

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate side

Present:

The Hon'ble Justice Altamas Kabir

And

The Hon'ble Justice Alok Kumar Basu

W.P.L.R.T. NO. 382 of 2001

Grantio Ceramics Ltd. ... Appellant/Petitioner.

Versus

Janardhan Senapati & Ors. ... Respondents.

For Appellant/Petitioner

Mr. Pradip Ghosh
Mr. Utpal Majumdar
Mr. Rajib Lal
Mr. Sanjoy Bose ...For the Petitioner.

For Respondent/Opposite Party

Mr. Ranabijoy Bhattacharya
Mr. Dilip Kumar Maity
Ms. Sharmila Bose
Mr. Subhojit Basu ... For Respondent Nos. 1 & 2.

Hear on:

Mr. Swadesh Bhuiyan
Mr. H.K. Basu
Mrs. Soma Roy Chowdhury
.. For the State & State
Respondents.

Mr. Dipankar Chakraborty
Mrs. S. Chakraborty ... For the C.M.C.

Judgment on:

12/3/2002

Alok Kumar Basu, J.

A twin question appears to be the core issue for disposal of this Writ Application which has been directed against the judgment and order dated 7th May, 2001 passed by the West Bengal Land Reforms and Tenancy Tribunal (hereinafter to be mentioned as the Tribunal) by the writ petitioner Granito Ceramics Ltd. as to whether the Tribunal has statutory jurisdiction decide that Premise-No. 2/3, Burdwan Road is a,

thika tenancy property and whether the said Tribunal was justified from the materials placed before it by Opposite Party Nos. 1 and 2 of the present writ petition in arriving at a decision that said Opposite Party Nos. 1 and 2 are 'bharatias' under alleged thika tenant in respect of a portion of Premises No. 2/3, Burdwan Road.

It goes undisputed that M/s. Bajoria Properties Ltd. was Owner of 2/3. Burdwan Road, along with the adjacent Premises No.3 and 10/5, Alipore Park Place and in 1968 said Bajoria Properties Ltd. sold all those premises to M/s. Kelvin Jute Manufacturing Company Ltd. The Kelvin Jute Manufacturing Company Ltd. approached the Calcutta Municipal Corporation (Opposite Party No. 7) in 1983 for amalgamation of all the said three premises and the said request being acceded to, all the said properties became amalgamated and came to be known as Premises No.3, Burdwan Road.

M/s. Kelvin Jute Manufacturing Company Ltd. became a sick industry and pursuant to the provisions of Sick Industrial Companies Act, 1985 and under the B.I.F.R. scheme and with consent of the Government of West Bengal, said Kelvin Jute Manufacturing. Company Ltd. sold the

amalgamated property to the present petitioner by a valid instrument for good consideration on 9th April, 1992.

After purchase of the property in question, the writ petitioner applied before respondent no.7 for mutation and that application was allowed in due course and thereafter, after obtaining necessary permission from the competent authority under the Urban Land Ceiling Act, 1976 and after getting sanctioned plan from respondent no.7, the writ petitioner started its project for raising a multi storeyed building complex at the said premises.

It is significant to mention in this context that as early as 1991, private respondents nos. 1 and 2 filed a Title Suit being No. 287 of 1991 in the Court of 2nd Munsiff at Alipore with a prayer for declaration of their possession as tenants in respect of portion of Premises No. 2/3, Burdwan Road and also for other consequential reliefs and in that suit one D.P. Bajoria, Kelvin Jute Manufacturing Company Ltd. and one Akhtar Hossain were impleaded as party defendants. It appears both from the writ petition as well as from the affidavit filed by private opposite party nos. 1 and 2 that since 1994 opposite party no. 1 and 2 have been approaching the Controller, Thika Tenancy Act for a declaration that premises

