

WPLRT 26 of 2022

**Anil Kumar Pandey @ Sharma
@ Anil Pandey and others****Vs.****The State of West Bengal and others.**
-----**Mr. Suprabhat Bhattacharya,
Mr. Mrinal Kanti Ghosh.****... for the petitioners.****Mr. Chandi Charan De,
Mr. Soumitra Bandyopadhyay,
Mr. Anirban Sarkar.****... for the State.****Mr. Sankha Prasad Ray.****... for the respondent no. 4.**

It is really unfortunate that the Tribunal without applying its judicial mind has proceeded to dismiss the application filed under Section 10 of the West Bengal Land Reforms and Tenancy Tribunal Act on the basis of the findings returned by the appellate authority in a proceeding under Section 54 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as 'said Act').

A proceeding was initiated under Section 50 of the said Act on the basis of the disputes having raised in relation to an entry in the record of rights. The said proceeding was registered as Miscellaneous Case No. 71(50) of 2005. Challenging the said order of the Revenue Officer, an appeal was preferred under Section 54 of the said Act, which was registered as Miscellaneous Case No. 78 of 2005. Several orders were passed in the said proceeding by the appellate authority and ultimately by an order dated 17th April 2006, the order of the Revenue Officer was set aside and the matter was remanded to the Block Land and Land Reforms Officer, Old Malda to reconsider the case

afresh.

After the order of remand, the proceeding was renumbered as Miscellaneous Case No. 5 of 2006 and by an order dated 5th June 2006, the same was disposed by the Revenue Officer. The said order of the Revenue Officer was directly challenged before the Tribunal in OA 1089 of 2007. The Tribunal was of the view that unless the remedy by way of an appeal provided under the statute is exhausted by the petitioners, an application under Section 10 of the West Bengal Land Reforms and Tenancy Tribunal Act cannot be maintained and while disposing of the said proceeding, liberty was granted to the petitioners to prefer an appeal under Section 54 of the said Act within a specified time.

Pursuant to the aforesaid leave having granted, the writ petitioners filed an appeal under Section 54 of the said Act, which was registered as Appeal No. 84 of 2007. The first order recorded in the said appellate proceeding would reveal that the said appellate authority was conscious that the appeal has been filed beyond the prescribed period provided therefor and invited the parties to disclose their stand thereupon. Ultimately, the delay was condoned and the said proceeding was disposed of finally on 2nd August 2011.

The writ petitioners challenged the said order of the appellate authority dated 2nd August 2011 passed in Appeal Case No. 84 of 2007 before the Tribunal and by the impugned order, the Tribunal has held that the frivolous application has been filed by the petitioners as simultaneous proceeding cannot be allowed to be filed on the selfsame issues and such conduct of the petitioners amounts to wastage of time of the Tribunal.

As indicated above, the appeal being Appeal Case No. 84 of 2007 was finally disposed of not on merit but

on the ground of *res judicata* and the said stand has been accepted by the Tribunal without venturing to go into the facts and the incidents as narrated above. The moment the order of the original authority is challenged by way of statutory appeal and the statutory authority remanded the matter to the original authority for deciding afresh, it cannot be termed to be the final determination of the issues involved in the said proceeding.

The principle of *res judicata* applies in a case where the issue involved in an earlier proceeding was finally decided by a competent forum, such issue cannot be reopened and/or agitated in a subsequent proceeding. The principle of *res judicata* is based on public policy, as every litigation must reach to its finality and cannot be permitted to be reopened by filing a subsequent proceeding.

The moment the order of remand is passed, it cannot be construed as a final determination of the right, but the right is required to be adjudicated by an original authority in terms of the findings made in the order of remand or, in other words, in terms of the order of remand. The issues after the remand cannot be said to have reached finality nor finally determined, which is a seminal point for invoking the principle of *res judicata*. The moment the order is passed after setting aside the order of the original authority, the order of the original authority loses its efficacy as to the finality and the matter remained undecided, to be decided by the said authority in terms of the order of remand.

We are afraid how the appellate authority as well as the Tribunal has applied the principle of *res judicata* and proceeded to dismiss the proceeding on that score. The procedure is hand made of justice. Even if a new number has been assigned to a continuing proceeding,

it does not lose the character of the original proceeding and, therefore, there is no scope of any confusion to arise in the mind of the quasi judicial authority.

We, thus, find that the order of the Tribunal as well as the appellate authority passed in Appeal No. 84 of 2007 are illegal and based upon a wrong principle of law and, therefore, cannot be sustained. Accordingly, the order of the Tribunal dated 6th April 2021 is hereby set aside. Consequently, the order of the appellate authority dated 2nd August 2011 is also set aside.

The appellate authority under Section 54 of the West Bengal Land Reforms Act, 1955 is directed to rehear the Appeal No. 84 of 2007 after affording an opportunity of hearing to all interested parties and shall dispose of the same within two months from the date of communication of this order by recording proper reasons except the plea of *res judicata*.

We made it clear that we had no occasion to go into the merit of the respective claims and the entire decision is based upon the applicability of *res judicata* and, therefore, none of the findings recorded herein above shall have any persuasive value thereupon.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)

