REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2402 OF 2015
(Arising out of SLP(C) No.8297/2014)

NEMAI CHANDRA KUMAR & ORS. … APPELLANTS

VERSUS

MANI SQUARE LTD. & ORS. … RESPONDENTS

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA,J

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

2. The factual matrix of the case is as follows:-

2.1 One Laxmi Narayan Ghosh was the owner of the land involved herein measuring 2 Bigha, 10 Cottahs and 3 Chhitacks, more or less, being Holding No.195, Picnic Garden, Tiljala. The said Laxmi Narayan Ghosh died intestate on or about 23rd July, 1950 leaving

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behind his widow Smt. Nilu Bala Ghosh and his son Jitendra Nath Ghosh.

2.2 On 7th December, 1970, Smt. Nilu Bala Ghosh died intestate and Jitendra Nath Ghosh, thereafter, became the absolute owner of the said property. The said Jitendra Nath Ghosh by a registered Deed of Lease dated 15th December 1973, demised the said premises to Badri Narayan Kumar (since deceased) and Nemai Chandra Kumar (appellant no.1 herein) - the proprietors of Kumar industries, for a period of 20 years commencing from 1st December, 1973 for a consideration and/or monthly rent as mentioned in the said lease deed. By the said lease deed, the lessees were given the right to raise construction on said property and to use and enjoy such property during the tenure of the lease with a condition that on expiry of the lease on 30th November, 1993 the lessees will have to deliver vacant and peaceful possession of the said property to the lessor in the same condition as it was at the time of execution of lease, by removing the structure which would be constructed thereon. It was submitted that the lessees raised pucca structure having pucca foundation, pucca floor and pucca wall with partly tin and partly tile shed on the roof and used the said premises including the structure constructed therein for running its factory activities therein.

2.3. In the meantime, the Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981 (hereinafter referred

to as the, ‘1981 Act’) came into force with effect from 18th January, 1982.

2.4 Immediately, after the said Act came into operation, the said Jitendra Nath Ghosh (Lessor) filed an application under Article 226 of the Constitution of India before the High Court of Calcutta challenging the vires of the said Act. The said writ petition which was numbered as C.R. No.10449 (W) of 1983 was entertained by the High Court by issuance of a writ of mandamus in terms of prayers of the said writ petition. An interim order was passed therein staying the operation of the provisions of the 1981 Act as well as Rules framed thereunder in so far as the premises were concerned.

2.5 In the meantime, West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (hereinafter referred to as the, ‘2001 Act’) came into force.

2.6 The lessees paid rent to the then landlord up to 1993 and they never claimed themselves as thika tenant under their landlord till 9th April, 2003. It was only after the 2001 Act came into operation, the said lessees submitted a return before the Controller, Kolkata Thika Tenancy claiming themselves as thika tenants in respect of the said premises and deposited rent with interest for the period from 18th January, 1982 till 2007. The Controller, Kolkata Thika Tenancy vide order dated 27th January, 2010 declared both Badri Narayan Kumar (since deceased) and Nemai Chandra Kumar (appellant no.1) as Thika Tenants in terms of Section

2(14) of the 2001 Act. By another order dated 29th April, 2010, the said authority recorded the death of Badri Narayan Kumar and substituted his legal heirs as thika tenants.

2.7 Respondent nos.1 and 2-writ petitioners are the transferees of the said premises from the erstwhile owner thereof, namely, the landlord of the appellants herein. After purchasing the said property vide conveyance deed dated 10th September, 2006 they applied for mutation of their names as owners of the said property and while searching relevant records, they came to know that the said premises were recorded as thika tenanted property and some of the appellants were recorded as thika tenants therein by following the declaration of their status as thika tenant in respect of the said premises given by the Controller, Calcutta Thika Tenancy vide his order dated 27th January, 2010.

