

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

W.P.A 13525 OF 2021

With
CAN 1 of 2023

Overseas Scrap Trading Corporation

vs.

Howrah Municipal Corporation and Ors.

For the Petitioner	: Mr. Saktinath Mukherji, Sr. Adv., Mr. Tarique Quasimuddin, Adv. Ms. Sanchita Chaudhuri, Adv. Mrs. Zainab Tahur, Adv. Mr. Firdaush Ahmed, Adv. Mr. Adnan Lodi, Adv.
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For the Howrah Municipal Corporation.	: Mr. Sandipan Banerjee, Adv. Mr. Ankit Sureka, Adv.
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For the State	: Mr. Wasim Ahmed, Adv.
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Judgment reserved on	: 10.04.2026
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Judgment pronounced on	: 17.04.2026
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Judgment uploaded on	: 17.04.2026.
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Shampa Sarkar, J.

1. The writ petition has been filed alleging inaction on the part of the Howrah Municipal Corporation (HMC) in executing Deed(s) of Conveyance in favour of the writ petitioner in respect of Plot Nos. A and B at Holding No. 432, G.T. Road (North), Police Station- Golabari, Ward No. 60, Howrah- 711101. Further prayer is for a direction upon the State of West Bengal through, the Department of Urban Development and Municipal Affairs to

issue an approval so that HMC can execute the Registered Deed(s) of Conveyance in favour of the petitioner.

2. Mr. Shaktinath Mukherjee, learned Senior Advocate for the petitioner submitted that, the HMC issued a tender notice dated November 29, 2010 declaring its intention to sell Plot Nos. A and B at Holding No. 432(North), G.T. Road, Police Station – Golabari, Ward No. 60, Howrah – 711101, on a freehold and “as is where is basis”. The writ petitioner participated in the tender process and submitted its bid. The application money was duly deposited. The petitioner was declared as the highest bidder.

3. According to the case run in the writ petition, the petitioner claimed to have been in possession of the said plots since 1953. One Bibhuty Bhusan Lahary was the original lessee under HMC, who executed deeds of sub-lease in favour of M/s Jay Bharat Iron & Steel Works Limited and Shri. Narsingdas Agarwalla for an area totalling to 21 Bighas 9 Katthas & 15 Chittaks. Out of the remaining portion of the area, namely, 17 bighas, 4 katthas & 8 chittaks, the said Bibhuty Bhusan Lahary, directly or through his concern M/s Punjab Line Properties Private Limited, executed multiple tenancy agreements and/or issued tenancy bills for smaller demarcated portions, in favour of various individual parties. Accordingly, the petitioner was put in possession of Plot Nos A and B. The petitioner claimed to have been so inducted as a monthly tenant in respect of the said plots sometime in 1953 and had been enjoying the property at a monthly rental of Rs, 968/- payable according to the English calendar. The rent was last paid in the month of March 2003.

4. The lease in respect of the said land had been granted in favour of Shri Bibhuty Bhusan Lahary for a period of 50 years by HMC, which expired in 2003. Since then, neither Bibhuty Bhusan Lahary nor any other person claiming through him had demanded rent from the petitioner. As HMC failed to complete the process of sale, several written representations were made by the petitioners. HMC also wrote a letter to the respondent no. 4 on April 28, 2012, with a request to accord approval at an early date so that the two plots comprised in Holding No. 432(Part), G.T. Road (North), Police Station – Golabari, Ward No. 60, Howrah – 711101 could be conveyed in favour of the petitioner for a total price of Rs. 4,39,09,348/- on “as is where is basis”. As silence prevailed, the petitioner again made a representation before HMC sometime in May 2012. On December 18, 2012, the respondent no. 4 wrote a letter to the HMC seeking certain information with regard to the record of rights and the source of title of HMC in respect of the said land. In December 2013, HMC wrote a letter to the Officer In-charge, Town Survey Unit, Howrah, thereby seeking correction of the name of HMC in the record of rights in connection with the said premises. By a further representation, the petitioner requested completion of sale sometime in August, 2014. The writ petitioner was informed by the Commissioner, HMC, that the matter was under active consideration in the survey department of HMC and suitable reply to the queries contained in the letter of the Secretary of the Municipal Affairs Department was being prepared. Sometime in 2016, HMC again addressed a letter to the Joint Secretary of the Municipal Affairs Department, Government of West Bengal, clarifying the queries made by the Government in the letter dated December 18, 2012. The said letter was also

accompanied by another letter dated June 7, 2012, issued by the HMC to the District Land and Land Reforms Officer and the Additional District Magistrate, Howrah. From the said letter, it transpired that a request was made to the District Land and Land Reforms Officer, Howrah to provide an authenticated copy of the record of rights in respect of the said plots. Being hopeful that the conveyance would be made, a joint development agreement was entered into by the petitioner with one Tirupati Niryat Private Limited for carrying out construction work on the said premises. In 2019 again, the petitioner sent a representation to the Commissioner, HMC. Further representations were made in 2020. The specific contention of Mr. Mukherjee was that, HMC was willing to execute the Deed of Conveyance in favour of the petitioner and had been taking all steps to complete the process but, the respondent no. 4 was dragging the issue by withholding the approval without any valid reason and on flimsy grounds. Sometime in January 9, 2019, the Government had also written to the HMC to review the issue and confirm whether it still wanted to sell the plots to the petitioner. Upon coming to know of such communication between the state and the HMC, the petitioner approached the Minister in-charge, Department of Urban Development and Municipal Affairs by filing a representation dated June 25, 2020. In the meantime, due to COVID 19 pandemic, the matter had come to a standstill. After the lockdown was called off, HMC made a representation on February 2, 2021 to the government. Again HMC wrote a letter to the Joint Secretary, Government of West Bengal, Department of Urban Development and Municipal Affairs on April 13, 2021 and submitted details of the records available in the office of the Commissioner and

confirmed that the petitioner was the highest bidder at the auction for sale of plot nos. A and B. HMC also expressed its willingness to execute the sale-deed by disclosing the steps taken for correction of the land records. In spite of receiving the said letter, the Ministry of Urban Development and Municipal Affairs had been sitting tight over the issue.

5. On account of the delay, the development agreement entered into between the petitioner and a builder, stood cancelled and the writ petition was filed thereafter, challenging such inaction on the part of the respondents. Explaining the delay, Mr. Mukherjee submitted that the matter was under active consideration and HMC had continuously assured the petitioner that the Deed of Conveyance would be executed and approval from the State Government was a mere formality.

6. Learned senior Advocate further submitted that it was not a situation when the petitioner was sleeping over its rights. The petitioner had time and again approached the HMC. The HMC had approached the government between 2012 and 2019. Sometime in 2019, the Government had also asked HMC, whether HMC was willing to continue with the sale process or not. In April 2021, HMC wrote a letter to the Joint Secretary, Government of West Bengal, Department of Urban Development and Municipal Affairs and submitted the details of the records and also confirmed that the petitioner was the highest bidder in connection with the sale of Plot nos. A and B.

