

25.01.2021.

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**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

WPA 75 of 2021

**Shibu Munda
-versus
The State of West Bengal & Ors.**

**Mr. Sayan De
Mr. Sandip Majumder
Ms. Esha Acharya
Mr. Sukanto Chakraborty
...For the Petitioner.**

**Mr. Amales Ray
Mr. Deborshi Dhar
...For the Respondent No.6.**

**Mr. Bikramaditya Ghosh
Ms. Bedashruti Bose
...For the State.**

Since learned counsel for the petitioner submitted that the respondent no.6 had proceeded to construct on the site even after a verbal direction issued by the court on 22nd January, 2021 at around 3 p.m., the respondent no.6 was directed to affirm an affidavit stating whether any construction had indeed been carried out at the site on 23rd January, 2021.

At 2 p.m., when the matter is called on today the respondent no.6 hands up a signed affidavit dated 25th January, 2021 stating that no further construction has been made since 23rd January, 2021 onwards. Upon the said respondent be informed by its counsel of the

direction of the court at about 3.30 p.m. on 22nd January, 2021. The said affidavit is kept on record.

A point of maintainability has been taken by the State and private respondents to the writ petition in which the writ petitioner has prayed for a direction restraining the respondent no.6 from continuing with the construction work over the 1.47 acres of land of which the writ petitioner claims to be a co-sharer. The writ petitioner also prays for a direction on the respondent no.2 being the Project office and District Welfare Officer, Darjeeling to take necessary steps for conducting the hearing of the petitioner's application under Section 14E of the West Bengal Land Reforms Act, 1956.

The respondents, on the other hand, urge that the writ petition is not maintainable on the ground of an alternate and efficacious remedy being available to the writ petitioner under Section 6 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997. It is also the respondent's case that under section 10(1), a person aggrieved by any order passed by an authority or any action taken by the Authority, may prefer an appeal to the Tribunal for the redressal of his grievance. Counsel for the respondents places an unreported judgment in *W.P. 24325(W) of 2013 (M/s. Howrah Trading Corporation vs. The State of West Bengal & Ors.)* in which a writ petition filed under the provisions of the

1997 Act was dismissed after taking note of the provisions of the said Act.

Learned counsel for the petitioner places a decision of learned Single Judge of this court in *Shelter Sales Private Limited vs. State of West Bengal & Ors.*: W.P. 14411(W) of 2017 in which the Revenue Officer was directed to initiate appropriate proceedings within a certain time frame under Section 14(E) of The West Bengal Land Reforms Act, 1955. Counsel also places *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others*: (1998) 8SCC 1 in which the Supreme Court held that an alternative remedy does not operate as a bar where the writ petition has been filed for the enforcement of a fundamental right or where there has been a violation of the principles of natural justice or where the order/proceedings are wholly without jurisdiction.

On facts, it is submitted that the concerned area of land has been purchased from a tribal by a non-tribal (respondent no.6 herein) and which is covered by Section 14(C)(1)(e) of the 1955 Act relating to modes of transfer of land by scheduled tribes. It is also submitted that under 14(e) of the said Act, the power of a Revenue Officer to set aside in proper transfers does not include the power to grant an injunction, which is the prayer against the respondent no.6 in the instant case. Counsel places two applications made to the BL & LRO

on 25th September, 2018 and the Revenue Officer on 9th September, 2020 by the petitioner for inter-alia cancellation of the deed of sale standing in the name of the respondent no.6 and for eviction respondent no.6 from the possession of the land.

On hearing learned counsel appearing for the parties, this court is of the view that Section 6(b) of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 dealing with the jurisdiction and power of the Tribunal constituted under the said Act, empowers the Tribunal to exercise its jurisdiction in relation to applications complaining of inaction under the West Bengal Land Reforms Act, 1955, as provided in Section 2(r) of the 1997 Act.

Section 10(1) includes the words ‘.....or any action taken either by an Authority or’ thereby also envisaging an action not taken by the Authority or which the Authority has failed to take under Section 10 of the said Act. The prayers of the petitioner in the application before the concerned Authorities, particularly in the second application dated 9th September, 2020, further indicate that the prayer for cancellation and annulment of the deed of sale standing in the name of the respondent no.6 and for eviction of the said respondent from the possession of the land is pending before the concerned Revenue Officer. The petitioner has also prayed for restoration of possession

of land in the said application. Although it is correct that Section 14E(2) only provides for restoration of the transferred plot of land to the transferor and does not provide for injunction, this court is of the view that the petitioner has the liberty of making an appropriate application before the concerned Authority under Section 6 of the 1997 Act for suitable orders. This view finds support in *M/s. Howrah Trading Corporation*. The decision relied on by the petitioner namely *Shelter Sales Private Limited* did not contemplate any issue of maintainability of the writ petition. The relevant paragraph in *Whirlpool Corporation* pertained to a scenario where there was already an order which was without jurisdiction or where there has been a breach of the principles of natural justice.

In this case, the grievance of the petitioner is squarely covered by the 1997 Act and the petitioner should take expeditious steps under the provisions of that Act.

Even though this court has expressed its views on the maintainability of the writ petition, it cannot turn a blind eye on the complete inaction on the part of the concerned BL & LRO and the Revenue Officer before the petitioner had applied in 2018 and 2020. The concerned Authorities are hence cautioned to wake up from their slumber and show alertness in appropriate cases.

In view of the reasons as stated above, WPA 75 of 2021 is dismissed without no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Moushumi Bhattacharya, J.)