

DL-29

MAT 524 of 2023

18.08.2023
Court No.5
(AD)

**Ramesh Chandra Mondal & Ors.
Vs.
The State of West Bengal & Ors.**

*Mr. Manoj Kumar Roy
... for the appellants*

*Mr. Soumitra Bandyopadhyay
Ms. Suchana Banerjee
Mr. Aniruddha Sen
... for the State.*

The appeal is directed against the order dated November 14, 2022 passed in WPA 23168 of 2022.

By the impugned order, the learned Judge was pleased to find that, the issue raised by the writ petitioners was barred by the principles of *res judicata*. In construing the applicability of the principles of *res judicata*, the learned Judge found that, the writ petitioners filed a previous writ petition being WP 21149 (W) of 2012 which was disposed of by an order dated July 25, 2019 by the High Court. The learned Judge quoted the order dated July 25, 2019 and held that, the issue raised was barred by the principles of *res judicata*. Learned Judge held that, liberty granted to the writ petitioners to approach the Court afresh for the relief to which they were actually entitled to, by no stretch of imagination, be construed to grant opportunity to file a second writ petition for similar reliefs.

Learned Advocate appearing for the appellants relies upon (2022) 4 Supreme Court Cases 764 (*National Confederation of Officers Association of Central Public Sector*

Enterprises & Others vs. Union of India & Others) and submits that, the principles of *res judicata* are not attracted to deny the writ petitioners to right to file a second writ petition on the self-same ground.

Apparently, the primary contentions of the writ petitioners, assailing the acquisition proceedings is that, the three plots of land were never acquired by the acquiring authority and that, they did not form part of the acquisition proceedings. According to the appellants, they were not given notice under Section 4 of the Land Acquisition Act, 1894 and notices of subsequent proceedings under the Act of 1894 in respect of the three plots concerned.

Such issues were raised in the earlier writ petition. The learned Judge in the earlier writ petitions was pleased to dismiss the writ petition by granting liberty to the writ petitioners to approach the Court afresh on the self-same relief.

The issues raised by the writ petitioners were not decided in the earlier round of litigation. Therefore, it cannot be said that, the issues raised were barred by the principles of *res judicata*.

National Confederation of Officers Association of Central Public Sector Enterprises & Others (supra) is of the view that, while determining the applicability of the principles of *res judicata* in the writ jurisdiction, the Court must be conscious that issues of public interest are not lost in the woods merely because a petition was initially filed

and dismissed without a substantial adjudication on merits.

In the facts of the present case, none of the issues raised by the writ petitioners in the earlier round of litigation were decided by the Court. Moreover, liberty was granted to file afresh.

In such circumstances, we set aside the impugned order dated November 14, 2022 and remand the matter to the learned Trial Court for adjudication on merits.

MAT 524 of 2023 is disposed of without any order as to costs.

All pending applications, if any, are also disposed of.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

