

**Prasanta Kumar Ghosh @ Prasanta Ghosh & Ors.
Vs.
The State of West Bengal & Ors.**

**Mr. Mrinal Kanti Ghosh,
Mr. K. C. Sahoo,
Mr. K. Das.**

... for the petitioners.

**Mr. Chandi Charan De, Ld. Addl. G.P.,
Mr. Soumitra Bandopadhyay,
Mr. Anirban Sarkar.**

... for the State.

By jumping the statutory forum provided under the relevant Act, the West Bengal Land Reforms and Tenancy Tribunal was approached for adjudication of the disputes for redressal of the grievances raised therein, which had been rejected by the Tribunal by passing the impugned order.

Section 10(3)(a) of the West Bengal Land Reforms and Tenancy Tribunal Act, 1987 provides that the Tribunal shall not admit any application unless the applicant has availed of all the remedial measures available to him under the relevant specified Act. However, an exception is carved out in Clause (b) of Sub-section 3 of Section 10 of the said Act that despite the existence of remedial measures if the Tribunal finds that it is not adequate or shall cause undue hardship to the applicant, the application can be maintained or entertained by the Tribunal.

Probably the writ petitioners have taken shelter under the aforesaid Clause and sought to contend that it would cause hardship to approach the forum provided in the statute and, therefore, the Tribunal ought to have held that the application is maintainable.

A little prelude to the dispute is required to be adumbrated.

The dispute owes its existence since 1979 when the judgement and decree was passed on 6th April, 1979 against the State of West Bengal declaring the title of the plaintiff therein. The decree further provides that the suit land ought to have been recorded in the Record of Rights in the name of the plaintiff nos. 1, 2 and 3 therein and further injunction was passed not to interfere with their peaceful possession.

The appeal filed against the said judgement and decree was dismissed and the judgement and decree of the Appellate Court was not assailed before this Court under Section 100 of the Code of Civil Procedure. As a consequence whereof it can be reasonably inferred that the said judgement and decree attained finality and remained binding on the parties.

However, a Miscellaneous Case No. 5 of 2009 was initiated by the competent authority for correction of the Record of Rights and since the said concerned authority despite initiation of such proceeding was sitting tight over the same, the approach was made to the Tribunal for expeditious disposal thereof.

Subsequently the Record of Rights was corrected so far as the 32 decimal of land in the said plot was concerned leaving 32 decimal of land, which remained recorded in the name of the vendors. After becoming aware that the remaining 32 decimal of land has not been recorded in the name of the petitioners, the Title Suit No. 15 of 2018 was filed, which is still pending adjudication. However, further approach was made to the Block Land & Land Reforms Officer, but the petitioners were relegated to

the District Land & Land Reforms Officer, as the said officer opined that the correction can be made by the said authority. However, the District Land & Land Reforms Officer remitted the matter back to the Block Land & Land Reforms Officer to take appropriate steps.

Pursuant to the said order a Miscellaneous proceeding was initiated and was ultimately disposed of with categorical finding that there is no scope to correct the entries made in the finally published L.R. Record of Rights so far as it relates to 32 decimal of land comprised in the concerned plot.

The writ petitioners did not intend to assail the said order before the appellate forum provided under Section 54 of the West Bengal Land Reforms Act, 1955, but approached the Tribunal directly taking a plea that the remedial measures provided under the relevant specified Act if exhausted would cause undue hardship.

It is contended by the learned Advocate appearing for the writ petitioners that the undue hardship would mean something which is not merited by the conduct of the applicant or is very much disproportionate having caused by the circumstance not warranted. In support of the aforesaid contention reliance has been placed upon a judgement of the Supreme Court rendered in case of *Benara Valves Ltd. & Ors. vs. Commissioner of Central Excise & Anr.* reported in (2006) 13 SCC 347.

After hearing the writ petitioners as well as the State Counsel, the only point which emerged in the instant writ petition is whether there is any element of undue hardship in not exhausting the remedial measures provided under the specified Act simplicitor on the premise that on an earlier occasion the correction of Record of Rights was effected and it

would be an futile exercise to approach the appellate authority against the order, which is per se illegal.

It is no doubt true that Section 10(3)(b) of the West Bengal Land Reforms and Tribunal Tenancy Act, 1987 creates an exception in approaching the Tribunal without exhausting or availing of the remedy provided in the relevant specified Act. Section 10(3)(a) provides that no person shall be permitted to approach the Tribunal directly without exhausting the remedy provided in the relevant specified Act. The moment the exception has been created, surpassing or bypassing all the relevant statutory provisions the same has to be interpreted and construed in a stricter manner, as ordinarily no litigant shall be allowed to jump the forum provided in the relevant Act.

Even in case of Benara Valves Ltd. (supra) the Apex Court has in unequivocal term succinctly narrated the importance of the pleadings as well as the factors to be disclosed by availing the benefit of an expression “undue hardship”. It has been highlighted that mere quoting the relevant expression of the statute is not sufficient and there must be sufficient and convincing materials justifying the jumping of forum and availing of the benefit of an exception provision. In paragraph 9 of the said judgement the Apex Court held that there must be a categorical assertion to the extent that the particular burden of exhausting the remedy or to observe or perform such requirement is disproportionate to the nature of such requirement and the benefit which the applicant would derive from compliance with it. The Supreme Court has further highlighted the effect of the expression “undue” before the word “hardship” to be of seminal importance and there is a requirement of greatest circumstances than a mere

hardship.

There is no doubt that once an exception is created in the provision, such exception embodies within itself the power of the Tribunal to entertain the tribunal application provided the parameters set forth therein are fully satisfied. The hierarchy of the system is to be respected and no litigant should be allowed forum shopping or get away with the remedy provided in the statute. Even a Writ Court exercising the power of judicial review under Article 226 of the Constitution of India has refrained from entertaining the writ petition when there is an efficacious remedy provided in the statute. Though there is no express bar in the language employed in Article 226 of the Constitution but by judicial orders self-restraint has been imposed. It is not a rule of compulsion but of discretion. The Writ Court may refuse to exercise such discretion if it is found that there is an efficacious remedy provided in the statute.

The “undue hardship” should not be construed to mean any kind of hardship or even a hardship presumed because of consumption of time in disposing of the appeal provided in the statute. Even if the points are settled, yet the aggrieved person can approach the appellate forum and can convince the aforesaid forum that the order assailed of is contrary to the settled proposition both on facts or law. Merely because an order was passed earlier for correction of Record of Rights does not mean nor can be construed to have causing any undue hardship in not approaching the appellate forum provided under Section 54 of the said Act.

We thus do not find any infirmity or illegality in the impugned order.

The writ petition is thus dismissed.

The dismissal of the writ petition shall not

preclude the writ petitioners in approaching the appropriate forum assailing the order impugned in the tribunal application in accordance with law.

There will be no order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)