7. According to Mr. Mukherjee, Section 223 of the Howrah Municipal Corporation Act, 1980 (herein after referred to as the said Act) permitted the corporation to sell or dispose of any movable or immovable property belonging to HMC, in the manner prescribed. Admittedly, there were no

rules, which would govern the mode and manner of disposal of the property. This fact has been admitted by HMC in the communications made with the government. Although, Section 102 of the Bengal Municipal Act, 1932 had a provision for taking permission from the State Government for sale of any property of the municipality, such provision was not incorporated in the HMC Act. Thus, HMC was also acting in violation of the statutory provisions by waiting for an approval from the State Government, when the law did not require such permission should be obtained. HMC failed to discharge its statutory obligations by not executing the Deed of Conveyance in favour of the writ petitioner.

8. Mr. Sandipan Banerjee, learned Advocate for HMC submitted that HMC was the owner of the Holding No. 432, G.T. Road (North), Police Station – Golabari, Ward No. 60, Howrah – 711101. The total plot measured around 22260.47 Sq.m. The land had buildings, hutments, bus stand, shops, factories, the Begum Rouqiya Urdu Girls School etc. Reference was made to the report prepared by the Executive Engineer, Survey Department, HMC dated June 4, 2025. Such survey was held on the direction of this court vide order dated May 2, 2025. Mr. Banerjee submitted that, until and unless the government granted its approval to finalise the sale, the corporation would not be in a position to execute the sale deed. He urged that the Principal Secretary, Urban Development and Municipal Affairs Department, Government of West Bengal by letter dated April 28, 2012, informed the Commissioner, HMC, that, at a cabinet meeting dated May 25, 2011, the Municipal Affairs Department had observed that transfer of the land from government to non-government or private bodies could be made

with the approval of the concerned department of the Government. In view of the above decision, request was made by the Commissioner, HMC, for necessary approval, to complete the process of sale in favour of the petitioner.

9. According to Mr. Banerjee, the Land Allotment Policy of the Land and Land Reforms Department dated December 26, 2012 bearing No. 6686-LP/1A-18/2012, provided that, in order to bring about uniformity, transparency and security in the matter of dealing with public assets and further, in order to reduce the discretion enjoyed by an authority to transfer or alienate land belonging to the local bodies and other departments, such land policy had been framed. As the policy was made applicable to local bodies, HMC did not commit any statutory violation and/or illegality in waiting for approval from the State Government.

10. However, Mr. Banerjee relied on the compliance reports filed before this court pursuant to directions of this court and stated that HMC was the sole owner of the entire Holding No. 432, G.T. Road, Police Station – Golabari, Ward No. 60, Howrah – 711101 and although, the plot had been mentioned as a thika property, such entry was erroneous and should be corrected at the earliest. HMC had already approached the appropriate authority for correction of the record of rights. Reliance was placed on the response of the Assistant Engineer, Survey Department, HMC, to the report in the form of affidavit filed by the Additional Secretary, Urban Development and Municipal Affairs Department, Government of West Bengal. It was specifically stated that the property was situated at Holding No. 432, G.T. Road (North), Police Station – Golabari, Ward No. 60, Howrah – 711101,

which belonged to HMC. As per the records between to 1914 and 1917, which were maintained by the HMC, the land measured around 34 bighas, 14 cottahs, 8 chittaks and 15 sq ft. Initially, the land was being used as a municipal market, slaughter house etc. A Deed of Lease was executed by and between the Commissioner, HMC and Bibhuty Bhusan Lahary. Bibhuty Bhusan Lahary was granted lease for a period of 50 years from March 23, 1953. The lease hold area measured about more or less 21 bighas, 1 cottah and 15 sq ft. The Government of West Bengal acquired more or less 3.38 acres and 5.30 acres out of Holding No. 432, G.T. Road (North), Police Station – Golabari, Ward No. 60, Howrah – 711101 in the year 1955 for the purpose of extension of railway siding. The lease granted to Bibhuty Bhusan Lahary by HMC expired on March 22, 2003. Thereafter, HMC decided to sell the two plots of land being plot nos. A and B measuring about 25.0861 cottahs and 20.1986 cottahs respectively, with preference to those industrial units which were in possession. Such decision was taken in the meeting of the MIC of HMC on February 6, 2010. The petitioner was already in possession. Thereafter approval of the Mayor and Commissioner were also taken. The sale of the plots were in accordance with Section 223 of HMC Act. The tender notice was published and bids were invited through newspaper publications in three leading dailies. The base price was assessed as per the market value fixed by the District Sub-Registrar, Howrah. The Government Pleader, Howrah vetted the tender notice along with the terms and conditions and the same was prepared by the then Commissioner, HMC. The notice inviting tender was published in the Ganashakti, Times of India and Anandabazar Patrika. Sealed tenders were opened on December

21, 2020 in presence of officials as recommended by the Mayor. Four applicants participated for each plot. The petitioner was the highest bidder in respect of both plot nos. A and B. As per the decision of the cabinet that was forwarded by the Municipal Affairs Department to the Commissioner HMC, the Principal Secretary, Urban Development and Municipal Affairs Department, Government of West Bengal was approached for necessary approval. The Joint Secretary, Urban Development, Municipal Affairs Department, Government of West Bengal asked the HMC to furnish certain documents. HMC had already requested the Officer In-Charge, Town Survey Unit, Howrah to provide the land records. Meanwhile, the Joint Secretary, Urban Development and Municipal Affairs Department requested HMC for further Information. HMC again requested for correction of the records and incorporation of the name of HMC as the owner of the concerned holding number. It was the specific case of Mr. Banerjee that, after the settlement, the land records had not been corrected by incorporating the name of HMC. Even on March 11, 2019, the Commissioner, HMC had requested for correction of the records of rights. The correction of the records of rights was still pending before the Land and Land Reforms Department, Howrah. The specific contention of Mr. Banerjee was that during the pendency of the writ petition a hearing was held in the office of the Additional Secretary, Urban Development and Municipal Affairs Department, Government of West Bengal. During such hearing, the officials of the Block Land and Land Reforms Office and the Office of the District Land and Land Reforms Office submitted that the R.S Record of Rights in respect of Mouza Golabari, Sheet No. 39, R.S Khatian No. 27 comprising in premises no. 4632, G.T. Road (N).

