



West Bengal Form No. 3701

**HIGH COURT FORM No. [J]2**  
**HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE**  
**DISTRICT: SOUTH 24-PARGANAS**

**IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), 2ND**  
**COURT, ALIPORE, SOUTH 24-PARGANAS**

**PRESENT: SMT. JHILOM GUPTA,**  
**CIVIL JUDGE (SR. DIVN.), SOUTH 24-PARGANAS**

**Judgment delivered on the 20<sup>th</sup> day of November, 2024**

**TITLE SUIT-CASE NO.- 39 OF 2000**  
**(COMPUTER REGISTRATION NO. 39/2000)**  
**C.N.R No – WBSP02-000432-2000**

**Ambe Plywoods Private Limited**

**.....Plaintiff**

**VERSUS**

**The Indian Oil Corporation Limited**

**.....Defendant**

**PAGE INDEX**

<b><u>Sl No.</u></b>	<b><u>Particulars</u></b>	<b><u>Page Number</u></b>
A.	Plaint case	1-8
B.	Written Statement of Defendant	8-11
C.	Issues	11
D.	Evidence adduced and documents exhibited	11-13
E.	Decision with reasons	13-41
F.	Order	41-42
<b>Period of disposal : Twenty-four years three months &amp; twenty-two days.</b>		



**DATE INDEX**

<b><u>Sl No.</u></b>	<b><u>Particulars</u></b>	<b><u>Date</u></b>
A.	Suit instituted	28.07.2000
B.	Written Statement filed	23.12.2004
C.	Issues framed	02.02.2006 and 13.04.2007 respectively.
D.	Evidence adduced and documents exhibited on behalf of plaintiff	19.08.2002, 15.01.2007, 07.05.2007, 22.11.2022, 02.02.2023, 24.02.2023, 23.03.2023, 16.08.2023, 30.08.2023, 15.09.2023 and 20.11.2023
E.	Evidence adduced and documents exhibited on behalf of defendant	20.06.2024, 21.06.2024, 30.07.2024 and 18.09.2024
F.	Argument heard	06.11.2024 and 11.11.2024

This suit-case coming on for final hearing on: 06.11.2024 and 11.11.2024 in presence of

Sri Sajal Kumar Das and Smt. Shreya Ghosh Dastidar

...Ld. Advocates for Plaintiff

AND

Smt. Paramita Banerjee and Smt. Subika Paul

...Ld. Advocates for Defendant

having stood for consideration to this day the Court delivered the following judgment.

This is a suit for declaration, recovery of possession and for other reliefs valued at Rs. 31,500/-.

The pleadings of the respective parties are as follows :-



### CASE OF THE PLAINTIFF

1. The case of the plaintiff Ambe Plywoods Private Limited is that in 2014 from one Smt. Rupa Ghosh and Sri Supratik Ghosh it purchased the suit property being premises No.16B, Gurusaday Road, PS Ballygunge now Karaya, Calcutta-19 vide a registered deed of sale being No.11441 for the year 2014. The husband and the father of the vendors to the present plaintiff respectively namely Sri Deba Prasad Ghosh, since deceased, was originally seized and possessed as an absolute owner of all that premises being No.16, Gurusaday Road (Store Road) PS Ballygunge now Karaya, Calcutta-19 within the jurisdiction of this Court.

2. The said deceased Deba Prasad Ghosh granted a lease to the defendant company the Indian Oil Corporation Limited a portion of premises No 16, Gurusaday Road (Store Road) now known and separately renumbered as 16B, Gurusaday, PS Ballygunge now Karaya, Calcutta-19 admeasuring an area of 8 Cottahs more or less by a registered deed of lease dated 21<sup>st</sup> February 1970 for a period of 20 years with an option of renewal for a further period of 10 years commencing on and from 1<sup>st</sup> January, 1970 at a monthly rent of Rs.1,800/- during the first ten years of the said term of 20 years and monthly rent of Rs. 2,000/- during the second ten years and monthly rent of Rs. 2,200/- during the renewal period 10 years payable according to English Calendar. The said lease deed was duly registered with the Sub- Registrar at Sealdah in Book No. 1. Volume No 8 Pages 185 to 198 being No. 297 for the year 1970. The said leasehold portion of the said premises No. 16, Gurusaday Road, Calcutta- 19 now 16B, Gurusaday Road, Calcutta- 19 is the subject matter of the present suit and hereinafter is referred to as the suit premises.

3. The principal relevant terms and condition upon which the said lease was granted under the said lease deed dated 21<sup>st</sup> February 1970 wherein the said predecessor-in-title of the plaintiffs Sri Deba Prasad Ghosh had been described as the Lessor and the defendant had been described as the Lessee are enumerated as hereunder:

a) Lessee shall be entitled to install erect and maintain in upon and underneath



the suit premises Petrol and/or high speed diesel Oil pumps storage tanks service, Lubricating stations roads culverts and other erections ancillary thereto.

b) Lessee shall pay the monthly rent as reserved in the lease deed together with the municipal rates and taxes both owners and occupiers assessment dues and outgoings and pay and discharge all municipal licence fees, storage for explosive licence fees, factory licence fees, insurance premium and all other charges ceases taxes levied as payable to public and local authority in respect of the business to be carried out therein including the bills and repair charges and outgoings in respect of telephone telegram phonogram etc.

c) The Lessee shall not use the suit premises for any particular vacation or manufacturing business not permitted by municipal or other public or authority and will comply with all requisition and demands.

d) Lessee shall take its own separate electric water and sanitation connections and in addition of rent shall pay and discharge the consumption charges and any other cess or outgoings of the suit premises.

e) The lessee shall also be entitled to erect all building structure fixtures and fittings on or upon the suit premises and shall remove and take away all such buildings and structures at the expiration or sooner determination of lease within 60 days thereof. The lessee at its own costs shall erect boundary walls height of 10'ft, or to such height allowable by municipal and explosive rules on the eastern and northern side of the suit premises and shall not demolish the existing boundary wall on the west and the said boundary walls shall belongs to the lessor and the lessee shall not be entitled to remove any part thereof.

f) Lessee shall permit the lessor or his authorized agent to enter into and upon the suit premises on giving 24 hours prior notice to view and examine the state of condition of the suit premises.

g) The lessee shall not use the suit premises in any way so as to create any nuisance and shall liable for the loss and damages caused therein or to the remaining part of the lessors property and to the occupiers thereof due to fire



explosion or any other.

h) If the rent hereby reserved or any part thereof shall be in arrears for a period of 3 months after becoming payable whether demanded or not or if the lessee shall commit breach or fail or neglect to perform or observe the covenants conditions or agreement as contained in lease deed or if the lessee shall go into liquidation then and in that in any of the above cases the lease shall stand determine at the option of the lessor and it shall be lawful for the lessor to re-enter upon the suit premises and /or to take action to repossess and enjoy as in all his former estate and interest by giving a notice in writing of his intention to re-enter.

i) At the expiration of the term of 20 years (i.e. actual period of lease) the lease will be renewed by execution of a further term of 10 years from the expiration of the said terms/ periods in case the lessee shall prior to the expiration at the last mentioned term give to the lessor one calendar month previous notice in writing of their intention to take a renewed lease. The renewed lease will be on a monthly rent of Rs.2,200/- and under and subject to the same covenants conditions as contained in the lease deed.

j) The Lessee shall at the expiration or so sooner determination of term of lease yield up and deliver peaceful and vacant possession of the suit premises and in the event of installation, erection or alteration or substitution have been made thereon and underneath the surface restore the same to their original state and condition. And if the lessee failed to remove such structures etc. within 60 days from the expiry of the lease the same shall belong to the lessor without any claim whatsoever by the lessee and the lessee shall pay compensation for the said period at the rate of rent last paid.

4. The said period of lease in respect of the suit premises expired whereupon the defendant exercised its option to renew the lease for the further period of 10 years as provided in the said lease deed. The said term/period including the renewal period of the lease has also expired with the expiry of 31<sup>st</sup> December 1999 by efflux of time.



5. The said Sri Deba Prasad Ghosh the absolute owner of the premises died on or about 16<sup>th</sup> July 1988 after having made and published his Last Will and Testament dated 18th May 1988 in Bengali language and character appointing his wife Smt. Rupa Ghosh and his son Sri Supratik Ghosh, the vendors of the present plaintiff herein, as the executrix and executor respectively of his Will. The probate of the said Will was duly applied for and granted in favour of the vendors of the present plaintiff by the Hon'ble High Court Calcutta in its testamentary and intestate jurisdiction under Case No.169 of 1988 on 3<sup>rd</sup> October 1988. In the said Will the said deceased Deba Prasad Ghosh duly devised and bequeathed the suit property to the vendors of the present plaintiff. By virtue of the said Will, the said Smt. Rupa Ghosh and Sri Supratik Ghosh, the vendors of the present plaintiff became seized and possessed of or otherwise well and sufficiently became entitled as the absolute owners of the suit premises.

6. The predecessor-in-interest of the present plaintiff duly intimated to the defendant about their ownership in respect of the suit property upon the demise of the said Sri Deba Prasad Ghosh. The present plaintiff also intimated to the defendant the fact of their purchase of the suit property.

