Panchkari Haldar Vs Promodh Kishore Mondal and Others

Court: Calcutta High Court

Date of Decision: June 17, 1957

Acts Referred: Bengal General Clauses Act, 1899 â€" Section 2, 3, 4, 8
Calcutta Thika Tenancy Act, 1949 â€" Section 1, 1(2), 23, 27, 28

Citation: 61 CWN 803

Hon'ble Judges: Sarkar, J; P.N. Mookerjee, J

Bench: Division Bench

Advocate: Nalini Ranjan Bhattacharjee, for the Appellant;Jitendra Nath Guha and Satya Priya Ghosh, for the Respondent

Judgement

P.N. Mookerjee, J.
On July. 31. 1948, the plaintiffs respondents obtained a decree for ejectment against the defendant appellant who

held the disputed land under the respondents as a monthly tenant for residential purposes and who had his own structures thereon. The decree was

passed by the learned First Additional Munsif Alipore. It was affirmed on appeal by the learned Additional District Judge, 2nd Court, Alipore, on

March, 18, 1953, and the second appeal there-from, which was filed in this Court on May, 1, 1953, was dismissed by Guha Ray, J. on March, 5,

1956. He, however, granted leave to the defendant to appeal under Clause 15 of the Letters Patent and in pursuance of that leave the present

appeal was filed on May, 18th, 1956. The suit was a simple suit for arrears of rent and ejectment and mesne profits upon, inter alia, the alleged

termination of the defendant''s tenancy by a notice to quit, expiring with the end of Agrahayan 1353 B.S. The notice was served about the first

week of that month. In the plaint, there were two other allegations, to which reference ought to be made, namely, (i) that the defendant was a

defaulter in the payment of rent--and as a matter of fact there was in the plaint a claim for arrears of rent from Pous 1350 B.S. to Agrahayan 1353

B.S.--and (ii) that the plaintiffs landlords required the disputed land for their own use.

2. On the concurrent findings of the courts below, the defendant has, indeed, no defence to the plaintiffs'' claim for ejectment unless he can get

protection under the Calcutta Thika Tenancy Act. That is not disputed before us and the only question is whether that Act applies to this case and.

if so, what is its effect on the rights of the parties before us.

3. The original Calcutta Thika Tenancy Act was passed en February, 28, 1949. It was followed by an amending Ordinance which came into force

on October, 21, 1952 and, later on. by the Amending Act of 1953. which received the President''s assent on March, 14, 1953, and became law

on and from that date.

4. From what I have stated above, it is perfectly clear that the original Act (Calcutta Thika Tenancy Act of 1949), the Amending Ordinance of

1952 and the Amending Act of 1953, were all passed when the defendant''s appeal was pending in the first appellate court. During the pendency

of the said appeal, the appellant tried to take advantage of the intervening legislation, namely, the original Act of 1949, by applying for relief under

sections 28 and 29 and thereof, but he was unsuccessful for reasons which are not material for our present purpose. Thereafter, when his appeal

was dismissed by the learned Additional District Judge, he filed his second appeal in this Court and claimed protection under the Calcutta Thika

Tenancy Act of 1949 as amended by the Amending Act of 1953.

5. Guha Ray, J. dismissed the second appeal, holding, inter alia, that the amended Thika Tenancy Act had no application to this case, as, in view of

the omission of sections 28 and 29, that Act could not affect decrees, passed before February 28, 19-19, the date of enactment of the original Act

of 1949. He construed the proviso to section 1 (2) of the Amending Act of 1953 as making the amended Act applicable on and from the date of

the original Act of 1949 and not before and as not affecting the decrees, passed prior thereto, his reasoning being that the only provision (section

28) in the original Act of 1949, by which pre-Act decrees were meant to be affected, having been omitted by the Amending Act of 1953 and thus

forming no part of the said Act, as finally amended and now in force, the latter could not affect such decrees.