The name of Bibhuty Bhusan Lahary was recorded as the superior tenant and M/s Jai Bharat Iron & Steel Works Limited And Shri. Narsingdas Agarwalla were recorded as “thikapraja”. The Board of Administrators of HMC held a meeting in which it was decided that the Government of West Bengal would be requested to take an administrative decision. From the records maintained by the HMC dating back between 1914 and 1917, it was evident that the land belonged to HMC. On the basis of such records, HMC wanted to sell the property. Admittedly, advance money in respect of Plot Nos. A and B had been received from the petitioner, which approximately aggregated to Rs. 35,12,700/-. According to Mr. Banerjee there was no illegality on the part of the HMC in not completing the execution of the Deed of Conveyance.

11. The State respondent contested the proceeding by filing a status report and thereafter a report in the form of an affidavit. Mr. Wasim Ahmed, learned Advocate submitted that the writ petition should not be entertained on the ground of inordinate delay. The auction was held sometime in 2010 and the writ petition was filed in 2021. He next submitted that the petitioner prayed for enforcement of a contract against the HMC. The proper remedy for the petitioner would have been to file a suit for specific performance of a contract, within the period of limitation. The relief against HMC i.e. a direction to execute the Deed of Conveyance in favour of the petitioner pursuant to the auction, could not be granted by a writ court. A civil suit for a decree of like nature was already time barred. The writ petition was filed to circumvent the law. The petitioner had adopted a circuitous method in order to enforce a time barred claim. He relied on the decision of the Hon'ble Apex

Court in the matters of ***Surjeet Singh Sahni vs. State of Uttar Pradesh and Ors.*** reported in ***2022 (2) ICC 488 (SC)***. It was next contended by Mr. Ahmed that, delay defeated equity. By filing repeated representations before the concerned authority, the period of limitation could not be extended. Mr. Ahmed relied on the status report and submitted that, HMC had published an advertisement on its own, for selling the two plots on 'as is where is basis'. Such decision was not taken with any approval from the State Government. HMC sent a proposal on April 28, 2012, inter alia, informing the State Government that the decision had been taken by the Mayor in Council dated March 5, 2010 and April 16, 2010. It was adopted in the meeting of the Office General (OG) of the Corporation on August 30, 2010. HMC decided to sell the two plots for a total price of Rs. 4,39,90,348/- on as is where is basis, by giving preference to those industrial units occupying the plots. The Urban Development and Municipal Affairs Department, Government of West Bengal by a letter dated December 18, 2012 requested the Commissioner, HMC to submit the documents for examination.

12. The Commissioner HMC submitted a report on September 27, 2016 inter alia, clarifying that the manner in which HMC had become owner of the plots could not ascertained, but the documents maintained by the corporation indicated that the land was leased by HMC to Bibhuty Bhusan Lahary in the year 1953 vide a Deed of Lease being No. 1599. Bibhuty's name appeared as a superior tenant in the said records. By a letter dated January 9, 2019, the Department requested the Commissioner of the HMC to review the matter and send specific information as to whether the old proposal initiated sometime in 2012 would still hold good or not. HMC was

asked to revisit the issue in terms of the Land Allotment Policy of 2012 and inform the department whether HMC still wanted to proceed with the sale. By a communication dated April 13, 2021, HMC provided certain documents with regard to the scheduled land and the status of the land. The government was of the view that in the absence of any rules by which the property of HMC could be disposed of, HMC was bound to follow the Policy of 2012 framed by the Land and Land Reforms Department, Government of West Bengal. HMC did not have unfettered discretion in dealing with public assets. The permission of the government was mandatory. Further objection was that, as per the information of the Additional District Magistrate and District Land and Land Reforms Officer, Howrah, the property was a thika property and the subject plots were recorded in respect of M/s Jay Bharat Iron & Steel Works Limited and Narsingdas Agarwalla as "Thikapraja". The name of the petitioner did not appear either in the R.S or in the L.R records. Urban Development and Municipal Affairs Department, Government of West Bengal requested HMC by a letter dated January 31, 2022, to review the matter and take a suitable decision on the basis of the land records. The Special Secretary, Department of Urban Development and Municipal Affairs opined in the status report that if HMC was the true owner of the land, they may approach the appropriate authority to record their names in the ROR. On such grounds, the State justified why the approval had been withheld.

13. Considered the submissions of the parties. With regard to the issue of delay, the background of the case, as has been narrated hereinabove, indicates that even in 2022, HMC and the said department were communicating on the issue of conveying the plots in favour of the

petitioner. The proposal to sell was sent to the concerned department by the HMC on April 28, 2012. On December 18, 2012, the concerned department sought for some clarifications and information from HMC. On December 11, 2013, the Officer In-Charge of Town Survey Unit, Howrah was approached by the HMC for correction of the Records of Rights in connection with Holding No. 432, G.T. Road (North), Police Station – Golabari, Ward No. 60, Howrah – 711101. The petitioner was in constant touch with both HMC and the concerned department during the entire process and it appears that both the corporation and the department were communicating with each other in order to resolve the issue and take forward the matter by exploring the possibility of execution of the deed and finalising the sale in favour of the petitioner. The concerned department had not denied approval, but continued to seek information from HMC. On the other hand HMC wanted to regularise the land records by seeking correction thereof. On December 16, 2014, the petitioner was informed by HMC that, the matter was under active consideration. The contents of the said letter are quoted below :-

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Date -16/12/2014

Sub:- Transfer of Plot at 432, G.T. Road (N) under Howrah Municipal Corporation.

Ref:- Your Letter No.- 21/08/2014, dated- 27/08/2014.

With reference to above, the undersigned is to inform parawise replies in response to the letter of joint Secretary of M.A Department, the Govt. of West Bengal vide Memo No- 479/MA/o/C-5/H/11-1/2012 dated 18/12/2012 is still under active process in the Survey Department of Howrah Municipal Corporation.

Sd/-

Commissioner

Howrah Municipal Corporation”

14. By a letter dated September 27, 2016, HMC approached the Joint Secretary, Department of Urban Development and Municipal Affairs, Government of West Bengal by submitting the clarifications sought for by the concerned department. The relevant portions of the said letter are quoted below :-

“ Date- 27/09/2016

Ref: 479/MA/O/C-5/H/IL-1/2012, Dated-18/12/2012

Sir,

In response to your letter mentioned herein above, received by this end on 09/02/2013, I am to inform you that Howrah Municipal Corporation upon receipt of the pervious memo in this connection being no. 177/MA/O/C-611-13/2012 dated-01/06/2012- moved to the District Land And Land reforms Officers (Howrah) and Officer in-Charge, Town Survey Unit (Howrah) on 07/06/2012 and 27/08/2012 respectively but could not receive the authenticated copy of the ROR as asked for. In this situation the copy of ROR for the year 1914-17 lying with Howrah Municipal Corporation is attached herewith for your perusal. Copy enclosed and marked ANNEXURE-A

2) As of date, there are no authentic documents found in this connection with "How and When the Corporation got those plots". Pertinent to mention that the above can be resolved from the following:-

Howrah Civic Companion-Vol -I, page no-451. Reveals the recital.

