

04.11.2022

WPLRT 153 of 2022

Court : 04
Item : 50
Matter : WPLRT
Status : DISMISSED
Transcriber: nandy

Swapan Jana & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Prabir Majhi, Advocate

.....for the Petitioners

Mr. Soumitra Bandopadhyay, Advocate

Mr. Araka Kumar Nag, Advocate

.....for the State

The stale claim is sought to be resurrected by filing the instant writ-petition challenging the order dated 24.11.2016 passed by the West Bengal Land Reforms and Tenancy Tribunal in OA 2476 of 2009. The proceeding was initiated initially before High Court which stood disposed of directing the predecessor-in-interest of present petitioner to file a 'B-form' before the competent authority within the stipulated time.

The dispute arose when the authorities did not take any step on the basis of the alleged filing of the 'B-form' and at the behest of the predecessor-in-interest of the present petitioner, the proceeding was filed before the Tribunal. The Tribunal time and again passed an order directing the predecessor-in-interest of the petitioner to produce the copy of the 'B-form' submitted in terms of the order of the High Court. There was a complete reluctance on the part of the predecessor-in-interest of the present petitioner in producing the copy of the 'B-form' which led the dismissal of the said tribunal application by passing the impugned order reserving the right of the predecessor to initiate a proceeding for the selfsame relief upon tracing out the copy of the said 'B-form'. Admittedly, the predecessor did not challenge the impugned order and it appears from the record that he died within two months from the said order.

Even the petitioners who succeeded to the estate of the father remain silent for such a long time and the present writ-petition is filed after a gap of nearly six years.

It is sought to be contended that after the death of the father the knowledge of the proceeding could be imputed when they met a lawyer and, thereafter, a certified copy was obtained in the year 2020 yet there has been a considerable delay in filing the instant writ-petition in the year 2022. Though there is no period of limitation provided for filing a writ-petition but the Court should be slow in entertaining a belated application and may refuse to exercise discretion under Article 226 of the Constitution on the ground of delay and laches.

A point is sought to be projected before us that the right to claim retention is a heritable one and, therefore, there is no impediment on the part of the heirs of the defendant in exercise of the power of retention under the statute. In respect of the aforesaid contention reliance is placed upon a judgment of the Division Bench rendered in the case of ***Monoranjan Belthoria & Anr. Vs. Deputy Commissioner of Purulia & Ors.*** reported in ***1979 (1) CLJ 557***. In the said report the Division Bench held that the right of an intermediary to retain the land under Section 6(1) of the West Bengal Estate Acquisition Act, 1955 is a heritable right but not an assignable right.

There is no quarrel to the aforesaid proposition that if the right to exercise the option for retention of the land is conferred upon the person, such right is heritable one as it has an impact on the heritability of the estate. The aforesaid proposition has no manner of application in the instant case for the simple reason that this Court is considering the writ-

petition in a limited compass. The sole question involved in the instant writ-petition is whether the order impugned order suffers from illegality and/or infirmity.

The predecessor-in-interest of the present petitioner was directed to submit the 'B-form' within a time-frame. He was not in a position to submit the copy of the 'B-form' which was directed to be submitted within the stipulated time and, therefore, the Tribunal instead of keeping the matter in suspended animation for all time to come disposed of the same giving opportunity to the predecessor to file a fresh proceeding after tracing out the copy of the said 'B-form'. Whether any right has accrued into the petitioner in filing a fresh 'B-form' at such state, it is open to him to take such steps and if the parties approach in this regard, the same shall be dealt with in accordance with law without being influenced by any observations made hereinabove.

Certain restrictions which have been imposed in the statute itself in relation to exercise of such right and, therefore, the observations made hereinabove shall not be construed to have whittle down such restrictions.

In view of the above, we do not find any justification in interfering with the impugned order.

The writ-petition being **WPLRT 153 of 2022** is **thus dismissed**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

