
(2016) 01 CAL CK 0061
In the Calcutta High Court
Case No : W.P.L.R.T. No. 168 of 2015.

Barun Shome

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 13-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal Land Reforms and Tenancy Tribunal Act, 1997 — Section 7

Citation : (2016) 1 CalLJ 534

Hon'ble Judges : Debasish Kar Gupta; Mumtaz Khan, JJ.

Bench : Division Bench

Advocate : Santimoy Panda and Goutam Das, Advocates, for the Appellant; L.K. Gupta and Ziaul Islam, Advocates and Monoranjan Jana and R. Maity, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

1. This is an application filed under Article 226 of the Constitution of India assailing a final order dated April 17, 2015 passed by the West Bengal Land Reforms and Tenancy Tribunal, 2nd Bench, in the matter of Barun Shome v. The State of West Bengal and Ors. [In Re- O.A.-1931/2014 (LRTT)].

2. By virtue of the order impugned, the above original application was dismissed being not maintainable. Liberty was given to the writ petitioner to take necessary steps in accordance with law if he would like to recall the order dated March 19, 2014 passed by the West Bengal Land Reforms and Tenancy Tribunal, First Bench, in the matter of Sunil Kumar Halder v. The State of West Bengal and Ors. [In Re- O.A.-3812 of 2013 (LRTT)]. The facts which were taken by the learned Tribunal while passing the order impugned are discussed, in a nutshell as follows:

The respondent No.8 filed an original application before the West Bengal Land Reforms and Tenancy Tribunal in the matter of Sunil Kumar Halder v. State of West Bengal and Ors. [In Re- O.A. No.3812 of 2013 (LRTT)]. By an order dated March 19, 2014, the above original application was disposed of by the learned

Tribunal with following direction upon the respondent No.6 :

"Having heard both sides and after perusal of the materials on record, we observe that a mere notice served upon the erstwhile owner directing the other to vacate the suit land is not enough. B.L. and L.R.O. should take all measures to vacate the erstwhile owners from the suit land and to restore the possession of the homestead beneficiary. Proceeding initiated should be continued till such restoration is made. Police help, as required for the purpose, be sought for from the S.D.O.

The B.L. and L.R.O, Kakdwip, District-South 24-Parganas is directed to conclude the aforesaid proceeding within a period of four (4) months from the date of communication of this order.

The petitioner is directed to serve copy of the application with all its annexure along with order passed by the Tribunal today upon the B.L. and L.R.O, Kakdwip, District-South 24-Parganasas well as upon S.D.O, Kakdwip within four weeks from the date of getting the certified copy of this order. With these terms, O.A. No.3812 of 2013 (LRTT) is disposed of.

Let a plain copy of this order duly countersigned by the Principal Officer of this Tribunal be made over the Id. Govt. Representative for communication to the authority concerned for compliance and xerox certified copy of this order, if applied for by the petitioner, be delivered on payment of requisite court fees."

3. The petitioner/aforesaid erstwhile owner was not impleaded in the above proceeding as a party. The writ petitioner/erstwhile owner filed an original application before the West Bengal Land Reforms and Tenancy Tribunal in the matter of Barun Shome v. The State of West Bengal and Ors. [O.A.-1931/2014 (LRTT)]. By the order impugned, the above original application was disposed of and the operative portion of the above order is quoted below:

"It appears that this O.A. has been filed by this applicant for recalling the order dated 19.03.14 passed in O.A. No.3812/2013(LRTT). So, we are of the opinion if this applicant likes to recall the order dated 19.03.14 passed by the Hon'ble First Bench in O.A. No.3812/2013 (LRTT), then he is to file recall application for recalling the order dated 19.03.14 passed in O.A. No.3812/2013 (LRTT). In view of the circumstances, we are of the further opinion that no order for recalling the order dated 19.03.14 passed in O.A. No.3812/2013 (LRTT) can be passed in O.A. No.1931/2014 (LRTT). As such, we pass the following order:-

The instant O.A bearing No.1931/2014 (LRTT) be and same is hereby dismissed being not maintainable.?

