

09.07.2024
rpan/15

WPLRT 93 of 2024
Choudhury Ajijur Rahaman & Others
– *Versus* –
The State of West Bengal & Others

Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee,
Mr. Vishal Mallick
... for the Petitioners.

Mr. Sk. Md. Galib,
Ms. Sujata Mukherjee
... for the State/Respondents.

Affidavit-of-service filed by the petitioners be kept on record.

This writ petition has been instituted to question the justifiability of the order dated May 24, 2024, passed by the learned Tribunal in O.A. 1060 of 2024 (LRTT). The learned Tribunal refused to exercise its jurisdiction to entertain the original application (in short, OA), citing the reason that the order challenged in the OA is appealable. The applicant approached the learned Tribunal directly to assail this order without first exhausting the statutory remedy.

Mr. Roy, learned advocate appearing for the petitioners, draws our attention to the notices issued under Section 51A (2) read with Section 57 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the Act of 1955), in the name of the petitioners and contends that from the notice itself, it is evident that the date of the hearing was scheduled for 12th December 2023 at 12:30 p.m., but the final order was purportedly passed on 17th November 2023.

Referring to the order passed by respondent no. 3 in Case No. Hat/01 of 2023 on 17th November 2023, he contends that the hearing for the aforementioned case was fixed on 17th November, 2023 but the petitioners prayed for an adjournment, which was granted. He argues that subsequently, it was discovered that the final order had been issued on the very same day, i.e. 17th November 2023. According to him, this constitutes a flagrant violation of the principles of natural justice.

Quite apart from the above, he argues that the subject land, being of a 'hat' nature, is non-agricultural land and thus cannot vest in the State under Sections 4 and 5 of the West Bengal Estate Acquisition Act, 1953 (hereinafter referred to as the Act of 1953). He contends that the petitioners raised this issue before the learned Tribunal but it failed to exercise its jurisdiction by glossing over this issue and failing to render any finding on it. Therefore, due to this jurisdictional error, intervention by this Court is warranted.

In rebuttal, Mr. Galib, learned advocate representing the State/respondents, vehemently opposes such prayer and submits that there is no reflection in the order dated 17th November, 2023 that a prayer for adjournment was made on 17th November, 2023. Furthermore, he argues that there is no indication that the notices, as claimed by the petitioners, were issued in connection with the case, being No. Hat/01 of 2023. Mr. Galib asserts that that issue that 'land, being 'hat' in nature, cannot vest in the State' had not been raised before the learned Tribunal.

In reply, Mr. Roy countered Mr. Galib's claim asserting that it was pleaded in the OA.

Heard the learned advocates. Perused the materials on record.

From the order under challenge in this writ petition it does not transpire that such issue that 'land, being 'hat' in nature, cannot vest in the State' was raised before the learned Tribunal or the learned Tribunal had the opportunity to address the issue.

Indisputably, the prescribed authority has passed final order. The learned Tribunal refused to entertain the OA, citing the reason that the final order passed by the prescribed authority is appealable. We do not find any infirmity or substantial miscarriage of justice or any jurisdictional error, let alone, any patent error which would convince us to interfere with the order passed by the learned Tribunal.

Needless to observe that the petitioners would be at liberty to prefer the statutory appeal before the respondent no.2 in accordance with law. It is clarified that the petitioners may raise all points available to them on fact and in law.

The respondent no.2 shall dispose of the appeal addressing all the points that would be raised on behalf of the petitioners, by passing a reasoned order, which would be communicated to the petitioners.

The entire exercise shall be completed within eight weeks from the date of communication of this order.

It will be open to the petitioners to raise the issue of pendency of the OA and the present writ petition to meet the issue of delay in preferring the statutory appeal.

The writ petition is, accordingly, disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)