

16.11.2021
(S/L-34)
Ct.-18
(Susanta)

(Via Video Conference)
C.O. 683 of 2021

Smt. Kaushyla Pandey
-Vs-
Sri Jaharlal Hati & Anr.

Mr. Ayan Banerjee,
Mr. Debjani Sengupta,
.... For the Petitioner.
Mr. Suhrid Sur,
... For the Opposite Parties.

Affidavit-of-service filed in Court today be kept
with the record.

The pre-emptee in a proceeding under Sections
8 & 9 of the West Bengal Land Reforms Act, 1955
(hereinafter referred to as the “said Act” in short) is
the petitioner of the present application under
Article 227 of the Constitution of India.

The opposite party No. 1 has initiated a
proceeding under Sections 8 & 9 of the said Act to
pre-empt a sale in favour of the petitioner being Pre-
emption Case no. 11 of 2018 which is pending
before the Additional Court of Learned Civil Judge
(Junior Division), Chandannagore, Hooghly.

The petitioner in the said pre-emption case
filed an application praying determination of the
issue regarding maintainability of the said case on
the ground that the pre-emptor has not deposited
the entire consideration price of the transaction
sought to be permitted.

The learned Trial Judge by the order impugned
being order no. 27 dated February 15, 2021 has
dismissed the application filed by the petitioner but

allowed the application filed by the pre-emptor seeking permission to deposit the balance of the consideration price along with 10 per cent compensation amount.

The learned Trial Judge in the order impugned although has referred the decision of the Hon'ble Supreme Court in the case of **BARASAT EYE HOSPITAL & ORS. vs. KASUTABH MONDAL** reported in **(2019) 19 Supreme Court Cases 767** but without taking into consideration the proposition of law laid down in the said decision, has dismissed the said application filed by the petitioner.

It has been laid down in the aforesaid decision that in order to maintain an application for pre-emption, the pre-emptor is required to deposit the entire consideration price of the sale sought to be permitted along with 10 per cent compensation amount at the time of filing the application for pre-emption.

The pre-emptor having not done so, cannot maintain the application for pre-emption and the said defect cannot be cured by depositing entire consideration price subsequently.

The order impugned, therefore, is not sustainable and is accordingly set aside.

The Pre-emption Misc. Case No. 11 of 2018 **(Sri Jaharlal Hati vs. Smt. Kaushyla Pandey & Anr.)** pending before the Additional Court of Learned Civil Judge (Junior Division),

Chandannagore, District- Hooghly is dismissed as not maintainable.

However, the pre-emptor is permitted to withdraw the money deposited by him in the said pre-emption case.

In the event the pre-emptor makes an application for withdrawal of the said money, the said application is to be disposed of in accordance with law, within three available effective working weeks of the said Court from the date of filing of the said application.

C.O. 683 of 2021 is disposed of with the above terms without any 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.)