No.2/3, Burdwan road is a thika tenancy land and in that process opposite party nos. 1 and 2 also approached this Court for similar nature of relief. It is pertinent to mention that the Granito ceramics Ltd., the present writ petitioner also on several occasions approached the Hon'ble court when their construction work on the disputed land was obstructed. It appears from the copy of different orders of this court passed from time to time in connection with different writ petitions filed by both private opposite party nos. 1 and 2 and by the present writ petitioner that the controller, Thika Tenancy Act, thrice turned down the prayer of the private opposite party nos. 1 and 2 to declare their status as 'bharatias' under alleged thika tenant in respect of Premises - -- 2./3, Burdwan Road this court ultimately refused to grant any prayer of opposite party nos.1 and 2 and, accordingly, the writ petitioner was granted permission to proceed with their construction work without distributing the portion of Premises No. 2/3, Burdwan Road where opposite party nos. 1 and 2 are said to be in possession till disposal of the suit filed by opposite party nos. 1 and 2 in the year 1991.

In the above background of facts and circumstances which are undisputed as it finds support both from the writ petition and also from the affidavits filed by private opposite

parties as well as by the State and State respondents, private opposite party nos. 1 and 2 moved the Tribunal through O. A. No. 2216 of 2000 with a prayer for a declaration that premises no. 2/3, Burdwan Road is a thika tenancy property and the present writ petitioner acquired no right, or interest by virtue of its purchase of the said property from Kelvin Jute Manufacturing Company Ltd. on the strength of their registered deed dated 9th April, 1992 and also for a declaration that opposite parties are bonafide 'bharatias' under thika tenant in respect of that property, a declaration that the deed of conveyance executed in favour of the present writ petitioner is bad and illegal and other consequential reliefs on the allegation of in action and culpable negligence on the part of the State respondents to act in accordance with the provision of Calcutta Thika Tenancy Act, 1981 (hereinafter to be mentioned as C. T. T. Act) to protect the interest of the private opposite parties.

It is significant to mention that the present writ petitioner also filed a writ petition before the High Court no. 162 of 2000 being aggrieved by the issue of a letter by respondent no. 7 whereby said respondent no. 7 wanted to take steps for de-amalgamation of Premises No. 2/3, Burdwan Road being insisted by the State respondent

through its Joint Secretary, Land and Land Reforms department on the consideration that the State has already declared the status of Premises No. 2/3, Burdwar Road as thika tenancy land and by operation of provision of section 5 of the C. T. T. Act, 1981, said land has been vested in the State in the year 1981 and Premises No. 2/3, Burdwan Road being a vested land cannot be amalgamated with private property of Premises No. 3 and 10/5, Alipore Park Place.

The Tribunal on receipt of O.A. No. 2216 and on admission of the same, simultaneously, treated said writ petition no. 167 of 2000 as a transferred petition to its own file and a new number as transferred application no. 2173 was given and the Tribunal disposed of both the application of private opposite parties as well as the transferred application of the present writ petitioner by a common judgment which is the subject matter of the present writ petition.

On examination of the impugned judgment of the Learned Tribunal, it appears that the Learned Tribunal accepting the contention of both the private opposite parties and the State and State respondents rejected the preliminary objection of the writ petitioner regarding its jurisdiction to

entertain both the original application and the transferred application. The Tribunal, on perusal of the documents annexed to the original application of the opposite party nos. 1 and 2 and also the documents annexed to the affidavit of the State and State respondents filed before the Tribunal, was of the view that there was overwhelming mass of evidence to show that opposite party nos. 1 and 2 for a long time have been occupying a portion of 2/3, Burdwan road as 'bharatias' under one of the thika tenants in respect of said premises and by operation of section 5 of the C.T.T. Act, 1981, when said Premises No. 2/3, thika tenants became the tenants of the State and the possession of the 'bharatias' became that of a tenant under the West Bengal Premises Tenancy Act and since Premises No. 2/3, Burdwan Road has been a thika tenancy property all long and when said property vested in the State by operation of Act from 1981, respondent no.7, could not pass any order for amalgamation of the said property with private property and M/s. Kelvin Jute Manufacturing Company Ltd. had no authority to sell out that property even under B.I.F.I. Scheme and pursuant to the provision of Sick Industries Act, 1985.