2.8 On knowing about the aforesaid order of the Controller declaring the said property as thika tenanted property and some of the appellants as thika tenants, respondent nos.1 and 2, being the purchasers of the said premises submitted an objection before Controller, Calcutta Thika Tenancy challenging the declaration which was given by the Controller in his earlier orders dated 27th January, 2010 and 29th April, 2010 and the said objection was rejected by the Controller vide order dated 1st August, 2012 in Misc. Case No.89 of 2010.

2.9 On being aggrieved, respondent nos.1 and 2 filed an application u/s 6 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 before the West Bengal Land Reforms and Tenancy Tribunal at Calcutta (hereinafter referred to as the, 'Tribunal') being O.A. No. 2833 of 2012 challenging the legality and validity of order dated 1st August, 2012 passed by the Controller in Misc. Case No.89 of 2010. The Tribunal vide judgment dated 18th November, 2013 dismissed the application and held that the Controller rightly declared the property as Thika Property w.e.f. 18th January, 1982 and the appellants as Thika Tenants under the Government w.e.f. 18th January, 1982.

2.10 On being aggrieved, respondent nos.1 and 2 preferred Writ Petition before the High Court of Calcutta. The High Court by impugned judgment dated 10th March, 2014 set aside the judgment dated 18th November, 2013 and allowed the writ petition.

3. The following submissions were made by learned counsel for the appellants:

3.1 The phrase 'any structure' used in the definition of Thika Tenancy under Section 2(5) of the Calcutta Thika Tenancy Act, 1949 (hereinafter referred to as the, '1949 Act') on its plain meaning would include both Kutcha and Pucca structures. The primary rule of construction is that the words or phrases in a Statute are to be interpreted in accordance with the plain language. To overlook

plain language would amount to re-writing of the words of Statute and, therefore, would ignore the legislative intent.

3.2 The interpretation of ‘any structure’ given by Calcutta High Court in series of judgments is incorrect on first principles and that there was no concluded view on this point under the 1949 Act.

3.3 As the lease in favour of the appellants was for 20 years pursuant to agreement dated 15th December, 1973 and the appellants are “Thika Tenants” within the meaning of Section 2(5) of the 1949 Act, in view of 1981 Act the land comprised in Thika Tenancy vested with the State w.e.f. 18th January, 1982.

4. The aforesaid submissions made on behalf of the appellants have been rebutted by learned counsel for the respondent nos.1 and 2 on the following grounds:

4.1 The lessee raised pucca structure and used the said premises including the structure constructed thereon for running its factory activities. Therefore, the appellants do not come within the meaning of Thika Tenants.

4.2 The lease was expired by efflux of time on 13th September, 1993 and lessee paid the rent to the then landlord up to 1993 and thereby never claimed themselves as Thika Tenants till 9th April, 2003.

4.3 The concept of Thika Tenancy in the three Acts (1949 Act, 1981 Act and 2001 Act) has been used as an expression inexonerably intertwined with the concept of ‘any structure’.

4.4 The term ‘any structure’ has been judicially read down to mean only ‘Kutcha structure’ (Temporary Structure) by series of judgments of the Calcutta High Court.

5. On the other hand the stand of the State is as follows:-

5.1 Section 2(5) of the 1949 Act was substituted by West Bengal Act VI of 1953 which clearly indicates that from very inception the thika tenant speaks about ‘any structure’. There is no scope to read kutcha structure instead of pucca structure. Even words are clear and there is no ambiguity and scope to resort to any external aid for the purpose of interpretation.

5.2 Section 10A was brought into the Statute by West Bengal Act XXIV of 1969 permitting the ‘thika tenant’ to erect pucca structure on the basis of permission given by the Controller.

5.3 Section 3(8) of the 1981 Act defines Thika tenant and it includes the appellants.

6. We have heard the learned counsel for the parties and perused the record.

7. The questions involved in this case are:

(i) Whether the appellants are ‘Thika Tenants’ within the meaning of Section 2(5) of 1949 Act or Section 3(8) of 1981 Act and

(ii) Whether the land in question stood vested with the State pursuant to provisions of 1949 or 1981 Act?

