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**(2003) 09 CAL CK 0062**  
**In the Calcutta High Court**  
**Case No : W.P.L.R.T. No. 349 of 2002**

Siba Prasad Sahoo

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 17-09-2003

**Acts Referred:**

Constitution of India, 1950 — Article 323A, 323B, 323B(3)  
Penal Code, 1860 (IPC) — Section 113  
West Bengal Land Reforms and Tenancy Tribunal Act, 1997 — Section 10(3), 10(4),  
15, 49(2), 49(4)

**Citation :** (2004) 1 CHN 162

**Hon'ble Judges :** S.P. Talukdar, J;Asok Kumar Ganguly, J

**Bench :** Division Bench

**Advocate :** P.B. Sahoo and Sudhakar Biswas, for the Appellant;Nibaran Kumar Das, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Asok Kumar Ganguly, J.—The question, which has fallen for consideration in this case, is whether an original application to the West Bengal Land Reforms & Tenancy Tribunal (hereinafter called the "said Tribunal") is maintainable without exhausting the statutory remedy provided under the West Bengal Land Reforms Act.

2. An O.A. No. 2832 of 2001 was filed before the said Tribunal challenging the order of vesting passed by the Sub-Divisional Officer and the Revenue Officer u/s 49(2) of the West Bengal Land Reforms Act (hereinafter called the "said Act")- The Tribunal held that the filing of such an application has been made in clear contravention of the provisions of the West Bengal Land Reforms & Tenancy Tribunal Act, 1997 (hereinafter called the "said Tribunal Act") and that, it had no jurisdiction to admit the said application and such the application is to be summarily rejected u/s 10(4) of the Tribunal Act and the Tribunal rejected the application. While so rejecting, the Tribunal has recorded an order to the effect that the application has been filed (a) without exhausting remedial measures

provided under the said Act and (b) the applicant failed to satisfy the Tribunal that the remedial measures are inadequate or availing of such measures will cause undue hardship to the applicant. The said order of the Tribunal dated 28.01.2002 has been challenged before us.

3. The material facts of the case are noted below--

The petitioner claims that he got a "raiyaati" patta in respect of 2.28 acres of land of Plot No. 1/413 under Kalyalchak Mouza within the Khejuri Police Station in the district of Midnapore. It has been claimed that during the settlement operation, the petitioner has been granted a "raiyaati" patta in respect of the said Plot of land. According to the petitioner, animosity developed between the petitioner and the private respondent Nos. 5 to 10 and as the private respondents threatened to evict the petitioner, he was compelled to file on 10.11.94 a suit, being Title Suit No. 299 of 1994. The petitioner's further claims that during the pendency of the said suit, he was illegally dispossessed from the said plot of land and by an amendment petition filed in the said suit, the petitioner prayed for recovery of possession of the land in question from the private respondents. It is also the case of the petitioner that during the pendency of the said suit, the, private respondent Nos. 5 to 10 filed an application u/s 49(2) of the said Act alleging therein that the "patta" was obtained by the petitioner illegally and the prayer was made for cancellation of "patt" a". The said proceedings for cancellation of "patta" was numbered as Misc. Case No. 11 of 1995. The petitioner filed a written objection in the said case. The petitioner's further case is that, in the meantime, the Civil Court decreed the suit declaring the plaintiffs' right, title and interest in respect of "ka" schedule(sic) property after directing eviction of the defendants who are private respondents herein as they were found to be trespassers. Against the said decree and judgment, no appeal was preferred by the defendants. Immediately thereafter, in the said Misc. Case, the petitioner filed a petition stating that since the settlement of the land, the same is in his possession, there is no reason for cancellation of "patta".

4. Thereafter, according to the averments made in the writ petition, the petitioner came to learn of the order of the Revenue Officer annulling the "raiyaati patta". The petitioner then obtained the certified copy of the said order. From the certified copy of the said order, the petitioner found that the Revenue Officer in passing the order by annulling the "patta" relied upon the report submitted by the Block Land & Land Reforms Officer.