Howrah Municipality leased out certain portion of land to Dr. B. B. Lahari deed no. 1599 for the year 1953 (Book No.- 1, Volume No - 22. pages 188 to 195). The right, title and interest of Howrah Municipality might be obtained from the same.

3) The base price of tender taken into consideration is based upon the price fixed by the District Registration Authority and as per the clause no. 09 read with clause no. 23 of the "Terms and Condition of Sale Plots" speaks for itself. Copies of the market Value/Chargeability Assessment Slips and Terms and Condition of Sale Plots are enclosed and marked as ANNEXURE-B.

4) Copy of the certificate from District Registrations regarding certifying rate is enclosed.

5) The than Howrah Municipality leased out the part of above mentioned property to Dr Bibhuti Bhusan Lahary way back on 23/03/1953 with land and structures like privy, slaughter house, etc. But eventually the factory sheds were erected by the factory owners which do not match with the existing leased out structures. For this reason the cost of the existing structures were not included in the proposal.

6) HMC had taken decision in its meeting Dr. 30/08/10 to sell two plots of lands within 432 G.T. Road (N) on "As is where is Basis".

7) The decision of MLC meeting dated 05/03/2010 (Item, no-19) is enclosed regarding said proposed sale of land, ANNEXURE-D

Enclo: As stated

Sd/-

Commissioner

Howrah Municipal Corporation”

15. On January 9, 2019, the concerned department asked the Commissioner, HMC to review the issue and send specific information with regard to the relevance of the said proposal. Contents of the said letter are quoted below:-

“No. 01/MA/O/C-5/H/IL-1/2012. Dated, Kolkata, the 9th January, 2019

From: The Joint Secretary

To the Government of West Bengal

To : The Commissioner,

Howrah Municipal Corporation,

4, Mahatma Gandhi Road,

Howrah – 711101

Sub: Regarding approval for sale of plots at 432, G.T. Road (North), of Howrah Municipal Corporation.

Sir,

In reference to your letter No. SVD/051/18-19 dated 04.12.2018 regarding the subject mentioned above, I am directed to request you

to kindly review the issue and send a specific opinion in regard to the relevancy of the old proposal initiated in the year 2012 by Howrah Municipal Corporation.

I am also directed to request you to intimate this Department whether Howrah Municipal Corporation is eager to recast the issue in line with Land Acquisition Proposal, 2012 and if they still want to sell the plots.

Yours faithfully,
Joint Secretary
to the Government of West Bengal”

16. HMC was also asked to inform the concerned department whether they were serious about selling the property or not. Information with regard to schedule of the land, status of the land etc. were provided to the concerned Department by a letter dated April 13, 2021 and the writ petition was filed sometime in August, 2021. The claim of HMC as owner of the land was clearly explained in the communication dated April 13, 2021.

17. Under such circumstances, the available records and the communications which have been annexed by the parties in their respective pleadings clearly indicate that the matter was alive all along and the State Government and HMC were continuously processing the matter to reach the same to its logical conclusion. The approval is still pending on the sole ground that the land records indicate that M/s Jay Bharat Iron & Steel Works Limited and Shri. Narsingdas Agarwalla were recorded as “Thikaprajas” in respect of Holding No. 432(North), G.T. Road, Police Station – Golabari, Ward No. 60, Howrah – 711101. Thus, this is not a case in which delay is fatal. The delay is not attributable to the petitioner. The petitioner was not sleeping over its right. The decision of **Surjeet Singh Sahni** (supra) is not applicable to the case.

18. The petitioner seeks to enforce a right which had accrued out of a tender process initiated by the HMC in respect of the sale of Plot Nos. A and B of Holding No. 432(North), G.T. Road, Police Station – Golabari, Ward No. 60, Howrah – 711101. HMC is an autonomous body. It is State under Article 12 of the Constitution of India. Section 221 of the Howrah Municipal Corporation Act, 1980 provides that the corporation shall have the power to acquire and hold movable and immovable properties or any interest therein whether within or outside the limits of Howrah. Section 223 empowers the corporation to dispose of by sale or otherwise any movable or immovable property belonging to HMC in the manner prescribed by Rules. Admittedly, in the instant case, no rules had been prescribed by the State under Section 215 of the HMC Act with regard to the procedure for sale or disposal of the immovable property. The Mayor-in-Council, in its meeting, had decided to sell the property to augment revenue. This decision was ratified by HMC at various stages and levels and the proposal was sent to the State Government for grant of approval. The Land Policy came later, by which time the right of the petitioner to purchase the land as the highest bidder, had crystallised. The tender notice did not mention anything about the process being subject to approval of the State Government.

19. According to HMC, the approval was sought for only on the ground that the concerned department had informed HMC that the cabinet had decided that approval of the respective departments of the government would be necessary for sale of public assets and such decision would also be applicable to local bodies. Thus, the right of the petitioner emanates from the auction held by HMC, in exercise of power under Section 223 of the Act.

The petitioner being the highest bidder had already deposited 10% of the price in respect of each plot, as per the demand of HMC. HMC accepted the money in 2010 and has been holding the said money ever since. This writ proceeding is not in the nature of a suit for specific performance of a contract. It is a writ, seeking mandamus upon the HMC to discharge its statutory duty by acting in terms of the Section 223 of the said Act. Thus, the second contention of Mr. Ahmed is not accepted. Reference is made to the decision of the Apex Court in the matter of **Shri Harminder Singh Arora vs Union of India and Ors.** reported in **AIR 1986 SC 1527**, the relevant paragraph is quoted below:-

“**29.** In the instant case, the instrumentalities of the State invited tenders for the supply of fresh buffalo's and cow's milk and, therefore, this case has to be decided on the basis of bid by the tenderers. There was no question of any policy in this case. It is open to the State to adopt a policy different from the one in question. But if the authority or the State Government chooses to invite tenders then it must abide by the result of the tender and cannot arbitrarily and capriciously accept the bid of Respondent 4 although it was much higher and to the detriment of the State. The High Court, in our opinion, was not justified in dismissing the writ petition in limine by saying that the question relates to the contractual obligation and the policy decision cannot be termed as unfair or arbitrary. There was no question of any policy decision in the instant case. The contract of supply of milk was to be given to the lowest bidder under the terms of the tender notice and the appellant being the lowest bidder he should have been granted the contract to supply, especially, when he has been doing so for the last so many years.”