RELEVANT STATUTORY PROVISIONS RELATING TO THIKA TENANCY.

THE CALCUTTA THIKA TENANCY ACT, 1949 (WEST BENGAL ACT XXIX OF 1969).

8. The Act was enacted to make better provisions relating to the law of landlord and tenant in respect of thika tenancy in Calcutta.

"Thika tenant" as defined in Section 2(5) reads as follows:

> "**2(5) "Thika tenant"** means any person who holds, whether under a written lease or otherwise, land under another person, and is or but for a special contract would be liable to pay rent, at 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 on such land for a residential, manufacturing or business purpose and includes the successors in interest of such person, but does not include a person –
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> (a) who holds such land under that another person in perpetuity; or
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> (b) who holds such land under that another person under a registered lease, in which the duration of the lease is expressly stated to be for a period of not less than twelve years; or
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> (c) who holds such land under that another person and uses or occupies such land as a khatal".

Since 1959, the term 'any structure' mentioned in Section 2(5) was considered by the Calcutta High Court to be a "Kutcha structure". By West Bengal Act XXIX of 1969 suitable amendment of 1949 Act was made by the State by defining "pucca structure" under Section 2(4a) and by empowering the "thika tenant" to erect "pucca

structure" by inserting Section 10A. The relevant Section 2(4a) defining "pucca structure" is as follows:

> **"2(4a) "pucca structure"** means any structure constructed mainly of brick, stone or concrete or any combination of these materials."

Right of thika tenant to erect pucca structures was inserted by Section 10A vide West Bengal Act XXIX of 1969, which reads as follows:-

> **"10A. Right of thika tenant to erect pucca structures.-** (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, but subject to the provisions of sub-sections (2) and (3), a thika tenant using the land comprised in his holding for a residential purpose may erect a pucca structure on such land for such purpose with the previous permission of the Controller.
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> (2) On an application made by a thika tenant in this behalf, the Controller may grant him permission to erect a pucca structure, if the Controller is satisfied that the thika tenant—
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> (a) is using the structure existing on the land comprised in his holding for a residential purpose,
>
> (b) intends to use the pucca structure to be erected on such land for a similar purpose, and
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> (c) has obtained sanction of a building plan to erect the pucca structure from the municipal authorities of the area in which such land is situated.
>
> (3) No thika tenant shall be entitled to eject a Bharatia from the structure or part thereof in the possession of the Bharatia for the purpose of erecting a pucca structure:
>
> Provided that the thika tenant may by providing temporary alternative accommodation to a Bharatia obtain from him vacant possession of the structure in his possession on condition that immediately on the

> completion of the construction of the pucca structure the thika tenant shall offer the Bharatia accommodation in the pucca structure at a rent which shall in no case exceed by more than twenty-five per centum the rent which the Bharatia was previously paying."

THE CALCUTTA THIKA AND OTHER TENANCIES AND LANDS (ACQUISITION AND REGULATION) ACT, 1981 [WEST BENGAL ACT XXXVII OF 1981]

9. The purpose of enactment of 1981 Act is as follows:

> "An Act to provide for the acquisition of interests of landlords in respect of lands comprised in thika tenancies and certain other tenancies and other lands in Calcutta and Howrah for development and equitable utilization of such lands.
>
> Whereas it is expedient to provide for the acquisition of interests of landlords in respect of lands comprised in thika tenancies and certain other tenancies and other lands in Calcutta and Howrah for developing and equitable utilization of such lands with a view to subserving the common good."

The 1981 Act came into effect from 2nd November, 1981. The reasons for enactment of the Act as quoted above was in fact inserted by substitution by the Calcutta Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 1993 with effect from 18th January, 1982.

