

17 **06.06.2022**

gd/ssd

WPA(P)/155/2022
GOUR MOHAN SADHUKHAN
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Joy Chakraborty,
Mr. Sandip Dinda,
Mr. Dip Jyoti Chakraborty
..for the Petitioner.

Mr. Jaharlal De,
Mr. Supratim Dhar
..for the State.

Ms. Sonal Sinha
..for the Respondent No.3.

Ms. Monjuli Chowdhury,
Ms. Mekhla Sinha
..for the Respondent No.12.

Mr. Ganapati Gangopadhyay
..for the Respondent No.15.

Mr. Prosenjit Mukherjee,
Mr. Arghya Kamal Das,
Mr. Subhajyoti Das
..for the Respondent No.16.

By this writ petition the petitioner has raised a grievance that by the illegal and unsustainable orders private respondent nos.15 and 16 have been permitted to convert a water body and raise a construction thereon.

The submission of learned counsel for the petitioner is that the order dated 19th March, 2021 was passed by the concerned Collector under Section 4(c) of the West Bengal Land Reforms Act, 1955 permitting

change of character/use of land. He has raised a grievance that though the petitioner had filed representation earlier in point of time raising an objection yet as required by sub-section (2) of Section 4(c) of the West Bengal Land Reforms Act, no opportunity of hearing has been given. He has further raised an issue that by the order dated 8th January, 2021 the private respondent has been permitted to raise compensatory water body in the area which is not in the locality, whereas in terms of Proviso of Section 17A(9) of the West Bengal Inland Fisheries Act, 1984 the compensatory water body is to be created in the same locality, which has not been done.

Learned counsel for the State has pointed out that against both the orders the petitioner has the remedy of filing the appeal.

Learned counsel appearing for the private respondents has supported the orders questioned by the petitioner.

Having regard to the nature of allegations which have been made by the petitioner and the grounds which have been raised for challenging the orders noted above, we are of the opinion that it would be more appropriate that the issues raised by the petitioner are examined by the appellate authority instead of this Court in exercise of the jurisdiction under the PIL. As

against the order passed under the West Bengal Inland Fisheries Act, 1984 there is a remedy of appeal under Section 18 of the Act and the limitation commences from the date of communication of the order. It has been stated by the learned counsel for the petitioner that the orders were not communicated to the petitioner initially. That apart there is also a provision for extending the limitation by the competent authority. So far as the order under Section 4(c) of the West Bengal Land Reforms Act is concerned, the said order is also appellable under Section 54 of the Act.

Hence, we permit the petitioner to file appeal against above order and to raise the grievance before the appellate authority, who on the basis of the original record will duly examine the grievance on merit after giving an opportunity of hearing to all the concerned affected parties.

Having regard to the nature of controversy which has been raised by the petitioner and also considering the fact that instead of entertaining the writ petition we are relegating the petitioner to the remedy of appeal, we are of the view that the petitioner should not be left remediless only on the ground of the expiry of limitation in the meanwhile.

Hence, we direct that if the petitioner avails the remedy of appeal within a period of three weeks from

today, then the appeal so preferred by the petitioner will be examined on merit without raising objection about limitation.

Appeal so preferred by the petitioner, will be considered and decided by the appellate authority as expeditiously as possible.

The petition is, accordingly, disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

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