

10.8.2023

Ct.236

Sk,sl.1

C.O. 2480 of 2007

CAN 1/2021,CAN 2/2014,CAN 4/2019,CAN 5/2019

Nilima Mukherjee & Anr.-vs-Sutabhya @ Satabhya
Ghoshal & Anr.

Mr. Biswabrata Basu Mallick
Mr. Dyutiman Banerjee
Mr. Deb Kumar Deashi
...for the petitioners.

Mr. Mr. Ayan Banerjee
Ms. Debasree Dhamali
Ms. Riya Ghosh
...for the O.Ps.

This application under Article 227 of the Constitution of India challenges the judgment dated 18th June, 2007 passed by the learned Additional District Judge, Hooghly in Misc. Appeal No. 99 of 2004 reversing the judgment passed by learned Trial Court dismissing the application under Section 8 of the West Bengal Land Reforms Act, 1955.

Briefly stated the opposite party no. 2, sold and transferred "A" schedule property to the opposite party no. 1, Sutabhya @ Satabhya Ghoshal at a consideration of Rs. 6.5 lakhs without notifying the petitioner. Learned trial court dismissed the petition. Learned Appellate Court, however, was pleased to reverse the finding of the learned Trial Court.

Heard Mr. Basu Mallick and Mr. Banerjee, learned counsel for the parties. According to Mr.

Basu Mallick, the learned Appellate Court reversed the judgment passed by the learned Trial Court without considering the prohibition of law regarding transfer of Bastu land.

Mr. Banerjee submits that the petitioner did not deposit the entire consideration money. Hence, she cannot maintain the application under Section 8 of the West Bengal Land Reforms Act, 1955, by virtue of the judgment of Hon'ble Apex Court pronounced in *Barasat Eye Hospital & Ors. -vs- Kaustabha Mondal* reported in (2019) 19 SCC 767. The petitioner is under obligation to pay the entire consideration money and in this case it is Rs. 6.5 lakhs with additional 10%. Since the same has not been paid this petition is not maintainable.

It is contended by Mr. Basu Mallick, learned counsel for the petitioner, that since the point was not taken before the learned Trial Court or before the learned First Appellate Court the same cannot be entertained in a proceeding under Article 227 of the Constitution of India.

Hon'ble Apex Court in *Abdul Matin Mallick-vs-Subrata Bhattacharjee(Banerjee) & Ors.* reported in (2022) 7 SCC 147 not only reiterated the view of Hon'ble Apex Court in *Barasat Eye Hospital(Supra)*, but also was pleased to hold that

since this issue strikes at the root of the proceeding, same can be taken in a proceeding before the higher forum.

Having perused the judgment as referred to herein above, I am of the view that the petition under Section 8 of the West Bengal Land Reforms Act, 1955 is not maintainable in absence of deposit of entire consideration money together with 10% thereof.

This revisional application therefore is bereft of merit and is dismissed however without cost.

Liberty is given to the petitioner to withdraw the amount already deposited with the learned Trial Court.

The application being CAN 5 of 2019 is thus, disposed of.

(Siddhartha Roy Chowdhury, J)