

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

F.A. No. 140 of 2024

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CAN 5 of 2026

***Hindustan Petroleum Corporation Limited
Versus
Smt. Uma Gupta and Others***

For the appellants	:	Mr. Suman Dutt, Sr. Adv., Mr. Supratim Dhar, Sr. Adv., Mr. Paritosh Sinha, Mr. Amitava Mitra, Mr. Shounak Bhattacharyya, Mr. Rajdeep Mantha, Mr. Naman Agarwal, ...Advs.
For the respondents	:	Mr. Jaydip Kar, Sr. Adv. Mr. Aniruddha Chatterjee, Sr. Adv. Mr. Anirban Ray, Sr. Adv., Mr. Shayak Mitra, Mr. Soumava Mukherjee, Mr. Subhajit Seth, ...Advs.
Heard on	:	06.08.2026, 10.08.2026 & 11.08.2026
Reserved on	:	11.08.2026
Judgment on	:	21.08.2026

Sabyasachi Bhattacharyya, J.:-

1. The present first appeal has been preferred by the defendant in an eviction suit on the ground of expiry of lease by efflux of time under the Transfer of Property Act, 1882, (hereinafter referred to as “the TP Act”), assailing the judgment and decree whereby such eviction was granted.
2. The brief facts of the case are that one Indira Gupta, since deceased, was the owner of a portion of the Premises No. 8/1, Alipore Road, Police Station – Alipore, Kolkata – 700 027, the suit property. By an indenture of lease dated August 24, 1955, the said owner Indira Gupta granted lease in respect of the suit property in favour of Caltex India Limited (the predecessor-in-interest of the defendant/appellant) for an initial period of 10 years, commencing from September 1, 1955, with an option of renewal for 3 successive periods of 10 years each.
3. Since the said owner did not agree to renew the lease as per the renewal clause, Caltex filed a suit, bearing no. 2380 of 1967, in the Original Side of this Court, seeking specific performance of the renewal clause provided in the indenture of lease.
4. The suit was decreed on compromise by a consent decree dated February 10, 1978, whereby the lease was extended, substantially on its original terms, till August 31, 1995.
5. Subsequently, the present eviction suit was instituted on the ground of expiry of the extended lease by efflux of time, since the appellant did not vacate the premises even after such expiry in terms of the lease.

6. The learned Trial Judge, while decreeing the suit, adjudicated on the question of maintainability, holding that the suit was maintainable, as well as held on merits that the suit property was not a *thika* tenancy.
7. Meanwhile, the lessor filed a writ petition bearing WP 1499 of 2005, *inter alia* seeking a declaration that the suit premises never stood vested with the State and challenging the *vires* of the West Bengal Thika Tenancy (Acquisition and Requisition) Act, 2001 (hereinafter referred to as “the 2001 Act”). During pendency of the writ petition, the Thika Controller issued a notice of hearing to the lessor on September 13, 2005, which was stayed by an order dated October 6, 2005 passed in GA No. 3210 of 2005, an interlocutory application filed in connection with the writ petition. The said stay order is submitted to be still subsisting.
8. During pendency of the suit, the defendant/appellant filed an application under Order XIV Rule 2 of the Code of Civil Procedure, 1908 (for short, “the Code”), praying for dismissal of the suit on the ground of maintainability in view of the power of adjudication as to whether a property is a *thika* tenancy or not being vested in the Thika Controller. By an order dated October 12, 2011, the said application was allowed, dismissing the suit, against which a first appeal, bearing FA no. 324 of 2012, was filed by the lessor. By a judgment dated April 10, 2014, the said appeal was allowed, setting aside the impugned judgment and decree and restoring the suit to be decided on trial.
9. While disposing of the appeal, a co-ordinate Bench of this Court directed the learned Trial Judge to frame the issue of bar of jurisdiction of the Civil Court and the maintainability of the suit as a preliminary issue.

