



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

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**WPA 8789 of 2026
Ambe Plywoods Pvt. Ltd. & Anr.
Vs.
The Office of the Controller, Kolkata Thika Tenancy & Ors.
With
CAN 1 of 2026**

For the petitioners : Mr. Krishnaraj Thakar, Sr. Adv.
Mr. Deepan Kumar Sarkar
Mr. Aurin Chakraborty
Mr. Pushan Kar
Mr. Sagnik Majumder
Ms. Shreya Ghosh Dastidar
..... advocates

For the respondent No.3 : Mr. Partha Pratim Roy
Mr. Shounak Mukhopadhyay
Mr. Amit Meharia
Ms. Paramita Banerjee
Mr. Sayan Dey
Mr. Yash Meharia advocates

For proposed added
respondent : Mr. Tanmoy Mukherjee
Ms. Aditi Kumar
Mr. Rudranil Das advocates

Heard on : 06.05.2026 and 14.05.2026

Judgment on : 14.05.2026

Hiranmay Bhattacharyya, J.:-

1. The petitioner has challenged the assumption of jurisdiction by the Learned Deputy Controller, Kolkata Thika Tenancy in relation to a property being premises no. 16B, Gurusaday Road, Kolkata, 700019 and has prayed for



setting aside the summons dated 02.01.2026 issued by the Deputy Controller, Kolkata Thika Tenancy in Misc. Case No. 63 of 2025.

2. Petitioner claims that their predecessor-in-interest instituted a suit being Title Suit No. 39 of 2000 before the Learned Civil Judge, (Senior Division), 2nd Court at Alipore for eviction of the 3rd respondent on the ground of expiry of lease by efflux of time. During the pendency of the said suit, the petitioner purchased the said property by registered deed of conveyance and got themselves substituted in place and stead of the original plaintiff in the said suit. The said suit was decreed and the 3rd respondent preferred an appeal being Title Appeal No. 7 of 2025.
3. In the meantime, the decree was put into execution by the petitioner giving rise to Title Execution Case No. 20 of 2025. It is alleged that the 3rd respondent in collusion with M/s Engineers Service Station filed an application Under Section 47 of the Code of Civil Procedure being Misc. Case No. 211 of 2025, wherein a plea has been taken that the 3rd respondent is the thika tenant under The Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 (for short “the 1981 Act”). In Title Appeal No. 7 of 2025, the 3rd respondent disclosed a copy of the notice to be treated as summons in Misc. Case No. 63 of 2025.
4. Challenging the authority of the Deputy Controller, Kolkata Thika Tenancy to issue the notice to be treated as summons dated 02.01.2026, the petitioner has approached this court.
5. Mr. Thakkar, Learned Senior Advocate for the petitioner contended that the 3rd respondent in its written statement filed in Title Suit No. 39 of 2000 took the plea that the property in question stood vested with the State of West Bengal under the 1981 Act as the same is the thika property. He contended that such plea was considered and rejected by the Learned Trial Judge while passing the judgment and decree dated November 20, 2024. Mr. Thakkar contended that the Civil Court was vested with the jurisdiction to adjudicate whether the status of the property is a thika property as well as the issue of



thika tenancy under the 1981 Act and the Controller lacked inherent jurisdiction to decide such issues. He further contended that the 3rd respondent had never set up any claim of Thika Tenancy under the The West Bengal Thika Tenancy (Acquisition And Regulation) Act, 2001 (hereinafter, the “2001 Act”). Mr. Thakkar thus, contended that the Deputy Controller, Kolkata Thika Tenancy could not have assumed jurisdiction and issued summons to the petitioners.

