

08-06-2022
Item No.45
Subrata

IN THE HIGH COURT AT CALCUTTA
Constitutional writ Jurisdiction

WPLRT No.52 of 2022
Budge Budge Company Limited
-vs-
The State of West Bengal & Ors.

Mr. Saptangsu Basu, sr. adv.
Ms. Mrinalini Majumder, adv.
Mr. Niladri Khanra, adv ...for the petitioner

Mr. Chandi Charan De, Addl. Govt. Pleader
Mr. Soumitra Bandyopadhyay, adv.
Mr. Anirban Sarkar, adv. ...for the State

The instant writ petition arises from an order dated February 11, 2022 passed by the 1st Bench, West Bengal Land Reforms Tenancy Tribunal dismissing the application being OA No.1505 of 2018 applying principle of res judicata.

The facts which appear from record are that the tribunal application was filed assailing an order passed by the Block Land & Land Reforms Officer (BLLRO) in considering an application for mutation on account of an order of amalgamation passed by the competent authority. The tribunal proceeded to reject the said application on the grounds that the similar prayer was rejected by the State-respondents on August 14, 2013 and, therefore, the subsequent application is barred by the principle of res judicata.

It has been brought to our notice that the said order was passed by an authority, not competent under the Act, and therefore, the principle of res judicata cannot be applied.

We do not want to deal with such aspect nor was there any occasion on the part of the tribunal to go into

such question for the simple reason that the application was pending before the BLLRO and no decision has been taken thereupon. The tribunal cannot usurp the powers of the appellate authority but vested with the powers to consider whether the order of the authority is sustainable in the eye of law. It is not expected from the tribunal to substitute itself into an armchair of the authority and decided the cause which is pending before such authority.

The moment the approach was made for an order directing the said authority to take a decision thereupon, it is inconceivable that the tribunal would take up such application and decide the same rendering the said application infructuous.

We, thus, find that the order impugned cannot be sustained and is therefore set aside. The tribunal application is allowed.

The BLLRO before whom the application filed by the writ petitioner is pending is directed to consider and dispose of the said application, within four weeks from the date of communication of this order, after affording an opportunity of hearing to all interested persons in accordance with law.

The writ petition is accordingly disposed of. No order as to costs.

[Harish Tandon, J]

[Shampa Dutt (Paul), J]

