

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present :

THE HON'BLE JUSTICE PARTHA SARATHI SEN

C.O. No. 56 of 2019

Sourav Banerjee
Vs
Jaba Poral & Ors.

For the Petitioner	: Sounak Bhattacharya, Adv.
	: Mr. Tanmoy Sett, Adv.
	: Mr. Pran Gopal Das, Adv.
Heard on:	: 09.11.2022, 14.11.2022 and 16.11.2022
Judgment on:	: 21.11.2022

Partha Sarathi Sen, J. : –

1. The present revisional application under Article 227 of the Constitution of India arises out of the impugned judgement dated 10.08.2018, as passed by the learned Additional District Judge, 5th Court, Howrah, in Misc. Appeal No. 162/2015. By the impugned judgement the Learned First Appellate Court reversed the order dated 30.07.2015, as passed by the Learned Civil Judge, Junior Division, 4th Court, Howrah in L.R Misc. Case No.33/2001 in a proceeding under Section 8 of the West Bengal Land Reforms Act.

2. In order to dispose of the instant revisional application fairly and effectively the facts leading to filing of the instant revisional application is required to be dealt with in a nut shell.

3. Before the learned trial court the opposite party no.1 herein filed an application under Section 8 of the West Bengal Land Reforms Act, 1956 (hereinafter referred to as the 'said Act') praying for pre-emption over the suit property which has been purchased by the present petitioner herein from the opposite party nos. 2 to 4 herein. As discussed earlier, the learned trial court allowed such application under Section 8 of the said Act in L.R Misc. Case No. 33/2001 which was challenged before the Learned Appellate Court by filing Misc. Appeal No.162/2005 and by the impugned judgement the learned Appellate Court allowed such appeal and thus set aside the order dated 30.07.2015, as passed by the learned trial court and thereby allowed the opposite party no.1's application for pre-emption.

4. The petitioner felt aggrieved and thus preferred the instant revisional application.

5. In support of his contention learned advocate for the petitioner at the very outset draws attention of this Court to the impugned judgement dated 10.08.2018, as passed by the Learned Appellate Court. It is contended that while passing the impugned judgement the Learned Appellate Court has failed to appreciate that the present opposite party no.1 being the petitioner in LR Misc. Case No.33/2001 has miserably failed to deposit the entire consideration money together with a further sum of 10 % of that amount at the time of filing of LR Misc. Case No.33/2001 under Section 8 of the said Act. It is argued further that since such deposit has not been made by the opposite party i.e.

the petitioner of the said Misc. Case, the opposite party no.1 herein has miserably failed to comply with the mandate of the provision of Section 8(1) of the said Act and thus the learned Appellate Court ought to have dismissed the Misc. Appeal No. 162/2015. In support of his contention the learned advocate for the present appellant places his reliance upon the following two reported decisions namely; **‘Barasat Eye Hospital & Ors. Vs. Kaustabh Mondal’ reported in (2019) 19 SCC 767 and ‘Abdul Matin Mallick vs. Subrata Bhattacharjee (Banerjee) and Ors.’ reported in (2022)7 SCC 147.**

6. On perusal of the entire materials as placed before this Court and after hearing the learned advocate for the petitioner at length, this Court is of considered view that for prior adjudication of the instant revisional application a look to the provision of Section 8 of the said Act is required. Section 8 of the said Act of 1955 reads as under:-

“8. Right of purchase by co-sharer or contiguous tenant –

(1) If a portion or share of a [plot of land of a raiyat] is transferred to any person other than a [co-sharer of a raiyat in the plot of land], [the [bargadar in the plot of land] may, within three months of the date of such transfer, or] any [co-sharer of a raiyat in the plot of land] may, within three months of the service of the notice given under sub-section (5) of section 5, or any raiyat possessing land [adjoining such plot of land], may, within four months of the date of such transfer, apply to the [Munsif having territorial jurisdiction,] for transfer of the said portion or [share of the plot of land] to him, subject to the limit mentioned in [section 14M,] on deposit of the consideration money together with a further sum of ten per cent of that amount:.....

(2)

(3).....”

7. In further considered view of this Court the relevant portions of the reported decision of '**Barasat Eye Hospital**' (supra) may be looked into and the same is reproduced herein below in verbatim:-

“.....