6. Mr. Roy, Learned Advocate appearing for the 3rd respondent raised an objection as to the entertainability of this writ petition. He contended that the West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 (for short “the 2001 Act”) is a “specified Act” under Section 2 (r) of the West Bengal Land Reforms and Tenancy Tribunal Act 1997 (for short ‘1997 Act’). He contended that the petitioner has challenged the summons issued by the Deputy Controller Kolkata Thika Tenancy fixing a date of hearing as per section 5(3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001. Mr. Roy contended that since the impugned notice relates to a matter under the provision of a specified Act, the West Bengal Land Reforms and Tenancy Tribunal (for short “WBLRTT”) is empowered to decide such issue in view of provision laid down under Section 6 of the 1997 Act.
7. Mr. Roy contended that the WBLRTT has been vested with the jurisdiction, power and authority to adjudicate or try the disputes and applications relating to land reforms and matters arising out of any provisions of the specified Act, and the jurisdiction of the High Court, except where the High Court exercises writ jurisdiction under Articles 226 and 227 of the Constitution by a Division Bench, has been excluded. He thus, contended that the instant writ petition should not be entertained by this court. In support of such contention, Mr. Roy placed reliance upon the judgement delivered by this court on March 20, 2026 in a batch of writ petitions, the lead case being WPA 25183 of 2025 in the case of **Gour Chandra Ghosh & Ors. Vs. State of West Bengal and Ors.** Mr. Roy contended that he shall



make appropriate submissions on merit only after the issue of maintainability is decided.

8. In reply, Mr. Thakkar, Learned Senior Advocate for the petitioner contended that in spite of availability of alternative remedy, the High Court can still exercise jurisdiction in cases where there has been wrongful assumption of jurisdiction by an authority. In support of such contention he placed reliance upon the decisions of the Hon'ble Supreme Court in the case of ***Whirlpool Corporation vs. Registrar of Trade Marks Mumbai and Ors.*** reported at **1998 (8) SCC 1**, ***Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer Cum Assessing Authority and Ors.*** reported at **2023 SCC Online SC 70** and ***North Eastern Development Finance Corporation Ltd. (NEDFI) vs. M/S L. Duol Builders*** reported at **(2026) 3 SCC 310**.
9. Mr. Thakkar, Learned Senior Advocate distinguished the decisions in the case of ***PHR Invent Educational Society Vs. UCO Bank and Ors.*** reported at **(2024) 6 SCC 579** by contending that the said decision also carved out certain exceptions when a petition Under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. He contended that the Hon'ble Supreme Court dismissed the writ petition on the ground that the said reported case did not fall under any of the exceptions carved out by the Hon'ble Supreme Court in the case of ***CIT Vs. Chhabil Dass Agarwal*** reported at **(2014) 1 SCC 603**. Mr. Thakkar however contended that the decision in the case of ***Leelavathi N. and Ors. Vs. State of Karnataka and Ors.*** reported at **2025 SCC Online (SC) 2253** held that a writ petition under Article 226 may be maintainable notwithstanding the existence of tribunals constituted Under Articles 323A or 323B of the Constitution of India. He contended that the decision in the case of ***Gour Chandra Ghosh (supra)*** is distinguishable on facts as the order passed in an appeal under Section 54 of the West Bengal Land Reforms Act 1954 was directly challenged by filing a writ petition before this court.



10. Heard the learned Advocates for the parties on the issue of maintainability of this writ petition and perused the materials placed.
11. Since an objection as to the entertainability of this writ petition has been raised by the 3rd respondent, this court proposes to deal with such objection at the threshold.
12. The issue that arises for consideration is whether an application under Article 226 of the Constitution of India challenging a notice issued by an “Authority” under the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 is entertainable before this Court.
13. The availability of a remedy under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 before the West Bengal Land Reforms and Tenancy Tribunal (for short “the WBLRTT”) is the principal ground of objection raised by Mr. Roy against entertainability of this writ petition.
14. In reply, Mr. Thakkar contended that it is well settled that existence of an alternative remedy cannot operate as an absolute bar in case of an action taken by an “Authority” which is wholly without jurisdiction.
15. The Hon’ble Supreme Court in ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.*** reported at **(1998) 8 SCC 1**, reiterated the proposition of law that alternative remedy shall not operate as a bar in at least three contingencies, namely, where the writ petition has been filed for enforcement of any of the Fundamental Rights or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.
16. The Hon’ble Supreme Court held thus-

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement



of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

17. The power of the High Court under Article 226 of the Constitution is plenary in nature and considering the facts of the case, the High Court has discretion to entertain or not entertain a writ petition, if an alternative efficacious remedy is available.
18. The Hon’ble Supreme Court in **Radha Krishan Industries vs. State of Himachal Pradesh & others** reported at **(2021) 6 SCC 771** after noticing several decisions including **Whirlpool Corporation (supra)**, formulated the principles of law on the “rule of alternate remedy” in paragraph 27 of the said reports. The Hon’ble Supreme Court held that when a right is created by a statute which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution.
19. The Hon’ble Supreme Court held thus-

“27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.



