

(1999) 04 CAL CK 0004
In the Calcutta High Court
Case No : M.A.T. No. 1001 of 1999

Dhanraj Suraiya		APPELLANT
	Vs	
State of West Bengal		RESPONDENT

Date of Decision : 22-04-1999

Acts Referred:

West Bengal Land Reforms (Amendment) Act, 1971 — Section 22, 22(1)
West Bengal Land Reforms Act, 1955 — Section 54, 54(1), 54(5)

Citation : (2000) 1 ILR (Cal) 266

Hon'ble Judges : Tarun Chatterjee, J;S.K. Tiwari, J

Bench : Division Bench

Advocate : Milan Bhattacharyya and Chamali Majumder, for the Appellant;
Indrajit Mondal, for Private Respondents, for the Respondent

Judgement

Tarun Chatterjee, J.—After hearing the Learned Counsel for the parties and going through the averments made in the application for condonation of delay, we are satisfied that sufficient grounds have been shown by the Appellant-Petitioner in not filing the appeal within time. Accordingly, the application for condonation of delay is allowed.

2. There will be no order as to costs.

3. By counsel of parties the appeal be treated as on day's list and also by consent of the Learned Counsel for the parties, the appeal is taken up for hearing and is being disposed of by this judgment.

4. In our view, the learned Trial Judge had acted illegally and with material irregularity in the exercise of its jurisdiction by holding that in view of availability of an alternative remedy u/s 54 of the West Bengal Land Reforms Act, 1955 (herein after referred to as "the Act") the writ petition must be dismissed. For the purpose of deciding the question in hand the order of the learned trial Judge may be quoted and accordingly, the order under challenge is quoted below:

In my view, there is an alternative remedy available under the law to the writ

Petitioner. In that view of the matter, the writ Petitioner may avail of such alternative remedy by making an application for revision against the impugned order before the Commissioner of Land and Land Reforms. Accordingly, this writ application is dismissed.

However, for the ends of justice, I pass an order of status quo as of date for a period of four weeks after the Puja Vacation.

5. From the order of the learned Judge, as quoted herein above, it, appears that the learned Judge was of the view that an alternative remedy in the form of a revision before the Commissioner of Division and Land Reforms was available to the writ Petitioner, and, therefore, the writ petition must be dismissed on that ground. In order to consider this aspect of the matter, we are of the view that Section 54 of the Act must be referred. Section 54 of the Act reads as follows:

Appeals.-(1) Subject to any special provisions for appeal made in this Act or in any rules made under this Act, an appeal shall lie in the manner indicated below-

(a) to a Collector. When the order is made by a Revenue Officer or revenue authority below the rank of a collector;

(b) to the Commissioner of the Division, when the order is made by the Collector of a district within the Division; and

(2) Where, at the commencement of Section 22 of the West Bengal Land Reforms (Amendment) Act, 1971, any appeal is pending before the member, Board of Revenue, such appeal shall, notwithstanding anything contained in Sub-section (1) be disposed of by such member.

(3) After any appeal is preferred to a Collector, he may transfer the appeal to any officer subordinate to him as may be prescribed: provided that the officer to whom the appeal is transferred superior in rank or position to the officer or authority making the order appealed against.

(4) An order passed in appeal shall be final.

(5) Notwithstanding anything contained elsewhere in this Act, the State Government may, on its own motion, correct any erroneous decision passed by the Revenue Officer or by any officer in an appeal under the foregoing provisions of this section and any such order passed by the State Government shall be final and shall not be called in question in any Court.

6. We have carefully considered the provisions made in Section 54 of the Act. From a plain reading of Section 54(1)(a) of the Act, it appears that Section 54(1)(a) of the Act provides an appeal to be filed before the collector when the order is made by the Revenue Officer or Revenue Authority below the rank of a collector. From this provision, it is therefore, abundantly clear that when an order is passed by a Revenue Officer, an appeal u/s 54(1)(a) of the Act would lie before the Collector. Similarly if an order is made by the collector of a district within the division, an appeal shall lie against the order of the Collector u/s 54(1)(b) of the

Act before the Commissioner of the Division. Section 54(5), however, empowers the State Government to correct any erroneous decision passed by the Revenue Officer or by any officer in an appeal. As noted herein earlier, the learned Judge, in our view, thought that in view of Section 54(1)(b) of the Act, a revision should be filed before the Commissioner of the Division. In our view, the view expressed by the learned trial Judge was absolutely illegal and invalid in law. Section 54(1)(b) of the Act prescribes the forum of appeal before the commissioner of Division against an order of the Collector. It does not confer, in our view, on the commissioner of the Division to entertain any revision. Therefore, the learned trial Judge erred in law by holding that a revision lies against the order of the collector who acted as the appellate authority u/s 54 of the Act. In any view of the matter, question of filing an appeal before the Commissioner of the Division could not arise at all against the order of the Collector in view of the admitted fact that such an appeal u/s 54(1)(b) of the Act would be maintainable only if the original order is made by the Collector of a district within the Division. Therefore, the question of filing an appeal u/s 54(1)(b) of the Act before the Commissioner against the order of the collector who had acted as the appellate forum could not arise at all.

Let us see whether the order impugned in this appeal can be said to have been passed by the Trial Judge in compliance with Section 54(5) of the Act. As noted herein earlier, Section 54(5) of the Act confers power only on the State Government to correct any erroneous decision of the Revenue Officer or any other officer. From a plain reading of Section 54(5) of the Act, it is evident that revisional power can only be exercised by the State Government on its own motion. Therefore, no right has been conferred on an aggrieved party u/s 54(5) of the Act to file a revision before the Commissioner of the Division. It is open to the State Government only to exercise power to correct any erroneous decision of the Revenue Officer or any other officer. Therefore, in the facts and circumstances of this case, Section 54(5) of the Act cannot be applied, as the State Government on its own motion has not exercised any power for revision of the order of the Collector who had set aside the order of the Revenue Officer.

7. Therefore, in our view, Section 54(1)(b) of the Act could not be applied in the facts and circumstances of this case and also Sub-section (5) of Section 54 could not be applied by the parties because Sub-section (5) of Section 54 has only conferred on the State Government to correct any erroneous decision of the Revenue Officer or any other officer on its own motion. In this view of the order, we are unable to sustain the order of the learned Trial Judge rejecting the application which was moved against the order of the appellate authority (in this case, the collector) on the ground that an alternative remedy was available to the writ Petitioner in the form of a revision before the Commissioner of the Division.

8. For the reasons aforesaid, the order of the Trial Court is set aside. The appeal is allowed to the extent indicated above. The learned Trial Judge is requested to

dispose of the writ application on merits within 8 weeks from the date of communication of this order. It will also be open to apply for appropriate interim relief before the Trial Court.

9. In view of the order passed in the appeal itself, the application for stay has become infructuous and is, therefore, disposed of as infructuous.

10. There will be no order as to costs.

S.K. Tiwari, J.

11. I agree.