

16.12.2020
Court No. 19
Item No.20
CP

C.O. 1563 of 2020

Jamaluddin @ Sk. Jamaluddin
vs.
Hemranjan Mondal & ors.

Mr. Debasish Banerjee
Mr. Amit Biswas

....for the petitioner.

The petitioner was the pre-emptor in Misc. Case (Pre-emption Case No. 54 of 2006). The learned Civil Judge (Junior Division), Islampur decreed the pre-emption case in favour of the pre-emptor/petitioner. The opposite party no. 1/pre-emptee preferred an appeal before the learned Additional District Judge, FTC-2nd Court, Islampur, Uttar Dinajpur, which was registered as Misc. Appeal (Pre) No. 1 of 2019. By judgment and order dated February 12 2020, the learned lower appellate court rejected the application for pre-emption thereby reversing the judgment and order passed by the learned Civil Judge (Junior Division), Islampur, Uttar Dinajpur dated December 6, 2018.

The learned lower appellate court allowed the appeal on two grounds, namely, that the pre-emption was filed by a co-sharer who was not a non-notified co-sharer beyond the period of limitation as would be reflected from the records and evidence available in

the proceedings. The other question on which the appeal was allowed and the decree of pre-emption was set aside, was on the basis of the judgment of the Hon'ble Apex Court in the case of Barasat Eye Hospital & ors. vs. Kaustabh Mondal, reported in **2019 SCC Online SC 1351**. The learned lower appellate court found on record that the entire consideration money was not deposited and only after 12 years from the date of commencement of the proceedings under Section 8 of the Land Reforms Act the petitioner/pre-emptor had deposited rest of the amount. The learned lower appellate court considered all the decisions of this court which permitted belated deposit of the remaining consideration amount if a pre-emptor had deposited some amount during filing of the application. However, with the decision of the Hon'ble Apex Court in Barasat Eye Hospital (supra) in Civil Appeal No. 1090 of 2010, those judgments were impliedly overruled and the Hon'ble Apex Court has finally decided the issue.

The learned counsel for the petitioner submits that the learned lower appellate court ought to have come to the finding as to what was the amount paid and what was the amount deposited belatedly before passing the judgment.

From a reading of the order as a whole it is clear that the learned court below considered the

issue in its entire perspective and had also noted the submission of the learned advocate for the pre-emptor/petitioner that upon the prayer of the pre-emptor to deposit the rest of the consideration money in the learned trial court, the learned trial court by order no. 77 dated September 25, 2018 allowed the prayer and, thereafter, the petitioner deposited such amount before the learned trial court before the final order was passed by the learned trial court.

Such being the factual aspect as narrated in the judgment impugned before this court, the contention of the learned advocate for the petitioner as to non-application of mind with regard to the quantum that was deposited belatedly does not persuade this court to admit the revisional application, especially when the Hon'ble Apex Court has decided the issue in the decision of Barasat Eye Hospital (supra). When the Hon'ble Apex Court has already decided the issue finally that the entire consideration money must be deposited by the pre-emptor at the time of filing of the application and the 'remainder' as mentioned in Section 9 would mean an amount deposited in excess but it could not be left to the whim of an applicant to deposit any amount, which it deemed proper. Full amount had to be deposited and if on inquiry it was found that any excess amount was deposited, the same could be

refunded. The relevant paragraphs of the said judgment are quoted below:

*“22. The historical perspective of this right was set forth by the Constitution Bench of this Court, as far back as in 1962, in the **Bhau Ram**²⁰ case. The judgment in the **Bishan Singh & Ors.**²¹ case preceded the same, where different views, expressed in respect of this law of preemption, have been set out, and thereafter the position has been summarized. There is no purpose in repeating the same, but, suffice to say that the remedial action in respect of the right of pre-emption is a secondary right, and that too in the context of the "right being a very weak right." It is in this context that it was observed that such a right can be defeated by all legitimate methods, such as a vendee allowing the claimant of a superior or equal right to be substituted in its place. This is not a right where equitable considerations would gain ground. In fact, the effect of the right to pre-emption is that a private contract inter se the parties and that too, in respect of land, is sought to be interfered with, and substituted by a purchaser who fortuitously has land in the vicinity to the land being sold. It is not a case of a co-sharer, which would rest on a different ground.*

