

(2005) 03 CAL CK 0001

Calcutta High Court

Case No: G.A. No. 486, 517 and 518 of 2005, E.C. No. 71 of 2004 and C.S. No. 9 of 2003

Shree Shree Iswar
Satyanarayanjee and Others

APPELLANT

Vs

Shree Ranisat Jute Private
Limited

RESPONDENT

Date of Decision: March 23, 2005

Acts Referred:

- Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 - Section 27(2), 5(3)
- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 102

Citation: (2005) 2 ILR (Cal) 53

Hon'ble Judges: Kalyan Jyoti Sengupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Kalyan Jyoti Sengupta, J.

The aforesaid three applications have been taken out by the several Applicants as being the third parties to resist the execution of the decree passed in the Civil Suit No. 9 of 2003. The decree has been passed on an application under Chapter XIII A of the Original Side Rules of this Court evicting the above Defendant Shree Ranisati Jute Private Limited. The above decree is sought to be executed by physical eviction of the judgment debtor and/or any other person or persons who are in actual possession in the decretal premises. The decretal premises is premises No. 21, Keshab Chandra Sen Street, Kolkata now renumbered as 21/1, Keshab Chandra Sen Street (hereinafter referred to the said premises). In all these three, applications, the Applicants have claimed their independent of and separate right from right, title, interest of the parties to the suit. For the sake of convenience I shall deal with the second and third application first.

2. G.A. No. 517 of 2005: This application has been taken out by one Smt. Bharati Barik claiming to be daughter and heiress and legal representative of one Hiralal Thakur who had claimed to be a thika tenant originally under the Plaintiff, deity. The thika tenancy right along with the structure was purchased by and under the registered instrument by the said Hiralal from one Shantibala Dasi in respect of a portion of the said premises identifying as a plot No. 12 measuring about one and half cottahs. In the conveyance it appears that the structure is partly brick built and partly with mud wall together with privy, drainage system, electrical installation, water connection. It is claimed in the petition that after purchase of the aforesaid structure and thika tenancy right Shri Hiralal paid rent for the portion of the land to the deity as a landlord. On commencement of Thika Tenancy (Acquisition and Regulation) Act, 1981 the said portion of the land has vested unto State of West Bengal so far as the interest of the landlord is concerned. Thus, the said Hiralal was entitled to get the protection, rights, privileges and to discharge obligation under the said Act. On death she has become thika tenant in place of her father. On vesting of the land as aforesaid the said Hiralal duly paid rent to the Government and the receipt has been annexed to the petition. It is further stated that due to ignorance of the provision of the law the returns as required to be filed under the aforesaid Act read with the; Rules framed thereunder could not be filed within the time. However, the same was filed on or about 21st February 2005 in Form "A" to the controller appointed under the said Act.

3. G.A. No. 518 of 2005: This application has been taken out by one Gopal Shaw who has made identical claim of right of thika tenancy. He says that by and under a deed of conveyance dated 9th February, 1968 he purchased the structure together with thika tenancy right from one Khokan Bala Dasi who had been a thika tenant under the said deity. This purchase was made by this Applicant in confirmation of the deity represented by one of the Sebais. After purchase rent was paid to the deity as a thika tenant. On commencement of the said Act the return in "A" Form was filed. However, there has been no determination of land revenue under the said Act. Since the said return was not processed so another return was filed in the prescribed form on 21st February 2005.

4. Mr. Bachawat appearing for the Applicant in this application contends that his client is not liable to be evicted with this execution proceeding of a decree, which does not bind his client who is a thika tenant. In view of the provision of Thika Tenancy (Acquisition and Regulation) Act, 1981 (hereinafter referred to as the first act) and further by and under the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (hereinafter referred to as the second Act) repealing the first Act his client can only be evicted by the State of West Bengal under and with the mode as mentioned in the Act and Rules thereunder not otherwise. In substance eviction of his client by this execution proceedings is not with due process of law as his client's eviction has not been initiated under the procedure laid down under the second Act.

