

[2012] 4 S.C.R. 583

RAMDAS BANSAL (D)

v.

KHARAG SINGH BAID & ORS.
(Civil Appeal No. 684 of 2012)

JANUARY 19, 2012

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Land Laws - Calcutta Thika Tenancy Act, 1949 - Calcutta Thika and Other Tenancies and Land (Acquisition and Regulation) Act, 1981 - West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 - Respondent had leased out building structure standing on landed premises in favour of appellant - After expiry of lease period, respondents filed suit for recovery of vacant possession - Appellant filed application under Order XLI Rule 27 CPC seeking to raise plea that respondents were Thika tenants of the suit premises under the State of West Bengal and appellant had become "Bharatia"(sub-tenant) of the demised structure under the respondents - High Court rejected the application and decreed the suit - Stand of appellant that relationship between the parties was no longer governed by the provisions of the Transfer of Property Act and the appellant could be evicted only on the grounds set out in s.13 of the 1956 Tenancy Act, however, none of such grounds had been pleaded or proved - Held: Having been granted a lease for a period of twenty one years in respect of the building standing on the suit premises, in which a Cinema theatre was located, the appellant could never claim to be a Thika Tenant in respect of the suit premises as defined either under the 1949 Act, the 1981 Act as well as the 2001 Act - Appellant did not come within the ambit of any of the definitions of "Thika Tenancy" under the aforesaid three Acts having been granted a lease of the structures which had already been erected on the lands long before the coming into operation of either the 1949 Act or the

A *1981 Act or even the 2001 Act - Provisions of the 1956 Tenancy Act not applicable to appellant, whose lease stood excluded from the operation of the aforesaid Act u/s.3 thereof - Order of High Court accordingly upheld - West Bengal Premises Tenancy Act, 1956 - ss.3 and 13.*

B In the year 1972, respondent had leased building structure standing on landed premises in favour of the appellant for a period of twenty one years. After expiry of the lease period, respondents filed suit against the
C appellant for recovery of vacant possession and also prayed for rectification of the misdescription of the premises in the lease deed as it did not tally with the description of the suit premises in the plaint. The prayer for rectification was allowed and the suit decreed by a
D Single Judge of the High Court. In the pending appeal before the Division Bench, the appellant filed application under Order XLI Rule 27 of CPC, to bring on record certain documents showing that by operation of law the respondents were the Thika tenants of the suit premises under the State of West Bengal and the appellant had
E become a "Bharatia" (sub-tenant) of the demised structure under the respondents. The Division Bench rejected the application under Order XLI Rule 27 C.P.C. and dismissed the appeal.

F Hence the present appeal. The appellant urged that the relationship between the parties was no longer governed by the provisions of the Transfer of Property Act and the appellant could now be evicted only on the grounds set out in Section 13 of the West Bengal
G Premises Tenancy Act, 1956, however, none of the grounds on which eviction could be ordered under the aforesaid Act had, in fact, been pleaded or proved.

Dismissing the appeal, the Court

H HELD: 1.1. The Respondents had filed Title Suit

against the appellant, inter alia, for (i) a decree for vacant possession in respect of the suit property comprising the demised premises described in the schedule to the plaint and delineated in the map annexed thereto and marked with the letter 'B'; and (ii) if necessary, the mis-description in the lease deed dated 19.9.1972 be rectified so as to reflect the true intention of the parties with regard to the identity of the suit property. Such a prayer was made on account of the fact that the description of the suit properties in the plaint did not tally with the description of the property in the Lease Deed itself. While in the Lease Deed, the demised property was described as premises No.91, Mahatma Gandhi Road, Kolkata, in the plaint, the suit property was described as being the property situated at premises No.91-A, Mahatma Gandhi Road and portion of premises No.6A, Sambhu Chatterjee Street, Kolkata. It is in such context that a separate prayer had been made in the plaint for rectification of the schedule in the Deed of lease, if necessary. The said two reliefs were more or less connected with each other, but even without such rectification, it was possible for the decree to be executed. [Para 26] [603-H; 604-A-E]

1.2. The said question has been dealt with in detail both by the Single Judge, as well as the Division Bench of the High Court, and both the Courts had held that the said issue was not of much consequence, since, as is evident from paragraph 2 of the Written Statement, the Appellant was fully aware at the time of granting of the lease that the demised premises consisted of a building constructed on the premises which consisted of both premises No.91-A, Mahatma Gandhi Road, as well as 6-A, Sambhu Chatterjee Street, and that the said two premises were inseparable. Both the Courts, accordingly, rejected the plea of the Appellant that the suit was not maintainable as the description of the suit property did not tally with the description of the property in the lease

A deed. Consequently, both the Courts allowed the prayer of the Respondent/Plaintiff to rectify the schedule of the lease deed to correct the mis-description of the suit property therein, as there was no doubt as to the identity of the suit property on which Grace Cinema Hall was situate, and the building erected on the two plots was inseparable. In the facts of the case, there is no reason to interfere with the decision of the High Court in this regard. [Paras 27, 28] [604-F-H; 605-A-B]

