

**IN THE HIGH COURT OF CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

and

The Hon'ble Justice Md. Shabbar Rashidi

W.P.L.R.T. 5 of 2023

With

W.P.L.R.T. 6 of 2023

Prosanta Kumar Ghosh & ors.

Vs.

The State of West Bengal & ors

For the Petitioners : Mr. Sourav Sen, Adv.
: Mr. Alok Bhowmik, Adv.

For the State : Mr. Hirak Barman, Adv.
(W.P.L.R.T. 5 of 2023) : Mr. Pretom Das, Adv.

For the State : Mr. Momenur Rahman, Adv.
(W.P.L.R.T. 6 of 2023) : Mr. Bedashruti Bose, Adv.

Hearing concluded on : November 20, 2023

Judgment on : November 30, 2023

Md. Shabbar Rashidi, J.

1. The two writ petitions are directed against an order dated September,19, 2023 passed by the West Bengal Land Reforms and Tenancy Tribunal (WBLRTT) in OA 2493 of 2023 (LRTT).
2. By the impugned order the learned Tribunal disposed of the OA granting the writ petitioner a liberty to prefer statutory appeal in terms of Section 54 of the West Bengal Land Reforms Act, 1955 keeping all the points open for adjudication by the appellate authority. The tribunal while passing the impugned order took note of the provisions of Section 10(3) West Bengal Land Reforms and Tenancy Tribunal Act, 1997 and negated the prayer of the petitioner.
3. It is the case of the writ petitioner that the predecessor-in-interest of the petitioner brought a suit against the State of West Bengal represented by the Collector/Deputy Commissioner, Darjeeling and others concerning the lands in question. The suit being Title Suit No. 9 of 1990 pending before the court of learned

Civil Judge (Junior Division), Silliguri within the district of Darjeeling, was contested by the Executive Engineer, Agri Irrigation Department Division, Jalpaiguri by filing written statement.

4. Initially, the suit was dismissed by the learned trial court by a judgment and decree dated July 17, 1999. The predecessor-in-interest of the petitioner preferred an appeal before the learned District Judge, Darjeeling. Later on, the appeal being O.C. Appeal No. 19 of 1999 was transferred to and disposed of by learned Second Additional District Judge, Silliguri, Darjeeling.

5. By the judgment and decree dated June 20, 2001, the learned first appellate court allowed the appeal being O.C. Appeal No. 19 of 1999 and remanded the original Suit back for fresh consideration.

6. Being dissatisfied with the judgment and decree dated June 20, 2001 passed in O.C. Appeal No. 19 of 1999, the State carried an appeal before the High Court being FMAT No. 3774 of 2001 renumbered as FMA No. 1679 of 2003. During the pendency of such appeal, since

there was no stay order, learned trial court proceeded with the original Suit on remand and by its judgment and decree dated August 24, 2006, the learned trial court again dismissed the suit on remand.

7. Against such dismissal of the suit on fresh trial, the predecessor-in-interest of the petitioner again carried an appeal before the learned District Judge, Darjeeling being Title Appeal No. 27(S) of 2006. The said appeal was subsequently transferred to the court of learned 1st Additional District Judge, Siliguri for disposal. The learned appellate court, by its judgment and decree dated March 25, 2009, allowed the appeal and decreed the suit.

8. The predecessor in interest of the writ petitioner put the decree into execution on and from June 09, 2009. There has been repeated objections and resistance in the execution of the decree at the behest of the State defendant. The predecessor in interest of the writ petitioner had to approach the court several times over a period of time to get the decree executed with police help. At the same time, the judgment debtor/State also

preferred several objections against the execution which also went upto the High Court in its revisional jurisdiction vide C.O. No. 2277 of 2016. By an order dated February 22, 2017 passed in the said Revisional Application, the learned executing court was directed to fix up 15 consecutive dates for demolition of existing structures and delivery of possession of the suit properties. Finally, after the order so passed in the Revisional Application, the decree was executed and the predecessor-in-interest of the writ petitioner was put in possession of the suit properties.

9. The predecessor-in-interest of the writ petitioner, on February 28, 2019 applied before the appropriate authority for mutation of his name in respect of the suit properties which was negated on the ground that the suit land stood recorded in the name of the BDO, Silliguri Naxalbari Block.

