

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
(Appellate Side)

C.O. 2072 of 2007

Smt. Sovana Dey

Vs.

Sri. Tapaban Dey

Before: The Hon'ble Justice Arijit Banerjee

For the Petitioner/Plaintiff : Mr. Ashis Chandra Bagchi, Sr. Adv.
Mr. Partha Sarathi Bhattacharyya, Ld. Sr. Adv.
Mr. Sourav Sen, Adv.
Mr. Raju Bhattacharyya, Adv.
Mr. Arunava Maity, Adv.
Mr. T.J. Mondal, Adv.
Mr. Surat Chowdhury, Adv.

For the Respondent/
Opposite party : Mr. Anindya Kumar Mitra, Ld. Sr. Adv.,
Mr. Ajay Kumar Debnath, Adv.
Mr. Prodip Kar, Adv.
Mr. Sujit Saha, Adv.
Mrs. Sangeeta Roy, Adv.
Mr. Devranjan Das, Adv.
Mr. Chandra Prakash, Adv.
Mrs. Swagata Dutta, Adv.

Heard On : 25.11.2021, 09.12.2021, 24.02.2022,
03.03.2022, 10.03.2022 & 31.03.2022

CAV On : 31.03.2022

Judgment On : 10.08.2022

Arijit Banerjee, J.:

1. This revisional application is directed against the judgment and order dated March 21, 2007, passed by the Additional District and Sessions Judge, F.T.C (1st), Raygunge, Uttar Dinajpur, in Misc. Appeal:- 07/2005 (***Sobhana Dey v. Tapaban Kumar Dey***), dismissing the appeal and affirming the judgment and order dated July 26, 2005, passed by the Civil Judge (Junior Division), Raiganj, Uttar Dinajpur, in Misc. Case No. 17/2003, whereby the present petitioner's application for pre-emption under Section 8 of the West Bengal Land Reforms Act, 1955 (in short, 'the said Act') was dismissed.

2. The petitioner claimed right of pre-emption both on the basis of being a co-sharer and also on the basis of vicinage. The learned Trial Court came to a categorical finding that the vendor of the land in question, prior to selling the same to the opposite party herein, had written a letter to the petitioner offering to sell the said land (3 katahs) to her at a price of Rupees Eighty Thousand per katah. However, the petitioner at that time had expressed her financial inability to purchase the said land at that price. Thereafter the land was sold by the vendor to the opposite party herein.

3. It was also contended by the petitioner before the learned Trial Court that the price of the land mentioned in the sale deed executed in favour of the opposite party is inflated. On that pretext, the petitioner did not deposit the entire consideration amount plus 10% as required under Section 8 of the said Act for exercising the right of pre-emption. The learned Trial Court

found on the basis of evidence adduced that there is no reason to hold that the consideration amount shown in the impugned sale deed is inflated.

4. Finally, the learned Trial Court came to a conclusion that the owner had sold the entirety of his land to the opposite party herein and not a part or share thereof. Accordingly, no right of pre-emption arose in favour of the petitioner.

5. The petitioner's application was dismissed.

6. The Appellate Court affirmed the findings of the learned Trial Court and dismissed the appeal. The pre-emptor has filed the present revisional application under Article 227 of the Constitution of India assailing the judgment and order of the Appellate Court.

7. Learned advocate for the petitioner argued the following points:-

(i) The petitioner did not receive notice under Section 5(4) of the said Act.

(ii) There is difference of opinion as to whether or not the right of pre-emption arises if the entirety of a plot of land is transferred and not only a part or share thereof. It was submitted that the due to such difference in opinion, in the case of **Naymul Haque @ Nainul Haque v. Allauddin SK. (C.O. 1164 of 2015)**, a learned Single Judge referred the issue to the Hon'ble Chief Justice for having the issue decided by a larger bench. A Division Bench, in a decision reported at **2019 (1) CLJ 488**, decided that right of pre-

emption may arise even when entirety of a plot of land is transferred.

(iii) the question as to whether or not right of pre-emption arises when a vendor transfers his/her entire portion or share in a plot of land to a person other than a co-sharer has been referred to the Chief Justice with a request to constitute a larger bench, by a learned Single Judge in the case of ***Sajidul Khandakar v. Bhabani Biswas reported at (2020) 4 CLT 345 (HC)***. Till such question is decided by the larger Bench, the present matter should be adjourned.