10. Learned senior counsel appearing for the appellant contends that Section 21 of the 2001 Act stipulates a bar to the jurisdiction of Civil Courts in respect of matters which, under the said Act, are required to be or have been decided or dealt with or which are to be or have been determined by the Controller or the Appellate or other Authority specified in the Act. The said bar, it is contended, has to be read in the context of Sections 5 and 8 of the 2001 Act. Sub-section (3) of Section 5 provides that if any question arises as to whether a person is *thika* tenant or not or whether the land in question is *thika* land or not, the Controller, either on his own motion or upon receiving any information, may, after giving the persons interested an opportunity of being heard and after examining such documents or particulars as may be considered necessary, enquire upon and decide such question.
11. On the other hand, sub-section (2) of Section 8 provides that if any question arises as to whether a person is a *Bharatia* under a particular *thika* tenant, the Controller may, either on his own motion or upon receiving any information, after giving the persons interested an opportunity of being heard and examining all documents and particulars considered necessary, enquire upon and decide such question.
12. Sub-section (3) of Section 8 provides that any dispute regarding payment of rent by the *thika* tenant to the State Government or by a *Bharatia* to a *thika* tenant or any case of eviction of *Bharatia* shall be disposed of by the Controller in such manner as may be prescribed. Thus, it is argued that the present suit for eviction of a *Bharatia* ought to have been filed before the Thika Controller. More importantly, the question as to whether the appellant is a *thika* tenant or not and whether the land in question is a *thika* land or

not as well as whether the appellant is at all a *Bharatia* under a particular *thika* tenant, were to be decided by the Thika Controller. By operation of Section 21 of the 2001 Act, it is submitted, the Civil Court's jurisdiction was barred. Hence, the impugned judgment was passed *de hors* the law and without jurisdiction.

13. By the 2010 Amendment to the 2001 Act, which came into force on and from November 1, 2010, the powers of the Controller, it is argued, were broadened by including the question as to whether the land in question is a *thika* land or not, which is of much wider purport than it originally stood, under which only the question as to whether a person is a *thika* tenant was to be decided by the Controller.
14. Learned senior counsel argues that the consent decree of 1978 operates between private parties and if the property has vested in the State by operation of law, such decree is not binding.
15. It is argued that since the Civil Court inherently lacked jurisdiction to entertain the suit, it vitiated the impugned judgment and rendered the same a nullity. In support of such contention, learned counsel cites an unreported judgment in *Hindustan Petroleum Corporation Limited vs. Santanu Mallick, Executor & Others*, passed in APD No. 120 of 2015.
16. Learned senior counsel for the plaintiffs/respondents, on the other hand, contends that undisputedly the appellant has been running a petrol pump, with a *pucca* structure, on the suit property at all material points of time. From the Surveyor's report, which was a part of the records, it will be evident that there is a *pucca* structure. Also, DW-1, in his cross-examination, admitted that the landlord permitted them to raise *pucca*

construction of permanent nature on the suit property and that such *pucca* construction was raised during continuance of the lease.

17. Thus, it is contended that there is no dispute between the parties that at the relevant point of time, the appellant was running a petrol pump with existing structures. At the juncture when the consent decree was passed in the year 1978, the Calcutta Thika Tenancy Act, 1949 (for short, “the 1949 Act”) was already in vogue. Even in the purported Form-A submitted under the Calcutta Thika and other Tenancies and Lands (Acquisition And Regulation) Act, 1981 (in brief, “the 1981 Act”), which was never exhibited before the Trial Court, the appellant did not claim itself to be a *thika* tenant under the 1949 Act.
18. Learned senior counsel cites *Jatadhari Daw & Grandshons v. Smt. Radha Devi & Another*, reported at (1986) 1 CHN 21, where it was held that a petrol pump did not come under the purview of the 1981 Act, which view was approved in *Lakshmimoni Das v. State of West Bengal and Others*, reported at 1987 SCC OnLine Cal 140.
19. The Special Bench of this Court, in the latter judgment, observed that within the scope and ambit of Section 5 of the impugned Act, only lands comprised in *thika* tenancy within the meaning of the Calcutta Thika Tenancy Act, 1949, comprising a *kutchra* structure and/or a *pucca* structure constructed for residential purposes with the permission of the Controller under the 1949 Act and *khatal* lands held under a lease shall vest and save as aforesaid no other lands and structures vest under the impugned Act (the 1981 Act).

