

(1976) 11 CAL CK 0019

Calcutta High Court

Case No: Civil Rule No"s. 2505 and 2506 of 1971

Anantalal Dutta

APPELLANT

Vs

Ramdulari Kurnie

RESPONDENT

Date of Decision: Nov. 19, 1976**Acts Referred:**

- Calcutta Thika Tenancy Act, 1949 - Section 2, 3, 7A
- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 97
- Constitution of India, 1950 - Article 19(1)(f)

Citation: 81 CWN 346**Hon'ble Judges:** S.K. Datta, J; H.N. Sen, J**Bench:** Division Bench**Advocate:** Anil Kumar Sett, for the Appellant; Barun Kr. Roy Choudhury, for the Respondent

Judgement

Salil Kumar Datta, J.

These Rules are directed against appellate orders passed by the Court of Small Causes Calcutta in Thika Tenancy appeals affirming the order of the Thika Controller dated July 21, 1970, August 6, 1970 and November 4, 1970. By the first order, the Thika Controller allowed the application of the Thika tenant u/s 7A of the Calcutta Thika Tenancy Act as amended. The Controller directed the tenant to deposit a sum of Rs. 770/- and cost within a period of 60 days from the date of the order. Thereafter, on August 6, 1970, the Thika Controller passed an order correcting the amount to Rs. 3410/- in place of Rs. 770/- as specified in the earlier order. The deposits were duly made. Another order was passed on 4th November, 1970 whereby the order for recovery of possession passed by the Thika Controller on an application u/s 5 of the Act was set aside. These orders were affirmed on appeals therefrom. The Rules are against the orders as already stated. The relevant facts are as follows. The landlord filed an application u/s 5 of the Calcutta Thika Tenancy Act, 1949 on the ground of building and rebuilding and default. The ground for default

was subsequently abandoned and by order dated August 24, 1957 the application u/s 5 was allowed on ground of building and rebuilding. Thereafter, the Thika Controller determined the amount of compensation payable and the compensation was deposited by the landlord. As the tenant did not vacate the order was put into execution on 7th June 1965 but the bailiff, as he went to the local for delivery of possession, was resisted. On the application of the landlord the order was passed on September 26, 1966 for police help and costs were deposited. It appears that the tenant preferred an appeal against the order allowing police help. The appeal was allowed on March 18, 1967 and the Thika Controller was directed to make necessary investigation under Order 21 Rule 97 of the Code in presence of parties. This proceeding was pending on August 26, 1967.

2. The Government of West Bengal in the meantime took a decision to amend the Calcutta Thika Tenancy Act, 1949, as the provisions thereof were considered inadequate to protect the interest of thika tenants. With a view to further restrict the eviction of thika tenants and conferring more rights on such tenants, the Government considered it necessary to undertake comprehensive legislation but pending its finalisation, interim legislation to stay all proceedings for ejectment of thika tenants was necessary. The Calcutta Thika Tenancy Stay of Proceedings (Temporary Provisions) Ordinance, 1967 was accordingly promulgated on August 26, 1967 staying execution of orders of eviction of the thika tenants. The provisions of this Ordinance, which were to expire on January 9, 1968, were continued by promulgation of the Second Ordinance (1 of 1968) on January 8, 1968. Consequent on the imposition of the President's Rule in the State, the provisions of the Ordinance were re-enacted in the Calcutta Thika Tenancy Stay of Proceedings (Temporary Proceedings) Act (President's Act 3 of 1968), staying eviction proceedings from August 26, 1967 upto and inclusive of September 25, 1968. As the comprehensive amendment was not till then finalised, it was considered necessary to continue the interim protection and stay of execution for further period. Accordingly by President's Act 25 of 1968, the life of the President's Act 3 of 1968 was extended by six months i.e. till and inclusive of March 25, 1969. Thereafter by West Bengal Act III of 1969, the stay of all proceedings for ejectment of thika tenants pending on the date of commencement of the Act i.e. 26th March, 1969 was continued till March 25, 1970.

3. While the proceedings connected with these Rules remained stayed, the Calcutta Thika Tenancy (Second Amendment) Act 1969 was brought into force with effect from October 30, 1969. This was comprehensive legislation amending the: parent act, restricting unfair eviction of thika tenants and conferring on them additional rights. By this amendment Act, substantial changes were introduced in the parent act, i.e. the Calcutta Thika Tenancy Act, 1949. The grounds of eviction contained in section 3 of the original Act were substituted by new section providing for eviction of the thika tenants on specific grounds namely:--

(i) On the ground that the thika tenant 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) Where the land of the holding is required by the landlord for his own occupation subject to restrictions contained in Sub-sections 2, 3 and 4 of section 3 and

(iii) On the expiry of the term held under a registered lease in respect of the holding.

It will thus be seen that the ground for building and re-building was no longer available to the landlord for eviction of a thika tenant from his holding.