6. Clearly then, the decision of this appeal depends upon the true construction of the above proviso. That proviso runs as follows :

Provided that the provisions of the Calcutta Thika Tenancy Act, 1949, as amended by this Act, shall subject to the provisions of section 9, also

apply and be deemed to have always applied to all suits, appeals and proceedings pending.--

(a) before any Court, or

(b) before the Controller, or

(c) before a person deciding an appeal u/s 27 of the said Act, on the date of the commencement of the Calcutta Thika Tenancy (Amendment)

Ordinance, 1952.

7. The language is plain enough to indicate that, by virtue of the proviso, the amended Calcutta Thika Tenancy Act would apply to the present case

if the appellant was a thika tenant under that Act. Before Guha Ray, J. the arguments proceeded on the assumption that the appellant was such a

thika tenant and before us also the parties proceeded on the same assumption and asked for a decision on that footing in the first instance, subject,

if necessary, to a determination of the said question later on. As the question whether the appellant is a thika tenant or not requires investigation of

facts which has not been made in this case, we accepted the parties'' suggestion to decide this appeal on the above assumption, leaving the above

question for decision, if necessary, by the trial court on remand.

8. Here, admittedly, the appeal before the first appellate court was pending on the date of commencement of the Amending Ordinance of 1952. It

was clearly then a pending appeal within the meaning of the above proviso and thus the amended Act would apply to it. True, the amended Act

does not contain the old section 28 and if, in law, the appellant ''.an get no relief against the trial court''? decree in this case except under that

section, no relief can be given to him at least in this appeal. That, however, does not conclude the appellant or put him out of court. The amended

Act, without, of course, section 28 which, inter alia, has been omitted from it, applies, as I have said above, to this case, if only as we have

assumed for the purpose of this case, the appellant is a thika tenant under the amended Act. On that assumption and in the view which I have

expressed above, section S of the Act would be attracted at once. The appellant then can be evicted in this proceeding only on a ground,

mentioned in that section and in terms thereof. It is not disputed before us that the only grounds, on which the respondents can claim to succeed

under that section are (i) default in the payment of rent and (ii) reasonable requirement of the landlords for their own use, but. in either case, the

notice to quit, as given in this case, namely, for less than a month, would be insufficient. In this view the plaintiffs'' claim for ejectment would fail and

their suit, so far as ejectment--and, necessarily also. mesne profits,--is concerned, must be dismissed, provided only that the defendant is a thika

under the amended definition.

9. The above view of the law is amply supported by the decision of this Court, reported in (1) Ajit Kumar Pal Vs. Sadhan Chandra Pal, where

Das Gupta, J. (with whom Guha J. concurred) dealt with the point in much the same way as I have done above and I entirely agree with his

observations and reasonings upon the point. A similar view was also taken in the earlier decision of the same Bench, reported in (2) 95 C. L. J.

236, and still earlier by Guha, J., sitting singly, in (3) 93 C. L. J. 52, on facts which have a close resemblance to those of the present case. The

decision of Renupada Mukherjee, J. in (4) Kanai Lal Sur Vs. Paramnidhi Sadhukhan, is also not opposed to the view which I have expressed

above. This is clear from the fact that it distinguished (3) 93 C. L. J. 52 and all that it laid down was that a final decree for ejectment, that is, a

decree which was not sub-judice but had become final, when the Act of 1953 came into force, could not be re-opened even under the amended

Act.

10. The effect of the repeal of section 28 of the original Act by the amending Act of 1953 does not strictly arise for consideration here and I would

not say anything on that point beyond referring to my decision, reported in (5) 93 C. L. J. 182, where I have explained the true basis and

implication of the case of Deorajin Debi and Another Vs. Satyadhyan Ghosal and Others, , decided by Sen. J. and myself.