27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

(emphasis supplied)

20. It is now judicially settled that when a statutory forum is created by law for redressal of grievances, the High Court may not entertain a writ petition ignoring the statutory dispensation.
21. In ***Thansingh Nathmal vs. Superintendent of Taxes*** reported at **AIR 1964 (SC) 1419**, the Constitution Bench of the Hon’ble Supreme Court reiterated the rule of self-imposed restraint that the High Court will not entertain a writ petition if an effective remedy is available to an aggrieved person.
22. The Hon’ble Supreme Court held thus-

“7. ...Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of



questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

(emphasis supplied)

23. The Hon'ble Supreme Court in ***CIT vs. Chhabil Das Agarwal*** reported at **(2014) 1 SCC 603** after reiterating the well recognised exceptions to the rule of alternative remedy, held that the proposition of law laid down in ***Thansingh Nathmal (supra)*** still holds the field.
24. The Hon'ble Supreme Court in ***PHR Invent Educational Society (supra)*** after noticing that despite its repeated pronouncements with regard to the High Courts ignoring the availability of statutory remedies under the RDBFI and SARFAESI Acts and exercising jurisdiction under Article 226 of the Constitution of India, held that the High Courts will not entertain a petition under Article 226 of the Constitution of India if an effective remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.

“37. *It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:*

- (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;*
- (ii) it has acted in defiance of the fundamental principles of judicial procedure;*
- (iii) it has resorted to invoke the provisions which are repealed; and*



(iv) when an order has been passed in total violation of the principles of natural justice.

38. It has however been clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (emphasis supplied)

25. The Hon'ble Supreme Court in **Rikhab Chand Jain vs. Union of India** reported at **Civil Appeal no. 6719 of 2012** reiterated the proposition of law laid down in the Constitution Bench decision in the case **Thansingh Nathmal (supra)** that when it is open to the aggrieved petitioner to move another tribunal for obtaining redress in the manner provided by the statute, the High Court normally will not permit the entertaining of a petition under Article 226 of the Constitution of India, the machinery created under the statute to be bypassed and will leave the party applying to it to seek resort to the machinery so set up.
26. From the aforesaid discussion, it follows that if the alternative remedy available to an aggrieved person is an effective one, a writ petition may not be entertained ignoring the statutory dispensation. In other words, whether the alternative remedy is an effective one or not would be one of the guiding as well as relevant factors in deciding the manner in which the High Court should exercise its discretion.
27. However, the Tribunals created under Article 323A and 323B stand on a completely different platform than the remedies available for redressal of grievances of aggrieved persons under various statutes as well as the Tribunals and Appellate Tribunals under The Recovery of Debts and Bankruptcy Act, 1993 (for short "RDB Act") and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act").



28. Articles 323A and 323B falls within Part XIVA of the Constitution of India which were inserted by the Constitution (Forty-second Amendment) Act, 1976. Part XIVA provides for creation of Tribunals. Article 323A deals with Administrative Tribunals and Article 323B deals with Tribunals for other matters.
29. Clause 2(d) of Article 323A and Clause 3(d) of Article 323B of the Constitution provides for exclusion of jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136.
30. The Administrative Tribunal Act, 1985 was enacted pursuant to the power conferred upon the Parliament under Article 323A of the Constitution.
31. Section 28 of the 1985 Act when originally enacted provided for exclusion of jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution.
32. Two out of the three issues which fell for consideration before the Constitution Bench in **L. Chandra Kumar vs. Union of India and others** reported at **(1997) 3 SCC 261** are as follows-

“(1) Whether the power conferred upon Parliament or the State Legislatures, as the case may be, by sub-clause (d) of clause (2) of Article 323-A or by sub-clause (d) of clause (3) of Article 323-B of the Constitution, to totally exclude the jurisdiction of ‘all courts’, except that of the Supreme Court under Article 136, in respect of disputes and complaints referred to in clause (1) of Article 323-A or with regard to all or any of the matters specified in clause (2) of Article 323-B, runs counter to the power of judicial review conferred on the High Courts under Articles 226/227 and on the Supreme Court under Article 32 of the Constitution?”

