

**02.12.
2022**

Ct. No. 04

Ab

WPLRT 81 of 2022

Ashima Halder

Vs.

The State of West Bengal and others.

**Mr. Pradip Kumar Mondal,
Mr. Soumitra Chatterjee.**

... for the petitioner.

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

... for the State.

The affidavit of service filed in Court today is kept with the record.

The Tribunal by passing an impugned order dated 12th April 2022 found that the appellate authority has not considered the directions passed at an earlier point of time in a different proceeding including the order of the High Court in deciding the said appeal and thereafter remitted the matter to the appellate authority to pass an order in terms of the aforesaid directions.

The dispute pertains to an acquisition of title in respect of the property and one of the stands taken was that the property has already been vested and the petitioner is a post vesting transferee. The civil suits were filed, the proceedings were initiated and the petitioner relied upon the aforesaid decisions and the said appellate authority was required to consider whether the details of the land described in the schedule to the title suit, the deed and the other records are in consonance with the stand taken by the petitioner.

The Tribunal found that the appellate authority upon reiterating and/or restating the law in an abstract form and without venturing to enter upon the factual matrix dismissed the said appeal filed by the petitioner.

It is no doubt true that the order of remand must

specify the reasons necessitating the matter to be decided by the authority below it, if the materials are not sufficient enough to arrive at the conclusion. Secondly, the higher forum should not usurp the power of the original authority and decide the cause in absence of any benefits of the decision taken by the said authority.

We find from the impugned order that factual aspects were not dealt with by the appellate authority and the appeal was proceeded in a truncated manner and on the proposition of law without mentioning that such proposition of law applies to the benefits of the given case.

We, thus, find that the course adopted by the Tribunal in remitting the matter to the appellate authority for reconsideration of facts does not appear to have been done infirmly and/or illegally. However, we find that the Tribunal has fixed a longer date for disposal of the said appeal, which, in fact, has expired because of the pendency of the instant writ petition.

We, therefore, dispose of the writ petition without interfering with the order of the Tribunal but extending the time for disposal of the said appeal, which shall be done by the appellate authority within one month from the date of communication of this order after affording an opportunity of hearing to the respective parties.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