However, the applicant is given liberty to take necessary steps in accordance with law if he likes to recall the order dated 19.03.14 passed in O.A. No.3812/2013 (LRTT).

Let a plain copy of this order duly countersigned by the Principal Officer of this

Tribunal be made over the Ld. Govt. Representative for communication to the concerned authority for information and Xerox certified copy of the order, if applied for by the applicant, be delivered subject to payment of requisite court fees."

4. It is submitted on behalf of the writ petitioner that the impugned order is not sustainable in law on the basis of the settled principles of law that in the event an original application filed before the learned Tribunal is disposed of without impleading a necessary party affecting him by that order of disposal, it is permissible to file an independent original application afresh before the learned Tribunal by such affected person for protection of his right. Reliance is placed on the decision of Shivdeo Singh and others v. State of Punjab and others reported in AIR 1963 SC 1909.

5. It is submitted by Mr. L.K. Gupta, learned Additional Advocate General, West Bengal, appearing on behalf of the State of West Bengal, that in the event an application under Article 226 of the Constitution of India is disposed of in absence of a necessary party then three options are available before that party as follows:

(i) To file a review application in respect of the writ application which has been disposed of.

(ii) An independent application under Article 226 of the Constitution of India afresh.

(iii) An appeal against the order passed in the writ application concerned.

6. It is also submitted by Mr. Gupta that the learned Tribunal exercises power of a learned Single Bench of the High Court sitting in writ jurisdiction under Article 226 or Article 227 of the Constitution of India. Therefore, in the instant case, the following remedies are available to the writ petitioner.

7. To file an independent original application before the learned Tribunal assailing the order passed by the Tribunal in the original application concerned where he had not been made a party, amongst other options.

8. He relies upon the decision of Ram Janam Singh v. State of Uttar Pradesh and another reported in AIR 1994 SC 1722. Having heard the learned Counsel appearing for the respective parties at length as also considering the facts and circumstances of this case, as recorded herein above, we are of the opinion that the provisions of Section 7 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (hereinafter referred to as the said Act, 1997) is required to be quoted below for proper adjudication of the issue involved in this writ application:

"7. Exercise by Tribunal of jurisdiction, power and authority exercisable by court. ? Save as otherwise expressly provided in this Act, the Tribunal shall, with effect from the date appointed by the State Government under section 6,

exercise all the jurisdiction power and authority exercisable immediately before that day by any court including the High Court, except the writ jurisdiction under Article 226 and 227 of the Constitution exercised by a Division Bench of the High Court, but excluding the Supreme Court, for adjudication or trial of disputes and applications relating to land reforms and matters connected therewith or incidental thereto and other matters arising out of any provisions of a specified Act."

9. Considering the aforesaid provisions as also the decision of *L. Chandrakumar v. Union of India* reported in AIR 1997 SC 1125, we are of the opinion that a Tribunal constituted in exercise of power conferred by an Act legislated in exercise of power conferred under Articles 223A or 223B of the Constitution of India, discharges the function as a court of first instance for adjudication or trial of dispute and applications relating to land reforms and matters connected therewith or incidental thereto and other matters arising out of any provision of a specified Act. In the instant case, the learned Tribunal has been created in exercise of power conferred under the West Bengal Land Reforms and Tenancy Tribunal Act which is enacted in exercise of power conferred under Article 223B of the Constitution of India.

10. In the decision of *Shivdeo Singh* (supra), the issue before the Hon'ble Supreme Court was the scope of exercising inherent power of the High Court to review its previous order under Article 226 of the Constitution of India in entertaining a writ application assailing an order passed in another writ application without impleading the necessary party in the former writ application. The Hon'ble Supreme Court held as follows:

"(8) The other contention of Mr. Gopal Singh pertains to the second order of Khosla, J., which in effect, reviews his prior order. Learned counsel contends that Article 226 of the Constitution does not confer any power on the High Court to review its own order and therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J."