7. The predecessor-in-interest of the present plaintiff caused notice dated 20.07.1999 to be served upon the defendant reminding the fact of expiry of lease by efflux of time and calling upon them to quit and vacate the suit premises with the expiry of 31st December 1999, and that in the event of default and failure to vacate the suit property a suit for recovery of possession of the suit premises would be brought against them and the defendant would be liable to pay damages and/or mesne profit at the rate of Rs. 5,000/- per diem on and from 1<sup>st</sup> January 2000 till recovery of vacant possession of the suit premises.

The defendant replied and made correspondence directly and through their lawyer with the predecessor-in interest of the plaintiff. Their lawyer denying to vacate the suit premises on a wrongful plea that the subject site falls under the Calcutta Thika Tenancy Acquisition & Regulation (Amendment) Act, 1981 and that as the matter is pending before the Hon'ble Supreme Court of India for consideration and the order of maintaining status quo as passed on 25.11.1998 is still persisting nothing can be done besides the defendant continuing in possession on



payment of monthly rent by way of cheque, informed the plaintiff that the defendant would continue possession.

The predecessor-in interest of the plaintiffs duly replied and stated that the said order dated 25.11,1998 of the Hon'ble Supreme Court of India does not hold good and applicable so far the subject leasehold property being the suit premises in occupation of the defendant is concerned. He denied all such allegation as contended by the defendant and specifically stated that the subject suit premises for maintaining petrol pump does not at all fall under the purview of Calcutta Thika Tenancy Acquisition & Regulation (Amendment) Act 1981 which question has been decided vividly under several numbers of Judgments and authorities of the court of law including by the Hon'ble Supreme Court of India. Accordingly the contention of the defendant as aforesaid are bogus and not tenable. Further the defendant was liable to remove all its structures fixtures and fittings as erected and installed in the suit premises at the expiration of the term of the lease or within 60 days thereof in default all those building structures and belongings of the suit premises shall be deemed to be the property of the predecessor-in-interest of the present plaintiff and accordingly the defendant will have no right to remove the same rather would be bound to leave the premises keeping the same in as is where is condition.

8. The predecessor-in-interest of the present plaintiff stated that the defendant was liable to vacate the suit premises on the ground of expiry of the period of lease by efflux of time in respect of the suit premises. The predecessor-in-interest of the present plaintiff seek such declaration and eviction of the defendant from this Court.

9. It is the submission of the plaintiff that for the negligence and willful denying to vacate the suit premises even after the expiry of the period of lease under the said lease deed dated 21.02.1970 the defendant should be held trespasser on and from 1<sup>st</sup> January 2000 and should be made liable to pay mesne profit and/or damages @ Rs.5,000/- per day from the date on and from 01.01.2000 till the date of recovery and / or delivery of the vacant possession of the suit premises.

10. The cause of action of the suit as per further submission of the



defendant arose on and from 31<sup>st</sup> December 1999 and all subsequent dates till date at premises No. 16B, Gurusaday Road, P.S. Ballygunge now Karaya, Calcutta-19 within the jurisdiction of this Court.

11. For the purpose of jurisdiction and court fees plaintiff has valued the suit at Rs. 31,500/- being the annual rent in respect of suit premises plus Rs. 5,000/- notionally taken for one day value of mesne profit and/or damages tentatively plus Rs. 100/- for declaration.

12. The plaintiff submitting the above facts has prayed for a decree for declaration that the lease dated 21<sup>st</sup> February 1970 has duly expired, come to an end, determined by efflux of the period of time in respect of the suit premises, a decree for recovery of khas and vacant possession of the suit premises described in the schedule herein below as against the defendant, a decree for mesne profit and/or damages @Rs.5,000/- per day on and from 1st day of January, 2000 till the date of recovery of vacant possession of the suit premises and other reliefs as may be found justified.

#### **CASE OF THE DEFENDANT**

13. Defendant the Indian Oil Corporation Limited by filing written statement through it's authorized agent on 23.12.2004, has contended before dealing with the allegations contained in the suit that-

13.1 On or about 9<sup>th</sup> September, 1980, Calcutta Thika Tenancy (Acquisition and Regulation) Bill, 1980 was introduced before the West Bengal Legislative Assembly and thereafter Bill was referred to the Select Committee. On or about 11<sup>th</sup> March 1981, the Select Committee submitted its report along with certain recommendations. On or about 2<sup>nd</sup> November 1981, the Bill was passed in the Assembly after accepting the recommendations made by the Select Committee and incorporating necessary amendments and thereafter on the same day the bill was first published in the Calcutta Gazette Extra-ordinary. On or about 5<sup>th</sup> May, 1982 Calcutta Thika Tenancy





(Acquisition & Regulation) Rules, 1982 were made and on 31<sup>st</sup> May 1982 the same was published in the Calcutta Gazette Extra Ordinary.

13.2 Upon promulgation of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 (for short “the 1981 Act”) all retail outlet leasehold lands held by the defendant under different leases within the jurisdiction of Calcutta and Howrah, stood acquired and vested in the State of West Bengal w.e.f 18<sup>th</sup> January, 1982.

13.3 On or about 22<sup>nd</sup> November 2002, the Government of West Bengal enacted the West Bengal Thika Tenancy (Acquisition and Regulation ) Act 2001 (for short “the 2001 Act”). By virtue of section 27 of the said 2001 Act, the said 1981 Act had been repealed with retrospective effect. Under provision of the said Act of 2001 and by virtue of its operation all retail outlet leasehold lands held by the defendant under different leases, stood acquired and vested in the State of West Bengal w.e.f 18<sup>th</sup> January, 1982.

14. With reference to the statement made in several paragraphs of the plaint, it is stated that the some of the contents of the said paragraphs are matters of record and some are contrary, inconsistent with the true fact of the case thus are denied.

15. It is stated that the land being 16, Gurusaday Road, at the time of transfer in favour of the defendant was a vacant land. The defendant with the consent of the plaintiffs, being the lessors duly obtained sanction from the Municipal Corporation and constructed structures at the said premises for carrying on business from the said premises.

16. It is stated that after coming into effect of the 1981 Act and the 2001 Act, the said premises in question stood acquired and vested in the State of West Bengal under the provisions of the said Acts and in such circumstances, question of extension of the lease period after 1981 and question of obtaining assent from the plaintiffs for continuance in possession of the land in question did not and does not



arise. It is further stated that in the 2001 Act the status and position of the defendant remained the same as under the 1981 Act. As such the defendant states and submits that the land still stand acquired and vested in the State of West Bengal under Section 4 of the 2001 Act. It is further stated that the Ld. Thika Controller had directed the defendant to file the Form A Return under the provisions of the 2001 Act, since the said premises along with all other leasehold retail outlet lands of the defendant had vested in the State of West Bengal. The defendant in compliance thereon, had duly filed the Form A Return.

17. It is stated that the defendant after the enactment of the 1981 Act, the defendant stopped payment of rent to the plaintiff Mr. Deba Prasad but however later the defendant started paying rent in respect of the said premises under the order of the Hon'ble High Court at Calcutta passed in **W.P.No.1028 of 1983**. All throughout the defendant in compliance with the directions contained in order passed by the Hon'ble High Court at Calcutta duly paid full rent in respect of the said premises to the plaintiffs. However, since the year 2000 the plaintiffs without assigning any reason thereof refused to accept the rent in respect of the said premises. It is stated that as the land has been acquired and vested with the State of West Bengal under Section 4 of 2001 Act with effect from 1982, hence the defendant did not and does not have any liability to pay any rent to the plaintiffs. It is further stated that the defendant was a thika tenant under the Calcutta Thika Tenancy Act,1949, was a thika tenant under the Act of 1981 or amended thereof and presently is a thika tenant under the 2001 Act.

18. Defendant has denied that the plaintiffs had ever served notice dated 20<sup>th</sup> July, 1999 calling upon the defendant to give the peaceful possession of the said premises. It is stated that the plaintiffs did not have any right to issue such alleged notice of eviction as by virtue of the 1981 Act and the 2001 Act, the said premises had already vested with the State of West Bengal.

19. Defendant states that it is not liable to give possession of the said premises to the plaintiffs nor it is in wrongful occupation of the said premises on and from 1<sup>st</sup> January, 2000 nor is liable to pay any damages and mesne profit which have been assessed @ Rs.5,000/- per diem until recovery of possession.



20. Denying each and every contention of the plaintiff, defendant in the end has prayed for dismissal of the suit with exemplary costs.

### **ISSUES**

21. Upon considering the pleadings of both the sides, following issues were framed by the Court on 02.02.2006 and subsequently, one additional issue was framed on 13.04.2007 for effective adjudication of justice :-

1. Is the suit maintainable in present form and prayer ?
2. Have the plaintiffs any cause of action to file the instant suit ?
3. Has the lease created under the lease deed dtd.21.02.1970 in respect of the suit premises expired with the renewal period too by efflux of the period of time stipulated therein ?
4. Is the defendant liable to vacate the suit premises with or without all additions thereto as claimed in plaint ?
5. Are the plaintiffs as absolute owners of the suit premises entitled to the decree for eviction and khas possession against the defendant ?
6. Are the plaintiffs entitled to a decree for mesne profit/damages against the defendant ?
7. To what other relief/reliefs, are the plaintiffs entitled ?
8. Is the suit bad for mis-joinder and non-joinder of the parties ?

