

DL. August 25,
13. 2021

Through Video Conference

W.P.L.R.T. 32 of 2021

Md. Zahid @ Md. Zahidur Rahaman & anr.

Vs.

State of West Bengal & ors.

Mr. Suprabhat Bhattacharya,
Mr. Md. Habibur Rahaman,
Mr. M. A. Salik,
...for the petitioners.

Mr. Md. T. M. Siddiqui,
Mr. Nilotpall Chatterjee,
...for the State.

The instant writ petition is directed against an order dated March 22, 2021 passed by the learned Third Bench, West Bengal Land Reforms and Tenancy Tribunal in OA No. 282 of 20202 (LRTT).

The petitioners filed an application under Section 10 of the West Bengal Land Reforms and Tenancy Tribunal Act 1997 praying for a direction upon the concerned DL & LRO to dispose of the representation dated 02.11.2018 for correction of record of rights and for mutation of the name of the petitioners as raiyat in respect of the plots in question.

Record reveals that the concerned DL & LRO started proceedings under Section 5A of the West Bengal Estate Acquisition Act (for short "the EA Act") being numbers 29/73, 30/73 and 31/73 wherein the plots in question were vested to the State. Against the order passed by the DL & LRO, the petitioners

filed three separate appeals under Section 54 of the West Bengal Land Reforms Act , 1955 (for short “the WBLR Act”) before the concerned DL & LRO being Appeal case nos. 75/A of 2012, 76/A of 2012 and 76/1/A of 2012. The DL & LRO after observing that the impugned transfer was a *bona fide* one and that the vesting cases were disposed of in a wrong way remanded the matter to the concerned BL & LRO vide order dated 27.08.2012. The petitioners thereafter made a representation dated 02.11.2018 before the concerned BL & LRO for correction of the RS & LR record of rights on the basis of the order passed by the DL & LRO. The petitioners approached the Tribunal alleging inaction on the part of the Block Land and Land Reforms Officer for not correcting the record of rights.

The learned Tribunal in the order impugned held that the order passed by the DL & LRO dated August 27, 2012 in the aforesaid appeal cases is nullity and granted liberty to the petitioners to prefer appeal before the appropriate appellate authority.

The learned advocate for the petitioner contends that the Block Land and Land Reforms Officer passed the order of vesting in a proceeding under Section 5A of the EA Act without giving any opportunity of hearing to the petitioners and as such the vesting order of vesting is a nullity. He, thus, contends that since the said order is nullity in the eye of law, the District Land and Land Reforms Officer was justified in setting aside the same.

The right of appeal is a creature of statute. The order passed by the Block Land and Land Reforms Officer was an order

under Section 5A of the EA Act. Subsection 6 of Section 5A of EA Act provides for the right of appeal. The appellate forum has also been fixed therein.

Sub-section (6) of Section 5A of the said Act is extracted below :-

“(6) An appeal against any order passed by the State Government under sub-section (2) or sub-section (3), or passed under any of those sub-sections as read with sub-section (4) by an officer to whom powers have been delegated under sub-section (4), if preferred within sixty days of such order [or within sixty days from the date of appointment of the Special Judge, whichever is later], shall lie to a Special Judge (being a person who is or has been a District Judge or an Additional District Judge) appointed by the State Government for the purpose of this section and such Special Judge shall dispose of the appeal according to the prescribed procedure.”

When the statute fixes the forum of appeal, an appeal against an order passed by the authority under the said statute lies only before such appellate authority and not before any other authority. The order passed by the BL & LRO is appealable under Section 5A (6) of the EA Act and not under Section 54 of the WBLR Act. The DL & LRO is not the appellate authority prescribed under Section 5A (6) of the EA Act read with the rules framed thereunder. Thus, the DL & LRO, Uttar Dinajpur had no jurisdiction to pass the order dated August 27, 2012 and as such the

said order is a nullity as rightly held by the learned Tribunal. Merely because there is an allegation of violation of the principles of natural justice, it was not open for the petitioner to approach the DL & LRO. The same could have been taken as a ground in the appeal before the appropriate authority.

The West Bengal Land Reforms and Tenancy Tribunal, in our view, is perfectly justified in granting liberty to the petitioners to prefer an appeal before the appropriate authority provided under sub-section (6) of Section 5A of the said Act.

In view of the fact that the order of the DL & LRO is nullity, we hold that there is no inaction on the part of the authorities in not considering the representation of the petitioners' dated 02.11.2018.

In view thereof, the impugned order does not suffer from any infirmity.

Accordingly, the writ application is dismissed without, however, any order as to costs.

Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.

(Soumen Sen, J.)

dns

(Hiranmay Bhattacharyya, J.)