5. It is not in dispute that against the said order passed u/s 49(2) of the said Act, a right of appeal is statutorily prescribed u/s 49(4) of the said Act. It is also not in dispute that, in the instant case, the petitioner without exhausting the right of appeal u/s 49(4) of the said Act, filed the original application straightaway before the Tribunal.

6. Now the question is whether the application to the Tribunal without exhausting the statutory remedy is permissible in law?

7. On this aspect of the matter, there are two judgments of the Division Bench of this Court. First of them was rendered on 25.06.2001 in the case of Jagadish Prasad Pati v. State of West Bengal and Ors., reported in 2001 WBLR (Cal) 714. In the said decision, apart from other questions, the question of maintainability of an application before the Tribunal without exhaustion of the statutory remedy came up for consideration. The learned Judges of the Division Bench, after construing Sections 6 and 10 of the Tribunal Act, in paragraph 16 of the said judgment, observed that Section 10 provides for the manner in which the jurisdiction, authority and powers of the said Tribunal are to be invoked and exercised.

8. The learned Judges also observed that the provisions in Section 6 of the Tribunal Act are subject to other provisions of the Tribunal Act, which include Section 10 Sub-section (3). The learned Judges of the Division Bench held "section 10 thereof, Sub-section (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. (See paragraph 16). After saying so, the learned Judges observed in paragraph 17 that 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. Thereafter, the learned Judges held that in view of the provisions of Sub-section (3) of Section 10 of the Tribunal Act, the contention of the learned Counsel for the petitioner that the litigant has a concurrent remedy, one u/s 6 of the Tribunal Act and one u/s 54 of the said Act cannot be accepted and the learned Judges clearly held that in order to invoke the jurisdiction of the Tribunal, the litigant is required to exhaust the remedies available to him under the Tribunal Act. With these observations, the writ petition was dismissed.

9. The other judgment rendered by the Division Bench of this Court on this aspect was in the case of Contai Thana Primary Teachers' Co-operative Credit Society Ltd. v. State of West Bengal and Ors., reported in 2003 (2) CHN 139. Both these judgments were rendered by the self-same Division Bench. As such, in the subsequent judgment in Contai Thana Primary Teachers' Cooperative Credit Society Ltd. v. State of West Bengal and Ors., reported in 2003 (2) CHN 139, the previous judgment in Jagadish Prasad Pati v. State of West Bengal and Ors. 2001 WBLR (Cal) 714, was referred to.

10. In paragraph 15 of Contai Thana, the learned Judges gave their findings on this aspect of the matter. In the said paragraph, the learned Judges held that even though the said Tribunal acts as a Court of first instance, there is a basic difference between the said Tribunal and the High Court which exercises power under Article 226 of the Constitution of India.

11. The Division Bench reiterated its previous view that the Tribunal being a creature of statute, it cannot exceed the power, vested on it by the statute. The learned Judges further held that the High Court exercising its jurisdiction under

Article 226 of the Constitution may entertain an application notwithstanding the existence of an alternative remedy. But, there being a specific bar u/s 10(3) of the Tribunal Act, the Tribunal cannot exercise similar power as has been sought to be urged by the learned Counsel for the petitioner and the writ application was dismissed by the Division Bench.

12. While perusing those two judgments, we have found that in the subsequent judgment, viz. Contai Thana (supra), an argument was sought to be made about two clauses of Sub-section (3) of Section 10 of the Tribunal Act and this argument is noted in paragraph 5 of the judgment in Contai Thana (supra). But, no finding on the same has been reached by the Division Bench, while the Division Bench gave its conclusion in paragraph 15 of the judgment.

13. It is not in dispute that the said Tribunal has come into existence pursuant to provisions of Article 323B of the Constitution of India for adjudication and trial by such Tribunal of disputes, claims, objections and application relating to or arising out of the land reforms or tenancy in land and other matters under specified Acts and for matters connected therewith or incidental thereto. The said Act of 1997 came into effect on 12.12.1997, inasmuch as on that date, the ascent(sic) of the Governor was first published in the Calcutta, Gazette Extraordinary. This is after the Constitution Bench judgment of the Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, . The said judgment of the Supreme Court by its Constitution Bench of seven Judges was rendered on 18.03.1997.

