

In The High Court at Calcutta
Civil Revisional Jurisdiction

The Hon'ble Justice Kausik Chanda

C.O NO. 2461 of 2007

Smt. Kamala Rani Roy & Ors.

...Petitioners.

-Versus-

Sri Sambhu Sen & Ors.

...Opposite parties.

For the Petitioners : Mr. Siva Prasad Ghose, Adv.
Ms. Neha Roy, Adv.

For the Opposite parties : Mr. Indrajeet Dasgupta, Adv.
Ms. Esha Banerjee, Adv.
Ms. Rima Biswas, Adv.

Hearing concluded on : 10/12/2020.

Judgment on : 18/12/2020.

Kausik Chanda, J.:- This revisional application under Article 227 of the Constitution of India has been directed against a judgment and order

dated February 28, 2007, passed by the learned Additional District Judge, Fast Track Court – II, Ranaghat, Nadia setting aside the judgment and order dated June 29, 2004, passed by the learned Civil Judge (Junior Division), 2nd Court, Ranaghat, Nadia on an application under Section 8 of the West Bengal Land Reforms Act, 1955.

(2) One Nirmala Bala Sen, since deceased, sought to pre-empt a sale made on October 17, 2000 by her brother Gopal Dey, since deceased. Before the Trial Court Nirmala Bala contended that she became the owner of the contiguous land by virtue of a deed of gift executed in her favour by her uncle Binod Behari. Nirmala Bala also claimed that she became a co-sharer of the relevant land by way of inheritance along with her brother and sisters from her father.

(3) The learned Trial Judge rejected the said application filed by Nirmala Bala, but the appeal court allowed the appeal holding that Nirmala Bala was entitled to pre-empt the sale. The order of the appeal court below has been challenged in this present application. It is important to bear in mind that the fate of the pre-emption application filed by Nirmala Bala has been pending for about two decades. The present application is being contested by the legal heirs of Nirmala Bala and the successive purchasers of the relevant land over time.

(4) To assail the judgment and order of the appeal court below, Mr. Siva Prasad Ghosh, learned advocate for the petitioners has raised three points. Firstly, he contends that that land in-question is a 'Bastu' land and, therefore, no right of pre-emption can be exercised with regard to such land. In support of the proposition that a 'Bastu' land cannot be pre-empted, Mr. Ghosh relies upon of the judgments reported at **2012 (5) CHN 239 (Tarulata Mahanta – vs. – Haripada Sarkar), (2007) 3 WBLR (Cal) 93 (Punit Singh – vs. – Sri Gour @ Gobinda Chandra Das)** and **2004 (2) CLJ (Cal) 273 (Swapn Kumar Kar -Versus- Salil Kumar Dey)**. Mr. Ghosh, however, very fairly has drawn the attention of this Court to a judgment reported at **2010 (1) CLJ (Cal) 556 (Sri Ramala Chowdhury & Anr. – vs. – Sri Suman Ghosh)** expressing a contrary view.

(5) Secondly, it has been argued by Mr. Ghose that Gopal had sold in excess of his share over the relevant land meaning thereby Gopal transferred his whole share of the land and in that view of the matter no pre-emption application was maintainable.

(6) Finally, it has been contended that the pre-emptor did not deposit consideration money together with a further sum of 10 per cent of that

amount along with her application for pre-emption and such short deposit rendered the application for pre-emption invalid in the eye of law and no order of pre-emption could have been passed by the appeal court on such application. He relied upon a decision of the Supreme Court reported at **(2019) 19 SCC 767 (Barasat Eye Hospital -Versus- Kaustabh Mondal)**.

(7) Mr. Indrajeet Dasgupta, appearing on behalf of the opposite parties, argues that the land in-question is a “Bastu” land situated within the municipal limits of Shantipur in Nadia. Sale with regard to such a ‘Bastu’ land is liable to be pre-empted. In support of this submission, Mr. Dasgupta relied upon the judgments reported at **(1989) 2 Supreme Court Cases 361 (Abdulla Kabir – versus – Md. Nasiruddin) and (2016) 2 CHN 489 (Sanjay Halder -versus- Budhan Rajak)**.

