

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**M.A.T. 1363 of 2019
With
CAN 1 of 2019
(Old No. CAN/9590/2019)
Mothabari Dhibar Samabay Samity Ltd.
Vs.
Uma Kanta Halder & Ors.**

Before: The Hon'ble Justice Arijit Banerjee

The Hon'ble Justice Apurba Sinha Ray

For the Appellant

Mr. Sumit Roy, Adv.
: Mr. S. Panja, Adv.
Mr. Ashok Kumar Jha, Adv.
Ms. Moumita Mondal, Adv.

For the Respondent No. 1

Mr. Arabinda Chatterjee, Ld. Sr. Adv.,
Mr. Md. Taimur Hossain, Adv.,
Ms. Anamika Biswas, Adv

For the State.

Mr. Soumitra Bandyopadhyay, Adv.
Mr. Aniruddha Sen, Adv.

For Orders On:

21.05.2024

Apurba Sinha Ray, J. :-

1. The Appellant-society's challenge to the maintainability of the writ petition on the grounds of res-judicata or principles analogous thereto and pendency of the writ petitioner's original application before the Tenancy Tribunal on similar causes, was overruled by the Learned Single Judge. It was held that the writ petition is not barred by the principle of res-judicata and further, the District Land & Land Reforms Officer, Malda issued the relevant notification not under any specified Act as mentioned in Section 2(r) of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (Act of 1997 henceforth); rather, he issued the said notification under the auspices of a Committee as per West Bengal Land Reforms Manual, 1991 (Manual 1991 henceforth) which is nothing but a set of principles for guidance of the Officers of the Government of West Bengal. In this regard, the learned Single Judge relied upon the case law reported at **2014 (1) CHN (CAL) 544 (Bhandardaha Beel Matsyajibi Samabay Samity Ltd. Vs. State of West Bengal)** and distinguished the case relied upon by the writ petitioner reported in **AIR 1997 SC 1125 (L. Chandra Kumar Vs. Union of India & Ors.)**

2. The writ petitioner's case, in a nutshell, is that he was the successful bidder in a tender process conducted for grant of a lease of

a Jalkar (Tank Fishery), namely, Gangapath Islampur R.S. Dag No. 557/1 Kaliachak-I, II & III. He paid 25% of the total amount as per notification dated 28.12.2017 on 15.02.2018 through DCR. By a letter dated 27.02.2018 the authority concerned reduced the area of Jalkar without assigning any cogent reason to the writ petitioner. The writ petitioner moved the Tribunal for quashing of such letter dated 27.02.2018 and subsequently moved this Court against an order passed by the Tribunal by filing a writ petition being W.P.L.R.T No. 31 of 2018. This Court set aside the said order of the Tribunal and directed the Tribunal to dispose of the matter afresh in a time bound manner. In the meantime, by memos dated 02.07.2018 and 11.07.2018, the lease of the writ petitioner was terminated and a lease was granted in favour of the private respondent without initiating a fresh tender process. Consequently, the present writ petition being no. 12340 (W) of 2018 was filed by the respondent no. 1 in this appeal. The appellant-society's challenge to the maintainability of the writ petition was turned down by the Learned Single Judge in the manner already indicated hereinabove.

3. As regards the point of the writ petition being hit by the principle of res-judicata, the Learned Single Judge compared the prayers in different proceedings between the parties and came to a finding that

the relevant writ petition having different set of prayers than the other two matters was not barred by the principle of res-judicata.

4. In overruling the second objection, the Learned Single Judge has come to the conclusion that as the concerned District Land and Land Reforms Officer did not issue the relevant notification as an authority under the specified Act within the meaning of the 1997 Act, or the notification was not issued under any specified Act, the bar under Section 2(r) of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 is not attracted. Further the learned Judge concluded that when the matter relates to settlement of tank fisheries, it is not governed by any specified Act within the meaning of Section 2(r) of the said Act of 1997. The Learned Single Judge has relied the decision of **Bhandardaha Beel Matsyajibi Samabay Samity Ltd. (supra)**. His Lordship further concluded that the decision in **L. Chandra Kumar (supra)** is not applicable.

