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Ct. No. 04

akd

WPLRT 173 of 2022

Smt. Mayarani Sardar

Vs.

The State of West Bengal & Ors.

Mr. Asit Kumar Bhattacharyya.

... for the petitioner.

Mr. Animesh Mukherjee,

Mr. Md. Ali Ahasan.

... for the private respondents.

We have been noticing from several orders passed by the West Bengal Land Reforms and Tenancy Tribunal that an uniform standard in passing an order is consistently adopted by directing the Government representative obviously the respondents in the proceeding to submit the status report.

We are informed by an appearing Counsel, who frequently appears before the said Tribunal, that such status reports are called for, which is neither verified by an affidavit nor a copy thereof is made available to take an exception thereto.

If such course is adopted and the reliance is placed on such status report and the disposal is secured, it not only amounts to violation of natural justice, but also adoption of a procedure unknown in legal parlance.

If the Tribunal construed the status report as an exact state of affairs in relation to a dispute, there is no impediment on the part of the Tribunal to direct the respondents to disclose such facts on oath by filing an affidavit, so that it would give an ample opportunity to the petitioner to controvert or disclose his stand thereupon. Using the status report as a document concerning the Members of the Bench only without making available to the writ petitioner is unjust enrichment upon the right accrued to the writ

petitioner in an adversarial system of adjudication governed by its procedural and substantive law.

In the instant case solely on the basis of the status report the tribunal application is adjourned sine die till the disposal of the Title Suit pending before the Court without ascertaining whether the interim order passed in the Title Suit has any bearing on the issues raised in the said tribunal application.

Mere passing an order of status quo does not mean that it would forestall the proceeding pending before the forum, but the status quo must be understood in the perspective of the facts pleaded in the plaint as well as the application for temporary injunction. Though the expression “status quo” is an expression of ambiguity, yet it is capable of being ascertained on the basis of the pleadings of the respective parties.

The aforesaid Title Suit No. 174 of 2009 was filed before the Civil Court for partition on separation of shares. It has got no nexus so far as the entry in the Record of Rights is concerned; as such entry neither creates title into a person nor extinguishes the same. An application for temporary injunction is taken out alleging that the co-sharer is trying to make construction over the undivided property and also trying to disposses the plaintiff without taking recourse to law. On the basis of the aforesaid allegations or averments made therein the order of status quo was passed in relation to the present position and the possession of the suit property till the disposal of the suit.

The expression “present position” cannot be construed in relation to the entry made in the Record of Rights, as such expression would mean in relation to a construction allegedly attempted to be made in

respect of the joint property. Any other interpretation would render the said order to operate beyond the peripheral thereof and would be construed so wide to imbibe within itself all conceivable eventualities.

We thus do not find any fetter on the part of the Tribunal to hear out the tribunal application as the judgement, preliminary decree or final decree passed in the partition suit shall not impact the decision to be taken in the tribunal application on merit.

We, therefore, set aside the impugned order and direct the Tribunal to fix the date for hearing of the said tribunal application and effort shall be shown to dispose of the same within six months from the date of the communication of this order after affording an opportunity of pleadings to be filed, if requires, and hearing to the respective parties.

With the above observations, the writ petition is disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