“(2) Whether the Tribunals, constituted either under Article 323-A or under Article 323-B of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?”

33. The Hon’ble Supreme Court held that the power of judicial review over legislative action vested in the High Courts under Article 226 and before the Supreme Court under Article 32 of the Constitution is an integral and



essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of the High Courts and the Supreme Court to test the Constitutional validity of legislations can never be ousted or excluded (*see para 78 of L.Chandra Kumar's case*).

34. It was further held that the power vested by the High Courts to exercise judicial superintendence over the decisions of all Courts and tribunals within their respective jurisdictions also forms part of the basic structure of the Constitution. (*see para 79*).
35. The Hon'ble Supreme Court held that so long as the jurisdiction of the High Courts under Articles 226/227 and that of the Supreme Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the 1985 Act or upon Tribunals created under Article 323B of the Constitution. (*see para 81*)
36. The contention that the Tribunals should not be allowed to adjudicate upon matters where the vires of a legislation is questioned and whether they should restrict themselves to handling matters where constitutional issues are not raised stood rejected in **L. Chandra Kumar (supra)**. The Hon'ble Supreme Court observed that to hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which it was constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the Division bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls, will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matters. (*See paragraph 90*)



37. The Hon'ble Supreme Court held that the Tribunal cannot act as a substitute for the High Courts and the Supreme Court and their function is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. In paragraph 99 of the said reports, it was held thus-

“99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

(emphasis supplied)

38. Whether the High Court can entertain a writ petition in respect of matters falling within the domain of Tribunal under Article 323A as a Court of first instance came up for consideration before the Hon'ble Supreme Court in **T.K. Rangaranjan vs. Government of Tamil Nadu and others** reported at **(2003) 6 SCC 581**. In this case, the Tamil Nadu Government terminated the services of thousands of employees who had resorted to strike for their demands. Challenging such an action, writ petitions were filed under



Articles 226/227 of the Constitution and the learned Single Judge passed an interim order which was set aside by the Hon'ble Division Bench by holding that without exhausting the alternative remedy of approaching the Administrative Tribunal, the writ petitions were not maintainable. The Hon'ble Supreme Court reiterated that under Article 226 of the Constitution, the High Court is empowered to exercise its extraordinary jurisdiction to meet unprecedented extraordinary situation. However, it was clarified that extraordinary powers are required to be sparingly used.

39. The Hon'ble Supreme Court noticed that at the relevant point of time, in Tamil Nadu, the Administrative Tribunal was manned by only one man. The Hon'ble Supreme Court after noting that the State Government had dismissed about two lakh employees for going on strike, held that the facts of the said case was most extraordinary and observed that if such a large number of employees were directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. In view of such exceptional circumstances, the Hon'ble Supreme Court held that there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy.
40. By referring to the observations made by the Hon'ble Supreme Court in paragraph 37 of the decision in the case of **Leelavathi N. (supra)**, Mr. Thakkar would vehemently contend that this Court should entertain this writ petition as the "Authority" under the 2001 Act acted without jurisdiction.
41. In **Leelavathi N. (supra)**, after reiterating the proposition of law laid down in **Radha Krishan Industries (supra)** and **PHR Invent Educational Society (supra)**, the Hon'ble Supreme Court arrived at a conclusion in paragraph 36 of the reports that the High Court should not entertain a writ petition under Article 226 of the Constitution of India in matters falling squarely within the domain of the Tribunals.