(iv) The question as to whether or not a pre-emption application under Section 8 of the said Act on the ground of co-sharer ship can be rejected at the outset as not maintainable if the application is accompanied by a deposit of an amount less than the consideration shown in the sale deed sought to be pre-empted along with the statutory interest of 10 per cent and no notice under Section 5 of the Said Act was served upon the co-sharer/pre-emptor, has been referred to a larger Bench by a learned Single Judge in the case of ***SK. Abdul Odud Ali v. Emanulla Khan & Ors.: 2021 (4) ICC 428***.

(v) There is no dispute that the land in question is 'bastu' land. The question as to whether or not a pre-emption application is maintainable in respect of 'bastu' land has been referred to a

larger bench by a learned Single Judge by an order dated 20.07.2018 passed in **CO No. 698 of 2018**.

(vi) In view of pendency of the aforesaid references, the present revisional application should be adjourned till such references are decided.

(vii) Non-deposit of full consideration money along with 10 per cent interest is not fatal to an application under Section 8 of the said Act as the said provision does not specify that the deposit has to be made simultaneously with the application nor does the provision specify any consequence, penal or otherwise, of such non-deposit. Reliance was placed on a Division Bench decision of this Court in the case of **Sahid Ali v. S.k. Abul Kasem,; 1998 CWN 758**.

8. On behalf of the opposite party, the following submission was made:-

(i) An offer of sale was made by the vendor to the petitioner by letter dated December 18, 2002. The petitioner refused such offer on the ground of financial inability. The petitioner is therefore estopped from claiming the right of pre-emption, which is a weak right and is not in public interest. Estoppel is a rule of equity which arises if the pre-emptor had knowledge of the proposed sale, even if notice in the statutory format was not given. Knowledge is enough. Reliance was placed on the decision of the Hon'ble

Supreme Court in the case of ***Indira Bai v. Nand Kishore***,: **AIR 1991 SC 1055**.

(ii) There is a concurrent finding of fact by both the courts below that the petitioner admittedly received an offer from the vendor for sale of the land to her at the rate of Rs. 80,000/- per katha but due to financial incapacity she was unable to accept the offer. This was one of the grounds on which both the Courts below rejected the petitioner's claim for pre-emption. No case has been made out for interference under Article 227 of the Constitution with the concurrent finding of the two Courts below.

(iii) Both the Courts below have found that the entire plot of land has been sold by the vender. Hence there can be no right of pre-emption under Section 8 of the said Act. Reliance has been placed on the decision of a learned Single Judge of this Court rendered on August 7, 2019 in **C.O. No. 1059 of 2019**.

(iv) The requisite consideration money was not deposited by the petitioner as required under Section 8 read with Section 9 of the said Act. On the plea raised in the plaint that the consideration of Rs. 2,40,000/- was inflated and the real market price would be Rs. 1,50,000/-, the petitioner deposited Rs. 1,50, 000/- plus 10% thereof aggregating Rs. 1,65,000/-. Both the Trial Court and the Appellate Court upon consideration of the evidence adduced held that the consideration money shown in the registered deed of

conveyance was not inflated and represented the market value. Even after the order of the Appellate Court, finally settling the question of fact regarding market value of the property, the petitioner did not deposit the balance amount which remains as short deposit. Therefore, the right of pre-emption, if any, was never activated / triggered off. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Barasat Eye Hospital & Ors. v. Kaustabh Mondal: (2019) 19 SCC 767**. Reliance has also been placed on decisions of learned Single Judges of this Court rendered in **CO 2311 of 2006 (Golam Kibria Mallik v. Sk. amar ali & ors.** on 6 February, 2020, and in **C.O. No. 2461 of 2007 (Smt. Kamala Rani Roy & Ors. v. Sri Sambhu Sen & Ors.)** on December 18, 2020.

(v) The question as to whether or not a pre-emption application under Section 8 of the said Act on the ground of co-sharership can be rejected at the outset on the ground of non-deposit of the entire amount that the pre-emptor is statutorily required to deposit has been referred to a larger bench by a learned Single Judge in **SK. Abdul Odud Ali v. Emanulla Khan & Ors. (supra)**. This was because the learned Judge in that case differed with the views of the learned judges in the cases of **Smt. Kamala Rani Roy & Ors. v. Sri Sambhu Sen & Ors. (supra)** and **Golam Kibria Mallik v. Sk. Amar Ali & ors (supra)**. Till the larger bench decides the

issue, the views expressed in the **Smt. Kamala Rani Roy** and **Golam Kibria Mallik** should be followed.

Court's view:-

9. Before expressing my opinion on the points argued by learned Advocates for the respective parties, I may briefly note the scope of an application under Article 227 of the Constitution.