11. In the light of what has gone before, it is perfectly clear that the present case cannot be finally decided without determining the status of the

appellant, namely, whether he is a thika tenant within the meaning of the amended Act. That question, therefore, should now be investigated and, as

the point was not considered by any of the courts below and as it could not have arisen while this case was pending before the trial court, it is only

proper that the above investigation should be made by the trial court and liberty should be given to either party to adduce fresh and further

evidence on this new point. That is also the prayer of the parties before us.

12. Before, however, we actually pass the order of remand, it is necessary to make some further observations.

13. In arguing the question of remand; for the above investigation, Mr. Guha, confined himself to the amended definition of the thika tenant in the

Act of 1953 and he did not raise any contention to the effect that the appellant would not be a thika tenant under the Calcutta Thika Tenancy Act

of 1949, even after its amendment by the amending Act of 1953, in view of the fact that his tenancy had been determined by a notice to quit prior

to the coming into force of the said original Act. That question was not raised before us, and not in (1) Ajit Kumar Pal Vs. Sadhan Chandra Pal,

either, possibly for the reason that the Thika Tenancy Act being a remedial measure, enacted for the protection of thika tenants, would apply to ex-

thika tenants, continuing in possession on the date of the Act, in view of certain judicial decisions. As the point was not raised or argued before us,

I am not called upon to express any opinion on the same. I did not, therefore, consider the same. At the same time, having regard to the attitude of

the parties before us, and the circumstances of the case, it is necessary that no such point should lie allowed to be raised at the further hearing

which will now take place in pursuance of our order of remand. That direction is, accordingly, given.

14. In the result then. I would decree this appeal, set aside the decisions of the three courts below and send back the case to the trial court for a

decision of the question whether the appellant is a thika tenant within the amended Thika Tenancy Act in the light of, and subject to, the

observations, made above. The decision would, of course, be on the evidence, already on record, and such further evidence as the parties may

choose to adduce in pursuance of the leave, granted hereinbefore, and if the question Lie answered in the affirmative, the plaintiffs'' claim for

ejectment and mesne profits would fail and their suit will be decreed only for rent. In the event of a negative answer, the plaintiffs'' suit would stand

fully decreed.

15. Costs will be in the discretion of the trial Court.

Sarkar, J.

16. The point which arises for decision in this appeal concerns the construction to be put on the proviso to subsection (2) of section 1 of the

Calcutta Thika Tenancy (Amendment) Act of 1953.

17. The facts of the case are as follows :-On the 28th February, 1947 the plaintiffs-respondents instituted a suit in the Munsif''s Court, Alipore, for

ejectment of the defendant- appellant and another from 2 kottahs of land within premises No. 50, Tollygunge Road on the allegations that the

defendants held the said land under them as monthly tenants-at-will on a rent of Rs. 3-12 per month and -used the same for residential purposes,

having their own structures thereon, and that as the defendants were defaulters and the plaintiffs wanted the land for their own use, they had

terminated the defendants'' tenancy by fifteen days notice to quit. The defendant-appellant who alone contested the suit contended inter alia that the

tenancy was agricultural and permanent and that the ''and had been improved and structures raided thereon on the landlords'' assurance of

permanency. The suit was. however, decreed on the finding that the defendants were monthly tenants-at-will and that the tenancy had been

determined by notice to quit.

18. This decree was passed on the 31st July, 1948 and the present appellant thereupon preferred an appeal to the District Judge, Alipore. While

that appeal was pending the Calcutta Thika Tenancy Act came into force on the 28th February. 1949. and the appellant applied for relief under

sec 29 of the said Act on the 1st May. 1950, but his application was dismissed on the 6th October, 1950. Thereafter he applied for relief under

sec 28 of the said Act on the 15th December. 1950. and the hearing of the appeal was stayed pending the hearing of that application. The

application was however, dismissed on the 12th June. 1951, and an appeal from that order was also dismissed or, the 6th December. 1952.