5. He submits that earlier decision rendered by Justice Jain reported in 1988 (2) CLJ 314 is riot binding, as his client was not a party in the earlier proceedings in which the Court adjudicated the issues raised and agitated between the Petitioners and the State of West bengal. He further contends drawing my attention to the provision of Section 5 Sub-section (3) of the second Act, whether his client is a thika tenant or not cannot be decided by any forum otherwise than provided in the statute. For this purpose thika controller has been conferred with power of adjudication as to whether particular premises is encumbered with thika tenancy or not and by virtue of the provisions of Section 5(3) of the second Act no forum including this forum has any jurisdiction to decide. The returns in Form "A" has also been filed with the controller and the same has not been adjudicated and/or decided as yet. Therefore, he submits, this Court must wait till the decision is rendered by the thika tenant controller. He further contends that it is possible under the statute that a pucca structure can be termed to be a structure to hold the relationship of thika tenancy. Even then the disputes both on fact and law cannot be adjudicated by this Court. He further submits that his client at least has been able to prima facie satisfy that neither the decree holder nor the Defendant was or is the landlord who could maintain a proceeding for eviction of this Applicant. Therefore, this matter should be heard on the affidavits and the Receiver be directed to stay his hands for not taking further steps to physically evict the Applicant.

6. The Learned Counsel for the Applicant in the application being G.A. No. 517 of 2005 has made identical submission on law and also placed the fact.

7. Mr. Kapoor, Learned Senior Counsel appearing for the decree holder in both the aforesaid two applications being 517 of 2005 and 518 of 2005 contends firstly that claim of thika tenancy of this two Applicants are patently frivolous as from their own statement and averment in the application as well as the document annexed to the petition it will appear no prima facie right of thika tenancy is established. He has drawn my attention to the various paragraphs of the application and the schedule of the conveyances and said that admittedly the structure is pucca and the consistent judicial pronouncement of this Court is that in order to establish thika tenancy right it has to be shown that in the demised land katcha structure has been erected and/or brought by the thika tenant. The owner and/or holder of a pucca structure cannot be termed to be a thika tenant. From the schedule of the two conveyance admittedly it will appear that there has been a puca structure. In support of this contention he has relied on the decision of this Court reported in 2001 (3) CHN 641.

8. He further contends that moreover in the writ petition this Court has held that this particular premises has not been vested unto State of West Bengal. This judgment has been reported in 1988 (2) CLJ 314. It is true that these persons were not parties but they had notice of pendency of this application. In view of declaration of title in the above writ petition vis-a-vis State of West Bengal who is accepted to be landlord by these two Applicants, this application cannot be

maintained. Moreover, he contends that there applications and/or other occupants are bound by the decree passed against the Defendant who became the successor-in-interest by way of lessee or assignee from the Plaintiff. After lawful assignment the said judgment debtor asserted its rights. Therefore, it is not necessary that these persons are to be made parties separately. He further contends that, in fact, even after commencement of the first Act the filing of returns in the prescribed Form "A" by the two Applicants in 1983 are of no value as on the face of their own cases. There cannot be thika tenancy at all and more particularly after commencement of this Act even after alleged filing of the returns these tenants had paid rent to the deities not as a thika tenant but as an occupant of the land in question before execution of the lease in favour of the Defendant judgment debtor.

9. He further contends that provision of the second act has no application in this matter as the returns were alleged to have been filed in 1983. Therefore, by virtue of the provision of Section 27 Sub-section (2) of the second Act all the provisions of the first Act will be applicable in this case. The conduct of the parties has also to be examined by this Court. These Applicants were perfectly aware of the execution of the proceedings one year ago. In the minutes of the meeting of the receiver these Applicants along with other persons signed and since then no step has been taken to resist the execution of application. In collusion with the office of the Thika Controller recently on 21st February, 2005 return in Form "A" has been filed to demonstrate the alleged right of thika tenancy. Such inconsistent and contradictory plea are bad enough not to pass any interim order and rather execution of the decree should be allowed to be proceeded without any further hindrance. Let the matter be heard on affidavits if this Court finds after hearing his client and the Thika Controller they are successful in establishing their right, they should be put back to possession.

10. Third application has been taken out by a group of persons numbering 119 who claim to be Bharatias, under a number of persons said to be thika tenants, namely one Sushila Devi Lakhi Narayan Shaw, Hirala Thakur (wrongly mentioned as Shaw), one Madan Chandra Dutta, one Chandan Choudhury, Ram Chandra Dutta, one Gopal Shaw, one Tara Devi Singh and Nandalal Singh, one Saipali Das, one Puspa Rani Das and Sailen Das jointly, one Shova Saha, Pratima Ghosh and Soma Ghosh jointly: and Jyotish Chandra Guha and Malati Rani Guha jointly and one Smt. Saraswati Devi.