10. The predecessor-in-interest of the writ petitioner preferred an Original Application before the learned Tribunal being OA No. 204 of 2020 seeking directions

upon the authorities concerned to mutate the name of predecessor-in-interest of the petitioner in respect of the suit lands within a time frame. The said OA was disposed of on January 09, 2023 directing disposal of the mutation application in the manner as directed in the order. The predecessor-in-interest of the petitioner filed a writ application being WPLRT No. 02 of 2023 which is pending.

11. The predecessor-in-interest of the writ petitioner also filed two separate applications for mutation being Misc Case No. 149 of 2023 and Misc Case No. 150 of 2023. The two applications were rejected by the appropriate authority under Section 50 of West Bengal Land Reforms Act, 1955, Matigara Block by its order dated July 03, 2023.

12. Being dissatisfied with such order of rejection, the predecessor-in-interest of the petitioner preferred an Original Application being OA 2493 of 2023 invoking the exemption clause envisaged under Section 10 (3) of the Land Reforms and Tenancy Tribunal Act, 1997. The said

OA was disposed of by the impugned order directing the petitioner to resort to the available alternative remedy of an appeal.

13. The predecessor-in-interest of the petitioner died on September 27, 2023 being survived by the writ petitioner.

14. It was contended on behalf of the petitioners that learned Tribunal failed to consider the provision under Section 10(3) of the said Act of 1997 in refusing to grant relief to the petitioner. It was also contended on behalf of the petitioners that learned Tribunal failed to take into consideration the undue hardship likely to be suffered by the petitioner in preferring the statutory appeal. It was also submitted that the petitioners or his predecessor-in-interest have been litigating since 1990 against the respondent, State of West Bengal. The predecessor-in-interest of the petitioner brought the civil suit against the State, which ultimately resulted in a decree in favour of the petitioners. After taking all the objections, the litigations have come to an end and the State of West

Bengal has accepted the order of the Civil Court. The decree passed in the Civil Court was executed in front of the State; and the predecessors-in-interest of the petitioners received possession of the suit properties. The authorities cannot turn there back and deny mutation of the suit lands in favour of the petitioners.

15. In respect of their contention, the petitioners relied upon **2003 SCC Online Cal 460 (Siba Prasad Sahoo vs. State of West Bengal)** and unreported decision rendered by Calcutta High Court in WPLRT 81 of 2021 in the case of **(Biswa Sekhar Mondal versus State of West Bengal).**

16. As noted above, the predecessors-in-interest of the petitioners brought a civil suit concerning the two suit properties which was initially dismissed but later on, the suit was decreed in appeal. The predecessor-in-interest of the petitioners sought for execution of the decree and upon a series of litigations, the predecessor-in-interest of the petitioner was to be in possession of the suit properties upon demolition of the existing structure and

disconnection of the electric connection lying in the suit premises. The suit was decreed on appeal by judgment dated September 25, 2009 in Title Appeal No. 27(S) of 2006.

- 17.** Thereafter, the predecessor-in-interest of the petitioner moved an application for execution of the decree which was vehemently opposed on behalf of the State. The predecessor-in-interest had to seek direction for disconnection of the electric connection lying in the suit premises, demolition of the existing structure thereon and also for execution of the decree with the help of police. In course of such execution, the schedule of the land was demarcated, identified and measured by the Government Amin. The aforesaid litigation reached up to the High Court in civil revisional applications which were disposed of by another order and judgment dated September 29.02.2015 at the behest of the State. The aforesaid bunch of revisional applications were dismissed by the High Court as the High Court cannot find any substance in the submission made on behalf of the

judgment debtor. The predecessor of the petitioner also preferred a revisional application being CO 227 of 2016 in connection with an order passed by learned Executive Court to fix at least 15 consecutive dates for execution of the decree passed in favour of the predecessor of the petitioner with liberty to fix additional dates if required. The learned Executive Court was directed to conclude the execution since within a time framed. Ultimately, a decree was executed in terms of the directions of the High Court in CO 227 of 2016. The existing structures were demolished and the predecessor of the petitioner was putting physical possession of the suit property.