42. **Leelavathi N. (supra)** after holding that the proposition of law laid down in **Thansingh Nathmal (supra)** and other similar judgments still holds the field, in paragraph 37 of the said reports, reiterated the proposition of law laid down in **T.K. Rangarajan (supra)** that in exceptional circumstances a writ petition may still be maintainable notwithstanding the existence of an alternative remedy.
43. It, therefore, follows that ordinarily the High Court will not entertain a writ petition if an alternative and efficacious remedy is available in the form of a Tribunal constituted under Articles 323A and 323B of the Constitution but can entertain a writ petition in very very exceptional circumstances.
44. It is well settled that a judgment is to be read as a whole in order to cull out the ratio decidendi.
45. The observations made in Paragraph 37 of **Leelavathi N. (supra)** should not be read as laying down a proposition that an aggrieved party can bypass the tribunal constituted under Articles 323A and 323B at the mere asking and directly approach the High Court in respect of matters falling within the domain of the tribunal. In this regard it would be relevant to take note of the observation of the Hon'ble Supreme Court in **L. Chandra Kumar (supra)** wherein it was held that while the jurisdiction conferred upon the High Courts under Articles 226 and 227 and upon the Supreme Court Under Article 32 of the Constitution is a part of basic structure of our Constitution and such jurisdiction cannot be ousted and Tribunals may perform a supplementary role in discharging the powers conferred by Articles 226 and 32 of the Constitution.
46. For the aforesaid reason, this Court is not inclined to accept the contention of Mr. Thakkar that **Leelavathi N. (supra)** is an authority for the proposition of law that a writ petition, alleging that the issue raised therein falls within the exceptions carved out by the Hon'ble Supreme Court in a catena of judgments, has to be entertained and tried by the High Court even in cases where the matter falls within the domain of the Tribunal.



47. To the mind of this Court, if a Tribunal constituted under Articles 323A & 323B of the Constitution, is an effective alternative remedy, the High Court would not normally exercise its jurisdiction keeping in mind the rule of self-imposed restraint which plays an important role in the exercise of discretion to entertain or not to entertain a writ petition.
48. West Bengal Land Reforms and Tenancy Tribunal Act 1997 received the assent of His Excellency the Governor of the State on 12.12.1997. The said Act came into force few months after the judgment in **L. Chandra Kumar (supra)** was delivered. The said Act was promulgated to provide for setting up of a Land Reforms and Tenancy Tribunal pursuant to Article 323B of the Constitution and for the adjudication and trial by such tribunal of disputes, claims, objections and applications relating to, or arising out of the, land reforms or tenancy in land and other matters under a specified Act and for matters connected there with or incidental thereto.
49. Section 6 of the 1997 Act deals with the jurisdiction, power and authority of the Tribunal. Section 6 states that the Tribunal shall with effect from such date as may be appointed by the State Government by notification in that behalf, exercise jurisdiction, power, and authority in relation to any order made by an authority under a specified Act; an application complaining of inaction or culpable negligence of an authority under a specified Act; an appeal against an order of the Mines Tribunal appointed under Section 36 of the West Bengal State Acquisition Act 1953; 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; and adjudication of matter, proceedings, cases and appeals with stood transferred from the High Court and other authorities to the Tribunals in accordance with the provisions of this Act.
50. Section 7 of the 1997 Act states that 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 date by any court including the High Court, except the writ jurisdiction 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 incidentally thereto and other matters arising out of any provisions of a specified Act.

51. Section 8 deals with the exclusion of jurisdiction of Courts. It states that on and from the date from which the jurisdiction, power and authority become exercisable under that 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.
52. Upon a conjoint reading of Sections 6, 7 and 8 of the 1997 Act, this Court finds that the jurisdiction, power and authority which used to be exercised by any Court including the High Court except the writ jurisdiction under Articles 226 and 227 of the Constitution exercised by the Division Bench of the High Court prior to the date appointed by the State Government under Section 6 of the 1997 Act in respect of matters relating to land reforms and other matters arising out of any provisions of a specified Act have been vested upon the Tribunal.
53. It, therefore, follows that the adjudication that used to be made by this Court under Article 226/227 as a Court of first instance in respect of the matters specifically provided for in Sections 6, 7 and 8 have been taken away from the jurisdiction of the High Court and entrusted to the Tribunal set up under the 1997 Act.
54. It is now well settled that the Tribunals will act as a Court of first instance and shall perform a supplementary role in discharging the powers conferred



under Articles 226/227 and it will not be open to the litigants to directly approach the High Court overtaking the jurisdiction of the Tribunal.