14. Under the said judgment, the learned Judges considered the scope and extent of the judicial power which has been vested on such Tribunals. After analysing different decisions of the Supreme Court and the factual aspect of litigation explosion and the huge arrears before the different High Courts, the learned Judges, in paragraph 93 of the said judgment at page 1154 of the report, held:

(a) Such Tribunals are competent to hear matters where the vires of statutory provisions are questioned but this is subject to one exception that the Tribunal shall not entertain any question regarding the vires of parent statutes under which the Tribunals have been set up. In such cases. High Court can be approached directly, (b) while discharging the duty, such Tribunals cannot act as substitute for the High Courts or the Supreme Court; (c) the functioning of such Tribunals is supplemental to the High Court and all decisions of such Tribunals will be subject to scrutiny before a Division Bench of the respective High Court; (d) the Tribunals will also have the powers to test the vires of subordinate legislation and rules but subject to the limitation pointed out at (a); (e) The Tribunal will act as a Court of first instance in respect of areas of law for which they have been constituted; (f) It will not be open for the litigants to approach the High Court directly even in cases where the questions of vires of statute are challenged (barring the exception pointed out above); (g) In view of the aforesaid findings, the Constitution Bench of the Supreme Court held that Clause (2)(d) of Article 323A and Clause (3)(d) of Article 323B of the Constitution to the

extent that they oust jurisdiction of the High Courts under Article 226/227 and/or the Supreme Court under Article 32 are unconstitutional; (h) The reason for such declaration, inter alia, was that the Constitution Bench of the Supreme Court found that the jurisdiction conferred on the High Court under Article 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the basic structure of Constitution.

15. In view of the aforesaid decision in *L. Chandra Kumar*, the status of those Tribunals acquires a special character and it cannot be said that they are mere creatures of statute like inferior tribunals. Certainly, those are creatures of statute, but, they have certain special features, which even a Civil Court does not have. A Civil Court does not have the jurisdiction, to strike down a law as ultra vires the Constitution of India. Such questions have to be referred by the Civil Court to the High Court (See Section 113 of CPC).

16. Apart from that, these Tribunals have been statutorily conferred with the power to punish for contempt in accordance with the constitutional dispensation under Article 323B(3)(b). The Tribunal with which we are concerned can, u/s 15 of the Tribunal Act, exercise power under the Contempt of Courts Act, 1971. The Civil Court also does not have such power under the Contempt of Courts Act.

17. Therefore, on a conjoint reading of the Constitution Bench judgment in *L. Chandra Kumar* and the provisions of the Tribunal Act, it is clear that the said Tribunal is an exalted judicial forum with special features having been established under the aegis of Articles 323A and 323B as observed in *L. Chandra Kumar*. Such a forum is supplemental to the High Court. These features distinguish these Tribunals from an ordinary Civil Court.

18. Keeping in conformity with such exalted status of this Tribunal, which is different from a mere creature of statute, which an inferior Tribunal is, this Tribunal has been conferred with some discretion in the matter of admitting an application which has been filed without exhausting the statutory remedy.

19. Now coming to the question of alternative remedy this Court finds that Sub-section (3) of Section 10 of the Tribunal Act has two parts and one part is different from the other.

20. For a better appreciation of the point, this Court sets out Sub-section (3) of Section 10 of the Tribunal Act:

"(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 undue hardship to the applicant."

21. On a perusal of the provisions of Section 10(3), clauses (a) and (b) of the

Tribunal Act, it is clear that there is no absolute bar on the part of the Tribunal to entertain a proceeding even without exhaustion of remedial measures under the relevant specified Act. Clauses (a) and (b) of Sub-section (3) of Section 10 of the Tribunal Act contemplate two different situations. Under Clause (a) of Sub-section (3) of Section 10 the Tribunal will not admit an application, unless the Tribunal is satisfied that the applicant has availed of all remedial measures available under the relevant specified Act in respect of the decision, which is challenged. But under Clause (b) the Tribunal has a discretion. If the Tribunal is satisfied that the remedial measures are not adequate or cause undue hardship to the applicant the Tribunal may admit the application. Therefore, the Tribunal is competent to take into its consideration the following aspects--

(a) Whether, the remedial measures provided under the provisions of the specified Act are adequate?