- 18.** The predecessor of the petitioner made representations before the concerned BL & LRO seeking mutation of the suit lands and its failure but predecessor of the petitioner moved the learned Tribunal by OA No. 204 of 2020 (LRTT). The State respondent made out a case in the said original application that the same was not maintainable as the land in question was not identified. However, the said OA was disposed of by an

order dated January 09, 2023 directing the BL & LRO, Matigara to dispose of the representation within six months. In spite of such directions, mutation of the suit properties were refused. The predecessor of the petitioner moved two separate pro forma applications for mutation of the two suit plots.

- 19.** Upon hearing, the two applications were rejected by the prescribed authority under Section 50 of the WBLR Act, 1955 and the prayer of the predecessor of the petitioner also was rejected mainly on the ground that the land sought to be mutated was recorded in the name of BDO, Silliguri Naxalbari Block. The prescribed authority also found that the petitioner was in possession of two LR plots but he had applied for mutation in respect of only one plot. It was also expressed by the prescribed authority that he had not received any correspondence against his letter seeking information regarding the details of the land acquired in favour of the erstwhile BDO. For the aforesaid reasons the prescribed authority rejected the prayer for mutation made on behalf

of the predecessor of the petitioner and at the same time, the applicant afforded liberty to prefer an appeal under Section 54 of the West Bengal Land Reforms Act.

20. The predecessor of the petitioner, instead of preferring an appeal under Section 54 of the WBLR Act approached the tribunal in OA No. 2493 of 2023. Although a case of undue hardship was made out by the petitioner, nevertheless, the learned Tribunal dismissed the OA granting the petitioner liberty to prefer an appeal under Section 54 of the West Bengal Land Reforms Act, 1955.

21. In the backdrop of the aforesaid facts, the point which has fallen for consideration by this Court is whether the learned tribunal was justified in dismissing the original application and passing the impugned order granting liberty to the predecessor of the petitioners to prefer a statutory appeal.

22. It is not denying that the predecessor of the petitioner has been litigating over the suit properties for a considerable period of time i.e. since 1990. So, also the

respondent State has been contesting the aforesaid litigations. Upon a series of litigations, the right and title of the predecessor of the petitioners was fructified in a decree. Even after the decree was finalized the predecessor of the petitioners had to undergo series a litigation for getting possession over the suit properties. The said respondent used every arrow in their cannon in the series of litigations with the predecessor of the petitioners. The petitioner got possession of the suit properties in the year 2017. The State having failed in every litigation, objection etc. seems to deny the fruits of the hard fought litigation by the predecessor of the petitioners by negating his prayer for mutation of the suit properties. The right and title of the petitioners over the suit properties has been finalized after such litigations and the State has had no option left but to accept the same. It is now the State has been trying to defraud and delay the petitioners, from enjoying the fruits of prolonged litigations in spite of a decree from a competent civil court. By their actions the State is not

only denying the petitioners their legal entitlement but at the same time they are defrauding the due process of law and unreasonably challenging the authority of a competent court, which cannot be allowed.

23. Section 10 of the Act of 1997 reads as follows:

“10. Application to Tribunal.-

(1) Subject to the provisions of section 6 and other provisions of this Act, a person aggrieved by any order passed by an Authority or any action taken either by an Authority or by the State Government may prefer an appeal to the Tribunal for the redressal of his grievance.

(2) Every application under subsection (1) shall be made within sixty days from the date on which such order was passed or such action was taken, as the case may be, or within such further time as may be allowed by the Tribunal for cause shown to its satisfaction, and shall be made in such form, and shall be

accompanied by such fee, as may be prescribed.

(3) Save as expressly provided in this Act, the Tribunal shall not admit an application referred to in sub-section (1) unless it is satisfied that –

(a) the applicant has availed of all remedial measures available to him under the relevant specified Act, and (b) the remedial measures available under the provisions of the relevant specified Act are not adequate or shall cause undue hardship to the applicant.

(4) The Tribunal may, if it is satisfied after such enquiry as it may deem fit that requirements under this Act and the rules made thereunder are complied with in relation to the application referred to in sub-section (1), admit such application, but where the

Tribunal is not so satisfied, it may reject the application summarily giving reasons therefor.

(5) Where an application under sub-section (1) has been admitted by the Tribunal, it shall decide and dispose of such application as expeditiously as possible, and ordinarily within six months from the date of such admission or from the date of receipt of records from the concerned Authority or the State Government, as the case may be.