20. The above two issues having been answered in favour of the petitioner, the court proceeds to deal with the next issue. The stand of the HMC with regard to its ownership over the plots is very clear. The communication dated April 13, 2021, made to the concerned department, is relevant. The contents thereof are set out below :-

From:

Commissioner,
Howrah Municipal Corporation,
4, Mahatma Gandhi road
Howrah:-711101

To:

The Joint Secretary to the Government of West Bengal,
Urban Development & Municipal Affairs Department,
(Municipal Affairs Branch), LSG Branch,
"Nagarayan", Bidhannagar, Salt Lake, Kolkata 700064

Sub: Seeking direction with respect to two plots at. 432, G. T. Road (N),
Howrah. Municipal Corporation.

Ref:-1. 177/MA/O/C-6/1L-13/2012, dated 01/06/2012 (Annexure A)

2.479/MA/O/C-5/H/IL-1/2012, dated 18/12/2012 (Annexure B)

3.01/MA/O/C-5/H/IL-1/2012, dated 09/01/2019 (Annexure C)

Sir,

In response to your letters as above, the following course of action have
been taken for with respect to two plots of land out of the property as
noted above:

1. Details pertaining to land record available at this end is furnished in
the here in below:

SL No.	Schedule of Land	Status of Land	Remarks
1	34 Bighas- 14Khata- 8Chatak-24 Sq.ft. of land comprising of Fire Brigade, Garage, Slaughter House, Roadways, Pound, Ward Office	"Received from the Government vide letter no. 4409, dated 14.9.65 from Off. Secy., P.W.D. to Commissioner, Burdwan Divn. And D.M.s Memo no. 809, dated 23.9.65". "Date of possession was in the year 1865	Annexure D
2	Government of West Bengal requisitioned more or less 3.28 acres and	For the purpose of remodelling of Howrah Yard in connection with electrification	Annexure E & F

	5.30 acres of land out of holding no. 432, G.T. Road (N) vide No. 1876 L.A. dated 4/02/1955 & No: 23758 L.A. dated 05/12/1955 respectively.	scheme.	
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3. The Commissioners of erstwhile Howrah Municipality leased out more or less 21 Bighas -9 Kotthas -chittaks of land to Dr.B.B Lahari vide deed no 1599 for the year 1953 (Book No - I, Volume No-pages 188 to 195). Hence it is implied that the Commissioners of erstwhile Howrah Municipality have the right title and interest executed the said Deed of Lease in favour of the said Dr.B.B Lahari.

4. Howrah Municipal Corporation decided to sell two plots of land on the terms of "As is where is basis numbered as PLOT - A and PLOT - B measuring more or less 25.0861 kathas and 20.1986 kathas respectively in terms of the MIC meeting decision dated 06/02/2010, item no 40 which was ratified in 1 O.G. meeting dated 30/08/2010 in terms of section 223 of the HMC Act 1980 as amended till date. The basic guidelines were as follows:

- * The base price of the land to be sold is to be fixed up upon the price determined by the District Registration Authority and as per clause no 09 read with clause no 23 of the "Terms and condition of Sale Plots" speaks for itself. (Annexure H)

- * Wide publicity is to be done by inviting tenders through news paper ventilation

- * Ld. Government Pleader, Howrah is to vet the all tender papers including the terms and conditions and Notice Inviting Tender.

- * The tender was opened on 21/12/2010 in the presence of the committee member constituted by the Hon'ble Mayor.

- * It has been found that M/S Overseas Scrap Trading Corporation of 63, Rafi Ahmed Kidwai Road was found to highest bidder in connection with plot A & B.

- * As per the guidelines as laid down by the State Cabinet for selling and or purchase of landed property by any Departments of the State Government and direction of Hon'ble Mayor on 12/09/2011, the entire matter was forwarded to the Municipal Affairs Department Government of West Bengal vide letter no. SVD/ED/001/2012-13, dated 28/04/2012 for according approval for selling of the two plots

5. The entire holding number in question covers under the Survey Sheets & Settlement sheets, details of which is furnished in the table below:-

Sl no.	Town Survey Sheet (Available in H.M.C)	Settlement Sheet (Available in Town Survey Unit, Howrah)
1	228	Howrah-6, Golabari – 37
2	229	Howrah – 7, Golabari - 38
3	252	Golabari – 36
4	253	Golabari – 39
5	254	Howrah- 11, Golabari-46

Only a few R.S. Katians being numbers 32,27,39,31,37,pertaining pertaining to Sheet number 39 Mouza- Golabari was collected from the Town Survey Unit and are placed in Annexure G as reference. From the records it is evident that the land in question is not recorded in the name of Howrah Municipality or Howrah Municipal Corporation as the case may be in R.S. Record of Right. Several correspondences were done for correction of the land records (Annexure I-M), but as on date on response is received at this end.

6. All other relevant enclosure are placed in Annexure (N,P,Q& R)

Further Howrah Municipal Corporation will like to seek direction of the department regarding query made vide memo number: 01/MA/O/C-5/H/IL-1/2012 dated:-09/01/2019 (Annexure C) in view of process elaborated in point number 4 of this letter.

Encl: As stated above

Thanking you.

Yours faithfully,

Sd/-

Commissioner

Howrah Municipal Corporation”

21. HMC considers itself the owner of the property. How such ownership has been claimed is available from the tabular depiction quoted hereinabove. The records maintained by the corporation indicate that in 1953, the land had been leased out to Bibhuty Bhusan Lahary for a period

of 50 years. Bibhuty Bhusan Lahary had created sub-leases and tenancies and the petitioner claims to have been one of such tenant having constructed an industrial unit on the property. Bibhuty Bhusan Lahary was paid the lease rent. Even after the lease between Bibhuti and HMC expired in 2003, none came forward to claim rent. The petitioner continued to occupy the premises. In November 2010, HMC decided to sell out the property to the industrial units who were in possession of the premises. Four bidders participated and the petitioner emerged as the highest bidder in respect of both Plot Nos. A and B. It also appears from the records that HMC had taken such decision and fixed the reserve price upon obtaining the market rate from the District Registrar's Office. The entire decision of HMC was ratified at various levels, as per procedure. The sale of the property by HMC was in accordance with the HMC Act. The contentions of the concerned department that, HMC should have taken permission from the concerned department, prior to the sale, is misconceived. The law does not provide so. The submissions on the part of the concerned department that, in the absence of rules, permission should have been taken from the concerned department, is an incorrect appreciation of law. The substantive law i.e. the HMC Act, permits the HMC to dispose of its properties. Had the Rules been prescribed by the State Government, corporation would have been bound to follow the Rules. In the absence of the rules, the corporation has to follow a proper procedure for distribution, sale or alienation of public assets i.e. to hold an open tender upon wide circulation of the tender notice and transfer the property to the highest bidder. It is not in dispute that, the decision taken by the corporation was in accordance with law and the