- 20.** Thus, it is submitted that the lease was for commercial operation of a petrol pump and was, thus, excluded from the definition of ‘*thika* tenancy’ under the 1949 Act. The tenancy was not a *thika* tenancy under the 1949 Act, though the lease commenced on August 24, 1955, when the said Act was in vogue, since there existed *pucca* structures on the property. In the consent decree dated February 10, 1978, the appellant admitted the lessor-lessee relationship between the parties and never claimed *thika* tenancy.
- 21.** Lastly, citing *Nemai Chandra Kumar (Dead) through Legal Representatives and Others v. Mani Square Limited and Others*, reported at (2024) 17 SCC 743, it is argued that the Hon’ble Supreme Court settled the law therein, approving the view taken by this Court in *Lakshmimoni Das (supra)*¹. As per the said judgment, in order to be a *thika* tenant under the 2001 Act, a person had to satisfy the threshold criteria under the 1949 Act and the 1981 Act.
- 22.** In order to come within the purview of the 2010 Amendment to the 2001 Act, the property, if *pucca*, had to be a residential building, constructed with the previous permission of the Controller and/or on the strength of a sanctioned building plan.
- 23.** It is contended that this Court had also relied on the judgment in *Mani Square Limited (supra)*² in a subsequent judgment of *State of West Bengal and Others v. Prabir Kumar Sarkar and Others*, reported at 2025 SCC OnLine Cal 9522, in such context.

¹ *Lakshmimoni Das v. State of West Bengal and Others*, reported at 1987 SCC OnLine Cal 140

² *Nemai Chandra Kumar (Dead) through Legal Representatives and Others v. Mani Square Limited and Others*, reported at (2024) 17 SCC 743

24. Upon hearing learned senior counsel for the parties, we find the following two cardinal questions to have arisen for consideration in the present appeal:

- (i) Whether the learned Trial Judge acted beyond jurisdiction in deciding the suit to be maintainable in the teeth of the bar under Section 21 of the 2001 Act;
- (ii) Whether the appellant is a *Thika* tenant in respect of the suit property.

25. The above issues are answered as follows:

- (i) **Whether the learned Trial Judge acted beyond jurisdiction in deciding the suit to be maintainable in the teeth of the bar under Section 21 of the 2001 Act**

26. As held in *Mani Square Limited (supra)*³, which approved of the view taken in *Lakshmimoni Das (supra)*⁴, only lands comprised in *thika* tenancies within the meaning of the 1949 Act, comprising *kutchha* structure and/or *pucca* structure constructed for residential purpose with the permission of the Controller under the 1949 Act and *khatal* lands held under the lease shall vest, and save as aforesaid no other land and structure vests, under the 1981 Act. It was further observed that acquisition of land comprising *thika* tenancy with even erection or acquisition of *pucca* structure by the *thika* tenant came to be provided in specific terms by the Legislature only from

³ *Nemai Chandra Kumar (Dead) through Legal Representatives and Others v. Mani Square Limited and Others*, reported at (2024) 17 SCC 743

⁴ *Lakshmimoni Das v. State of West Bengal and Others*, reported at 1987 SCC OnLine Cal 140

November 1, 2010, when the 2010 Amendment was effected to the 2001 Act, and not before.

27. Thus, in respect of *pucca* structures which were already existent before February 1, 2010, in order to be a *thika* tenancy within the contemplation of the 2001 Act, the parameters laid down in the 1949 Act and the 1981 Act are to be satisfied.
28. *Mani Square Limited (supra)*⁵ lays at rest any dispute regarding whether the expression “any structure” in the definition of *thika* land under the 1949 Act, the 1981 Act and the 2001 Act comprises of literally all structures or *kutcha* structures. Only *kutcha* structures come by default within the purview of *thika* property.
29. However, certain exceptions were made even in respect of *pucca* (permanent) structures, which might also come within the fold of *thika* tenancies subject to satisfaction of certain conditions.
30. In order to explore such conditions, we are to first look into Section 10A of the 1949 Act. Under the said provision, 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.
31. Thus, three important criteria were to be met for a *pucca* structure to come within the purview of a *thika* property within the contemplation of the 1949 Act –
 - (i) The *thika* tenant had to hold the property for a residential purpose;

⁵ *Nemai Chandra Kumar (Dead) through Legal Representatives and Others v. Mani Square Limited and Others*, reported at (2024) 17 SCC 743

- (ii) The *pucca* structure was to be erected for “such purpose”, that is, for residential purpose; and
- (iii) The construction had to be made with previous permission of the Controller.

32. In the present case, at the juncture when the consent decree, containing the last lease between the parties was passed, the 1949 Act was holding the field. In the terms and conditions of lease enumerated in the said decree, the parties categorically admitted the jural relationship between them to be governed by the clauses of the original lease deed dated August 24, 1955, barring modification to Clause 4(c). In Paragraph No. 5 of the “Terms and Conditions” incorporated in the consent decree, it was categorically stated that save as therein provided, all other terms and conditions of the lease dated August 24, 1955, except for the renewal of the term, shall be applicable and shall govern the said extended term.

