

**08.06.
2022**

Ct. No. 04

Ab

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.**

WPLRT 51 of 2022

**Smt. Ruma Kolya (Jana)
Vs.
The State of West Bengal and others.**

**Mr. Mrinal Kanti Ghosh,
Mr. Jayanta Dey.**

... for the petitioner.

**Mr. Md. T.M. Siddiqui,
Mr. Nilotpal Chatterjee.**

... for the State.

The tribunal application filed by the writ petitioner was dismissed as the Bench does not find that it is a fit case to grant benefit of exception carved out in Section 10(3)(b) of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (hereinafter referred to as 'said Act').

The object of incorporation of Section 10 of the said Act can be seen from the language employed therein that the tribunal shall not entertain any application at the behest of the litigant unless he/she has exhausted all remedial measures provided in the specified Act. The exception is carved out in Section 10(3)(b) of the said Act where the tribunal may entertain the application without resorting the remedial measures provided it would cause undue hardship to the litigant. Time and again the undue hardship has been interpreted in plethora of judgments and there is no ambiguity in our mind that it is not relatable to an economic hardship. The undue hardship must be of a higher magnitude than of a mere hardship and there must be strong

reasons to be disclosed in this regard.

It is really unfortunate that the writ petitioner has been knocking the doors of the authority after having purchased the land from the rightful owner and every time the Block Land and Land Reforms Officer has rejected the application for mutation on one pretext or another. On earlier two occasions, the order of rejection of mutation application was assailed before the appellate authority under Section 54 of the West Bengal Land Reforms Act, 1955 and the appellate authority after setting aside the order directed the Block Land and Land Reforms Officer to consider the said application on the basis of the deed of sale executed and registered in favour of the writ petitioner.

Despite the aforesaid order having passed by the appellate authority, the application for mutation was rejected for the third time on an extraneous ground, which cannot be come in the way of considering the application for mutation. It would be a futile exercise to approach the appellate authority as the sequel of facts have shown that despite the order passed by the appellate authority the fate of the mutation application was the same.

On the third time, when the application for mutation was rejected, the writ petitioner approached the tribunal taking shelter under Section 10(3)(b) of the said Act that approaching the appellate authority would be a futile exercise and it would cause not only undue hardship but there would not be any justice that would be imparted to the writ petitioner. The aforesaid impression was created because of the past events, more particularly, that the Block Land and Land Reforms Officer has not acted in terms of the order of the appellate authority and rather took one ground or another to achieve the rejection thereof. Even the

tribunal found that the Block Land and Land Reforms Officer could not have rejected the said application for the third time yet did not find that such a case must come within the exception caved out in the said Section.

It is a matter of great concern that the rejection for the third time was based upon on an extraneous factor, which cannot be play any active or passive role in considering the application for mutation.

Section 50 of the West Bengal Land Reforms Act, 1955 cast an obligation on the prescribed authority to maintain up to date record of rights in the prescribed manner by incorporating the changes as a result of transfer or inheritance. There are other instances, which are recorded in the said Section to which we are not concerned with, as the case of the writ petitioner falls within the purview of Clause (a) to the said Section.

Rule 21 of the West Bengal Land Reforms Rules, 1965 provides a mechanism of recording the changes in the record of rights occasioned under Clauses (a) to (f) thereof and after such change is made, the Revenue Officer being the competent authority shall inform the parties accordingly.

Since there was no procedural aspect indicated in the said Rules, the Government vide order dated 6th February 22009 indicated the exhaustive procedure relating to such application. The said order postulates that the application for mutation received in the office of the Block Land and Land Reforms Officer must contain the documents enumerated therein. In the event there is no objection received from any corner and the mutation is sought on the ground of transfer by a rightful owner/raiyat, it was not obligatory on the part of the said competent authority to order for field enquiry.

What can be seen from the aforesaid provision that the moment an application is filed on account of the

transfer having effected by the rightful owner and in the event there is no objection forthcoming from any corner, it is obligatory on the part of the said authority to allow such application.

Interestingly, the order of the Block Land and Land Reforms Officer was founded on the order of the District Judge on an application filed by the Sebait being the vendor of the present writ petitioner seeking permission to sale the property belonging to the Deity. The order was passed and a direction was further made that the entire sale proceeds shall be deposited with the Court. It was an obligation on the part of the vendor being the Sebait of the said Debottar estate to comply with the order of the Court.

There is no role so far as the writ petitioner is concerned to play in relation thereto nor the authority can usurp the power of the District Judge more so that the compliance has not been secured. The matter is pending before the District Judge and in the event any order is required to be passed in this regard, the said Court is competent to pass such order. So long the deed remained valid, the Block Land and Land Reforms Officer has no business to put any question thereupon nor can take such factor to deny the mutation.

It is to be borne in mind that mere changes having made in the record of rights neither creates any title into a person nor extinguishes such title. It is only for the purpose of securing the timely payment of the land revenue and the person responsible therefor.

We, thus, find that it is a fit case where the tribunal should have entertained the application. We, thus, set aside the impugned order.

On the basis of the findings made herein above, there is no justification in remanding the matter to the tribunal for consideration on merit.

The order passed by the Block Land and Land Reforms Officer on 4th June 2019 in Mutation Case No. 4622 of 2014 is hereby set aside. The concerned Block Land and Land Reforms Officer is directed to effect the changes in the record of rights on the basis of the deed executed in favour of the writ petitioner within two weeks from the date of communication of this order.

Considering the conduct of the concerned Block Land and Land Reforms Officer in dealing with the mutation application and the manner in which the same is decided, this order may be placed before the Principal Secretary, Department of Land and Land Reforms, Government of West Bengal, to initiate an appropriate proceeding against those erring officers.

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.)