

62 **22.06.
2022**
Ct. No. 04

Ab

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

WPLRT 74 of 2022

**M/s. Contai Salt & Industries
Company Private Limited**

Vs.

The State of West Bengal and others.

Mr. Santi Pada Pahari.

... for the petitioner.

**Mr. Chandi Charan De,
Mr. Soumitra Bandyopadhyay,
Mr. Anirban Sarkar.**

... for the State.

It is really unfortunate that a prayer for interim order is refused citing the provisions contained in Section 10(7) of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (hereinafter referred to as 'said Act').

It is recorded in the impugned order that unless the service of the copy of the said application is effected upon the respondents therein, the prayer for interim injunction cannot be entertained. Curiously enough, even after observing so, the next date is fixed after a gap of nearly one year.

At the very outset, we must record that the tribunal did not read the provisions contemplated under Section 10(7) of the said Act. The tribunal has partly quoted the said sub-section and omitted to consider the provisos attached thereto. The entire provisions contemplated under Section 10(7) of the said Act is required to be reproduced, which is being done in the following:

"10(7). Notwithstanding anything contained in

any other provision of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceeding relating to, an application made under sub-section (1) unless-

- (a) copies of such application and of all documents in support of the plea for such interim order are duly furnished seven days in advance to each of the parties against whom such application is made or is proposed to be made;
- (b) an opportunity of being heard is given to each of the parties against whom such application is made;

Provided that the Tribunal may pass an interim order as an exceptional measure if it is satisfied for reasons to be recorded in writing that it is necessary so to do for preventing any loss being immediately caused to the applicant;

Provided further that if the application referred to in sub-section (1) is not decided and disposed of within a period of six months from the date of the interim order, the interim order shall, if it is not vacated earlier, stand vacated on the expiry of the period as aforesaid unless, for special reasons or in the interest of justice, the interim order is varied, modified or extended by the Tribunal."

Upon meaningful reading of the language employed in the aforementioned provisions, there is no cavil of doubt that the said provisions start with non-obstante clause and the enabling provision mandates the service of the copy of an application upon the party against whom the interim order is sought and since the tribunal is bound to adhere the principle of natural justice, the hearing to the other side is also required to be provided. However, the proviso appended thereto bestowed the power upon the tribunal to pass an interim order in an exceptional circumstances and upon recording the reasons as to why the service would defeat the purpose of following the enabling provision or would frustrate the claim to some extent. It cannot be said that the tribunal is denuded of an absolute and inchoate power in

passing an ex parte interim order unless the copy is served upon the party against whom such interim order is sought.

The proviso inserted to a provision somewhat controls the enabling provision and the circumstances indicated therein is required to be satisfied in order to exercise such power. The language employed in Section 10(7) of the said Act is somewhat akin to a language of Order XXXIX Rule 3 of the Code of Civil Procedure. Normally, the Court should not pass any order detrimental to the interest of the party unless the said party is made known of the claim against him and had an adequate opportunity to defend such claim. The exception is carved out by inserting a proviso so that the legitimate claim should not be defeated by resorting to the aforesaid provisions and in deserving and exceptional cases, the Court is not denuded power to pass ex parte interim order against the party by recording the reasons.

Such being the proposition of law as understood from the plain and simple reading of the provision of law, we do not appreciate the conduct of the tribunal in passing the impugned order upon quoting the relevant provisions of law in partial manner. The provisions of the statute are to be read as a whole and the meaning is to be gathered upon application of the well-known canon of interpretation. Simply to secure the rejection of the prayer for ex parte ad interim order of injunction, it is not fair on the part of the tribunal to quote the Section partially in order to give an impression in the mind of a litigant as well as the common people that the order is not susceptible to be challenged and has been passed strictly in tune with the aforesaid provisions.

We do not intend to go further deep into the aforesaid aspect after having noticed the manner and

conduct by which the impugned order is passed. We, therefore, set aside the impugned order.

Liberty is granted to the petitioner to approach the tribunal with a prayer for passing an ex parte ad interim order of injunction or an interim order if the other side has already appeared and if such prayer is made, the tribunal shall pass an order strictly in terms of the provisions contained in Section 10(7) of the said Act and if the tribunal intends to pass an ex parte ad interim order of injunction must record the reasons as contemplated in provisos to Section 10(7) of the said Act.

It goes without saying that the tribunal shall pass the order within a week from the date when the prayer is renewed by the petitioner and shall not unnecessarily adjourn the matter at the behest of the parties unless necessitated by unavoidable circumstances.

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.)

