REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2402 OF 2015

NEMAI CHANDRA KUMAR (D) THR. LRS. & ORS. ..... **APPELLANT(S)**

VERSUS

MANI SQUARE LTD. & ORS. ..... **RESPONDENT(S)**

JUDGMENT

Dinesh Maheshwari, J.

Table of Contents

Preliminary

1. This appeal is directed against the judgment and order dated 10.03.2014, as passed by the High Court of Calcutta in W.P.L.R.T. No. 325 of 2013 whereby, the High Court has allowed the writ petition filed by the respondent Nos. 1 and 2 of this appeal and has disapproved the orders dated 27.01.2010 and 01.08.2012 as passed by the Controller, Calcutta *Thika* Tenancy[1] as also the order dated 18.12.2013 as passed by the West Bengal Land Reforms and Tenancy Tribunal at Calcutta[2].

1.1. By the orders aforesaid, the Controller and the Tribunal had concluded that the present appellants were *thika* tenants in respect of the property involved in this litigation and the landlord's interest therein stood vested in the State under the statutes governing *thika* tenancies. However, in the impugned judgment and order dated 10.03.2014, the High Court concluded to the opposite and held that the Controller and the Tribunal were not justified in accepting the present appellants as *thika* tenants in respect of the property in question.

2. Put in a nutshell, the issues involved in this appeal revolve around *thika* tenancy enactments, as applicable to the property and the tenancy in question. The nature of tenancy created in favour of the appellants and/or their predecessors and impact/implication of the structure put up by them on the property in question form the core of the typical and peculiar questions involved in this matter.

---

[1] Hereinafter also referred to as 'the Controller'.
[2] Hereinafter also referred to as 'the Tribunal'.

3. Before proceeding further, we may point out that the consideration herein relates to *thika* tenancy and undoubtedly, the word '*thika'* in Bengali means 'temporary or partial'[3].

Statutory Provisions

4. Ordinarily, we would have commenced the discussion with relevant factual aspects but, in the present case, even for proper appreciation of factual matrix, an insight into the relevant provisions of law with reference to their enactment as also chronology of their enforcement appears necessary. Hence, before adverting to the facts of the case, we deem it appropriate to extract the relevant statutory provisions relating to *thika* tenancy, in their feasible chronology and also with reference to their objects and reasons. We shall deal with the construction of phraseology of these provisions and implications thereof a little later. For the present purpose, only the relevant provisions are being reproduced.

5. In order to make better provisions in respect of the law of landlord and tenant as also *thika* tenancy in Calcutta, the Calcutta *Thika* Tenancy Act, 1949 (West Bengal Act II of 1949)[4] came to be enacted in place of its predecessor Ordinance and with the following Statement of Objects and Reasons: -

> "**STATEMENT OF OBJECTS AND REASONS**
>
> There has been a persistent demand for legislative measures for the protection of the *thika* tenants of Calcutta and the Howrah Municipal area against arbitrary eviction and enhancement of rent.

[3] *Vide* ***Sri Sri Satyanarayan & Ors. v. S.C. Chunder*****: (2001) 3 CHN 641- paragraph 19,** reproducing from the decision in the case of ***Hindustan Petroleum Corporation Ltd. v. Sashi Bhusan Mondal*****, APD No. 280 of 1981.**

[4] Hereinafter also referred to as 'the Act of 1949'.

> Accordingly, an Ordinance was promulgated staying all decree or orders for eviction of the *thika* tenants on any ground other than non-payment of rent.
>
> The present Bill has been framed, with a view to regulate the rights and liabilities of the *thika* tenants and their landlords."

5.1. The said enactment made various provisions as regards the extent of *thika* tenancies, the grounds on which a *thika* tenant could have been ejected; the procedure relating to the proceedings for ejectment; the regulation of rent and its payment; appeals and other special matters etc. All other provisions of this enactment are not required to be dilated but, it is the definition of "*thika* tenant" occurring in clause (5) of Section 2 of the Act of 1949, as substituted in the year 1953, which is of relevance and the same may be reproduced as under: -

> "**2. Definitions. -**
>
> *** *** ***
>
> (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 -
>
> (a) who holds such land under that another person in perpetuity; or
>
> (b) who holds such land under that another person under a registered lease, in which the duration of the lease is expressly stated to be for a period of not less than twelve years; or
>
> (c) who holds such land under that another person and uses or occupies such land as a *khattal*."

5.1.1. The nature of structure, if put up by the tenant over the demised premises, has a bearing over the questions relating to *thika* tenancy and has its direct implication in the present case, as shall be noticed hereafter later.

5.2. By way of Amendment Act No. XXIX of 1969, clause (4a) was inserted to Section 2 and Section 10A was also inserted to the Act of 1949. These two provisions could also be reproduced as under: -

> **"2. Definitions.-**
>
> *** *** ***
>
> (4a) "*pucca* structure" means any structure constructed mainly of brick, stone or concrete or any combination of these materials;"
>
> *** *** ***
>
> "**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*[5] from the structure of 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."

5.3. It could at once be indicated that the expression "any structure" as occurring in clause (5) of Section 2 of the Act of 1949 as also in the

[5] The definition of the term "*Bharatia*", as occurring in clause (1) of Section 2 of the Act of 1949, is not of direct application to the present case but, for a proper comprehension of the related provisions, the same is also reproduced as under: -

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

successor enactments has been a matter of several debates in the High Court and a substantial number of decisions were rendered in that regard, essentially to the effect that the expression “any structure”, in the context of the enactment and its purpose, only referred to a temporary structure, more specifically called “*kutcha* structure” as contradistinguished from a permanent structure, which has been referred to as “*pucca* structure”.

5.4. Clause (6) of Section 2 of the Act of 1949 also has a bearing in the present case and could be noticed as under: -

> “**2. Definitions.-**
>
> *** *** ***
>
> (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.”

6. The aforesaid Act of 1949 was repealed as a whole by the new enactment initially carrying the title of ‘the Calcutta *Thika* Tenancy (Acquisition and Regulation) Act, 1981’. This enactment, promulgated on 02.11.1981, came into force with effect from 18.01.1982. Later on, several amendments were made to this enactment, including the change of its title by way of the Calcutta *Thika* Tenancy (Acquisition and Regulation) (Amendment) Act, 1993[6]. Significantly, the said Amendment Act of 1993 was given retrospective effect from 18.01.1982, i.e., the date of commencement of the principal enactment. With change of name, this enactment, being West Bengal Act No. XXXVII of 1981, came to be known

[6] Hereinafter also referred to as ‘the Amendment Act of 1993’.

as 'the Calcutta *Thika* and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981'[7].

6.1. The Statement of Objects and Reasons of this enactment of the year 1981 could also be usefully noticed as under: -

> "**STATEMENT OF OBJECTS AND REASONS**
>
> The *bharatias* under the Calcutta *Thika* Tenancy Act, 1949, are vulnerable to the wishes of the *thika* tenants with regard to enhancement of huts or other structures occupied by them and with regard to ejectment therefrom. The provisions of that Act do not provide for protection of *bharatias* against ejectment or enhancement of rent at the whims of the *thika* tenants. Accordingly, there has been persistent public demand for regulating the relation between *thika* tenants and *bharatias*.
>
> 2. The *thika* tenants pay some rent to the Landlords who are the owners of the land. Thus, the landlords continue to remain as intermediaries in Calcutta and in the Municipality of Howrah. There has also been a long-standing public demand that each system of intermediaries should be abolished and the State Should establish direct *thika* tenants so as to regulate the premises held by them.
>
> 3. The Calcutta *Thika* Tenancy (Acquisition and Regulation) Bill 1980 is intended to meet both these public demands which were considered just fair and equitable. In order to give some protection to the *thika* tenants and *bharatias* against ejectment, the Calcutta *Thika* Tenancy Stay of Proceedings (Temporary Provisions) Act, 1978 was enacted. It came into force on the 19th day of July, 1978. The life of that Act has been extended upto 18th day of July, 1981. The object of that Act was to provide temporary protection against ejectment pending enactment of a comprehensive legislation to remove the public grievances as already stated. Pending proceedings and appeals of ejectment of *bharatias* and *thika* tenants will stand abated.
>
> 4. This bill is also intended to provide for the acquisition of the rights of landlords in lands comprised in *thika* tenancies on payment of an amount calculated at a rate not exceeding ten rupees per square metre on the lines of the amount laid down in the Urban Land (Ceiling and Regulation) Act, 1976 and vesting thereof in the State free from all encumbrances. *Thika* tenants shall hold their lands under the State on terms and conditions to be prescribed in the rules, and the *bharatias* will enjoy the same protection against ejectment and enhancement of monthly rent, as enjoyed by the premise tenants under the West Bengal Premises, Tenancy Act, 1956. Since *bharatias* constitute a very poor section of the urban

[7] Hereinafter this enactment is also referred to as 'the Act of 1981'; and whenever contextually required, is also referred to by its original name, i.e., Calcutta *Thika* Tenancy (Acquisition and Regulation) Act, 1981.

population, it has been provided that, instead of Civil Courts, disputes between *bharatias* and *thika* tenants will be decided by Controller.

5. It is also proposed that the provisions of the West Bengal Land Holding Revenue Act, 1979 shall apply to *thika* tenants in the matter of payment of revenue, but with a separate schedule as shown in clause 25 of the Bill.

6. The Bill seeks to achieve the above objects."

6.2. The Statement of Objects and Reasons for the said Amendment Act of 1993 had been as under: -

"**STATEMENT OF OBJECTS AND REASONS.**

Experience of the last few years has shown that there are some practical difficulties in the operation of the Calcutta *Thika* Tenancy (Acquisition and Regulation) Act, 1981.

2. It has therefore, been considered necessary and expedient-

a) to include slums and *bustees* within the purview of the Act;

b) to streamline the provisions regarding survey of the *thika* tenanted land;

c) to make some other, changes as have been felt necessary to remove doubts or otherwise to improve the working of the Act.

3. The Bills has been framed with the above objects in view."

6.3. The Preamble of this Act of 1981 was also substituted by the Amendment Act of 1993. For the present purpose, suffice would be to take note of the existing Preamble part of this enactment 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 development and equitable utilization of such lands with a view to subserving the common good;"

6.4. In the Act of 1981, as originally enacted, the terms "*pucca* structure" and "*thika* tenant" were defined respectively in clauses (7) and (8) of Section 3 in the following terms: -

"**3. Definitions.-**

*** *** ***

(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;

(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 successors-in-interest of such person."

