

IN THE SUPREME COURT OF INDIA  
INHERENT JURISDICTION

REVIEW PETITION (CIVIL) NO.1483/2015  
IN  
CIVIL APPEAL NO.2402/2015

MANI SQUARE LTD. AND ANR.

PETITIONER(S)

VERSUS

NEMAI CHANDRA KUMAR (D) AND ORS.

RESPONDENT(S)

O R D E R

This review petition emanates from the judgment of this Court dated February 24, 2015, whereby the appeal filed by the respondents herein (Nemai Chandra Kumar and Others) being Civil Appeal No. 2402 of 2015 was allowed.

The sole contention on which we are in agreement with the prayer to recall the judgment under consideration is that the judgment concludes that the respondents in review petition were "*Thika Tenants*" within the meaning of expression "*Thika Tenant*" under Section 2(5) of the Calcutta Thika Tenancy Act, 1949 (for short, the 1949 Act). Section 2(5) of the 1949 Act reads thus :

*"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 successor 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 the 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.

(emphasis supplied in italics)

Admittedly, in the present case, the registered lease deed was executed on 15<sup>th</sup> December, 1973 in favour of Badri Narayan Kumar (since deceased) and Nemai Chandra Kumar (Respondent No.1 herein) for a period of 20 years commencing from 1<sup>st</sup> December, 1973.

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 24<sup>th</sup> 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.

....., J.  
(A.M. KHANWILKAR)

....., J.  
(DINESH MAHESHWARI)

NEW DELHI  
MARCH 03, 2021

ITEM NO.15      Court 5 (Video Conferencing)      SECTION XVI

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

**REVIEW PETITION (C) No. 1483/2015**

**IN**

**CIVIL APPEAL NO.2402/2015**

**MANI SQUARE LTD. AND ANR.**

**Petitioner(s)**

**VERSUS**

**NEMAI CHANDRA KUMAR (D) AND ORS.**

**Respondent(s)**

**(IA No. 2/2017 - I.A. FOR BRINGING ON RECORD LRS. OF R-1)**

**Date : 03-03-2021 These matters were called on for hearing today.**

**CORAM :**

**HON'BLE MR. JUSTICE A.M. KHANWILKAR**  
**HON'BLE MR. JUSTICE DINESH MAHESHWARI**

**For Petitioner(s)**

**Mr. P. Chidambaram, Sr. Adv.**  
**Mr. Kunal Vajani, Adv.**  
**Mr. Pranaya Goyal, AOR**  
**Mr. Aman Gadhi, Adv.**  
**Mr. Abhirath Thakur, Adv.**

**For Respondent(s)**

**Mr. Jaideep Gupta, Sr. Adv.**  
**Mr. Utpal Majumdar, Adv.**  
**Mr. Kunal Chatterjee, Adv.**  
**Ms. Ranjeeta Rohatgi, AOR**  
**Ms. Samten Doma, Adv.**

**Ms. Madhumita Bhattacharjee, AOR**

**UPON hearing the counsel the Court made the following**  
**O R D E R**

**IA No. 2/2017**

**Application for bringing on record the legal representatives of deceased respondent No. 1 is allowed subject to all just exceptions.**

**It is also mentioned in the application that respondent No. 2 has also expired and her legal**

representatives are already on record.

Cause-title be amended accordingly forthwith, in the review petition and civil appeal.

I.A. No.2 of 2017 is allowed accordingly.

Review Petition (C) No. 1483/2015

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In view of the restoration of appeal, all interim order(s) passed in the appeal stand revived.

The review petition is disposed of accordingly.

**Civil Appeal No.2402/2015**

By consent, hearing of the revived appeal proceeds forthwith.

Heard in-part.

For further hearing, list this appeal tomorrow i.e. 4<sup>th</sup> March, 2021.

(NEETU KHAJURIA)  
COURT MASTER

(VIDYA NEGI)  
COURT MASTER

(Signed order in review petition is placed on the file.)