(8) With regard to the second point as raised by Mr. Ghosh, Mr. Dasgupta submits that the dispute with regard to the transfer of the entire portion of share by the Gopal is inconsequential inasmuch as an application for pre-emption is maintainable even if the share is transferred in whole.

(9) With regard to the issue on deposit of money, Mr. Dasgupta tried to distinguish the judgment passed in **Barasat Eye Hospital** case

contending that the said judgment is applicable when pre-emption is claimed on the ground of vicinage only. According to Mr. Dasgupta **Barasat Eye Hospital** case has considered right of pre-emption to be a weak right when the pre-emption has been claimed on the ground of vicinage. The said judgment itself recognises that case of a co-sharer rests on a different ground. Mr. Dasgupta submits that inadequate deposit is not a ground for rejection when the pre-emptor is a co-sharer and in such a case the ratio of **Barasat Eye Hospital** case has no application.

(10) The issue, as to whether pre-emption in respect of a 'Bastu' land can be claimed, has been referred to Division Bench by a learned Single Judge in **C.O No. 698 of 2018 (Sri Purshottam Das Agarwal vs. Srimati Dhanpati Devi Agarwal)**. The learned Single Judge noticed the views expressed in (**Tarulata Mahanta – vs. – Haripada Sarkar**) reported at **2012 (5) CHN 239** and (**Punit Singh – vs. – Sri Gour @ Gobinda Chandra Das & Ors.**) reported at **(2007) 3 WBLR (Cal) 93** and the contrary view taken in the judgment reported at **(2015) 2 CHN 410 (Sabri Properties Private Limited – vs. – CTS Industries Limited)**.

(11) The views expressed in **Punit** case, **Tarulata** case and **Swapan Kumar** case were on the basis of the observations made in Paragraph 51 of the judgment reported at **(1996) 2 CLJ 285 (Paschimbanga**

Krishak Samiti –versus- State of West Bengal) where it was held as follows:

“51. Having regard to the scope and object of both the Acts, we are of the opinion that on applying the principles of harmonious construction and with a view to remove the intrinsic inconsistencies, it should be held that the provisions of the West Bengal Land Reforms Act have no application in respect of matters covered by Urban Ceiling Act. However, it is made clear that the said Act will have application to agricultural lands situated within the said Area.”

(12) The inter-play, overlapping or conflict between the said two Acts in so far as provisions related to pre-emption are concerned, are to be examined by the Larger Bench. In the present application we are posed with a significantly different question.

(13) The relevant land is situated in Shantipur Municipality, Nadia. The Urban Land (Ceiling and Regulation) Act, 1976 defines ‘urban land’ as follows:

“(i) any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

(ii) in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee, a town area committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture.

.....”

“Urban agglomeration” has been defined under Section 2(n) of the said Act as follows:

“(A) in relation to any State or Union territory specified in column (1) of Schedule I, means, -

(i) the urban agglomeration specified in the corresponding entry in column (2) thereof and includes the peripheral area specified in the corresponding entry in column (3) thereof; and

(ii) any other area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one

lakh) and such other relevant factors as the circumstances of the case may require, by notification in the Official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in that Schedule and the peripheral area therefor shall be one kilometer;

(B) in relation to any other State or Union territory, means any area which the State Government may, with the previous approval of the Central Government, having regard to its location, population (population being more than one lakh) and such other relevant factors as the circumstances of the case may require, by notification in the Official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong to category D in Schedule I and the peripheral area therefor shall be one kilometre;”

(14) A combined reading of Sections 2(n) and 2(o) of the said Act makes it clear that land situated in each and every municipality in West Bengal is not ‘urban land’. To be considered as an ‘urban land’, a land within a municipality has to be situated within the limits of “urban agglomeration” as included in Schedule I appended to the said Act.