tender notice was published in three widely circulated dailies. Four bidders participated in the bidding process and the petitioner emerged as the highest bidder in respect of both Plot Nos. A and B. Only because a departmental communication had been received by the corporation that the government had decided that in the event of sale of public assets or land, approval should be taken from the concerned department, the right of the petitioner under the law to have the land conveyed pursuant to the Letter of Acceptance issued by the HMC, cannot be curtailed. The cabinet's observation which is not on record, and which has not seen the light of the day, cannot curtail the vested right of the petitioner as the successful bidder, to be conveyed the property. The decision of the corporation to dispose of its own property cannot be negated or held to be illegal on the ground that the proposal to sell had not been approved by the State Government prior to holding such auction. It is nobody's case that the auction was not validly conducted. The auction was confirmed and the petitioner complied with. The terms and conditions of the auction and also paid the advance. The decision of the Cabinet if at all, cannot override the provisions of a statute, which allows the HMC to dispose of its own property. HMC does not have any objection to convey the land. With regard to the question as to how HMC became the owner of the property, the query repeatedly made by the State Government was answered by the communication dated April 13, 2021. This court is of the view that the series of events which took place would clearly clarify that there was no dispute with HMC's right over the property. HMC had leased out certain portions of the land to Bibhuty Bhusan Lahary by a registered Deed being

No. 1599 in the year 1953 which was entered into in Book No. 1, Volume No. 22 at Pages 188 and 195 as per the reports. The name of Bibhuty Bhusan Lahary as superior tenant is recorded in the Record of Rights and the name of his sub-lessees have also been entered as thika proja. The source of right of Bibhuty Bhusan Lahary in occupying the said land was the lease granted by the HMC. The Deed of Lease between HMC and Bibhuty Bhusan Lahary is a registered document, which has the presumption of correctness.

22. Admittedly before 1953, the HMC was already treating itself as the owner of the land and taking decisions in respect thereof, including execution of a registered lease in respect of the property. None had ever challenged the right of HMC. Moreover, the record of rights is not a document of title. It neither creates title nor does it extinguish title. If the name of HMC was not entered in the record of rights that itself, would not be a reason to hold that HMC was not the lawful owner of the land. No one with a better claim to title has surfaced as yet. It is an admitted position that Bibhuty Bhusan Lahary had created sub-leasees and tenancies in respect of the property and that is how the petitioner had come into possession of the property in question.

23. The only ground taken by the HMC for not executing the deed of sale was that, as per the Land Policy of 2012 and the communication of the cabinet's decision, sale by the corporation would require approval from the Government. HMC is not unwilling to sell. Rather, HMC has continuously persuaded the State Government to grant a formal approval.

24. Now, comes the question of applicability of the Land Allotment Policy of 2012. The said policy was notified sometime in December, 2012, i.e. after the auction had taken place. The execution of the Deed of Conveyance was a natural consequence of the tender process. The policy will not be applicable retrospectively. It is an office order of the Land and Land Reforms Department. The purpose behind such policy is quoted below :-

“Whereas the State Government, its parastatals (Corporations, Development Authorities), and urban local bodies etc. have been allotting and pricing land/other assets in line with various Departmental and other norms which often vary in their content and their applicability;

2. And whereas there is need to introduce uniformity, reduce discretion and avoid case by case decision-making to ensure transparency while dealing with public assets;”

25. It primarily deals with grant of long term and short term lease and leasehold interest. Assignment of such leasehold interest, inter departmental transfer etc. are also covered by the said policy. It also provides that land meant for commercial use shall inevitably be auctioned to the highest bidder, for which adequate publicity should be given. Commercial use would mean offices, shops, shopping malls, housing (not meant for the EWS, LIG or the poor), cineplexes, theme parks, hospitals, educational institutions etc. and would include all other activities except those activities for which a different mode of disposal is prescribed. In this case, even assuming that the spirit of the policy is applicable, although, the policy came in later, the land was being auctioned and the highest bidder was selected, who had also paid the advance. Publicity had been made in three widely circulated dailies. The rest of the policy deals with the mode

and manner in which land transfer should be done for construction of housing for the poor, projects in power generation sector etc. Thus, there is nothing in the said policy that acts as a bar for HMC to continue with the sale of the plots by executing the formal deed of sale. Consequently, the records and the status of the land were surveyed by the Executive Engineer, Survey Department, HMC as per the direction of the court and a report dated June 4, 2025 was filed. The relevant portion thereof is quoted below:-

“Detail survey report of the land and structure on the 432, G.T. Road (N), Howrah: 711101 is furnished here under:

1. Land area as municipal Record/Town Survey Sheet: 55732 sq.m. as per present position 22260.47 Sq.m.
2. Total of the structure:
 - a) Number of Building: 5
 - b) Number of hutments: 87
 - c) Bus stand, shops, factories and residential area: 1
 - d) One School Building name: Begum Rouqiya Urdu Girls School: 1
 - e) One over head water tank is under construction

Executive Engineer
Survey Department

Howrah Municipal Corporation”

26. It is undoubtedly available from the survey done by the corporation, which has not been denied by the state respondents that, on the said plots there are residential buildings, school building, bus stand, factories and huts. The land has pucca structures.

27. HMC in their affidavit made a statement that, the price of the land had escalated. However no attempt was made to urge this issue and no document was filed with regard to increase in the value of the land.

28. Next comes the objection with regard to the land being thika land. The report in the form of affidavit filed by the Additional Secretary, Department of Urban Development and Municipal Affairs, Government of West Bengal indicates that the land appears to be thika land. Reliance was placed on the communication of the Additional District Magistrate and District Land and Land Reforms Officer, Howrah dated December 27, 2021 in support of such contention. The contents thereof are quoted below :-

“Sir,

With reference to the above, the comprehensive report as sought for, is provided as deciphered from the records available, which are as follows:

1. Premises No. 432 G.T. Road comprised of R.S. Plot No.s 65, 66, 67, 69, 70, 71, 72, 73 of Mouza Golahari, Sheet No. 39 corresponding to L.R. Plot No.s are 70, 71, 76, 77, 78, 79, 81, 82 respectively. The R.S. Plots are recorded in R.S. Khatian No. 27. The name of BIBHUTI BHUSAN LAHIRY is recorded as SUPERIOR TENANT and the name of JAY BHARAT IRON AND STEEL WORKS PVT. LTD. and NARSINGHDAS AGARWALA is recorded as DAKHALKAR THIKAPRAJA. In L.R. Khatian no. 8 & 14, the subject plots are recorded in favour of JAY BHARAT IRON AND STEEL WORKS PVT. LTD. and NARSINGHDAS AGARWALA respectively.

2. The status of JAY BHARAT IRON AND STEEL. WORKS PVT. LTD. and NARSINGHDAS AGARWALA is THIKAPRAJA in L.R. R.O.R.

3. There is no mention of Overseas Scrap Trading Corporation in the R.S. and L.R. R.O.R.

4. Since the recorded status of JAY BHARAT IRON AND STEEL WORKS PVT. LTD. & NARSINGHDAS AGARWALA Is thika tenant, the opinion of the Dy. Thika Controller may be sought for in regard.