5. Against such interim order the present appeal has been filed by the appellant-society, namely, Mothabari Dhibar Samabay Samity Ltd., which is the respondent no. 12 in the writ petition, on the grounds, inter alia, that the observation of the Learned Single Judge in respect of res-judicata as well as the observation that District Land

and Land Reforms Officer is not a specified authority or the notification was not issued under the specified Act are not correct. In this regard, the decision reported at **2023 SCC OnLine Cal 405 (State of West Bengal & Ors. Vs. Abdul Odud)** has been cited.

6. Learned Counsel appearing on behalf of the respondent/writ petitioner has contended that Learned Single Judge has propounded the correct interpretation of the provisions of West Bengal Land Reforms and Tenancy Tribunal Act, 1997 and he has further contended that the law laid down in the case of **Bhandardaha Beel Matsyajibi Samabay Samity Ltd. (supra)** still holds good and further the above case law is squarely applicable to the facts and circumstances of this case.

Decision with reasons

7. Before proceeding further, it may be helpful to note the contents of Sections 2(r), 6, 7 and 8 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, which read as follows:-

“ 2(r). specified Act" means-

- (i) the West Bengal Estate Acquisition Act, 1953; or
- (ii) the West Bengal Land Reforms Act, 1955; or

(iia) the West Bengal Restoration of Alienated Land Act, 1973; or

(iii) [* * *] [[Omitted by West Bengal Land Reforms and Tenancy Tribunal (Amendment) Act, 2005 (West Bengal Act 10 of 2005) (w.r.e.f. 1.3.2005) for the following:

(iv) the Calcutta thika Tenancy (Acquisition and Regulation) Act, 1981; or.]]

(iv) the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fisherman Act, 1975; or]

(v) [* * *] [Omitted the words the West Bengal Land Holding Revenue Act, 1979; by the West Bengal Act 5 of 2002 (w.e.f. 13.4.2001).]

(vi) [the West Bengal Premises Tenancy Act, 1997 (only against final order of the Controller);] [[Substituted by West Bengal Act 32 of 2010:

(vii) [the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001;] [Inserted by West Bengal Land Reforms and Tenancy Tribunal (Amendment) Act, 2005 (West Bengal Act 10 of 2005) (w.r.e.f. 1.3.2005).].

6. Jurisdiction, power and authority of Tribunal.—

Subject to the other provisions of this Act, the Tribunal

shall, with effect from such date as may be appointed by the State Government by notification in this behalf, exercise jurisdiction, power and authority in relation to—

- (a) any order made by an Authority under a specified Act;
- (b) an application complaining inaction or culpable negligence of an Authority under a specified Act;
- (c) an appeal against an order of the Mines Tribunal appointed under section 36 of the West Bengal Estates Acquisition Act, 1953;
- (d) applications relating to matters under any provision of a specified Act or matters relating to any constitutional validity of any Act under the provisions of a specified Act;
- (e) adjudication of matters, proceedings, cases and appeals which stand transferred from the High Court and other Authorities to the Tribunal in accordance with the provisions of this Act.

7. Exercise by Tribunal of jurisdiction, power and authority exercisable by court. — Save as otherwise expressly provided in this Act, the Tribunal shall, with effect from the date appointed by the State Government under section 6, exercise all the jurisdiction power and authority exercisable immediately before that day by any

court including the High Court, except the writ jurisdiction under Articles 226 and 227 of the Constitution exercised by a Division Bench of the High Court, but excluding the Supreme Court, for adjudication or trial of disputes and applications relating to land reforms and matters connected therewith or incidental thereto and other matters arising out of any provisions of a specified Act.

8. **Exclusion of jurisdiction of courts.** — On and from the date from which jurisdiction, power and authority become exercisable under this Act by the Tribunal, the High Court, except where that Court exercises writ jurisdiction under Articles 226 and 227 of the Constitution by a Division Bench, or any civil court, except the Supreme Court, shall not entertain any proceeding or application or exercise any jurisdiction, power or authority in relation to adjudication or trial of disputes or applications relating to land reforms or any matter connected therewith or incidental thereto or any other matter under any provision of a specified Act.”

