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16.05.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No 7256 of 2024

Kusum Saha

Vs.

The State of West Bengal & Ors.

Mr. Arjun Roy Mukherjee,

Mr. Asif Dewan,

Mr. A. Sarkar

...for the petitioner

Mr. Omar Faruk Gazi,

Mr. Abhisekh Tikadar

...for the respondent no. 5

1. Affidavit-in-opposition and affidavit-in-reply filed today be kept on record.
2. However, in view of the stand taken by the petitioner, the merits of the matter need not be gone into.
3. Learned counsel appearing for the petitioner fairly submits that although the writ petition had been entertained primarily on the ground of purported lack of jurisdiction of the Sub-Divisional Officer to pass the impugned order, it transpires subsequently that by virtue of Section 9(1) of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994, the Sub-Divisional Officer does have power to pass such order.

4. Learned counsel for the petitioner also places before the Court a judgment of this Court dated February 25, 2021 passed in W.P.A. No. 15952 of 2018, where a similar proposition was laid down, holding that the powers and constitution of a State Scrutiny Committee under Section 8A of the 1994 and the powers of the Sub-Divisional Officer under Section 9(1) of the said Act operate in different fields.

5. Thus, learned counsel for the petitioner fairly does not press the jurisdiction point.

6. It is also submitted that the challenge now refers only to the merits of the orders passed by the Sub-Divisional Officer, for which the petitioner has an adequate alternative remedy by way of an appeal by virtue of the amended section 7F of the 1994 Act, which amendment came into force by a Notification dated October 14, 1996.

7. Thus, the petitioner seeks to explore her remedy before the appellate authority.

8. Upon hearing learned counsel for the parties, it transpires that the very fact that the writ petition was entertained indicates that there was a bona fide scope of doubt as to the authority of the Sub-Divisional Officer.

9. Thus, it cannot be said that the attempt of the petitioner to file a writ petition instead of a

statutory appeal was mala fide or actuated by any motive to protract litigation.

10. In such view of the matter, W.P.A. No 7256 of 2024 is disposed of by granting liberty to the petitioner to approach the appellate authority, as provided in the amended 1994 Act, against the impugned order.

11. If such an approach is made, the appellate authority shall entertain the same, by taking into consideration that the pendency of the writ petition affords sufficient ground to the petitioner to contend that the petitioner was bona fide pursuing a wrong forum and remedy, which prevented the petitioner from preferring an appeal in time.

12. It is expected that, if filed, the appeal shall be decided as expeditiously as possible in accordance with law without being influenced in any manner by any of the observations made herein.

13. Needless to say, it will be open to the petitioner to renew the prayer for interim order in connection with the appeal, if so filed, before the appellate authority.

14. There will be no order as to costs.

15. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)