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Ct. No. 23
26.11.2020

C.O. 1351 of 2020
(Via Video Conference)

Ananta Roy & Anr.
Vs.
Sri Jiban Kumar Ghosh

Mr. Imtiaz Ahmad,
Ms. Kiran Kumari Mahato … For the petitioners.

The pre-emptors in a proceeding under Section 8 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the 'said Act' in short) are the petitioners of the instant application under Section Article 227 of the Constitution of India.

The petitioners filed an application before the 1st Court of learned Civil Judge (Junior Division) District. Murshidabad being Misc. (LR) Case No. 55 of 2016 to pre-empt the disputed sale on the ground of co-sharership.

The learned trial Judge allowed the said application by the order dated May 28, 2019.

The pre-emptee/opposite party aggrieved by the judgment and order of the learned trial Judge preferred an appeal being Misc. Appeal No. 15 of 2019.

The appeal Court below by the order impugned has reversed the judgment and order of the learned Trial Judge and has dismissed the application for pre-emption.

The consideration price of the sale sought to be pre-empted is admittedly at Rs. 2,05,000/- and the petitioners at the time of filing of the said application for pre-emption had deposited a sum of Rs. 1 lakh along with the interest @ 10% thereon.

The appeal Court below relying on the decision of the Hon'ble Apex Court in the case of ***Barasat Eye Hospital & Ors. Vs. Kaustabh Mondal*** passed in ***Civil Appeal No. 1090 of 2010***, reported in ***2019 SCC Online SC 1351*** reversed the judgment of the trial Judge holding that since the entire consideration price along with the statutory interest thereon was not deposited by the petitioners along with the application under Section 8 of the said Act, the application is not maintainable.

The learned Trial Judge, while allowing the application for pre-emption although allowed the pre-emptors to deposit the balance of the entire consideration price but in view of the ratio of law laid down by the Hon'ble Apex Court in the aforementioned report the pre-emptor is not entitled to such extension of time to make good of the said short deposit of the consideration price.

The paragraph 34 of the said report being relevant to the context is quoted below:-

"***34.*** *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."*

The petitioner is required to deposit the entire consideration price of the sale sought to be pre-empted at the time of filing of the application to exercise his right of pre-emption under Section 8 of the said Act as has been held by the Hon'ble Apex Court in the said report.

In this context it is profitable to quote paragraph 29 of the said report:-

"***29.*** *We are, thus, firmly of the view that the pre-requisite to even endeavor to exercise this week 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."*

In view of the discussion made above this Court does not find any illegality or infirmity in the order impugned warranting interference.

C.O. 1351 of 2020 is therefore dismissed.

No order as to costs.

However, the petitioners are at liberty to withdraw the money deposited by them along with their application for pre-emption.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)