### **Evidence Adduced from the side of the plaintiff :**

22. To prove the case, original plaintiff No.2 Sri Supratik Ghosh, authorized representative of present plaintiff company Sri Vishal Jhaharia and valuer of plaintiff company Sri Sarbajit Dutta have given evidence as P.W.-1, P.W.-2 and P.W.-3 respectively. During their evidence following documents were marked



exhibits :-

Sl. No.	Exhibit Number	Description of documents	Date of Admission	Whether admitted with or without objection.
1.	1	Duly attested copy of probated will being P.L.A. No.169 of 1988	19.08.2002	Without objection
2.	2	Certified copy of registered lease deed dtd.21.02.1970	19.08.2002	Without objection
3.	3	Copy of letter dtd.20.07.1999	19.08.2002	Without objection
4.	4	Copy of letter dtd.08.02.2000	19.08.2002	Without objection
5.	5	Copy of letter dtd.26.11.1999	19.08.2002	Without objection
6.	6	Extract copy of board resolution dtd.04.05.2022	02.02.2023	Without objection
7.	7	Original deed of conveyance bearing registration No.11441 for the year 2014	02.02.2023	Without objection
8.	8	Original letter containing two pages	02.02.2023	Without objection
9.	9	Office copy of letter dtd.13.06.2022	02.02.2023	Without objection
10.	10	Report of estimation of the rental value/fair market rate of the property at premises No.16B, Gurusaday Road	30.08.2023	With objection

**Evidence Adduced from the side of the defendant :**

23. To prove the defence case, the constituted attorney of defendant company, namely, Mr. Ajeet Kumar Anurag and authorized representative of company, namely, Mr. Nishant Singh have deposed as DW-1 and DW-2 respectively. During their evidence following documents have been marked exhibit :-



Sl. No.	Exhibit Number	Description of documents	Date of Admission	Whether admitted with or without objection.
1.	A	Letter dtd.15.12.2004 along with annexures	20.06.2024	Without objection
2.	B	Original acknowledged copy of letter dtd.05.02.2013	20.06.2024	Without objection
3.	C	Original acknowledged copy of letter dtd.24.02.2013	20.06.2024	Without objection
4.	D	Original special power of attorney	20.06.2024	Without objection
5.	E	authorization letter dtd. 25.07.2024	30.07.2024	With objection
6.	F	General Power of Attorney dtd.02.08.2022	30.07.2024	With objection
7.	G	Extract of minutes of Board Resolution dtd. 28.08.2017	30.07.2024	With objection

#### **DECISION WITH REASONS**

##### **Issued No.1 (Is the suit maintainable in present form and prayer ?)**

24. The defendant at the very outset has challenged the maintainability of the suit in the present forum on the ground that the suit property is a thika property and the defendant is a thika tenant in respect of the same, hence the present forum being a civil Court has no jurisdiction to try the dispute raised by the plaintiff as per Thika Tenancy Act enacted and amended from time to time.

The submission of the defendant is that if the Court is to decide issue No. 5 whether plaintiff is the absolute owner of the suit premises entitled to the decree for eviction and khas possession of the said premises against the defendant then the Court will have to come to the conclusion that the suit property is not a thika property and that the defendant is not a thika tenant thereto. But the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 and all subsequent Thika Acts on the subject specifically bar the jurisdiction of Civil Court to deal with the



matter which concerns thika tenancy. Hence the suit filed by the plaintiff praying for the relief against the defendant is not maintainable in this Court.

25. Ld. Advocate for the plaintiff has argued that the argument of the defendant that since Court cannot decide whether defendant is a thika tenant in respect of the suit property it is not possible for the Court to decide whether absolute ownership of the property lies with the plaintiff, is absolutely baseless, erroneous, misleading argument in the light of the settled principle of law and the evidence on record. The onus was on the defendant to prove that the defendant was/is a thika tenant on the basis of contemporaneous documents. Since the defendant could not produce any document or order of the Thika Controller to show that the defendant has been declared as a thika tenant, the defendant basically has no legal right to stay in the suit property as the lease granted in it's favour by the predecessor-in-interest of the vendors of the plaintiff to enjoy the property has expired by efflux of time in December, 1999. The law of thika tenancy is clear. Thika tenancy does not consider leases for more than 12 years prior to 2000 who have erected pucca structure on a land. Hence, the pucca structure raised by the defendant on the suit property under a lease for about 30 years can never come under Thika Tenancy Act. Going by the argument of the defendant anybody taking a defence of thika tenancy, without filing any document in support of the contention in any suit for eviction may remain in the suit property years after years completely depriving the landlords from enjoying it's own property. The defendant purposely has not moved any application before the Thika Controller to get its right adjudicated since the year 2015 as the defendant was well aware of the settled position of law on the subject. The defendant wanted to stay in the suit property in the guise of claiming itself a thika tenant without any supporting evidence or materials, hence it did not pursue it's claim with the Thika Controller for declaring it as a thika tenant. Therefore, if the defendant petrol pump does not get the title of the thika tenancy adjudicated by the Thika Controller for several years, the defendant shall remain in possession of the plaintiff's property for those several years claiming that it's application for declaration as thika tenant is pending with the Thika Controller and no relief therefore can be given to the plaintiff for eviction of the said defendant from the suit property. This frivolous argument of the defendant is required to be discarded. The right to adjudicate the dispute raised by the plaintiff falls well within the jurisdiction of this Court since the suit property is not a thika property and the defendant is not a thika tenant thereto. Without adhering to the submission of the defendant Court should proceed to scan



the evidence on record to find out whether decree of eviction as prayed by the plaintiff against the defendant can be given as per law.

26. It is a fact that Thika Tenancy Acts specifically bar the jurisdiction of the civil court to decide and to deal with, any question, or to determine any matter, which, by or under the Act, is required to be, or has been, decided or dealt with, or which is to be, or has been, determined, by the Controller or the Appellate or other authority specified in the provision of the Act. Thus, Court would definitely not take any attempt to determine any matter which exclusively falls within the jurisdiction of the Thika Controller or shall it assume any power of any authority to adjudicate any such question which is solely determinable by any special authority.

Court in the subsequent process of scanning the evidence and argument of the contesting parties will only try to ascertain what is the defence of the defendant regarding the relief claimed by the plaintiff against it, whether the defendant is already a declared thika tenant or it's prayer to declare it as a thika tenant pending before the proper authority has really any merit under the prevailing law on the subject. If it is found that the defendant has already been declared as a thika tenant by the competent authority in respect of the suit premises then the Court will definitely lay off it's hand from proceeding further with the relief claimed by the plaintiff, even if it is found that the defendant has sufficient grounds to have it declared as a thika tenant, subject to the provision of the prevailing law, by the competent authority then also Court will remain abstain from dealing with the issue raised by the plaintiff against the defendant.

27. To make it understood why the Court is saying that it is not interfering with the jurisdiction of any other's authority, I will like to categorically mention what the defendant has argued in support of his case.

- The defendant has claimed that Shri Deba Prasad Ghosh who was the original owner of the suit property had leased out vacant land being 16, Gurusaday Road, Ballygunge, Kolkata -700019 to the defendant in the year 1970 vide lease deed dated 21.02.1970 for a period of 20 years with an option of renewal for a further period of ten years.



- The defendant Indian Oil Corporation Ltd with due consent of the original plaintiffs obtained sanction from the Municipal Corporation and other authorities and constructed structures at the suit premises for carrying on business on the same. Such structure was built at the cost and expenses of Indian Oil Corporation Ltd and belongs to the defendant.
- Defendant has referred clause (c) of the agreement where it is stated that in the event if the demised premises or any portion thereof being taken up or any portion thereof is acquired for set back or otherwise by any authority whomsoever the Lessee shall be entitled to receive and to be paid compensation in respect of the Lessee's structures or erection standing thereon and the Lessor shall be entitled to the compensation for the land as owner in accordance with law and rent payable in respect of the demised premises.
- After the death of Shri Deba Prasad Ghosh the suit premises had devolved upon the original plaintiffs by virtue of a Will.
- Upon promulgation of the Calcutta Thika Tenancy (Acquisition and Regulation) Act 1981 all retail outlet on lease hold lands held by the defendant and other oil marketing companies under different leases within the jurisdiction of Calcutta and Howrah, **stood acquired and vested in the state of West Bengal with effect from 18-01-1982.**
- On 03.07.1983 a writ was filed by the defendant before the Hon'ble High Court at Calcutta challenging the vires of the 1981 Act being W.P No. 1028 of 1983 wherein Shri Deba Prasad Ghosh was respondent no. 44.
- On 28.11.1983 order was passed in W.P No. 1028 of 1983 wherein the Hon'ble High Court had directed respondent not to interfere or take any steps against the possession of the defendant nor transfer or dispose of the suit premises.
- In violation of the said order dated 28.11.1983 vendors of the present plaintiff transferred the suit premises in favour of the plaintiff in 2014 beyond knowledge of the defendant. The said transfer, as per submission of the defendant was **void since no ownership of the suit premises was with the plaintiff rather was with the State on the date of such transfer.** Moreover, the original plaintiffs continued to accept rent from the defendant even after the purported transfer of the suit premises in favour of the plaintiff. In the said premises on 28.07.2000 the instant suit was filed by Smt. Rupa Ghosh the w/o- Shri Deba Prasad Ghosh and Shri Supratik





Ghosh, s/o- Shri Deba Prasad Ghosh (original plaintiff) seeking ejection of the defendant from the suit premises and also for certain declaration in respect of lease deed dated 19.02.1970 alleging that the said deed had expired by influx of time.