6.5. In this enactment, the text of Section 5, as originally enacted, and as later on substituted by the Amendment Act of 1993, had been materially different and carry their own relevance for the questions at hand. We may, therefore, usefully reproduce the text of Section 5 before and after the Amendment of 1993 in juxtaposition, as under: -

Section 5 as originally enacted.	Section 5 as substituted by the Amendment Act of 1993.
"**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 occupied 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: Provided that the easements, rights, common facilities or benefits enjoyed by a *thika* tenant or an	**"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;

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 landlords shall not be affected in any way by such vesting."	(*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*)."

6.6. The particular expression "tenant of other lands" as occurring in Section 5 after its substitution by the Amendment Act of 1993 was also defined in clause (7B) of Section 3 by way of the same amendment and it reads as under[8]:-

> "**3. Definitions.-**
>
> *** *** ***
>
> (7B) "tenant of other lands" means any person who occupies other lands under another person, whether under a written lease or otherwise, and is or but for a special contract would be liable to pay rent at a monthly or periodical rate for occupation of such other lands, and includes the successor-in-interest of such person;"

7. The aforesaid Act of 1981 was repealed by the West Bengal *Thika* Tenancy (Acquisition and Regulation) Act, 2001[9]. This new enactment came into force from 01.03.2003. Its Statement of Objects and Reasons reads as under: -

> "**STATEMENT OF OBJECTS AND REASONS.**
>
> The Calcutta *Thika* and other Tenancies and Lands (Acquisition and Regulation) Act. 1981 (West Ben. Act XXXVII of 1981) (hereinafter referred to as the said Act) was amended in 1993 to make up for certain deficiencies in the said Act. In course of administering the said Act, it has come to the notice of the State

[8] There had been several other insertions and substitutions by way of the said Amendment Act of 1993 which need not be noticed for being not relevant in respect to the questions at hand.
[9] Hereinafter also referred to as 'the Act of 2001'.

Government that certain provisions of the said Act are still defective, leaving scope for addition to existing litigations. It is, therefore, necessary to amend the said provisions.

2. The bill has been framed with the above object in view."

7.1. In this enactment of the year 2001, the expression "*thika* tenant" came to be defined in clause (14) of Section 2. The said clause (14) was also amended by the West Bengal *Thika* Tenancy (Acquisition and Regulation) (Amendment) Act, 2010[10] with effect from 01.11.2010. We may place the text of this clause (14), as originally enacted and as amended by the Amendment Act of 2010 in juxtaposition as under: -

Clause (14) of Section 2 as originally enacted.	Clause (14) of Section 2 as substituted by the Amendment Act of 2010.
"(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."	"(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 including *pucca* structure, if any, 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."

7.2. The expression "*pucca* structure" came to be defined in clause (13) of Section 2 of the Act of 2001. It is noticed that this definition of "*pucca*

[10] Hereinafter also referred to as 'the Amendment Act of 2010'.

structure" in the Act of 2001 was further amended by Act No. XI of 2019 but we need not refer to the said amendment for being not relevant for the present purpose. The said clause, as originally enacted, reads as under: -

> "**2. Definitions.-**
>
> *** *** ***
>
> (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;"

7.3. Section 4 of this enactment provides for vesting of the land comprised in *thika* tenancies and other particular class of lands in the State with effect from 18.01.1982. Noticeably, this date '18.01.1982' is the same date from which the Act of 1981 came into force and even the Amendment Act of 1993 was enforced. This Section 4, as originally enacted, reads as under: -

> "**S. 4. Lands comprised in *thika* tenancies and other lands, etc. to vest in the State. -**With effect from the 18th day of January, 1982, the following lands along with the interest of landlords therein shall be deemed to have vested in the State, free from all encumbrances-
>
> (*a*) lands comprised in, and appurtenant to, tenancies of *thika* tenants including open areas, roads; and
>
> (*b*) lands held in monthly or other periodical tenancies, whether under a written lease or otherwise, for being used or occupied as *khatal*:
>
> Provided that any land comprised in, and appurtenant to, tenancies of *thika* tenants created after the 18th day of January, 1982, shall also be deemed to be vested in the State, free from all encumbrances with effect from the date of creation of tenancies of *thika* tenants:
>
> Provided further that such vesting shall not be deemed to have affected in any way the easements, customary rights or other facilities enjoyed by *thika* tenants, *bharatias* or occupiers of land coming within the purview of this section:
>
> Provided also that nothing contained in this section shall prevent the State Government or the local authority from taking up any development work on the land appurtenant to tenancies of *thika* tenants for public purpose."

7.3.1. Yet further, clause (a) of the above-quoted Section 4 was amended by the Amendment Act of 2010 and after its amendment, coverage of the land for the purpose of vesting in the State was comprehensively provided with the broader expression "*thika* land". This clause (a) of Section 4 of the Act of 2001 before and after the amendment could also be placed in juxtaposition as under: -

Clause (a) of Section 4, as originally enacted.	Clause (a) of Section 4, as substituted by the Amendment Act of 2010.
"(a) lands comprised in, and appurtenant to, tenancies of *thika* tenants including open areas, roads; and"	"(a) *thika* land;"

7.4. In order to specify the meaning of the expression "*thika* land", clause (15) also came to be inserted to Section 2 of the Act of 2001 by way of the said Amendment Act of 2010 in the following terms: -

> "**2. Definitions.-**
>
> *** *** ***
>
> (15) "*thika* land" means any land comprised in and appurtenant to, tenancies of *thika* tenant irrespective of the fact whether there is any claim of such tenancy or not and includes open areas and roads on such land."

8. The aforesaid are the main provisions in the statutes with reference to the nature of tenancies and other eventualities, including those of the nature of structure put up by the tenant. We shall refer to the other provisions of law at the appropriate stage and to the extent requisite.

Background and Factual Matrix

9. As regards the factual matrix of the present case, a brief chronology of events could be noticed as follows: -

9.1. One Laxmi Narayan Ghosh was owner of the land involved herein admeasuring 2 Bighas, 10 Kottahs and 3 Chhitacks, more or less, being Holding No. 196, Picnic Garden, Tiljala[11]. The said Laxmi Narayan Ghosh died intestate on or about 23.07.1950 leaving behind his wife Smt. Nilu Bala Ghosh and his son Jitendra Nath Ghosh. Thereafter, Smt. Nilu Bala Ghosh died intestate on 07.12.1970 and Jitendra Nath Ghosh became the absolute owner of the subject property.

9.2. On 15.12.1973, by a registered deed of lease, Jitendra Nath Ghosh leased out the subject property to Badri Narayan Kumar and Nemai Chandra Kumar, being the partners of M/s. Kumar Industries, for a period of 20 years commencing from 01.12.1973 and expiring on 30.11.1993 at the rent and on the terms and conditions contained in the said registered deed of lease.

9.3. By the said deed of lease, the lessees were also given the right to raise construction on the subject property and to use and enjoy the same during the tenure of the lease with a condition that on expiry of the lease on 30.11.1993, the lessees will have to deliver vacant and peaceful possession of the said property in the same position as it was at the time of execution of lease to the lessor, by removing the construction thereon. Admittedly, the lessees raised some structure over the subject property. The nature of this structure, and its use, have also formed a part of

[11] Later on, it came to be known as the premises at No.195, Picnic Garden Road, Kolkata-700 039. This being the property involved in the present litigation, is herein referred to as the 'subject property' or 'the property in question'.

contentions in this appeal. Hence, we shall elaborate on the same at the appropriate juncture.

9.4. On 18.01.1982, the Act of 1981 came into force and immediately thereafter, the said Jitendra Nath Ghosh (lessor) filed a writ petition in the High Court under Article 226 of the Constitution of India challenging *vires* thereof. The said writ petition, being C.R. No. 10449 (W) of 1983, was entertained by the High Court and on 30.09.1983, an interim order was passed therein staying the operation of the impugned Act of 1981 as well as Rules framed thereunder insofar as the subject property was concerned. Thereafter, from time to time, various orders were passed therein and ultimately, the aforesaid writ petition, C.R. No. 10449 (W) of 1983, was directed to be transferred to the Tribunal for passing appropriate orders.

9.5. In the meantime, the lease granted by the said original owner, Jitendra Nath Ghosh, in favour of M/s. Kumar Industries, represented by its partners Badri Narayan Kumar and Nemai Chandra Kumar, came to an end by efflux of time on 30.11.1993.

9.6. After the Act of 2001 came into force, the said M/s. Kumar Industries represented by its partners filed an application before the learned Controller on or about 10.04.2003, being Return No. 67/234, for a declaration that they were *thika* tenants of the subject property and claimed that they had deposited rent with interest with the Controller for the period from 18.01.1982 till 2007. The proceedings on this application filed by the lessees have ultimately led to the present appeal.

9.7. Before adverting to the proceedings on the application filed by the lessees, another relevant factual aspect is required to be noticed, which relates to dealing with the property in question by the landlord. After demise of the said Jitendra Nath Ghosh, his heirs, by a deed of conveyance dated 10.09.2007, transferred the property in question to seven companies including the respondent No. 1 Mani Square Ltd. and also informed the Assessor, Tollygunge Tax Department, Kolkata Municipal Corporation about such conveyance by their letter dated 13.09.2007. Pursuant to this, the said six companies along with the respondent No. 1 applied before the Kolkata Municipal Corporation to get their names mutated as owners of the property in question in the Municipal records. It appears that the High Court of Calcutta, by its order dated 19.09.2008 sanctioned the scheme of amalgamation whereby, the said six companies were amalgamated with the respondent No. 1 Mani Square Ltd. and consequently, all the assets and properties of the said six companies vested in the respondent No. 1. Thereafter, on 15.07.2010, the respondent No. 1 applied before the Kolkata Municipal Corporation in the prescribed form, for mutation of the subject property exclusively in its name in the Municipal records. According to the respondent No. 1, only at that stage, it was informed that the Controller had declared the lessees as *thika* tenants over the property in question. The respondent No. 1 raised objections whereupon, the matter was re-examined by the Controller. This has been the reason that we have two

orders passed by the Controller in this matter, respectively dated 27.01.2010 and 01.08.2012.