2.1. The point relating to a portion of the demised premises being a Thika Tenancy and thus covered by the provisions of the Calcutta Thika and Other Tenancies and Land (Acquisition and Regulation) Act, 1981, was raised before the Division Bench of the High Court, which, however, negated such contention upon holding that the Respondents were not Thika Tenants since the building had been constructed on the land in question before the Calcutta Thika Tenancy Act, 1949, came into operation. Placing reliance on the doctrine of separation of possession from ownership, the Division Bench further held that the Appellant had failed to establish that the Respondents or their predecessors-in-interest were Thika Tenants of the suit property. The Division Bench also held that even after execution of the lease deed in favour of the Respondents, the lessor remained the owner of the property, whereas the Respondents' father merely got the right to enjoyment of the property and could not, therefore, be said to be the Thika Tenant within the meaning of the definition given in the subsequent legislations. On such reasoning, the Division Bench rejected the application filed on behalf of the Appellant under Order XLI Rule 27 CPC to bring on record subsequent facts to prove his status as a tenant of a portion of the structure in relation to which the Appellant had acquired the status of a Bharatia after the acquisition of Thika Tenancies under the 1981 Act. [Para 29] [605-C-G]

2.2 The law relating to Thika Tenancies in relation to Calcutta and Howrah, as it existed prior to the Acquisition Act of 1981, was the Calcutta Thika Tenancy Act, 1949, which excluded leases of land exceeding 12 years' duration. The instant lease being one for 20 years, the same stood excluded from the operation of the 1949 Act, when it was executed. In any event, having been granted a lease for a period of twenty one years in respect of the building standing on the suit premises, comprising premises No.91-A, Mahatma Gandhi Road and 6-A, Sambhu Chatterjee Street, Kolkata, in which the Grace Cinema was located, the Appellant could never claim to be a Thika Tenant in respect of the suit premises as defined either under the Calcutta Thika Tenancy Act, the Calcutta Thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981, as well as The West Bengal (Acquisition and Regulation) Act, 2001. [Para 30] [605-H; 606-A-C]

2.3. A "Thika Tenant" under the Calcutta Thika Tenancy Act, 1949, was defined to mean any person who, inter alia, held, whether under a written lease or otherwise, land under another person and has erected or acquired by purchase or gift any structure on such land for a residential, manufacturing or business purpose and includes the successors-in-interest of such person, except for the exceptions indicated in Sub-Section (5) of Section 2 of the said Act. As also indicated hereinbefore, the aforesaid Act stood repealed by the Calcutta Thika Tenancy and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981, which provided for the acquisition of interest of landlords in respect of lands comprised in Thika Tenancies and certain other tenancies and other larids in Kolkata and Howrah for development and equitable utilization of such lands. In the said Act, a "Thika Tenant" has been defined to mean any person who occupies, whether under a written lease or otherwise land

A under another person and is or but for a special contract
liable to pay rent, at a monthly or periodical rate, for the
land to the said person and has erected or acquired by
purchase or gift any structure on such land for residential,
B manufacturing or business purpose and includes the
successors-in-interest of such person. What is significant
in the definition of Thika Tenant under the 1981 Act is the
persons who had been excluded from the definition in
the 1949 Act, were also brought within the ambit of the
1981 Act. Consequently, certain lands which were earlier
C excluded from the definition of "Thika Tenancy", were
now brought within its ambit. [Para 31] [606-D-H; 607-A]

2.4. The circumstances were further altered with the
enactment of the West Bengal Thika Tenancy
(Acquisition & Regulation) Act, 2001, to provide for the
D acquisition of interests of landlords in respect of lands
comprised in Thika Tenancies and certain other
tenancies in Kolkata and Howrah and other Municipalities
of West Bengal for development and equitable utilization
of such lands with a view to sub-serve the common good.
E It is clear that the main object of the 2001 Act was to
extend the acquisition of lands beyond Kolkata and
Howrah, in other Municipalities of West Bengal, for
development and proper utilization of such lands. [Para
32] [607-B-C]

F 2.5. The Appellant does not come within the ambit of
any of the definitions under the aforesaid three Acts
having been granted a lease of the structures which had
already been erected on the lands long before the coming
into operation of either the 1949 Act or the 1981 Act or
G even the 2001 Act. Consequently, the provisions of the
West Bengal Premises Tenancy Act, 1956, will not also
be applicable to the Appellant, whose lease stood
excluded from the operation of the aforesaid Act under
Section 3 thereof. Consequently, the Appellant's
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application under Order XLI Rule 27 CPC was quite A
rightly rejected by the High Court. [Para 33] [607-D-F]

Lakshmimoni Das v. State of West Bengal AIR 1987 Cal
326; *Gnan Ranjan Sengupta v. Arun Kumar Bose (1975) 2*
SCC 526; *Astulla v. Sadatu AIR 1918 Cal 809*; *Mahendra*
Nath Mukherjee v. Jogendra Nath Roy Choudhury (2
Calcutta Weekly Notes, 260); *Pabitra Kumar Roy v. Alita*
D'souza (2006) 8 SCC 344: 2006 (6) Suppl. SCR 678 and
Jatadhari Daw vs. Radha Devi 1986 (1) CHN 21 - cited. B

Case Law Reference: C

AIR 1987 Cal 326 Cited Para 14

(1975) 2 SCC 526 Cited Para 14

(2 Calcutta Weekly Notes, 260) Cited Para 23 D

2006 (6) Suppl. SCR 678 Cited Para 23

1986 (1) CHN 21 Cited Para 25

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of 2012. E

From the Judgment and Order dated 16.07.2007 of the
High Court of Calcutta in CS No. 102 of 1994, APDT No. 12
of 2004, APD No. 274 of 2005 and GA No. 2719 of 2006.