55. In ***State of W.B. v. Ashish Kumar Roy*** reported at **(2005) 10 SCC 110**, the vires of the 1997 Act was challenged. The Hon'ble Supreme Court reiterated the observations of the Constitution Bench decision in the case of ***L. Chandra Kumar (supra)*** and it was held that as long as the tribunal constituted performs a supplementary role, without exclusion of the jurisdiction of the High Court under Article 226 and 227 and under Article 32 of the Constitution of India, the validity of the legislation constituting such tribunals could not be doubted. It was further held that the Tribunals would act as authorities of first instance whose decision could be challenged before the Division Bench of the High Court in its writ jurisdiction.
56. The Hon'ble Division Bench in the case of ***Ananda Koley vs. State of West Bengal and Ors*** reported at **(2016) 3 WBLR 577** after noting the provisions of Article 323 B of the Constitution of India and the interpretation of the same as made in the case of ***L. Chandra Kumar (supra)*** held that a tribunal created under Article 323B of the Constitution is a Court of first instance and in a case coming within the jurisdiction of the West Bengal Land Reforms and Tenancy Tribunal, the Court sitting under Article 226/227 of the Constitution of India cannot act as a court of first instance. The Hon'ble Division Bench held that there are two distinguishable features so far as the tribunals created by virtue of any statute where the power flows from the provisions of Article 323A or 323B of the Constitution of India, which are as follows-
- (i) The Tribunal is a court of first instance and under the provisions of Section 8 of the 1997 Act the jurisdiction of a Court sitting under Article 226 and 227 of the Constitution of India has been ousted to act as the Court of first instance and that judicial review is a basic structure of the Constitution of India.
 - (ii) The Tribunal created under the provisions of Article 323A of the Constitution of India or by virtue of the provisions of the Act



which is legislated by the State Legislature in exercise of power conferred on it by the provision of Article 323B of the Constitution of India is competent to examine the vires of any provision of an Act save and except any provision of an Act which creates that tribunal.

(emphasis supplied)

57. The Hon'ble Division Bench in the case of **Indian Oil Corporation Limited vs. Anchit Agarwal** reported at **2023 (1) CHN (CAL) 493** after considering the decision of the Hon'ble Supreme Court in the case of **L. Chandra Kumar (supra)** and **Ashish Kumar Roy (supra)** held that it indubitably follows that for adjudication of any dispute which touches upon any provision of a specified Act under the West Bengal Land Reforms and Tenancy Tribunal Act 1997, one must approach the Tribunal at the first instance and all other civil courts including the High Court except the Division Bench exercising the writ jurisdiction under Article 226/227 of the Constitution of India do not have any power and jurisdiction to entertain such dispute.
58. From the aforesaid discussion it follows that the jurisdiction of the single bench of the High Court under Article 226 and 227 of the Constitution of India as a Court of first instance has been expressly excluded by virtue of Section 8 of the 1997 Act in respect of matters falling within the jurisdiction, power and authority of the WBLRTT thereby retaining the jurisdiction of the Division Bench of the High Court under Articles 226 and 227 of the Constitution of India.
59. The decision of the co-ordinate bench of this court in the case of **Rita Basu and Ors. vs. State of West Bengal and Ors.** reported at **WP 1205 of 2010**, supports the aforesaid view taken by this Court wherein it was held that the writ petition before the Division Bench without exhausting the remedy before the Tribunal is not maintainable. It was further held that the



writ petition under Article 226 of the Constitution of India is not maintainable before the Single Bench of the High Court.

60. This Court in ***Gour Chandra Ghosh (supra)*** after considering various provisions of the 1997 Act held that the machinery created under the 1997 Act is an effective alternative remedy.
61. West Bengal Land Reforms and Tenancy Tribunal has been vested with the jurisdiction, power and authority in relation to matters relating to any Constitutional validity of any Act under the provisions of a specified Act. The Tribunal can also decide whether the statutory authority has acted in accordance with the provisions of the enactment in question or not or it has acted in defiance of the fundamental principles of judicial procedure or has resorted to the provisions which are repealed or an order has been passed in total violation of principles of natural justice.
62. The object of constitution of the Tribunal is to ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal and High Court while exercising the power of judicial review will have the benefit of a decision of merits which will be used by it in finally deciding the matter. The said object shall be frustrated if writ petitions are entertained at the mere asking of a party in respect of matters falling within the domain of Tribunal.
63. The summons that was issued for hearing under Section 5(3) of the 2001 Act, is under challenge in this writ petition. Thus, it is evident that the petitioner approached this Court in relation to a matter under the provisions of the 2001 Act which is a specified Act under Section 2(r) of the 1997 Act. The issue involved in this writ petition falls within the jurisdiction of the Tribunal under the first limb of Clause (d) of Section 6 of the 1997 Act.
64. WBLRTT, which is the Tribunal constituted under Article 323(B) of the Constitution is well equipped to deal with the matters as specifically mentioned in Section 6 of the 1997 Act. The said Tribunal is also competent to decide matters relating to any constitutional validity of any Act under the provisions of the specified Act. Thus, it cannot be urged that the question



whether the Deputy Controller, Kolkata Thika Tenancy acted beyond its authority to issue the notice of summons cannot be raised before the Tribunal.