Section 3(7) of 1981 Act defines "pucca structure" as follows:-

> **"3(7)"pucca structure"** means any structure constructed mainly of brick, stone or concrete or any combination of these materials, or any other material of a durable nature;

Section 3(8) defines “thika tenant” as quoted below:

> “**3(8) “thika tenant”** means any person who occupies, whether under a written lease or otherwise, land under another person, and is or but for a special contract would be liable to pay rent, at a monthly or at any other periodical rate, for that land to that another person and has erected or acquired by purchase or gift any structure on such land for residential, manufacturing or business purpose and includes the successors-in-interest of such person.”

10. Chapter II of the 1981 Act relates to acquisition of lands comprised in thika tenancies and other lands and the rights of landlords in such lands.

Section 5 which was later substituted by Section 6 of the Calcutta Thika Tenancy (Acquisition and Regulation) (Amendment) Act, 1993 (West Ben. Act XXI of 1993) w.e.f 18th January, 1982, originally reads as follows:

> **"5. Lands comprised in thika tenancies and other lands, etc. and right, title and interest of landlords in such lands to vest in the State.-** With effect from the date of commencement of this Act, lands comprised in thika tenancies and other lands held under any person in perpetuity or under registered lease for a period of not less than twelve years or held in monthly and periodical tenancies for being used or occupies as Khatals along with easements, customary rights, common facilities and such other things in such thika tenancies and Khatals attached to or used in connection with such thika tenancies, and Khatals and the right, title and interest of landlords in such lands shall vest in the State free from all encumbrances:
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> Provided that the easements, rights, common facilities or benefits enjoyed by a thika tenant or an occupier of any land under any person in perpetuity or any land under any

person under registered lease for a period of not less than twelve years or a Khatal in Khas lands of the land-lords shall not be affected in any way by such vesting.".

After substitution Section 5 reads as follows:

"5. Lands comprised in thika tenancies, khas lands, etc. to vest in the State.-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 bustee 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)."

WEST BENGAL THIKA TENANCY (ACQUISITION AND REGULATION) ACT, 2001

11. The parties have also relied on 2001 Act which came into effect from 1st March, 2003. The said Act cannot be relied upon in the present case but it is desirable to notice the definition of "public structure" and "Thika Tenant" given therein. The relevant provisions of 2001 Act read as under:

> **“2.(13)** "pucca structure" means any structure constructed mainly of brick, stone or concrete or any combination of these materials, or any other material of a durable nature;
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> **2.(14)** "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 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 sub-section (2) of section 6 of this Act irrespective of the status, he may have enjoyed earlier.”

12. The expression ‘any structure’ though used within the definition of ‘Thika Tenant’ under Section 2(5) of 1949 Act, the same has not been defined under the 1949 Act.

Section 2(6) of the 1949 Act stipulates:

> **“2(6)** all words and expressions used but not defined in this Act and used in the Transfer of Property Act, 1882 (IV of 1882) or the Bengal Tenancy Act, 1885 (VIII of 1885), have the same meaning as in those Acts.”

Therefore, one can derive the definition of such words and expressions used but not defined in the 1949 Act from the Transfer of Property Act, 1882 or the Bengal Tenancy Act, 1885 as it has the same meaning as in those Acts.

The expression ‘any structure’ has not been used in the Transfer of Property Act, 1882 or Bengal Tenancy Act, 1885, therefore, it will be of no help to refer to Transfer of Property

Act, 1882 or Bengal Tenancy Act, 1885 to define the word and expression ‘any structure’ used in Section 2(5) of the 1949 Act.

13. The term ‘any structure’ was considered by Calcutta High Court in **Kshiroda Moyee v. Ashutosh Roy, 63 CWN 565** and learned Single Judge by judgment dated 10th March, 1959 held:

> “The next point argued on behalf of the appellant is that the Thika Tenancy Act applies and, if it does apply, the tenant is entitled to put up any structure under its provisions because Section 2(5) defines a Thika tenant as “one who holds, whether under a written lease or otherwise, land under another person, and is or but for a special contract would be liable to pay rent, at a monthly or any other periodical rates, for that land to that another person and has erected or acquired by purchase or gift any structure on such land for a residential, manufacturing or business purpose.” Thus under the definition, a Thika tenant ‘is a tenant of the land’ on which he has either erected a structure or has purchased from somebody else a structure. It appears from the lease (Ex.1) that there possibly was some sort of a structure on the disputed land already at the time when the lease was executed. The tenant, therefore, might come under the definition of a Thika Tenant under the Calcutta Thika Tenancy Act, 1949 and it is, admittedly, within Calcutta as defined in Clause 11 of Section 3 of the Calcutta Municipal Act, 1923. But then there is nothing in the Thika Tenancy Act to show that the tenant will be entitled to put up a pucca structure. Mr. Bhattacharjee, on behalf of the appellant, lays stress on the word “any” before the word “structure” in Section 2(5), but, that does not mean that the tenant will be entitled to put up a permanent structure on the land. It merely means that when the tenant has put up a structure on the land he has taken of, then, he will satisfy the requirement of the definition of Thika Tenant or, in other words, “any” there stands for “a” and does not mean that the tenant will be entitled to put up any kind of structure. What kind of structure the tenant will be entitled to put up will depend upon the terms of the contract between the parties and also upon the Transfer of Property Act which regulates these things and, as already pointed out, even if there was no contract

> between the parties, Section 108 (p) would have prevented the tenant from putting up a permanent structure on the land without the landlord's consent. Clearly, therefore, the defendant is not entitled either under the provisions of the Transfer of Property Act or under the provisions of the Thika Tenancy Act to put up a permanent structure on the land."

14. In **Monmatha Nath Mukherjee v. Banarasi & Ors. 63 CWN 824,** learned Single Judge of Calcutta High Court vide judgment dated 28th May, 1959 referring the decision in **Kshiroda Moyee Sen** observed:

> "Although I respectfully agree with the conclusion made by Guha Ray, J., I do so for reasons of my own. The adjective 'any' is a word which excludes limitation or qualification and makes the noun, before which it is prefixed, as wide as possible. Thus the word has been regarded as equivalent to and having the force of "every" or "all" (see Crawford on "Statutory Construction", sec. 186 at page 318). That being so, the words 'any structure' would ordinarily include a pucca structure.
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> Nevertheless, for reasons which I am going to state the words "any structure" used in section 2(5) of the Calcutta Thika Tenancy Act cannot be taken to mean all kinds of structure including a pucca structure.
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> The Calcutta Thika Tenancy Act is a special Act and was enacted, as its preamble shows, "to make better provision relating to the law of landlord and tenant in respect of thika tenancies in Calcutta". The general law regulating the relationship of landlord and tenant, including thika tenant, is contained in Chapter V of the Transfer of Property Act. In section 108(p) of the Transfer of Property Act there is a prohibition against the lessee raising pucca or permanent structures on the land of the tenancy, without the lessor's consent."

15. The matter was subsequently considered by the Division Bench of Calcutta High Court in **Annapurna Seal v. Tincowrie Dutt, 66 CWN 338.** The Court referring to the earlier decisions held:

> "A construction has to be given to the word 'structure' in this case which must be suited to the context of the Calcutta Thika Tenancy Act. It will be inappropriate to attempt to rigidly define structure. What is or is not structure has to be decided on the facts of each case in the light of the Statute and its objects. Only certain broad principles may be indicated but no rigid definition is possible. In the first place, the land mentioned in section 2(5) of the Act certainly has to be land without the structure contemplated in Section 2(5) of the Act. The primary object of this statute was that only land was to be let out for subsequent structures to come upon it. If the land is already built over with structures when let out then this possibility could not be envisaged. Therefore, the land must be without the structure within the meaning of section 2(5) of the Act. Some of the decisions which I have quoted above indicate a distinction already made by the courts on the ground that the structure meant here is only temporary structure and not a permanent or pucca structure."