Jaideep Gupta, H.K. Puri, Kunal Chatterjee and Priya Puri
for the Appellant. F

Roibat Banerjee, Ashok Matur, K. Singh for the
Respondents. G

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

2. From the materials on record, it appears that premises H

A No. 91, Mahatma Gandhi Road and premises No.6, Sambhu Chatterjee Street, Calcutta, together comprised lands on a portion whereof a building was erected and now known the "Grace Cinema Hall". Out of the said two plots, premises Nos.91-A, Mahatma Gandhi Road and premises No.6A, Sambhu Chatterjee Street were carved out. Out of the said lands, one Atal Coomar Sen was the owner of lands measuring 3 Cottahs 3 Chittacks and 30 Sq. feet, situated at 91-A, Mahatma Gandhi Road, Calcutta, which was leased to one Gunput Rai Bagla and Radha Kissen Bagla with the right to construct a building thereupon, for a period of twenty years commencing from 1st April, 1905. Pursuant to the right granted in the lease, the Baglas constructed a building on the demised premises. On 3rd March, 1908, a registered Agreement was entered into between Atal Coomar Sen, Gunput Rai Bagla and Radha Kissen Bagla and one Cowasji Pallenjee Khatow, whereby the Baglas surrendered their rights for the unexpired period of the lease with regard to the land to Atal Coomar Sen, while the structure standing on the land was sold to Cowasji Pallenjee Khatow. Atal Coomar Sen granted a fresh lease of the land to Cowasji Pallenjee Khatow for 42 years from 1st April, 1908. Atal Coomar Sen died on 5th November, 1927, leaving behind his son Achal Coomar Sen, who sold the said land to Aditendra Nath Mitter, Anitendra Nath Mitter, Ajitendra Nath Mitter, Ashitendra Nath Mitter and Abanitendra Nath Mitter, on 12th May, 1939. On 17th June, 1943, M/s. Moolji Sicka & Company, which had succeeded to the interest of Cowasji Pallenjee Khatow, by a registered Agreement assigned the unexpired portion of the Lease Deed to Chagganlal Baid and Parashmal Kankaria. On 6th October, 1945, Parashmal Kankaria assigned his share in the property in favour of Chagganlal Baid.

3. On 21st Decembr, 1947, the Mitters filed Suit No.22 of 1948 in the Calcutta High Court against Chagganlal Baid and Parashmal Kankaria for their ejection from the suit premises. During the pendency of the said suit, on 15th January, 1958,

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ORS. [ALTAMAS KABIR, J.]

Chagganlal Baid executed six Deeds of Settlement in favour of his six sons in regard to the said property. On 19th September, 1972, Kharag Singh Baid and Barhman Baid as Trustees in the Deed of Settlement dated 15th January, 1958, granted a lease in favour of one Ramdas Bansal for a period of twenty one years commencing from 1st November, 1972, in respect of :

a) House and building standing on 1 bigha 3 cottahs 14 chittacks and 30 sq. feet of land comprising premises No.91, Mahatma Gandhi Road, Calcutta (being the freehold portion) and

b) House and building standing on 3 cottahs 30 sq. feet of land comprised in 91-A, Mahatma Gandhi Road.

4. The said transactions prompted the Mitters to file Suit No.441 of 1973 in the Calcutta High Court against Chagganlal Baid for recovery of possession of the said property. The Respondents herein, in their turn, filed C.S. No.102 of 1994, against the Appellant, Ramdas Bansal, praying for rectification of the misdescription of the property in the Deed of Lease dated 19th September, 1972 and for recovery of possession of the lands in question.

5. It is the specific case of the Appellant in the instant appeal that the property mentioned in the First Schedule to the plaint contained in Part I and Part II is not identical to the area shown in the map annexed to the Deed of Lease. Apart from the above, several other contentions were raised in the written statement filed by the Appellant, namely,

(i) that no notice of eviction, as envisaged under Section 13(6) of the West Bengal Premises Tenancy Act, 1956, had been given before filing of the eviction suit;

(ii) the particulars given in Parts I and II of the First Schedule and the map as Annexure B to the plaint

- A were incorrect;
- (iii) the lease had never been acted upon by the parties and the same was, by necessary implication, cancelled; and
- B (iv) movables indicated in Annexure C to the plaint belong to the Appellant and the question of payment of damages does not, therefore, arise.

C 6. On 15th July, 2003, the learned Single Judge framed issues to go to trial in the suit. After diverse proceedings, the learned Single Judge decreed Suit No.102 of 1994, in favour of the Respondents herein. An appeal was filed by the Appellant herein, against the order of the learned Single Judge in the Calcutta High Court, being APOT No.12 of 2005. On 28th June, 2005, the Division Bench of the High Court stayed the operation of the judgment and order of the learned Single Judge dated 11th April, 2005.