Findings and conclusion of the Controller

10. For the questions involved in this matter, it shall be apposite to take note of the proceedings relating to the said application moved by the lessees and the findings returned by the Controller in necessary details.

10.1. After moving of the application aforesaid, spot enquiry was conducted by an enquiry officer on the subject property; and notices were sent to the landlord Jitendra Nath Ghosh and thereafter to Asit Ghosh. However, no objection was filed.

10.2. The Controller, in his order dated 27.01.2010, held that the applicants qualified as *thika* tenants under Section 2(14) of the Act of 2001 in respect of 2B, 7K of the land in the subject property. In holding so, the Controller perused the rent receipts issued on behalf of the then landlords to the returnees as well as the copies of the documents endorsing M/s. Kumar Industries as lessee. The Controller also examined the report of the enquiry officer, which recommended *thika* tenancy while mentioning the existence of structures like office rooms, asbestos sheds, storage place etc. along with open space.

10.3. Therefore, the learned Controller declared the applicants as *thika* tenants. Further to this, the legal heirs of late Badri Narayan Kumar filed an application before the Controller for substitution of their names as *thika*

tenants and the learned Controller substituted them as *thika* tenants in place of late Badri Narayan Kumar.

10.4. As noticed hereinbefore, on 15.07.2010, the respondent No. 1, unaware of the abovementioned developments whereby the learned Controller had declared the appellants as *thika* tenants, applied before the Kolkata Municipal Corporation for mutation of the subject property exclusively in its name in the Municipal records. In response to the said application for mutation, the Kolkata Municipal Corporation, by its communication dated 28.07.2010, asked the respondent No. 1 to submit documentary evidence to prove as to how the said seven companies became owners of the property in question. It had been the case of the respondent No. 1 that in order to find out the present position of the subject property, enquiries were made and searches were conducted; and in that process, it was learnt that the said *ex parte* order dated 27.01.2010 had been passed by the learned Controller declaring the appellants as *thika* tenants.

10.5. Having noticed the said order dated 27.01.2010, the respondent No. 1 filed an application dated 26.08.2010 before the State Government under Section 13 of the said Act of 2001 whereupon, the Joint Secretary to the Government in its Department of Land and Land Reforms, requested the learned Controller to dispose of the application of the respondent No. 1 after giving an opportunity of being heard to all the concerned.

11. Having heard the parties, the Controller proceeded to deal with the matter in his impugned order dated 01.08.2012. Though preliminary objections regarding unexplained delay in filing the return were taken but, the Controller considered it proper to examine the matter on merits rather than on technical grounds.

11.1. The Controller, *inter alia*, observed that when the lease deed was signed, the Act of 1949 was in force and in terms of Section 2(5) thereof, the following four foundational facts were required to be examined: -

a. Whether the claimant was holding the land under a written lease, or under any other person, and was paying the rent periodically.
b. Whether the claimant was holding the land under a lease whose duration was expressly stated to be not less than 12 years.
c. Whether the claimant had erected or acquired (by purchase or gift) any structure on the land for residential, manufacturing or business purpose.
d. Whether the claimant was holding such land or was using or occupying it as *khatal*.

11.2. The Controller observed that in the present case, the claimant was not contending that the land was ever occupied as *khatal*, so point (d) was answered in the negative. Duration of the lease was also more than 12 years, so point (c) was also negatived. The Controller further observed that as per the assessment register of the Corporation, at all times, there were *pucca* structures on the land; and since the High Court had held in ***Sri Sri***

***Satyanarayan & Ors. v. S.C. Chunder*: 2001 (3) CHN 641**, that for a tenant to be considered a *thika* tenant, no *pucca* structures must have been raised. Hence, it was found that the lessees were not *thika* tenants per the Act of 1949. The relevant observations and findings of the learned Controller could be usefully extracted from the typed copy of the order, as placed before us as Annexure P2 (at p. 95 of the paper-book): -

> "3. Admittedly, it is not the case of the applicant parties that the said premises was ever used or occupied as a khatal. Accordingly, clause (iv) of the aforesaid ingredients Can be answered in the negative at the very on set. In my opinion, the test mentioned in Clause (ii) above regarding duration of the lease has to be answered in the negative as the duration of The Said lease was admittedly for more 12 years. Moreover, the 1947-48 and 1982 assessment register of the Corporation as disclosed by the parties clearly show that at all material times there were (and still are) "places structures at the said premises within the meaning of a "pucca structures" under the Thika Act. It is also found that there are structures having pucca foundation, pucca floors and pucca wall and as disclosed by the report of the said spot enquiry there exist brick built-walls with R.T./Tin shed in the said premises. Applying the ratio of the decision of the Hon'ble High Court at Calcutta in 2001 (3) CHN 641 (Sri Sri Satyanarayan and Ors. vs. S.C. Chunder), for a claimant to be considered a Thika tenant under the Calcutta Thika Tenancy Act, 1949, the structure constructed by him/it in must not be pucca structure. I therefore find that the applicant parties did not qualify as thika tenants under the then existing Calcutta Thika Tenancy Act, 1949."
>
> (emphasis supplied)

11.3. The Controller further observed that the appellants did not qualify as *thika* tenants under Section 3(8) of the Act of 1981 either, since even after altering the definition, the exclusion of *pucca* structures remained. It was also found that the lease, based on which the lessees were claiming to be *thika* tenants, had expired on 30.11.1993 and there was no existing relationship of lessor-lessee between the parties. Hence, on 01.03.2003, when the provisions of the Act of 2001 came into force, the lessees had

become at the highest, lessees at sufferance, having no jural relationship with the lessor; and they being essentially trespassers on the land, were not *thika* tenants under Section 2(14) of the Act of 2001. It was also held that the Act of 1949 and the Act of 1981 were not applicable to the property in question. The Controller also observed that the stay order of the High Court was only limited to restricting the application of the Act of 1981 and not the Act of 2001. However, and even after having held that the applicants were not *thika* tenants and there was no relationship of landlord and tenant on the date when the Act of 2001 came into force, the Controller, yet, proceeded to reject the objections with reference to the fact of erection of *pucca* brick wall over the property in question while observing that in view of the decision of Calcutta High Court in the case of ***Purushottam Das Murarka v. Harendra Krishna Mukherjee*****: 79 CWN 852**, subsequent erection of brick wall will not take the applicants outside the definition of *thika* tenant.

11.4. The relevant observations and conclusion of the learned Controller could also be usefully extracted from the typed copy of the order, as placed before us as Annexure P2 (at pp. 101-104 of the paper-book): -

> "13. This authority also finds that that the lease granted by the concerned landlords to the said lessee, on the strength of which the applicant parties are claiming to be thika tenants, expired on 30th November 1993. After such expiry, there was no relationship of Lessor-Lessee between be owners of the concerned premises and the applicant parties. Accordingly, on 1st March, 2003, when the provisions of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 came into force, the ere-lessees (*sic*) had become at the highest lessees at sufferance having no jural relationship with the lessor. The judgment cited by the objector for this proposition i.e. AIR 1928 Cal 753 is squarely applicable to the

facts of the case. Going by that judgment, the applicant parties became trespassers or at the highest tenants at sufferance after expiry of lease. Therefore, they cannot qualify as thika tenants within the meaning of Section 2(14) of Section 2(14) of the said Act of 2001 and the said premises cannot qualify thika land within the meaning of Section 2(15) of the said Act of 2001. From the relevant records which are now before this Forum, it is abundantly clear that neither the Calcutta Thika Tenancy Act, 1949 or the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 or any Rules framed thereunder could ever be applicable to the said premises. The receipts granted by the landlords describing the lessees as thika proja as claimed by the applicant, parties, cannot help the applicant parties. It appears that the said receipts are general receipts, catering both to monthly and thika tenants and the issuance thereof cannot ipso facto clothe the grantees-applicant parties with the status of thika tenancy. That apart, the status of the applicant parties has to be culled out from the provisions of law the registered lease deed and not from the private description provided in certain rent receipts. The claim of Thika tenancy of the applicant parties on the basis of this rent bill / receipt is therefore doubtful.

14. The objector has referred to a writ petition filed on 30th September, 1983 where an order of stay of operation of Calcutta Thika Tenant (Acquisition & Regulation) Act, 1981 was Made. According to the objector, this order is still subsisting which would negate the application of 2001 Act to the land in question. I reject this proposition since the Said order was expressly restricted to the 1981 Act. Therefore the order cannot be interpreted to apply to the 2001 Act and/or the 2010 Amendment Act,

15. Even though I have held that the applicant parties were not tenants nor there was any Landlord-Tenant relationship as on the date when the 2001 Act came into force and consequently is on the date of the 2010 Amendment, I am constrained to reject the application by the objector n (*sic*-on?) the last point urged by the applicant parties that is malting (*sic*) of pucca brick wall does not exclude the applicant parties from the definition of thika tenant. I accept the proposition laid down in 729 CWN 852 relied on by the applicant parties to hold that subsequent erection of brick wall will not take the applicant parties outride (*sic*) the definition of thika tenant. Therefore, the applicant parties were indeed thika tenants and the judgment reported in 79 CWN 852 is squarely applicable to their case. On that basis I have no option but to reject the application of the objector.

I accordingly hold that Bari Narayan Kumar, since deceased and Nemai Chandra Kumar were the Thika Tenants in the subject premises.

After expiry of Badri Narayan Kumar on 06/07/2006, Sint. Jharna Kumar, Sri Debashis Kumar, Smt. Sanchita Paul, Sudipta Kumar &

> Smt. Jyotsna Roy, alongwith Sri Nemai Chandra Kumar are declared as Jt. Thika Tenants.
>
> Thus the earlier order of Thika Tenancy Controller dt. 27.01.2010, stands.
>
> The matter is accordingly disposed of on contest."
>
> (emphasis supplied)

11.5. Hence, objections of the respondent No. 1 were rejected. It was held that Badri Narayan Kumar and Nemai Chandra were *thika* tenants, and after the expiry of Badri Narayan Kumar, his legal heirs were joint *thika* tenants.

Findings of the Tribunal

12. The decision aforesaid was challenged before the Tribunal in O.A. No. 2833/12 (LRTT) and which was decided on 18.11.2013. The Tribunal predominantly based its decision on the Act of 2001 and made various observations including that the unauthorised erection of *pucca* structure by a *thika* tenant without permission of the Controller might entitle the landlord to bring an action for removal of the unauthorised structure or for ejectment but, the nature of tenancy was not changed; that construction of *pucca* structure was not a bar to claim the status of *thika* tenancy; that for the question at hand and to determine if the land vested in the State by virtue of the Act of 2001, simply letting out of the land was to be seen and not the nature of construction.

