

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA No. 210 of 2020

Kalpana Chhetri & Anr.

Vs.

The State of West Bengal & Ors.

For the writ petitioners	:-	Mr. Nripen Das, Adv. Mr. Debanjan Das, Adv.
For the State	:-	Mr. Bikramaditya Ghosh, Adv. Mr. Momenur Rahman, Adv.
For respondent nos. 2-4	:-	Mr. Saumya Dasgupta, Adv. Mr. Bijoy Bikram Das, Adv.
Heard on	:-	18.02.2020 & 19.02.2020
Judgment on	:-	19.02.2020

Amrita Sinha, J.:-

The petitioners in the instant writ petition has challenged the inaction on the part of the District Land and Land Reforms Officer (DL & LRO) in taking steps to dispose of the appeal preferred by them challenging the order passed by the Block Land and Land Reforms Officer (BL & LRO).

The petitioners submit that the DL & LRO is the competent authority to dispose of the appeal preferred against the order of the BL & LRO under the provision of the West Bengal Land Reforms Act, 1955.

The respondents raise a preliminary objection with regard to the maintainability of the writ petition before this Court. It has been submitted that the petition challenging the inaction on the part of the DL & LRO to act in terms of the West Bengal Land Reforms Act, 1955 shall be maintainable before the West Bengal Land Reforms and Tenancy Tribunal and not before this Court under Article 226 of the Constitution of India.

In response to the submission made by the respondents the petitioners rely on the provision under Article 226 of the Constitution of India. According to the petitioners, the jurisdiction under Article 226 of the Constitution of India cannot be ousted and the petitioners are well entitled to approach the writ jurisdiction of this Court on the ground of violation of the principles of natural justice.

The petitioners have relied upon the judgment delivered by the constitution Bench of the Hon'ble Supreme Court in the matter of L. Chandra Kumar –vs- Union of India reported in 1997(3) SCC 261. Reliance has been placed upon paragraphs 79, 80, 81, 99 and 100 of the said judgment. The petitioners have harped upon the observation of the Court that the jurisdiction conferred upon the High Court under Article 226/227 of the Constitution of India is part of the inviolable basic structure of the Constitution. While this jurisdiction cannot be ousted, other courts and tribunals may perform a supplemental role in discharging the powers conferred under Article 226/227 of the Constitution.

The petitioners have submitted that the inaction on the part of the DL & LRO compelled the petitioners to approach the High Court under Article 226 for peremptory direction upon the respondents to act in accordance with the provision of law.

The High Court at this stage is not required to enter into the merits of the case and accordingly, the single Bench of the High Court is competent to pass necessary orders.

According to the petitioners, the provision to apply before the Tribunal is an alternative remedy. Whether to entertain petition on account of availability of an alternative remedy is a rule of discretion exercised by the Constitutional Court under Article 226 of the Constitution. The West Bengal Land Reforms and Tribunal Tenancy Act is a State legislature and applying the principle as laid down in the matter of L. Chandra Kumar the High Court shall have the jurisdiction to entertain the petition.

Since an objection has been raised with regard to the maintainability of the writ petition, I propose to decide the said issue first prior to going into the merits of the case.

The Hon'ble Supreme Court in the case of L. Chandra Kumar (supra) has held that the Tribunals created under Articles 323A and Article 323B of the Constitution will continue to act like Courts of first instance in respect of the errors of law for

which they have been constituted. It will not be open for the litigants to directly approach the High Court even in cases where they question the vires of statutory legislations by overlooking the jurisdiction of the concerned Tribunal.

The West Bengal Land Reforms and Tenancy Tribunal was set up in pursuance of Article 323B of the Constitution of India for adjudication and trial of disputes, claims, objections and applications relating to, or arising out of land reforms or tenancy in land and other matters under a specified Act and for matters connected therewith or incidental thereto.

The preamble of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, hereinafter WBLRTT Act, 1997, mentions that whereas it is expedient to provide for the setting up of a Land Reforms and Tenancy Tribunal and for adjudication and trial by such Tribunal of disputes, claims, objections and applications relating to, or arising out of, land reforms or tenancy in land and other matters under a specified Act and for the exclusion of the jurisdiction of all courts except a Division Bench of the High Court exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India.

In Section 2(b) of the WBLRTT Act, 1997 'Authority' has been defined as an officer or authority or functionary exercising the powers or discharging functions as such under a specified Act.

