

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE Kesang Doma Bhutia.

C.O. No. 639 of 2005

Ratan Dhar

VS.

Sunil Kumar Pal & Ors.

With

C.O. No. 1366 of 2021

With

CAN 1 of 2021

For the Petitioner : Mr. Mukteswar Maity

Hearing concluded on : 21.12.2021

Judgment on : 19.01.2022

Kesang Doma Bhutia, J:- This Court has no determination to hear a revisional application of the year 2005, but for proper adjudication of the issue involved in C.O. No. 1366 of 2021, the revisional application no. C.O. 639 of 2005 need to be heard analogously with C.O. No. 1366 of 2021 as both the revisional application arises out

of a decree of preemption passed in Misc. Appeal 106 of 1993, by learned Additional District Judge, Hooghly on 03.12.2003. Therefore, both the above C.Os are considered analogously.

Facts which is necessary for determination of the both the revisional applications, in gist is that present opposite parties Anil Kumar Pal and Sunil Kumar Pal have filed preemption case under Section 8 of the West Bengal Land Reform Act, 1955 being Misc. Case No. 20 of 1991 against the petitioner for preemption of 1 Katha, 15 Chattak and 15 Sqft. in the Court of the First Munsif at Seramore. The learned trial court was pleased to dismiss such preemption case on 13.09.1993.

Being aggrieved by such order of dismissal the preemptor Anil Kumar Pal and Sunil Kumar Pal have preferred a Misc. Appeal No.106 of 1993 before learned District Judge, Hooghly. The Appeal was finally heard by the Additional District Judge Hooghly and was pleased to allow the appeal granting preemption in respect of "KA" schedule property and directed the appellants to deposit the balance consideration money along with statutory compensation thereof within one month from the date of order. Subsequently, on the prayer of the appellants, time for deposit was further extended by another month and was pleased to reject the

application for Review of such order filed by respondent/ the present petitioner.

Being aggrieved by order of preemption passed by the learned First Appellate Court on 03.12.2003 and subsequent two orders of extension of time and rejection of review application, the present petitioner Ratan Dhar preferred C.O. No. 639 of 2005.

From the materials in record of C.O. No. 1366 of 2021, it is seen that opposite parties/preemptor no. 1 and 2 have already put the decree of preemption passed by the Appellate Court in Misc. Appeal No. 106 of 1993 on 03.12.2003 in execution. In such Execution Case, the petitioner has filed an application under Section 47 of Civil procedure Code and where he has challenged the executable of the **decree** of the Appellate Court on the ground that preemption was sought in respect of **“Kha” Schedule Property comprising 1 Khatha, 15 Chattak and 15 Sqft. of plot no 1850, but decree was passed in respect of Ka” Scheduled Property comprising 5 Khatha, 6 Chattak and 43 Sqft. land of plot no. 1850.**

While dealing with the application of the petitioner under section 47 of CPC, the learned trial/executing court has observed the learned Appellate Court has granted pre-emption in respect of “Ka” Schedule

Property and not in respect of “Kha” Schedule Property and it has no authority to declare order of the superior Court to be null and void and thereby rejected the application u/s47 of CPC.

The petitioner Ratan Dhar being aggrieved by order of dismissal of his application under Section 47 of the Civil Procedure Code filed in Misc. Case No. 91 of 2018 passed by the learned Civil Judge (Junior Division) 4th Court, Serampore/the executing court on 18.01.2020 has preferred the present C.O. no.1366 of 2021 along with an application under Section 5 of the Limitation Act, for condonation of delay of 563 days. The delay is condoned to prevent miscarriage of justice and for the reason that would be discussed below. **Accordingly, CAN 1 of 2021 is disposed of.**

It is undisputed facts the pre-emption is sought for in respect of **“Kha” schedule property measuring 1 Khatha, 15 Chattak and 15 Sqft. of plot no 1850** and not in respect of **“Ka” Scheduled Property comprising 5 Khatha, 6 Chattak and 43 Sqft. land of plot no. 1850.** Therefore, apparently there is an error on face of the decree of preemption passed by the Appellate Court. It is settled law the executing Court has no jurisdiction to decide whether the decree passed by the Appellate Court is null and void or bad in law and court cannot go beyond the decree and it is bound by the decree. Therefore, this Court

does not find any error being committed by the Executing Court in passing the impugned order, but question remains whether the defective decree can be executed. The answer is no as the petitioner has never purchased entire “Ka” Schedule Property. The petitioner has purchased only “Kha” Schedule Property. Therefore, the decree passed by the Appellate Court palpably appears to be wrong and which makes the decree of preemption passed by it unexecutable in the trial court.

From order no. 84 dated 31.01.2004 passed by the learned Appellate Court it appears the learned Appellate Court was pleased to extend and grant another one month time to the opposite parties no. 1 and 2 to deposit the balance consideration money along with statutory compensation and reject the review application under Section 114 of Civil Procedure Code filed by the present petitioner vide order no. 91 dated 20.09.2004.