11. Applicants serial Nos. 7, 105, 6, 5, 9, 4, 8, 10, 11, 18 are claiming Bharatias under Susila Deyi Lakhi Narayan Shaw; Applicants bearing serial No. 13 claiming to be thinka tenant under Hiralal Thakur; Applicants being serial Nos. 14, 3, 16, 15, 84 are claiming to be Bharatias under the said madan Chandra Dutta; Applicants bearing serial Nos. 17, 118, 117 claiming to be Bharatias under Chandan Choudhury; Applicants bearing serial Nos. 32, 58, 104, 40, 41, 85, 44, 88, 110, 78, 72, 2, 42, 43, 45,

46, 34, 31, 39, 60, 70, 71, 76, 77, 87, 91, 96, 103, 106, 119, 19, 20, 21, 70, 23, 33, 947 73, 38, 111, 74, 36, 29, 86 are claiming to be Bharatias under the said Ram Chandra Dutta; Applicants bearing serial Nos. 99, 25, 27, 30, 92, 24, 35, 28, 115 are claiming to be Bharatias under Gopal Shaw; Applicants bearing Nos. 53, 116, 1, 63, 65, 61, 66, 113, 95, 37, 59, 67, 62 are claiming themselves to be Bharatias under Tara Debi Singh and Nandalal Singh; Applicants bearing serial Nos. 54, 50, 22, 48, 112, 49, 52, 12, 97, 89, 47, 51 are claiming to be Bharatias under Saipali Das and Puspa Rani Das and Sailen das jointly; Applicants bearing serial Nos. 101, 90, 55, 109, 68, 114, 55, 98 are claiming to be Bharatias under Shova Saha, Pratima ghosh and Soma Ghosh; Applicants bearing serials Nos. 108, 100, 57, 56 are claiming themselves to be Bharatias under Jyotish Chandra Guha and Malati Rani Guha; Applicants bearing serial Nos. 83, 81, 93, 69, 79, 80, 75, 102, 107, 82 are claiming to be Bharatias under Smt. Saraswati Devi.

12. In the application all the aforesaid Applicants did not mention even who are the respective thika tenants who inducted them as Bharatias. I have granted leave for the ends of justice to file a supplementary affidavit, to state so because from the supplementary affidavit the aforesaid information I have gathered. Neither in the application nor in the supplementary affidavit any document was annexed, namely the rent receipt to show that they are Bharatias under the respective thika tenants. A bunch of xerox copies of the receipts have been handed over to the Court. These receipts were also accepted by the Court to examine their claim with all sincerity so that their case is not ignored under any circumstances.

13. It is pertinent to record that except the heiress or legal representatives of Hiralal Thakur and Gopal Shaw none of the alleged thika tenants has come forward to protect their right. One need not go further as it is clear that none of them is under physical possession and occupation and all the persons being the Applicants are claiming to be Bharatias under them.

14. On the first day having understood the problem I directed the Thika Controller to be present and to appear in these proceedings and to produce all the records relating to the premises vis-a-vis the claim of thika tenancy made by several persons and also that of Bharatias. The records were produced before this Court. I have gone through the records as far as possible after having afforded a chance to inspect the same and happily all the persons have taken the inspection of records.

15. Mr. Anindya Mitra, learned Senior Counsel while resisting this application made by the aforesaid persons claiming to be Bharatias submits that except Gopal Shaw and heiress and legal representatives of Hiralal Thakur none of the thika tenants has come forward to establish their rights, so the persons who were claiming to be Bharatias cannot maintain their actions separately. It has now become well settled that a land with the pucca structure cannot constitute thika tenancy, moreover the claim of thika tenancy is self-destructive to the interest of Applicant and the Thika Controller has not decided their rights as a thika tenant. So until and unless the right

is--decided and established by the Thika Controller this Court cannot stay the execution or to grant interim relief. They should get the adjudication from the Thika Controller first thereafter they should approach this Court.

16. When there has been no apparent right of thika tenancy going by the averment -and statement in the application of the two persons Gopal Shaw and Hiralal Thakur and further other so-called thika tenants have any come forward these Bharatias; cannot have been independent right. Their alleged right is through the thika tenants, as such this application must fail and no interim order should be passed, and/or the applications are liable to be dismissed.