16. The aforesaid view was followed by the Division Bench of the Calcutta High Court in **Purushottam Das Murarka v. Harendra Krishna Mukherjee, 79 CWN 852.** The Court vide judgment dated 13th May, 1975 following the aforesaid decision in Annapurna Seal held that if Thika Tenant constructs or attempts to construct pucca structure on the demised land without the permission of the landlord, he does not cease to be a Thika Tenant. The landlord will have the right to bring an action against the Thika Tenant for the purpose of restraining him from constructing a pucca structure on the demised land.

17. The matter was subsequently considered by Full Bench of Three Judges of Calcutta High Court in ***Lakshimimoni Das & Ors. v. State***

of West Bengal & Ors., (AIR) 1987 Calcutta 326. Referring to the previous judgments the Court held:

> *"**19**. Pursuant to power conferred by Section 20 of the impugned Act, rules have been framed called as the Calcutta Thika Tenancy (Acquisition and Regulation) Rules, 1982. Mr. Pal has submitted that Rule 3 and Rule 10 are relevant for the consideration of the scope, ambit and effect of the provision of vesting under Section 5. Referring to the expression "lands comprised in thika tenancy" as appearing in the first limb of Section 5, Mr. Pal has contended that the definition of the expression 'thika tenant' in Section 2(5) of Calcutta Thika Tenancy Act, 1949 has been the subject matter of judicial interpretation and consideration in several decisions of this Court. In these decisions it has been held that (a) the expression "any structure" in Section 2(5) of the 1949 Act means kutcha and for non-pucca structure and reference may be made to the decisions of this Court in the case of Monmatha Nath Mukherjee v. Smt. Banarasi reported in (1959)63 Cal WN 824. It has been held by a single Judge of this court that thika tenant is not entitled to put up a permanent structure on the land. The Division Bench consisting of P. B. Mukherjee and R. S. Bachawat JJ. (as their Lordships then were) held that the expression "thika tenancy" had imported a concept of temporariness. Even after the 1969 Amendment of the Calcutta Thika Tenancy Act, 1949, the Division Bench of this Court in the decision made in the case of Purushottam Das Murarka v. Harindra Krishna Mukherjee, reported in (1975) 79 Cal WN 852 has observed to the following effect : -*
>
> > *"But there cannot be any doubt and it is also not disputed on behalf of the appellant that, if during the pendency of his lease, a thika tenant constructs or attempts to construct pucca structure on the demised land without the permission of the landlord, he does not cease to be a thika tenant."*
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> *"**56**. For the reasons aforesaid we hold as follows:-*
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> *(a) The impugned Act is not protected under Article 31C of the Constitution as it is found on scrutiny*

> *of different provisions of the impugned Act that the impugned Act has not been enacted to give effect to provisions of Articles 39(b) and (c) of the Constitution and the impugned Act is open to challenge on the score of violations of Part III of the Constitution.*
>
> *(b) Within the scope and ambit of Section 5 of the impugned Act only lands comprised in thika tenancies within the meaning of the Calcutta Thika Tenancy Act, 1949 comprising a kutcha structure and/or a pucca structure constructed for residential purpose with the permission of the Controller under the Calcutta Thika Tenancy Act, 1949 and khatal lands held under a lease shall vest and save as aforesaid no other land and structure vest under the impugned Act."*

18. Ordinarily, the court resorts to the plain meaning rule (also known as literal rule) for statutory interpretation. The said rule emphasis that the starting point in the statutory interpretation is statute itself and if the language of the statute is clear and unambiguous, there is no need to look outside the statute.

19. The intention of the legislature is primarily to be gathered from the language used in the statute, "thus paying attention to what has been said as also to what has not been said" as observed by this Court in ***Dental Council of India v. Hari Prakash (2001) 8 SCC 61***. Relevant part of which is quoted hereunder:

> ***"7.*** *The intention of the legislature is primarily to be gathered from the language used in the statute, thus paying attention to what has been said as also to what has not been said. When the words used are not ambiguous, literal meaning has to be applied, which is the golden rule of interpretation."*