5. The name of Howrah Municipal Corporation is not available as possessor over the subject plots in the R.S. & L.R. R.O.R.

Encis: 1. RS kh 27

2. LR Kh 8,14

Yours faithfully,

Sd/-

Additional District Magistrate and
District Land & Land Reforms Officer
Howrah.”

29. The department also, by a letter dated May 29, 2025 requested the Deputy Controller, Howrah Thika Tenancy to inform the department whether the land situated at Plot Nos. A and B on Holding No. 432, G.T. Road(North), Police Station – Golabari, Ward No. 60, Howrah – 711101, was a Thika land or not and who were the Thika tenants. The contents of the letter are quoted below :-

“Sir,

With reference to above, I am directed to request you to inform this Department whether the land situated at Plot “A” and Plot “B” at Holding No.- 432 G.T. Road (North), P.S. Golbari, Ward No.- 60, Howrah – 711101, are recorded as thika Land, if so, who are the thika Tenants of the said premises by return mail (e-mail id: mad12law@gmail.com).

This may be treated as ‘URGENT’

Yours faithfully
Special Secretary”

30. In reply, the Deputy Controller, Thika Tenancy Department, Howrah by a letter dated May 29, 2025 had informed that no return had ever been submitted in form A in their office in respect of the said premises after the Cardinal date of vesting i.e. January 18, 1982 and as such no determination of the Thika Tenancy could be done from their end. However, the R.S and L.R records indicated that M/s Jay Bharat Iron & Steel Works Limited and Shri. Narsingdas Agarwalla were recorded as “Thikaprajas”. Contents of the said letter are quoted below :-

“Sir,

With reference to subject mentioned above and your office memo no332(Law)/UDMA-15011(12)158/2021-LS-MA dated 29.05.2025

I do hereby inform you that from available office record it is found that no return has been submitted by any person in form A in this office against premises no 432, G.T Road, P.S- Golabari after cardinal date of vesting i.e 18.01.1982 and as a result no determination of Thika Tenancy could be done from this end u/s 5(3) of WBTT(A&R) Act, 2001. Regarding RS and LR Record, the custodian is OC, Townsurvey, Howrah from whom we have collected the relevant LR and RS Record where Narsingha Das Agarwal and Jai Bharat Iron & Steel are recorded Thika Tenant and sending the same to the Department for your ready reference.

Yours faithfully,

Sd/-

Deputy Controller,

Thika tenancy Department, Howrah”

31. The fact that there are pucca structures on the said land is not in doubt. If the Deputy Controller was of the opinion that no determination of Thika Tenancy could be done, the matter ends there. The fact that Bibhuty Bhusan Lahary was granted lease of the said land in 1953 for a period of 50 years clearly indicates that the land was not a Thika land. The definition of thika tenant under the Calcutta Thika Tenancy Act, 1949 is quoted below :-

“2(5)- "thika tenant" means any person who holds, whether under a written lease or otherwise, land under another person, and is or but for a special contract would be liable to pay rent, at a monthly or any other periodical rate, for that land to that another person and has erected or acquired by purchase or gift any structure on such land for a residential, manufacturing or business purpose and includes the successors in interest of such person, but does not include a person—

(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.”

32. The Thika Controller categorically stated that it could not be ascertained whether the land was thika land or not. The admitted position was that no return in Form A had ever been submitted in the said office. The court refers to the decision of ***Bharat Petroleum Corporation Limited vs. Aarvee Finvest Private Limited***, reported in **(2013) 4 Calcutta Law Times 386 (HC)**. It was held that the amended definition in the West Bengal Thika Tenancy Acquisition and Regulation Amendment Act, 2010 did not redefine thika tenant as already defined in the Calcutta Thika Tenancy Act, 1949, either in the Act of 1981 or as originally in the Act of 2001. The Amendment Act of 2010 amended the definition of thika tenant under Section 2(14) of the Act of 2001 only and that too with effect from November 15, 2010. Thika tenancies dealt with by the Act of 1981 or by the Act of 2001, were in respect of thika tenancies as they existed on January 18, 1982. Therefore, under the Act of 1949, Bibhuty Bhusan Lahary cannot be treated as a Thika Tenant and the lands were not Thika lands as per law. If Bibhuty Bhusan Lahary could not not a Thika tenant in 1949. Subsequent change in the definition of Thika Tenant will not have retrospective effect. The land had not vested either under the 1981 nor under the 2001 Act. In ***Lakshmimoni Das vs. State of West Bengal and Ors.*** reported in **1987 2 CHN 148**, which was affirmed by the Supreme Court in ***Nemai Chandra***

Kumar (dead) Thr. Lrs. And Ors. v. Mani Square Ltd. and Ors., reported in **2022 SCC Online SC 920** a special Division Bench of this court held as follows:-

“(a) The impugned Act is not protected under Article 31 C of the Constitution of India as it is found on scrutiny of different provisions of the Impugned Act that the Impugned Act has not been enacted to give effect to provisions of Articles 39(b) and (c) of the Constitution and the impugned Act is open to challenge on the score of violations of part III of the Constitution.

(b) Within the scope and ambit of Section 5 of the impugned Act only lands comprised in thika tenancies within the meaning of the Calcutta Thika Tenancy Act, 1949 comprising a kutchha 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 vests under the impugned Act.”

33. Going by the above ratio, the land did not vest to the State as it was not a thika land. Court further refers to the decision of a Division Bench of this Court in **Kamal Kumar Mitra vs. Arun Kumar Chatterjee and Ors.** decided in **F.M.A No. 441 of 1996** .

34. The decision of **Lakshmimoni Das** (supra) was followed by the Hon’ble Apex Court in **Ramdas Bansal (Dead) Through Lr vs Kharag Singh Baid and Ors. decided in Civil Appeal No. 684 of 2012 (Arising Out of SLP© N. 25484 of 2007)**, relevant portions of which are quoted below :-

“29. The point relating to a portion of the demised premises being a Thika Tenancy and thus covered by the provisions of the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, was raised before the Division Bench of the High Court, which, however, negated such contention upon holding that the Respondents were not Thika Tenants since the building had been constructed on the land in question before the Calcutta Thika Tenancy Act, 1949, came into operation. Placing reliance on the doctrine of separation of possession from ownership, the Division Bench further held that the Appellant had failed to establish that

the Respondents or their predecessors-in-interest were Thika Tenants of the suit property. The Division Bench also held that even after execution of the lease deed in favour of the Respondents, the lessor remained the owner of the property, whereas the Respondents father merely got the right to enjoyment of the property and could not, therefore, be said to be the Thika Tenant within the meaning of the definition given in the subsequent legislations. On such reasoning, the Division Bench rejected the application filed on behalf of the Appellant under Order XLI Rule 27 CPC to bring on record subsequent facts to prove his status as a tenant of a portion of the structure in relation to which the Appellant had acquired the status of a Bharatia after the acquisition of Thika Tenancies under the 1981 Act.

