September 13, 2023
Sl. No.11
Court No.19
s.biswas

CO 451 of 2023

Chitta Ranjan Misra
vs.
Subrata Majhi and others

Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal
... for the petitioner

This revisional application arises out of an order dated December 22, 2022 passed by the learned Civil Judge (Junior Division), 3rd Court at Tamluk, Purba Medinipur, in J. Miscellaneous Case No.21 of 2012.

By the order impugned, the learned trial court rejected an application under Section 151 of the Code of Civil Procedure filed by the petitioner, seeking permission to deposit the balance consideration amount of Rs.10,611/-. The application was filed on April, 6, 2022. The entire consideration money, together with 10% of the said amount had not been deposited at the time of filing of the application. The application for preemption was filed in the year 2012. The learned court rejected the said application on the proposition of law declared by the Hon'ble Apex Court in the matter of **Barasat Eye Hospital & ors. vs. Kaustabh Mondal** reported in **(2019) 19 SCC 767**.

It appears that although the learned court below had not gone into a detailed discussion with regard to the merits of the said application, this court does not find any illegality in the order impugned. The learned trial court followed the decision of the Hon'ble Apex Court in the matter of **Barasat Eye Hospital** (supra) and also in the matter of **Abdul Matin Mallick vs. Subrata Bhattacharjee (Banjerjee) and ors., Civil Appeal No.3499 of 2022**.

The matter has a chequered history. The petitioner and the proforma opposite parties filed an application for preemption before the learned Civil Judge (Junior Division), 3rd Court at Tamluk, Purba Medinipur. The same was registered as J. Miscellaneous Case No.21 of 2012. By order dated September 16, 2014, the application for pre-emption was rejected on the ground that the petitioners were not co-sharers at the time sale. Such order was challenged in Misc. Appeal No.5 of 2015 renumbered as Misc. Appeal No.2 of 2017. The learned Additional District Judge, 3rd Court Tamluk decided the Misc. Appeal. The Misc. Appeal was allowed by judgment and order dated February 8, 2018. The order was challenged before the High Court in C.O. 1135 of 2018. The High Court set aside the order passed in the Misc. Appeal and directed the learned trial judge to consider the matter afresh, by framing an issue on the point of limitation. Thereafter, when the matter appeared before the learned trial judge on remand, the petitioner filed an application for deposit of balance consideration money amounting to Rs.10611/-. The learned trial judge rejected the said application.

The transfer took place on 19.09.2012. The petitioner filed an application for preemption on the ground of being a non-notified co-sharer sometime in July, 2013. The period of limitation was due to expire on 18.09.2013. Thus, there was no scope for the court to allow the short deposit after 10 years from filing of the pre-emption application.

In **Barasat Eye Hospital (supra)** the scheme of Section 8 and the law relating to pre-emption was interpreted. The Hon'ble Apex Court declared the law, inter alia, holding that once the time period to exercise a right was sacrosanct, the deposit of the full amount within such time period was also sacrosanct. The two went hand-in-hand. The Hon'ble Apex Court was of the firm view that the pre-requisite to exercise this weak right was the deposit of the amount of sale consideration and the 10% levy on that consideration, or else, the right under Section 8 of the said Act would not be triggered. The concluding paragraph of the said judgment indicates the purpose behind the decision and the discussion which led to the ratio laid down by the Hon'ble Apex Court. The conclusion reads as follows:-

> "39. We hope that our view should put the controversy in respect of this 'weak right' of pre-emption to rest."

In paragraphs 1 and 2 of the said judgment, the Hon'ble Apex Court traced the law relating to pre-emption in general. It was observed that the right of pre-emption had its origin in the Mohammedan rule, based on customs which came to be accepted in various courts, primarily located in the north of India. The law was largely absent in the south of India. The law came to be incorporated in various statutes, both, prior to coming into force of the Constitution of India and even thereafter. The constitutional validity of such laws of pre-emption came to be debated before the Constitutional Bench of the Hon'ble Supreme Court in **Bhau Ram v. Baij Nath Singh** reported in **AIR 1962 SC 1476**. Even though there were views expressed that the right of pre-emption was opposed to the principles of justice, equity and good conscience, it was felt that the reasonableness of those statutes had to be appreciated in the context of a society where there were certain privileged classes holding land and, thus, there could be some utility in preventing a stranger from acquiring property in an area which had been populated by a particular fraternity or class of people. This aspect was sought to be balanced with the constitutional scheme, prohibiting discrimination against citizens on the grounds of religion, race, caste, sex, place of birth or any of them, under Article 15 of the Constitution.

