

**20.01.
2023**

Ct. No. 04

Ab

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.**

WPLRT 161 of 2022

**Sankar Barman and another
Vs.
The State of West Bengal and others.**

**Mr. Rabindranath Mahato,
Mr. Aritra Sankar Roy.
... for the petitioners.**

**Mr. Chandi Charan De,
Mr. Anirban Sarkar.
... for the State.**

**Mr. Uday Shankar Bhattacharya,
Mr. Asim Kumar Ghosh.
... for the respondent no. 4 & 6.**

The instant writ petition is directed against an order dated 29th August 2022 passed by the West Bengal Land Reforms and Tenancy Tribunal in OA 2481 of 2022 by which the order impugned before the Tribunal was stayed till the next date, which is fixed on 30th August 2023.

A proceeding was initiated before the competent authority relating to the rectification of the record of rights on the strength of title derived from the deeds, which, according to the petitioners, were declared as invalid by the competent Civil Court.

It is not in dispute that an appeal against the decree of the Civil Court is pending before the learned Additional District Judge, Special Court at Paschim Medinipur. It is also not in dispute that there is no order of stay of operation of the decree passed by the appellate Court.

In the meantime, a proceeding was initiated under

the West Bengal Land Reforms Act, which culminated into an order for rectification and/or modification of the entry made in the record of rights. The order of the competent authority was challenged before the appellate authority under Section 54 of the said Act and the said appellate authority after setting aside the order of the competent authority remanded the matter with a direction to restore the original entry, which was rectified and/or modified by the said order. The order of remand was the subject matter of challenge before the Tribunal.

The blanket order of stay of such nature in effect tantamount to allowing the tribunal application and a person, who emerged successful in the lower tier of the adjudicatory system, shall be deprived of the usufruct of the said order simply because a right of challenge to a higher forum is provided in the statute. The Court must strike a balance between the rights of the parties and in pursuit of preserving such right may modify the order or put certain conditions as warranted in the facts of the each case.

The serious questions have been raised and, therefore, the blanket order of stay should not have been granted in the manner as has been done by the Tribunal in the impugned order.

We, therefore, modify the order dated 29th August 2022 to the extent that any action taken by the competent authority in terms of the order passed by the appellate authority shall be subject to the result of the said tribunal application and the directions to be passed therein in this regard.

With such observations, the writ petition is disposed of.

For abandon precaution we hereby make it clear that all points available to the parties are kept open as we had no occasion to go into the same and if taken, shall be decided by recording proper reasons in

accordance with law.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)