

08.08.2024

Item No.23

Crt.No.02

b.r.

WPA 2391 of 2023

Manoj Kumar Singh & Anr.

-vs-

The State of West Bengal & Ors.

Mr. Ashoke Kumar Banerjee, Sr. Adv.

Mr. K. Bose

Mr. Syed Arif Ahamed

..... for the petitioners.

Mr. Ashim Kumar Ganguly, Ld. AGP

Mr. Subrata Dasgupta

.... For the State-Respondents.

Mr. Ashoke Kumar Banerjee, learned Senior counsel, appears for the petitioners.

Mr. Ashim Kumar Ganguly, learned Additional Government Pleader, appears for the State-Respondents.

The instant writ petition has been filed with the following reliefs:-

“(a) a writ/order/direction in the nature of Mandamus commanding the concerned respondents especially respondent no.4 to consider the representation dated 14.12.2022 in accordance with law;

(b) issue a writ/order/direction in the nature of Mandamus to cancel the impugned notice dated 14th October, 2014, issued by the respondent no.3, Sub-Divisional Land and Land initiating fresh proceeding under Section 44(2A) and 57 of the West Bengal Estates Acquisition Act being Annexure ‘P-25’ of this application as the

identical notice was quashed by the Hon'ble Division Bench on 03.0-2.2014;

(c) Issue a writ/order/direction in the nature of Mandamus commanding the respondents respondent no.3 to show cause as to why instituting repeated proceedings for vesting under the West Bengal Estates Acquisition Act;

(d) A writ in the nature of Certiorari commanding the concerned respondent authorities to produce all records relating to the petitioner's case and on such production being made render conscionable justice on perusal of the same;

(d) An interim order in terms of prayer (a), (b) and (c) above;

(e) Rule NISI in terms of prayer

(e) and (f) above;

(f) Costs incidental to the issue;

(g) To pass such other or further order or orders as to your Lordships may deem fit and proper."

The representation of the petitioners dated **December 14, 2022, annexure p-25 at page-143** to the writ petition shows that the petitioners have already filed proceeding before the jurisdictional **Land Reforms and Tenancy Tribunal**. Learned counsel for the petitioners inform this Court that the proceeding had already been registered as **OA No. 3324 of 2014 (LRTT)** pending before the **Tenancy Tribunal**. The grievance of the petitioners that the Tribunal has kept this

proceeding pending **since 2014** and the jurisdictional Benches are not available regularly.

Learned Senior counsel referring the case made out in the writ petition submits that the grievance raised by the petitioners before the Tribunal is that the respondent authorities have taken steps in respect of their lands wholly without jurisdiction and in gross violation of the relevant provisions of the **West Bengal Estates Acquisition Act, 1953** and without following the provisions thereunder. He submits that this is a jurisdictional error and the action of the respondents are wholly without jurisdiction, therefore this writ petition is maintainable. He submits that High Court in exercise its jurisdiction under **Article 226 of the Constitution of India** has the power to issue a writ of mandamus and or a writ in the nature of mandamus or to pass necessary directions where the Government, a public authority has failed to exercise or has wrongly exercised its discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion *mala fide* or on irrelevant considerations or by ignoring the relevant considerations and materials or in such manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases the writ petitions are entertained. In support, he

has relied upon a decision of the Hon'ble Supreme Court, ***In the matter of: The Comptroller and Auditor General of India, Gian Prakash, New Delhi and another, -vs- K.S. Jagannathan and another, reported in AIR 1987 SC 537.***

Mr. Ganguly, learned Additional Government Pleader appearing for the respondents has raised the point of maintainability of this writ petition. Referring to **Section 2(r) of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997**, he submits that any disputes arising out of the **West Bengal Estates Acquisition Act, 1953** shall be applied for redressal before the jurisdictional **Land Reforms and Tenancy Tribunal** constituted under the said **1997 Act**. Therefore, this writ petition is not maintainable and the petitioners shall address their grievance in the pending proceeding before the jurisdictional **Land Reforms and Tenancy Tribunal**.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that admittedly the petitioners have already initiated **OA No. 3324 of 2014** where the entire grievances of the petitioners are canvassed before the jurisdictional statutory forum.

It is no doubt that an alternative remedy cannot stand as an absolute bar to entertain a writ petition and

it is the self-imposed restriction by the High Court in exercise of its jurisdiction under **Article 226 of the Constitution of India**. Wherever and whenever, if the High Court finds a palpable wrong on the part of the State authority, it can definitely entertain a writ petition and issue mandamus and/or other writs. It is also settled that the writ petition is a summary procedure.

From the disputes raised through this writ petition, this Court is also of the view that to adjudicate upon such disputes several fact finding enquiries may have to be conducted and the jurisdictional **Tenancy Tribunal** has that authority in law, which the writ Court cannot do. Moreover, a substantive proceeding is pending before the jurisdictional Tribunal.

In view of the foregoing reasons and discussions, this Court is of the view that this writ petition is not to be entertained by this Court in exercise of authority under **Article 226 of the Constitution of India** when the speedy, efficacious and alternative statutory remedy has already been availed of by the petitioners.

The jurisdictional **Tenancy Tribunal** shall commence the hearing of the proceeding within a period of **three weeks** from the date of communication of this order and shall come to its logical conclusion, in accordance with law, as expeditiously as possible but not later than **one year** from the date of commencement

of the hearing. There shall be no unnecessary adjournment.

In the event, the jurisdictional Bench is not available, the **learned Chairman of the Tribunal** shall assign the matter before a regular Bench for its expeditious disposal.

It is made clear that this Court has not gone into the merits of the writ petition. The parties to the said original proceeding pending before the jurisdictional Tenancy Tribunal shall be at liberty to urge their respective points. The Tribunal shall not be influenced by any observations, made by this Court and shall decide the matter independently in accordance with law.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition, **WPA 2391 of 2023** stands **disposed of**, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)