24. 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 Gopal Sardar 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 Gopal Sardar 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.

25. 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 repealed 24), 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 24 Vide Section 2 of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019 clear in their terms.

26. 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.

27. 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.

28. 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.

29. 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.....”

8. Relevant portion of the judgement of ‘**Abdul Matin Mallick**’ (supra) is as under:-

“.....
6.3. Therefore, deposit of the entire sale consideration with additional 10% of the sale consideration alongwith the pre-emption application is a statutory and mandatory requirement and it is a pre-condition before any further enquiry as contemplated under Section 9 of the Act is held. In the present case, admittedly, the pre-emptors had not deposited the entire sale consideration with additional 10% of the sale consideration alongwith the pre-emption application. The aforesaid aspects have not been considered either by the First Appellate Court or even by the High Court in this case.

7. Now, so far as the submission on behalf of the pre-emptors that they bonafidely believed that the sale consideration mentioned in the sale deed is in favour of the vendee, who is an outsider (outside the family) was higher than the actual sale consideration and therefore, they did not deposit the entire sale consideration with additional 10% of the sale consideration alongwith the pre-emption application is concerned, it is to be noted that the aforesaid cannot be a ground not to comply with the condition of deposit as required under Section 8 of the Act, 1955. At the most, such a dispute can be the subject matter of an enquiry provided under Section 9 of the Act. As observed hereinabove, the enquiry under Section 9 with respect to the sale consideration in the sale 14 deed would be only after the condition of deposit of entire sale consideration with additional 10% as provided under Section 8 of the Act has been complied with.

8. Now, so far as the submission on behalf of the pre-emptors that the contention of non-deposit of the entire sale consideration with additional 10% of the sale consideration by the pre-emptors was not raised before the Courts below and has been raised for the first time before this Court, and therefore the same be not considered/permitted to be raised now, is concerned, it is to be noted that the said contention would go to the root of the matter on maintainability of the pre-emption application as without complying with the statutory requirements as mentioned under Section 8 of the Act, 1955, the same is not maintainable. It is an admitted position that the pre-emptors had not deposited the entire sale consideration with additional 10% of the sale consideration along with the pre-emption application as required under Section 8 of the Act in the instant case. In view of the aforesaid admitted position, we have considered the submission on behalf of the appellant on non-fulfillment of the condition mentioned in Section 8 of the Act.”

9. From the aforementioned discussion it appears to this Court that the legislatures while enacting the said Act of 1955 in their own wisdom made it obligatory for the pre-emptor to deposit the entire consideration money together with a further sum of 10 % of that amount while filing an application

under Section 8 of the said Act. On perusal of the Section 9 of the said Act of 1955 it reveals that only on deposit of the requisite amount as mentioned in Section 8(1) of the said Act, the Munsif shall give notice of the application to the transferee for making an enquiry relating to pre-emption. In the aforementioned two reported decisions the Hon'ble Supreme Court has made it clear that the pre-emptor applying for pre-emption under Section 8(1) of the Act shall have to deposit the entire consideration money together with the further sum of 10% of the amount and unless such deposit is made, the right of a pre-emptor is not even triggered of.

10. In the case in hand it reveals to this Court that while filing LR Misc. Case No.33/2001 the present opposite party no.1 has not deposited the entire consideration money and on the contrary he deposited a sum of Rs.40,000/- along with 10% of the said amount on his own estimation and in view of such, he flouted the mandate of Section 8(1) of the said Act of 1955.

11. In considered view of this Court, while passing the impugned judgement the learned Appellate Court has probably overlooked the aforesaid mandatory provision of law. This Court thus finds that while passing the impugned judgement Learned Appellate Court ought to have hold that the LR Misc. Case No.33/2001 as filed by the present opposite party no.1 under Section 8 of the said Act of 1955 is not maintainable on account of non-fulfillment of the condition as mentioned in Section 8 of the said Act. As a result the instant revisional application succeeds. The impugned judgement dated 10.08.2018 as

passed in Misc. Appeal No.162/2015 by the Learned Additional District Judge, 5th Court, Howrah is set aside. Consequently the order dated 30.07.2015, as passed by the learned Civil Judge, Junior Division, 4th Court, Howrah is upheld.

12. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

(Partha Sarathi Sen, J.)