D 7. Nothing further transpired till the month of August, 2006, when the Appellant filed an application under Order XLI Rule 27 of the Code of Civil Procedure ('C.P.C.', for short), being G.A.No.2719 of 2006, in the pending appeal (APOT No.12 of 2005) to bring on record certain documents showing that a portion of the demised property was governed by the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001, which meant that by operation of law the Appellant had become a "Bharatia", of the demised structure on 6A, Sambhu Chatterjee Street, under the Respondents who were already the Thika tenants of the said land. The said application was directed to be taken up along with the Appeal. The Appellant also filed certain additional grounds in support of his claim that he was a Thika tenant in the premises. It was also mentioned that in view of the option clause in the Lease Deed dated 19th September, 1972, the provisions of the proviso to Section 3(2) of the West Bengal Premises Tenancy Act, 1956, would not be attracted to the facts of the case. The appeal was dismissed

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by the High Court by its order dated 16th July, 2007, giving rise to the Special Leave Petition and the Appeal arising therefrom.

8. Appearing for Shri Ramdas Bansal, the Appellant herein, Mr. Jaideep Gupta, learned Senior Advocate, submitted that the question involved in the Appeal was whether a portion of the leased property comprised a Thika Tenancy, and if so, what would be the consequence thereof, vis-à-vis the said portion for which notice under Section 106 of the Transfer of Property Act, 1882, had been given prior to filing of the suit for eviction.

9. Mr. Gupta submitted that prior to 1949, within the municipal limits of Calcutta and Howrah in the State of West Bengal, there existed a category of tenancy known as "Thika Tenancy". Under such system of tenancy, vacant land was leased by the landlord to a tenant with liberty to erect structures thereupon of a temporary nature, which were referred to as "Kutchra Structures". The structures would be owned by the tenant of the land and the tenant was further entitled to grant lease of the structure or portion thereof in favour of sub-tenants. In this kind of tenancy, the tenant of the land was referred to as the "Thika Tenant" and the sub-tenant was referred to as "Bharatia". Such tenancies were unregulated and came to be regulated for the first time by the Calcutta Thika Tenancy Act, 1949, in which a Thika Tenant was described in Sub-Section (5) of Section 2 in the manner following :-

"Section 2(5) - "thika tenant" means any person who holds, whether under a written lease or otherwise, land under another person, and is or but for a special contract would be liable to pay rent, at monthly or any other periodical rate, for the land to that another person and has erected or acquired by purchase or gift any structure on such land for a residential, manufacturing or business purpose and includes the successors in interest of such person, but does not include a person -

A (a) who holds such land under that another person in perpetuity; or

(b) who holds such land under that another person under a registered lease, in which the duration of the lease is expressly stated to be for a period of not less than twelve years; and

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(c) who holds such land under that another person and uses or occupies such land as a khattal."

C 10. In the said Act a Bharatia was described in Sub-Section (1) of Section 2 in the following manner :-

"Section 2 -

(1) "Bharatia" means any person by whom, or on whose account rent is payable for any structure or part of a structure erected by thika tenant in his holding."

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11. Mr. Gupta submitted that the aforesaid Act dealt only with the rights and obligations of the landlord, Thika Tenant and Bharatia, in relation to each other.

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12. In 1981, there were fresh developments in relation to Thika Tenancies in Calcutta with the enactment of the Calcutta Thika and Other Tenancies and Land (Acquisition & Regulation) Act, 1981. The said Act was for the acquisition of the interest of landlords in relation to the lands comprised in Thika Tenancies and certain other tenancies and other lands in Calcutta and Howrah, for development and equitable utilization of such lands. In the 1981 Act, "Thika Tenancy" was defined in Sub-section (8) of Section 3 as follows :-

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G "Section 3 -

(8) "thika tenant" means any person who occupies, whether under a written lease or otherwise, land under another person, and is or but for a special contract would be liable to pay rent, at a monthly or at any other periodical rate,

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for that land to that another person and has erected or
acquired by purchase or gift any structure on such land for
residential, manufacturing or business purpose and
includes successors-in-interest for such person." A

13. As may be noticed in the definition of Thika Tenancy
in the 1981 Act, clauses (a), (b) and (c) of Sub-Section (5) of
Section 2 of the 1949 Act were omitted which had the effect of
including the said lands described therein within the ambit of
Thika Tenancies under the 1981 Act. Consequently, the
definition of "Bharatia" in Sub-Section (1) of Section 3 was also
amended in the 1981 Act to read as follows :- B C

"Section 3 -

(1) "Bharatia" means any person by whom, or on whose
account, rent is payable for any structure or part thereof,
owned by thika tenant or tenant of other lands in his
holdings or by a landlord in a bustee or his khas land." D

14. Mr. Gupta urged that in several judgments delivered
by the Calcutta High Court, it was held that prior to coming into
force of the Acquisition Act of 1981, only those tenancies where
Kutcha structures had been erected by the Thika Tenant would
be considered to be a Thika Tenancy. Learned counsel
submitted that this proposition had never been decided by this
Court despite the fact that the State of West Bengal had
preferred an appeal in the case of *Lakshmimoni Das Vs. State*
of West Bengal [AIR 1987 Cal 326]. The Appeal was not,
however, pursued by the State of West Bengal because it
subsequently amended the Acquisition Act of 1981, once in
1993 and again in 2001, as a result whereof the decision in
Lakshmimoni Das case (supra) ceased to have any effect. E F G
According to Mr. Gupta, the subsequent amendments of 1993
and 2001 have been challenged in the High Court, but the matter
is yet to be decided. Mr. Gupta urged that the interpretation
given by the High Court to the word "structure" to mean Kutcha
structures only, does not appear to be sound and is contrary H

A to a plain reading of the Section. Mr. Gupta submitted that it is
a well-settled principle of interpretation that when the meaning
of a provision in a Statute is clear from a plain reading thereof,
no other interpretation ought to be given to the same. Mr. Gupta
pointed out that in the context of this very Act, this Court in *Gnan*
B *Ranjan Sengupta Vs. Arun Kumar Bose* [(1975) 2 SCC 526]
had observed that since the legislation is a beneficial
legislation, nothing must be read into such definition that is not
expressly made a part thereof.