12.1. The Tribunal, in its elaborate judgment relied upon various authorities and referred to various principles but the crux of its consideration had been the overriding impact and effect of the Act of 2001. As regards the structure in question, the Tribunal held it to be "semi-*pucca*"

but, again observed that all types of structures were included within the meaning of “any structure” in the definition of *thika* tenant in the Act of 2001, which was a beneficial legislation.

12.2. Some of the observations and findings of the Tribunal could be usefully extracted from the typed copy of its judgment placed before us as Annexure P5 (at pp. 200-207 of the paper-book), which would read as under: -

> “16.3 By such amendment confusion and ambiguity to interpret the words "any structure" has been totally dispelled. A particular Thika Land may now vest in the state with effect from 18.01.1982 in a suo-motu proceeding, even if there is no claimant as on 01.03.2003. Any suo-motu proceeding initiated prior to the instant O.A. the impugned proceeding was initiated on the basis of question raised by the applicant before the Government in the year 2010 and challenging thereby the decision dated 27.01.2010 of the Thika Controller. We cannot interpret the law otherwise so that the leasing out of land becomes operative again after complete abolition of Zamindari System by the W.B.E.A. Act, 1953.
>
> 16.4 If it is presumed that the respondents were not a Thika Tenant in terms of the provisions of the Act, 1981, then the impugned proceeding initiated by the Controller recognizing the occupiers on the land taken on lease prior to 18.01.1982 is a valid proceeding as the respondents were in possession on 18.01.1982 and again on 01.03.2003. The respondents became Thika Tenant under the Act, 2001 and the suit land vested in the state with effect from 18.01.1982.
>
> *** *** ***
>
> 16.5 It is an admitted fact that the structure constructed on the suit land by the respondents was with tin shed. The tin shed structure was made with authority given by the landlord and hence the same was not unauthorized. The nature of the structure is undoubtedly semi-pucca. The tin-shed structure cannot be a pucca structure within the meaning of pucca structure in the Act, 1981 after 1993 Amendment as all the materials are not of durable nature. Again, all types of structures are included within the meaning of 'any structure' in the definition of Thika Tenant in the Act, 2001.
>
> *** *** ***
>
> 17… The Act 2001 is a beneficent statute having a chequered history making gradual headways to grant benefit to the occupier on lands belonging to others and to sub-serve common good. Hence, there is no doubt, whatsoever, that the substituted words "any

structure including pucca structure" operate with effect from 18.01.1982, the date given retrospective effect in the Act, 2001 before amendment Act, 2010 was brought in the Statute.

*** *** ***

18.1 …It might happen that a particular occupier could not be declared as Thika Tenant in view of the provisions of the Act, 1981 & the Act, 1949. But in view of the provisions of Sec. 3 inserted in the Act, 2001 conferring over-riding effect to the provisions of the Act, fresh declaration/ determination is not a bar in the perspective of this radically amended Act as because legislature enacted law with retrospective effect and as because observations from a judgment have to be considered in light of the questions which were before the Court. But there was no scope to place before the Court the new issues for decisions in the past as the questions / issues were not existing at the time of past decisions prior to the enactment of the Act, 2001. Because of subsequent legislation in 2001, there has been effective changes of the pre-existing statutory provisions with retrospective effect. Hence, it is well settled that the previous judgement may be reviewed."

(emphasis supplied)

12.3. Thus, the Tribunal proceeded on the finding that even if the occupier could not be declared to be a *thika* tenant under the Act of 1949 or the Act of 1981, the decision could be reviewed because of the change in the pre-existing statutory provisions with retrospective effect. As regards the matter of filing of return, the Tribunal observed that such filing was meaningless because its purpose was for taking consequential action and it was only apprising the Controller of the particular land but, was not linked with vesting, which occurred due to the operation of law. The Tribunal, therefore, found no reason to interfere with the findings of the Controller and proceeded to dismiss the appeal.

13. Aggrieved by the decisions aforesaid, the respondent No. 1 preferred a writ petition in the High Court, being W.P.L.R.T. No. 325 of 2013, which was considered and allowed by the High Court by its impugned

judgment and order dated 10.03.2014 while holding that the present appellants did not qualify as *thika* tenants.

Findings of the Calcutta High Court

14. Having regard to the submissions made and the questions involved in this matter, we may also take note of the reasoning of the High Court in necessary details.

14.1. The High Court referred to the relevant background aspects and findings of the Controller and the Tribunal and then, particularly noticed the admitted position that the lessees had raised *pucca* structure having *pucca* foundation, *pucca* floor and *pucca* wall with partly tin and partly tile shed on the roof and used the premises, including the structure constructed thereat for running their factory activities. The High Court also took note of the facts relating to the enforcement of the Act of 1981 and challenge thereto by the landlord by way of writ petition, wherein an interim order was passed, staying operation of the said enactment *qua* the property in question. The High Court also specifically took note of the fact that the lessees never claimed themselves as *thika* tenants before filing the return, which they filed on 10.04.2003, only after the advent of the Act of 2001. The High Court, thereafter, proceeded to deal with the principal questions involved in the matter with reference to the said three *thika* tenancy enactments while pointing out that the tenancy in favour of the predecessor-in-interest of the present appellants was created when the Act of 1949 was in operation; was subsisting when the Act of 1981 came into operation; and

the present appellants were claiming *thika* tenancy rights under the Act of 2001.

14.2. Proceeding with the definition of "*thika* tenant", as contained in Section 2(5) of the Act of 1949, the High Court observed that the lease having been granted in favour of the lessees for a period of more than 12 years i.e., for 20 years and the lessees having constructed *pucca* structure having *pucca* foundation, *pucca* floor and *pucca* walls with tile and tin shed on the roof in contradistinction to any *kutcha* or temporary structure as contemplated under the said Act, the said lessees cannot be regarded as *thika* tenants within the ambit of Section 2(5) of the Act of 1949.

14.3. Furthermore, noting that the expression "any structure" in Section 2(5) of the Act of 1949 had been interpreted to mean only temporary or *kutcha* structure and not permanent or *pucca* structure in ***Jatadhari Daw & Grandsons v. Smt Radha Debi & Anr.*: 1986 (1) CHN 21,** which was also approved in the Full Bench decision of the High Court in the case of ***Lakshmimoni Das and Ors. v. State of West Bengal and Ors.*: AIR 1987 Cal 326**, the Court cleared the clouds upon the question as to whether the present case qualified the requirement of "any structure" by concluding in the negative. The High Court, *inter alia*, observed and held as under (at p. 14 of the impugned order): -

> "Considering the nature of the construction which was made mainly of bricks as mentioned above we cannot hold that the structure which was constructed by the then lessee was either temporary or Kutcha structure. As such we can safely hold that this part of the requirement of Section 2(5) of the said Act, was not fulfilled in the instant case."
>
> (emphasis supplied)

14.4. On the point of applicability of Section 10A inserted to the main Act of 1949 by way of amendment in the year 1969 which gave right to *thika* tenants to erect *pucca* structure for residential purpose with previous permission of the Controller, the Court noted that since the present appellants did not qualify the requirements of being a *thika* tenant under Section 2(5), they had no right to raise a *pucca* structure under Section 10A of the said Act. Furthermore, the present appellants never claimed that they raised *pucca* structure with the permission of the Controller. Therefore, it was concluded that they cannot be declared as *thika* tenants under the Act of 1949.

14.5. Moving on to the point as to whether the respondents would qualify as *thika* tenants under Section 3(8) of the Act of 1981, the Court examined the relevant provisions and held that the requirements under this Section 3(8) were exactly the same as were under Section 2(5) of the Act of 1949 except the exclusion parts; and thus, by deleting and/or omitting the said exclusion parts of the Act of 1949 from the definition of *thika* tenant under Section 3(8) of the Act of 1981, the lessees under a lease even for more than 12 years were also brought under the purview of *thika* tenancy but, the other essential conditions remained the same namely, those of the tenant's liability to pay rent under a lease or otherwise as also the requirement that such tenant had erected or acquired by purchase or gift any structure on such land either for residential or manufacturing or business purpose.

14.6. The High Court took note of the fact that the Act of 1981 came into operation with effect from 18.01.1982 and then, found that as per the admitted facts of the case, while the requirement of liability to pay rent for the demised land continued until 30.11.1993 as per their lease deed but, the lessees failed to fulfil the other half of requirement, i.e., of erecting or acquiring a *kutcha* or temporary structure. The High Court held that the *pucca* structure erected on the demised land by the lessees cannot be considered within the ambit of "any structure". The High Court, *inter alia*, held as under (at pp.17-18 of the impugned order): -

> "Since the said tenancy continued till 30th November, 1993 it cannot be disputed that the said tenant had liability to pay rent for the demised land to their landlord till 30th November, 1993. Thus, this part of the requirement under Section 3 (8) of the said Act is fulfilled in the instant case. However, the other requirement i.e., erection and/or acquisition by purchase or gift, any structure on such land by the tenant for residential, manufacturing or business purpose, is not satisfied in the instant case as admittedly the said lessee did not raise any kutcha structure and/or temporary structure on the demised land. We have already indicated above that the expression "structure" used in Section 3(8) of the said Act should be construed as "kutcha" structure and/or temporary structure in contra-distinction to the permanent or "pucca" structure as was held by the Division Bench of this Hon'ble Court in the case of Jatadhari Daw & Grandsons -Vs- Smt. Radha Devi & Anr. (Supra) which was subsequently affirmed by the Full Bench of this Hon'ble Court in the case of Lakshmimoni Das -Vs- State of West Bengal (Supra)."
>
> (emphasis supplied)

14.7. The High Court, thereafter, took up for consideration a somewhat ticklish issue pertaining to this case, being related with the effect of retrospective amendment of Section 5 of the Act of 2001. After an elaborate reference to the unamended provisions as also the amended provisions which were given retrospective effect from the very date of commencement

of the original enactment, the High Court also took note of all the salient features of the pronouncement of the Full Bench in the case of ***Lakshmimoni Das*** (supra) and then, analysed the position of law in the following words (at pp.36-40 of the impugned order): -