It appears from the impugned judgment that while private opposite party nos. 1 and 2 through their application

Projected the case of their alleged claim as 'bharatia' under alleged thika tenant in respect of Premises No. 2/3, Burdwan Road, the State respondents through its affidavit while supporting the stand that respondent no.7, the Calcutta Municipal Corporation had no legal right or jurisdiction to amalgamate a vested land with that of private property asserted that Granito Ceramics Ltd. did not acquire any title or interest in 2/3, Burdwan Road premises being a vested land and respondent no.7 acted beyond its jurisdiction and authority by sanctioning its building plan. He State respondent had further stated that all the Government Officials participating in the meeting taken place under the B.I.F.R. Scheme pursuant to the provisions of Sick Industries Act, 1985 were misled and misdirected and hence, even if there was consent from the side of State Government for sale of the property including 2/3, Burdwan Road, such consent had no legal sanction only because no consent in view of the facts and circumstances could have been given.

The Learned Tribunal, on consideration of the petition of the opposite parties along with the affidavits filed by the present writ petitioner and the State respondent and having regard to the written and oral submissions made before it by all the parties involved in the litigation came to the conclusion that it has the statutory jurisdiction to entertain both the

application as well as the transferred application and on merit, the Tribunal observed that from the document placed before it, it had been proved beyond all shadow of doubt that Premises No. 2/3, Burdwan Road is a thika tenancy property and private opposite party nos. 1 and 2 are bonafide 'bharatias' in respect of a portion of said property and when the appropriate authority under the C.T.T. Act, namely, Joint Secretary, Land and Land Reforms department, Government of West Bengal, failed the unauthorized and illegal act of the Granito Ceramics Ltd., the Tribunal was of the view that under Section 6 (B) read with Section 10 (6) of the Tribunal Act, necessary direction must be issued to the State Government and other authorities under the C.T.T. Act, 1981 to implement the provisions of the said act and to protect the interest of the thika tenants as well as the 'bharatias'. The Tribunal, at the same time, rejected the transferred application of the present writ petitioner almost on the identical ground that there was no illegality or abuse of the process of law on the part of the respondent no. 7 when it intimated the writ petitioner its intention to take steps for de-analgamation of Premises No.3 on the sole ground that the State Government and the appropriate authority took the decision to treat Premises No. 2/3, Burdwan Road as a thika

tenancy land and when the said property vested in the State under operation of the C.T.T. Act, 1981.

From the challenge thrown against the impugned judgment and order by the present writ petitioner, the Grantio Ceramics Ltd., and from the stand taken by opposite party nos. 1 and 2 as well as by the State and State respondents through their respective affidavits filed in connection with the writ petition and also on examination of the judgment and order of the Tribunal, we are of the view that for proper adjudication of this long standing dispute, we must confine our consideration on two most vital points which have already been indicated at the very beginning of our discussion.

Let us, first proceed with the first basic question as to whether in view of the allegation made by the opposite party nos. 1 and 2 in their application and also in view of the prayers sought for in their application and having regard to the provisions of C. T. T. Act, 1981 and the relevant provisions of the Tribunal Act, 1997, the Tribunal really has the statutory jurisdiction to entertain both the applications filed by the private opposite parties of the present writ

petition as well as the transferred application of the present writ petitioner.

From para 10 of the impugned judgment, it appears that the Tribunal observed since the dispute principally centers round a question of law on given facts on record – whether land at Premises No. 2/3, Burdwan Road vested in the State with effect from the date of commencement of C. T. T. Act, 1981⁷ and it further observed at para 6^a but the authorities entrusted with implementation of the provisions of the C. T. T. Act, did not pay any heed and thus, have not discharged the statutory obligation cast upon them to protect the interest of the thika tenants and the ‘bharatias’ including the applicants⁹ and from these observations of the Tribunal it is very much clear that according to the tribunal, it has the statutory jurisdiction only because Premises No. 2/3 Burdwan Road which is the subject matter of dispute appears to be vested land and when the appropriate authority under the C. T. T. Act failed to discharge their duties to protect the interest of thika tenants and ‘bharatias’ like the applicants, it is none but the Tribunal alone has the jurisdiction to entertain the application under Section 6 (B) of the Tribunal Act read with Section 7, 8 and 10 (3) of the said Act.

