

2 25.8.2022
Sc Ct. no.12

WPLRT 101 OF 2022

Sanjay Saraf

Vs.

The State of West Bengal & Ors.

Mr. Kishore Dutta
Mr. Joyjit Ganguly
Mr. Pradip Sancheti
Mr. Debangshu Dinda.

....For the Petitioner

Mr. Sirsanya Bandopadhyay
Mr. Arka Kumar Nag.

....For the State

Heard Mr. Dutta, learned senior counsel appearing for the petitioner and Mr. Sirsanya Bandopadhyay, learned Junior Standing Counsel for the State.

Mr. Dutta, learned senior counsel submits that he challenges the impugned order, *inter alia*, on two counts –

(1) there has been a gross violation of the principles of natural justice inasmuch as the lis was decided by the Thika Controller on the basis of the written submission, filed by the Bharat Petroleum Corporation Limited (BPCL) and without written submission by the petitioner as it was not filed within a period of two weeks granted to him though subsequently without the knowledge of the impugned order being passed, the petitioner has

filed the written note of submission on 2nd May, 2022.

(2) In view of the nature of the lis, the Thika Controller under the provisions of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 has no jurisdiction over the matter and that point has not been discussed in the impugned order.

Mr. Bandopadhyay, learned Junior Standing Counsel for the State vehemently submits that the impugned order is appealable under Section 6(a) of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 and the period of limitation for the same is sixty days (60) from the date of passing of the impugned order as provided in Section 10 of the aforesaid Act though the period of limitation is extendable at the discretion of the tribunal.

It is further submitted by Mr. Bandopadhyay that Section 12 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 also provides for limitation of thirty days (30) days and that thirty (30) days' limitation is mandatory and in order to avoid the period of limitation as specified in both the aforesaid Acts, the petitioner has knocked the door of this Court under Article 226 of the Constitution of India by bypassing the appeal provision.

Taking into consideration the aforesaid submissions, we propose to dispose of the matter at the

threshold because it is not in the interest of justice to keep the matter pending for a full dress hearing.

It is well settled in law and no authority is needed to substantiate the proposition that any issue of violation of the principles of natural justice and any issue of jurisdiction can be raised bypassing the provision of appeal in a particular Act by filing a petition under Article 226 of the Constitution of India which vests plenary power in this Court to go into those aspects. In such a situation, it is not required to saddle the responsibility on the petitioner to knock the door of the appellate Court unnecessarily when the original Court had no jurisdiction to decide the issue under the relevant Act and Rules.

It is also well settled that the violation of the principles of natural justice is a serious issue striking at the root of the very litigation and we, on perusal of the impugned order, find that the Thika Controller has relied on the written note of submission without offering any opportunity of hearing to the parties in arriving at the conclusion.

It is true that two weeks' time was granted to the petitioner to file the written note of submission but the written note of submission could not be filed within that two weeks. That does not mean that the petitioner should have been non-suited for such a wrong and for that time should have been granted taking into consideration the inconvenience of the petitioner to file

the written note of submission in time to do substantial justice in the matter between the parties.

Regard being had to the facts and submissions of learned counsel appearing for the parties, we remit the matter back to the Thika Controller for trial *de novo* after giving opportunity of hearing to the parties concerned.

The parties are at liberty to raise all the points available to them along with the point of jurisdiction etc. and it would be pertinent to mention here that the Thika Controller for his convenience may rely on the written note of submission filed by the parties to arrive at a conclusion but the written note of submission cannot be taken as a substitute for personal hearing.

In view of such fact, we hope and trust that the learned Thika Controller shall understand the meaning of the '**personal hearing**' and dispose of the matter in accordance with law within a reasonable period after receipt of the file, preferably, within a period of six months from the date of receipt of the file.

In the result, the impugned order is set aside and the matter is remitted back to the learned Thika Controller.

On the prayer of Mr. Bandopadhyay, learned Junior Standing Counsel appearing for the State, we feel it proper to observe here that the parties shall avoid taking unnecessary adjournments.

On peculiar facts of the case, the matter is being remitted, and this will not be a precedent for future cases.

The writ petition is accordingly disposed of.

There will be no order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Chitta Ranjan Dash, J.)

(Aniruddha Roy, J.)