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gd/ssd

MAT/1978/2022
IA NO: CAN/1/2022
ANANTA SINGH AND ORS.
VS
STATE OF WEST BENGAL AND ORS.

Mr. Biswarup Biswas,
Mr. Kajal Ray
..for the Appellants.

Mr. Debasis Das,
Mr. Jayanta Kumar Das,
Ms. Madhumanti Das
..for the Respondent Nos.10 to 22.

This intra court appeal is at the instance of the private respondents challenging the order of the learned Single Judge dated 5th December, 2022 whereby in WPA 19994 of 2022 a direction has been issued to Superintendent of Police, Paschim Medinipore to depute sufficient force to the Sabang Police Station to evict the appellants from the subject land. It has further been directed that if necessary the SP may also call for the assistance of any other State force for the aforesaid purpose.

The facts in nutshell are that there was vesting of subject land which was later set aside by the West Bengal land Reforms and Tenancy Tribunal and in consequence thereof the pattas which were allotted to the appellants were cancelled. The writ petitioners had approached learned Single Judge by filing WPA 19994 of 2022 seeking a direction to the police to recover the possession of the land in question from the appellants

and hand over the same to the writ petitioners.

Learned Single Judge has by the impugned interlocutory order allowed the said prayer.

Submission of learned counsel for the appellants is that the writ petitioners have the remedy before the Tribunal in terms of Section 10 read with Section 6 of the West Bengal land Reforms and Tenancy Tribunal Act, 1997 and in the identical circumstances the Division Bench of this Court in the matter of *Swapan Chakraborty v. The State of West Bengal* reported in 2022(2) CHN (CAL) 199 has already held that the remedy of writ is not the proper remedy and the concerned person should approach the Tribunal for such a relief.

Learned counsel for the respondents (writ petitioners) supporting the order of the learned Single Judge has submitted that after the cancellation of patta in terms of Section 49(2) of the West Bengal Land Reforms Act, 1955, since the possession was not delivered, though several communications were sent by the revenue authorities to the police authorities, therefore, the writ petition was filed which was maintainable in view of the fact that it is a case for police inaction.

We have heard the learned counsel for the parties and perused the materials on record.

In the present case, the Revenue Officer empowered under the provisions of West Bengal Land Reforms Act, 1955 had passed the order dated 11.09.2018 noting that no vesting of property in question exist and also finding that the patta holders were in possession of the suit land and had annulled the patta in terms of Section 49(2) of the Act of 1955. Record further reflects that initially the writ petitioners had approached the Tribunal by filing an application being OA No.1865 of 2020 with a prayer to issue a direction to the concerned police authorities for rendering assistance for delivery of possession in pursuance to the order passed under Section 49(2) of the Act. The said application was entertained by the Tribunal but the writ petitioners had withdrawn the same on 09.11.2021 on the plea that there was some formal defects in the application, with liberty to approach the appropriate forum on observing all legal formalities and impleading all necessary parties. Thereafter instead of approaching the Tribunal, the writ petitioners had filed the present writ petition.

Learned counsel for the writ petitioners have pointed out that the order of the revenue authority passed under Section 49(2) of the Act was subject matter of challenge in appeal before the Tribunal at the instance of the appellants but the said appeal was

dismissed in default on 27.12.2022.

Plea of the learned counsel for the appellants is that the appellants were not aware of the dismissal of appeal since the same was dismissed during the Covid period and now they will apply for restoration of appeal.

A perusal of Section 49 of the Act of 1955 reveals that on annulment of patta under Section 49(2) of the Act the Revenue Officer is empowered under Section 49(3) to approach delivery of possession of such land to the Collector by using such force as may be required after evicting the person in actual occupation of such land. Sub-section (3A) thereof empowers the Revenue Officer to obtain the police help for this purpose.

Applicability of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 is not in dispute. Section 6 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 deals with the jurisdiction, power and authority of the Tribunal and empowers the Tribunal to take action in respect of the specified Act. The West Bengal Land Reforms Act, 1955 is a specified Act under Section 2(r) of the Act of 1997. In terms of Section 6(1) of the Act of 1997 the Tribunal has the jurisdiction in any matter relating to any order made by the authority under the specified Act. In this case order under Section 49(2), which is sought to be enforced by seeking police help, has been made under the specified

Act. Under Section 6(b) the Tribunal has jurisdiction to entertain an application complaining inaction and culpable negligence of an authority under the specified Act. Hence, if there is inaction even after the order under Section 49(2) of the Act, the remedy lies under Section 6(b) of the Act. Hence, the writ petitioners have the remedy of filing an application under Section 10 before the Tribunal which, in fact, the writ petitioners had earlier filed but had withdrawn on the plea of formal defects. The said application was withdrawn with liberty, therefore, the option of approaching the Tribunal under Section 10 with the proper application was open to the writ petitioners.

The aforesaid issue has been settled by the Division Bench of this Court in the matter of *Swapan Chakraborty* wherein the Division Bench in the similar circumstances has in a case where the appellant was seeking enforcement of an order passed under Section 49(2) of the Act of 1955, has reached to the conclusion that the proper forum for such a relief would be the West Bengal Land Reforms and Tenancy Tribunal and not the High Court under Article 226 or Article 227 of the Constitution of India.

The reliance of the learned counsel for the writ petitioners under Section 10(3) of the Act of 1997 is misplaced because the writ remedy cannot be said to be

covered under sub-section (3) of Section 10.

In the aforesaid circumstances of the case, we are of the opinion that since there is a specific remedy available under the Act, therefore, the writ petitioners are required to avail that remedy and unless the writ petitioners are able to make out a special case for bypassing the said statutory remedy and approaching the Writ Court, a petition under Article 226/227 is normally not maintainable.

Hence, the order passed by the learned Single Judge under challenge is set aside with liberty to the writ petitioners to approach the Tribunal seeking the redressal of the grievance in accordance with law.

We make it clear that if the appellants apply for restoration of their appeal, then the appeal of the appellants and the writ petitioners will be decided together by the Tribunal in accordance with law expeditiously.

The appeal is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