19. In the meantime the Calcutta Thika Tenancy (Amendment) Ordinance, 1952 had come into force on the 21st October, 1952, and on the 14th

March, 1953, the Calcutta Thika Tenancy (Amendment) Act of 1953 replaced the said Ordinance. Four days thereafter, i.e., on the 18th March.

1953, the appellant''s appeal against the decree for ejectment was dismissed by the Additional District Judge, Alipore. The appellant thereupon

preferred a Second Appeal to this Court and in this appeal it was urged by him before Guha Ray, J., who heard the appeal that in view of the

proviso to sub-sec. (2) of sec. 1 of the Calcutta Thika Tenancy (Amendment) Act. 1953 the learned Additional District Judge should have applied

the provisions of the Calcutta Thika Tenancy Act, 1949, as amended by the said Act, to the appeal and should have held that he was not liable to

ejectment as a thika tenant. Guha Ray, J., however, came to the conclusion that the said provisions were not applicable to the case and dismissed

the appeal, but he granted leave to appeal under clause 15 of the Letters Patent and. accordingly, the present appeal has been filed and the same

question which was argued before Guha Ray J., has been pressed before us.

20. The Calcutta Thika Tenancy Act of 1949 denned a thika tenant in a certain manner. This definition was, however, amended by the Calcutta

Thika Tenancy Ordinance of 1952 and the amended definition was embodied in the Act of 1953. According to this definition, a thika tenant means

any person who hold-, whether undo: a written lease or otherwise, land under another person at a monthly or any other periodical rate of rent and

has erected or acquired any structure on such land for a residential, manufacturing or business purpose. Sec. 1 sub-sec. (2) of the Act of 1953

which enacts that the Act shall come into force immediately on the Calcutta. Thika Tenancy (Amendment) Ordinance, 1952, ceasing to operate

contains a proviso which is in the following terms;--

Provided that the provisions of the Calcutta Thika Tenancy Act, 1949 as amended by this Act, shall, subject to the provisions of sec. 9, also

apply and 1)6 deemed to have always applied to all suits, appeals and proceedings pending-

(a) before any Court, or

(b) before the Controller, or

(c) before a person deciding an appeal u/s 27 of the said Act, on the date of the commencement of the Calcutta Thika Tenancy (Amendment)

Ordinance, 1952.

21. The contention of the appellant is that since his appeal arising out of the ejectment decree was pending on the 21st October, 1952, when the

Calcutta Thika Tenancy (Amendment) Ordinance, 1952, 1952, came into force, the provisions of the Calcutta Thika Tenancy Act of 1949. as

amended by the Act of 1953, were applicable to the said appeal under the above proviso and that applying the said provisions, it should be held

that he is a thika tenant, as denned in the said Act as amended, and. as such, is liable to ejectment only in the manner provided in the said Act.

Particular stress was laid in the argument on the use of the word ''always'' and it was contended that the expression ""be deemed to have always

applied"" in the proviso meant that the provisions of the Act of 1949, as amended by the Act of 1953, were applicable to all suits and appeals, even

if such suits or appeals might have been instituted before the date of the commencement of the Act of 1949.

22. Guha Ray, J., however, came to the conclusion that the word ""always"" in the proviso did not refer to any point of time prior to the date of the

commencement of the Thika Tenancy Act of 1949 but referred only to the period subsequent to the said date, namely, the 28th February. 1949.

He recognised that the proviso literally interpreted would mean that the provisions of the Act of 1949, as amended by the Act of 1953, should

apply to all pending suits, appeals and proceedings, whether they were in respect of thika tenancies or not. but he held that such general meaning

could not have been intended by the Legislature and so he interpreted the words ""all suits, appeals and proceedings"" in a limited sense as

applicable only to those suits, appeals and proceedings which were in relation to thika tenants, as denned in the Act of 1949 as amended by the

Act of 1953.