~~The learned~~ senior advocate, Mr. Bhuian, appearing for the State and ~~State respondents as well as~~ Mr. Bhattacharyya, appearing for the private opposite parties while lending their full support to the above observation of the Tribunal have further gone to add that the statutory authority of the Tribunal has been clearly defined in the landmark judgment on this issue as reported in the case of L. Chandra Kumar versus Union of India, 1997 (3) Supreme Court cases page 61 and in para 90, 92, 93 and 99 of the said judgment, the apex Court has clarified what should be the exact authority and jurisdiction of the Tribunal vis-à-vis the High Court in exercising its power under Article 226/227 of the Constitution and in view of that pronouncement, the Tribunal alone is the for a to adjudicate any of the points covered under Section 6 of the Tribunal Act read with Section 10 (3) and naturally, the private opposite parties committed no mistake in approaching the Tribunal for the alleged in action of the appropriate authority under the specified act when admittedly the C.T.T. Act, 1981 is a specified Act over which the Tribunal has full authority and jurisdiction to decide any issue within that Act.

The learned senior counsel, Mr. Bhuian being supported by Mr. Bhattacharyya has also submitted in this context, that there is a distinction between determination of jurisdictional

or primary fact and determination of secondary fact. The vesting of land under Section 5 of the C. T. T. Act, 1981 depends on the jurisdictional or primary fact of the existence of the thika tenants on the disputed land on the date of commencement of the Act. It is well within the jurisdiction of the Tribunal to decide the jurisdictional or primary fact on the materials on record. It is urged by the learned senior advocate that when all relevant materials are before the Tribunal it is within the competence of the Tribunal to decide the dispute, because, it has jurisdiction to decide any matter arising out of any provision of a specified Act. The learned senior advocate Mr. Bhattacharyya, on the part of the opposite party nos. 1 and 2, has supported this contention by referring a decision of a single Judge Bench of this Court decided in the case of Kashinath Mondal and Ors. Versus Bani Ballav Biswas and Ors. Reported in 2001 (2) CHN page 319.

Thus, from the observation of the Tribunal itself and also from the submissions made on behalf of the State and State respondents and for opposite party nos. 1 and 2, we can summarise that according to the Tribunal it has the jurisdiction to decide the nature and status of the land in dispute because of the fact that said dispute relating to the

status of the land is an issue within the C. T. T. Act, 1981 – a specified act for exercising jurisdiction by a Tribunal and when there was complaint of in action and culpable negligence on the part of the appropriate authority of this specified act and finally, the question relating to the status of the disputed land being a jurisdictional or primary fact in view of the pronouncement of the apex Court in the case of L. Chandra Kumar (supra), the Tribunal has rightly exercised its jurisdiction by entertaining both the application and transferred application.

After giving our most anxious deliberation ^{on} this question of jurisdiction after taking into consideration the submissions of all the parties and having regard to the decisions of the apex court in the case of L. Chandra Kumar (supra), we are really unable to persuade ourselves to accept the contention of the State respondents and private opposite parties and so also the conclusion of the Tribunal regarding its jurisdiction to entertain both the applications. From the four corners of the C. T. T. Act, 1981 there appears no provision empowering the Controller, who is the primary authority under the said Act, to declare whether a property is a thika tenancy property or whether an occupant on the said property is a 'bharatia' under a thika tenant or not. This Court also on several

Occasions observed on the similar line after due consideration of all the provisions of the thika tenancy Act and a reference can readily be made to the decision rendered in the case of Shamlal and Atta and Ors. Versus State of West Bengal and Ors. Reported in 1999 (1) CLJ page 250. It is further available from the C.T.T. Act, 1981 that under the said Act, thika Controller is the primary authority to decide any question covered under Section 11 of the said Act and the party aggrieved with decision of the thika Controller may prefer appeal and ultimately the State Government is authorized to make revision of any order passed by the thika controller.