> "Thus we find that the Full Bench of this Hon'ble Court held in no uncertain term in the said Lakshmimoni Das's case (Supra) that no other land save and except the thika tenancy land and khatal land, could be vested under the original provision of Section 5 of the Act of 1981. Now let us consider the effect of the amended provision of Section 5 of the Act of 1981 which the Special Bench had no occasion to consider as the said amended provision was introduced in the Act of 1981 after the judgment was delivered by the Special Bench in Lakshmimoni Das's case (Supra).
>
> On plain reading of the amended provision of Section 5 of the said Act, it appears to us that apart from thika tenancy property and/or the khatal land, some other land which was neither thika tenancy land nor khatal land, was sought to be vested under Section 5(c) of the said Act.
>
> We feel that deep analysis of this provision is necessary to find out the real intention of the legislature in introducing the said amendment. Did the State Legislature really intend to vest land of any description which was let out to tenant either under a written lease or otherwise? Had it really been so, then while enacting a new legislation on the very same subject in 2001, the State Legislature would not have omitted the provision regarding vesting of other land which was there in the Act of 1981 from the Act of 2001.
>
> If we compare the original provision of Section 5 of the Act of 1981 with the amended provision of Section 5, then it appears to us that the provision relating to vesting of thika land and other land either occupied and/or used as khatal which was there in the original provision of Section 5 was retained in the amended provision of Section 5 of the said Act. What more was introduced in the amended provision was vesting of Bustee land situated in the khas land of the landlord, land in slum areas and other land which was neither thika tenancy land nor Bustee land, nor land in slum area nor land occupied and/or used as khatal. Then what was actually intended by introducing the provision of vesting of other land under Section 5 (c) of the amended provision? Other land was defined in Section 3 (5A) which included vacant land or tank. Tenant of other land was defined in Section 3(7B) of the amended provision which says that tenant of other land means any person who occupies other land under another person, whether under a written lease or otherwise, and is or but for a special contract would be liable to pay rent at a monthly or periodical rate for occupation of such other lands, and includes the successor-in-interest of such person. Thus,

if Section 5 (c) is read conjointly with Section 3(5A) and Section 3(7B) then it leads us to hold that whenever any land including vacant land or tank is let out to a tenant by the landlord even for a day or a month at a daily or monthly rate, the landlord's interest in such land will vest in the State under Section 5 (c) of the said Act by overriding the provision of the Transfer of Property Act (Central Law) governing the relationship of landlord and tenant. If we hold as such , it will lead to absurdity. Probably the State Legislature, after considering the absurdity and/or impossibility of implementation of the amended provision of the Act of 1981, dropped the idea of vesting of other land and accordingly omitted the said provisions while legislating on the same subject in 2001. Such intention of the legislature will be clear, if we consider the State Legislature's choice of the date of enforcement of 2001 Act. In fact two contradictory provisions cannot co-exist and operate simultaneously in the same field. When the subsequent legislation conveys a different intention relating to the laws of vesting than that of the idea of vesting introduced in the earlier Act, it goes without saying that the earlier Act was repealed. Having regard to the fact that the Act of 2001 was given effect from the very same date on which the Act of 1981 was enforced, we have no hesitation to hold that State Legislature practically abandoned its idea of vesting of any other land apart from thika tenancy land and khatal land as on 18.01.1982 and this conclusion is drawn by us as we find that the Act of 2001 was given retrospective effect from the very same date when the Act of 1981 was enforced. Again if the provisions of the Act of 2001 is considered, then it goes without saying that the provision relating to vesting of landlord's interest in the thika tenancy and khatal land was made in the said statute in conformity with the Full Bench Decision of this Court in Lakshmimoni Das's case (Supra). Omission of the provision relating to vesting of other land was also made in conformity with the said decision of the Full Bench Decision in Lakshmimoni Das's case (Supra). As such, we have no hesitation to hold that idea of vesting the landlord's interest in the other land in the State under the Act of 1981 was abandoned by the State. However, in view of the savings clause provided in the Act of 2001, the vesting which had already taken place under the Act of 1981 in respect of thika tenancy land and khatal land was saved. That apart having regard to the fact that the operation of the Act of 1981 in respect of the petitioners' property was stayed by this court, the landlord's interest in the said premises could not have vested under 1981 Act. Then again the private respondent also did neither submit any return under 1981 Act claiming their tenancy under the State nor did they ever claim the landlord's interest vested under the said Act."

(emphasis supplied)

14.7.1. In view of the above, the High Court held that the landlord's interest in the subject property never vested in the State under the Act of 1981.

14.8. Moving on to the Act of 2001, the High Court held that even thereunder, the landlord's interest never vested in the State. In this regard, the Court examined the provision of Section 2(14) of the Act of 2001, again, as originally enacted and as amended by the Act of 2010 and then, held as under (at pp. 41-42 of the impugned order): -

> "The definition of thika tenant under Section 2 (14) of 2001 Act as mentioned above was almost identical with the definition of thika tenant as mentioned in Section 3(8) of 1981 Act except the exclusion part regarding structure which stood forfeited to the State under Sub-Section 2(6) of the said Act. The definition of thika tenant in Section 2(14) of Act of 2001 was amended by the Amendment Act of 2010 and thereby the words "by purchase or gift any structure on such land" was substituted by the words "by purchase or gift any structure including pucca structure if any on such land". Thus the expression "pucca structure" was included in the definition clause of Section 2 (14) of the said Act for the first time by the Amendment Act of 2010 and effect of such amendment was given prospectively with effect from 1st November, 2010. The effect of the amendment was not given from the date when the 2001 Act came into operation from 18th July, 1981. Thus, existence of pucca structure on the said land as on 1st November, 2010 will itself be of no help to the private respondent inasmuch as on 1st November, 2010 there was no subsisting lease and/or contract under which original lessees were liable to pay rent to their landlords in respect of the land comprising in the said premises. The lease dated 15th December, 1973 expired by efflux of time on 30th September, 1993. After expiry of the said lease, the lessees became trespassers and/or at best they may be regarded as tenant by sufferance who had no liability to pay rent to their landlord either under the said lease which stood expired in 1993 or under any other law. Thus, the first part of the requirement of Section 2(14) of the said Act is not fulfilled in the instant case. As such the land which was comprising in the said tenancy of the predecessor-in-interest of the private respondent cannot vest with the State under Section 4 of the said Act."
>
> (emphasis supplied)

14.9. The High Court agreed with the contention that the expression "structure including *pucca* structure", was included in Section 2(14) of the Act of 2001 only for recognizing the tenancy of those *thika* tenants who constructed these *pucca* structures with permission of the Controller under

provisions of the Act of 1949 or the Act of 1981, with the building plan sanctioned by the Municipal Corporation. The High Court further held that the decision in ***Purushottam Das Murarka*** (supra) was misconstrued by the Controller while holding the present appellants to be *thika* tenants since *pucca* structures were raised during continuance of the lease. The Court pointed out that a different principle was laid down in that case, and both the Controller and the Tribunal misconstrued it; and held that the impugned orders, thus, remained wholly unsustainable in the following words: -

> "In fact, this was the decision which was misconstrued by the Thika Controller while drawing his conclusion that since thika tenant raised pucca construction during continuance of his lease, they became thika tenant. In our reading, we find a different principle was laid down in the said decision which could not be properly understood by the controller and the Tribunal which ultimately affirmed the Controller's said order. It was simply decided therein that if a thika tenant raises any pucca construction during the continuance of his lease without the landlord's consent, then the landlord may initiate action for demolition of such unauthorized construction. It was never held in the said decision, that if tenant of a land raises pucca structure, he will automatically be a thika tenant. Since the said decision was the sheet anchor for coming to the conclusion that the private respondents were thika tenant, we cannot approve the said order of the Controller for the aforesaid reason."

14.10. In view of the above discussion and findings, the High Court held that the Controller and the Tribunal were not justified in holding that the present appellants were *thika* tenants in respect of the subject property and the landlord's interest therein vested with the State under the Act of 2001 with effect from 18.01.1982. Hence, the writ petition was allowed.

14.11. Being aggrieved by the order so passed by the High Court, the appellants have preferred this appeal.

Previous decision of this appeal and review thereof

15. Before proceeding further, we may point out that this appeal against the said judgment and order dated 10.03.2014 was earlier considered and decided by a co-ordinate bench of this Court by way of the judgment dated 24.02.2015. Therein, the matter was essentially considered with reference to the provisions contained in Section 2(5) of the Act of 1949 as also the later inserted Section 2(4a) and Section 10A to the Act of 1949; and while holding that the intention of legislature was clear that the expression “any structure” would include both *kutcha* (temporary) and *pucca* (permanent) structure, it was concluded that the appellants fulfilled all the conditions of *thika* tenancy as defined in Section 2(5) of the Act of 1949. In consequence to this finding and with reference to the Act of 1981, it was held that the property in question vested in the State along with interest of landlord free from all incumbrances.

16. A review petition bearing No. 1483 of 2015 was filed in the matter seeking review of the judgment aforesaid, which was considered and allowed by us on 04.03.2021. After noticing the provisions contained in Section 2(5) and particularly the excepted category of the lease beyond 12 years, it was observed that the judgment under review suffered from an error apparent on the face of the record because the crucial fact, that the period of lease in the present case was of 20 years, was not even taken into consideration. The question as to whether the appellants were entitled to succeed on the basis of the provisions of the Act of 1981 was, of course,

left open because the same had not been considered in the judgment under review. Therefore, we allowed the review petition and restored the appeal for reconsideration while observing, *inter alia,* as under: -

> "One of the excepted categories in Section 2(5) of the 1949 Act postulates that the definition will have no application to lease beyond 12 years period. On this count alone, the finding of fact recorded by this Court in the judgment under review and the declaration given in favour of respondent No. 1 on that basis cannot stand, being a manifest error apparent on the face of record and also contrary to the express statutory provision.
>
> The question whether the appellants in Civil Appeal could otherwise succeed on the other arguments, including that they had protection under the provisions of The Calcutta Thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981 (for short, 'the 1981 Act'), of being the Thika Tenant(s) and that the pucca structure erected by them was also protected/covered under that provision, is a matter which needs to be examined in the revived civil appeal.
>
> Indeed, the judgment under review refers to the provision Section 3(8) of the 1981 Act, but there is no analysis in the judgment as to how the appellant (Respondent No.1 herein) would acquire the status of *thika tenant* as such. It is only then the issue of vesting under the 1981 Act can be taken forward.
>
> Counsel for the respondent(s) was at pains to persuade us that even if the judgment under consideration is reviewed, the conclusion in favour of respondent No. 1 would remain the same. Again, that is a matter to be considered in the civil appeal, consequent to the recall of judgment dated 24th February, 2015. All contentions available to both sides in the revived appeal can be considered on its own merits. We order accordingly.
>
> In view of the restoration of appeal, all interim order(s) passed in the appeal stand revived.
>
> The review petition is disposed of accordingly"

Rival Contentions

17. The foregoing had been the summary of the entire background in which this appeal was heard at length by us. We may now usefully summarise the contentions urged on behalf of the contesting parties.

