

(2001) 06 CAL CK 0043
In the Calcutta High Court
Case No : W.P.L.R.T. No. 403 of 2001

Jagadish Prasad Pati

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 25-06-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 323A, 323B
West Bengal Estates Acquisition Act, 1953 — Section 36, 44(2A), 6(5)
West Bengal Land Reforms Act, 1955 — Section 10(3), 51A(4), 51A(5), 54
West Bengal Land Reforms and Tenancy Tribunal Act, 1997 — Section 10, 6

Citation : (2001) 3 CALLT 309

Hon'ble Judges : Altamas Kabir, J;Alok Kumar Basu, J

Bench : Division Bench

Advocate : P.B. Sahu and Sudhakar Biswas, for the Appellant;Durgadas Roy and Husne Ara Begum, for the Respondent

Final Decision : Dismissed

Judgement

A. Kabir, J.—A short but nevertheless interesting question of law has been raised by Mr. P.B. Sahu, learned advocate, appearing in support of the writ petition, which is directed against the order dated 2nd March, 2001, passed by the learned West Bengal Land and Tenancy Tribunal in original Application No. 2842 of 2000, disposing of the petitioner's application with leave to prefer an appeal against the order passed by the Revenue Officer on 25th August, 1999, rejecting the petitioner's application u/s 51A(4) of the West Bengal Land Reforms Act, 1955.

2. Mr. Sahu submitted that pursuant to an amicable partition between the coparceners of a Hindu Mitakshara family, the petitioner was allotted a half share in respect of certain properties, After the coming into operation of the West Bengal Estates Acquisition Act, 1953, the petitioner filed a return in Form "B" for exercising his right of option of retention of the lands of his choice. The petitioner also, made an objection u/s 44(2a) of the aforesaid Act for correction of the relevant Record-of-Rights. Such objection being dismissed, the petitioner filed a

writ application, being C.R. No. 348(W) of 1964, which was "disposed of on 14th May. 1968, with a direction upon the authorities to give the petitioner an opportunity of filing an application u/s 6(5) of the said Act. The petitioner, thereafter, filed a suit, being T.S. No. 1 of 1977, before the learned Munsif, 1st Court, Jhargram, for declaration of his right, title and interest in the lands in question and for a further declaration that he was a direct tenant in respect thereof under the State. The suit being dismissed on contest, the petitioner preferred an appeal, being Title Appeal No. 92 of 1978, against the judgment and decree of the learned Munsif and the same was allowed on contest against the State by the learned Additional District Judge, 3rd Court, Midnapore, on 13th November, 1978. The judgment and decree of the learned Munsif were set aside and the petitioner's suit was decreed on contest against the State and his title to the suit lands was declared. The State of West Bengal and its officers and agents were permanently enjoined from disturbing the petitioner's possession in the suit lands without proceeding u/s 6(5) of the West Bengal Estates Acquisition Act, 1953.

3. During the settlement operations conducted under the provisions of the West Bengal Land Reforms Act, 1955, the petitioner applied to the settlement authorities u/s 51A(1) of the aforesaid Act to correct the relevant Records-of-Rights in the light of the judgment and decree of the Civil Court, Ignoring the said decision of the Civil Court, the Revenue officer, the Respondent No. 3 herein, rejected the petitioner's objection upon holding that the lands in question had vested to the State.

4. The petitioner then applied to the District Land and Land Reforms Officer, Midnapore, the Respondent No. 2 herein, with copies of the judgment and decree of the Appeal Court in respect of Title Appeal No. 92 of 1978, but since no action was taken by the said authority, the petitioner filed an application before the West Bengal Land Reforms and Tenancy Tribunal under Sections 6 and 10 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, being O.A. No. 2842 of 2000. The learned Tribunal disposed of the said application on 2nd March. 2001, by directing the petitioner to prefer an appeal against the order of the Revenue officer upon holding that the said order being an appealable order, the petitioner should have exhausted his alternative "remedy of preferring an appeal instead of moving the Tribunal directly.

