

SUPREME COURT OF INDIA

Nemai Chandra Kumar & Ors.

Vs.

Mani Square Ltd. & Ors.

[2015] INSC 0150

(Sudhansu Jyoti Mukhopadhaya and Prafulla C. Pant, JJ.)

24.02.2015

JUDGEMENT

Sudhansu Jyoti Mukhopadhaya , J.

1. Leave granted. The Appellants have preferred this appeal against judgment dated 10 March, 2014 passed by the Division Bench of High Court of Calcutta in W.P.L.R.T. No. 325 of 2013. By the impugned judgment, the High Court allowed the writ petition filed by the Respondent Nos. 1 and 2 and set aside the order dated 18 November, 2013 passed by the West Bengal Land Reforms and Tenancy Tribunal (hereinafter referred to as the, 'Tribunal') in O.A. No. 2833/12 (LR TT).

2. The factual matrix of the case is as follows: 2.1 One Laxmi Narayan Ghosh was the owner of the land involved herein measuring 2 Bigha, 10 Cottahs and 3 Chhitacks, more or less, being Holding No. 195, Picnic Garden, Tiljala. The said Laxmi Narayan Ghosh died intestate on or about 23rd July, 1950 leaving behind his widow Smt. Nilu Bala Ghosh and his son Jitendra Nath Ghosh. 2.2 On 7 December, 1970, Smt. Nilu Bala Ghosh died intestate and Jitendra Nath Ghosh, thereafter, became the absolute owner of the said property. The said Jitendra Nath Ghosh by a registered Deed of Lease dated 15 December 1973, demised the said premises to Badri Narayan Kumar (since deceased) and Nemai Chandra Kumar (Appellant No. 1 herein) -the proprietors of Kumar industries, for a period of 20 years commencing from 1st December, 1973 for a consideration and/or monthly rent as mentioned in the said lease deed. By the said lease deed, the lessees were given the right to raise construction on said property and to use and enjoy such property during the tenure of the lease with a condition that on expiry of the lease on 30 November, 1993 the lessees will have to deliver vacant and peaceful possession of the said property to the lessor in the same condition as it was at the time of execution of lease, by removing the structure which would be constructed thereon. It was submitted that the lessees raised pucca structure having pucca foundation, pucca floor and pucca wall with partly tin and partly tile shed on the roof and used the said premises including the structure constructed therein for running its factory activities therein. 2.3. In the meantime, the Calcutta Thika and Other Tenancies and Lands

(Acquisition and Regulation) Act, 1981 (hereinafter referred to as the, '1981 Act') came into force with effect from 18 January, 1982. 2.4 Immediately, after the said Act came into operation, the said Jitendra Nath Ghosh (Lessor) filed an application Under Article 226 of the Constitution of India before the High Court of Calcutta challenging the vires of the said Act. The said writ petition which was numbered as C.R. No. 10449 (W) of 1983 was entertained by the High Court by issuance of a writ of mandamus in terms of prayers of the said writ petition. An interim order was passed therein staying the operation of the provisions of the 1981 Act as well as Rules framed thereunder in so far as the premises were concerned. 2.5 In the meantime, West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (hereinafter referred to as the, '2001 Act') came into force. 2.6 The lessees paid rent to the then landlord up to 1993 and they never claimed themselves as thika tenant under their landlord till 9 April, 2003. It was only after the 2001 Act came into operation, the said lessees submitted a return before the Controller, Kolkata Thika Tenancy claiming themselves as thika tenants in respect of the said premises and deposited rent with interest for the period from 18 January, 1982 till 2007. The Controller, Kolkata Thika Tenancy vide order dated 27 January, 2010 declared both Badri Narayan Kumar (since deceased) and Nemai Chandra Kumar (Appellant No. 1) as Thika Tenants in terms of Section 2(14) of the 2001 Act. By another order dated 29 April, 2010, the said authority recorded the death of Badri Narayan Kumar and substituted his legal heirs as thika tenants. 2.7 Respondent Nos. 1 and 2 -writ Petitioners are the transferees of the said premises from the erstwhile owner thereof, namely, the landlord of the Appellants herein. After purchasing the said property vide conveyance deed dated 10 September, 2006 they applied for mutation of their names as owners of the said property and while searching relevant records, they came to know that the said premises were recorded as thika tenanted property and some of the Appellants were recorded as thika tenants therein by following the declaration of their status as thika tenant in respect of the said premises given by the Controller, Calcutta Thika Tenancy vide his order dated 27 January, 2010. 2.8 On knowing about the aforesaid order of the Controller declaring the said property as thika tenanted property and some of the Appellants as thika tenants, Respondent Nos. 1 and 2, being the purchasers of the said premises submitted an objection before Controller, Calcutta Thika Tenancy challenging the declaration which was given by the Controller in his earlier orders dated 27 January, 2010 and 29 April, 2010 and the said objection was rejected by the Controller vide order dated 1st August, 2012 in Misc. Case No. 89 of 2010. 2.9 On being aggrieved, Respondent Nos. 1 and 2 filed an application Under Section 6 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 before the West Bengal Land Reforms and Tenancy Tribunal at Calcutta (hereinafter referred to as the, 'Tribunal') being O.A. No. 2833 of 2012 challenging the legality and validity of order dated 1st August, 2012 passed by the Controller in Misc. Case No. 89 of 2010. The Tribunal vide judgment dated 18 November, 2013 dismissed the application and held that the Controller rightly declared the property as Thika Property w.e.f. 18 January, 1982 and the Appellants as Thika Tenants under the Government w.e.f. 18 January, 1982. 2.10 On being aggrieved, Respondent Nos. 1 and 2 preferred Writ Petition before the High Court of Calcutta. The High Court by impugned judgment dated 10 March, 2014 set aside the judgment dated 18 November, 2013 and allowed the writ petition. The following submissions were made by Learned Counsel for the Appellants: 3.1 The phrase 'any structure' used in the definition of

Thika Tenancy Under Section 2(5) of the Calcutta Thika Tenancy Act, 1949 (hereinafter referred to as the, '1949 Act') on its plain meaning would include both Kutcha and Pucca structures. The primary rule of construction is that the words or phrases in a Statute are to be interpreted in accordance with the plain language. To overlook plain language would amount to re-writing of the words of Statute and, therefore, would ignore the legislative intent. 3.2 The interpretation of 'any structure' given by Calcutta High Court in series of judgments is incorrect on first principles and that there was no concluded view on this point under the 1949 Act. 3.3 As the lease in favour of the Appellants was for 20 years pursuant to agreement dated 15 December, 1973 and the Appellants are "Thika Tenants" within the meaning of Section 2(5) of the 1949 Act, in view of 1981 Act the land comprised in Thika Tenancy vested with the State w.e.f. 18 January, 1982.

3. The Aforesaid submissions made on behalf of the Appellants have been rebutted by Learned Counsel for the Respondent Nos. 1 and 2 on the following grounds: 4.1 The lessee raised pucca structure and used the said premises including the structure constructed thereon for running its factory activities. Therefore, the Appellants do not come within the meaning of Thika Tenants. 4.2 The lease was expired by efflux of time on 13 September, 1993 and lessee paid the rent to the then landlord up to 1993 and thereby never claimed themselves as Thika Tenants till 9 April, 2003. 4.3 The concept of Thika Tenancy in the three Acts (1949 Act, 1981 Act and 2001 Act) has been used as an expression inexonerably intertwined with the concept of 'any structure'. 4.4 The term 'any structure' has been judicially read down to mean only 'Kutcha structure' (Temporary Structure) by series of judgments of the Calcutta High Court. ;