The Appellants

18. Learned senior counsel for the appellants has assailed the order impugned with a variety of submissions concerning operation and effect of the *thika* tenancy enactments.

18.1. It has been submitted by the learned senior counsel that the term "any structure", as used in the Act of 1949, includes both *kutcha* and *pucca* structures. The learned counsel has relied upon the decision of this Court in ***Chief Inspector of Mines and Anr. v. Lala Karam Chand Thapar and Ors.*: (1962) 1 SCR 9** to contend that "any" as referred to in the term "any structure" in Section 2(5) of the Act of 1949, means "all". It has been submitted that words/phrases in a statue ought to be construed as per their plain language; and the decisions in ***Om Prakash Gupta v. DIG Vijendrapal Gupta:* (1982) 2 SCC 61, *Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.*: (2012) 9 SCC 552, *Union of India & Anr. v. Hansoli Devi & Ors.*: (2002) 7 SCC 273** and ***Vijay Narayan Thatte and Ors. v. State of Maharashtra and Ors.*: (2009) 9 SCC 92** have been relied upon.

18.2. It has also been contended that the case of ***Monmatha Nath Mukherjee v. Smt. Banarasi and Ors.*: 63 CWN 824** had wrongly been decided, and that there exists no other authority, apart from this case for the proposition that the term "any structure" in Section 2(5) of the Act of 1949 is only confined to *kutcha* structure. It has further been submitted that ***Jatadhari Daw & Grandsons*** (supra) merely relied on ***Monmatha Nath***

Mukherjee (supra), and in fact, ***Jatadhari Daw & Grandsons*** has been set aside by the Supreme Court by its order dated 27.10.2004. It has also been contended that the judgement in ***Kshiroda Moyee Sen and Ors. v. Ashutosh Roy and Ors.*****: 63 CWN 565** is being misread, since it was not held that "any structure'" in Section 2(5) meant *kutcha* structure, but was actually held to the contrary; and that the Act of 1949 does not restrict the structures to *kutcha* structures and that the nature of these structures would depend upon the terms of the contract between the parties. It has also been submitted that it was held by the High Court in ***Kshiroda Moyee Sen*** (supra) that a *thika* tenant was not entitled to put up *pucca* structures on the land merely because he had taken the land on *thika* tenancy but, while there was no right to put up *pucca* structures, the landlord was only entitled to seek a decree of injunction. The learned counsel has also referred to ***Jnan Ranjan Sen Gupta and Ors. v. Arun Kumar Bose*****: (1975) 2 SCC 526**, wherein it was held that the Act of 1949 was a beneficial legislation, and should be liberally interpreted in favour of the tenants, and that if two interpretations were possible, the one in favour of the tenant should be upheld.

18.3. The learned senior counsel has also submitted that the reliance on Section 108(p) of the Transfer of Property Act, 1882[12]-[13] to interpret the Act

[12] Hereinafter also referred to as 'the Transfer of Property Act'.

[13] Clause (p) of Section 108 of the Transfer of Property Act dealing with rights and liabilities of the lessee enjoins upon the lessee that, -

> "(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;"

of 1949 is erroneous, since a special statute like the Act of 1949 overrides a general statute like the Transfer of Property Act; and Section 108(p) of the Transfer of Property Act does not lay down that permanent structures cannot be constructed by a tenant.

18.4. It has been contended by the learned senior counsel that the insertion of Section 10A by the Amendment Act of 1969 had been only to the effect that if otherwise the *thika* tenant was not permitted to build *pucca* structures under the terms of the lease with the landlord, he could have done so with permission of the Controller. Section 10A shows intent of the legislature to include lands in which the tenant has erected or acquired permanent structures.

18.5. As regards the interpretation of *thika* tenant and the phrase "any structure" under the Act of 1981, the learned senior counsel for the appellants has argued that they are not being correctly interpreted. The concept of *thika* tenancy under the Act of 1981 was much wider than the one under the Act of 1949, wherein the temporariness of the concept of *thika* tenancy was removed. The term "other lands" was not in place at the inception, and was inserted by way of the Amendment Act of 1993. The learned counsel would submit that the legal position on the nature of construction is clearer after the Amendment Act of 1993, since all *thika* tenancies, as defined under Section 3(8) of the Act of 1981, stood vested with the State with effect from 18.01.1982; and the concept of "other lands" was introduced by virtue of Section 5(c).

18.6. The learned counsel has further submitted that the property in question continued to be under *thika* tenancy after the Act of 2001, since the acquisition was carried out retrospectively; and it was expressly stated in Section 4 that it would take effect from 18.01.1982. Furthermore, the learned counsel has submitted that the amendment to the definition of *thika* tenancy by way of the Amendment Act of 2010 was only clarificatory in nature, and merely confirmed what was always the position, that the nature of structures could either be *kutcha* or *pucca*.

18.7. In the other limb of submissions, the learned counsel has submitted that the findings of fact by the Tribunal were set aside by the High Court in its writ jurisdiction without any cogent reason. The Tribunal had categorically held that the structures on the land were *kutcha* in nature, but the High Court held that it was admitted that the structures were *pucca* in nature, without any discussion on this issue.

The State

19. The learned counsel for the respondent-State has supported the submissions made on behalf of the appellants.

19.1. The learned counsel for the respondent-State has submitted that the order of the Controller is within the four corners of the law and is required to be upheld. The learned counsel would submit that the definition of *thika* tenant under Section 2(5) of the Act of 1949 was substituted by the West Bengal Act VI of 1953, which indicates that, from its inception, the definition of *thika* tenant clearly talked about “any structure”; and there was

no scope to read only *kutcha* structure into the definition. It has been submitted that when words are clear and there is no ambiguity, there is no reason to resort to any external aid for interpretation. The learned counsel would also submit that after insertion of Section 10A to the Act of 1949, *thika* tenants could erect *pucca* structures on the land with the permission of the Controller and hence, the Act of 1949 did not contemplate a bar on erection of *pucca* structures by the *thika* tenant.

19.2. As regards the definition of “any structure” under the Act of 1981, it has been submitted by the learned counsel that a provision for “any structure” had been made in the Act of 1981, but the persons who were excluded from the definition under the Act of 1949 were brought within the ambit of the Act of 1981; and lands which were earlier excluded from the definition of *thika* tenancy, were also brought within the ambit in the Act of 1981. The learned counsel has referred to the decision of this Court in ***Ramdas Bansal (Dead) Through LR v. Kharag Singh Baid & Ors.*: (2012) 2 SCC 548**.

19.3. It has also been submitted that Section 6(4) of the Act of 1981 permitted a *thika* tenant to construct *pucca* structures in accordance with the building plans sanctioned under the Calcutta Municipal Corporation Act, 1980 or the Howrah Municipal Corporation Act, 1980 but, the requirement of prior permission from the Controller for erection of *pucca* structures had not been provided for under the Act of 1981.

19.4. It has been contended by the learned counsel for the State that the High Court, in ***Monmatha Nath Mukherjee*** (supra), erred in concluding that the Act of 1949 did not include *pucca* structures, since no external aid was required for the purpose of interpreting the definition of *thika* tenant, and the Courts could not have gone behind the language of the statute, or add or subtract from it. It has been submitted that the Courts cannot rewrite, recast or reframe the legislation; and reliance is placed on the decisions of this Court in ***Hardeep Singh v. State of Punjab & Ors.*****: (2014) 3 SCC 92** and ***Afcons Infrastructure Ltd. & Anr. v. Cherian Varkey Construction Company Private Limited & Ors.*****: (2010) 8 SCC 24**.

19.5. As regards the effect of repeal and re-enactment of Acts, it has been submitted by the learned counsel for the respondent-State that when an Act is repealed, it is treated as revoked or abrogated and removed from the statute book. It has been argued with reference to the decision in ***Gajraj Singh & Ors. v. State Transport Appellate Tribunal & Ors.*****: (1997) 1 SCC 650** that whenever an Act is repealed, it must be considered as if it had never existed, except when pertaining to past and closed transactions. The learned counsel would submit that per Section 21 of the Act of 1981, the Act of 1949 was completely repealed without a savings clause, and the Act of 1981 was given a special overriding effect by virtue of Section 4. The Act of 2001 further repealed the Act of 1981, and came into force with effect from 01.03.2003, while being retrospectively applied with effect from 18.01.1982. Since an overriding effect was provided while repealing the

Act of 1949, any determination under the Act of 1949 required review in light of the provisions of the repealing Act, being the Act of 1981. By placing reliance on such overriding effect, it has been contended that the appellants became *thika* tenants by virtue of the operation of the Act of 1981, with the subject property having vested with the State from the date of commencement of the Act of 1981. It has also been contended that the respondent Nos. 1 and 2, who have stepped into the shoes of landlord, have no right, title or interest in the property in question and hence, the impugned judgment is not sustainable in the eyes of the law.

19.6. It has additionally been submitted by the learned counsel that under the Act of 1949, the two main factors to determine the claim of *thika* tenancy were the nature of the structure on the land and the length of the lease, but these exclusions were not present in the Act of 2001, which was also given an overriding effect in terms of Section 3 read with Sections 2(14) and 2(15) thereof. Hence, it has been submitted by the learned counsel that disqualification under the Act of 1949 could not be used as a shield against the application of the provisions of the Acts of 1981 and 2001, with the Act of 2001 being a complete and independent code in itself.

