

(2019) 11 CAL CK 0012
In the Calcutta High Court

Case No : Wb Land Re & Ten.226 (WPLRT) No. 131, 132 Of 2019

Panchadeep Seva Trust And Others

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 04-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227, 323A, 323B

Citation : (2019) 11 CAL CK 0012

Hon'ble Judges : Protik Prakash Banerjee, J;Dipankar Datta, J

Bench : Division Bench

Advocate : Prabal Kumar Mukherjee, Nilanjan Bhattacharjee, Shantimoy Bhattacharjee

Judgement

Dipankar Datta, J

1. These two writ petitions are taken up for consideration together, since the same involve common questions and fact and law.
2. Accepting the request of Mr. Prabal Kumar Mukherjee, learned senior counsel for the petitioners, we granted leave to move these writ petitions without notice to the respondents and without annexing thereto copies of the orders impugned.
3. At the time of consideration of the writ petitions, it has transpired that no written orders have been passed by the West Bengal Land Reforms and Tenancy Tribunal (hereafter the Tribunal) on the original applications filed by the respective petitioners being O.A. 2651 of 2019 (L.R.T.T.) and O.A. 2650 of 2019 (L.R.T.T.). What we find from the averments made in the writ petitions is that the original applications of the petitioners having been posted for admission hearing on 20th March, 2020, prayer was made before the 1st Bench of the Tribunal for urgent hearing but such prayer has been refused orally.
4. Mr. Mukherjee submits that grave urgency is involved in the matters since the petitioners run the risk of losing possession of their immovable properties, tomorrow; and in view thereof, it is urged that the Tribunal instead of reiterating

that the original applications would be posted on the date fixed by its registry, ought to have considered the prayers of the petitioners for admission of the original applications as well as interim stay immediately.

5. There being no written order passed by the Tribunal, we called upon Mr. Mukherjee to satisfy us that the writ petitions are maintainable at this stage. Mr. Mukherjee has placed reliance on three decisions of Hon'ble Division Benches of this Court reported in (2016) 3 Cal LT 313 (Shahi Enclaves Private Limited Vs. The State of West Bengal & Ors.), 2018 SCC OnLine Cal 11971 (Jantara Pant Vs. Union of India & Others) and 2015 SCC OnLine Cal 7732 (Sita Devi Agarwala Vs. State of West Bengal & Ors.). Relying thereon, it has been contended that even in the absence of an order passed by the relevant tribunal, the High Court exercising its jurisdiction under Articles 226 and 227 of the Constitution may entertain a writ petition/civil revisional application, provided urgency is involved, and make such appropriate order as the situation demands protecting the interest of the parties before it.

6. Shahi Enclaves Private Limited (supra) appears to have noted the decision of the Supreme Court reported in 1997 (3) SCC 261 (L. Chandra Kumar Vs. Union of India & Ors.). There, the Supreme Court had the occasion to deal with Articles 323-A and 323-B of the Constitution of India, whereby the power of judicial review exercisable by the High Courts under Articles 226/227 of the Constitution in respect of orders passed by the tribunals constituted under Articles 323-A and 323-B stood excluded. While holding that the power of judicial review exercisable by the High Courts under Articles 226/227 of the Constitution could not have been excluded, the Supreme Court had the occasion to observe in paragraphs 90 and 91 as follows :-

"90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. ... We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution. ... Having regard to both the aforestated contentions, we hold that all decisions of

Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls."

7. The law laid down in *L. Chandra Kumar* (supra) seems to be clear that a Division Bench of the High Court may assume jurisdiction to test an order passed by a tribunal (created under Articles 323-A or 323-B of the Constitution) upon such tribunal adjudicating a point on merits. Unless there is an adjudication or even a written order spurning the request of a party to have an urgent hearing, the stage of application of mind by the tribunal is not reached and it would be difficult, if not impossible, for the High Court to discern why the tribunal acted in that particular manner. A mere direction for posting an original application on a future date, without anything more, does not in our opinion amount to a 'decision', as comprehended in *L. Chandra Kumar* (supra), which would be amenable to the jurisdiction of this Court under Articles 226/227 of the Constitution. To our mind, an order of the Tribunal in order to be challenged before this Court under Articles 226/227 of the Constitution ought to evince a process of adjudication; however, any adjudication in the present cases is conspicuous by its absence.