Apparently, the decree appears to be bad in law as preemption decree was passed in respect of “Ka” Schedule Property in respect of which no preemption was sought for by the preemptor. On the contrary, preemption was sought by the present opposite parties no. 1 and 2 against the petitioner in respect of “Kha” Schedule Property.

That apart one of the prerequisite conditions to file an application for preemption under Section 8 of West Bengal Land Reforms Act, 1955 is that preemptor need to deposit the undisputed consideration money as shown in the deed of transfer together with a further sum of ten percent of that amount in the court having territorial jurisdiction. Section 9 of West Bengal Land Reforms Act, 1955 further provides the court having jurisdiction and where the application for preemption is filed shall issue notice to the transferee on the deposit mentioned in sub-section (1) of Section 8 being made. Section 9 further contemplates if preemptor claims inflated consideration money has been shown in the deed just to prejudice his interest and actual consideration paid is much less then it is the duty of the Civil Court where the case is pending to adjudicate about the actual consideration money paid by the transferee. The court also has to decide what further amount, if any, which has been spent by the transferee for annulling the encumbrance and also amount spent towards cesses, rents and taxes and provided transferee or any person interested put forward such claim. On determination of the actual consideration money paid by the transferee and any other cost, if any, spent by the transferee, then direct the preemptor to make further deposit.

In the present case there is no dispute among the parties about the actual consideration money quoted in the purchase deed of the petitioner/transferee. Further no claim has been put forward by the transferee/ present petitioner towards extra expenses incurred by him. Therefore, as per Section 8 and 9 of the West Bengal Land Reforms Act, 1955 it is mandatory for the person seeking preemption to deposit the entire consideration money as reflected in the deed of sale along with 10 % of that amount in the Court, while filling application under Section 8 of the West Bengal Land Reform Act, 1955.

In the present case the orders passed by the Appellate Court and which are under challenge prima facie prove the preemptor/opposite parties have failed to comply such prerequisite condition contained in Section 8 and 9 of the West Bengal Land Reform Act, 1955. The Appellate Court by passing impugned orders not only allowed the opposite parties to deposit the balance consideration money at the appellate stage but also extended time in making deposit of balance consideration money along with statutory compensation of 10% of that amount.

In *Barasat Eye Hospital & Ors. Vs. Kaustabh Mondal* , reported in (2019) SCC 767, the Hon'ble Supreme Court has been pleased to hold right for pre-emption under Section 8 of the Act of 1955 would be triggered off on deposit of the amount which in turn, would be within the

time stipulated for triggering the right. The petitioners who have failed to deposit the amount as stipulated in Section 8 they cannot pray for extension of time for deposit to exercise the right of preemption.

In view of the order of the Hon'ble Supreme Court in Barasat Eye Hospital (Supra) in order to avail a right of preemption, a weak right the opposite parties are required to deposit the entire consideration money mentioned in the purchase deed of the transferee/petitioner along with 10% of that amount in the Court at the time of filling the application under Section 8 of the Act, 1955.

Therefore, the impugned order permitting the preemptor/opposite parties to deposit deficit consideration money along with 10 % of the amount after the disposal of the appeal and at the convenience of the opposite parties no. 1 and 2 appear to be in violation of provision of Section 8 and 9 of the West Bengal Land Reforms Act, 1955 and such decree and subsequent orders passed by the learned appellate court below suffer from illegality and liable to be set aside.

Therefore, the decree of pre-emption passed by learned Additional District Judge, Hooghly, in Misc. Appeal No. 106 of 1993 on 03.12.2003, order no. 84 dated 31.01.2004 granting extension to deposit the balance consideration money after the time stipulated in the decree. and order

no. 91 dated 20.09.2004 rejection of the petitioner's review application passed by the learned Additional District Judge, Hooghly in Misc. Appeal No. 106 of 1993 are set aside with the finding that the preemption case being no. 20 of 1991 is not maintainable on the preemptor failure to deposit entire consideration money with 10 per cent of the amount in the Court of First Munsif, Serampore, Hooghly along with the preemption application and for passing preemption decree in respect of wrong schedule property i.e. "Ka" Schedule property and not in respect of "Kha" Schedule Property preemption of which is actually sought for. Consequently, the Execution Case pending before the Civil Judge (Junior Division), 4th Court, Serampore, Hooghly for execution of unexecutable decree passed by the Appellate Court in Misc. Appeal 106 of 1993 and in respect of wrong Schedule Property is also not maintainable. The present opposite parties/preemptor are at liberty to withdraw the consideration money along with 10 per cent of the amount lying in deposit with the Civil Court (Junior Division), 4th Court, Serampore, Hooghly.

Accordingly, **C.O. No. 639 of 2005 and C.O. No.1366 of 2021** along with **CAN 1 of 2021 is disposed of**. Connected application, if any, are disposed of.

Interim orders, if any, stands discharged.

There will be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Kesang Doma Bhutia, J.)