
(2007) 06 CAL CK 0022
In the Calcutta High Court
Case No : W.P.L.R.T. 354 of 2007

Sadhu Ram Ruidas

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-06-2007

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal Land Reforms and Tenancy Tribunal Act, 1997 — Section 10, 10(3), 6

Citation : (2007) 3 CALLT 472

Hon'ble Judges : Manik Mohan Sarkar, J; Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Mintu Kumar Goswami, for the Appellant; Indrajit Sen and Sitaram Samanta, for the Respondent

Judgement

1. We have heard Mr. Goswami for the petitioner and Mr. Sen, learned Senior Standing Counsel for the State and we have also gone through the impugned order and have examined the statement and averments made in the application made before the learned Tribunal. We are of the view that the learned Tribunal has not fallen in error in not entertaining the petitioner's application though the petitioner has stated in the petition that order impugned has been passed without serving any notice and defying the order passed by the learned Sessions Judge concerned.

2. According to Mr. Goswami, learned Tribunal ought to have entertained the application having regard to the facts and circumstances made out in the application. Mr. Sen has drawn our attention to Section 10 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 which is quoted as under:

10. 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 the 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 any application referred to in Sub-section (1) unless it is satisfied that:

(a) the application 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.

(6) While deciding the application under Sub-section (5) the Tribunal shall issue such direction, or pass such order, as it may deem fit.

(7) Notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceeding relating to, an application made under Sub-section (1) unless:

(a) copies of such application and of all documents in support of the plea for such interim order are duly furnished seven days in advance to each of the parties against whom such application is made or is proposed to be made:

(b) an opportunity of being heard is given to each of the parties against whom such application is made:

Provided that the Tribunal may pass an interim order as an exceptional measure if it is satisfied for reasons to be recorded in writing that it is necessary so to do for preventing any loss being immediately caused to the applicant:

Provided further that if the application referred to in Sub-section (1) is not decided and disposed of within a period of six months from the date of the interim order, the interim order shall, if it is not vacated earlier, stand vacated on the expiry of the period as aforesaid unless, for special reasons or in the interest

of justice, the interim order is varied, modified or extended by the Tribunal.

3. It says that the words in the negative, being Sub-section 3, makes it clear that the Tribunal has no jurisdiction to admit any application unless the situation mentioned in the aforesaid sub-section are satisfied. Admittedly, in this case, the applicant has not exhausted all the remedial measures even though admittedly, the right of appeal is provided in the statute itself. He further submits that no case has been made out that remedial measure available under the provision of the Act is not adequate or shall cause any hardship to the applicant.

4. Mr. Goswami says violation of principle of natural justice is one of the instances of undue hardship. However, unfortunately, we find that no such case has been made out. There must be a positive case in order to invoke jurisdiction of the learned Tribunal without exhausting alternative remedies, as mentioned in the sub-section, without the same, as rightly submitted by Mr. Sen, the Tribunal has no power to decide usurping the power of the other forums.

5. According to us, what are the instances of causes which will come within the sweep of undue hardship or inadequate remedial measures, are to be seen before the learned tribunal exercises power u/s 10 of the Act. There may be various situations and circumstances which cannot be exhaustively illustrated, can be termed to be remedies available not being adequate or causing undue hardship.

6. It is settled law that the power and jurisdiction of the learned Tribunal was examined by the Supreme Court in L. Chandra Kumar Vs. Union of India and others, wherein it has been explained by the Supreme Court amongst others that the Tribunal is vested with all the powers as available to the High Court in case of the writ jurisdiction save and except the power to entertain any challenge against the parent statute under which the Tribunal has been formed. In the instant case, there is no challenge against any of the provisions of the aforesaid Act of 1997. Accordingly, we hold that the power and jurisdiction in entertaining the dispute in the public law field of the learned Tribunal is co-extensive with power and jurisdiction under Article 226 of the Constitution of India. It is now settled law that existence of the alternative remedy in entertaining writ petition by the High Court is not a bar but it is a question which is to be considered by the High Court as a factor of exercise of discretion in entertaining a writ petition. The High Court, in case of breach of natural justice and breach of fundamental right, as guaranteed under Part-III of the Constitution as a matter of course, entertain proceedings even though alternative remedy being made available to the litigant. Such a power, in our view, can also be exercised by the Tribunal and perhaps with this idea, the legislature has provided in Clause B of Sub-section 3 of Section 10 that when the measure available under the provisions of the relevant specific Act are not adequate or shall cause undue hardship to the applicant.

7. The power of the appellate authority under the West Bengal Land Reforms Act, in our view, cannot be extended to confer jurisdiction upon it and decide the

breach of infringement of fundamental right. Constitutional question or difficult legal question can only be decided by the forum equipped with expertise of the Constitutional laws as well as other incidental laws. Simple interpretation or application and non-application of provision of any statute can be done by any forum constituted under any particular Act. So, according to us, when there would be a case of infringement of fundamental right, remedy available by way of, appeal under any statute cannot be an adequate one and shall be deemed to be as inadequate. It is the purview of Sub-section 3 of Clause B of the said Act.

8. It is true that complaint of breach of principle of natural justice can be entertained by the learned Tribunal straight way, but this discretion should not be exercised in all cases. If it is found such complaint can be redressed by any other authority without any difficulty and for which no hardship will be faced, then learned Tribunal will be justified to refuse. But while approaching, as above, the litigant faces hardship then learned Tribunal will certainly, as a matter of course, entertain. In this case, we have already observed that no such case has been made out. Therefore, we do not find any fault in the order. However, we dispose of this application by the following order:

9. In the event, the petitioner prefers an appeal within a period of fortnight from the date of receipt of certified copy of this order, the appellate authority, namely, District Land and Land Reforms Officer, shall entertain the appeal condoning the delay, of course on an application for this purpose be made, and hear out the appeal on merit. Before deciding the appeal on merit, the appellate authority shall examine two points; firstly, whether a notice was served or opportunity of hearing was given to the applicant or not; secondly, whether there has been any defiance of the order, passed by the learned Sessions Judge, while passing the impugned order or not. In the event, the aforesaid two points are conclusively established before the appellate authority then obviously, impugned order of Block Land and Land Reforms Officer will not be sustainable. After deciding the aforesaid points, the appellate authority will decide the entire appeal on merit if warranted. In the event no appeal is preferred within the time, as above, the ordering portion of this Judgment will stand recalled. If appeal is preferred, the same shall be disposed of within a period of twelve weeks from the date of filing of the appeal upon giving hearing to all concerned.

The instant application thus stands disposed of. There will be no order as to costs.

Urgent xerox certified copy, if applied for, be given to the parties on priority basis.