- Thereafter, the West Bengal Thika Tenancy (Acquisition and Regulation) Act of 2001 was enacted and by virtue of Sec. 27 of the Act, the Act of 1981 was repealed with retrospective effect.
- By S. 7 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 the Ld. Tribunal has been bestowed with all jurisdiction, power and authority which are exercisable by any Court, for adjudication or trial of disputes and applications relating to land reforms and matters connected there with or incidental thereto and other matters arising out of any provisions of specified Act. Thus, for adjudication of the dispute which touches any provision of a specified Act, plaintiff must have approached the Tribunal at the first instance as all other Civil Courts have lost the power and jurisdiction to entertain such dispute. (ref: **Indian Oil Corporation Ltd. Vs. Anchit Agarwal , 2022 SCC Online Calcutta 1870, L. Chandra Kumar Vs. Union of India (1997) 3 SCC 261, State of West Bengal Vs. Ashis Kumar Roy (2005) 10 SCC 110**).
- On 20.12.2004 defendant submitted Form 'A' under the provision of R- 3(a) of the West Bengal Thika Tenancy (Acquisition and Regulation) Rules 2004 along with a copy of the lease deed, before the Ld. Thika Controller to occupy the said premises directly under the State of West Bengal. The said Form A has been marked as Exbt. A.
- On 31.12.2012 rent of Rs. 19,33,253/-, Rs. 10,37,787/- as principal amount and Rs. 8,45,566/- as interest up to 31.12.2012 has been deposited by the defendant with the office of the Ld. Thika Controller.
- **On 05-02-2013 letter was issued by the defendant to the Regional Thika Controller by which ad hoc payment was made for empanelment of Engineer Service Station, the petrol pump running at the suit premises, under Thika Tenancy Act from 18.01.1982 to 31.12.2012.** The said letter has been marked Exbt. C.
- Vide certificate dated 27.08.2024 S.B.I, Esplanade Branch has confirmed that the aforementioned amount has been deposited under T.R – 7/ Rent Control / Thika tenancy on 31.12.2012 under Journal No. 0388672935 and 038801165 and Challan



Serial No. 00683 and 00684 respectively.

- The matter pending before the Hon'ble Court stopped being listed on and from 20-09-2011 till October -2019 when RTI application was filed by the defendant and the instant suit began to be listed on a regular basis.
- An application u/S 5 (3) of the Thika Tenancy Act is already pending before the Ld. Thika Controller on being filed by the defendant.
- **The suit premises along with the interest of the original plaintiff and the present plaintiffs have already been vested with the state of West Bengal and the defendant is a Thika Tenant under the State. There is no relationship between the original plaintiff or the present plaintiff and the defendant.**

28. Thus gist of the defendant's argument is two fold. On the one hand the defendant is saying that it became a thika tenant in respect of the suit premises upon promalgamation of the Calcutta Thika Tenancy (Acquisition and Regulation) Act 1981 and thereafter under the West Bengal Thika Tenancy (Acquisition and Regulation) Act of 2001 with retrospective effect, on the other hand it is saying that on 20.12.2004 it has submitted Form 'A' under the provision of R- 3(a) of the West Bengal Thika Tenancy (Acquisition and Regulation) Rules 2004 along with a copy of the lease deed, before the Ld. Thika Controller to occupy the said premises as thika tenant directly under the State of West Bengal and nine years thereafter on 05.02.13 it has issued two letters to the Regional Thika Controller for empanelment of Engineer Service Station which is the outlet of the defendant running at the suit premises under the Thika Tenancy Act from 18.01.1982 to 31.12.12.

The second submission of the defendant clearly indicates that though the suit property allegedly had vested with the State of West Bengal by virtue of S. 5 of the Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act of 1981 (*the words 'the Calcutta Thika Tenancy' has been amended by W.B. Act 21 of 1993*) with the coming into force of the Act on 18.01.1982 the defendant did not take any steps to comply R. 3 of the Calcutta Thika Tenancy (Acquisition and Regulation) Rules, 1982 at that time and submit Form A within the stipulated time period. After this suit was filed by the plaintiff, the defendant taking the plea that as the West Bengal Thika Tenancy (Acquisition and Regulation) Act of 2001 was enacted and by virtue of Sec. 27 of the Act the Act of 1981 was repealed with



retrospective effect hence on 15.02.2004 the defendant submitted Form A return to the Controller, Calcutta Thika Tenancy, Land & Land Reforms Department (Ext. A). It means from 1981 to 2004 defendant was not a declared thika tenant under the State of West Bengal. For the sake of argument if it is accepted for a while that the suit premises had vested with the State and the defendant became the thika tenant under the State in respect of the said premises, then also Court has no document on record to infer that the defendant at that time took any initiative to deposit rent of the suit premises to the State claiming itself a thika tenant.

Be that as it may, submission of the Form- A in February, 2004 perhaps did not work as expected, hence on 05.02.2013 and 24.02.2013 (Ext. B and Ext. C) defendant had to issue two letters to the Regional Thika Controller on payment of certain fees for empanelment of it's outlet at the suit premises Engineer Service Station at 16, Gurusaday Road, Kolkata-700019 under the Thika Tenancy Act from 18.01.1982 to 31.12.2012.

29. From the above facts it is clear that the defendant till today has not been accepted or empaneled as a thika tenant in respect of the suit premises. Thus, the first contention of the defendant that it is a declared thika tenant of the suit premises does not hold good.

30. Before proceeding further with the discussion, I would like to refer S. 5 of the Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act of 1981 and Rule 3 of Calcutta Thika Tenancy (Acquisition and Regulation) Rules, 1982 to understand it in a better way why the defendant has taken the plea of thika tenancy and what the defendant had to do for getting the protection of the concerned Act.

31. **S. 5 of the Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act of 1981** provides that -

With effect from the date of commencement of this Act, the following lands along with the interest of landlords therein shall vest in the State, free from all Encumbrances, namely :-



- (a) lands comprised in and appurtenant to tenancies of thika tenants including open areas, roads, passages, tanks, pools and drains;
- (b) lands comprised in and appurtenant to bustees on khas lands of landlords and lands in slum areas including open areas, roads, passages, tanks, pools and drains;
- (c) other lands not covered by clauses (a) and (b) held under a written lease or otherwise, including open areas, roads, passages, tanks, pools and drains;
- (d) lands held in monthly or other periodical tenancies, whether under a written lease or otherwise, for being used or occupied as khatal:

Provided that such vesting shall not affect in any way the easements, customary rights or other facilities enjoyed by thika tenants, Bharatias and occupiers of land coming within the purview of clauses (c) and (d).

**32. R. 3 of the West Bengal Thika Tenancy (Acquisition and Regulation) Rules, 1982 provides that-**

Every thika tenant and any tenant in respect of other lands which vest under section 5, occupying any land under a landlord on the date of commencement of the Act, shall occupy such land directly under the State on the following terms and conditions :

- (a) every thika tenant, or tenant as the case may be, shall furnish to the Controller a return in Form A showing the particulars of his total land within two hundred and forty days from the date of commencement of the Act. The Controller may, on a written application from such thika tenant or extend the date for furnishing the return by a period not exceeding sixty days :

[Provided that the Controller may, on reasonable grounds, accept any return which may be filed by the thika tenant or tenants after the expiry of the prescribed time-limit.]

- (b) every thika tenant or tenant shall pay to the Controller an annual revenue being not less than what he was paying to the landlord before the coming into force of the Act until the amount of revenue is determined in accordance with the provisions of the West Bengal Land Holding Revenue Act, 1979 (West Bengal Act No. 44 of 1979) read with sub-section (2) of section 26. The annual revenue paid for any



period pending determination of the amount of revenue as aforesaid shall be adjusted against the amount of revenue when determined;

(c) the amount of revenue when determined and the amount of penalty if any, shall be paid in such installment or installments and on such date or dates as the Controller may direct;

(d) any arrear of revenue or installment of revenues or amount of penalty or part thereof shall bear simple interest at the rate of 6 $\frac{1}{4}$  per centum per annum from the date on which the revenue or the installment thereof or the amount of penalty or the part thereof falls due till the date of its payment;

(e) subject to the provisions of the Act and these rules, the arrear of revenue or penalty or part of revenue or penalty shall be recoverable as a public demand;

(f) all cesses, municipal or other local rates or other impositions which are, or may hereafter be, imposed on the land and the buildings or other erections thereon, if any, whether payable by the owner or the occupier, shall be paid by the thika tenant or the tenant, as the case may be;

(g) no remission or reduction of revenue or penalty on any ground whatsoever shall be claimed. The State Government may, however, by notifications remit wholly or in part, for such period as may be specified therein, the revenue or the penalty or the both, payable for the land falling within an area or areas affected by flood or earthquake or any other natural calamity;

(h) the boundaries of the land shall be kept intact and well defined;(i)the land shall be kept free from nuisance, dirt, filth or encroachment;

(j) no part of the land shall be converted into, or used as, a place of religious worship or cremation or burial;

(k) no part of the land shall be used or permitted to be used for any purpose, other than that for which it was occupied on the date of commencement of the Act, or in any manner which renders it unfit for use for the purpose for which it was occupied on such date;

(l) no part of the land shall be used or permitted to be used for any immoral or illegal purposes or in any manner detrimental to public peace or public safety;

(m) the Controller or any officer authorised in this behalf by the State Government



or the Controller may, after giving 24 hours' notice, enter upon the land or any part thereof to inspect and enquire the condition of the land or the buildings or other erections thereon, if any, or inspect and enquire about any building or erection thereon in the course of its construction or making and for all other reasonable purposes;

(n) if there is any breach of, or non-compliance with, any of the terms and conditions as aforesaid or the provisions of the Act or these rules, the thika tenant or the tenant, as the case may be, shall, in addition to any other penalty or disqualification to which he may be subject under the Act or the rules, forfeit his right, of occupation of the land, with effect from the date on which an order in this behalf is made in writing by the Controller after giving him a reasonable opportunity of being heard. Upon such forfeiture, the occupant shall be treated as a trespasser and the Controller or any officer authorised by him may, after giving 3 days' notice, enter the land and the buildings or other erections thereon, if any, and take vacant possession thereof.