Since the relevant land is not within an “urban agglomeration”, it cannot be said that the relevant land is covered under the Urban Land (Ceiling and Regulation) Act, 1976.

(15) In the present application, therefore, we are confronted with the question as to whether pre-emption with regard to the sale of a ‘Bastu’ land covered under the West Bengal Land Reforms Act, 1955 but not an ‘urban land’ within the meaning of Urban Land (Ceiling and Regulation) Act, 1976 is permissible.

(16) In the case, cited by Mr. Dasgupta, reported at **(1989) 2 Supreme Court Cases 361 (Abdulla Kabir – versus – Md. Nasiruddin)** the issue before the Supreme Court was whether a land recorded as ‘Bari’ of an agriculturist not included in agricultural land will attract the provision of the West Bengal Land Reforms Act, 1955. It was held as follows:-

“Therefore, on a conspectus of the aforesaid provisions, if obviously follows that homestead of an agriculturist even though the same is included in the holding of the raiyat but not on the agricultural land still it is to be treated as agricultural land being the homestead of the agriculturist under the provisions of the West Bengal Land Reforms Act read with West Bengal Estates Acquisition Act and West

Bengal Non-Agricultural Tenancy Act. Therefore, the application under Section 8 of the West Bengal Land Reforms Act filed by the respondent-petitioner as a co-sharer of the said holding for pre-emption of the land purchased by a stranger i.e. the appellant is maintainable under law as has been rightly held by the lower appellate court as well as High Court. The application for pre-emption under Section 8 of West Bengal Land Reforms Act was properly allowed by lower appellate court and the said order was maintained by High Court. There is no infirmity in this finding and we uphold the same.”

(17) In the aforesaid case a homestead of an agriculturist, which was an integral part of his agricultural land, was treated to be agricultural land. The facts of the present case are entirely different.

(18) The amended definition of ‘land’ as defined under the West Bengal Land Reforms Act, 1955 was considered by a Coordinate Bench of this Court. In the judgment reported at **(2016) 1 CLJ (Cal) 513 (Ranjit Kumar Mondal -versus- Pankoj Mukhopadhyay)**. It has been held that in view of amended definition of “land” as contained in Section 2(7) of the

West Bengal Land Reforms Act, 1955 every description of land comes within the purview of the said Act and an pre-emption in respect of Bastu land is permissible. Significantly, the said judgment after taking into consideration **Punit** case and **Tarulata** case followed **Sabri properties** case being latest in point of time. The same view has been taken in the judgment reported at **(2016) 2 CHN 489 (Sanjay Halder – Vs. – Budhan Rajak)**.

(19) In view of the discussions above, I am of the opinion that a pre-emption with regard to sale of a 'Bastu' land under the West Bengal Land Reforms Act, 1955 is permissible.

(20) The second point as to whether an application for pre-emption is maintainable under Section 8 of the West Bengal Land Reforms Act, 1955 in the event of a raiyat transferred his/her entire portion of share in a plot of land to a person other than a co-sharer, has also been referred to Larger Bench by a learned Single Judge of Jalpaiguri Circuit Bench of this Court in **C.O No. 21 of 2019 (Sajidul Khandakar -vs- Bhabani Biswas)**.

(21) The said reference has been made without noticing the fact that the said issue was referred to a Special Bench and the Special Bench had already answered the issue in affirmative by a judgment reported at

(2019) 1 CLJ (Cal) 488 (Naymul Haque @ Nainul Haque -versus- Allauddin Sk).

The relevant part of the said judgment is reproduced below:

“In the case of Chhana Rani Saha (supra), the contiguous land-owner’s right of pre-emption was upheld in a situation where the entire land in question was sold. This is the opinion of the learned Single Judge in the cases of Biswanath Sarkar (supra) and Sk. Sajhan Ali (supra). The word “or” in Biswanath Sarkar (supra) and Sk. Sajhan Ali (supra) have been construed to be disjunctive. The view of the learned Single Judge in Kinkar Mahato (supra) was that right of the pre-emption could be exercised only when a co-sharer raiyat transferred a portion of the share of his interest in the plot of land. In view of the decision of the Hon’ble Supreme Court in the case of Chhana Rani Saha (supra), the word “or” has to be read as “or” only, and not “of”. This answers the reference.”

