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03.01.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 5821 of 2023

Smt. Sudha Rai
Vs.
The State of West Bengal & Ors.

Mr. S.T. Mina,
Mr. Pratick Sardar
...for the petitioner

Mr. Shamim ul Bari
...for the State

1. Learned counsel appearing for the petitioner contends that the petitioner is a thika tenant in respect of the property-in-dispute.
2. By the impugned memorandum dated July 11, 2016, it was observed that a previous proceeding under the Thika Tenancy Act was dropped by the order of the Deputy Controller of the Thika Tenancy Department, Howrah, dated March 03, 2014. It was erroneously observed that as no fresh returns were filed by any of the previous returnees, the land in question was declared non-thika land.
3. It is argued that it is further mentioned in the memorandum that hearing was again conducted on an application filed by some of the legal heirs of Shiv Gobind Rai, the original thika tenant, and again order was passed on March 17, 2016. It is

argued that the petitioner was never heard prior to passing such purported order.

4. The petitioner further submits by relying on the averments in paragraph no. 12 of the writ petition that the petitioner, only after applying under the Right to Information Act, learnt about the Memorandum and got a copy of the same, which resulted in the delay in preferring the present writ petition. It is argued that under Section 5(3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001, read with Rule 3 of the West Bengal Thika Tenancy (Acquisition and Regulation) Rules, 2004, the petitioner has to be given a hearing and the modalities as stipulated therein are to be followed before any question is decided as to whether a person is a thika tenant or not.

5. Heard learned counsel for the parties.

6. Although the State takes an objection as to the long delay in filing the present writ petition, this Court is satisfied that the explanation given in paragraph no. 12 of the writ petition is sufficient to justify the delay on the part of the petitioner, who is a layman in law and only got a copy of the memorandum after applying under the Right to Information Act.

7. The contention of the petitioner is justified in as much as under Section 5(3) of the 2001 Act, if any

question arises as to whether a person is a thika tenant or not or whether the land in question is a thika land or not, the Controller, either on his own motion or upon receiving any information may, after giving the person interested an opportunity of being heard and after examining all such documents and particulars, as may be considered necessary, can enquire upon and decide such question.

8. In view of the same having not been adhered to in the present case, the impugned Memorandum is required to be set aside.

9. Accordingly, W.P.A. No. 5821 of 2023 is allowed, thereby setting aside the impugned Memorandum dated July 11 of 2016, annexed at page 33 of the writ petition.

10. However, it is made clear that nothing in this order shall prevent the Thika Controller from undertaking a fresh proceeding for deciding the question as to whether the petitioner is a thika tenant in respect of the property or not.

11. However, prior to deciding on such issue, the Controller has to adhere to the provisions of Section 5(3) of the 2001 Act, read in conjunction with Rule 3 of the 2004 Rules, as mentioned above.

12. There will be no order as to costs.

13. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)