65. Mr. Thakkar placed strong reliance upon the decision in the case of **Godrej Sara Lee** (supra) in support of his contention that when the jurisdiction of an authority has been questioned, the writ petition can be entertained instead of relegating the petitioner to the alternative statutory remedy.
66. In **Godrej Sara Lee** (supra), returns under the VAT Act were filed declaring the goods to fall under a particular Entry and the Assessing Officer accepted the classification of goods and the rate of tax as stated by the appellant therein. Subsequently the revisional authority sought to revise the said assessment. The jurisdiction of the revisional authority was questioned.
67. In **Godrej Sara Lee** (supra), the Hon'ble Supreme Court placed reliance on two earlier decisions wherein it was held that whether a particular item falls within an entry in a sales tax statute raises a pure question of law and if investigation into facts is unnecessary, the High Court could entertain a writ petition in its discretion even though alternative remedy was not availed of.
68. After noting the provisions of Section 34 of the VAT Act the Hon'ble Supreme Court observed that the first proviso imposed a restriction on exercise of *suo motu* power, if an issue had been settled inter alia by an appellate authority. Taking note of the admitted factual position that the decision of the Tribunal had attained finality, the Hon'ble Supreme Court observed that once the issue stands finally concluded, the decision binds the State, a *fortiori*, the revisional authority. The Hon'ble Supreme Court after observing that the issue raised therein being a pure question of law, held that the writ petition ought not to have been thrown out at the threshold.
69. Section 4 of the 1997 Act deals with the composition of the Tribunal. It states that the Tribunal shall consist of a Chairman and not less than one Judicial Member and one Administrative Member. No persons shall be qualified as a Judicial Member unless he has been or is qualified to be, a



Judge of a High Court. No person shall be qualified to be appointed as a Chairman unless he is, or has been a Judge of the High Court or has held for a period of not less than one year, the office of a Judicial Member. Each bench of the Tribunal shall consist of at least one Judicial Member and one Administrative Member.

70. If such is the composition of the Tribunal, there is no reason why the petitioner could not approach the Tribunal which is well equipped to decide the question of jurisdiction of the Controller under 2001 Act to issue the impugned summons. That apart, the question of jurisdiction raised by the petitioner herein is not a pure question of law and it requires an investigation on facts as well. The question of jurisdiction in the case on hand is a mixed question of law and fact.
71. In ***North Eastern Development Finance Corporation Ltd.*** (supra) the Hon'ble Supreme Court after noting that the loan agreement was executed on 11.05.2001 and SARFAESI Act became operational from 21.06.2002 held that the SARFAESI Act was erroneously invoked by the Corporation and since such invocation was without jurisdiction, there is no question of relegating the company to the Debt Recovery Tribunal under Section 17 of the SARFAESI Act. The said decision being distinguishable on facts, cannot come to the aid of the petitioner.
72. For all the reasons as aforesaid this court holds that the WBLRTT constituted under Article 323B of the Constitution should not be allowed to be bypassed on the ground of alleged wrongful assumption of jurisdiction by an "Authority" under the 2001 Act, as the WBLRTT has the power, authority and jurisdiction to decide such issue.
73. Accordingly, the writ petition stands dismissed as not entertained. The connected application stands disposed of.
74. Petitioner is, however, left free to approach the proper forum in accordance with law.



75. Before parting, it is made clear that this court has not entered into the merits of the claim made by the petitioner in this writ petition and the findings rendered hereinbefore are only for the purpose of supporting the ultimate conclusions on the issue of entertainability of this writ petition and the same shall not prejudice either of the parties before the proper forum if such forum is approached by the parties. They shall, however, be no order as to costs.
76. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)