to let out the vacant land to anybody but could create lease in respect of the structures. The landlords were entitled to compensation for the lands acquired by the State of West Bengal in the manner provided under Section 8 of the 1981 Act. Section 9 of the 1981 Act lays down that monthly and other periodical tenancies of Bharatias in respect of structures occupied by them on payments of rent to the thika tenants shall, with effect from the date of coming into force of 1981 Act, i.e., 18th January, 1982, be governed by the provisions of Premises Tenancy Act and for the said purpose, owners of the structures shall be deemed to be landlords and Bharatias shall be deemed to be tenants under the said Act. Section 11 of the 1981 Act lays down that tenancy of Bharatia as a tenant under thika tenant shall not be extinguished because of subsequent non-existence of the structure which the Bharatia previously occupied under the thika tenant and its tenancy shall continue. According to Section 19 of the 1981 Act, all proceedings for ejectment of thika tenants and Bharatias shall stand abated with effect from 19th day of July, 1978 as if such proceedings had never been made. It may be useful to refer to the provisions of Sections 9, 11 and 19 referred to above which read thus:

"9. Thika tenants and Bharatias to be governed by West Bengal Act 12 of 1956 . \026 (1) The monthly and other periodical tenancies of Bharatias in respect of structures occupied by them on payment of rents to Thika tenants shall, with effect from the date of coming into force of this Act, be governed by the provisions of the West Bengal Premises Tenancy Act, 1956, in all matters coming within the purview of the said Act and, for the said purpose, the owners of the structures shall be deemed to be landlords and the Bharatias shall be deemed to be tenants under the said Act.

(2) Notwithstanding anything contained in this Act or in the West Bengal Premises Tenancy Act, 1956, a Bharatia under a Thika tenant shall be entitled to take separate electrical connection from the electricity supplying agency or separate water supply connection from the appropriate agency for his own use.

11. Tenancy of Bharatia to continue. \026 (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, the tenancy of a Bharatia as a tenant under a thika tenant shall not be extinguished because of subsequent non-existence of the structure or a part thereof which the Bharatia previously occupied under the thika tenant.

(2) If any structure or part thereof which was in the occupation of a Bharatia as a tenant under a thika tenant ceases to exist except under an order of a court under section 18A of the West Bengal Premises Tenancy Act, 1956, the thika tenant shall reconstruct similar accommodation and restore possession to the Bharatia and put the Bharatia in possession of such accommodation within one month of such structure ceasing to exist, failing which the Bharatia may make an

application to the Controller in the prescribed manner.

(3) On an application made by the Bharatia under sub-section (2), the Controller shall, after giving the thika tenant and the Bharatia an opportunity of being heard, direct the thika tenant to reconstruct similar accommodation and restore possession to the Bharatia within such time as Controller may decide.

(4) If the thika tenant fails to comply with the orders of the Controller under sub-section (3), the Bharatia shall be entitled to reconstruct the structure and, for that purpose, may make an application to the Controller who shall, after giving the Bharatia and the thika tenant an opportunity of being heard, approve such cost of reconstruction as may appear to him to be fair and reasonable and, after such reconstruction, allow adjustment of the cost of such reconstruction from the rent payable by the Bharatia in such monthly instalments as the Controller may think fit.

(5) If there is any unlawful resistance by or on behalf of the thika tenant to the reconstruction by the Bharatia under sub-section (4), the Officer-in-charge of the local police station shall, on receipt of any requisition of the Controller in writing in this behalf, render all necessary and lawful assistance to the Bharatia.

19. Proceedings including appeals and proceedings in execution of orders, etc. to abate. \026 All proceedings including appeals and all proceedings in execution of orders passed in proceedings including appeals under the Calcutta Thika Tenancy Act, 1949, pending on the 19th day of July, 1978, for the ejectment of thika tenants and Bharatias shall stand abated with effect from the 19th day of July, 1978, as if such proceedings, appeals or execution proceedings had never been made."