5. Mr. sahu Submitted that the order of the learned Tribunal went against the very grain of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997. It was urged that by directing the petitioner to prefer an appeal u/s 54 of the West Bengal Land Reforms Act, 1955, the learned Tribunal had not only failed to exercise its powers under Sections 6 and 10 of the West Bengal Land Reforms and Tenancy Tribunal Act, but had by such failure rendered ineffective the very intent and purport of the Act, "namely, speedy disposal of cases within the jurisdiction of the Tribunal.

6. Mr. Sahu urged that while remedy by way of appeal u/s 51A(5) of the West

Bengal Land Reforms Act, 1955, was available to the petitioner, the petitioner was also entitled to invoke the jurisdiction of the Tribunal u/s 6 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, which empowered the Tribunal to exercise jurisdiction, power and authority in relation to an order in original made by an authority under a specified Act or an application complaining of inaction or culpable negligence of an authority under a specified Act. Mr. Sahu submitted that a similar provision had been included in Section 10 of the aforesaid Act which enables a person aggrieved by any order passed by an Authority or any action taken either by an Authority or by the State Government to prefer an appeal to the Tribunal for redressal of his grievance. Mr. Sahu contended that it was for the litigant to choose which forum he would approach.

7. In support of his submission, Mr. Sahu referred to the decision of the Hon''ble Supreme Court in the case of Bank of India Vs. Lakshimani Dass and Others, , wherein the above principle was considered and it was held that where two remedies are available under the law, any one of them can be availed of, but once that is done, resort to the other remedy would be barred.

8. Mr. Sahu next referred to the decision of the Hon''ble Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, , where the provisions of Articles 323A and 323B introduced in the Constitution by the Constitution 42nd Amendment and the Tribunals constituted thereunder, fell for consideration, and it was, inter alia, observed that the Tribunals had been set up for speedy disposal of cases. Mr. Sahu urged that by asking the petitioner to prefer an appeal the learned Tribunal was really lengthening the period of litigation, since it could very well have disposed of the petitioner's application on merit as it was vested with the jurisdiction to do so.

9. Mr. Sahu submitted that the learned Tribunal also erred in directing the petitioner to take recourse to the alternative remedy available u/s 51A(5) of the West Bengal Land Reforms Act, 1955, having regard to the consistent view taken by the Hon''ble Supreme Court and the various High Courts that alternative remedy was not a complete bar to the invocation of jurisdiction under Article 226 of the Constitution.

10. In support of his submission Mr. Sahu referred to two decisions of the Hon''ble Supreme Court in 1) Smt. Kaulashwari Devi and another Vs. Nawal Kishore and another,) Union of India (UOI) and Another Vs. State of Haryana and Another, , where the said principle was explained. Mr. Sahu submitted that in the facts of the said two cases the Hon''ble Supreme Court had held that since certain legal questions had been raised the High Court should not have dismissed the writ petitions by suggesting an alternative remedy.

11. Mr. Sahu urged that on the same analogy the learned Tribunal ought to have disposed of the petitioner's application on merit instead of directing the petitioner to take recourse to the other remedy of appeal available to him u/s 51A(5) of the West Bengal Land Reforms Act, 1955.

12. Appearing for the State and the State respondents, Mr. Durgadas Roy submitted that the Tribunal had not committed any illegality in directing the petitioner to avail of the other remedy available to him and no interference was, therefore, called for with the order of the learned Tribunal.

13. Mr. Sahu's contention, though attractive, cannot be accepted for the reasons indicated hereinafter.

14. Section 6 of the aforesaid Act, which deals with the jurisdiction, power and authority of the Tribunal constituted under the Act provides as follows :-

"6. Jurisdiction, Power and Authority of Tribunal:--

Subject to the other provisions of this Act, the Tribunal shall, with effect from such date as may be appointed by the State Government by notification in this behalf, exercise, jurisdiction, power and authority in relation to-

- (a) an order in original 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 (West Bengal Act I of 1954);
- (d) Adjudication of disputes and applications relating to matters under any provisions of a specified Act involving interpretation of any provision of the Constitution or of validity of a specified Act or of any other law for the time being in force;
- (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."

