

(2013) 11 CAL CK 0052

Calcutta High Court

Case No: C.O. No. 697 of 2013

Shri Ashok Kumar Samanta and
Another

APPELLANT

Vs

Smt Surjamukhi Mondal and
Others

RESPONDENT

Date of Decision: Nov. 29, 2013

Citation: (2014) 1 CALLT 195

Hon'ble Judges: Tarun Kumar Gupta, J

Bench: Single Bench

Advocate: Samiran Giri, for the Appellant; Hiranmoy Bhattacharyya, for the Respondent

Final Decision: Dismissed

Judgement

Tarun Kumar Gupta, J.

This application under Article 227 of the Constitution of India is directed against order No. 373 dated 24th of January, 2013 passed by learned Civil Judge (Junior Division), Alipore in Misc. Case No. 18 of 2007 arising out of Misc. Thika Execution Case No. 2 of 1965. It is the case of the petitioners that the O.P.s were the land owners of the suit property being Thika Land and that present petitioners along with O.P. No. 13 became Thika tenants under the O.P.s, After the expiry of the lease granted by O.P.s. in favour of the petitioners and O.P. No. 13 they filed Misc. Thika case No. 314 of 1955 in the Court of learned Civil Judge (Junior Division), Alipore. It was dismissed vide order dated 10th of February, 1964. O.P. preferred one appeal being Misc. Appeal No. 292 of 1964. Learned sub-ordinate Judge, 6th Court at Alipore being the appellate Court allowed said appeal by passing a decree of eviction against the thika tenants vide order dated 27th of August, 1964. The O.P. decree holders put said decree into execution being Thika Execution Case No. 2 of 1965. The present petitioners judgment debtors filed one Misc. Case No. 79 of 1965 u/s 47 of the CPC challenging said execution case. It was dismissed on contest by learned executing Court by observing that executing Court cannot go behind the

decree. It was dismissed vide order dated 19th of March, 1966. The present petitioner judgment debtors preferred one Motion being C.R. No. 2372 of 1966 which was also dismissed on contest. Later on learned executing Court allowed an application for amendment filed by the O.P. decree holders. Challenging said order the petitioner judgment debtors preferred one Misc. Appeal being 448 of 1973 which was dismissed on contest. The present petitioner judgment debtors preferred one Civil Rule being No. 784 of 1974 in this Court against said order of dismissal of appeal. Said rule was also dismissed by this Court vide order dated 18th of June, 1975. Thereafter present petitioner judgment debtors filed another Misc. Case being No. 75 of 1966 u/s 47 of the Code of Civil Procedure. Said Misc. Case u/s 47 of the CPC was dismissed for default on 19th of February, 1998. Later on present petitioner judgment debtors have filed another Misc. Case being No. 18 of 2007 u/s 47 of the Code of Civil Procedure. By the order impugned dated 24th of January, 2013 said Misc. Case being No. 18 of 2007 was dismissed by the executing Court on contest. Hence is this revisional application.

2. Mr. Samiran Giri appearing for the petitioners submits that O.P. decree holders obtained a decree of eviction against the petitioner thika tenants under the Calcutta Thika Tenancy Act, 1949 vide judgment dated 27th of August, 1964. He submits that while the execution case being Thika Execution Case No. 2 of 1965 was still pending the Calcutta Thika and other tenancies and lands (Acquisition and Regulation) Act, 1981 came into force. Said Act was later on amended by the Calcutta Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 1993 with retrospective effect from 18th of January, 1982. According to him, in terms of section 5 of said Act of 1981 as stood amended by Amendment Act of 1993 the thika tenancy lands vested to the State and that thika tenants became direct tenants under the State. He next submits that in terms of section 19 of said Act of 1981 all proceedings including appeals and all proceedings in execution of orders passed in the proceedings including appeals under the Calcutta Thika Tenancy Act, 1949 pending on 19th day of July, 1978 for the ejectment of thika tenants and "Bharatias" stood abated with effect from 19th July, 1978 as if such proceedings, appeals or execution proceedings had never been made. According to Mr. Giri in view of said specific provision namely section 19 of said Act of 1981 the execution case being Thika Execution Case No. 2 of 1965 became non-est in support of his contention he refers a case law reported in [Narayan Chandra Ghosh and Others Vs. Kanailal Ghosh and Others,](#)) as well as a case law reported in [Mir Mohammad Ali Vs. Sairunessa,](#)

3. He next submits that as the earlier Misc. Case being No. 75 of 1976 u/s 47 of the CPC was dismissed for default on 19th of February, 1998 there was no legal bar to file another Misc. Case under the same provision of law as the earlier one was not dismissed on merit. In support of his contention he refers the case [Smt. Rinku Mondal \(Biswas\) and Smt. Sarifunnessa Vs. Union of India \(UOI\) and Others,](#)