20. In ***State of Maharashtra v. Nanded-Parbhani Z.L.B.M.V. Operator Sangh, (2000) 2 SCC 69***, this Court held:

> *"**8**……..It is a cardinal principle of the rule of construction of a statute that when the language of a statute is fairly and reasonably clear, then inconvenience or hardships are no considerations for refusing to give effect to that meaning. It is not the contention of the learned counsel appearing for the State nor can it be said that on giving a plain meaning to the words used in Section 207(1) of the Act, there will be any absurdity or it would make the statute offend any provisions of the Constitution. Tindal, C.J. in Sussex Peerage case1 (Cl&F at p. 143) applying the rule has stated—*
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> > *"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver."*
>
> ***11.** The intention of the legislature is required to be gathered from the language used and, therefore, a construction, which requires for its support an additional substitution of words or which results in rejection of words as meaningless has to be avoided……"*

21. *This Court in* ***Grasim Industries Ltd. v. Collector of Customs, (2002), 4 SCC 297*** *observed:*

> ***"10.*** *No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating (sic altering) the statutory provisions. Wherever the language is clear the*

> *intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in Crawford v. Spooner2 "we cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well settled and reference to a few decisions of this Court would suffice. (See: Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests, Union of India v. Deoki Nandan Aggarwal, Institute of Chartered Accountants of India v. Price Waterhouse and Harbhajan Singh v. Press Council of India.)"*

22. The language of Section 2(5) of 1949 Act defining 'Thika Tenant' is fairly and reasonably clear. The said section also reflects the intention of the legislature. The meaning of the word 'any structure' used in Section 2(5) cannot be derived in isolation on mere presumption. The Calcutta Thika Tenancy Act, 1949 was enacted to make better provisions relating to the law of the landlord and the tenant in respect of Thika Tenancy. To claim rights of a 'Thika Tenant' a person should be a 'Thika Tenant' under Section 2(5) of the 1949 Act for which he should satisfy the following conditions:

> *"(i) The person shall be holding land under another person;*
>
> *(ii) he shall be liable to pay rent, at a monthly or any other periodical rate, for that land to that another person; and*

> *(iii) he should have erected or acquired by purchase or gift any structure on such land for a residential, manufacturing or business purpose. It includes the successors in interest of such person."*

The said definition does not include a person- (a) who holds such land under that another person in perpetuity; or (b) under a registered lease, in which the duration of the lease is expressly stated to be for a period of not less than twelve years; or (c) uses or occupies such land as a Khattal.

23. The word 'any structure' relates to structure erected or acquired by purchase or gift on such land for a residential, manufacturing or business purpose. 'Any structure' mentioned therein has a direct relationship with the purpose for which the structure is erected or acquired i.e. for a residential, manufacturing or business purpose. The words 'any structure' has no bearing with the nature of structure i.e. whether it is 'Kutcha'(temporary) or 'pucca'(permanent). If such 'any structure' was erected or acquired not for residential, manufacturing or business purpose, the person who is holding land cannot claim to be a 'Thika Tenant' within the meaning of Section 2(5) even if other conditions mentioned therein are fulfilled.

24. In all the above mentioned judgments of Calcutta High Court, the High Court has neither noticed nor discussed the purpose for which structure was erected or acquired by purchase or gift.

Instead of determining the issue based on the purpose for which the structure was erected i.e. for residential, manufacturing or business, the High Court held that thika tenants are not allowed to raise permanent structures on the land.

25. In view of the aforesaid finding we hold that the High Court in ***Kshoroda Moyee, Monmatha Nath Mukherjee, Annapurna Seal and Purushottam Das Murarka,*** has not laid down the correct law.