17. It appears from the rival contentions of the respective parties that in these three applications the question arises whether the Applicants have been to establish prima facie their legal rights to remain in possession or occupation of the said premises to resist the execution of the decree. Three applications are to be dealt with separately. The Applicant in G.A. No. 517 of 2005 has stated in the petition that she is the daughter of one Hiralal Thakur. The said Hiralal Thakur by a registered document purchased the structure erected on Plot No. 12 of the said premises measuring about 1 ♦ cottahs along with thika tenancy right The said deed was executed on 9th December 1969.

18. It appears that said Hiralai Thakur also furnished returns in Form "A" pursuant to the first Act. Deposit of rent in favour of the Government has also been evidenced enclosing the Challans thereof. I have examined the records produced by the Thika Controller in relation to this claim and I find prima facie the returns has been submitted in the year 1983 but no decision has been taken by the Thika Controller. Under the provisions of the first Act the Thika Controller was not conferred with power expressly to decide the question of existence of thika tenancy. Now by and u/s 5(3) of the second Act Thika Controller has been conferred expressly with power to decide this question. The second Act has been given a retrospective operation, naturally, it is the question whether this Court has jurisdiction to decide this question in view of exclusive power having been given to the Thika Controller. But at the same time under the provision of Order 21 Rule 102 of the CPC this Court has exclusive jurisdiction to decide all the question and disputes inclusive of the nature involved in the present application. Therefore, it appears to me that there exists in this application disputed question relating to law and fact as such it needs to be dealt with after the affidavits are filed. Whether the provisions of CPC overrides the provisions of the second Act or vice-a-versa is a primary point to be decided and without the decisions being rendered therein I cannot decide the existence of thika tenancy, so far the case of thika Applicant is concerned.

19. Mr. Kapoor and Mr. Mitra suggest that there is no scope for decision as the records and the statement and averment in the application together with conveyance do not prima facie establish the right of thika tenancy. According to them in view of the decision of this Court in relation to the same very property in the

writ jurisdiction as quoted above and further factually this person states about existence of pucca structure, claim of thika tenancy automatically goes. I think the decision rendered by this Court by the learned Single Judge has to be examined as this Applicant was not party to the writ petition. Therefore, legal implication of the pronouncement of this Court as against the State of West Bengal has to be examined so far as its applicability is concerned. Hence, it would not be proper for me to reject this application without rendering decisions as above at the ad interim stage.

20. It is now settled position of law in a proceeding of this nature when serious question are raised that Court must grant interim order maintaining status quo as of today.

21. Therefore, I direct the Receivers shall not take physical possession of this portion of the plot provided of course, this Applicant deposits a sum of Rs. 3,000/- in advance with the joint Receiver and go on depositing a sum of Rs. 3,000/- per month with the joint Receiver who shall hold and keep it in the separate account. Such advance payment shall be made within seven days from the date of receipt or service of this order (whichever is earlier) failing which the Receivers shall take physical possession of this plot evicting all persons with the help of the Police in terms of my earlier order.

22. G.A. No. 518 of 2005: This application has been made by one Gopal Shaw represented by Mr. Bachawat, learned Senior Counsel. I find from this application and documents annexed to the same that the Applicant has been able to establish prima facie that thika tenancy right exists and the situation is identical as that of the earlier petition. Only difference I find that the date of conveyance of purchase of the structure and of thika tenancy right is of 9th February 1968. Mr. Bachawat submits that though it is mentioned in the schedule about the pucca structure it will appear that the structure is pucca and kutcha both. According to him the definition of structure must be kutcha. He further submits that the judgment of the Division Bench has not stated if the structure is mixed one whether thika tenancy right can be denied or not. His contention is that in view of commencement of the Second Act with retrospective operation the return in Form "A" filed earlier by his client has to be dealt with and existence of thika right has to be decided by the Thika Controller exclusively and not by this Court, Therefore, according to him until and unless this decision is rendered his client is not liable to be evicted by execution of the decree. His client has to be evicted by the State of West bengal under the provisions as mentioned in the Act itself. The legal protection cannot be denied by this Court as the execution of this application aiming at to evict his client is not the due process of law.

23. In view of the serious question raised by Mr. Bachawat I think that the similar ad interim relief should be granted to his client with a similar condition. The amount of deposit will be same as in the earlier case.