C 15. Mr. Gupta further submitted that the interpretation which
had been put by the High Court on the definition of Thika
Tenancy must be held to have been impliedly set aside, since
the law itself had been amended with retrospective effect from
18th February, 1982, when the 1981 Act was brought into effect.
D It was submitted that after the amendment, the Controller of
Thika Tenancy has consistently included permanent "Pucca
Structures" within the definition of Thika Tenancy, since the
impact of the earlier judgments had been taken away by the
amendments. According to Mr. Gupta, it can no longer be said
that a Thika Tenant must be the owner of a Kutcha structure
E alone. Reference was also made to the changes in the definition
of "Thika Tenancy" in the 1981 Act, whereby various types of
tenancies, which had previously been omitted from the
definition, were now brought within the ambit of such tenancies.
F In this regard, Mr. Gupta laid special stress on the fact that in
the definition of "Thika Tenanvu" under the 1949 Act, lands held
in lease for over 12 years were omitted from its purview,
whereas in the 1981 Act such exclusion was omitted, thereby
bringing even such tenancies on lease beyond 12 years within
the purview and ambit of "Thika Tenancies" and as a further
G consequence by virtue of Section 5 of the 1981 Act, even
leases held for periods beyond 12 years came to be vested in
the State free from all encumbrances. On account of such
vesting, M/s. Kharag Singh Baid & others became Thika
H Tenants directly under the State of West Bengal and Ramdas
Bansal became a Bharatia within the meaning of the Vesting

Act. Mr. Gupta submitted that the further consequence of the above is that the relationship between the Thika Tenant and Bharatia came to be governed by the provisions of the West Bengal Premises Tenancy Act, 1956. A

16. Mr. Gupta submitted that on account of the change in the legal equations after the enactment of the 1981 Vesting Act, a portion of the suit premises had definitely vested, insofar as the interest of the landlord was concerned, in the State of West Bengal with effect from 8th February, 1982 and M/s Kharag Singh Baid & others, therefore, became tenants directly under the State of West Bengal, subject to the provisions of the Vesting Act, and Ramdas Bansal became a Bharatia under them within the meaning of the said Act. Mr. Gupta urged that as a result of the above changes, the relationship between the parties would no longer be governed by the provisions of the Transfer of Property Act and the Appellant could now be evicted only on the grounds set out in Section 13 of the West Bengal Premises Tenancy Act, 1956. It was submitted that none of the grounds on which eviction could be ordered under the aforesaid Act had, in fact, been pleaded or proved. The suit proceeds on the basis that the relationship between the parties continued to be governed by the provisions of the Transfer of Property Act, 1882, and that the Appellant was liable to be evicted by efflux of time on the expiry of the period mentioned in the lease. Mr. Gupta urged that the land in question has, in fact, been classified by the Thika Controller as a Thika Tenancy and has, therefore, vested in the State of West Bengal. B
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17. Mr. Gupta submitted that the aforesaid question as to whether the lands did vest in the State of West Bengal in 1982 arises in the context of an application made under Order XLI Rule 27 of the Code of Civil Procedure by the Appellant. The High Court summarily dismissed the said application on the erroneous basis that M/s Kharag Singh Baid & others did not acquire any title to the structures, but merely got a right of enjoyment from the owners. Mr. Gupta submitted that the rejection of the Appellant's application under Order XLI Rule 27 G
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- A C.P.C. was erroneous in view of the changes in the law which had taken place since the filing of the suit and its pendency in the Courts. Mr. Gupta submitted that in view of the coming into operation of the 1981 Act and the vesting provisions contained therein, the Courts were required to consider the matter differently from what existed at the time of filing of the plaint.

18. Mr. Gupta lastly submitted that one of the prayers made in the suit filed by the Respondents is that the description of the property in the schedule to the lease is different from the description of the property in the schedule to the plaint, as a result whereof one of the express prayers in the suit was for leave to rectify the schedule to the lease on the ground of mutual mistake. According to Mr. Gupta, the said contention and prayer of the Respondents was clearly barred by limitation, since the suit for rectification had been instituted more than twenty one years after the execution of the lease. In this connection, Mr. Gupta submitted that the decision in *Astulla Vs. Sadatu* [AIR 1918 Cal 809] has no application to the facts of the present case, as the principle laid down therein was totally different and is incapable of being compared with the existing law. Mr. Gupta also denied the applicability of the doctrine of estoppel as contained in Section 116 of the Evidence Act on the submission that such estoppel operates and is available only at the beginning of a tenancy and that it is well-settled that if since the date of tenancy the title of the landlord comes to an end, the doctrine of tenant's estoppel can no longer arise.