With the passage of time, such laws of pre-emption, which existed in many states were abrogated, and it was only within a limited jurisdiction that the said law prevailed.

One such enactment still in existence was the West Bengal Land Reforms Act, 1955. The Apex Court held that it was the said enactment with which the court was concerned and the very right of pre-emption and the manner of its application under the said Act was debated before the Court in the said case. The definitions of raiyat and bargadar which were relevant for the interpretation of the law were set out, considered and discussed. The provisions of Sections 8 and 9 were also set out, considered and discussed. In paragraph 10 of the said judgment the decision of the Hon'ble Apex Court in ***Bishan Singh vs. Khazan Singh***, repoted in ***AIR 1958 SC 838,*** a four Judges Bench was relied upon. It was opined that a preemptor had 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 was simply a right of substitution, in place of the original vendee and the pre-emptor was bound to show not only that he had the right as good as the of that vendee, but superior to that of the vendee. The superior right had to subsist at the time when the pre-emptor exercised the right. The relevant portion of the said decision in ***Bishan Singh (Supra)*** was quoted and accepted by the Hon'ble Apex Court. From the elucidation of the legal position with regard to the right of pre-emption, the Apex Court held that the right of pre-emption was "a very weak right". That being the character of the right, any provision to enforce such a right was, to, be strictly construed. Relying on the decision in ***Gopal Sardar v. Karuna Sardar,*** reported in ***(2004) 4 SCC 252***, the Hon'ble Apex Court held that just like Section 5 of the Limitation Act, 1963 could not be pressed into service in aid of a belated application made under Section 8 of the said Act seeking condonation of delay, similarly, the right of pre-emption being a statutory right, was to be strictly exercised in terms of the said section, with no place for consideration of equity.

The decision, in ***Kedar Mishra v. State of Bihar*** reported in ***(2016) 7 SCC 478*** was also relied upon. In paragraph 17, the Court concluded that in order to trigger off the right of pre-emption, deposit of the entire stated consideration plus 10% of consideration, was a mandatory pre-condition. The question of recourse to Section 9 would not arise till the amount was deposited. Paragraph 22 of the judgment deals with the discussions. The Apex Court had consciously decided to set forth the entire history of the law of pre-emption. The Hon'ble Apex Court observed that the decision would have larger ramifications than mere adjudication of the lis before it, especially because the Apex Court was informed that there were other similar cases, pending consideration before the Calcutta High Court.

The historical perspective set forth by the Constitution Bench as far back as in 1962 in **Bhau Ram (supra)** was relied upon. The elucidation of the law laid down in **Bishan Singh (supra)** were set out in great detail. The Hon'ble Apex Court interpreted the law of preemption in West Bengal and held that preemption was not a right in respect of which equitable consideration would gain ground. The decision in ***Gopal Sardar (Supra)*** was read in its true enunciation and spirit. It was held that sanctity was attached to both the amount and the time frame. Sanctity could not only be attached to the time frame within which the application had to be filed and not to the amount to be deposited. The Apex Court held, as the commencement of Section 9 was with the statement "on the deposit mentioned in sub-section (1) of section 8 being made" even in order to hold an enquiry under Section 9, the first requirement was deposit of the amount as mentioned in the sale deed along with the 10% thereof. Once such deposit was made, the next stage was for the learned trial court to give notice of the application to the transferee. The Hon'ble Court concluded thus:-

> "**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.
>
> **30.** We are not inclined to construe the aforesaid provisions otherwise only on the ground that there are no so-called "penal provisions" included. The provisions of Sections 8 and 9 of the said Act must be read as they are. In fact, it is a settled rule of construction that legislative

provisions should be read in their plain grammatical connotation, and only in the case of conflicts between different provisions would an endeavour have to be made to read them in a manner that they co-exist and no part of the rule is made superfluous. [British India General Insurance Co. Ltd. v. Itbar Singh, AIR 1959 SC 1331] The interpretation, as we have adopted, would show that really speaking, no part of either Section 8, or Section 9 of the said Act is made otiose. Even if an inquiry takes place in the aspect of stated consideration, on a plea of some fraud or likewise, and if such a finding is reached, the amount can always be directed to be refunded, if deposited in excess. However, it cannot be said that a discretion can be left to the pre-emptor to deposit whatever amount, in his opinion, is the appropriate consideration, in order to exercise a right of pre-emption. The full amount has to be deposited.