8. We have perused the decisions relied on by Mr. Mukherjee.

9. In *Shahi Enclaves Private Limited* (supra), an appeal filed before the Tribunal against an order of the Controller of Thika Tenancy was time barred and, therefore, an application for condonation of delay in filing the appeal had been filed. On such application for condonation of delay, the Tribunal had called for affidavits, but had refused to make any order on the interim prayer of the party which had belatedly approached the tribunal. It is in such circumstances that the Hon'ble Division Bench proceeded to give its decision overruling the contention of the respondents that the writ petition was not maintainable, and made an appropriate order. Having regard to the fact that the Tribunal was seized of an application for condonation of delay, we are inclined to the view that the matter had entered the portals of the Tribunal on its adjudicatory side, as distinguished from its administrative side; and, therefore, the Hon'ble Division Bench did have the jurisdiction to pass an appropriate order protecting the interest of the party that had approached it. The decision in *Shahi Enclaves Private Limited* (supra) is, therefore, clearly distinguishable on facts.

10. Insofar as the decision in *Jantara Pant* (supra) is concerned, we find that the relevant Central Administrative Tribunal was also in seisin of an original application and hearing of such application was procrastinated for one reason or the other; and during such pendency, a criminal case was proceeding wherein the employee was required to disclose her defence unless an order of stay were granted. It is in such circumstances that the Hon'ble Division Bench while placing reliance on the decision in the case of *Shahi Enclaves Private Limited* (supra) proceeded to pass a limited interim order. For the same reasons we have held

the decision in *Shahi Enclaves Private Limited* (supra) to be distinguishable, the decision in *Jantara Pant* (supra) is also distinguishable.

11. However, in *Sita Devi Agarwala* (supra), we find a situation of like nature as at hand. In paragraph 4 of the decision, the Hon'ble Division Bench recorded that a prayer for urgent hearing having been made by the learned advocate for the original applicant, the Tribunal refused to entertain the prayer and instead directed the original application to be listed in the usual course. Reading the decision in *Sita Devi Agarwala* (supra) in between the lines, we do not find any reference to the decision in *L. Chandra Kumar* (supra). That apart, what we find from paragraph 34 is that not only did the Hon'ble Division Bench decide the writ petition on merits but also passed orders which in effect granted the relief that the original applicant/petitioner had prayed by filing the original application before the Tribunal. Since the decision in *Sita Devi Agarwala* (supra) does not even remotely refer to the decision in *L. Chandra Kumar* (supra), we do not feel bound by such decision.

12. In view of the absence of any order passed by the Tribunal touching upon the merits of any point raised before it in respect whereof the power of judicial review can be exercised by the writ Court, we are afraid these writ petitions are not maintainable.

13. These writ petitions are, accordingly, dismissed.

14. However, we wish to make certain parting observations. It is not that all original applications which are filed before the Tribunal involve grave urgency. Such cases would be few and far between. In given case where the Tribunal is urged to take up an original application for admission hearing urgently together with consideration of a prayer for interim relief and the Tribunal is not satisfied that an urgent hearing is warranted or that interim relief ought to be granted, as the case may be, it would sufficiently serve the interest of justice if a brief order were passed recording that the case set up in the original application does not warrant an urgent hearing and/or interim relief. At the least, such a brief order would demonstrate application of mind and satisfy the requirements of a fair decision making process. We hope and trust that the inconveniences and the constraints being faced by the Tribunal due to dearth of adequate number of members notwithstanding, such a course of action as indicated above would be followed to the extent possible in future.

15. We grant liberty to the petitioners to file an interim application explaining the urgency and if such an application is filed in course of tomorrow (5th November, 2019), we request the relevant bench of the Tribunal to pass an order on such application in writing by Thursday next (7th November, 2019), positively.

16. Needless to observe, if the written order is adverse to the interest of the respective petitioners, they shall be at liberty to pursue their remedy before the appropriate forum in accordance with law.