19. Mr. Gupta urged that not only was the entire position altered with the coming into operation of the 1981 Vesting Act, but the equation between M/s Kharag Singh Baid & others and Ramdas Bansal underwent a sea change, in the context whereof the application filed on behalf of the Appellant under Order XLI Rule 27 CPC ought to have been allowed. He further submitted that the judgment of the High Court was, therefore, erroneous and was liable to be set aside.

20. On the other hand, Mr. Ahin Chowdhury, learned Senior

Advocate, appearing for the Respondents, contended that the Lease which had been granted by the Respondent, Kharag Singh Baid, in favour of the Appellant, Ramdas Bansal, was for a period of twenty one years commencing from 1st November, 1972. Since, after the expiry of the full term of the lease, the Appellant refused to hand back possession of the leasehold premises, wherein Grace Cinema Hall was situated, the Respondents were compelled to file the suit for recovery of the suit premises. Mr. Chowdhury urged that at the time of trial of the suit, no contention had been raised on behalf of the Appellant that the tenancy was either a Thika Tenancy or that he was a monthly tenant and enjoyed the protection of the West Bengal Premises Tenancy Act, 1956. Mr. Chowdhury submitted that such a point was taken for the first time in regard to 3 Cottahs out of the entire suit premises comprising about 19 Cottahs, before the Division Bench which held that the question of Thika Tenancy did not arise in the present case, since all the constructions had been raised before the Calcutta Thika Tenancy Act, 1949, came into operation. The Division Bench rejected the application made under Order XLI Rule 27 C.P.C., on the ground that none of the conditions of the said provisions had been satisfied.

21. Mr. Chowdhury submitted that the first contention before the Trial Court was with regard to the description and identity of the demised property. It was urged that confusion was sought to be created by the Defendant in the suit by contending that the Respondents were not entitled to relief, inasmuch as, they were seeking relief in a property which was different from the property mentioned in the Lease Deed. However, both the Trial Court, as well as the Division Bench, held that in this case there was no difficulty at all in identifying the property, inasmuch as, what was leased out by the Respondents to the Appellant was the Grace Cinema Hall and what was to be recovered by the Respondents in the suit was also the said Cinema Hall and nothing else.

22. Mr. Chowdhury submitted that the Appellant had

A himself stated in Paragraph 2 of his Written Statement that he
was a monthly tenant of the very same property situated at 91-
A, Mahatma Gandhi Road, Calcutta, and a portion of 6A,
Sambhu Chatterjee Street, Calcutta, under the Respondents.
Furthermore, in his evidence-in-chief, the Appellant had stated
B that the property of which he was a tenant, was built on the
premises which comprised 91-A, Mahatma Gandhi Road,
Calcutta and a portion of 6A, Sambhu Chatterjee Street,
C Calcutta. He further submitted that the building which had been
constructed on premises No.91-A, Mahatma Gandhi Road,
Calcutta, and a portion of 6A, Sambhu Chatterjee Street,
D Calcutta, was inseparable and a Cinema Hall was housed
therein. Mr. Chowdhury urged that the Trial Court had held that
there was no confusion in the minds of the parties with regard
to the identity of the demised premises and that the Appellant
had not disputed the execution of the Lease Deed. There was,
E therefore, no difficulty in identification of the subject matter of
the suit. Mr. Chowdhury submitted that there was an obvious
mistake with regard to the description of the suit premises in
respect whereof rectification had been sought. The premises
on which Grace Cinema always stood, was 91-A, Mahatma
Gandhi Road and 6A, Sambhu Chatterjee Street and the same
building covered both the plots and it was nobody's case that
the possession of the Appellant herein was relatable to any
other transaction apart from the lease dated 19th September,
F 1972. Mr. Chowdhury submitted that the Trial Court had very
aptly recorded that after enjoying the fruits of the lease, the
Appellant herein had wanted the Court to disregard the Deed
of Lease because, according to the Appellant, it related to
some other premises.

G 23. Mr. Chowdhury submitted that one of the other points
which had been raised by the Appellant for determination before
the Trial Court was that the Respondent was not entitled to have
the Lease deed rectified, since the suit for rectification was
barred by limitation. It was submitted that the said objection was
H considered and rejected by the Trial Court, since the suit was

not one for rectification but for recovery of possession of the demised property after expiry of the period of the lease. Learned counsel submitted that it was not even necessary for the Respondent to expressly pray for a decree for rectification and even without such a prayer the Court could pass a decree for eviction in respect of the property which was demised. It was submitted that it was within the Court's domain to construe as to which premises had been demised and for what term and on what conditions. According to Mr. Chowdhury, the bar of limitation could be raised only if the Respondent had come with a prayer for rectification of the document simplicitor. However, the primary relief sought for by the Respondents was for recovery of possession and rectification was sought as an incidental relief. Mr. Chowdhury submitted that as early as in the case of *Mahendra Nath Mukherjee Vs. Jogendra Nath Roy Choudhury* (2 Calcutta Weekly Notes, 260), the Calcutta High Court had held that title could be established without rectification of the instrument itself, even though the time to secure rectification of the instrument had elapsed. Mr. Chowdhury submitted that it had been consistently held by the Courts that if in a plaint a prayer for possession of the property or for declaration of title is made, rectification is only a formality and incidental to the relief granted. It was submitted that, in any event, the point relating to limitation had not been seriously urged before the Division Bench of the High Court. Mr. Chowdhury submitted that the only other point argued before the Trial Court, but not before the Division Bench, was that the lease was a precarious lease since it had an option clause, which entitled the Appellant to protection under Section 3 of the West Bengal Premises Tenancy Act, 1956. It was submitted that the said contention had been rejected by the Trial Court. Mr. Chowdhury submitted that in *Pabitra Kumar Roy Vs. Alita D'souza* [(2006) 8 SCC 344], it was held that the law was clear that a Lease Deed for a period of 20 years or more would stand excluded from the operation of the 1956 Act, unless the same was terminable before its expiration at the option of the landlord or of the tenant. After the lease was allowed to run its