In view of the aforesaid provisions, now the question to be examined is as to whether in the present case, the earlier suits for ejectment filed by the thika tenants for ejectment of Bharatias abated under Section 19 of the 1981 Act? Under 1949 Act, procedure was provided for ejectment of a thika tenant only and no procedure whatsoever was prescribed for ejectment of a Bharatia by a thika tenant. Therefore, a suit for ejectment could be filed by a thika tenant for ejectment of a Bharatia before an ordinary civil court and such Bharatia during the continuance of 1949 Act was not entitled to claim protection under the Premises Tenancy Act and could be evicted upon determination of his tenancy by giving a notice under Section 106 of the Transfer of Property Act. Under 1981 Act, it has been specifically provided that Bharatias are entitled to claim protection of the Premises Tenancy Act meaning thereby that now they cannot be evicted unless grounds for eviction enumerated under the Premises Tenancy Act are proved and they cannot be ejected merely upon determining their tenancy by giving a notice under Section 106 of the Transfer of Property Act.

Section 9 of the 1981 Act specifically lays down that from the date of coming into force of 1981 Act, i.e., 18th January, 1982, the tenancies of Bharatias shall be governed by the Premises Tenancy Act. On that date, both the suits earlier filed by the thika tenants for ejectment of Bharatias were pending and when the same were filed, it was not required of the thika tenant to prove the grounds for eviction enumerated under the Premises Tenancy Act, but with effect from 18th January, 1982 even in those suits a thika tenant was required to prove grounds for ejectment under the Premises Tenancy Act in case it is held that the same did not abate.

Learned Senior Counsel appearing on behalf of the appellants has placed reliance upon three decisions of Calcutta High Court in the case of Ranjit Kumar Saha v. Sudhir Kumar Dey 91 Calcutta Weekly Notes 1071, Ranjit Kumar Saha v. Sudhir Kumar Dey 91 Calcutta Weekly Notes 1090 and Mrs. Qaiser Jahan v. Mohammad Yawoob 1982 (2) Calcutta Law Journal 143. In these three decisions, it has been laid down that the provisions of Section 19 of the 1981 Act shall apply only in relation to those

suits for eviction which were filed before the Controller under the provisions of 1949 Act and were pending on the date of commencement of 1981 Act. It was further laid down therein that the said provisions shall have no application to the suits for ejectment filed before the civil court by a thika tenant for ejectment of a Bharatia and pending on the date of commencement of 1981 Act. In none of these three cases, the provisions of Sections 9 and 11 of the 1981 Act have been considered. In case it is held that such suits would not come within the mischief of Section 19 of the 1981 Act, the provisions of Section 9 of the 1981 Act would not apply to it although expressly Section 9 provides that from the date of commencement of 1981 Act, i.e., 18th January, 1982, the provisions of the Premises Tenancy Act would apply to Bharatias. Such suits cannot be effectively disposed of after the commencement of 1981 Act as earlier it was not necessary to prove the grounds for eviction enumerated under the Premises Tenancy Act and the Bharatia would be thereby denied the protection granted to him under the Premises Tenancy Act although he was entitled to such protection even in pending suits. This being the position, we are clearly of the view that suits for ejectment filed by the thika tenants for ejectment of Bharatias which were pending before a civil court abated under Section 19 of the 1981 Act, as such High Court was quite justified in holding that the present suits were maintainable.

Learned Senior Counsel appearing on behalf of the appellants next submitted that the High Court was not justified in reversing the finding of fact recorded by the lower appellate court that plaintiffs failed to prove the bona fide necessity in relation to one room. In this regard, it may be stated that from the judgment of the High Court, it would appear that the lower appellate court affirmed finding of the trial court in relation to personal necessity of the plaintiffs with regard to three rooms which finding was assailed by the defendants before the High Court. The building is one in which eviction was sought by the plaintiffs from four rooms and evidence is also common. While considering correctness of finding of the lower appellate court in relation to three rooms, High Court came to the conclusion that the plaintiffs were having only two rooms and they required in all seven rooms, meaning thereby that they required five more rooms and in those circumstances, it was held that the plaintiffs succeeded in proving their case in relation to bona fide necessity with regard to all the four rooms, including one room for which eviction was refused by the lower appellate court. In view of the aforesaid facts, we are not inclined to interfere with the impugned judgment rendered by the High Court even with regard to eviction of the defendants from one room, in the exercise of powers of this Court under Article 136 of the Constitution of India.

In the result, the appeals fail and the same are dismissed but in the circumstances of the case, we direct that there shall be no order as to costs.