33. **The Calcutta Thika Tenancy Act, 1949** was enacted to regulate the law of landlord and tenant in respect of thika tenancies in Calcutta, and to make better provisions relating to the law. The said 1949 Thika Tenancy Act was repealed by the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981. In 1981, there were fresh developments in relation to thika tenancies in Calcutta. The 1981 Act was enacted 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.

34. The said 1981 Thika Tenancy Act has been repealed and replaced by the 2001 Thika Tenancy Act (West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001) with effect from 18.01.1982. Some of the provisions of the 2001 Thika Tenancy Act were amended with effect from 5th October, 2010, by the West Bengal Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 2010.

35. It has already been found, so far the case of the defendant has been discussed, that the defendant till today has not been accepted as thika tenant by the



competent authority. All the documents submitted by the defendant to the Thika Controller are unilateral documents. No assent of the Thika Controller empaneling the defendant as thika tenant is there on the record. In the scenario, question comes by operation of law whether the defendant could be declared as thika tenant by the Thika Controller or if there is any chance of the defendant becoming a thika tenant in respect of the suit property. If it is found that there is any such chance, then the Court will not interfere with the matter further as I have already stated.

36. Now, let us see what fact is there before the Court to infer the chance of the defendant to become a thika tenant.

37. It is an admitted fact of the case that the defendant was inducted in the suit property by way of a lease deed in the year 1970 by the predecessor-in-interest of the vendors of the present plaintiff. After getting the suit property the defendant, as per terms of the deed, constructed a petrol pump at the suit premises and started running it's business. Thus, when Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act of 1981 came into force since 18.01.1982 or the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 was enacted with the retrospective effect from the aforesaid date, over the suit premises there was already a pucca structure of a petrol pump constructed by the defendant at it's own costs with the sanction of the competent authority as per terms of the lease deed. In the scenario question further comes whether the defendant having such a pucca structure on the suit premises could be or can be declared as a thika tenant.

38. The essential ingredient of a thika tenancy is that the land should be owned by a superior landlord, but the structure thereon should be owned by another person in occupation of such land, ordinarily on payment of rent, who may have erected the structure on the land held by him as occupier and/or holder of the land, or acquired the structure by way of gift or purchase.

39. **S. 2 (14) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 defines "Thika tenant".** As per the section "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 any other periodical rate for that land to that another person, and has erected or acquired [by purchase or gift any structure including pucca structure, if any, on such land][*Substituted by section 3(3) of the West Bengal Thika Tenancy (Acquisition and Regulation (Amendment) Act, 2010 (West Bengal Act No. 25 of 2010) (With effect from 1.11.2010) for by purchase or gift any structure on such land.*] for residential, manufacturing or business purpose, and includes the successors-in-interest of such persons but excludes any resident of a structure forfeited to the State under subsection (2) of section 6 of this Act irrespective of the status, he may have enjoyed earlier.

40. Thus, after 1<sup>st</sup> November, 2010, the definition of “thika tenant” includes the owner of a pucca structure, whether the pucca structure has been acquired by gift or purchase, or has been erected by him from his own fund. Defendant cannot take advantage of the definition of thika tenant as amended with effect from 01.11.2010 to declare it having a pucca structure on the suit premises as a thika tenant since 18.01.1982.

41. In the said premises it is to be seen whether at the relevant point of time in 1982 any land having a pucca structure could come under the purview of thika tenancy.

42. The definition of ‘**thika tenant**’ under the **1949 Thika Tenancy Act** expressly excluded a person who held land under another person in perpetuity or a person who held land under another person, under a registered lease, for a period of not less than 12 years, or a person who held land under another person and used or occupied such land as a ‘khatal’. There could only be a ‘thika’ tenancy under the 1949 Act, when the land belonged to one person and the structures thereon to another person. But it had not been stated in the Act what the term “structure” would include.

43. **Section 3(8) of the 1981 Thika Tenancy Act** defined ‘thika tenant’ to mean any person who occupied, whether under a written lease or otherwise, land





under another person, and was, or but for a special contract, would be liable to pay rent at a monthly or at any other periodical rate, for that land to that another person and had erected or acquired by purchase or gift, any structure on such land for residential, manufacturing or business purpose and included successors-in-interest of such person.

44. The definition of 'thika tenant' in the 1981 Act was almost identical to the definition of 'thika tenant' in the 1949 Act, except that, persons holding land in perpetuity, persons holding land under registered lease for a period of not less than 12 years and persons using land for the purpose of khatalas were no longer excluded from the definition of 'thika tenant'.

45. But, again the expression 'structure' was not defined in the Thika Tenancy Act of 1981 vividly so as to include any pucca structure under the purview of thika tenant. But, all along the expression 'structure' had been judicially interpreted to mean a "kuccha" and/or temporary structure. However, a different view was taken by the Hon'ble Supreme Court, by its judgment and order dated 24th February, 2015, in Civil Appeal No. 2402 of 2015 arising out of SLP (C) 8297/2014 (Nemai Chandra Kumar & Ors. Vs. Mani Square Ltd. & Anr.).

46. In 1969 the **Thika Tenancy Act of 1949** was amended to include the definition of 'pucca structure' which was defined to mean any structure constructed mainly of brick, stone or concrete or any combination of these materials.

47. By amendment in 1969, Section 10A was incorporated in the 1949 Thika Tenancy Act. **Section 10A provided that** notwithstanding anything contained in any other law for the time being in force, or any contract, but subject to the provisions of Sub-section (2) and (3), a thika tenant using the land comprised in his holding for a residential purpose, might erect a pucca structure on such land, for such purpose, with the previous permission of the Controller. Sub-section 2 of Section 10A provided that the Controller might grant permission to erect a pucca structure, if the Controller was satisfied that the thika tenant had been using the structure on the land comprised in his holding for a residential purpose, intended to



use the pucca structure to be erected on such land for a similar purpose and had obtained sanction of a building plan to erect the pucca structure from the municipal authorities of the area.

48. Section 10A incorporated in 1969 made it patently clear that a thika tenant using a structure for residential purpose, might erect a pucca structure in place of the existing “kuccha” structure, with permission of the Controller and for similar purpose, that is, residential purpose, subject to sanction of the municipal authorities.

49. Thus, under the 1949 Thika Tenancy Act, no pucca structure for business or manufacturing purpose was either recognized or brought within the purview of thika tenancy.

50. The 1949 Thika Tenancy Act was repealed and replaced by the 1981 Thika Tenancy Act, under which the interests of landlords in lands comprised in thika tenancies, and certain other lands in Calcutta and Howrah, was vested in the State. But "thika tenancy" as defined by the 1949 Thika Tenancy Act as was adopted under the Act of 1981 hence the expression ‘structure’ did not include “pucca structure” by necessary implication under the 1981 Act.

51. The Hon’ble Apex court in the case of **Nemai Chandra Kumar (D) Thr. Lrs. And Others Versus Mani Square Ltd. And Others, Civil Appeal No.2402 pf 2015 decided on 27.07.2022** elaborately discussed whether a permanent structure would come within the purview of the Thika Tenancy Act of 1949, 1981 or 2001. The relevant part of the judgment says that-

“27.1. There are other strong reasons for which too, the successor enactment is required to be taken in aid for construing the provisions of the preceding enactment in the present case. It is a fact that even when the Act of 2001 came into force from 01.03.2003, the vesting of the land comprised in thika tenancies and other land etc. was deemed to have occurred w.e.f. 18.01.1982; that being the very date of enforcement of the Act of 1981. Learned counsel for the respondent No. 1 appears right in his submissions that the Act of 1981 having been simultaneously enacted



while repealing the Act of 1949, it had to be read in conjunction with the preceding enactment and the legislature would be deemed to be aware of the judicial pronouncements as regards the material terms of the Act of 1949 which were, with same frame and phraseology, retained in the new enactment. The decisions referred to by the learned counsel for the respondent No. 1 in the cases of Bengal Immunity Co. Ltd. and Gammon India Ltd. (supra) provide enough guide on the principle that repeal and simultaneous re-enactment is to be considered as reaffirmation of the old law. The submission on behalf of the appellants and the State, that the interpretations put to the expression “any structure”, as occurring in relation to the Act of 1949, cannot be imported for the purpose of the interpretation of the same expression in similar enactment with similar phraseology, which was made in replacement of the earlier one, is required to be rejected. The exclusion aspects of the Act of 1949 had, of course, not been continued in the Act of 1981 but the basic elements for a tenancy to become thika tenancy remained the same namely, requirement of payment of rent and construction/acquisition of any structure thereat by the tenant. There is nothing in the Act of 1981 for which the interpretation of the expression “any structure” could have been made different than the interpretation of the same expression in regard to the Act of 1949.