Thus, the very basis of the observation of the Tribunal that the appropriate authority under the C.T.T. Act failed to discharge its alleged duties towards the private opposite party has virtually no ground to stand in view of the fact that there is no provision in the C.T.T. Act to determine the status of any premises as thika tenancy or to declare status of any occupant as 'bharatia' under thika tenant which was the actual prayer of the private opposite parties, though, clothed otherwise only to make it acceptable before the Tribunal.

Now, we would like to refer the reliefs sought for in the original application preferred by the private opposite party nos.1 and 2 and on examination of the application, we find

that they prayed for a declaration that Premises No. 2/3, Burdwan Road is a thika tenancy property, a declaration that they are bonafide 'bharatia' under thika tenant in respect of that property and also a declaration that the purchase deed of the present petitioner is bad and illegal. To adjudicate a particular application we are required to examine both the cause of action as well as the reliefs sought for and in the present case, on examination of the original application filed by the opposite parties, we find that the cause of action appears to be imaginary one and the reliefs sought for are admittedly beyond the statutory jurisdiction of the Tribunal.

We have already indicated that opposite party nos. 1 and 2 approached the Tribunal only in the year 2000 and before that they started their litigation process as early as in 1991 when they filed a civil suit for almost self same prayers with a different language and thereafter, these opposite parties approached the High Court on several occasions when they failed to have any positive response from respondent no. 7 and also from the thika Controller regarding their alleged claim as 'bharatia' under alleged thika tenant in respect of 2/3, Burdwan Road and only thereafter, they approached the Tribunal for reliefs which in almost plain language means declaratory reliefs and beyond the purview of the specified

and here lies the question whether the Tribunal can really exercise jurisdiction, where the specified act itself does not provide for any authority to decide the issue in question.

From the facts and circumstance disclosed by the opposite party nos. 1 and 2, it is very much clear that their possession on the alleged ground of bonafide 'Bharatia' appears to have been threatened by the act of a third party, namely, the present petitioner through its construction work and in that exigency, the only course open to the opposite parties is to approach the Civil Court & Similar was the view of the single Judge Bench in the case of Smt. Munia Devi show versus Sri Jugol Kishore show and Anr. As reported in 1999 (2) on page 18. Almost similar is the view taken by a Division Bench of this Court in the case of Indira Devi Rajak versus Thika Controller and Ors. Reported in 1999 (2) CHN page 311.

The Learned Tribunal has tried to assert its statutory jurisdiction and raised a question regarding authority of the petitioner to challenge its jurisdiction in view of the Division Bench judgement of this Court passed W.L.R.T. No. 956 of 2000, where the Division Bench declined to interfere in the order of the Tribunal while admitting the original application on the question of statutory jurisdiction. The learned senior counsel, Mr. Bhulan, appearing for the State and State

respondents in this context, has drawn our attention to the judgment of the apex Court delivered in S. L. P. © No. 12322 of 2001 (State of West Bengal and Ors. versus Suswapan Tie Up Pvt. Ltd. and Ors.) and submits that the apex Court has set aside the Division Bench judgment of this High Court which negated the jurisdiction of the Tribunal and the judgment of the Single Bench has been upheld which has held that Tribunal has got the jurisdiction to entertain the dispute.

The learned senior counsel, Mr. Pradip Ghosh, appearing for the petitioner submits that from the Division Bench judgment of this Court passed in connection with W. P. L. R. T. No. 99956 of 2000 (Justice S. B. Sinha and Justice P. Ray), it is available that the Division Bench in the said judgment made it clear that the question regarding statutory jurisdiction shall remain open till final adjudication. As regards the judgment of the apex Court referred to by Mr. Bhuiyan, the learned counsel appearing for the petitioner contends that effect of that judgment would be upon the parties of the particular litigation being not a judgment in rem.

Having regard to the submissions made on behalf of the parties and on examination of the Division Bench judgment in W. P. L. R. T. No. 956 of 2000 and also the judgment of the apex Court (supra), we are of the view that following the decisions given in the case of L. Chandra Kumar (supra), this Court retains full power of judicial scrutiny over the judgment of the Tribunal and when the Division Bench in W. P. L. R. T. No. 956 of 2000 made it clear that the question relating to jurisdiction can be re-examined and when we are of the view the decision of the apex Court mentioned by the opposite parties, in fact, does not stand in our way for re-examination of the issue regarding jurisdiction of the Tribunal, we can very well make our own observation keeping in view the established judicial norms and precedents.