33. Thus, at a juncture when the 1949 Act was fully in force, the appellant admitted categorically that it was a lessee under the plaintiffs/respondents, which is mutually exclusive with the concept of *thika* tenancy, where the property vests in the State and the lessee becomes a *thika* tenant directly under the State. There was no assertion of *thika* tenancy rights by the appellant within the four corners of the consent decree, which contained the terms of the lease.

34. Hence, the appellant had categorically waived any *thika* tenancy right by signing the terms and conditions which were made a part of the consent decree.

35. Secondly, the suit property has been admittedly used all along as a petrol pump by the appellant and its predecessor-in-interest, and not for “residential purpose” as mandatorily required under Section 10A of the 1949 Act, which was inserted by the Amendment of 1969.
36. Hence, Section 10A was fully operative at the juncture when the consent decree was passed, thus precluding any scope of applicability of the exemption provided therein in respect of the *pucca* construction standing on the suit property.
37. It is also nobody’s case that any permission was previously taken from the Controller before erecting the *pucca* structure.
38. In the absence of the aforesaid threshold criteria, there could not be any manner of doubt that by entering into the jural relationship of lessor-lessee with the plaintiffs/respondents by dint of the consent decree dated February 10, 1978, the defendant/appellant categorically waived any right to claim *thika* tenancy. Since the plaintiffs/respondents acted on the said consent decree to their detriment, by permitting user of the same by the appellant in terms of the deed, the appellant is squarely barred by the principle of Estoppel from claiming any *thika* tenancy right.
39. It is to be noted here that although there cannot be any Estoppel against the law, the questions as to whether a person is a *thika* tenant or not or a property is a *thika* tenancy or not are mixed questions of fact and law, which require the foundational criteria of a *thika* tenancy to be fulfilled. Hence, this is not a case where the appellant automatically became a *thika* tenant by operation of law, but the appellant had to establish fulfilment of the pre-conditions of being a *thika* tenant within the contemplation of the 1949 Act

as well as the 1981 Act and the 2001 Act in order to attract the operation of the Statute. Thus, the concept of 'Estoppel against the law' is not applicable to the question of *thika* tenancy and it is dependent on appreciation on a case-to-case basis as to whether a particular property is a *thika* land or a tenancy is in the nature of a *thika* tenancy. Hence, since the appellant, by entering into the lease embodied in the consent decree of 1978, gave out and admitted that it is a lessee under the plaintiffs/respondents in respect of the subject property, which is admittedly comprised of a *pucca* structure used for commercial purpose, at a point of time when the 1949 Act was operative, the appellant is now barred by Estoppel from doing a *volte face* and claiming *thika* tenancy under the State.

- 40.** A purposive interpretation of Section 5(3) and Sections 8(2) and 8(3) would clearly indicate that the "question" and/or "dispute" contemplated under the said provisions have to be *bona fide* questions or disputes. In the present case, in view of the above discussions, no real dispute or question regarding *thika* tenancy remained to be decided. Hence, the 'dispute' / 'question' now sought to be raised by the appellant in that regard is a sham and illusory one.
- 41.** Section 21 of the 2001 Act debars the jurisdiction of the Civil Court only in respect of matters which are required to be dealt with or decided or determined by the Controller or the authorities provided under the said Act. In the absence of any further requirement being there for the issue to be determined/decided, nothing remained to be adjudicated by the *Thika* Controller.

- 42.** Hence, the bar under Section 21, read with Section 5(3) and Sections 8(2) and 8(3), of the 2001 Act did not apply in the present case at all.
- 43.** Thus, this issue is decided against the appellant, by holding that the learned Trial Judge was fully empowered and acted within jurisdiction to entertain the suit and decide the same on merits.