28. The suggestion that the expression “any structure”, in its plain meaning ought to be construed as inclusive of all structures whether kutcha or pucca, needs to be rejected for a variety of reasons.

28.1. In the Act of 1949 as originally enacted, even though the expression “any structure” had been used but, it was consistently maintained by the Calcutta High Court with reference to the object and purpose of Act of 1949 and its frame that, the definition of “thika tenant” would not include pucca structure because the enactment was otherwise not dealing with the rights and liabilities of the tenant, for which the provisions of Transfer of Property Act were required to be referred to; and such a proposition was also in accord with Section 2(6) of the Act of 1949; and per Section 108(p) of the Transfer of Property Act, a pucca structure was not permissible. In Jatadhari Daw & Grandsons (supra), the Division Bench of the High Court, even while construing the Act of 1981, proceeded on the same lines and held that the expression “structure” in the statute did not include permanent structure.

28.2. The Full Bench of the High Court in Lakshmimoni Das (supra) meticulously examined variegated aspects of the matter and various provisions of enactments and



also different pronouncements while holding that construction of kutchha structure on the lease hold land was a sine qua non for constituting thika tenancy. We find such interpretation to be in accord with the very object and purpose of these enactments, at least until the enforcement of the Amendment Act of 2010 w.e.f. 01.11.2010; and the submission of learned counsel for the respondent No. 1 based on the doctrine of stare decisis deserves to be accepted that the interpretation of this particular term “any structure”, which has been holding field for more than half a century ought not to be disturbed or unsettled. In Shanker Raju (supra) this Court had held that: -

“10. It is a settled principle of law that a judgment, which has held the field for a long time, should not be unsettled. The doctrine of stare decisis is expressed in the maxim stare decisis et non quieta movere, which means “to stand by decisions and not to disturb what is settled”. Lord Coke aptly described this in his classic English version as “those things which have been so often adjudged ought to rest in peace”. The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible....”

28.3. There are several indications which unfailingly lead to the conclusion that “any structure” which was employed in the Act of 1949 and was further employed in the Act of 1981 and also in the Act of 2001 for the purpose of creation of thika tenancy referred only to kutchha structure until the year 2010. The first and foremost indication comes from the amendment of the Act of 1949 by Act of XXIX of 1969 whereby clause (4a) was inserted to Section 2 and then Section 10A was inserted to the enactment which, in effect, invested a right in the thika tenant to erect a pucca structure when using the land in question for a residential purpose but only with permission of the Controller. If pucca structure was a part of the definition of thika tenant in clause (5) of Section 2, Section 10A was never required to be inserted to the Act of 1949. Then, in the Act of 1981, even when the legislature provided for acquisition of land comprised in thika tenancy and other lands, the principal part of the definition of thika tenant remained the same; only the other three exclusion conditions, as occurring in clause (5) of Section 2 of the Act of 1949 were removed. However, the Act of 1981, as originally enacted, never provided for creation of thika tenancy by the event of tenant erecting or acquiring by purchase or gift, any pucca structure.

28.4. Of course, by amendment of Section 5 by the Amendment Act of 1993, it was introduced that even “other land” under lease could be acquired but, the purpose and



object of the enactment did not provide for such a broad and all-pervading legislative fiat. This aspect of the matter does not require any further elaboration in the present case for the fundamental reason that claim of the appellants had only been of thika tenancy and when they do not answer to the description of thika tenant, there would arise no question of operation of Section 5 of the Act of 1981, whether in its unamended form or in its amended form.

28.5. Significant it is to notice that even in the Act of 2001, as originally enacted, the definition of thika tenancy in clause (14) of Section 2 thereof retained more or less the same expressions as were there in the Act of 1981; and the expression “any structure including pucca structure” came to be inserted to this clause only by the Amendment Act of 2010. Moreover, the Amendment Act of 2010 was given only prospective effect from 01.11.2010 and not the retrospective effect, as was earlier given to the original Section 4 of the Act of 2001. Thus, acquisition of the land comprising thika tenancy with even erection or acquisition of pucca structure by the thika tenant came to be provided for in specific terms by the legislature only from 01.11.2010 and not before. As noticed, before 01.11.2010, so far as the lease in question was concerned, the same had ceased to subsist and there was no existing lease which could have taken the appellants within the frame of thika tenancy on 01.11.2010.

#### **The relevant decisions of Calcutta High Court-**

29. Though a large number of decisions concerning the three enactments in question, more particularly in relation to thika tenancy and the implication of structure on the demised property, have been cited but instead of elongating this discussion with multiple authorities, it appears appropriate to take note of the considerations of the Full Bench of Calcutta High Court in the case of Lakshmimoni Das (supra) wherein the Court dealt with the provisions of the Act of 1981 as originally enacted. Therein, the Full Bench expressed its relevant reasoning and ratio, inter alia, in the following terms: -

“43. Keeping in mind of the principle of interpretation indicated hereinabove, an attempt should be made to ascertain what was the mischief sought to be remedied by the impugned legislation. If the interpretation put forth by Mr. Gupta, the learned Additional Advocate General appearing for the State Respondents is accepted in toto, it appears to us that the same would undoubtedly produce palpable injustice,



anomaly, contradiction and lead to absurd results and in order to avoid such peculiar situation, a reasonable meaning to those words should be given which does not cause any ambiguity and/or absurdity and the mischief sought to be remedied is also properly achieved. In this connection, the title of the impugned Act may supply some guidance to the construction of S. 5 of the impugned Act. Although, the title does not override the plain meaning of the section but in case of ambiguity and doubt, the title serves as a good guideline. The title of the impugned Act only refers to acquisition and regulation of thika tenancy (by repealing the Calcutta Thika Tenancy Act, 1949). Looking into the history of the legislation and purpose of the legislation, it appears to us that the impugned legislation is plainly to abolish the rights of the landlord over the lands held by thika tenants which were so long governed by the provisions of Calcutta Thika Tenancy Act, 1949. The passage quoted from Cooley's 'A Treatise on the Constitutional Limitations' at pages 143 and 149 since referred to by Mr. Pal appearing for some of the petitioners may not be wholly applicable while construing a provision of statute in our country. The legislation in our country is not bound by the title to an Act strictly and the legislature can travel beyond the title but at the same time Constitution makers did not intend that the legislature will pass an altogether different Act under the cover of a title thereby misleading the legislators themselves and also the authority requiring to give assent to the legislation. In our view, it should be the endeavour for the Court to strike a balance by giving a meaning which has connection with the title of the Act and the intention of the legislature and the evil sought to be remedied. At the same time, the Court has to interpret the Act in such a manner so that it may not lead to any destructive result and/or absurd or inconsistent situation. In our view, while interpreting the words "other lands" after the words 'thika tenancy' the legal maxim *eiusdem generis* (of the same kind) and the maxim '*noscitur a sociis*' (a thing is known by its companion) should be borne in mind.

Applying these legal maxims, it appears to us that 'other land' appearing in S. 5 of the impugned Act must mean land falling under the category of thika tenancy land. This general word following a specific word must apply not to different objects of a widely differing character, but something which can be called a class or kind of objects. In this case, from the title, preamble of the Act, the intention of the legislature as also on consideration of the mischief sought to be remedied by the impugned Act it must be held that 'other land' must be land coming within the category of thika tenancy land. If however appears that besides the lands comprising thika tenancies lands used as khatalas and the right, title and interest of landlord in



such khatala are intended to be vested under S. 5. Lands comprising pucca and permanent structures erected by the tenant for user of the land for khatala and lands used for khatala held under a lease for a period beyond twelve years cannot comprise thika tenancy within the meaning of 'thika tenancy' under the Calcutta Thika Tenancy Act. It also appears to us that the expression 'thika tenancy' under the aforesaid Act has been judicially noted in various decisions of this court as referred to by Mr. Pal and it must be accepted that the Legislature is aware of the meaning of such expression and has, therefore, used the expression on the basis of the said accepted meaning. But it appears to us that S. 5 expressly envisages vesting of khatala although all khatala may not conform to 'thika tenancy' within the meaning of thika tenancy under the Calcutta Thika Tenancy Act, 1949 which is repealed by the impugned Act. In view of express reference of khatal without any reservation in S. 5, we are inclined to hold that although the impugned act is essentially a piece of legislation for vesting of thika tenancy lands and temporary or kutcha structures thereon and for regulation of such lands and structures and the title of the Act and the provision for repealing the Calcutta Thika Tenancy Act, 1949 also conform to such intention and purpose of the impugned legislation, khatal lands held on lease even if such lands do not comprise thika tenancy within the meaning of thika tenancy under the Calcutta Thika Tenancy Act also vest under S. 5. It appears to us that most of the khatala comprise kutcha or temporary structure and they also comprise thika tenancies within the meaning of 'thika tenancy' under the said 1949 Act. We may also take judicial notice that in majority cases, thika tenancies comprise bustees and/or slums and the legislature has intended to vest thika tenancies and structures thereon for regulating such thika tenancy lands. It therefore appears to us that with an intention to regulate khatal lands, along with other underdeveloped lands and structures mainly comprising bustees or slums, the legislature has expressly included khatala in S. 5 for the purpose of vesting of such khatala and consequential control and regulation of khatala. We therefore approve the interpretation of S. 5 of the impugned Act as made in the Bench decision of this Court in Jatadhari Daw's case, Appeal No. 239 of 1978 reported in (1986) 1 Cal HN 21. Save as aforesaid, no other land or structure vest under the impugned Act.”

