

19
01.03.2022
Ct. No.10
b.das

W.P.A. 13630 of 2021

(Via Video Conference)

Ramdas Mishra & Anr.
Vs.
State of W. B. & Ors.

Mr. Aniruddha Chatterjee
Mr. Iftekar Munshi ...for the petitioner.

Mr. Chandi Charan De
Ms. R. Rahaman ...for the State.

Mr. Soumik Ganguli
...for the respondent Nos.5 & 9.

Learned counsel appearing for the State respondents has challenged the maintainability of the writ petition on the ground that in view of the provisions laid down under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, hereinafter referred to as the Act of 1997, the remedy of the petitioner lies before the Tribunal and this Court, in exercising extraordinary jurisdiction under Article 226 of the Constitution of India, cannot entertain the writ petition.

The contention of the writ petitioner in the present case is that the petitioner submitted an application before the State authorities for correction of Record of Rights which is pending before the authority since 2017. The petitioner has prayed for a direction upon the authority to

consider the application filed by the petitioner before the authority within a stipulated period of time.

Learned counsel appearing for the petitioners has taken the Court to Section 10 of the Act of 1997 which entitles a person aggrieved by an order passed by an authority or any action taken either by an authority or by the State Government to prefer an appeal before the Tribunal for redressal of his grievance.

Learned counsel has also referred to Section 6(b) of the Act of 1997 which says that “an application complaining inaction or culpable negligence of an authority under a specified Act” shall be dealt with by the Tribunal.

Placing reliance on a judgment of the Hon’ble Supreme Court in Maharashtra Chess Association vs. Union of India & Ors. reported in (2020) 13 SCC 285, learned counsel has submitted that the Hon’ble Supreme Court has observed that the writ jurisdiction of a High Court cannot be completely excluded by the statute and exercise of such jurisdiction is not subject to strict legal principles. The limitations placed on the Court’s discretion to exercise such jurisdiction is self-imposed and discretionary.

Learned counsel submits that as this Court is not called upon to delve into the merits of the issue pending before the Authority and the petitioner has only sought a direction upon the concerned authority for consideration of his representation pending before the authority since long,

the prayer of the petitioner is not de hors the tenor of the provisions of the Act of 1997 and as such, is maintainable before this Court.

There is no quarrel with the proposition of law that exercise of writ jurisdiction by the High Court is discretionary and is not completely excluded by the statute. Nevertheless, when an alternative, efficacious remedy is available to the writ petitioner, the High Court normally refrains from exercising jurisdiction under Article 226 of the Constitution of India and relegates the matter to the regular forum, unless there are exceptional circumstances warranting intervention.

The intention of the legislature as expressed in the preamble to the Act of 1997 is, “Whereas it is expedient to provide for the setting up of a Land Reforms and Tenancy Tribunal and for adjudication and trial by such Tribunal or disputes, claims, objections and application relating to or arising out of land reforms or tenancy in land and other matters under a specified Act and for the exclusion of the jurisdiction of all courts except a Division Bench of the High Court exercising writ jurisdiction under Article 226 and 227 of the Constitution of India and the Supreme Court of India in adjudication and trial of such disputes, claims, objections and applications and for matters connected therewith or incidental thereto.”

Section 8 of the Act of 1997 excludes the jurisdiction of the High Court and other civil courts except where the

Court exercises writ jurisdiction under Article 226 and 227 of the Constitution by a Division Bench and the Supreme Court, from entertaining any proceeding or application or exercising any jurisdiction, power or authority in relation to adjudication or trial of disputes or applications relating to land reforms or any matter connected therewith or incidental thereto or any other matter under any provision of a specified Act. The West Bengal Land Reforms Act, 1955 is a specified Act under Section 2(a) of the 1997 Act. Provision of appeal before the Tribunal is laid down in Section 10 of the Act wherein a person aggrieved is entitled to prefer an appeal not only against the order passed by the authority but also an action taken by the authority, such action also including an inaction on the part of the authority.

Section 6(b) of the Act authorizes the Tribunal to deal with an application complaining inaction or culpable negligence of an authority under a specified Act.

In the present case, the grievance of the petitioner is inaction on the part of the authority with regard to his application praying for correction of Record of Rights which is governed by the West Bengal Land Reforms Act, 1955.

In view of Section 6(b) and Section 10 of the Act of 1997, the petitioner is at liberty to approach the Tribunal for redressal of his grievances.

No exceptional circumstance being made out by the petitioner, this Court, in exercise of extraordinary

jurisdiction under Article 226 of the Constitution of India, is not inclined to deal with the prayer of the petitioner in the writ petition, as such prayer can be dealt with by the Tribunal under the Act of 1997.

In view of the same, the writ petition being WPA 13630 of 2021 is dismissed as not maintainable.

However, the petitioner is at liberty to approach the West Bengal Land Reforms and Tenancy Tribunal for redressal of his grievances along with an application praying for condonation of delay in filing such application. Learned Tribunal is requested to consider the application for condonation of delay filed by the petitioner and dispose of the main application, in accordance with law.

However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)