10. In **Trimbak Gangadhar Telang v. Ramchandra Ganesh Bhide reported in AIR 1977 SC 1222** the Hon'ble Supreme Court observed that it is well established that it is only when an order of a Tribunal is violative of the fundamental basic principles of justice and fair play or where a patent or flagrant error in procedure or law has been committed or where the order passed results in manifest injustice, that a Court can justifiably intervene under Article 227 of the Constitution of India.

11. In **Achutananda Baidya v. Prafulla Kumar Gayen reported in 1997 5 SCC 76** the Hon'ble Supreme Court observed that the power and duty of the High Court under Article 227 is essentially to ensure that the Courts and Tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of the Apex Court that the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or

discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice.

12. In the case of ***Khimji Vidhu v. Premier High School reported in AIR 2000 SC 3495*** the Hon'ble Supreme Court observed that findings of fact arrived at by the Trial Court and the Appellate Court could not have been interfered with by the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India. Jurisdiction under Article 227 of the Constitution must be sparingly exercised and may be exercised to correct errors of jurisdiction and the like but not to upset pure findings of fact, which falls in the domain of an Appellate Court only. The High Court, thus, exceeded the jurisdiction vested in it by upsetting finding of facts and the impugned order suffers from a jurisdictional defect.

13. In ***Savita Chemicals (P) Ltd. v. Dyes & Chemical Workers' Union reported in 1999 2 SCC 143***, the Hon'ble Apex Court observed that the High Court under Article 227 could not have interfered with the findings of the Labour Court as if it was hearing an appeal. Under Article 227 of the Constitution of India, the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear error of law.

14. In ***Estralla Rubber-vs.-Dass Estate (P) Ltd. reported in 2001 8 SCC 97***, the Hon'ble Supreme Court held that the exercise of power under Article 227 involves a duty of the High Court to keep inferior courts and tribunals

within the bounds of their authority and to see that they do duty expected or required by them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate Courts or tribunals. Exercise of this power and interfering with the orders of the Courts or Tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice will remain uncorrected. It is also well settled that the High Court while acting under Article 227 cannot exercise its power as an Appellate Court or substitute its own judgment in place of that of the Subordinate Court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of inferior Court or Tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the Court or Tribunal has come to.

15. In ***Ouseph Mathai v. M. Abdul Khadir reported in 2002 1 SCC 319***, the Hon'ble Supreme Court observed that it is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as

a matter of right. In fact power under this Article cast a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such Courts and Tribunals in accordance with law conferring powers within the ambit of the enactments creating such Courts and Tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate Courts and Tribunals resulting in grave injustice to any party.

16. It is therefore clear that the jurisdiction under Article 227 of the Constitution is to be exercised by the High Court sparingly to ensure that Subordinate Courts and tribunals do not exceed their jurisdiction and to ensure that there is no such glaring error or illegality in the order under revision, which if not corrected, will cause manifest injustice to the petitioner.

17. Divers points were argued on behalf of the petitioner and the same were dealt with by learned Counsel for the opposite party. As a matter of courtesy I deemed it proper to record all such points. However, in my view, this application can be disposed of on one simple point i.e. whether or not any right of pre-emption arose in favour of the petitioner in view of the fact that the entire amount that the petitioner was required to deposit statutorily was never deposited by her.

18. In the case of ***Barasat Eye Hospital & Ors. v. Kaustabh Mondal (supra)***, the Hon'ble Supreme Court, noted that a pre-emptor has two rights; "first, the inherent or primary right i.e. right for the offer of a thing about to be sold; and second, the secondary or remedial right to follow the thing sold. The secondary right of pre-emption is simply a right of substitution, in place of an original vendee and the pre-emptor is bound to show not only that his right is as good as that of the vendee, but that it is superior to that of the vendee. Such superior right has to subsist at the time when the pre-emptor exercises his right."

The Supreme Court went on to observe that the right of pre-emption is a very weak right. That being the character of the right, any provision to enforce such a right must be strictly construed. The relevant paragraphs of the reported judgment are set out hereunder:-

"23. The historical perspective of this right was set forth by the Constitution Bench of this Court, as far back as in 1962, in *Bhau Ram* case. The judgment in *Bishan Singh* case preceded the same, where different views, expressed in respect of this law of pre-emption, have been set out, and thereafter the position has been summarised. 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 view 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.

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), itself puts a precondition for the exercise of the right of pre-emption, by requiring the deposit of the full stated purchase money and 10 % per cent 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 been triggered off. The provisions of Section 8 are explicit and clear in their terms.”

