
(2013) 12 CAL CK 0013
In the Calcutta High Court

Case No : M.A.T. No. 1799 of 2013 and C.A.N. No. 11402 of 2013

Bhandardaha Beel Matsyajibi Samabay Samity Ltd. and
Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-12-2013

Acts Referred:

Citation : (2014) 1 CALLT 258 : (2014) 1 CHN 544

Hon'ble Judges : Subhro Kamal Mukherjee, J; Sahidullah Munshi, J

Bench : Division Bench

Judgement

Subhro Kamal Mukherjee, J.—This is an appeal against judgment and order dated November 21, 2013, passed by the Hon'ble Single Judge in W.P. No. 34089 (W) of 2013, inter alia, dismissing the writ petition with liberty to the petitioners to approach the West Bengal Land Reforms and Tenancy Tribunal in accordance with law. In the writ petition a tender notice dated November 8, 2013, issued by the District Land and Land Reforms Officer, Murshidabad, for and on behalf of Government Tank Fisheries Settlement Committee, was impugned.

2. The Hon'ble Single Judge was of the opinion that although the impugned tender notice was not issued in exercise of any power conferred by any specified Act as defined in the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, it was, indeed, one that could be characterized as an activity of the District Land and Land Reforms Officer pertaining to a matter connected with or incidental to the Land Reforms. Therefore, in view of the provisions of sections 7 and 8 of the said Act, the dispute raised in connection with such tender notice had to be tried, initially, by the Tribunal.

3. Being aggrieved by and dissatisfied with the said order of dismissal of the writ petition, the writ petitioner filed this appeal.

4. The West Bengal Land Reforms and Tenancy Tribunal Act, 1997, was enacted to provide for setting up of a Land Reforms and Tenancy Tribunal in pursuance of

Article 323B of the Constitution of India and for adjudication and trial by such tribunal of disputes, claims, objections and applications relating to or arising out of land reforms or tenancy in land and other matters specified under a Specific Act and for matters connected therewith or incidental thereto.

5. Sub-section (b) of section 2 of the said Act defines authority as an officer or authority or functionary exercising powers or discharging functions as such under a specified Act.

6. Under sub-section (r) of section 2 of the said Act specified Acts are as under:

(i) the West Bengal Estate Acquisition Act, 1953; or

(ii) the West Bengal Land Reforms Act, 1955; or

(iii) the West Bengal Restoration of Alienated Land Act, 1973; or

(iv) the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fisherman Act, 1975; or

(v) the West Bengal Premises Tenancy Act, 1997;

(vi) the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001.

7. Section 6 of the said Act prescribes the jurisdiction, power and authority of the said tribunal. It provides that the tribunal shall exercise jurisdiction, power and authority in relation to -

(a) any order made by an authority under a specified Act;

(b) an application complaining inaction or culpable negligence of an authority under a specified Act;

(c) an appeal against an order of the Mines Tribunal appointed u/s 36 of the West Bengal Estates Acquisition Act, 1953;

(d) applications relating to matters under any provision of a specified Act or matters relating to any constitutional validity of any Act under the provisions of a specified Act;

(e) adjudication of matters, proceedings, cases and appeals which stand transferred from the High Court and other authorities to the Tribunal in accordance with the provisions of this Act.

8. Section 8 of the said Act excludes the jurisdiction of the Courts and prohibiting the Courts not to entertain any proceeding or application or exercise any jurisdiction, power or authority in relation to adjudication or trial of disputes or applications relating to land reforms or any matter connected therewith or incidental thereto or any other matter under any provision of a specified Act.

9. However, the power of the High Court exercising jurisdictions under Articles 226 and 227 of the Constitution of India by a division bench and the Supreme

Court of India was recognised.

10. Mr. Soumya Majumdar, learned Advocate appearing in support of this writ petition, submits that in the writ petition the petitioners have not challenged any order under a specified Act made by an authority. Therefore, he submits that the writ petition was maintainable.

11. Mr. Asoke Kumar Banerjee, learned Government Pleader appears for the State respondents and submits, per contra, that the Hon'ble Single Judge was right in holding, inter alia, that the writ petition was not maintainable. The said writ petition was not maintainable inasmuch as the order was made by an authority under a specified Act, Mr. Banerjee, further, submits that the District Land and Land Reforms Officer issued the said tender notice; the District Land and Land Reforms Officer is an authority under the West Bengal Land Reforms Act, 1955, which is, admittedly, a specified Act.

12. We are of the considered opinion that the notification was issued by the District Land and Land Reforms Officer not as" an authority under a specified Act, but for and on behalf of the Government Committee for Settlement of Tank Fisheries. While issuing the said tender notice, he was not exercising any power under the West Bengal Land Reforms Act, 1955. He was empowered to issue such notification under the West Bengal Land Reforms Manual. The West Bengal Land Reforms Manual is nothing, but a compilation of administrative instructions. It was not framed under the West Bengal Land Reforms Act, 1955.

13. We are of the considered opinion that any order under a specified Act made by an authority could be challenged at the first instance before the said Tribunal. Our reading of section 6 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, is that Tribunal inter alia, can exercise jurisdiction, power and authority in relation to any order under a specified Act made by an authority under a specified Act and can entertain an application complaining inaction or culpable negligence of an authority while exercising power under a specified Act.

14. The West Bengal Land Reforms and Tenancy Tribunal is a tribunal of limited jurisdiction. Tribunal acting under a special statute derives its powers to so act within four corners of that statute. If the provisions of the statute are violated and specially in regard to the conditions, which confers jurisdiction and power on the Tribunal to exercise it, the order becomes without jurisdiction. Before a Tribunal can be held to have jurisdiction to decide a particular matter, it must not only have jurisdiction to try the matter brought before it, but must, also, have the authority to pass the order sought for. It is not sufficient that the Tribunal has some jurisdiction in relation to the subject-matter.

15. We find that the tender notice was issued for the purpose of settling tank fisheries. The said tender notice has nothing to do with agrarian reforms. The District Land and Land Reforms Officer issued the tender notice not in exercise of his power or in discharge of his function under a specified Act, but it was issued in accordance with the administrative instructions as compiled in the said

Manual, which was not framed under any specified Act, as above.

16. The West Bengal Land Reforms and Tenancy Tribunal, therefore, cannot entertain a challenge against such notice. It would, therefore, be appropriate to conclude that the High Court possesses the jurisdiction of judicial review under Article 226 of the Constitution of India against the impugned tender notice.

17. Thus, the order impugned is set aside.

18. The writ petition is restored to its original file and number.

19. Let affidavit-in-opposition to this writ petition be filed two weeks after the re-opening of this Court after the Winter holidays. Let affidavit-in-reply to such opposition be filed one week thereafter.

20. List the matter for hearing before the Hon"ble Single Judge after four weeks of the reopening of the Court after winter holidays subject, however, to the convenience of the Hon"ble Judge.

21. During the pendency of the writ petition, the authorities shall be restrained by an order of injunction from settling the disputed Beels without the leave of the Hon"ble Single Judge. We, however, make no order as to costs.

Sahidullah Munshi, J.

I agree.