

D/L
Item No. 01
24.08.2023
KOLE

**FMA 1188 of 2022
With
IA CAN 1 of 2022
Halima Khatun & Ors.
-Vs.-
The State of West Bengal & Ors.**

*Mr. S. P. Lahiri,
Mr. Habibur Rahaman,*

...for the appellants.

*Mr. Somnath Ganguli, AGP,
Mr. Sukalpa Seal,*

.... For the State.

We are told that the appellant no. 1 has passed away during the pendency of this appeal. We are also told that all the legal heirs of the appellant no. 1 are on record as appellants/writ petitioners. Hence, no question of substitution would arise. Let the name of the first appellant be struck off from the cause title of the appeal papers. Learned Advocate for the appellants is granted liberty to carry out appropriate amendment to the cause title of the appeal papers.

This is an appeal against a judgment and order dated June 23, 2022, whereby the writ petition of the appellants being WPA 14965 of 2018 was dismissed.

The appellants had approached the learned Single Judge with the grievance that the private respondents as well as the concerned Panchayat Authorities were interfering with peaceful possession and enjoyment of tea garden by the writ petitioners. The learned Single Judge noted that an

order dated June 19, 2004 has been passed by the West Bengal Land Reforms and Tenancy Tribunal on transferred writ petitions being CO 4725(W) of 1994 and CO 4726(W) of 1994. By the said order, the concerned respondent authorities were directed to hold field enquiry and ascertain whether or not the land in question is pre-dominantly being used for the purpose of tea cultivation and if it is found that the land is being used for tea cultivation, the District Land and Land Reforms Officer, Uttar Dinajpur would frame proposals under the appropriate clauses of the West Bengal Land and Land Reforms Manual, 1991 and in accordance with the circulars and orders issued, if any, by the State Government and transmit the same to the State Government in the Land and Land Reforms Department for consideration of the proposals for allowing the applicants to retain the land to the extent in the opinion of the State Government will be required by the applicants under the proviso to Section 14Y of the West Bengal Land Reforms Act, for the purpose of running their existing tea garden.

The learned Judge noted that the aforesaid exercise has yet not been completed. Accordingly, the learned Judge dismissed the writ petition with the following observations:-

“In view of the aforesaid situation it appears to this Court that how much land the petitioners are entitled to retain for tea cultivation is required to be determined before considering the grievance as ventilated by them in the present writ petition. Therefore, at this stage the present writ petition cannot be entertained and the same stands dismissed.”

Being aggrieved, the writ petitioners are before us by way of this appeal.

Learned Advocate for the appellants/writ petitioners says that the concerned Panchayat is pressurizing the appellants to attend a 'Salishi'. The Panchayat Authorities have no jurisdiction or authority to do so. The appellants apprehend that if the Panchayat Authorities are permitted to hold such 'Salishi' and if the appellants have to attend the same, the appellants may be forced to agree to something that will be against their interest.

From the affidavit of service filed in Court today, it appears that all the respondents have been served. However, neither the Panchayat Authorities nor the private respondents have appeared today.

We find some basis for the grievance of the appellants if what they say is correct. Nobody has appeared to controvert the statements and submissions made on behalf of the appellants.

We are of the view that the administrative head of the district should look into the matter. Accordingly, we grant liberty to the appellants to make a fresh comprehensive representation with supporting documents to District Magistrate, Uttar Dinajpur, being the respondent no. 2 herein, within a fortnight from date. If such a representation is made, the respondent no. 2 is directed to dispose of the same in accordance with law by a reasoned order, within a period of four weeks from the date of receipt of the representation, after giving an opportunity of hearing to the appellants herein, the private respondents or their authorized representatives as also the concerned Panchayat Authorities. The representation/application that the

appellants will make to the respondent no. 2 will be accompanied by land schedule of the plots concerned. If the respondent no. 2 finds substance in the complaint of the appellants, he will take appropriate remedial measures.

We clarify that we have not gone into the merits of the case. The respondent no. 2 shall take an informed decision in accordance with law observing the principles of natural justice. Needless to say, neither the private respondents nor the Panchayat Authorities shall take any coercive steps against the appellants or the land in question, which is contrary to law.

The order under appeal is set aside.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)