30. The law relating to Thika Tenancies in relation to Calcutta and Howrah, as it existed prior to the Acquisition Act of 1981, was the Calcutta Thika Tenancy Act, 1949, which excluded leases of land exceeding 12 years duration. The instant lease being one for 20 years, the same stood excluded from the operation of the 1949 Act, when it was executed. In any event, having been granted a lease for a period of twenty one years in respect of the building standing on the suit premises, comprising premises No.91-A, Mahatma Gandhi Road and 6-A, Sambhu Chatterjee Street, Kolkata, in which the Grace Cinema was located, the Appellant could never claim to be a Thika Tenant in respect of the suit premises as defined either under the Calcutta Thika Tenancy Act, the Calcutta Thika and other Tenancies and Lands (Acquisition and Regulation) Act, 1981, as well as The West Bengal (Acquisition and Regulation) Act, 2001.

31. As has been indicated hereinbefore, a “Thika Tenant” under the Calcutta Thika Tenancy Act, 1949, was defined to mean any person who, inter alia, held, whether under a written lease or otherwise, land under 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, except for the exceptions indicated in Sub-Section (5) of Section 2 of the said Act. As also indicated hereinbefore, the aforesaid Act stood repealed by the Calcutta Thika Tenancy and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981, which provided for the acquisition of interest of landlords in respect of lands comprised in Thika Tenancies and certain other tenancies and other lands in Kolkata and Howrah for development and equitable utilization of such lands. In the said Act, a “Thika Tenant” has been defined to mean any person who occupies, whether under a written lease or

otherwise land under another person and is or but for a special contract liable to pay rent, at a monthly or periodical rate, for the land to the said person and has erected or acquired by purchase or gift any structure on such land for residential, manufacturing or business purpose and includes the successors-in-interest of such person. What is significant in the definition of Thika Tenant under the 1981 Act is the persons who had been excluded from the definition in the 1949 Act, were also brought within the ambit of the 1981 Act. Consequently, certain lands which were earlier excluded from the definition of “Thika Tenancy”, were now brought within its ambit.

32. The circumstances were further altered with the enactment of the West Bengal Thika Tenancy (Acquisition & Regulation) Act, 2001, to provide for the acquisition of interests of landlords in respect of lands comprised in Thika Tenancies and certain other tenancies in Kolkata and Howrah and other Municipalities of West Bengal for development and equitable utilization of such lands with a view to sub-serve the common good. It is clear that the main object of the 2001 Act was to extend the acquisition of lands beyond Kolkata and Howrah, in other Municipalities of West Bengal, for development and proper utilization of such lands.

33. The Appellant does not come within the ambit of any of the definitions under the aforesaid three Acts having been granted a lease of the structures which had already been erected on the lands long before the coming into operation of either the 1949 Act or the 1981 Act or even the 2001 Act. Consequently, the provisions of the West Bengal Premises Tenancy Act, 1956, will not also be applicable to the Appellant, whose lease stood excluded from the operation of the aforesaid Act under Section 3 thereof. Consequently, the Appellants application under Order XLI Rule 27 CPC was quite rightly rejected by the High Court.”

35. Under such circumstances, the objection of the State is also negated. The land cannot be treated as a thika property. In this case, the thika Controller had specifically stated that whether the land was a thika property or not could not be determined. Thus, the petitioner cannot be kept in a state of suspended animation on a frivolous objection raised by the State. The matter has been continuing before this court from 2021 to 2026. The

objection raised by the State is contrary to law and not supported by documents.

36. Admittedly, the lease of Bibhuti Bhusan expired in 2003 and there were existing pucca structures. In the decision of **Nemai Chandra Kumar (dead) Thr. Lrs. And Ors. v. Mani Square Ltd. and Ors.**, reported in **(2024) 17 SCC 743**, the Hon'ble Apex Court held as follows:-

“87. Significant it is to notice that even in the 2001 Act, 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 1981 Act; and the expression “any structure including pucca structure” came to be inserted to this clause only by the 2010 Amendment Act. Moreover, the 2010 Amendment Act was given only prospective effect from 1-11-2010 and not the retrospective effect, as was earlier given to the original Section 4 of the 2001 Act. 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 1-11-2010 and not before. As noticed, before 1-11-2010, 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 1-11-2010.

Conclusion

* * *

* * *

97. In summation of what has been discussed hereinabove, we could broadly say:

97.1. The Full Bench decision of the Calcutta High Court in *Lakshmimoni Das* [*Lakshmimoni Das v. State of W.B.*, 1987 SCC OnLine Cal 140 : AIR 1987 Cal 326] is affirmed.

97.2. The structure, as put up by the appellants and/or their predecessors, had been pucca structure on the property in question.

97.3. 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 1949 Act.

97.4. The appellants and/or their predecessors were not thika tenants within the meaning of the 1981 Act for two major reasons:

- (a) that the structure in question was a pucca structure; and
- (b) that the 1981 Act was not operative in relation to the property in question because of the stay order passed by the High Court.

97.5. 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 2001 Act does not enure to their benefit.

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

37. In the decision of ***Orissa State Prevention & Control of Pollution Board vs Orient Paper Mills and Another*** reported in **(2003) 10 SCC 421**, it was held that when a statute empowered an authority to commit an act or exercise certain powers in respect of certain matters, the exercise of such powers conferred by the statute would not depend on the existence of the rules, unless the statute expressly provided for the same. In other words, framing of the rules was not a condition precedent to the exercise of power by HMC. HMC was expressly conferred with statutory power to dispose of the immovable property. In this context, the expression ‘as may be prescribed’ only means that if rules were framed, the powers conferred on the authority had to be exercised in accordance with such rules which would deal with the procedure. As rules were not framed in this regard, there could not be a void. The HMC was not precluded from exercising the power conferred by the statute, in a reasonable and fair manner. Thus, the writ petition is allowed. The petitioner is entitled to conveyance of the land upon execution of Deed(s) of sale on ‘as is where is basis’.

38. The State Government, through department of Urban Development and Municipal Affairs, Government of West Bengal is directed to grant necessary approval to the corporation for the purpose of execution of the Deed(s) of Sale in favour of the petitioner within eight weeks from date and HMC will convey the land by execution of the Deed(s) within four weeks thereafter. In the event the approval is not received within eight weeks, HMC

shall proceed with the execution of the deeds on its own without further reference to the State Government.

39. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

40. Parties are also granted liberty to act on the basis of the Server copies of the judgment.

(Shampa Sarkar, J.)