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A full course, both the lease and the conditions contained therein would come to an end and would cease to be operative and the clause for prior determination would no longer be available as a defence against eviction. The Trial Court, therefore, held that the contention regarding the sooner determination clause
 B would not be of any help to the Appellant in the instant case, since the lease had run its full course and this point of precariousness was not pressed before the Division Bench.

24. Mr. Chowdhury submitted that the only other point
 C which was canvassed before the Division Bench and not before the Trial Court was the point relating to Thika Tenancy. The learned counsel submitted that the documents which the Appellant had wanted to introduce at the appellate stage had not been produced before the Trial Court. It was also sought to be contended by the Appellant that by operation of the Thika
 D Tenancy Act, Kharag Singh Baid was the Thika Tenant of the land while the Appellant, Ramdas Bansal, was a Bharatia under him and, consequently, was entitled to the protection of the Thika Tenancy Act, 1981, as far as the 3 Cottahs of land comprising 6A, Sambhu Chatterjee Street was concerned.
 E According to Mr. Chowdhury, the provisions of the Thika Tenancy Act were not attracted to the facts of the present case at all, since the Baid never claimed that they were Thika Tenants. On the other hand, the Baid and their predecessors were holding under registered leases and all the Pucca
 F constructions were made before 1949. So the Baid never became Thika Tenants of the land in question at any point of time.

25. Mr. Chowdhury further submitted that it is only on the
 G basis of the documents, which the Appellant had sought to introduce before the Division Bench, that the contention was sought to be raised that by operation of law, the Baid became Thika Tenants and Bansal became a Bharatia in respect of the suit property. Mr. Chowdhury submitted that this contention was
 H rejected since the Calcutta Thika Tenancy Act came into

operation in 1949 and prior thereto it could not be said that either the Respondents had become the Thika Tenants or that the Appellant had become a Bharatia under them. On the other hand, the Baidas came into the picture for the first time in 1949, and could not, therefore, be said to be Thika Tenants. Mr. Chowdhury submitted that there was a fully built-up running Theatre House on the land in question and as had been held in several decisions of the High Court, Thika Tenancy applies only to Kutcha structures. In fact, in 1986 the Calcutta High Court held in *Jatadhari Daw Vs. Radha Devi* [1986 (1) CHN 21], that the expression "structures" in the statute did not include permanent structures and when permanent structures had been raised, such occupation could not be considered to be a Thika Tenancy within the meaning of the 1949 Act. Mr. Chowdhury submitted that the said interpretation had been approved in the judgment of the Special Bench of the Calcutta High Court in the case of *Lakshminoni Das* case (supra). It was urged that in the absence of any Kutcha structure on the demised land, the Division Bench of the High Court had rightly decided that no Thika Tenancy was involved in this case. As far as the rejection of the application to adduce additional evidence is concerned, Mr. Chowdhury submitted that the Division Bench of the High Court had rightly rejected the application made under Order XLI Rule 27 CPC, since the Appellant did not fulfil the pre-conditions for asking for such relief. Mr. Chowdhury submitted that all the arguments advanced on behalf of the Appellant were arguments of desperation and the Division Bench had rightly disallowed the Appellant's prayer for retrial of the suit on the basis of the new documents sought to be proffered on behalf of the Respondents. Mr. Chowdhury submitted that the appeal was wholly misconceived and was liable to be dismissed with appropriate costs.

26. As indicated hereinabove, the Respondents had filed Title Suit No.102 of 1994 against the Appellant, inter alia, for

- (i) a decree for vacant possession in respect of the

A suit property comprising the demised premises described in the schedule to the plaint and delineated in the map annexed thereto and marked with the letter 'B'; and

B (ii) if necessary, the mis-description in the lease deed dated 19.9.1972 be rectified so as to reflect the true intention of the parties with regard to the identity of the suit property.

C Such a prayer was made on account of the fact that the description of the suit properties in the plaint did not tally with the description of the property in the Lease Deed itself. While in the Lease Deed, the demised property was described as premises No.91, Mahatma Gandhi Road, Kolkata, in the plaint, the suit property was described as being the property situated D at premises No.91-A, Mahatma Gandhi Road and portion of premises No.6A, Sambhu Chatterjee Street, Kolkata. It is in such context that a separate prayer had been made in the plaint for rectification of the schedule in the Deed of lease, if E necessary. The said two reliefs were more or less connected with each other, but even without such rectification, it was possible for the decree to be executed.