19.7. It has also been contended that a decision taken on the basis of a previous enactment is liable to be changed on the basis of existing enactment, and the status of *thika* tenancy is required to be examined afresh in light of the Act of 2001, irrespective of the status a tenant might have enjoyed under the previous enactments. Reliance is placed on the

decision of the High Court in the case of ***Ram Krishna Shaw v. Tachmani Devi*****: (1994) 1 CAL 394**. Hence, it has been the stand of learned counsel for the respondent-State that the registered deed of lease dated 15.12.1973 for a period of 20 years would not be a bar in considering the claim of *thika* tenancy.

The respondent No. 1

20. Learned senior counsel for the respondent No. 1 has countered the submissions aforesaid and has supported the order impugned, again with a variety of propositions.

20.1. In the first limb of submissions, the learned senior counsel has contended that the appellants do not qualify as *thika* tenants under the Act of 1949 and even under the Act of 1981.

20.2. As regards the status of the tenancy of the appellants under the Act of 1949, it has been submitted that leases beyond 12 years were excluded, and the term “any structure” has been interpreted to mean *kutcha* structure in a series of decisions by the High Court of Calcutta. The term *“thika”* means “temporary” or “non-permanent”, and hence, only deals with temporary tenancies.

20.3. The learned senior counsel for the respondent No. 1 has referred to the decision in ***Lakshmimoni Das*** (supra), where it was held that within the scope and ambit of Act of 1981, only the lands comprised in *thika* tenancies within meaning of Act of 1949, comprising *kutcha* structure, or *pucca* structure constructed for residential purpose with permission of

Controller, or *khatal* lands held under lease vested in the State; and save as aforesaid, no other land and structures vested under the said enactment. The case of ***Sri Sri Satyanarayan*** (supra) has been relied upon, where it was observed that *thika* in Bengali meant temporary or partial. Reliance has also been placed on the decision in the case of ***Kshiroda Moyee Sen*** (supra), where it was held that a tenant was not entitled to put any permanent structure on the land under the Transfer of Property Act or the *Thika* Tenancy Act. Furthermore, by placing reliance on ***Monmatha Nath Mukherjee*** (supra), it is contended that nothing in the Act of 1949 entitled a tenant to erect a *pucca* structure. It has also been pointed out that the decision in ***Monmatha Nath Mukherjee*** was affirmed by the Division Bench of the High Court in ***Annapurna Seal v. Tincowrie Dutt and Anr.*****: 66 CWN 338**, wherein the High Court held that a *pucca* building could not come under the purview of the Act of 1949, since it dealt with concepts of temporary natures like the "*thika* tenant", a "*bharatia"* and "structures". It has also been submitted that the Statement of Objects and Reasons of the Act of 1949 makes it clear that the Act was brought into force to protect tenants having *kutcha* or temporary structures from eviction and against charging of exorbitant amounts of rent by the landlord. The learned counsel has also submitted that the term *"pucca* structure" was only added for the first time in the Act of 2001.

20.4. As regards the Act of 1981, the learned senior counsel has argued that it was not the intention of the legislature that land in all leases of vacant

land of any tenure upon which tenant constructed a structure would vest in State. By placing reliance on the Statement of Objects and Reasons, it is submitted that the Act of 1981 is an appropriatory and confiscatory enactment, which contemplated acquisition and had not been for creation of *thika* tenancies. Furthermore, it has been contended that even if one became a *thika* tenant under the State, he would have to obtain permission to construct *pucca* structure in accordance with building plan sanctioned under the Calcutta Municipal Corporation Act, 1980. Support has also been sought from the affirmation of the decision in ***Monmatha Nath Mukherjee*** (supra) by the Division Bench in ***Jatadhari Daw & Grandsons*** (supra). It has been submitted by the learned counsel that some questions were referred to the Full Bench of the High Court of Calcutta in ***Lakshmimoni Das*** (supra), where it was held that per Section 5 of the Act of 1981, only those lands which had *kutcha* structures, or *pucca* structures constructed with permission of the Controller under the Act of 1949, and *khatal* lands held under a lease, would vest with the State under the Act of 1981.

20.5. The learned counsel for the respondent No. 1 has submitted that the decisions aforementioned have been consistently followed by the High Court, even as recently as 2016; and a view which has been consistently adopted by the High Court for more than 60 years, deserves not to be upset at the instance of the appellants. Reliance is placed on the decision of this Court in ***Shanker Raju v. Union of India*****: (2011) 2 SCC 132.**

20.6. The learned senior counsel has further submitted that repeal of the Act of 1949 and simultaneous re-enactment of the law, being the Act of 1981, is an affirmation of the old law in the Act of 1949. Therefore, the Act of 1981 is required to be read in conjunction with the Act of 1949, as the legislature was aware about the consistent judicial interpretation of the term "any structure", but still did not change it. This shows the intent of the legislature to keep the meaning of the term "any structure" in line with the judicial pronouncements and the Act of 1949. This definition was only amended prospectively under the Act of 2001 by way of the Amendment Act of 2010. Reliance is placed on various decisions of this Court including those in ***Bengal Immunity Company Limited v. State of Bihar and Ors.*****: (1955) 2 SCR 603** and ***Gammon India Ltd. v. Special Chief Secretary & Ors.*****: (2006) 3 SCC 354.**

20.7. As regards the Amendment Act of 2010, inserting *pucca* structures in the term "any structure", the learned counsel has submitted that this amendment is prospective in nature, and not clarificatory, since the amendment was made applicable from 01.11.2010, prospectively. The intention could be ascertained from the fact that when the Act of 1981 was repealed by the Act of 2001, some provisions of the Act of 2001 were applied retrospectively with effect from the date of commencement of the Act of 1981, i.e., 18.01.1982, while the Amendment Act of 2010 was applied prospectively.

20.8. It has also been submitted by the learned counsel for the respondent No. 1 that the appellants did not pay rent to the landlords after expiry of the lease on 30.11.1993 and as such, their occupation after the expiry of the lease is tenancy at sufferance; and a tenant at sufferance is liable to pay mesne profits/damages, and not rent. Therefore, after 30.11.1993, the appellants could not be *thika* tenants, since they were not liable to pay rent. The learned counsel has referred to various decisions in this regard including that in ***Nand Ram (Dead) Through Legal Representatives v. Jagdish Prasad (Dead) Through Legal Representatives*****: (2020) 9 SCC 393.**

20.9. The learned senior counsel has also submitted that the operation of the Act of 1981 as regards the property in question was stayed by the High Court of Calcutta by the order dated 30.09.1983 in WP Civil Rule No. 10449(W) of 1983. Therefore, the appellants could not be *thika* tenants under the Act of 1981 and the said land could not vest with the State; and significantly, the appellants filed Return in Form A on 10.04.2003 under the Act of 1981 when the said Act had been repealed and additionally, the return filed was much after the expiry of lease.

20.10. In the last limb of arguments, the learned senior counsel for the respondent No. 1 has submitted that the findings of the High Court of Calcutta are correct; that in rejoinder submissions, learned senior counsel for the appellants had conceded that it was not appellants' case that any new *thika* tenancy was created under the Act of 1981 and since the

appellants were admittedly not *thika* tenants under the Act of 1949, this part of submissions on behalf of the appellants clarifies that they are not *thika* tenants, and hence, the judgement of High Court deserves to be upheld.

21. We have heard the learned counsel for the parties at sufficient length and have examined the record of the case with reference to the law applicable.

Analysis

22. Having given anxious consideration to the entire matter, we are satisfied that the High Court has taken an eminently just and proper view of the matter in setting aside the untenable orders passed by the Controller and the Tribunal; and no case for interference is made out.

22.1 A long length of arguments has been advanced before us by the contesting parties, particularly in view of the peculiarities associated with the three enactments and their amendments from time to time. Having regard to the subject matter, it appears appropriate only to deal with the material propositions and factors while analysing the submissions. This analysis could be broadly sub-divided into four parts namely, the nature of the structure in question; the statutory scheme and import of three enactments with their amendments; the relevant decisions; and other miscellaneous but relevant factors.

<u>The Structure in question</u>

23. We may, in the first place, clear one of the unnecessary submissions made on behalf of the appellants as if the High Court has

unjustifiably stated that the structures in question were admittedly *pucca* in nature. This submission is unnecessary as also incorrect. The High Court has made the relevant observations about the nature of structure and has returned its findings in that regard only after proper comprehension of all the relevant factual aspects.

23.1. The fact that the structure in question was *pucca* in nature could not have been put to any issue by the appellants. As noticed, the learned Controller, in paragraph 3 of his findings in the order dated 01.08.2012, categorically recorded the facts that even from the assessment register of the Corporation, it was clearly shown that at all material times, there were placed such structures at the subject property which fell within the meaning of "*pucca* structures". The Controller also found with reference to the enquiry report that there were structures having *pucca* foundation, *pucca* floors and *pucca* walls as also brick walls with tin shed. The Tribunal, in its findings, made rather strange observations that the structure in question was a "semi-*pucca"* one and for that purpose, referred only to tin shed and not the other structures as noticed and mentioned by the Controller. In fact, the Tribunal diverted its attention more to its proposition that after the Amendment Act of 1993, all types of structures were included within the meaning of "any structure". In any case, the Tribunal also could not return a specific finding that it had been a *kutcha* structure. The classification of semi-*pucca*, as attempted to be carved out by the Tribunal, was neither

envisaged by the statute nor could have been countenanced in view of the specific facts noticed by the Controller.

23.2. The High Court has, obviously, taken into comprehension the findings of the Controller which were never challenged by the appellants and hence, made the observations that the lessees had admittedly raised *pucca* structure. Even if the appellants seek to dispute such findings, such a dispute is required to be rejected, particularly with reference to indisputable findings of the Controller. The structure in question had been a *pucca* structure. Its implication shall unfold hereafter.

The statutory scheme and the import of three enactment with their amendments

24. A quick but comprehensive recap of the entire environment surrounding the enactments in question would make it clear that by the Act of 1949, essentially the *thika* tenancies were sought to be regulated, more particularly against arbitrary eviction and enhancement of rent. Therein, by the Amendment Act No. XXIX of 1969, the *thika* tenant was given the right to erect *pucca* structure in case the land comprised in the holding was being used for residential purposes, of course, with previous permission of the Controller. *Bharatias*, being essentially the persons paying rent in respect of the structure erected by the *thika* tenant, were also given protection so that *thika* tenant would not eject them for erecting a *pucca* structure. The legislature duly took note of the requirements of giving protection to *thika* tenants and *bharatias* against ejectment and thus, the Calcutta *Thika* Tenancy Stay of Proceedings (Temporary Provisions) Act,

1978, was enacted, whose life was extended upto 18.07.1981. As specified in the Statement of Objects and Reasons for the Act of 1981, the object of the said Act of 1978 was to provide temporary protection against ejectment until a comprehensive legislation was enacted to deal with the public grievances.