As per Section 2(r)(ii) of the WBLRTT Act, 1997 'specified Act' means West Bengal Land Reforms Act, 1955.

Section 3 of the WBLRTT Act, 1997 mention that the Act shall have overriding effect.

Section 6(b) of the WBLRTT Act, 1997 lays down the jurisdiction, power and authority of the Tribunal. It says that 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 an application complaining inaction or culpable negligence of an authority under a specified Act.

Section 7 of the WBLRTT Act, 1997 mentions that save and otherwise expressly provided in this Act, the Tribunal shall with effect from the date appointed by the State Government under Section 6, exercise all the jurisdiction, power and authority exercisable immediately before that day by any court including the High

Court, except the writ jurisdiction under Articles 226 and 227 of the Constitution exercised by a Division Bench of this High Court, for adjudication or trial of disputes and applications relating to land reforms and matters connected therewith or incidental thereto and other matters arising out of any provision of a specified Act.

Section 8 of the WBLRTT Act, 1997 mentions that on and from the date from which jurisdiction, power and authority become exercisable under the Act by the Tribunal, the High Court except where court exercises writ jurisdiction under Articles 226 and 227 of the Constitution by a Division Bench shall not entertain any proceeding or application or exercise any jurisdiction, power or authority in relation to adjudication or trial of disputes or applications relating to land reforms or any matter connected therewith or incidental thereto or any other matter under any provision of a specified Act.

Section 11 of the WBLRTT Act, 1997 lays down that all appeals arising out of the orders passed by the Tribunal shall lie to the Division Bench of the High Court.

The inaction complained of by the petitioner is of an authority which falls under Section 2(b) of the Act. The inaction complained is covered under Section 6(b) of the Act. The authority is required to function in accordance with the provisions of the West Bengal Land Reforms Act, 1955, a specified Act under Section 2(r)(ii). Section 8 of the Act, ousts the jurisdiction of the Single Judge of the High Court to entertain the dispute.

In the case of L. Chandra Kumar the Supreme Court categorically laid down that the Tribunals created under Article 323B shall act as the 'Court of first instance'.

In Smt. Anjali Mukherjee -vs- Commissioner of Police, Lalbazar & Ors. reported in 2007(3) CLT 456, the court held that in view of the decision passed in the case of L. Chandra Kumar (surpa) the jurisdiction of the learned Single Judge of the High Court to entertain a writ petition in respect of matters covered under the Administrative Tribunals Act is ousted. It categorically laid down that the Single Judge of the High Court does not have the jurisdiction to entertain the writ petition.

In Rajib Kumar -vs- State of Uttar Pradesh & Ors. reported in (2010) 4 SCC 554 the court held that the Tribunal created under Articles 323A and 323B of the Constitution will function as the only court of first instance in respect of errors of law for which they have been constituted. It held that the provision laid down in the

case of L. Chandra Kumar (supra) embodied a rule of law and in view of the provision under Article 141 of the Constitution the same is binding on the High Court.

The Supreme Court has dealt with the issue of alternative institutional mechanisms for settlement of disputes and the need of speedy resolution of disputes. The note of the Malimath Committee has also been taken into consideration. The court held that the Tribunal created pursuant to Articles 323A and 323B of the Constitution are competent to hear matters specifically entrusted upon them. The sole idea was to offload the tremendous pendency of variety of cases in the High Court. The jurisdiction was set up primarily to streamline cases for speedy dispensation of justice.

The jurisdiction under Article 226 of the Constitution of India cannot be curtailed and the same is the basic structure of the Constitution of India is a well settled proposition. The same is definitely available to the petitioners but certainly not at this stage. At the first instance the petitioner has to initiate proceeding before the Tribunal and thereafter approach the High Court to test the validity of the order passed under judicial review, if occasion so arises.

As the West Bengal Land Reforms and Tenancy Tribunal has been set up under the provision of Article 323B which has been upheld by the Hon'ble Supreme Court I am not convinced by the argument of the petitioners that the instant petition can be entertained before this Court, at this stage.

In my opinion the petitioners have to approach the Tribunal first and then only can they approach the High Court under Articles 226/227 of the Constitution of India, that too, before the Hon'ble Division Bench.

In view of the aforesaid, W.P.A. 210 of 2020 is dismissed.

However, dismissal of the writ petition will not stand in the way of the petitioners from approaching the appropriate forum, in accordance with law, if so advised.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Amrita Sinha, J.)