Another point which encouraged the Tribunal to assume the jurisdiction in the present case appears to be its prejudged conception that land of Premises No. 2/3, Burdwan and vested in the State in the year 1981 and vesting of land being subject matter of a specified act is certainly within the jurisdiction of the Tribunal under provision of Section 2 read with Section 6, 7 8 and 10 of the Tribunal Act, 1997.

This very approach of the Tribunal to strengthen its view regarding jurisdiction appears to be perverse and not tenable in law only because the question of vesting would follow the vital question whether the land in question we have already held that the tribunal has got no jurisdiction as that was not the subject matter of the specified Act and there was no authority under the specified Act, which empowered to take any action or to record any order on this issue.

Thus, after considering all the points involved in the matter and having regard to the submission made on behalf of all the parties, we are of the clear view that having regard to the provisions of Section 6, 7, 8, 9 and 10 (3) of the Tribunal Act, the Tribunal has no jurisdiction to entertain the original application which, in fact, was filed for declaratory reliefs beyond the jurisdiction of the Tribunal and which was filed on imaginary allegation of in action of such an authority whose existence is found nowhere in the specified Act, Similarly, the Tribunal has no jurisdiction to entertain the transferred application which was, in fact, directed against the action of respondent no. 7- the Calcutta Municipal Corporation when admittedly the Calcutta Municipal Corporation Act is not a specified act over which the Tribunal

can be said to have any jurisdiction. Thus, we answer the first question raised by us in the negative.

Before dealing with the 2nd question, we think it fit and proper to record that the entire submissions made on behalf of the State and State respondents by senior counsel Mr. Bhuian to discard all the points taken by the writ petitioner in the matter of acquiring title over all the properties including 2/3, Burdwan Road, the action taken pursuant to the provisions of Sick Industries Act, 1985 and under the D. I. F. R. scheme appears to be somewhat futile in view of the fact that the basic foundation behind the submissions of Mr. Bauian is that Premises No. 2/3, Burdwan Road being a thika tenancy property vested in the State free from all encumbrances with effect from 18th January, 1982 and hence, the basic question that requires a positive answer in order to appreciate the submissions of Mr. Bhuian is whether property of Premises No. 2/3, Burdwan Road is really a thika tenancy property or not.

We have indicated earlier that as early in 1991, the private opposite party nos. 1 and 2 filed a title suit for declaration of their status as 'bharatia' under thika tenant impleading one Bajoria, Kelvin Jute Manufacturing Company

ad. and one Akhtar Hosain and that suit is still pending, we have also gathered from affidavits as well as from different documents annexed to the present writ petition that opposite party nos. 1 and 2 since 1994 approached the High Court as well as thika tenancy Controller for declaration of their status as 'bharatia' under Thika Tenancy Act and all their attempts remained unsuccessful.

It is pertinent to mention that while disposing of a public interest litigation along with a writ appeal preferred by the present writ petitioner, the Division Bench of this Court comprising of Chief Justice Mathur and one of us (A. Kabir, J.) in its judgment dated 14th March, 2000 was pleased to observe that on examination of the original file of the State, it appears that action was initiated for vesting of the Premises No. 2/3, Burdwan Road in the State and a note sheet was prepared by the secretary in charge and was placed before the minister concerned, but, in pursuance of that no order was passed.

We may reiterate the legal position that in the C. T. T. Act, 1981, there is no provision empowering any authority to declare any property a thika tenancy property and though the State Government has the authority to take a final decision in

this regard, it appears from the observation of the Division Bench as indicated that State Government, too, did not take any decision regarding vesting of Premises No. 2/3, Burdwan Road in the State. This clearly indicates that there was no action from the side of the State to determine the status of Premises No. 2/3, Burdwan Road as thika tenancy land.

