

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

Hon'ble Justice Soumitra Pal, Hon'ble Chairman &
 Hon'ble Dr. Subesh Kumar Das, Administrative Member.

CASE NO. OA 256 of 2018.
DOLLY JHA –Vs- THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p style="text-align: center;">10</p> <hr/> <p>17.6.2019.</p>	<p>For the Applicant : Mr. K. Bhattacharya, Advocate.</p> <p>For the State Respondent : Mr. G.P. Banerjee, Advocate.</p> <p>For the Private Respondent : Mr. S.N. Ray, Advocate.</p> <p style="text-align: center;">In this application, the applicant, – Dolly Jha, has prayed for a direction upon the respondents to disburse the retirement dues of her deceased husband Omprakash Jha, an Assistant Commercial Tax Officer, on the basis of the succession certificate granted by order No. 13 dated 28th March, 2017 by the Court of District Delegate, Raiganj, Uttar Dinajpur appearing at pages 25 and 26 of the Original Application being Misc. Case 05 of 2014 (Succession).</p> <p style="text-align: center;">Mr. S.N. Ray, learned advocate for the private respondents submits that during the pendency of the application, Nirmala Devi Jha and Ajay Kumar Jha, Ajit Kumar Jha claiming to be the sons of first wife, that is Nirmala Devi Jha, have been added as parties and are contesting the application on the ground that since the application has been filed for recalling the order dated</p>	

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	<p>25th March, 2017 before the competent Court, no order may be passed as the proceedings therein are pending.</p> <p>It is submitted by Mr. K. Bhattacharya , learned advocate appearing on behalf of the applicants that since Competent Court has issued the succession certificate, it cannot be reopened or questioned in an indirect manner before the Tribunal. Moreover, as the application for recalling the order dated 28th March, 2017 was dismissed for default, therefore at present no legal proceedings are pending before the Civil Court.</p> <p>Mr. Ray submits that since the application for recall of the said order is still pending, no order may be passed.</p> <p>Mr. G.P. Banerjee, learned advocate appearing on behalf of the State respondent submits if directed the State authorities shall act in accordance with law.</p> <p>It is submitted on behalf of the private respondent that the marriage between the applicant and the deceased husband is disputed, which is denied Mr. Bhattacharya,.</p> <p>There is no dispute that the District Delegate, Raiganj, Uttar Dinajpur in Misc Case No. 5 of 2014 has</p>	

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	<p>passed an order on 28th March, 2017 granting succession certificate. Dispute, if any, is between the applicant and the private respondents. The Tribunal has no jurisdiction to deal with the said issue. During argument , it was brought to the notice of the learned advocates for the parties that the Supreme Court in Vasudev Dhanjibhai Modi- versus- Rajabhai Abdul Rehman : 1970(1) SCC 670, particularly in paragraph 6 thereof, has held that even an executing Court cannot go behind the decree. The said paragraph laying down the law is as under :-</p> <p style="padding-left: 40px;">“6.A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties...”.</p> <p>Since we find that a competent Court has issued succession certificate, the Tribunal has no jurisdiction to entertain the submission of the private respondents and hence the contention of the applicant</p>	

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Skg.	<p>has to be upheld.</p> <p>Therefore, in view of such facts and circumstances of the case, the application is disposed of by directing the Commissioner , Commercial Taxes, West Bengal - respondent No. 2 to disburse the retiral dues of Om Prakash Jha in terms of the succession certificate, as evident from the pages 25 and 26 of the application, within eight weeks from the date of presentation of a copy of this order. We make it clear that we have not gone into any other issues raised, which may be pending before any other Court.</p> <p>(Subesh Kumar Das) Member (A).</p> <p>(Soumitra Pal) Chairman.</p>	