4. Another new section numbered as 7A was inserted after section 7 of the parent Act. The said section is as follows:--

"7A. (1) Where an order for ejectment of a thika tenant from his holding has been made by the Controller u/s 5 before the date of commencement of the Calcutta Thika Tenancy (Second Amendment) Act, 1969, but the possession of the land comprised in the holding has not been recovered by the landlord from the thika tenant, the thika tenant may, within sixty days from such date, apply to the Controller for setting aside the order. (2) on receipt of an application under sub-section (1) the Controller shall cause a notice thereof to be served on the landlord, and if after considering such evidence as the parties may adduce,--

(a) the Controller is satisfied that the order for ejectment would have been made against the thika tenant even if the Calcutta Thika Tenancy (Second Amendment) Act, 1969, had been in force on the date on which such order was made, the Controller shall dismiss the application with such costs as the Controller may allow to the landlord; or

(b) The Controller is satisfied that no order for ejectment would have been made against the thika tenant if the Calcutta Thika Tenancy (Second Amendment) Act, 1969, had been in force on the date on which such order was made, the Controller shall determine the amount which would have been payable by the thika tenant for the period commencing from such date and ending with the date of the order to be made under this sub-section, if the thika tenant had to pay rent at the rate at which it was last paid during such period and after deducting therefrom all such sums as the thika tenant may have deposited with the Controller or paid to the landlord on account of rent for such period, the Controller shall direct the thika tenant, by order, to deposit the remaining amount, together with such further amount as the Controller may allow to the landlord as his costs of the proceedings arising out of the application under sub-section (1) of section 5, within such time, not exceeding sixty days from the date of the order, as the Controller may fix.

(3) If the thika tenant deposits the amounts ordered by the Controller under clause (b) of subsection (2) within the time fixed by him, the Controller shall allow the application under sub-section (1) and set aside the order of ejectment and dispose

of the application of the landlord under subsection (1) of section 5.

(4) If the thika tenant fails to deposit such amounts within such time, his application under subsection (1) shall be dismissed with such costs as the Controller may award to the landlord."

5. There are other material changes in the said Act with which we are not concerned in these Rules.

The other relevant provision is section 13 which is as follows :--

"13. The amendments made to the said act by this Act shall have effect in respect of all applications for ejectment of thika tenants, and all appeals from orders made on such applications, under the provisions of the said Act which are pending at the commencement of this Act."

6. It has been contended by Mr. Seth that in view of the provision of section 13 the amendments made to the said Act including those in section 7A have no application when the application for ejectment of a thika tenant or any appeal therefrom was not pending at the commencement of the said amendment Act. Mr. Seth submitted relying on the decision in [Narayan Chandra Saha Vs. Dev All \(P\) Ltd.](#), that the provision of the amendment Act would only be attracted if an application or an appeal is pending at the relevant date. As, in this case no such application u/s 5 or an appeal therefrom was pending section 7A could have no application in this case.

7. Mr. Seth also contended that section 7A is ultra vires as imposing unreasonable restrictions on the enjoyment of the property offending Article 19(1) (f) of the Constitution. As this contention was taken at an earlier hearing before A.K. Mookerji, J. his Lordship was pleased to refer the matter to a larger Bench in view of the question involved. At the hearing before us, Mr. Seth has submitted that he is not pressing this contention.

8. The point now is whether section 7A applies to this case. The amending Act of 1969 was brought into force on October 30, 1969. There can be no dispute that the provisions of the said amending Act came into force on that date in absence of any prohibition about commencement of the provisions thereof. In respect of pending applications u/s 5 for ejectment of a thika tenant and appeal from orders therein, under provisions of section 13 of the amendment Act, a limited retrospective operation was given to such provisions of the amendment Act as would be affected thereby. It was provided that the provisions of the amendment act will be applicable to such applications u/s 5 or appeals from orders therein if they were pending at the commencement of the said Act. Such retrospective operation obviously will be in respect of such provisions of the amendment Act as would affect and apply to the pending proceedings under the terms thereof. While substituted section 3 in the parent Act is one of such provisions, section 7A which is prospective in operation, applies under its terms to a case when order of ejectment has been made by the

Controller which obviously include its appellate authority but possession of the holding has not been taken in pursuance of such order and not to any pending proceeding relating to the application u/s 5 or appeal from any order passed therein. This is a new right conferred on the thika tenant even if no proceeding for his ejectment is pending before the Thika Controller or the appellate authority. The condition is that the application for setting aside the order of eviction is to be filed within sixty days of the commencement of the amendment Act and possession of the holding has not been recovered by the landlord in the meantime. In this view, the provisions of section 13 of the amendment Act has no application to section 7A as inserted by the said Act and section 7A applies by its own force prospectively provided the conditions therein are satisfied. There is no dispute that the application u/s 7A was made in time by the thika tenant and the amount as directed by the Thika Controller had been duly paid. There is accordingly no infirmity in the order of the Thika Controller dated November 4, 1970 setting aside the order of eviction the thika tenant.

The rules accordingly fail and are discharged. There will be no order for costs in the circumstances.

H.N. Sen, J.

I agree.