29.1. In the passing, we may also observe that the suggestions made on behalf of the appellants and the State that the decision of Jatadhari Daw & Grandsons (supra) has been set aside by this Court by its order dated 27.10.2004 is not correct as such. By the said order dated 27.10.2004, the matters were remitted to the High Court, particularly in view of subsequent legislations in the form of Amendment Act of



1993 as also the Act of 2001, without this Court having pronounced on the question of law either way. Similarly, the decision in Lakshmimoni Das (supra) has also not been examined on its ratio and merits by this Court earlier.

30. Apart that we have no hesitation in giving our imprimatur to the enunciation aforesaid, we are also at one with the observations of the High Court in the impugned order that even after amendment of the Act of 1981 by the Amendment Act of 1993, vesting indiscriminately of every parcel of let out land, in the broad expression “other land”, could not have been bought about and hence, ultimately this enactment, as such, was given up and was substituted by the Act of 2001.

31. Apart from the aforesaid view taken by us, so far as the present matter is concerned, a fundamental reason operates against the applicability of the Act of 1981. As noticed, after coming into force of the Act of 1981, the same was indeed challenged by the landlord in the High Court and indisputably, operation of the enactment qua the subject property was stayed by the High Court. The correctness or otherwise of the order so passed by the High Court is not a matter of question before us. The fact of the matter remains that the said Act was under total eclipse qua the subject property pursuant to the binding order of the High Court. Therefore, any suggestion about the operation of the said enactment and thereby vesting of the subject property in the State pursuant to Section 5 of the Act of 1981 is rather redundant.

32. Then, the lease in question came to an end on 30.11.1993. Thereafter, the appellants ceased to be persons liable to pay rent at monthly or in any other periodical rate. In that position, they ceased to answer to the definition of thika tenant within the meaning of Section 3(8) of the Act of 1981. Similarly, they did not answer to the description of thika tenant within the meaning of Section 2(14) of the Act of 2001. As a necessary corollary, neither Section 5 of the Act of 1981 applied to the tenancy in question nor Section 4 of the Act of 2001. The application made before the Controller in the month of April, 2003 for accepting the appellants and/or their predecessors as thika tenants was, therefore, fundamentally misconceived and could have only been rejected.....

Conclusion

35. In summation of what has been discussed herein above, we could broadly say:

1. The Full Bench decision of Calcutta High Court in Lakshmimoni Das (supra) is





affirmed.

2. The structure, as put up by the appellants and/or their predecessors, had been pucca structure on the property in question.
3. For the structure being pucca in character and the term of lease being 20 years, the appellants and/or their predecessors were not thika tenants within the meaning of Section 2(5) of the Act of 1949.
4. The appellants and/or their predecessors were not thika tenants within the meaning of the Act of 1981 for two major reasons:
  - a. that the structure in question was a pucca structure; and
  - b. that the Act of 1981 was not operative in relation to the property in question because of the stay order passed by the High Court.
5. On the date when lease expired in the month of November, 1993, the appellants and/or their predecessors were not thika tenants and, therefore, the Act of 2001 does not ensure to their benefit.....”

52. From the foregoing discussion regarding the scope of the definition “thika tenancy” in different statutes and the judicial interpretation of the term “thika tenancy” given by the Hon’ble Apex Court it is clear that the defendant is not and can never be declared as a thika tenant as because since before 1981 the defendant had a pucca structure at the suit premises.

53. The Thika Tenancy Act 1981 and 2001 (which gives retrospective effect to the provision contained therein since 18.01.1982) though does not define the expression “structure” enumerated in the definition “thika tenancy” but use of the expression "structure" in specific context and use of the term and definition “pucca structure” in another context clearly postulates that “structure” used in the definition of “thika tenancy” does not include “pucca structure” before 01.11.2010. **In such view of the law, there remains no confusion that defendant is not a thika tenant and he can never be declared as such. Thus, argument of the defendant that since it is a thika tenant and that the suit premises is a thika land, hence this Court cannot try the relief claimed by the plaintiff does not hold good once again. This Court has sufficient jurisdiction to try suit brought by the plaintiff against the defendant praying for it's eviction from the suit premises as neither the suit premises nor the relation of the plaintiff and the defendant in respect of the said premises falls under any such category of**



**special statutes which this Civil Court cannot try.**

54. In the light of the discussion above made, **issue No.1 whether the suit maintainable in present form and prayer stands decided in favour of the plaintiff.**

**Issue No. 2 (Have the plaintiffs any cause of action to file the instant suit ?)**

55. Admittedly the defendant was inducted in the suit premises as a lessee by virtue of a registered deed of lease in the year 1970. The said lease dated 21<sup>st</sup> February 1970 was for a period of 20 years with an option of renewal for a further period of 10 years commencing on and from 1<sup>st</sup> January, 1970 at a monthly rent of Rs.1800/- during the first ten years of the said term of 20 years and monthly rent of Rs. 2,000/- during the second ten years and monthly rent of Rs. 2,200/- during the renewal period 10 years payable according to English Calendar. The said period of lease in respect of the suit premises expired whereupon the defendant exercised its option to renew the lease for the further period of 10 years as provided in the said lease deed. The said term / period including the renewal period of the lease has expired with the expiry of 31<sup>st</sup> December 1999 by efflux of time. Thereafter, the defendant did not approach the plaintiff for renewal or for fresh lease in respect of the suit premises. Thus the lease dated 21<sup>st</sup> February, 1970 in terms of S.111 (a) of the Transfer of Property Act has been determined by efflux of time.

56. Upon determination of a lease by efflux of time, all rights, title and interest of the lessee under the lease, ceases to exist as per law, and the lessee becomes duty bound to put the lessor into possession of the property in terms of Section 108 (q) the T.P. Act which provides that, upon determination of a lease, the erstwhile lessee is obligated to put the lessor in possession of the property, even if there is no express covenant in the contract. However in the present case there was express provision in the said respect in the registered lease instrument but the defendant did not comply the term.

57. In the said circumstances, the plaintiff has come before the Court



praying for eviction of the defendant from the suit premises. **Hence, issue No.2 whether plaintiff has any cause of action to sue the defendant is decided in favour of the plaintiff.**

**Issue No.3 (Has the lease created under the lease deed dtd.21.02.1970 in respect of the suit premises expired with the renewal period too by efflux of the period of time stipulated therein ?)**

58. Plaintiff in support of the case has produced the lease deed vide which the defendant was inducted in the suit premises by Sri Deba Prasad Ghosh which has been marked Exbt.2.

59. The content of the deed with regard to the period of lease says that the lease was for a period of 20 years with an option of renewal for a further period of 10 years commencing on and from 1<sup>st</sup> January, 1970 at a monthly rent of Rs.1800/- during the first ten years of the said term of 20 years and monthly rent of Rs. 2,000/- during the second ten years and monthly rent of Rs. 2,200/- during the renewal period 10 years payable according to English Calendar. The said period of lease in respect of the suit premises expired after twenty years whereupon the defendant exercised its option to renew the lease for the further period of 10 years as per the terms contained therein. The said term / period including the renewal period of the lease has expired with the expiry of 31<sup>st</sup> December 1999 by efflux of time. **Hence, issue No. 3 is decided in favour of the plaintiff to the effect that lease dated 21<sup>st</sup> February, 1970 has expired by efflux of time on 31<sup>st</sup> December, 1999.**

**Issue No.4 (Is the defendant liable to vacate the suit premises with or without all additions thereto as claimed in plaint ?) and Issue No.5 (Are the plaintiffs as absolute owners of the suit premises entitled to the decree for eviction and khas possession against the defendant ?)**

60. Both these issues being interlinked are taken up together for consideration for the sake of brevity and convenience.



61. Defendant has never challenged that Sri Deba Prasad Ghosh was the absolute owner of the premises or he had executed Will in favour of his wife Smt. Rupa Ghosh and son Sri Supratik Ghosh or that as the executrix and executor respectively said Smt. Rupa Ghosh and her son Sri Supratik Ghosh were granted probate by the Hon'ble High Court Calcutta in its testamentary and intestate jurisdiction under Case No.169 of 1988 on 3<sup>rd</sup> October 1988.

62. Defendant has submitted that Smt. Rupa Ghosh and her son Sri Supratik Ghosh who were the original owners of the suit premises did not have any right to transfer the suit premises in favour of the present plaintiff after promulgation of Thika Tenancy Act in 1981 as the suit property by virtue of the said Act had vested with the State. But, it has already been found from the evidence on record that there was no chance of the suit property to be vested with the State under the Thika Tenancy Act, 1981 or 2001 as it already had a pucca structure on it being constructed by the defendant to run the business. Hence, transfer of the suit premises by Smt. Rupa Ghosh and her son Sri Supratik Ghosh in favour of the present plaintiff by virtue of registered deed of sale being No.11441 for the year 2014 marked Exbt.7 was not illegal. On the strength of the said deed present plaintiff rightly became the absolute owner of the suit premises. **Thus, issue No.5 whether plaintiff is the absolute owner of the suit premises is decided in favour of the plaintiff.**

63. Law says if the lessee continues to remain in possession of the leased property, without the consent of the lessor, such possession becomes wrongful from the date of the termination of the lease and the lessor accrues a right to enter upon the property immediately after the expiration of the term without any further notice.