23. He observed:

What it"" (i.e. the proviso) ""seeks to do is to lay down that although the parent Act was different from the final shape given to it by the Amending

Act of 1953, this final shape, in fact given on the 14th March, 1953, is to be deemed to have always been the shape of the parent Act and until the

Act was enacted, the question could not possibly arise as to what was the form in which it existed.

In this view of the true meaning of the proviso the Thika Tenancy Act of 1949 cannot be extended so as to apply to decrees passed before the

original Act came into force, * * * *

24. In coming to this decision, Guha Ray, J. was influenced by the repeal of sections 28 and 29 of the Thika Tenancy Act of 1949 by section S of

the Act of 1903. Section 28 empowered the Court to rescind or vary any decrees or order passed by it for the recovery of possession of any

holding from a thika tenant before the date of the commencement of the Act, if the possession of such holding had not been recovered by the

execution of such decree or order and the Court was of opinion that the decree or order was not in conformity with any provision of the Act, in

order to give effect to such provision, and section 29 enacted that the previsions of the Act would apply to every suit and proceeding, including a

proceeding in execution, for ejectment of a thika tenant pending at the date of commencement of the Act and provided for transfer of such suit or

proceeding to the Controller appointed under the Act and for decision thereof by the Controller in accordance with the provisions of the Act, as if

this Act had been in operation on the date of the institution of the said suit or proceeding. According to Guha Ray, J., the repeal of these sections

without the substitution of some other provisions enabling the Courts to give relief to the thika tenants in similar manner and the language of the

proviso giving the omission of these sections a retrospective effect, as if these provisions were never a part of the Act of 1949, unmistakably

showed an intention on the part of the legislature to exclude decrees or orders for ejectment passed before the commencement of the Act of 1949

from the operation of the Act and, as such, any interpretation of the proviso giving it retrospective effect beyond the date of the commencement of

the Act of 1949, so as to make it applicable to pre-Act decrees or orders, would not be proper and reasonable. He held that a decree which was

passed by a Court with jurisdiction to pass it could not be set aside when there was no power conferred upon the Court for setting it aside and

that, therefore, even though the appeal in the present case was pending before the Additional District Judge, Alipore, on the date of the

commencement of the Calcutta Thika Tenancy Ordinance, 1952, the provisions of the Act of 1949, as amended by the Act of 1953, would not be

applicable to the subject matter of the appeal.

25. With due respect we cannot agree with Guha Ray, J., that after the repeal of these sections by the Act of 1953, a thika tenant is left without

any remedy against, or is not entitled to relief from the operation of any decree or order for ejectment passed before the date of the

commencement of the Act of 1949 or that the proper inference from the repeal of they a sections is that the legislature intended to exclude such

decree or order from the purview of the Thika Tenancy Act, as amended in 1952. and to deny to the thika tenants coming within the ambit of the

amended definition the benefit of the provision of that Act.

26. This new definition of thika tenant had in fact Seen introduced by the Calcutta Thika Tenancy (Amendment) Ordinance, 1952. This Ordinance

amended the Thika Tenancy Act of 1949 but did not omit or affect sections 28 and 29 of the said Act. As is well known, on account of the

vagueness of the definition of thika tenant in the Act of 1949 many persons, who would have been thika tenants, as defined in this Ordinance, and

whom the Act had intended to benefit, had to suffer decrees for ejectment because they could not prove that they held their lands under the system

known as Thika etc., as required by the said definition, and, therefore, the Ordinance was promulgated with a view to give relief to such persons.