F 27. The said question has been dealt with in detail both by the learned Single Judge, as well as the Division Bench of the High Court, and both the Courts had held that the said issue was not of much consequence, since, as is evident from paragraph 2 of the Written Statement, the Appellant herein was fully aware at the time of granting of the lease that the demised premises consisted of a building constructed on the premises which consisted of both premises No.91-A, Mahatma Gandhi G Road, as well as 6-A, Sambhu Chatterjee Street, and that the said two premises were inseparable. Both the Courts, accordingly, rejected the plea of the Appellant that the suit was not maintainable as the description of the suit property did not tally with the description of the property in the lease deed. H Consequently, both the Courts allowed the prayer of the

Respondent/Plaintiff to rectify the schedule of the lease deed to correct the mis-description of the suit property therein, as there was no doubt as to the identity of the suit property on which Grace Cinema Hall was situate, and the building erected on the two plots was inseparable. A

28. In the facts of the case, we see no reason to interfere with the decision of the High Court in this regard. B

29. The point relating to a portion of the demised premises being a Thika Tenancy and thus covered by the provisions of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, was raised before the Division Bench of the High Court, which, however, negated such contention upon holding that the Respondents were not Thika Tenants since the building had been constructed on the land in question before the Calcutta Thika Tenancy Act, 1949, came into operation. Placing reliance on the doctrine of separation of possession from ownership, the Division Bench further held that the Appellant had failed to establish that the Respondents or their predecessors-in-interest were Thika Tenants of the suit property. The Division Bench also held that even after execution of the lease deed in favour of the Respondents, the lessor remained the owner of the property, whereas the Respondents' father merely got the right to enjoyment of the property and could not, therefore, be said to be the Thika Tenant within the meaning of the definition given in the subsequent legislations. On such reasoning, the Division Bench rejected the application filed on behalf of the Appellant under Order XLI Rule 27 CPC to bring on record subsequent facts to prove his status as a tenant of a portion of the structure in relation to which the Appellant had acquired the status of a Bharatia after the acquisition of Thika Tenancies under the 1981 Act. C D E F G

30. The law relating to Thika Tenancies in relation to Calcutta and Howrah, as it existed prior to the Acquisition Act of 1981, was the Calcutta Thika Tenancy Act, 1949, which excluded leases of land exceeding 12 years' duration. The H

A instant lease being one for 20 years, the same stood excluded from the operation of the 1949 Act, when it was executed. In any event, having been granted a lease for a period of twenty one years in respect of the building standing on the suit premises, comprising premises No.91-A, Mahatma Gandhi
 B Road and 6-A, Sambhu Chatterjee Street, Kolkata, in which the Grace Cinema was located, the Appellant could never claim to be a Thika Tenant in respect of the suit premises as defined either under the Calcutta Thika Tenancy Act, the Calcutta Thika and other Tenancies and Lands (Acquisition and Regulation)
 C Act, 1981, as well as The West Bengal (Acquisition and Regulation) Act, 2001.

31. As has been indicated hereinbefore, a "Thika Tenant" under the Calcutta Thika Tenancy Act, 1949, was defined to mean any person who, inter alia, held, whether under a written
 D lease or otherwise, land under another person and has erected or acquired by purchase or gift any structure on such land for a residential, manufacturing or business purpose and includes the successors-in-interest of such person, except for the exceptions indicated in Sub-Section (5) of Section 2 of the said Act. As
 E also indicated hereinbefore, the aforesaid Act stood repealed by the Calcutta Thika Tenancy and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981, which provided for the acquisition of interest of landlords in respect of lands comprised in Thika Tenancies and certain other tenancies and other lands
 F in Kolkata and Howrah for development and equitable utilization of such lands. In the said Act, a "Thika Tenant" has been defined to mean any person who occupies, whether under a written lease or otherwise land under another person and is or but for a special contract liable to pay rent, at a monthly or
 G periodical rate, for the land to the said person and has erected or acquired by purchase or gift any structure on such land for residential, manufacturing or business purpose and includes the successors-in-interest of such person. What is significant in the definition of Thika Tenant under the 1981 Act is the persons
 H who had been excluded from the definition in the 1949 Act, were

also brought within the ambit of the 1981 Act. Consequently, certain lands which were earlier excluded from the definition of "Thika Tenancy", were now brought within its ambit. A

32. The circumstances were further altered with the enactment of the West Bengal Thika Tenancy (Acquisition & Regulation) Act, 2001, to provide for the acquisition of interests of landlords in respect of lands comprised in Thika Tenancies and certain other tenancies in Kolkata and Howrah and other Municipalities of West Bengal for development and equitable utilization of such lands with a view to sub-serve the common good. It is clear that the main object of the 2001 Act was to extend the acquisition of lands beyond Kolkata and Howrah, in other Municipalities of West Bengal, for development and proper utilization of such lands. B C

33. The Appellant does not come within the ambit of any of the definitions under the aforesaid three Acts having been granted a lease of the structures which had already been erected on the lands long before the coming into operation of either the 1949 Act or the 1981 Act or even the 2001 Act. Consequently, the provisions of the West Bengal Premises Tenancy Act, 1956, will not also be applicable to the Appellant, whose lease stood excluded from the operation of the aforesaid Act under Section 3 thereof. Consequently, the Appellant's application under Order XLI Rule 27 CPC was quite rightly rejected by the High Court. D E F

34. We, therefore, see no reason to interfere with the judgment and order of the Division Bench of the Calcutta High Court impugned in this appeal and the appeal is, accordingly, dismissed with costs assessed at Rs.25,000/- to be paid by the Appellant to the Supreme Court Legal Services Committee. G

B.B.B.

Appeal dismissed.