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Ct. No. 04

Akd

WP.LRT. 3 of 2022

Jharna Mudi

Vs.

State of West Bengal & Ors.

**Mr. Sourav Paul,
Mr. Anjan Banerjee.**

... for the petitioner.

**Mr. A. Ray,
Mr. T. M. Siddiqui,
Mr. Nilotpall Chatterjee.**

... for the State.

Let the affidavit of service filed today be kept with the record.

Despite service there is representation on behalf of the private respondent. However, the State respondent is represented.

The present writ petition has arisen from an order dated 8th December, 2021 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A. 2274 of 2021; whereby and whereunder the tribunal application was admitted and interim order was passed directing the State respondents not to give effect to the order dated 27th September, 2021 passed by the Appellate Authority, i.e. the District Land & Land Reforms Officer, Howrah in Appeal No. 135 of 2018 till the next date. The Tribunal also directed the parties to exchange their respective affidavits and matter is directed to be listed on 27th July, 2022 for hearing.

The petitioner having felt aggrieved by the said order has filed the instant writ petition and it is contended by the learned Advocate appearing for the petitioner that there is no prejudice caused to the private respondent by the order of the Appellate Authority, as the case was remanded to the Block Land & Land Reforms Officer to consider the case afresh. According to him, the order of remand causes

no prejudice to any litigant, as the matter has not been decided finally.

We are not accepting such proposition of law for the simple reason that if a person is aggrieved by an order of remand and a right is provided in the statute to file an appeal, such right, if exercised, cannot be diminished nor whittled down solely on the ground that the order of remand is always considered to be an innocuous one. There is no fetter on the part of the Appellate Court / Authority to consider whether the order of remand can be justified on the legal parameters or not.

If the proposition sought to be laid down by the learned Advocate for the petitioner is accepted, the provisions relating to an appeal against an order of remand shall be rendered infructuous and under any circumstances the order of remand is susceptible to be challenged by way of an appeal. The moment higher forum admitted the proceeding filed against an order of remand, the inevitable circumstance is to stay further proceedings before the original authority. The reasons for the same can be conceptualized with the following facts:

The order of remand is amenable to be challenged by way of an appeal and if such appeal is filed, no order is passed upon the original authority where the matter was remanded by the first Appellate Authority and in the meantime if the original proceeding is disposed of, it would render the said appeal against the order of remand infructuous or otiose.

The Appellate Authority is vested with power to consider whether the order of remand is justified or legally sustainable and pending such consideration the original proceeding put at halt.

In view of the above, we do not think that the Tribunal has committed any error or infirmity in passing the impugned order.

The writ petition sans merit.

However, at this stage it is submitted by the learned Advocate for the petitioner that the time to exchange affidavits may be extended.

In view of the fact that valuable right is under consideration, we extend the period for filing the affidavits by two weeks from date and reply thereto, if any, shall be filed within a week thereafter.

The Tribunal is requested to take up the matter on the date already fixed and endeavour shall be shown to dispose of the same as expeditiously as possible.

The writ petition is thus disposed of.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)