That is why no change was made in sections 28 and 29. The provisions of the Act of 1949, as amended by the Ordinance, were made applicable

to all pending cases and for the purpose of giving relief to thika tenants, as defined in the Ordinance, against whom decrees or orders for ejectment

had been passed between the dates of the commencement of the Act of 1949 and of the Ordinance but delivery of possession had not been given,

section 5 sub-sec. (2) of the Ordinance provided that such thika tenants would be entitled to apply, within three months of the commencement of

the Ordinance, to the Courts or the Controllers passing such decrees or orders and empowered the Courts or the Controllers to set aside such

decrees or orders and annul the execution proceedings, and the Courts were further empowered to remit the cases to the Controllers for decision

and the Controllers were empowered to reopen the cases and pass new orders. The explanation to this section further provided that the

expression "Court" in the section included a Court exercising appellate or revisional jurisdiction. The Act of 1953 provided in section9 thereof that

any proceeding commenced under sub-sec. (2) of sec. 5 of the Calcutta Thika Tenancy (Amendment) Ordinance of 1952 should be continued on

the said Ordinance ceasing to operate, as if subsections (2), (3) and (4) of that section and the explanation to that section were in force.

27. The position which emerges on a consideration of sections 28 and 29 of the Act of 1949 and the provisions of section 5 of the Thika Tenancy

(Amendment) Ordinance of 1952 is that the intention of the legislature was to give the benefit of the new definition of thika tenant in the said

Ordinance with retrospective effect to all persons against whom decrees or orders for ejectment had been passed before the commencement of

the Act of 1949 or between the dates of the commencement of that Act and of the Ordinance, provided only that delivery of possession had not

be obtained against. them. In these circumstances, can it he suggested that the repeal of sections 23 and 29 by the Act of 1953, predicated a

different intention on the part of the legislature. The reason why sections 28 and 29 were replaced is that these sections were no longer necessary

to lie retained in view of the comprehensive words, of the provision to sub-sections (2) of sec. 1 of the Act of 1953.

28. The Thika Tenancy Act of 1949 had come into force on the 28th February. 1949. and the Act or 1953 came into force on the 14th March.

1953. A decree or order for ejectment passed before the 28th February. 1949, in execution of which no delivery of possession had been obtained

before that date, would have been either put in execution or appealed from and such appeal would have been pending on or after "that date. In

such cases sections 28 and 29 of the Act of 1949 would have come into operation. But at the date of the commencement of the Act of 1953. four

years after the commencement of the Act of 1949. it could not normally be expected that any such decree or order for ejectment against which no

appeal had been preferred would have remained unexecuted, so as to necessitate the application of section 28. Section 29 applied t(suits and

proceedings in execution pending at the date of the commencement of the Act of 1949 and, even if any such suits and proceedings were pending at

the date of the commencement of the Act of 1953., they would have come within the purview of the proviso to sub-sections (2) of section 1

thereof, so that there was no need to retain sections 29 in the Act of 1953. The language of the proviso is, in my opinion, sufficiently wide to attract

decrees and orders passed before the commencement of the Act of 19-19 in respect of which any proceedings might have been pending on the

date of the commencement of the Ordinance of 1952 and to make the provisions of the Act of 1919. as amended by the Act of 1953, applicable

thereto. The word "always" occurring in this proviso is very significant and it cannot be given a restricted meaning, so as to exclude proceedings

arising out of decrees or orders passed before the commencement of the Act of 1949.

29. Guha Ray, J. has recognised that literally interpreted the proviso would mean that the provisions of the Thika Tenancy Act of 1949, as

amended, would apply to all suits, appeals and proceedings pending at the date of the commencement of the Ordinance, whether such suits,

appeals and proceedings were in respect of thika tenants or not. If that be the literal meaning of the proviso, there is no sufficient reason why such

meaning should not be given to it or why its scope should be restricted.