4. Mr. Hiranmoy Bhattacharyya, learned counsel appearing for the O.P. decree holder, on the other hand, submits that the O.P. decree holders got the decree of eviction against the thika tenants as far back as on 22nd of August, 1964 and put said decree into execution through Misc. Thika Execution Case No. 2 of 1965. According to him, when section 19 of the Act of 1981 was brought into statute book with retrospective effect from 19th July, 1978 the present petitioner judgment debtors were no longer thika tenants of the suit property. According to him, said section 19 of the Act of 1981 in so far as it relates to abatement of an execution proceeding for eviction of a thika tenant against whom a decree for eviction has been passed, before enforcement of new Act of 1981 and an appeal preferred by a thika tenant against whom a decree for eviction has been passed did not abate and that section 19 was declared ultra vires by a Special Bench of three Judges of this High Court in the case of [Lakshmimoni Das and Others Vs. State of West Bengal and Others](#), . He further submits that in the case of Mir Md. Ali (supra) no reference was made to the earlier judgment of Special Bench comprising of three judges and as such said judgment of Mir. Mohammad. Ali had no binding force. He further submits that the case of Narayan Chandra Ghosh and others (supra) was also of no assistance to the petitioner judgment debtors as said case relates to a pending eviction suit filed by thika tenant against "Bharatia" and not relating to an execution case where an eviction decree was already passed under the Act of 1949.

5. Mr. Bhattacharyya next submits that the Special Bench Judgment passed in the case of Lakshmimoni Das and others has not yet been set aside by any competent Court. According to him, even if any appeal is pending in the Hon'ble Apex Court against said judgment of the Special Bench and even if there is an order of stay, still the binding nature of said judgment of the Special Bench has not wiped out. In support of his contention he refers the case of [Pijush Kanti Chowdhury Vs. State of West Bengal and Others](#),

6. There is no denial that O.P. decree holders obtained a decree of eviction dated 27th of August, 1964 against the petitioner judgment debtors under the Calcutta Thika Tenancy Act, 1949 which was confirmed upto the High Court level. An execution case being Thika Execution Case No. 2 of 1965 was filed as far back as in 1965 when neither the Act of 1981 nor the subsequent Act being West Bengal Thika Tenancy (Acquisition and Regulation) Act of 2001 came into operation. The petitioner judgment debtors filed one Misc. Case being No. 79 of 1965 u/s 47 of the CPC which was dismissed after contested hearing and was confirmed up to this level. An amendment petition filed by the O.P. judgment decree holders was allowed by the execution Court and it was confirmed upto this level. The petitioner judgment debtors again filed one Misc. Case No. 75 of 1976 u/s 47 of the CPC which was dismissed for default on 19th of February, 1998. Thereafter only in 2007 they again filed another Misc. Case being No. 18 of 2007 u/s 47 of the Code of Civil Procedure. It was again dismissed on contest by the order impugned dated 24th of January, 2013. It is true that in terms of section 5 of the Act of 1981 the thika tenant lands

vested to the State with retrospective effect from 18th of January, 1982. But admittedly, the eviction decree in the case in hand against the thika tenant was passed long back and that on 18th of January, 1982 the present petitioner judgment debtors though in possession, were not thika tenants any more in view of passing of the eviction decree long back.

7. It is true that in terms of section 19 of said Act of 1981 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 19th day of July, 1978 for the ejectment of thika tenants and "Bharatias" stand abated with effect from 19th July, 1978 as if such proceedings, appeals or execution proceedings had never been made.

8. The maintainability of said provision u/s 19 of the Act of 1981 so far as it related to abatement of the ejectment decrees, appeals therefrom and execution cases came for consideration before a Special Bench of three Judges in the case of Lakshmimoni Das and others {supra}. The same was discussed in para 66 of said judgment the relevant portion of which runs as follows:--

The vires of section 19 has been challenged on the ground that legislature has no power to declare any decision of a Court of law to be void or of no effect. It has been contended that the legislature is competent to pass any major legislation within its legislative competency and a Court of law can pronounce upon the validity of any law if the law or any provision of such law is held ultra vires the Constitution. It has been contended that section 19 of the impugned Act is intended to override or set aside the decision of a Court but the legislature has no right to do so under the Constitution. It has been submitted that it is always open to the legislature to give effect to a legislation retrospectively and to declare what the law should be deemed to have been from a particular date but the legislature cannot declare that a decision of a Court properly constituted will be ineffective. In support of this contention, reliance has been made to the decision of the Supreme Court made in the case of (59) Jnanapada v. The Central Provincial Syndicate Ltd. reported in AIR 1979 SC 71 and in the case of (60) [State of Tamil Nadu and Another Vs. M. Rayappa Gounder and Others](#), . The above decisions of the Supreme Court fully support the contentions of Mr. Bhunia that the legislature is not competent to make such a provision by which judgment and order delivered by the competent Court of law will stand set aside and the same will be declared null and void by the legislature because such provision will amount to direct inroad on the judicial power of the State. Under the Constitution of India, a competent Court of law can pronounce upon the validity of any law and declare the same to be null and void if it is beyond the legislative competence of the legislature or it is in conflict with the constitutional provisions. The legislature although supreme in its own field deserving utmost respect for being an institution elected by the people cannot within the frame work of our constitution declare any decision of the Court of law to be void or of no effect.