24.1. The various features of the Act of 1949 had been the subject-matter of debates in various decisions of Calcutta High Court, particularly after amendment in the year 1953 in the definition of *thika* tenant. One of the consistent lines of thought remained in various decisions like those in the case of ***Kshiroda Moyee Sen***, ***Monmatha Nath Mukherjee*** and ***Annapurna Seal*** (supra), that the expression "any structure", as referred to in Section 2(5) though ordinarily could be interpreted as "all structures" but, while harmonising the said provision with Section 108(p) of the Transfer of Property Act, the term "structure" in this definition could refer only to a "*kutcha* structure".

25. Then, in the Act of 1981, the State Legislature introduced the provisions for acquisition of the rights of landlords in the land comprised in *thika* tenancies by payment of certain amount on the lines of the then operating Urban Land Ceiling (Ceiling and Regulation) Act, 1976. This acquisition was to result in vesting of all the rights in the land comprised in *thika* tenancies in the State free from all encumbrances; and the *thika* tenants were to hold the land under the State on prescribed terms and conditions. Protection against ejectment was also granted to *bharatias*.

25.1. Again, the salient features of the Act of 1981, as originally enacted, had been the subject-matter of several debates in the High Court with same consistent line of thought that the "structure" referred to in the definition of "*thika* tenant" meant only *kutcha* structure; and it related to *pucca* structure only when the same was for residential purposes.

25.2. In the Act of 1981, the legislative intent, on one hand being of protecting the interest of vulnerable class of tenants/occupants but on the other hand, the fiat being of exaction of the landlord's property to the State, obviously, the provisions were required to be construed in a balanced manner and were so construed by the Calcutta High Court in several of its decisions and the matter was ultimately dealt with by the Full Bench of the High Court in the case of ***Lakshmimoni Das*** (supra) wherein, the Full Bench approved the interpretation of Section 5 of the Act as put by the Division Bench in the case of ***Jatadhari Daw & Grandsons*** (supra). The Full Bench answered the reference in the following terms: -

> **"56.** For the reasons aforesaid we hold as follows:—
> (a) The impugned Act is not protected under Art. 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 Arts. 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 S. 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.

(c) Sub-sections (2) and (3) of S. 8 of the impugned Act and R. 5, Calcutta Thika Tenancy (Acquisition and Regulation) Rules, 1982 are ultra vires the Constitution.

(d) Rule 3(b) of the Calcutta Thika Tenancy (Acquisition and Regulation) Rules, 1982 excepting the following portion "every thika tenant or tenant shall pay to the Controller annual revenue being not less than what he was paying to the landlord before the coming into force of the Act" Rules 3(h), 3(i) and 3(j) of the said rules are ultra vires.

(e) Section 19 of the impugned Act in so far as it purports to abate any pending appeal preferred by a thika tenant against a decree for eviction of thika tenant under the Calcutta Thika Tenancy Act, 1949 and any execution proceeding for eviction of a thika tenant against whom a decree for eviction had been passed under the Calcutta Thika Tenancy Act, 1949 before the enforcement of the impugned Act is illegal and ultra vires.

(f) Section 6(2) of the impugned Act excepting the proviso thereunder and Ss. 26 and 27 of the impugned Act are declared ultra vires."

25.3. We are essentially concerned with the sub-paragraph (b) aforesaid as regards the construction of Section 5 of the Act of 1981. Interestingly, while the said decision in ***Lakshmimoni Das*** (supra) was challenged in this Court but, even during the pendency of such challenge, the legislature made amendments to the Act of 1981 by virtue of the Amendment Act of 1993 which was intended to remove the practical difficulties in operation of the Act of 1981. By this Amendment, even the Title and the Preamble of the Act of 1981 as originally enacted were amended. In fact, such amendment of title etc. had its foundation in the observations occurring in ***Lakshmimoni Das*** (supra) wherein the Full Bench of the High Court, *inter alia*, took into consideration the original title of the enactment, i.e., the Calcutta *Thika* Tenancy (Acquisition and Regulation) Act, 1981 while construing its provisions where the expression "other land" was not there.

25.4. However, it could be readily seen that the amendment of Section 5 by the Amendment Act of 1993, rather than removing the difficulties and clarifying the position of law as also rather than removing the basis of the decision in ***Lakshmimoni Das*** (supra), only created more complexities and unworkable situation where the effect of newly inserted clause (c) of Section 5 was going to be as if any land given on lease in any manner was to result in vesting of the interest of the landlord in the State. If we could say so, the shortcomings in the originally enacted Section 5 of the Act of 1981, which were indicated in ***Lakshmimoni Das*** (supra) by the Full Bench of the Calcutta High Court, rather than being removed, became more prominent with complexities because of the Amendment Act of 1993.

25.5. In our view, the High Court has rightly held in the order impugned that the confusions and anomalies were dealt with in the Act of 2001; and because of the larger part of absurdity having been removed in the Act of 2001, the challenge in this Court to the judgment in ***Lakshmimoni Das*** was not taken forward.

26. The object and purpose of these enactments and text of the relevant provisions, when examined with reference to their texture and context, the provisions of vesting as evolved by way of originally enacted Section 5 of the Act of 1981 and as provided for in Section 4 of the Act of 2001 read with the Amendment Act of 2010 put it beyond the pale of doubt that until the advent of the Amendment Act of 2010 w.e.f. 01.11.2010, erection of *pucca* structure on the leased land did not bring the tenant within

the definition of *thika* tenant and thus, there could not have been any vesting in the State under Section 5 of the Act of 1981 (whether originally enacted or amended) or under Section 4 of the Act of 2001, as originally enacted.

27. We may also observe that ordinarily, a later enactment may not be a safe external aid for interpreting the preceding enactment on the same subject but the object and purport of the enactments dealing with *thika* tenancies commencing from the year 1949 and continuing with successive enactments of 1981, its amendment in 1993, then the enactment of 2001 and its amendment in the year 2010, formed a series of legislative exercises towards the same subject, i.e., protection of *thika* tenants. Hence, the later promulgation of the Act of 2001 and its amendments could have been referred to, and have rightly been referred to, by the High Court in the impugned judgment while construing the Act of 1981.

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 *kutcha* 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 *kutcha* 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 same 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 ejusdem 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 khatals and the right, title and interest of landlord in such khatals are intended to be vested under S. 5. Lands comprising pucca and permanent structures erected by the tenant for user of the land for khatals and lands used for khatals 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 khatals although all khatals 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 khatals 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 khatals in S. 5 for the purpose of vesting of such khatals and consequential control and regulation of khatals. 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.

Other miscellaneous but relevant factors

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.

33. It is also significant to notice that the Controller, in his detailed order dated 01.08.2012, even after examining all the facts of the case and also the provisions of law applicable, repeatedly held that the appellants could not have been treated as *thika* tenants under the Act of 1949 or under the Act of 1981. It was only in the last part of the impugned order dated 01.08.2012, the learned Controller abruptly picked up the decision in ***Purushottam Das Murarka*** (supra) and held on that basis that since construction of *pucca* structure was not prohibited, therefore, the applicants could be taken as *thika* tenants. Such a proposition was not compatible with the findings in the earlier part of the same order and with the statute as also with the purport and effect of the decision in ***Purushottam Das Murarka***.

33.1. In the case of ***Purushottam Das Murarka*** (supra), the two major questions had been about the period of lease with reference to the initial period of five years and renewal of seven years; and about the effect of *thika* tenant constructing or attempting to construct *pucca* structure on the demised land. The period of tenancy is not relevant for the present purpose. As regards the aspect relating to the structure, the Court noticed the decisions in ***Monmatha Nath Mukherjee*** and ***Annapurna Seal*** (supra) but then, observed that if during pendency of lease, a *thika* tenant constructs or attempts to construct *pucca* structure on demised land

without permission of landlord, he does not cease to be the *thika* tenant. Thus, the lessee being a *thika* tenant was an existing fact in said case. The High Court has rightly observed that it was never held in ***Purushottam Das Murarka*** (supra) that if tenant of a land would raise *pucca* structure, he would automatically become a *thika* tenant. The conclusion drawn on the basis of the said decision by the Controller could have only been disapproved.

33.2. Then, the Tribunal, in its impugned order, attempted to inject various such philosophies which were simply beside the point. In our view, the High Court has meticulously examined the matter in its right perspective and, with apt analysis of all the three enactments vis-à-vis the facts of the case, has rightly concluded against the claim of the *thika* tenancy of the appellants and/or their predecessors.

34. In the aforesaid view of the matter, we do not consider it necessary to enter into any further or finer analysis of other contentions urged and decisions cited by the learned counsel for the respective parties. In our view, the impugned order deserves to be upheld because neither the appellants became *thika* tenants under the enactments aforesaid nor there had been any vesting of the subject property thereunder.

Conclusion

35. In summation of what has been discussed hereinabove, 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 enure to their benefit.

6. The impugned decision of the High Court, therefore, calls for no interference.

36. Before closing, we may also take note of the fact that by way of interim orders dated 15.04.2014 and 22.07.2014, the appellants were directed to make payment towards occupancy charges. The appellants have made certain deposits and by the order dated 27.08.2021, we had directed the appellants to deposit further an amount of Rs. 20,00,000/- (Rupees twenty lakhs) in the Registry of this Court of which, the contesting

respondents were held entitled to withdraw an amount of Rs. 16,50,000/- (Rupees sixteen lakhs fifty thousand) by way of the occupancy charges; and the remaining amount was ordered to be invested in a fixed deposit with periodical renewal, to be disbursed subject to the outcome of this appeal. The said deposited amount together with accrued interest is ordered to be disbursed to the respondent No. 1 while we otherwise leave it open for the said respondent in taking recourse to appropriate remedies, strictly in accordance with law, in relation to any other claim/relief.

37. Accordingly and in view of the above, this appeal fails and is, therefore, dismissed subject to the observations foregoing. All pending applications also stand disposed of. No order as to costs.

……..…….J.
(A.M. KHANWILKAR)

……..…….J.
(DINESH MAHESHWARI)

NEW DELHI;
JULY 27, 2022.