30. In the case of Deorajin Debi and Another Vs. Satyadhyan Ghosal and Others, the question arose whether pending proceedings under sections

28 of the Act of 1949 had become incompetent in consequence of the repeal of the said section by the Act of 1953. or whether the benefits of that

Act had been extended to such proceedings by virtue of the above provision construing the proviso my learned brother who was a party to that

decision held that taking it at its worst the proviso was ambiguous or capable of two interpretations and that since the amending Act was a

remedial statute, the words of the proviso should be construed, so far as they reasonably admit, so as to secure that the relief contemplated by

statute should not be denied to the class intended to be relieved. He further held that such construction was not opposed to the literal meaning of

the proviso. In the same case Sen, J. pointed out that the proviso did not say that the amended Act should be deemed to have been the law from

the commencement of the original Act but only laid down that the provisions of the amended Act should apply, and should be deemed to have

always applied, to pending proceedings. According to this decision, the effect of the proviso was not as if section 28 was never a part of the

original Act and it was further held therein that such pending proceeding was saved by section 8 of the Bengal General Clauses Act, Since the

terms of the proviso did not indicate any intention of excluding the operation of the said section. I am aware that a contrary ""view has been taken

by another Division Bench in the case of Deorajin Debi and Another Vs. Satyadhyan Ghosal and Others, and the reasons on which it is based.

31. The question of interpretation of the proviso was also considered by a Division Bench in the recent case of Ajit Kumar Pal Vs. Sadhan

Chandra Pal, , the facts of which were similar to the facts of the case before us. In that case the decree for ejectment had been passed on the 4th

September, 1948, but on appeal the said decision had been reversed and the suit had been dismissed on the 17th April, 1950, on the finding that

the notice was insufficient. A second appeal was preferred on the 29th June, 1950, and this was pending on the 21st October, 1952. when the

Calcutta Thika Tenancy (Amendment) Ordinance came into force. Guha Ray, J. who heard that appeal allowed it and remanded the suit to the trial

court with certain directions. In the Letters Patent appeal from this decision it was contended on behalf of the tenant that by virtue of the above

proviso Guha Ray. J., was bound in second appeal to apply to the case the provisions of the Calcutta Thika Tenancy Act, as amended by the Act

of 1953. including the provisions of sections 3 and4 thereof. It was held by Das Gupta, J., with whom Guha, J., concurred that the said provisions

were applicable to the case by virtue of the proviso, since the appellant was a thika tenant within the meaning of the amended definition in the Act,

and that he was not liable to ejectment as he had not been given notice according to the provisions of sections 4 of the amended Act. The appeal

was allowed and the dismissal of the suit was affirmed. Guha. Ray, J., had taken the view that it would not be right to interpret the proviso literally

and to hold that the legislature had intended by the proviso to affect the right of ejectment that had already accrued to the plaintiff-landlord after the

determination of the tenancy by service of notice to quit. On this point Das Gupta, J., held that if the natural meaning is given to the words used in

the proviso, the necessary and inescapable conclusion is that the legislature did intend to take away such vested rights, if they are inconsistent with

the provisions of the Act as amended, and observed :

As the Courts have no right to take away from any party the benefit of a provision of law which the legislature has extended to him. I consider

myself bound to hold that even though the provisions of the Act may have the result of destroying the vested right in any part, the provisions must

be enforced.

In the above case it had been agreed on both sides that the defendant was a thika tenant according to ""the definition in the amended Thika Tenancy

Act. Guha Ray, J. however, proceeded in the case before us on the footing that the defendant was a thika tenant within the said definition without

deciding the question. Mr. Guha on behalf of the plaintiffs-respondents has pointed out before us that there is no clear finding of the Courts below

in the present case showing that the defendant would come within the ambit of that definition and that the materials before us are not sufficient for

arriving at a proper decision on this question. He has further drawn our attention to clause (c) of the definition in section 2(5) of the amended Thika

Tenancy Act which provided that a person who uses the land of his tenancy as a khattal is not a thika tenant and had referred us to the case of

Ram Prasad v. Sonatan, (2) 95 C.L.J. 236, where under similar circumstances the case was remanded for investigation of the question whether the

defendant was a thika tenant. He has therefore pressed for an order for remand for investigation of this question I think, in the circumstances, that

this question should be further investigated and I therefore concur in the order which my learned brother has proposed in the matter.