In view of the aforesaid judgment of the Special Bench the second point has to be answered in favour of the opposite parties.

(22) Moving to the last point as raised by the petitioner, I find Nirmala Bala in her application for pre-emption admitted as follows:

“That although Gopal Chandra Dey received a consideration money of Rs.30,000/- only, in the deed dated 13/10/2000, an inflated consideration of Rs.80,000/- has been mentioned.”

“That the petitioner files this pre-emption petition depositing the actual consideration of Rs.30,000/- together with compensation of Rs.3,600/-. If the learned court decides that consideration money was paid in excess of Rs.36,000/-, the petitioner undertakes to deposit whatever additional amount the learned court would direct to deposit.”

(23) The judgment rendered in **Barasat Eye Hospital** case makes it clear that unless an application for pre-emption is accompanied by a deposit of full consideration together further sum of 10 per cent of the value, the pre-emption application cannot be entertained.

(24) The relevant part of the judgment passed by the Hon’ble Supreme Court is quoted below:

“24. if we turn to Section 8(1) of the said Act, the right of pre-emption is activated “on deposit of the consideration money together with the further sum of 10% of that amount.” Thus, unless such a deposit is made, the right of a pre-emptor is not even triggered off. The provisions of Section 8 are explicit and clear in their terms.”

27. In our view, when the inquiry is being made by the Munsif, whether in respect of the stated consideration, or in respect of any additional amounts which may be payable, the pre-requisite of deposit of the amount of the stated consideration under Section 8(1) of the said Act would be required to be fulfilled. The phraseology “the remainder, if any, being refunded to the applicant” would have to be understood in that context. The word “remainder” is in reference to any amount which, on inquiry about the stated consideration, may be found to have been deposited in excess, but it cannot be left at the own whim of the applicant to deposit any amount, which is deemed proper, but the full amount has to be deposited, and if found in excess on inquiry, be refunded to the applicant.

28. We are, thus, firmly of the view that the pre-requisite to even endeavour to exercise this weak right is the deposit of the amount of sale consideration and the 10% levy on that consideration, as otherwise, Section 8(1) of the said Act will not be triggered off, apart from making even the beginning of Section 9(1) of the said Act otiose.

33. The last question which arises is whether the respondent can now be granted time to deposit the balance amount. When the direction was so passed, in pursuance of the order of the appellate court, the respondent still assailed the same. The requirement of exercising the right within the stipulated time, in respect of the very provision has been held to be sacrosanct, i.e., that there can be no extension of time granted even by recourse to Section 5 of the Limitation Act.”

(25) Mr. Dasgupta argues that the entire judgment rendered in **Barasat Eye Hospital** case proceeds on the basis that right of pre-emption is a weak right when the application for pre-emption has been made on the ground of vicinage. Placing reliance upon the last line of paragraph 23 of the said judgment, he submits that the judgment itself has made a distinction between a co- sharer and a contiguous owner for the purpose of pre-emption application. Therefore, **Barasat Eye Hospital** case is not applicable where the pre-emptor is a co-sharer.

(26) Though I find the argument advanced by Mr. Dasgupta to be very attractive, I am unable to persuade myself to accept such contention. It does not appear that the Supreme Court has expressly made any such distinction between a co-sharer and a contiguous owner for the purpose of deposit to be made under Section 8 of the Act. It is not permissible to

construe otherwise by way of making any logical deduction from any observations made in the said judgment.

(27) In view of the discussion above, the present revisional application is allowed. The opposite parties, however, will be entitled to the refund of the amount deposited in the trial court together with the interest accrued thereon, if any.

(28) There will be, however, no order as to costs.

(29) Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Kausik Chanda, J.)