(6) While deciding the application under sub-section (5), the Tribunal shall issue such direction, or pass such order, as it may deem fit.

(7) Notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any

proceeding relating to, an application made under sub-section (1) unless –

(a) copies of such application and of all documents in support of the plea for such interim order are duly furnished seven days in advance to each of the parties against whom such application is made or is proposed to be made;

(b) an opportunity of being heard is given to each of the parties against whom such application is made: Provided that the Tribunal may pass an interim order as an exceptional measure if it is satisfied for reasons to be recorded in writing that it is necessary so to do for preventing any loss being immediately caused to the applicant:

Provided further that if the application referred to in sub-section (1) is not

decided and disposed of within a period of six months from the date of 10 the interim order, the interim order shall, if it is not vacated earlier, stand vacated on the expiry of the period as aforesaid unless, for special reasons or in the interest of justice, the interim order is varied, modified or extended by the Tribunal.”

24. In the case of **Siba Prasad Sahoo (supra)**, it was held by the High Court that,

“21. On a perusal of the provisions of section 10(3), clauses (a) and (b) of the Tribunal Act, it is clear that there is no absolute bar on the part of the Tribunal to entertain a proceeding even without exhaustion of remedial measures under the relevant specified Act. Clauses (a) and (b) of sub-section (3) of section 10 of the Tribunal Act contemplate two different situations.

Under clause (a) of sub-section (3) of section 10 the Tribunal will not admit an application, unless the Tribunal is satisfied that the applicant has availed of all remedial measures available under the relevant specified Act in respect of the decision, which is challenged. But under clause (b) the Tribunal has a discretion. If the Tribunal is satisfied that the remedial measures are not adequate or cause undue hardship to the applicant the Tribunal may admit the application. Therefore, the Tribunal is competent to take into its consideration the following aspects—

(a) Whether, the remedial measures provided under the provisions of the specified Act are adequate?

(b) It is obvious that the question of adequacy must have a direct nexus with the claim of the applicant. In other words, the applicant can move the Tribunal, without exhausting the remedial measures, if the applicant satisfies the Tribunal that the

remedial measures are not equally efficacious or where the remedial measures do not provide a forum, which can effectively deal with the grievances of the applicant, say for instance, where the remedy may be one from 'Ceaser to Ceaser' or that the so called remedy provided is no remedy in fact.

(c) Now on the question of undue hardship, the Tribunal can also consider whether the remedy fastens such a financial burden on the applicant as to make the remedy illusory or meaningless.

22. Therefore, on a proper consideration of the aforesaid clauses, viz. clauses (a) and (b) of sub-section (3) of section 10 of the Tribunal Act, the Tribunal can entertain an application at the instance of an applicant if he/she satisfies the Tribunal that remedial measures under the specified Act are not adequate or causes undue hardship to the applicant."

25. Similarly, in the case of **Biswa Sekhar Mondal (supra)**, it was noted that,

“12. In other words, notwithstanding an applicant presenting an application under sub-section (1) of the Act of 1997 not availing of the remedial measures under the relevant specified statute a Tribunal may admit, hear and dispose of such an application, if it is satisfied that the remedial measures available are not adequate or shall cause undue hardship to the applicant. Satisfaction of any of the two conditions of clause (b) of sub-section (3) obliges the Tribunal to admit the application.

13. While rejecting an application at the admission stage the Tribunal is

***required to consider sub-section (3)
and particularly both the clauses
therein and give reasons in relation to
them.”***

26. Therefore, taking into consideration the amount of hardship already suffered by the petitioner and his predecessor, the series of litigations and order passed therein and also in view of the ratio laid down in the case of **Siba Prasad Sahoo (supra)** and **Biswa Sekhar Mondal (supra)**, we set aside the impugned order passed by the learned Tribunal. We direct the State to mutate the name of the petitioner in respect of the suit properties abiding the judgment and decree passed in the aforesaid suit within four weeks from the date of communication of this order to the BL and LRO.

27. Accordingly, the two writ petitions being **W.P.L.R.T. 5 of 2023** and **W.P.L.R.T. 6 of 2023** are disposed of.

28. Urgent certified photocopies of this judgment and order, if applied for, be given to the parties upon compliance of the requisite formalities.

Md. Shabbar Rashidi, J.

29. I agree.

Debangsu Basak, J.