11. It is necessary to repeat and reiterate that, in this case, the learned Tribunal exercises the power conferred to a Single Bench of the High Court under Article

226 or Article 227 of the Constitution of India. We find substance in the submissions made by the learned Additional Advocate General with reference of Ram Janam Singh (supra) and the relevant portion of the above decision is set out below:

"8. The appellant, admittedly, was not impleaded as a party to the said writ application, but as he is directly affected like many other officers, who had entered into the State Civil Service before the respondent, filed the connected Special Leave Petition, challenging the validity of the judgment aforesaid. In view of the fact that the appellant had entered into Civil Service of the State Government before the respondent, it is not in dispute that he is affected in the matter of seniority by the impugned judgment. It was held by this Court in the case of Prabodh Verma v. State of Uttar Pradesh, AIR 1985 SC 167 : (1984) 4 SCC 251, that a writ application in which the necessary parties likely to be affected have not been impleaded, the High Court should not proceed with such writ application, without insisting, on such persons or some of them in representative capacity being made respondents. It was further held that if petitioner refuses to join them, the High Court ought to dismiss the petition for non-rejoinder of necessary parties. Admittedly, none was impleaded even in a representative capacity. But, it can be urged on behalf of the respondent that he had not sought any relief against any individual. He had sought the intervention of the High Court to declare Rule 3(1) of 1973 Rules and Rule 3(b) of 1980 Rules as ultra vires, so far they made applicable the benefit of those Rules to only specified class of persons and restricted to others who were similarly situated. As such respondent was not required to implead private respondent, who might be affected by the verdict of the Court. Even if this stand is accepted can it be said that persons who have been affected by the judgment of the High Court in the connected writ application cannot challenge the correctness thereof either by filing a Review Petition before the High Court or by filing a Special Leave Petition before this Court? According to us, the answer is in negative. The appellant has a locus standi to challenge the said judgment, although he was not party to the same and the Special Leave Petition filed on his behalf cannot be rejected on that ground. The delay in filing the Special leave Petition has also been fully explained in the facts and circumstances of the case, which is condoned."

12. Therefore, we are of the opinion that it was open for the writ petitioner to avail of the following three options to protect his interest which might have been affected by the order dated March 19, 2014 passed in O.A. No.3812 of 2013 (LRTT) without impleading him as a party.

- (i) To file an appropriate application in the above original application;
- (ii) To file an independent original application; or
- (iii) An application under Article 226 of the Constitution of India before the appropriate Division Bench of this High Court assailing the aforesaid order dated March 19, 2014 passed in O.A. No.3812 of 2013 (LRTT).

13. Therefore, there was no bar and/or impediment for the learned Tribunal to entertain the original application bearing O.A. No.1931 of 2014 (LRTT), as one of the options available to the writ petitioner had been chosen by him. The learned Tribunal was in error in dismissing the above original application by virtue of the order impugned granting liberty to the writ petitioner to file an application for recalling of the order dated March 19, 2014 passed in O.A. No.3812 of 2013 (LRTT) which was one of the aforesaid options, as discussed herein above.

14. Therefore, the impugned order dated April 17, 2015 passed by the learned Tribunal in O.A. No.1931 of 2014 (LRTT) is quashed and set aside. The learned Tribunal is directed to dispose of the above original application in accordance with law expeditiously.

15. Let it be made clear that we have not considered any of the issues involved in the above original application on its merit and all points are kept open for consideration of the learned Tribunal.

16. Considering the prima facie case involved in the above original application we are of the opinion that the balance of convenience and/or inconvenience is in favour of granting interim relief to a limited extent to the writ petitioner. The parties to this proceeding are directed to maintain status quo as of today with regard to the nature and character and possession of the land in question till the original application is taken up by the learned Tribunal for enabling the petitioner to renew his prayer for interim relief before the learned Tribunal.

17. This writ application is, thus, disposed of.

18. There will be, however, no order as to costs.

19. Urgent photostat certified copy of this order be supplied to the parties, if applied for, subject to compliance with all necessary formalities.