15. On the other hand, Section 10 of the Act deals with the procedural aspect of filing of applications before the learned Tribunal and inter alia, provides as follows:-

"Application to Tribunal:

- 1. Subject to the provisions of Section 6 and other provisions of this Act a person aggrieved by any order passed by an Authority or any action taken either by an authority or by the State Government may prefer an appeal to the Tribunal for redressal of his grievance.
- 2. Every application under Sub-section (1) shall be made within sixty days from the date on which such order was passed or such action was taken, as the case may be, or within such further time as may be allowed by the Tribunal for cause shown to its satisfaction, and shall be made in such form, and shall be accompanied by such fee as may be prescribed.

3. Save as expressly provided in this Act, the Tribunal shall not admit an application referred to in Sub-section (1) unless it is satisfied that-

(a) the applicant has availed of all remedial measures available to him under the relevant specified Act, and

(b) the remedial measures available under the provisions of the relevant specified Act are not adequate or shall cause hardship to the applicant.

4. The Tribunal may, if it is satisfied after such enquiry as it may deem fit that requirements under this Act and the Rules made thereunder are complied with in relation to the application referred to in Sub-Section (1) admit such application, but where the Tribunal is not so satisfied it may reject the application summarily giving reasons therefore.

5. Where an application under Sub-section (1) has been admitted by the Tribunal, it shall decide and dispose of such application as expeditiously as possible, and ordinarily within six months from the date of such admission or from the date of receipt of records, from the concerned Authority or the State Government as the case may be.

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16. It is well-settled that if two Sections of the same statute are in conflict, the last must prevail, but the Court should endeavour to construe the language of the legislature in such a way as to avoid such rule and to give a harmonious construction to the two conflicting provisions.

17. The provisions of Sections 6 and 10 of the Act make it clear that while Section 6 empowers the learned Tribunal to exercise jurisdiction, power and authority in relation to the matters referred to therein, Section 10 provides the manner in which such jurisdiction, authority and powers are to be invoked and exercised, it is clear that the jurisdiction, power and authority of the learned Tribunal as indicated in Section 6 are subject to the other provisions of the Act, which includes Section 10 thereof, subsection (3) whereof provides that the Tribunal shall not admit an application in respect of any order passed by an Authority unless it is satisfied that the applicant has availed of all remedial measures available to him under the relevant specified Act.

18. The Tribunal is a creature of statute and has to function in accordance with the provisions of the statute and the powers vested in it by the statute. In view of the provisions of Sub-section (3) of Section 10, Mr. Sahu's submission that Section 6 provided a remedy to a litigant which was concurrent to the remedy provided u/s 54 of the West Bengal Land Reforms Act. 1955, cannot be accepted. In order to invoke the jurisdiction of the Tribunal, a litigant would be required to exhaust the remedies available to him under the aforesaid Act.

19. Mr. Sahu's other submissions relating to alternate remedy is dependant on

his submission regarding concurrent jurisdiction of the Tribunal u/s 6 with the Appellate Authority u/s 54 of the West Bengal Land Reforms Act, 1955, and must also fall,

20. The writ application is, therefore, dismissed. The time For preferring appeal as per the leave granted by the learned Tribunal is extended by a month from date. All other direction contained in the order of the Tribunal impugned in the writ application will remain operative.

21. There will be no order as to costs.

22. If an urgent xerox certified copy of this order is applied for, the same is to be supplied to the applicant within 7 days from the date of such application being made, subject to compliance with all the required formalities.

A.K. Basu, J.

23. I agree.

24. Application dismissed