(b) It is obvious that the question of adequacy must have a direct nexus with the claim of the applicant. In other words, the applicant can move the Tribunal, without exhausting the remedial measures, if the applicant satisfies the Tribunal that the remedial measures are not equally efficacious or where the remedial measures do not provide a forum, which can effectively deal with the grievances of the applicant, say for instance, where the remedy may be one from "Ceaser to Ceaser" or that the so called remedy provided is no remedy in fact.

(c) Now on the question of undue hardship, the Tribunal can also consider whether the remedy fastens such a financial burden on the applicant as to make the remedy illusory or meaningless.

22. Therefore, on a proper consideration of the aforesaid clauses, viz. clauses (a) and (b) of Sub-section (3) of Section 10 of the Tribunal Act, the Tribunal can entertain an application at the instance of an applicant if he/she satisfies the Tribunal that remedial measures under the specified Act are not adequate or causes undue hardship to the applicant.

23. With regard to the judgments of the Division Bench of this Court referred to above, this Court is inclined to think that this aspect of the matter possibly escaped the attention of the learned Judges of the Division Bench in Jagadish Prasad Pati. Though in the subsequent case, in Contai Thana (supra), on this aspect of the matter, argument was advanced but the Division Bench possibly did not consider it necessary to decide that point in the facts of that case.

24. Now coming to the facts here, there is no averment by the petitioner why the remedy provided u/s 49(4) of the said Act appears to be inadequate or whether it causes any undue hardship to the petitioner. In paragraph 12, averments have been made, about alternative remedy. But from the said averments, this Court cannot come to the conclusion that the remedy provided under the Act, viz. u/s 49(4) of the said Act is either inadequate or is one, which creates undue hardship on the applicant. In fact there is no such pleading.

25. For the reasons aforesaid, this Court does not find any error in the order of the Tribunal. The order of the Tribunal was passed in a manner, which is consistent with the provisions of Section 10(3) of the Tribunal Act and, as such, is affirmed by this Court.

26. The learned Counsel for the petitioner, however, relied on some judgments, viz. in the case of Union of India (UOI) and Another Vs. State of Haryana and Another, , as also on the judgment in the case of Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, , on the question of hardship. Hardship is basically a question of fact. No such pleading of hardship is there in the writ petition. Apart from that those decisions were rendered while considering scope of alternative remedy in the context of Article 226 of the Constitution. It is well-known that for considering the efficacy of alternative remedy as against the jurisdiction of Writ Court under Article 226 of the Constitution completely different considerations are at play. Therefore, those judgments are not relevant here.

27. The decision cited by the learned Counsel for the petitioner in the case of Ghulam Qadir Vs. Special Tribunal and Others, , was in respect of a different Tribunal. The Tribunal in Ghulam Kadar was also differently structured since that Tribunal was enacted for a different purpose. The purpose was to enable a person to seek remedy as his property has been declared evacuee property under the relevant Act in view of disturbance arising out of communal riots. In such a situation, the claim was to be preferred within 30 days. But the said period can be relaxed for sufficient reasons, which are required to be recorded. The said decision, therefore, given in the background of a totally different statutory provision and fact situation cannot be applied to the present case. The said decision has no application at all.

28. For the reasons aforesaid this writ petition is dismissed. The order of the Tribunal is affirmed.

No order as to costs.

S.P. Talukdar, J.

I agree.

Later:

29. This judgment will not however prevent the writ petitioner from filing an appeal under the relevant provisions of the Act. If such appeal is filed within a period of six weeks from date, the Appellate Authority may entertain the same without insisting on the period of limitation, if any. If the appeal is filed thereafter, then the writ petitioner will have to satisfy the authority for condoning the delay in preferring the appeal.

30. Let a plain copy of the operative portion of the judgment duly countersigned by the Assistant Registrar (Court) be given to the learned Counsel for the parties

on usual undertaking.

31. Let urgent xerox certified copy of this judgment, if applied for, be made available to the learned Counsel for the parties.

Asok Kumar Ganguly and S.P. Talukdar, JJ.