*23. The second aspect of importance is that given the aforesaid position, even the time period for making the deposit, under Section 8(1) of the said Act, has been held to be sacrosanct, in view of the judgment of this Court in the **Gopal Sardar**²² case. The very provision of Section 8(1) of the said Act came up for consideration and, as held in that case, if the time period itself cannot be extended and if Section 5 of the Limitation Act would not apply, while interpreting Section 8 of the said Act, then the requirement of deposit of the amount along with the application, within the time stipulated is sacrosanct. The amount to be deposited is not any amount, as that would give a wide discretion to the pre-emptor, and any pre-emptor not able to pay the full amount, would always be able to say that, in his belief, the consideration was much lesser than what had been set out. If we read the judgment in the **Gopal Sardar**²³ case, in its true enunciation and spirit, there is sanctity attached to both, the amount and the time frame. There cannot be sanctity to the time frame, incapable of extension even by the Limitation Act, and yet, there be no sanctity to the amount.*

24. In the context of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, the recent view of this Court, in the context of the relevant provision (now repealed²⁴), itself puts a pre-condition for the exercise of the right of pre-emption, by requiring the deposit of the full stated purchase money and 10% of the purchase amount. In our view, it makes no difference that the proviso in Section 16(3) of that Act states that "...no such application shall be entertained...", in the context of filing of applications, without the deposit of the full amount. We may say so because, 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.

25. Now turning to Section 9 of the said Act, from which, apparently, some judgments of the Calcutta High Court have sought to derive a conclusion that an inquiry into the stated consideration is envisaged. However, the commencement of sub-section (1) of Section 9 is with "on the deposit mentioned in sub-section (1) of section 8 being made..." Thus, for anything further to happen under Section 9 of the said Act, the deposit as envisaged under Section 8 of the said Act has to be made. It is only then that the remaining portion of Section 9 of the said Act would come into play.

26. The question now is as to what would be the nature of inquiry which has been envisaged to be carried out by the Munsif. If Section 9, as it reads, is perused, then first, the amount as mentioned in the sale transaction is to be deposited, as per sub-section (1) of Section 8 of the said Act. Once that amount is deposited, the next stage is for the Munsif to give notice of the application to the transferee. The transferee thereafter, when enters appearance within the time specified, can prove the consideration money paid for the transfer "and other sums." Such other sums, if any, are as "properly paid by him in respect of the land including any sum paid for annulling encumbrances created prior to the day of transfer and rent or revenue, cesses or taxes for any period." The inquiry, thus envisaged, is in respect of the amount sought to be claimed over and above the stated sale consideration in the document of sale because, in that eventuality further sums would have to be called for, from the pre-emptor. In that context, the additional amount would have to be deposited. Even in the event that a pre-emptor raises doubts

regarding the consideration amount, enquiry into the said aspect can be done only upon payment of the full amount, along with the application. In this aspect, the phrase "the remainder, if any, being refunded to the applicant" would include to mean the repayment of the initial deposit made along with the application, if considered to be excess. To give any other connotation to these Sections would make both, the latter part of Section 8 of the said Act and the inception part of Section 9 of the said Act, otiose. We do not think such an interpretation can be countenanced.

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.

29. We are not inclined to construe the aforesaid provisions otherwise only on the ground that there are no so called "penal provisions" included. The provisions of Sections 8 & 9 of the said Act must be read as they are. In fact, it is a settled rule of construction that legislative provisions should be read in their plain grammatical connotation, and only in the case of conflicts between different provisions would an endeavour have to be made to read them in a manner that they co-exist and no part of the rule is made superfluous.²⁵ The interpretation, as we have adopted, would show that really speaking, no part of either Section 8, or Section 9 of the said Act is made otiose. Even if an inquiry takes place in the aspect of stated consideration, on a plea of some fraud or likewise, and if such a finding is reached, the amount can always be directed to be refunded, if deposited in

excess. However, it cannot be said that a discretion can be left to the pre-emptor to deposit whatever amount, in his opinion, is the appropriate consideration, in order to exercise a right of pre-emption. The full amount has to be deposited.

Under such circumstances, I do not find any reason to interfere with the order impugned.

The petitioner is entitled to get back the amount deposited in the learned court below together with interest in case it has been kept in an interest bearing deposit and if the same has not been kept in an interest bearing deposit, the amount as deposited by the petitioner shall be refunded to the petitioner in accordance with law.

The revisional application is disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)