26. The Calutta Thika Tenancy Act, 1949 was amended in 1953 and 1969. By the West Bengal Act XXIX of 1969 definition of 'pucca structure' was inserted under Section 2(4) as Section 2(4a), which reads as follows:

> *"**2(4a)."pucca structure"** means any structure constructed mainly of brick, stone or concrete or any combination of these materials;*

By the same very amendment of 1969, Section 10A was inserted empowering the 'Thika Tenant' to erect pucca structure for using residential purpose with the previous permission of the Controller. It reads as follows:

> ***"10A. Right of thika tenant to erect pucca structures.-*** *(1) Notwithstanding anything contained in any other law for the time being in force or in any contract, but subject to the provisions of sub-sections (2) and (3), a thika tenant using the land comprised in his holding for a residential purpose may erect a pucca structure on such land for such purpose with the previous permission of the Controller.*
>
> *(2) On an application made by a thika tenant in this behalf, the Controller may grant him permission to erect a*

pucca structure, if the Controller is satisfied that the thika tenant—

(a) is using the structure existing on the land comprised in his holding for a residential purpose,

(b) intends to use the pucca structure to be erected on such land for a similar purpose, and

(c) has obtained sanction of a building plan to erect the pucca structure from the municipal authorities of the area in which such land is situated.

(3) No thika tenant shall be entitled to eject a Bharatia from the structure or part thereof in the possession of the Bharatia for the purpose of erecting a pucca structure:

Provided that the thika tenant may by providing temporary alternative accommodation to a Bharatia obtain from him vacant possession of the structure in his possession on condition that immediately on the completion of the construction of the pucca structure the thika tenant shall offer the Bharatia accommodation in the pucca structure at a rent which shall in no case exceed by more than twenty-five per centum the rent which the Bharatia was previously paying."

The insertion of Section 2(4a) and Section 10A by West Bengal Act XXI*X* of 1969 also makes the intention of legislature clear that for the purpose of thika tenancy, 'any structure' includes both 'kutcha' (temporary) or 'pacca'(permanent) structure.

27. In spite of the said insertion of Section 2(4a) and Section 10A, the Division Bench of the High Court rendered reliance on the judgments in ***Kshoroda Moyee, Monmatha Nath Mukherjee, Annapurna Seal and Purushottam Das Murarka*** and allowed the writ petition preferred by the respondent Nos.1 and 2 by the impugned judgment.

28. In view of the above findings, we hold that the appellants fulfill all the conditions of 'Thika Tenant' and come within the meaning of 'Thika Tenant' as defined in Section 2(5). Further, in view of the Calcutta Thika & other Tenancies and Lands (Acquisition and Regulation) Act, 1981 since 18th January, 1982, the land in question vests in the State along with interests of the landlord therein free from all encumbrances. As the High Court failed to appreciate the relevant provisions and erred in holding that the appellant is not 'Thika Tenant' within the meaning of Section 2(5), we set aside the impugned judgment dated 10th March, 2014 passed by the Division Bench of High Court of Calcutta in W.P.L.R.T No.325 of 2013 and uphold the order dated 18th November, 2013 passed by the Tribunal in O.A. No.2833/12 (LRTT). The appeal is allowed. There shall be no order as to costs.

……J.
(SUDHANSU JYOTI MUKHOPADHAYA)

……J.
(Prafulla C. Pant)

NEW DELHI,
FEBRUARY 24, 2015.

ITEM NO.IB COURT NO.4 SECTION XVI
(For judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 8297/2014

(Arising out of impugned final judgment and order dated 10/03/2014 in WPLRT No. 325/2013 passed by the High Court Of Calcutta)

NEMAI CHANDRA KUMAR & ORS Petitioner(s)

VERSUS

MANI SQUARE LTD & ORS Respondent(s)

Date : 24/02/2015 This petition was called on for judgment today.

For Petitioner(s)
Ms. Ranjeeta Rohtagi, Adv.

For Respondent(s)
Mr. Soumya Chakraborty, Adv.
Mr. Anip Sachthey, Adv.
Ms. Shagun Matta, Adv.

M/s. Parekh & Co., Adv.

Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhaya pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Prafulla C. Pant.

Leave granted.

The appeal is allowed in terms of the signed reportable judgment.

(Nidhi Ahuja) (Suman Jain)
COURT MASTER COURT MASTER
[Signed reportable judgment is placed on the file.]