24. As far as Application No. 486 of 2005 is concerned this application has been made jointly by a number of persons claiming to be Bharatias. None of the thika tenants except successor-in-interest of Hiralal Thakur and Gopal Shaw has come forward to resist this application. In view of the interim protection given to the aforesaid Applicants the persons who are occupying under them are not liable to be evicted at this stage physically. These persons are stated hereunder:

1. Bengilal Shaw, claiming to be Bharatias under Hiralal thakur.

2. Madhab Chandra Ghosh, Kamala haldar, Kalachand Ghosh, Sikendra Singh, Suren Charda Das, Sudarsan Das, Sandhya Das, Ramu Prasad Shaw, Barendra Nath Maity, claiming to be Bharatias under Gopal Shaw.

The remaining Applicants in this application are claiming to be Bharatias under different persons who are said to be thikas tenants. These persons upon being Bharatias, upon the reading of both the Acts it will appear, are given legal protection and they have been given legal status too to occupy. They are to be evicted under the provisions of the aforesaid Thika Act and they cannot be evicted by any other mode. Though the thika tenants in relation to these Bharatias have not come forward but I have got the advantage of going thorough the records brought by the Thika Controller in connections with these persons.

25. The contention of Mr. Mitra and Mr. Kapoor that since these persons have not come forward as thika tenants to resist the execution, the so-called Bharatias should, be outright evicted, is not accepted by me, prima facie, as the law enjoins with the protection as observed by me. From the records I find as follows:

26. Susila Devi Lakhi narayan Sliaw have filed their return in Form "A" under the provision of Thaka Act, 1981 as amended in 2002 only on 21st February, 2005. A genuine and bona fide tenant is required to furnish returns in Form "A" within a stipulated time. This time expired long time back.

27. I am of the prima facie view that this filing of Returns on 21st February 2005 is sham exercise and is done aiming at to set up defence in the execution application, this execution application has been initiated long before filing of, the above returns. It seems to me after the Receiver has taken symbolic possession of this property this return has been filed to create a purported right of thika tenancy.

28. So, I am of the view prima facie of course, that there has been no thika tenancy so far this portion of the land is concerned and these so-called Bharatias are no Bharatias under the law and they are in unauthorized occupation and possession of this portion of land. Therefore, they cannot get any interim relief. However, I give fortnight time to these Applicants viz. Subhasis Dey, Tapas Paul. Pradeep barui, Khaderu Ram Shaw, Gouri Devi, Jitendra Shaw, Shankar Barui, Dipali Dey, Samar Dutta, Madho Lal Seth to vacate their respective portions of occupation and hand over possession to joint Receiver, failing which the Receiver will take physical

possession and to put their own padlock thereon until further orders of this Court.

29. I find from the records of Madan Chandra Dutta though he has not come forward to, resist this application he has filed return in Form "A" in 1983 and subsequently in 2005 since, the Return has been filed contemporaneously under the first Act, it has to be examined what is the implication of furnishing further and similar returns subsequently. I think that these persons' right shall be protected by granting ad interim relief as granted in the case of Hirala Thakur and Gopal Shaw. Therefore, the areas of occupation of Rabindra Das and Debanand Das, Mangal Das, Ashok Das, Anandi Das will remain under symbolic possession of the Receiver and to be occupied by these persons under Receiver. The Receivers shall cause a measurement to be taken of the areas of occupation. This person shall jointly pay an amount to be calculated at the rate of Rs. 3 per square feet as a charge for occupation of the ground. This amount shall be paid in advance within seven days from the date of taking measurement and shall go on paying month by month each and every month to the Receiver who shall keep it separately in Bank.

30. Chandan Choudhury: I have checked up the records. This person has filed returns on 17th February, 2005 apparently disbelieve bona fide and legality of furnishing of this returns. I, prima facie, hold that this person has no right of thika tenancy at all. Naturally, person occupying through him has no right to occupy. I accordingly give fortnight time to Gita Rani Ghosh, Josna Majhi, MohiSaha to vacate and hand over possession to Receiver failing which the same course of action shall be taken, as in case of Sushila Devi.

31. Ram Chandra Dutta is found from the records to have furnished returns in "A" Form in 1983. So interim protection to the persons as mentioned in serial number 5 of paragraph 3 in supplementary affidavit for occupying under him is also given on the same terms as in case of madan Chandra Dutta.