8. The short issue is whether or not the notification that was under challenge before the Learned Single Judge has any connection with any matter under the West Bengal Land Reforms Act, 1955, which is a specified Act.

9. After considering the submission and counter-submission of the learned counsel for the parties as well as considering the decisions in **Bhandardaha Beel Matsyajibi Samabay Samity Ltd. (supra)** and **State of West Bengal & Ors vs. Abul Odud (supra)**, this Court finds that the appellant has an arguable case. It is true that in the case of **Bhandardaha Beel Matsyajibi Samabay Samity Ltd. (supra)** the Division Bench considered a tender notice issued by the District Land and Land Reforms Officer, Murshidabad for Government Tank Fisheries Settlement Committee. The Division Bench held that the *West Bengal Land Reforms and Tenancy Tribunal Act, 1997* was enacted to provide for setting up of the *West Bengal Land Reforms and Tenancy Tribunal Act, 1997* in pursuance of Article 323(B) of the *Constitution of India* for adjudication and trial by such tribunal of disputes, claims, objections and applications relating to or arising out of land reforms or tenancy in land and other matters specified under a specified Act and for matters connected therewith or incidental thereto. The Division Bench also held that *the notification was issued by the*

*District Land & Land Reforms Officer not as an authority under the specified Act but for and on behalf of the Government Committee for Settlement of Tank Fisheries. While issuing the said tender notice, he was not exercising any power under the West Bengal Land Reforms Act, 1955. He was empowered to issue such notification under the West Bengal Land Reforms Manual, **which is nothing but a compilation of administrative instructions. It was not framed under the West Bengal Land Reforms Act, 1955.***

10. The Division Bench further held that *any order under a specified Act made by an authority could be challenged at the first instance before the said tribunal. The Hon'ble Division Bench also held that the said tribunal can exercise jurisdiction, power and authority in relation to any order under a specified Act made by an authority under a specified Act and can entertain an application complaining inaction or culpable negligence of an authority while exercising power under a specified Act. Before a tribunal can be held to have jurisdiction to decide a particular matter, it must not only have jurisdiction to try the matter brought before it, but must, also, have the authority to pass the order sought for. It is not sufficient that the tribunal has some jurisdiction to the subject matter.*

11. In paragraph 16 of the said case law it has been mentioned that *the tender notice was issued for the purpose of settling Tank Fisheries. The said tender notice has nothing to do with the agrarian reforms. The District Land and Land Reforms Officer issued the tender notice not in exercise of its power or in discharge of its function under a specified Act but was issued in accordance with the administrative instructions as compiled in the manual, which was not framed under any specified Act as above and, therefore, the tenancy tribunal cannot entertain of challenge against such notice.* After going through the above decision it appears that the Learned Single Judge has accepted the reasonings given by the Hon'ble Division Bench in the case of **Bhandardaha Beel Matsyajibi Samabay Samity Ltd. (supra).**

11.1 Undisputedly, the West Bengal Land Reforms Manual, 1991 contains certain guidelines for the officers of the Government of West Bengal. But, unfortunately the attention of the Hon'ble Division Bench in the earlier case as well as the attention of the Learned Single Judge in this case, were not drawn to Section 52 of the West Bengal Land Reforms Act, 1955 as well as Rule 28-A of West Bengal Land Reforms Rules, 1965 during hearing of the relevant matters.

12. For the sake of convenience Section 52 of West Bengal Land Reforms Act, 1955 is reproduced hereunder:-

“52. Management of lands.—(1) *All lands to which this Act applies shall be deemed to have been held under the State on such terms and conditions as may be prescribed.*

(2) Any land belonging to the State or land which is at the disposal of the State Government or held under the State by virtue of the provisions of the West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954), or this Act or any other law in force shall, unless the State Government otherwise directs by any general or special order, be managed, in such manner as may be prescribed, by the Collector of the district under whose jurisdiction the lands are situated subject to the control of the State Government, particularly determination of terms and conditions of lease as may be specified in the lease deed and fixation of annual rent with or without premium.