It also appears to us that there is substance in the contention of Mr. Bhunia that if a decree for eviction of a thika tenant has been passed and such a decree has not been varied or reversed by any superior Court then on the face of such decree it must be held that there is no relationship of thika tenant and thika landlord between the parties. In that event, even if there is abatement of the execution proceeding, the relationship of thika landlord and thika tenant cannot revive on the date of commencement of the impugned Act and section 5 of the impugned Act, therefore, cannot affect the right of the erstwhile thika landlords in whose favour decrees had already been passed by competent Court of law and as such the lands in question are not "lands comprised in the thika tenancy" as referred to in section 5 of the impugned Act. If a land which once comprised a thika tenancy but has ceased to be so in view of decree of eviction passed by a competent Court cannot vest u/s 5 of the impugned Act, it appears to us unreasonable and unconnected with the purpose of the impugned Act to direct for abatement of execution proceeding for recovery of possession from erstwhile thika tenants thereby frustrating the decree passed by a competent Court of law and creating an anomalous position that an erstwhile thika tenant who has no right to remain in possession in the land in question because of a decree of eviction passed against him will merrily continue unauthorized occupation without any obligation whatsoever either to the erstwhile landlord or to the State and the erstwhile landlord will suffer a prejudice without any remedy whatsoever in law. In our considered opinion, section 19 of the impugned Act does not apply to cases where decrees for eviction passed against an erstwhile thika tenant have not been reversed and execution proceedings for eviction of such erstwhile tenant are pending. In such cases, the execution proceedings will remain unaffected by section 19 of the impugned Act. We may also note here that the definition of "thika tenant" u/s 3(8) of the impugned Act does not include erstwhile thika tenant whose appeal or against whom an execution proceeding was pending when the impugned Act comes in force, If an erstwhile thika tenant would have been made a "thika tenant" within the definition of thika tenant under the impugned Act, then the thika tenancy in question could vest u/s 5 and abatement of pending proceedings for eviction of such thika tenants including appeals and consequential execution proceedings could have been abated without any absurd consequences. In the aforesaid facts, section 19 of the impugned Act in so far as it purports to abate execution proceeding for eviction of a thika tenant against whom a decree for eviction has been passed, before enforcement of the new Act and an appeal preferred by a thika tenant against whom a decree for eviction has been passed do not abate and section 19 is declared ultra vires in so far as the same purports to abate such proceedings.....

9. The Special Bench have declared that section 19 of the Act of 1981 in so far as it purports to abate execution proceeding for eviction of a thika tenant against whom a decree for eviction has been passed, before enforcement of the new Act of 1981 and an appeal preferring a thika tenant against whom a decree for eviction has

been passed do not abate and section 19 is declared ultra vires in so far as the same purports to abate such proceedings. There is nothing to show that said Special Bench judgment has been set aside as yet by any competent Court of law.

10. In the case of Pijush Kanti Chowdhury (supra) a Division Bench of this Court has specifically held that unless a decision is set aside by the superior Court, the said decision remains binding as a precedent though may not be binding upon the parties to the proceedings where the superior Court has granted interim order of stay. It was further held that the object of granting interim order is to see that the relief claimed in the appeal may not become inappropriate or the appeal does not become infructuous for not granting such interim order. The Division Bench further lays down that by mere grant of interim stay the effect of a binding precedent is not destabilized.

11. In the case of Mir Mohammad Ali (supra) a question arose as to whether in a pending case of eviction filed by the thika tenant against the "bharatia" the thika tenant may be permitted to make amendments in the pleadings to remove the defects and to make the eviction suit compatible to the provisions of the Act of 1981 and the question was answered in the negative.

12. In the case of Narayan Chandra Ghosh & Ors. (supra) Hon"ble Apex Court held that suits for eviction filed by the thika tenants for ejectment of "bharatias" which were pending before a civil Court abates u/s 19 of the Act of 1981. In those cases no question arose either before the Division Bench of this Court or before the Hon"ble Apex Court as to whether an execution case for eviction of a decree of eviction passed under Act of 1949 should abate u/s 19 or not. As such, aforesaid case laws as referred by learned counsel for the petitioner judgment debtors have not much application in the facts of this case particularly in view of the Special Bench judgment as referred above. It appears that learned trial Court rejected the Misc. Case u/s 47 of the CPC relying on the Special Bench judgment passed in Lakshmimoni Das and others" case.

13. In view of the discussion made above I find no reason to interfere with the same. Accordingly, the revisional application is dismissed on contest but without cost. As the execution case is admittedly pending since 1965 for execution of an ejectment decree passed as far back as in 1964, I direct the learned executing Court to dispose of the execution proceeding within 12 (twelve) weeks from the date of communication of the order without granting unnecessary adjournments to either side. However, I pass no order as to costs.

Urgent photostat certified copy of this judgment be supplied to the learned counsels of the parties, if applied for.