

(1954) 07 CAL CK 0029

Calcutta High Court

Case No: Civil Revision Case No. 460 of 1954

Krishnalal Haldar

APPELLANT

Vs

Ratharanjan Banerjee

RESPONDENT

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**Date of Decision:** July 14, 1954**Acts Referred:**

- Constitution of India, 1950 - Article 227

**Citation:** (1956) 1 ILR (Cal) 283**Hon'ble Judges:** Renupada Mukherjee, J**Bench:** Single Bench**Advocate:** Shyama Charan Mitter, for the Appellant; Abinash Chandra Ghosh, for the Respondent

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### Judgement

Renupada Mukherjee, J.

This Rule was issued at the instance of one Krishnalal Haldar who instituted a Title Suit against opposite party Ratharanjan Banerjee alias Promode Ranjan Banerjee for ejectment from certain premises on the footing that the opposite party was a thika tenant under him. From the admitted facts of the case, it would appear that when the above title suit which was numbered as Title Suit No. 495 of 1948 was pending in the court of the third Munsif, Alipore, the Thika Tenancy Act of 1949 came into operation. Thereafter, the suit was transferred to the Controller of Thika Tenancies and numbered as Misc. Case No. 37 of 1950. A conditional order for ejectment of the opposite party was passed by the Controller on March 25, 1951. An appeal was preferred before the District Judge which was also dismissed on November 22, 1951. Thereupon, a commissioner was appointed for valuing the structures raised by the Defendant and they were valued at Rs. 790-9-0. The entire amount was deposited by the landlord Petitioner on July 31, 1952, and a final order of ejectment was made on that date. Shortly after this, the Thika Tenancy Ordinance of 1952, being West Bengal Ordinance XV of 1952, came into operation on October 21, 1952, and the tenant made an application for rescinding the order of ejectment under para. 5(2) of

the Ordinance. I may mention that in the mean-time execution proceedings for obtaining delivery of possession were started at the instance of the landlord Petitioner but no delivery of possession was actually taken. The application of the opposite party for setting aside the order of ejectment and annulling the execution proceedings was refused by the learned Munsif who exercised the powers of the Controller on July 7, 1953. An appeal was taken before the District Judge against the said order and the appeal was allowed and the order of the Controller was set aside.

2. The landlord Petitioner has moved this Court in its revisional jurisdiction and also under Article 227 of the Constitution for setting aside the order of the District Judge mainly on the ground that the District Judge was wrong in holding that the present opposite party had a right under para. 5(2) of the Ordinance to make the application for rescinding the order of ejectment.

3. Mr. Mitter appearing on behalf of the Petitioner contended that the learned Controller of Thika Tenancy was right in holding that the opposite party against whom an order for ejectment has been passed on the admitted footing that he was a thika tenant had no right to apply under para. 5(2) of the Ordinance of 1952 for rescinding the order and annulling the executing proceedings. He contended that the special benefit conferred by the above paragraph is available to a person against whom an order for ejectment has been made only if a dispute exists as to whether he is really a thika tenant or not. The relevant portion of para. 5(2) of the Ordinance may be quoted here:

If, at any time, between the commencement of the said Act and of this Ordinance a decree or order has been passed for the recovery of possession of any land and for other relief, if any, and delivery of possession has not been given, then on application made in this behalf by the person against whom the decree or order was passed, within three months of the commencement of this Ordinance, the Court which or the Controller who passed the decree or the order shall decide (after hearing the parties and after taking fresh evidence if necessary) whether the person is a thika tenant within the meaning of the said Act as amended by this Ordinance. If the Court or Controller holds that the person is not such a thika tenant, it or he shall dismiss the application. If the Court or Controller holds that the person is such a thika tenant, it or he shall set aside the decree or the order and annul the execution proceedings, if any, and

(i) where the proceedings are before a Court, it shall remit the case to the Controller to be dealt with by him according to law,

(ii) where the proceedings are before the Controller, he shall re-open the case and pass a new order.

4. A reading of the entire para. 5(2) of the Ordinance will sufficiently show that there is no justification for giving this paragraph the limited construction which Mr. Mitter seeks to give. The paragraph shows that an application for setting aside a decree or

order for ejectment and annulling the consequential execution proceedings can be made by any person provided two essential requisites are satisfied. These two requisites are that a decree or order for recovery of possession has been passed or made against such a person and secondly no delivery of possession has been given prior to the making of the application. If these two conditions are satisfied the person against whom such a decree or order has been made is entitled to make the application. Mr. Mitter contended that the paragraph contemplates that the Controller should make an enquiry as to whether the applicant is a thika tenant within" the meaning of the Thika Tenancy Act, 1949, as amended by the Ordinance of 1952 and that where there is no room for such enquiry, the paragraph has got no application. I am not impressed by the soundness of this argument. The paragraph shows that the above enquiry is only a matter of secondary importance and there may be cases, when such enquiry may become unnecessary or useless. It is only where the character of the tenancy was in dispute in previous proceedings that the Controller should make an enquiry as to whether the applicant under para. 5(2) is a thika tenant or not.

5. But there may be cases, and the present case is one of them, where there may not be any dispute between the parties as to the real nature of the tenancy of the applicant. In such cases, the Controller is saved the trouble of making any enquiry as to whether the applicant is a thika tenant or not. In such cases he should forthwith make the order which the section requires him to make, namely, set aside the decree, or order of ejectment and annul the execution proceedings, if the decree or order was passed by him and if the execution proceedings were pending before him. This being my interpretation of para 5(2) of the Calcutta Thika Tenancy Ordinance, 1952, I am of opinion that the learned Controller was wrong in throwing out the present application in limine and holding that it did not come within the scope of para. 5(2) of the Ordinance of 1952. The learned District Judge was right in setting aside the order and sending back the application to the Controller for disposal on merits.

6. In the result, the Rule must be discharged. It is, accordingly, discharged.

7. In the circumstances of the case, I do not make any order as to costs.