(3) If the State Government is of opinion that different sets of rules are necessary

for the management of different classes or descriptions of lands or lands of different areas, it may make different sets of rules under this section.

*(4) Until rules made under this section come into operation, **management of any land covered by this Act shall continue to be made in accordance with the existing law or rules or manual or principles, whichever may apply.***

13. Needless to mention, as per definition of ‘land’ in the Act, 1955, it includes ‘tank fisheries’ as well. Therefore, the management of land as found in Section 52 of the Act also includes management of tank fisheries. Thus, Section 52 of the Act, 1955 lays down the provisions for management of land including ‘tank fisheries’ and it is crystal clear from the above section that until rules made under the section come into operation, the management of such land including ‘tank fisheries’ shall continue to be made in accordance with the existing law or rules or manual or principles whichever may apply. This goes to show that West Bengal Land Reforms Act, 1955, being a specified Act, has laid down that management of land including ‘tank fisheries’ should be done in accordance with manual etc. until relevant rules come into

operation. Therefore, West Bengal Land Reforms Manual, 1991 is the creation of or recognized by the West Bengal Land Reforms Act, 1955. The concept of such manual or making of such manual containing principles for management of land including ‘tank fisheries’ has been recognized in Section 52(4) of the Act, 1955. This aspect of the matter was not drawn to the attention of the Division Bench in **Bhandardaha Beel Matsyajibi Samabay Samity Ltd. (supra)** and not considered in the judgment delivered in that case. The above discussion shows the Act 1955 has made specific provision for such Manual in the body of the said statute. Undoubtedly, the Manual of 1991 is part of the statutory scheme of the Act 1955 as envisaged thereunder for carrying out the purposes of the said statute. In short, the foundation of such Manual 1991 lies in the provision of Section 52(4) of Act 1955.

14. Our stand will be further fortified in this regard if we peruse Rule 28-A of the West Bengal Land Reforms Rules, 1965 wherein it has been specifically mentioned as hereunder:-

“28A. Management of land and estate belonging to the State Government in accordance with subsection (2) of section 52.— Without prejudice to the provisions elsewhere contained in these rules, all lands and all interests therein

*belonging to the State Government shall be managed and shall be deemed to have been managed by the Collector of the district under **whose jurisdiction the lands are situated in accordance with the West Bengal Land and Land Reforms Manual, 1991**, published by the Board of Revenue, West Bengal, being the rules for the time being in force for the management of Government lands and estates subject to such directions, as may, by general or special order, be issued from time to time by the State Government in this behalf:*

Provided that the State Government may entrust the management of a land belonging to it in any area to a local body or to an authority constituted by or under any law for the time being in force on such terms and conditions as the State Government may specify from time to time.”

15. From the above, it further transpires that the West Bengal Land and Land Reforms Manual, 1991 and the functionaries thereunder derive their power and authority not only under Act of 1955 but also under relevant Rules, 1965. A bare perusal of the words of Rule 28-A

of Rules 1965 will show that the Manual 1991 has been given the status of statutory Rules until formation of relevant Rules as indicated in the Act 1955. Therefore, the Manual 1991 cannot be brushed aside by saying that it is not framed under the West Bengal Land Reforms Act, 1955.

16. The writ petitioner has placed reliance on the order dated 04.04.2001 which admittedly shows that the relevant Jalkar is part of khasmahal land of the State of West Bengal, meaning thereby that such land is lying at the disposal of the Government and it forms part of the estate of the Government.

17. Neither during the hearing of **Bhandardaha Beel Matsyajibi Samabay Samity Ltd. (supra)** nor during the hearing of the instant writ petition before the Learned Single Judge, the provisions of Section 52 of Act, 1955 or rule 28-A of the Rules, 1965 were brought on record and no discussion was made in respect of such provisions in those judgments.

