

05.09.2022

WPLRT 121 of 2022

Court : 04
Item : 153
Matter : WPLRT
Status : DO
Transcriber: nandy

Tapas Kumar Yadav
Vs.
The State of West Bengal & Ors.

Mr. Saptangshu Basu, Senior Advocate
Mr. Ayan Banerjee, Advocate
Ms. Deboshree Dhamali, Advocate
Ms. Riya Ghosh, Advocate

.....for the Petitioner

Mr. Sirsanya Bandopadhyay, Advocate
Mr. Arka Kumar Nag, Advocate

...for the State

The proceeding under Section 14T(3) of the West Bengal Land Reforms Act, 1955 is contemplated by the authorities and the notice for hearing was issued under Section 14M of the said Act. The copy of the notice would reveal that the State wanted to take steps for vesting of the land possessed by the writ-petitioner invoking the provisions contained under Section 14T(3) of the said Act. The vires of the said provision was challenged in case of ***Paschim Banga Rajya Bhumijibi Sangha Vs. The State of West Bengal***, reported in ***1996 (2) CLJ 285***, wherein this Court ultimately declared the said provisions to be *ultra vires* under Article 300A of the Constitution of India. The aforesaid decision is challenged before the Supreme Court and we are informed that the matter is still pending.

However, the Apex Court has passed an interim order in the said proceeding and a plea is sought to be raised, because of the interim order having passed therein, the efficacy of the judgment of the Division Bench has been lost.

Identical issue was raised before the Division Bench of this Court in case of ***Pijush Kanti Chowdhury Vs. The***

State of West Bengal & Ors. reported in **(2007) 3 CHN 178**, wherein the Division Bench held: -

“10. After hearing the learned Counsel for the parties and after going through the aforesaid provision we find that the Supreme Court by those interim orders has no doubt stayed the operation of the order of the Division Bench of this Court by directing the parties to maintain status quo and at the same time, even restrained the State from inducting third parties on the lands which were the subject-matters before the Apex Court. Such interim order is binding upon the parties to the proceedings but the law is equally settled that by mere passing of an interim order staying the operation of a judgment with certain further conditions, the existence of the said judgment is not wiped out and at the same time, for such interim orders inter parties, the authority of a decision as a precedent is never undermined. Unless a decision is set aside by the Superior Court, the said decision remains binding as a precedent though may not be binding upon the parties to the proceedings where the Superior Court has granted interim order. Moreover, once a provision has been declared ultra vires the Constitution of India, the State cannot invoke the said ultra vires proceeding against the citizens of the country simply because an interim order of stay of operation order declaring the provision as ultra vires has been passed in an appeal against such order. The object of granting interim order is to see that the relief claimed in the appeal may not become inappropriate or the appeal does not become infructuous for not granting such interim order; but by mere grant of interim stay, the effect of a binding precedent is not destabilized. Over and above, the interim orders of the stay granted by the Supreme Court clearly indicate that the said Court never intended that notwithstanding the decision of the High Court declaring a part of the provisions of vesting as ultra vires the State would nevertheless be free to proceed with the process of vesting during the pendency of the proceedings before the Supreme Court and that is why status quo as regards possession has been maintained and even, the State has been restrained from creating any "third party interest" in the lands in question.

14. We, therefore, find substance in the contention of Dr. Mondal that a Division Bench of this Court having declared the provision contained in the West Bengal Land Reforms Act regarding vesting without making any lawful provision for compensation for such

vesting in the Act as ultra vires the Constitution of India, the State cannot be permitted to proceed with the said provision of vesting against the petitioners as long adequate provision is not made in the Statute for compensation.”

What we discern from the aforesaid observations of the Division Bench is that mere grant of an interim stay does not wipe out the legal efficacy of the judgment of the Division Bench declaring the said provision as *ultra vires* to Article 300A of the Constitution of India. So long as the judgment is not set aside it remains binding and recourse to the said provision is not permissible. The Division Bench has held that the State cannot proceed under the said provision by vesting the property under Section 14T(3) of the said Act unless the said order declaring the said provision to be *ultra vires* is set aside by the Supreme Court.

In view of the observation of the coordinate Bench we are unable to persuade ourselves to the observation of the Tribunal that the prayer of stay of the operation of the notice cannot be granted as it is at the zygotic stage. We are not unmindful of the proposition of law that the Court should seldom interfere at the notice/show-cause stage unless the parameters set forth by a judicial precedents are satisfied. One of the reasons where the Court should interfere is that the authority who is not vested with the power to proceed under the relevant provision has, in fact, proceeded thereunder, and therefore, we do not find that there is any impediment on the part of the Tribunal to consider the said aspect.

Since the matter is already fixed on 16.09.2022, we do not intend to keep the instant writ-petition pending and

direct the Tribunal to decide the issue if raised on the date so fixed.

We have limited our consideration to an interim order which has been refused by the Tribunal. In view of the findings of the Division Bench of this Court in ***Pijush Kanti Chowdhury (supra)*** we pass an interim order to the effect that the said authorities are restrained from proceeding any further on the basis of the said notice for a period of three months from date or until further order whichever is earlier.

The Tribunal is directed to take a decision on the interim order on the date so fixed or any other day which the Tribunal may fix. It is up to the Tribunal to take a decision on the said issues without being influenced by the fact that this Court has passed an interim order for a limited period.

With these observations, the writ-petition being **WPLRT 121 of 2022** is **disposed of**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