Now, from the impugned judgment, para 24, 25 and 26 in particular, it is available that the Learned Tribunal focused its attention towards various documents simultaneously produced both by private opposite parties as well as by State and State respondents in their respective affidavits to vindicate their stand that opposite party nos. 1 and 2 have been occupying a portion of Premises No. 2/3, Burdwan Road as 'bharatia' under the C. T. T. Act, 1981 for a long time.

The Tribunal has mentioned about the inspection book, assessment book of the Calcutta Municipal Corporation, copy of chalan by which one Rahim Box Mullick deposited in the Court of 2nd Munsiff, Alipore to be credited in the name of Bajoria Properties Ltd, rent receipts granted by Akhtar Hossain in favour of the opposite party nos. 1 and 2 from the month of June, 1991 to February, 1992, copy of trade licence issued by the C. M. C. in favour of opposite party no.1 copy of electric bill of CESC Ltd. showing Shafi Ahamed as a

consumer in respect of one electric meter standing in Premises No. 2/3, Burdwan Road, copy of a chalan showing deposit of professional tax by one SK. Manjur of 2/3, Burdwan Road, reports submitted by the enquiry officer M. K. Banerjee asserting Shafi Ahamed as thika tenant in respect of a portion of Premise No. 2/3, Burdwan Road and others and the Tribunal concluded that there was overwhelming mass of evidence establishing beyond any doubt that prior to the commencement of the provisions of the C. T. T. Act, 1981, some persons including the private opposite parties were occupying rooms both for residential and business purposes in the structures constructed and owned by others on the land of Premises No. 2/3, Burdwan Road owned by other persons and thereafter taking recourse to the definition of 'bharatia' 'thika tenant' and 'landlord' under the C. T. T. Act, 1981, the Tribunal observed that the status of the three different kinds of persons within the meaning of the C. T. T. Act, 1981 as of 'bharatia' 'thika tenants' and 'landlords' is established a complete three tier tenure under the scheme of the C. T. T. Act, 1981.

At the time of hearing before us, the learned advocate Mr. Bhattacharyya appearing for the opposite party nos. 1 and 2 after drawing our attention to all those documents

indicated above has concluded that there is no ground to controvert the observation of the Tribunal which is based on overwhelming evidence and this assertion of Mr. Bhattacharyya is strongly supported by Mr. Bhuian, the senior counsel appearing for the State and State respondents.

Even taking the risk of unpalatable work of reiteration, we would like to observe that the Tribunal cannot be the forum for deciding the disputed question of status of either of the land or of the private opposite parties and it would have been better for the Tribunal to ask the private opposite parties to get the matter adjudicated by an ordinary Civil Court which has the real jurisdiction to entertain and decide such issue through its process of adjudication. Be that as it may, let us examine whether the documents relied on by private opposite party nos. 1 and 2 and accepted by the Tribunal in the impugned judgment are really acceptable in the eye of law to establish the case of the opposite party nos. 1 and 2.

Except the inspection book, the copy of the assessment book, the copy of the chalan showing deposit of rent by Rohim Box Mullick and the report of enquiry officer M. K. Banerjee, all other documents produced by opposite party nos. 1 and 2 may at best prove their possession over a portion

of 2/3, Burdwan Road and those documents can in on way establish that opposite party nos. 1 and 2 are 'bharatias' under alleged thika tenant in respect of the premises in dispute.

Regarding the inspection book on which much reliance has been placed by opposite party nos. 1 and 2 during argument before us, the learned senior counsel Mr. Ghosh on behalf of the writ petitioner has raised strong question about its admissibility in evidence and to substantiate his points, Mr. Ghosh relied on the decision reported in 61 CWN page 175 and 1985 (1) CHN page 84. Regarding assessment register, Mr. Ghosh submits that authenticity of the document is in great doubt as it is not coming from custody of the C. M. C. and further, in the said register there is on mention of the alleged thika under whom the opposite party nos. 1 and 2 are said to be 'bharatias'. As regards the copy of chalan by which it is alleged that one of the thika tenants namely, Rahim Bux Mullick deposited rent in favour of M/s. Bajoria Properties in the Year 1964, from the remarks portion of the information slip on positive is available and hence, according to Mr. Ghosh no reliance can be placed on this document also. Mr. Ghosh submits that about report of the enquiry officer on which much emphasis has been placed

both by the Learned Tribunal as well as by the opposite parties, it will be suffice to say that said report was not accepted by the thika Controller under said enquiry officer was subordinate and the thika Controller, after considering the said enquiry report was pleased to reject the prayer of the private opposite party nos. 1 and 2 to treat them as 'bharatia' under thika tenant in respect of Premises No. 2/3, Burdwan Road.