31. We may also note that, as a matter of fact, the pre-emptor in the present case i.e. the respondent has not filed any material to substantiate even the plea on the basis of which, even if an inquiry was held, could a conclusion be reached that the stated consideration is not the market value of the land.

32. We also believe that to give such a discretion to the pre-emptor, without deposit of the full consideration, would give rise to speculative litigation, where the pre-emptor, by depositing smaller amounts, can drag on the issue of the vendee exercising rights in pursuance of the valid sale deed executed. In the present case, there is a sale deed executed and registered, setting out the consideration.

33. We are of the view that the impugned order and the view adopted would make a weak right into a “speculative strong right”, something which has neither historically, nor in judicial interpretation been envisaged.

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. [Gopal Sardar v. Karuna Sardar, (2004) 4 SCC 252]

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."

Upon a meaningful reading of the decision, it is evident that the object of the said decision was to put to rest the controversy in respect of exercise of such a weak right, especially in the matter of short deposits. The Apex court took note of the fact that the decision would have a far larger ramification, as many cases were pending before this High Court on this point. Secondly, the law was in existence since 1955, but the interpretation of the same in respect of the requirement to deposit the consideration amount was finally put to rest in the decision of **Barasat Eye Hospital (supra)**. It was a law declared on the point and will have a retrospective effect. The Hon'ble Apex Court was of the view that if short deposits were allowed, a weak right would give rise to speculative suits.

In the decision of **Abdul Matin (supra),** a similar view was taken by the Hon'ble Apex Court upon relying on the decision in **Barasat Eye Hospital (supra).** The Hon'ble Apex Court was dealing with Misc. Preemption Case No.8 of 2012 which had been filed before the trial court. The Misc. preemption case was dismissed by the trial court. Misc. Appeal No.7 of 2014 was preferred. The Misc. Appeal was allowed and the order of the learned trial court was set aside. The application for pre-emption was allowed on the ground of co-sharership. The first appellate court allowed deposit of the balance consideration money. Aggrieved, the pre-emptee approached the High Court. The High Court dismissed the revisional application by upholding the order of the first appellate court and also upholding the decision of the first appellate to allow a belated deposit of the balance consideration money. Such order was challenged in Civil Appeal No.3500 of 2022. In such a pending proceeding, the decision of **Barasat Eye Hospital (supra)** was referred to and it was held that the learned lower appellate court was not justified in permitting the preemptor to deposit the balance consideration money with additional 10% and the High Court was also not justified in upholding such decision.

Thus the Apex Court applied the decision of **Barasat Eye Hospital (supra)** even in a pending pre-emption case of 2012, and set aside the order of the High Court passed in C.O.4266 of 2016. The decision of **Barasat Eye Hospital (supra)** was rendered in 2019.

In the decision of ***Assistant Commissioner, Income Tax Rajkot v. Saurashtra Kutch Stock Exchange Ltd.,*** reported ***(2008) 14 SCC 171***, the Hon'ble Apex Court held as follows:-

> "**35.** In our judgment, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". In other words, Judges do not make law, they only discover or find the correct law. <u>The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law.</u> It only discovers the correct principle of law which has to be applied retrospectively. <u>To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood</u>."

In the decision of ***P.V. George and Others v. State of Kerala and others***, reported in ***(2007) 3 SCC 557***, the Hon'ble Apex Court held that the law declared by a court will have retrospective effect if not otherwise stated to be so specifically.

The decision of the Hon'ble Apex Court was a law declared on the point that deposit of the full amount stated as the sale consideration together with further deposit of 10% was a precondition to filing an application under Section 8(1) of the West Bengal Land and Land Reforms Act, 1995. The conflicting legal position was clarified, interpreted, rectified and altered. The decision has a retrospective effect and will apply to pending proceedings.

The learned court below did not commit any error.

The revisional application is thus dismissed.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)