32. Tara Debi Singh and Nandalal Singh have not been able to establish any right of thika tenancy. They have filed Returns on 18th February, 2005. This return is not prima facie acceptable under the law to be valid one to establish the claim of thika tenancy. Similar situation appears so far the Saipali das, Pusparani das, Shova Saha, Pratima ghosh and soma Ghosh, Smt. Saraswati Debi are concerned. Their respective returns were filed on 17th February, 2005. 18th February 2005 respectively after initiation of the execution application and after the Receiver having taken possession. It is simply unbelievable prima facie. I, prima facie, hold these persons have no right of thika tenancy as the returns were not filed within the time mentioned in the first Act. Therefore, the persons as mentioned in serial Nos. 53, 116, 1, 63, 65, 61, 66, 113, 37, 59, 67, 62, 54, 50, 22, 48, 112, 49, 52, 12, 97/89, 47, 51, 101, 90, 90, 55, 109, 68, 64, 114, 55, 98, 83, 81, 93, 69, 79, 80, 75, 102, 107, 82 of the cause title of the application who are claiming to be Bharatias under the aforesaid persons have no right to occupy the premises. The names of these persons are given hereunder:

Sati
Rani
Shaw
Rabin Das
Barik
Swarup
Roy
Hari
Ram
Gond
Ghoshan
Das
Jalim
Das
Arbind
Singh
Menoka
Rani
Das
Subhashini
Barik
(Pramanick)
Khokan
Patra
Chabi
Roy
Kanon
Hazra
Panchubala
Das
Santanu
Shaw
Purnima
Barik
Shahadul
Barik
Rajendra
Barik
Chuni
Lal
Jadav
Laxminarayan
Karmakar
Aloka
ghosh
Sunil
Kumar
GhakraBorty
Sibu
Pada
Swar
Singerwar
Das
Kaleshwar
Das
Gora
Ghosh
Bijali
Das
Moti
Das
Babu
Lal
Das
Jageswar
Das
Rajendra
Das
Sita
Ram
Das
Mahadip
Das
Babu
Lal
Das
Arvind
Kumar
Das
Ram
Mahato
Sree
Mahato
Rameshwar
Mahato
Jatadhari
Jha
Budhan
Mahato
Binderswar
Mahato
Baldeb
Shaw
Kundan
Lal
Saigal
Shankar
Lal
Pal

(53)
(216)
(3)
(43)
(65)
(61)
(76)
(813)
(95)
(30)
(59)
(62)
(62)
(540)
(56)
(22)
(48)
(182)
(49)
(20)
(22)
(27)
(29)
(44)
(25)
(261)
(20)
(28)
(209)
(68)
(64)
(524)
(53)
(98)
(83)
(86)
(93)
(68)
(79)
(80)
(75)
(402)
(487)

33. They were also given fortnight times to vacate and withdraw from their respective portion of occupation and hand over possession to Joint Receiver, failing which the similar course of action shall be adopted by the Receiver.

34. Jyotish Chandra Guha and Malati Rani Guha: I find from the records produced by the thika Controller that a return in Form "A" was filed without mentioning any date. However, having examined the age and nature of the document I am prima facie satisfied that this was not a subsequent creation but it was filed contemporaneously. The similar protection is given to these persons who are occupying through them, viz. Madan Chandra Dey, Rambilash Das, Bhagal Ram Gupta, Tiloktoma Sil. The Receiver shall take measurement of the area of occupation of these persons and after the measurement is complete these persons shall pay an amount to be calculated at the rate of Rs. 3 per square feet. This payment shall be made in advance within seven days from the date of taking measurement and shall go on paying month by month at the aforesaid rate to the Joint Receiver; who shall keep the amount separately in Bank and hold the same.

35. However, I observe all these findings both on fact and law are absolutely tentative and prima facie and without prejudice to the rights arid, contentions of the parties. The matter shall be heard on affidavits. Let, the affidavit-in-opposition be filed by the decree holder and the judgment debtor within seven days from date, affidavit-in reply. Reply is to be filed within one week thereafter and the matter to appear in the list for hearing three weeks hence. Thika Controller may file affidavit, if so advised, within fortnight from the date and copies of the affidavit shall be exchanged by all the persons mutually as above.

36. Thika Controller shall not proceed to adjudicate the matter until further order and shall furnish xerox copy of the Returns filed by the persons above and which were produced in Court and to be kept with the records and original shall be produced at the time of hearing of this application.