(ii) Whether the appellant is a Thika tenant in respect of the suit property

- 44.** Taking a cue from the above discussions, the Hon'ble Supreme Court, in *Mani Square Limited (supra)*⁶, has set at rest the previous contradictory views as to whether a *pucca* structure can come within the expression 'any structure' in the definition of a *thika* land. The controversy was set at rest by laying down the proposition that unless the *pucca* construction was erected or acquired post- November 1, 2010, it would not come within the ambit of "thika tenancy" unless the baseline criteria provided in the 1949 and 1981 Acts were satisfied.
- 45.** Since the lease evidenced by the consent decree of 1978 was entered into between the parties long prior to the 2010 Amendment to the 2001 Act, that is, November 1, 2010, and even the suit was instituted in the year 2007, much prior thereto, the erection of *pucca* structure could not automatically come within the purview of *thika* tenancy.
- 46.** The view taken by the Division Bench of this Court in *Jatadhari Daw (supra)*⁷ and reiterated by the Three-Judge Bench in *Lakshmimoni Das*

⁶ *Nemai Chandra Kumar (Dead) through Legal Representatives and Others v. Mani Square Limited and Others*, reported at (2024) 17 SCC 743

⁷ *Jatadhari Daw & Grandshons v. Smt. Radha Devi & Another*, reported at (1986) 1 CHN 21

(*supra*)⁸, as to a petrol pump falling outside the purview of *thika* tenancy, has been affirmed in *Mani Square Limited (supra)*⁹, thus, leaving no manner of doubt that the present suit property, which is admittedly a petrol pump, fell outside the purview of *thika* tenancy.

- 47.** Even otherwise, as discussed above, the foundational criteria stipulated in Section 10A of the 1949 Act, which were very much in force at the time when the jural relationship between the parties was entered into in 1978, are not met in the instant case. Neither any previous permission of the Controller nor residential use of the property beforehand, nor the erection of the *pucca* structure being for the residential purpose has been established. On the contrary, the suit property is admittedly comprised of a petrol pump which is obviously used for commercial purpose.
- 48.** Hence, since the aforesaid criteria are not met, there cannot be any manner of doubt that the suit property in the instant case was never a *thika* tenancy.
- 49.** In order to come within the purview of *thika* tenancy as contemplated in the 2001 Act, as reiterated in *Mani Square Limited (supra)*¹⁰, the tenancy had to be a *thika* tenancy from its inception. Although the initial lease deed was executed in the year 1955, the same merged into the consent decree dated February 10, 1978 which renewed the lease lastly, substantially in terms of the original lease deed clauses, with minor variations and *sans* the renewal clause. By entering into such lease and admitting the plaintiffs/respondents

⁸ *Lakshmimoni Das v. State of West Bengal and Others*, reported at 1987 SCC OnLine Cal 140

⁹ *Nemai Chandra Kumar (Dead) through Legal Representatives and Others v. Mani Square Limited and Others*, reported at (2024) 17 SCC 743

¹⁰ *Nemai Chandra Kumar (Dead) through Legal Representatives and Others v. Mani Square Limited and Others*, reported at (2024) 17 SCC 743

as lessors, the appellant gave a go-bye to any possible contrary and mutually exclusive claim of *thika* tenancy under the State. In 1978, the 1949 Act was already in force. Since the jural relationship of the parties fell outside the ambit of the 1949 Act at that juncture, it cannot be said that the subsequent statutes of 1981 and 2001 conferred any better right on the appellant, as a *thika* tenant.

- 50.** In such view of the matter, this issue is also decided against the appellant, holding that the appellant is not a *thika* tenant in respect of the suit property.

CONCLUSION

- 51.** In the light of the above observations, the learned Trial Judge was well within her jurisdiction in assuming determination to decide the suit on its merits by holding the same to be maintainable.
- 52.** In view of the expiry of the lease by efflux of time and the appellant having not vacated the suit property in terms of the consent decree dated February 10, 1978, evidencing the terms of lease between the parties, the eviction decree passed by the impugned judgment and decree was sound in law and perfectly justified.
- 53.** Accordingly, the appeal fails.
- 54.** F.A. No. 140 of 2024 is, accordingly, dismissed on contest without any order as to costs, thereby affirming the impugned judgment and decree dated December 22, 2023, passed by the learned Civil Judge (Senior Division), Sixth Court at Alipore, District: South 24 Parganas, in Title Suit No. 57 of 2016.

- 55. Interim orders, if any, stand vacated.
- 56. A formal decree be drawn up accordingly.
- 57. The Trial Court Records be sent down at the earliest.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

Later:

After the above judgment is passed, learned senior counsel for the appellant makes a prayer for stay of operation of the above judgment.

However, since we are apprised that the appellant has already been dispossessed pursuant to the eviction decree, which was impugned in the appeal, there is no scope for stay of operation of the above judgment.

Accordingly, such prayer is refused.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)