18. The powers under Manual 1991, therefore, exercised by the District Land and Land Reforms Officer cannot be said to be dehors the provisions of West Bengal Land Reforms Act, 1955 as well as West

Bengal Land Reforms Rules, 1965. When the Act or statute has itself made provisions for compilation of certain directions in a Manual, can it be said that such compilation, i.e., Manual 1991, was not framed under the Act 1955? We think not. Moreover, Section 62 of the Land Reforms Act has laid down that the State Government has the authority to give such directions, not inconsistent with the provisions of the Act, to any Collector, Revenue Officer or Prescribed Authority under this Act as may appear to the State Government to be necessary for carrying out the purposes of this Act or any rules made thereunder. Therefore, the officers of the Government are to carry out the purposes of the Act, 1955 or Rules made thereunder and accordingly for that reason the West Bengal Land Reforms Manual, 1991 has been framed. The same cannot be described as a mere compilation of administrative instructions since, even at the cost of repetition I must say, the Act, 1955, as well as Rules, 1955, prescribe that such a Manual should be introduced in the statutory scheme and if the officers of the Government of West Bengal carry out such instructions of the Government by following the principles as laid down in West Bengal Land Reforms Manual, 1991, which are not inconsistent with the Act, 1955 or Rules 1965, their action should not be assailed as unauthorized, as was done by the Learned Single Judge. We are of the respectful opinion that the decision of the Hon'ble Division Bench in

Bhandardaha Beel Matsyajibi Samabay Samity Ltd. (supra) in the aforesaid regard is per incuriam.

19. ‘*Per incuriam*’ are the decisions given in ignorance or forgetfulness of some inconsistent statutory provisions or of some authority binding on the Court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account, to be demonstrably wrong. If a decision has been given ‘*per incuriam*’, the Court can ignore it (***please see A.R. Antulay v. R.S. Nayak & Anr. reported at (1988) 2 SCC 602***).

20. In ***Huddersfield Police Authority v. Watson, (1947) 2 All ER 193***, Lord Godard CJ observed that where a case or a statute had not been brought to the Court’s attention and the Court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incuriam.

21. In ***Young v. Bristol Aeroplane Co. Ltd., reported at (1944) 2 All ER 293***, the House of Lords, observed that ‘Incuria’ literally means ‘carelessness’. In practice per incuriam appears to mean per ignoratium. The Courts have developed this principle in relaxation of

the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered 'in ignoratium' of a statute or other binding authority.

22. In *Government of A.P. and Anr. v. B. Satyanarayana Rao, reported at (2000) 4 SCC 262*, it has been held that the rule of per incuriam can be applied where a Court omits to consider a binding precedent of the same court or the superior Court rendered on the same issue or where a court omits to consider any statute while deciding that issue.

23. We are of the opinion that the relevant notification was issued by the District Land and Land Reforms Officer, Malda, under a specified Act and therefore, the tenancy tribunal has the exclusive jurisdiction to entertain such notification as a Court of first instance. In the facts and circumstances discussed above, I am constrained to hold that by approaching a learned Single Judge of this Court by initiating Writ Petition No. 12340 (W) of 2018, the writ petitioner acted contrary to the law laid down by the Hon'ble Supreme Court and to the relevant condition of the judicial decision in **L. Chandra Kumar (supra)**. Paragraph 93 of the said decision reads as follows:-

***“93.** Before moving on to other aspects, we may summarise our conclusions of the jurisdictional powers of these Tribunals.*

The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective

High Court. We may add that the Tribunals will, however, continue to act as the only Courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.”

24. In fine, the instant appeal is allowed on contest without any order as to costs. We set aside the impugned judgment of the Learned Single Judge. No fruitful purpose will be served by keeping the writ petition pending. Accordingly, the writ petition being no. 12340 (W) of 2018 is, thus, disposed of treating the same as on day's list. The unnecessary comments made by the Learned Single Judge in respect of some Learned Advocates in the body of His Lordship's judgment are expunged. The writ petitioner is at liberty to pursue its cause before the appropriate forum in accordance with law. The interim order(s) stand(s) vacated. CAN 1 of 2019 (Old No. CAN/9590/2019) is also disposed of.

25. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)