Undisputedly, prior to commencement of C. T. T. Act, 1981, there was a three tier system under the scheme of the old C. T. T. Act, 1949, which includes a landlord having a superior interest in the land, a person known as thika tenant who was authorized to raise construction on the said land on payment of rent or fees either per month or per year and the 'bharatias' who are inducted by the person raising construction in lieu of rent. To prove the existence of thika tenancy, it must be shown beyond doubt that some persons in lieu of payment of rent raised some construction with the consent of landlord on the premises in question and such persons in due course inducted 'bharatias' in respect of the construction raised by them.

From the documents produced by the opposite party nos. 1 and 2, we do not find anything wherefrom it can be

held that at any point of time, any of the alleged thika tenant ^{raised} any construction with their own money on Premises No. 2/3 Burdwan Road and there is also no document to show that those alleged thika tenants ever paid any amount as rent to the superior landlord be it M/S. Bajoria Properties or Kelvin Jute Manufacturing Company Ltd. It is important to note that none among the alleged thika tenants at any point of time asserted their right as such over Premise No.2/3 Burdwan Road and even no other so-called 'bharatias' except the private opposite party nos.1 and 2 have come forward to assert their right as such over the disputed premises.

When we keep in mind that is no recording regarding the alleged thika tenancy status of the disputed land or alleged 'bharatia' status of opposite party nos.1 and 2 in any of the official register of either the Calcutta Municipal Corporation or in the register of the thika Controller, we become more skeptical about the evidenciary value of the document produced by party nos.1 and 2 and relied on by the Tribunal and in our considered view, we should not record our detail observation about these document lest our observation may be referred to in other litigation and thereby the interest of the litigating parties may be affected.

Thus, having regard to the submissions made by the respective parties on the materials depending on which the Tribunal affirmed the status of the disputed land as thika tenancy land and the status of private opposite party nos.1 and 2 as 'bharatias' and on our independent assessment of those materials, we are of the view that the Tribunal was not justified in arriving its conclusion and we do not subscribe to the views taken by the Tribunal in this regard for the reasons already indicated.

Thus, having regard to the submissions made by the parties and after due consideration of the facts and circumstances and the relevant materials on record and also with due regard to the several decisions of the apex court and also of our High Court as cited in the bar, we have no option but to answer in the negative both the questions raised by us for determination and disposal of the writ petition.

As soon as we record our observation that Tribunal has no jurisdiction to entertain either the application of the private opposite party of the transferred application of the present writ petitioner and that the Tribunal is of both in law and fact in arriving at its conclusion regarding status of the land and of opposite party nos.1 and 2, we reiterate that the land in question did not vest in the state as alleged and

there was there was no legal bar for the present petitioner to continue the work of construction subject to the order of the High Court, if any passed in this regard and subject to the order of the court passed in the pending civil suit instituted by the private opposite party nos. 1 and 2. we also make it clear that Tribunal has no jurisdiction also to allow respondent no.7 to proceed afresh with the de-amalgamation process as indicated in its letter addressed the writ petitioner.

With our above observation. We also dispose of the petition being CAN No.6948 filed by opposite party nos.1 and 2 seeking permission to repair portion of Premises No.2/3, Burdwan Road under their occupation by rejecting such prayer.

As result, the writ petition succeeds, but without any order as to costs.

Xerox certified copy of this judgment, if applied for, may be supplied within 7 days complying with all the necessary formalities.

I agree,

(Altamas Kabir, J.)

(Alok Kumar Basu, J.)