64. Having said so, Section 116 of the Transfer of Property Act states that, continuance of possession of the property by the lessee after expiration of the term of the lease, coupled with acceptance of rent by the lessor or implied assent provided by the lessor towards the lessee continuing to remain in possession of the property, in the absence of an agreement to the contrary, brings into existence a statutory tenancy from month to month (in case of an immovable property). The said concept is more popularly recognized as 'Tenancy by Holding Over'. Notwithstanding the



concept of 'Tenancy by Holding Over', in the event a lessee continues to retain possession of a property, without the consent (whether implied or explicit) from the lessor, such retention of possession is unlawful, and the concept is recognized as 'Tenancy at Sufferance'.

65. On review of the provisions laid down in the Act along with various judicial pronouncements on the subject, it is obvious that, upon determination of a lease due to efflux of time, the lessee is mandated under law to handover possession of the premises to the lessor. Even in case of a dispute between the parties, the lessee does not have a right to retain possession of the premises subsequent to determination of the lease by efflux of time. However, if a lessee/ tenant acts in contravention and does not handover possession of the demised premises to the lessor despite determination of the lease by efflux of time, then the lessee shall either become a 'Tenant at Will/ Holding Over' or a 'Tenant at Sufferance', depending upon the lessor's consent (express/ implied). In such an event, wherein a tenant refuses to handover possession of the premises despite determination of a lease by efflux of time, the lessor has a right to regain possession of the premises by instituting a suit for ejectment against the lessee in the competent court of law.

66. Here in this case defendant is possessing the suit premises even after determination of lease without paying any rent to the plaintiff. It is the contention of the defendant that after the enactment of the 1981 Act, the defendant had stopped payment of rent to Sri Deba Prasad Ghosh however later the defendant started paying rent in respect of the said premises under the order of the Hon'ble High Court at Calcutta passed in W.P.No.1028 of 1983 to Sri Deba Prasad Ghosh. All throughout the defendant in compliance with the directions contained in order passed by the Hon'ble High Court duly paid full rent in respect of the said premises to the original plaintiffs after Sri Deba Prasad Ghosh died. However, since the year 2000 the plaintiffs without assigning any reason thereof refused to accept the rent in respect of the said premises. Defendant states that as the land has been acquired and vested with the State of West Bengal under Section 4 of 2001 Act with effect from 1982, hence the defendant did not and does not have any liability to pay any rent to the plaintiffs.



67. From the act of the vendors of the present plaintiff it is clear that they never consented to the continuance of possession of the suit premises by the defendant on any term what so ever after the lease granted in favour of the defendant determined, rather immediately after expiration of the lease they stopped accepting any rent from the defendant, even upon service of notice they asked the defendant to vacate the suit premises. Ultimately when the defendant did not act on the legal notice, they instituted this proceeding against the defendant praying for it's eviction from the suit premises. In such view of the fact the status of the defendant in respect of the suit premises turns out to be not better than a tenant at sufferance who is liable to be evicted from the suit premises ( even without a notice ) by due process of law.

68. Clause (j) of the lease deed vide which the defendant was inducted in the suit premises provided that the Lessee shall at the expiration or so sooner determination of term of lease yield up and deliver peaceful and vacant possession of the suit premises and in the event of installation, erection or alteration or substitution have been made thereon and underneath the surface restore the same to their original state and condition. And if the lessee failed to remove such structures etc. within 60 days from the expiry of the lease the same shall belong to the lessor without any claim whatsoever by the lessee and the lessee shall pay compensation for the said period at the rate of rent last paid.

69. It has already been decided that the lease granted in favour of the defendant has expired. As per clause (j) of the deed though the defendant was bound to deliver vacant peaceful possession of the suit premises restoring the premises in it's previous condition but that has not been possible to be ensured in the meantime. Thus, at present the defendant must vacate the suit premises and shall deliver peaceful and vacant possession of the premises to the plaintiff after removing all installation, erection made thereon and underneath the surface restoring the same to their original state and condition and if the defendant fails to comply with the order of the Court within the time to be stipulated herein below, all the installations, erection, etc will stand forfeited to the plaintiff. With such observation **issue No. 4 is decided in favour of the plaintiff to the effect that the defendant is liable to vacate the suit premises with or without all additions thereto.**



**Issue No.6 (Are the plaintiffs entitled to a decree for mesne profit/damages against the defendant ?)**

70. The plaintiff referring the case of **Dilipkumar Guptoo & others vs Hindustan Petroleum Corporation Ltd** has submitted that the Hon'ble High Court at Calcutta in the aforesaid case held that as the defendant petrol pump failed to establish that the suit premises stood vested with the State hence the plaintiff shall be entitled to a decree of the eviction of the said defendant from the suit premises. In Dilipkumar Guptoo's case the Hon'ble High Court was further pleased to evict the petrol pump along with allowing claims for recovery of mesne profit, damages and compensation. The fact in Dilipkumar Guptoo's case is identical/similar to the facts of the instant suit, hence relying the decision of the case referred above and keeping in consideration that the lease granted in favour of the defendant has ceased to exist by efflux of time and thereby the defendant has become a mere trespasser in respect of the suit property, Court should pass a decree for eviction of the defendant from the suit premises upon direction to the defendant to pay mesne profit/damages.

71. Evidence on record has shown that the defendant since after determination of the lease is occupying the suit premises merely as a tenant at sufferance without paying any occupational charges thereto since 01<sup>st</sup> January, 2000. Hence for occupying the suit premises unlawfully without any occupational charges to the person entitled to the property, the defendant is liable to pay mesne profit/damages in respect of the said premises till it is evicted from the suit premises.

72. **Order 20 Rule 12 of the Civil Procedure Code** refers to the manner in which a decree may be passed in a suit for possession of immovable property and for rent/ profits. Sub clauses (a) to (c) of sub section (1) and sub section (2) of Order 20 Rule 12 refer to the procedure as follows:

**"Rule 12 Decree for possession and mesne profits.-** (1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree.-

(a) for the possession of the property;

(b) for the rents which have accrued on the property during the period prior to the



institution of the suit or directing an inquiry as to such rent;

(ba) for mesne profits or directing an inquiry as to such mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until-

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or 23

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under Clause (b) or Clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry."

73. Plaintiff has prayed for mesne profit and/or damages from 01<sup>st</sup> January, 2000 till the date of recovery of vacant possession of the suit premises from the defendant. Such claim of the plaintiff is justifiable. Thus, plaintiff be favoured with a decree for mesne profit against the defendant subject to the inquiry U/Or. 20 , R. 12 of Code of Civil Procedure.

74. **In the light of the observation made, issue No. 6 is decided in favour of the plaintiff.**

**Issue No.7 ( To what other relief/reliefs, are the plaintiffs entitled ? )**

75. At this stage I do not find any order of injunction or order of appointment of Receiver is required for the effective disposal of the suit. Moreover, plaintiff has not pressed these relieves during argument. Hence, prayer of the plaintiff to pass an order of injunction or appoint any Receiver at the end of the trial, is refused.

76. With regard to the prayer of the plaintiff to order the defendant to pay costs of the suit, I am of the opinion that for both the plaintiff and the defendant the





suit has been delayed and for the said reason both the parties from time to time were ordered to pay costs either to each other or to the District legal Services Authority, Alipore. In the said circumstances, now I am not inclined to favour the plaintiff with any order as to costs against the defendant as prayed for.

77. **With such findings, issue No.7 is decided against the plaintiff.**

**Issue No.8 (Is the suit bad for mis-joinder and non-joinder of the parties ?)**

78. This issue has not been pressed by defendant at the time of argument. In fact, discussing the pleadings of the parties and the evidence on record I have not found any reason to counter the suit for mis-joinder and non-joinder of necessary parties. Thus, issue No. 8 is decided in favour of the plaintiff to the effect that the suit not bad for non-joinder or mis-joinder of necessary parties.

79. In the end, the case of the plaintiff succeeds.

80. Court Fees paid is correct.

81. Hence, it is

**ORDERED**

that Title Suit being number 39 of 2000 be and the same hereby stands decreed on contest against the defendant without any order as to costs.

Defendant is hereby directed to vacate and deliver peaceful khas possession of the suit premises in favour of the plaintiff after removing all installation, erections made thereon and underneath the surface restoring the same to their original state and condition within a period of sixty days from the date of passing this order, in default, plaintiff will be at liberty to pray for execution of the decree as per law and all the installations, erection, etc in the said circumstances



shall stand forfeited to the plaintiff.

Plaintiff is hereby permitted to pray for mesne profit with liberty to file and recover the same in view of Or. 20, R. 12 of the Code of Civil Procedure.

Suit is disposed off accordingly.

Dealing Assistant is directed to draw up decree and keep note of the order on relevant Registers and C.I.S.

**Dictated & Corrected by me.**

**Sd/- (J. Gupta)  
Civil Judge (Sr. Divn.),  
2<sup>nd</sup> Court, Alipore.**

**Sd/- (Jhilom Gupta)  
J.O. Code: WB00963  
Civil Judge (Sr. Divn.),  
2<sup>nd</sup> Court, Alipore.**