

27-01-2020
Court No.3
(Susanta/ A/J)
SI/05.

**CIRCUIT BENCH OF
CALCUTTA HIGH COURT
AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 78 OF 2019

**Sri Tarun Kumar Roy & Anr.
Vs.
*Sri Subimal Ghosh & Anr.***

Ms. Suman Sehanabis (Mandal).

. . .For the Petitioners.

Mr. Subhasish Misra.

. . . For the Opposite Parties

The pre-emptors in a proceeding under Sections 8 & 9 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 Article 227 of the Constitution of India.

The petitioners in the application for pre-emption stated, inter alia, that they will be depositing the consideration price after the pre-emption application is being allowed.

The petitioners subsequently filed an application praying leave of Court to proceed with the pre-emption case without depositing the consideration price.

The learned Trial judge by the order no. 1 dated November 12, 2018 disposed of the said application by granting leave to the petitioners to put in the consideration price.

The petitioners thereafter filed an application seeking recall of the said order on the ground that

the learned Trial Judge has misconstrued the prayer of the petitioners.

The learned Trial Judge by the order impugned herein being order No.10 dated August 3, 2019 has dismissed the said application by directing the petitioner to pay the said consideration price by August 9, 2019.

In view of the judgment of the Hon'ble Apex Court in the case of ***Barasat Eye Hospital & Ors. Vs. Kaustabh Mondal in civil Appeal no. 1090 of 2010***, the issue regarding the time for deposit of the consideration price to maintain the claim of pre-emption under Section 8 of the said Act is no Longer res integra.

In the said decision the Hon'ble Supreme Court has clearly held that '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'.

This Court, therefore, does not find any illegality and/or infirmity in the order impugned warranting interference.

C.O. 78 of 2019 is dismissed.

No order as to costs.

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.)