34. The last question which arises is whether the respondent can now be granted time to deposit the balance amount. When the direction was so passed, in pursuance of the order of the appellate Court, the respondent still assailed the same. 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.”

35. As we have discussed above, once the time period to exercise a right is sacrosanct, then the deposit of the full amount within the time is also sacrosanct. The two go hand-in-hand. It is not a case where an application has been filed within time and the amount is deficient, but the balance amount has been deposited within the time meant for the exercise of the right. We are saying so as such an eventuality may arise, but in that case, the right under the application would be triggered off on deposit of the amount which, in turn, would be within the time stipulated for triggering the right. That not having happened, we are of the view that there cannot be any extension of time granted to the respondent now, to exercise such a right. This is, of course, apart from the fact that this speculative exercise on behalf of the respondent has continued for the last fourteen years, by deposit of 50 % of the amount.”

19. It has therefore been laid down by the Hon’ble Supreme Court that a person seeking to exercise a right of pre-emption is required to deposit the entire amount statutorily required as a pre-condition for the right of pre-emption to be triggered off. Unless the entire amount as required under Section 8 of the said Act is deposited, no right of pre-emption arises in favour of that person.

20. It is not in dispute that in the present case, the petitioner never deposited the entire amount as she was statutorily required to do on the pretext that the consideration amount shown in the impugned sale deed executed in favour of the opposite party is inflated. Even after the Appellate Court found as a matter of fact that such amount is not inflated and represents the correct market price, the petitioner did not deposit the balance amount. Therefore, no right of pre-emption arose in favour of the petitioner. Irrespective of the decisions in the references pending before the larger benches of this Court, the petitioner's claim of pre-emption must fail and has been rightly rejected by the learned Trial Court as well as the Appellate Court.

21. I am conscious that a learned Judge of this Court in the case of **SK. Abdul Odud Ali v. Emanulla Khan & Ors. (Supra)** has referred to a larger bench the question as to whether or not a pre-emption application under Section 8 of the said Act on the ground of co-sharership can be rejected at the threshold for non-deposit of the entire amount that the pre-emptor is statutorily required to deposit. Such reference has been made on the basis of one sentence at paragraph 23 of the Hon'ble Supreme Court's decision in **Barasat Eye Hospital & Ors. v. Kaustabh Mondal (supra)**, to the effect that the case of a co-sharer would rest on a different ground. In my opinion and with the greatest of respect to the learned Judge, that sentence cannot be read in isolation and no inference can be drawn therefrom to the effect that the Hon'ble Supreme Court has said that the requirement of making statutory deposit as a pre-condition for exercise of right of pre-emption

would not apply when the claim of pre-emption is made on the basis of co-sharership. In my understanding, no such distinction has been made between a pre-emptor claiming on the basis of co-sharership and a pre-emptor claiming on the basis of vicinage.

22. In any event, I am of the opinion that the views expressed by learned Single Judges of this Court in the cases of **Smt. Kamala Rani Roy & Ors. v. Sri Sambhu Sen & Ors.** (Supra) and **Golam Kibria Mallik v. Sk. amar ali & ors** (supra) should be followed until the larger bench decides the reference, those prior views being of coordinate benches. In this connection I may refer to the decision of the Hon'ble Supreme Court in the case of **M.S. Bhati v. National Insurance Company Ltd.; (2019) 12 SCC 248** where at paragraphs 10 and 11 of the reported judgment the Supreme court observed as follows:-

“10. The learned Counsel further submitted on the alternative plea that the decision in *Mukund Dewangan* has been reserved for reconsideration by a larger Bench in *Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi* by a two-Judge Bench of this Court on 3-5-2018.

11. The law which has been laid down by a three-Judge Bench of this Court in *Mukund Dewangan* binds this court. As a matter of judicial discipline, we are duty-bound to follow that decision which continues to hold the field.”

23. I am of the considered view that since coordinate Benches of this Court in ***Smt. Kamala Rani Roy & Ors. v. Sri Sambhu Sen & Ors.*** (supra) and ***Golam Kibria Mallik v. Sk. amar ali & ors*** (supra), took one view and subsequently a coordinate bench took a different view and referred the matter to a larger bench, judicial discipline requires that I follow the earlier view which still holds the field and has not yet been differed from by a larger bench.

24. In view of the aforesaid I do not find any reason to interfere with the judgment and order under revision in exercise of power under Article 227 of the Constitution of India, keeping in mind the guideline laid down by the Hon'ble Supreme Court in various cases for exercise of jurisdiction under Article 227 of the Constitution as noted above. The application accordingly fails and is dismissed without any order as to costs.

25. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

(Arijit Banerjee, J.)