

Form No. J(2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

W.P.L.R.T. 183 of 2025

**Immam Sk. and others
Vs.
The State of West Bengal and others**

For the petitioners	:	Mr. Ambu Bindu Chakraborty Ms. Mrinmoyee Roy Chowdhury
For the State	:	Mr. Lalit Mohan Mahata Mr. Rudranil De
For the Private respondent nos.4 & 5	:	Mr. Agniswar Chowdhury Mr. P. Hazra
Heard on	:	17.11.2025
Judgment on	:	17.11.2025

Sabyasachi Bhattacharyya, J.:-

1. Learned counsel for the petitioners submits that the learned Tribunal committed a patent perversity in proceeding on the

premise that a suit filed by the present petitioners seeking declaration of title and injunction over the self-same land which is the subject-matter before the Tribunal had been dismissed after full trial and the prayer for injunction made therein was rejected.

- 2.** On such premise, the learned Tribunal held that the petitioners, having failed before the Civil Court, cannot re-litigate on the same issue before the Tribunal under the guise of a mutation dispute and the doctrine of finality of litigation squarely applies.
- 3.** From the records, learned counsel seeks to impress upon us that it is actually the private respondents herein and before the Tribunal who have filed a title suit bearing O.C. Suit No.40 of 2021 which is still pending.
- 4.** However, an application for temporary injunction made by the private respondents in the civil suit was turned down.
- 5.** As such, it is argued that the learned Tribunal proceeded on a palpably erroneous premise.
- 6.** That apart, learned counsel for the petitioners submits that it will be evident from the order sheet before the Tribunal that the matter was fixed for maintainability hearing on the ground that by the self-same original application, several appellate orders were challenged by the petitioners.

7. Hence, arguments were advanced by all parties on the issue of maintainability and not on the merits and, as such, the learned Tribunal acted without jurisdiction in deciding the main original application itself on merits.
8. Learned Additional Government Pleader and as well as learned counsel appearing for the private respondents submits that the learned Tribunal was justified in observing that the Appellate Authority had entered into the merits of the case and considered title deeds, R.S. Records of Rights and mutation case sheets and had come to a conclusive finding.
9. Moreover, learned Additional Government Pleader contends that the order passed in a previous application filed by the present writ petitioners under Section 44(2)(a) of the West Bengal Estates Acquisitions Act, 1953 (hereinafter referred to as 'the 1953 Act') was challenged before the concerned Tribunal but withdrawn.
10. Hence, the issue has already attained finality.
11. Upon hearing learned counsel for the parties, we cannot arrive at any conclusive finding *ex facie* as to whether the Tribunal heard the matter on merits or on maintainability.
12. No conclusive finding either way can be arrived at from the cryptic order of the Tribunal dated September 10, 2025, which

merely records that counsel for the parties were heard and hearing was concluded and the matter was made C.A.V.

- 13.** However, from the previous orders, it transpires that although the original application was not specifically fixed for hearing only on the point of maintainability, fact remains that the issue of maintainability was raised by the private respondents who were directed to file their written affidavit-in-opposition.
- 14.** In such opposition also, the maintainability as well as merits were challenged by the private respondents.
- 15.** Thus, some doubt remains as to whether the parties had addressed the issue of maintainability only in their arguments, and not the main original application on merits.
- 16.** Even otherwise, the Tribunal ought not to have decided on merits the application without deciding the point of maintainability either way, since the serious issue was taken as to whether a single original application can be preferred against several appellate orders passed in different appeals.
- 17.** Moreover, insofar as the withdrawal of the previous challenge to an order passed under Section 44(2)(a) of the 1953 Act is concerned, we find from the recording of the Appellate Authority's current order that a prayer under Section 44(2)(a) of the 1953 Act was made by the respondents which having "not

been considered” by the ADM and BL & LRO, Malda, an appeal was preferred, which was later withdrawn.

- 18.** Hence, it appears *prima facie* that the appeal had been preferred against the non-consideration of the prayer under Section 44(2)(a) and not dismissal of such prayer.
- 19.** Thus, the concept of *res judicata* or principles akin to Order XXIII of the Code of Civil Procedure cannot be said to be directly applicable at this stage without ascertaining the facts from the records.
- 20.** Be that as it may, the learned Tribunal also proceeded on a perverse premise that a civil suit filed by the present petitioner was dismissed and the same issue could not be re-litigated, whereas, in reality the suit is still pending at the behest of the private respondents, and not the petitioners, and an injunction prayer made therein has been refused.
- 21.** In such view of such several discrepancies in the impugned order of the Tribunal, we are of the opinion that the matter ought to be remanded to the learned Tribunal for a complete adjudication upon giving adequate opportunity being given to the parties to address all issues, on maintainability as well as on merits (if need be, depending on the decision on maintainability).
- 22.** Hence, WPLRT 183 of 2025 is partially allowed on contest, thereby setting aside the impugned judgment dated October 31,

2025 passed by the Third Bench, West Bengal Land Reforms and Tenancy Tribunal in O.A. No.1740 of 2025 (LRTT) and remanding the matter to the said Bench of the Tribunal for a fresh adjudication on merits as well as maintainability of the case.

- 23.** It is made clear that the learned Tribunal shall proceed first to decide the issue of maintainability.
- 24.** Thereafter, in the event such issue is decided in favour of the original applicants/present writ petitioners, the parties shall be afforded an opportunity to address the merits of the original application and only upon such opportunity being given on the materials on record, the Tribunal shall come to a final conclusion on the same and dispose of the original application accordingly.
- 25.** It is expected that such entire exercise shall be completed by the learned Tribunal within two months from the date of communication of this order to the Tribunal.
- 26.** It is made clear that the merits of the respective contentions have not been gone into by this court and the Tribunal shall proceed to decide on all issues independently, without being unduly influenced in any manner by any of the observations made above.
- 27.** There will be no order as to costs.

- 28.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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