

S/L 28
17.01.2023
Court No.652
SD

CO 2054 of 2021

Vikash Agarwal
Vs.
Sri Asit Koley & Anr.

Mr. Kushal Chatterjee
Mr. Shibjit Mitra
Mr. Amit Chowdhury

...for the Petitioner.

Mr. Sukumar Ghosh
Mr. Sandip Ghosh

...for the Opposite Parties.

Affidavit of service filed by the petitioner in court today be kept with the record.

This application has been preferred challenging the Order No.15 dated 18.02.2021 passed by the learned Civil Judge (Junior Division), Additional Court, Chandernagore in Pre-emption Misc. Case No.13 of 2019.

The petitioner contended that the opposite parties being the preemptors/petitioners filed an application under Section 8 read with Section 9 of the West Bengal Land Reforms Act, 1955 praying for exercising the right of pre-emption over the sale affected to a registered deed of conveyance executed on 24.5.2019 on the ground of adjacent property having largest boundary.

The petitioner herein further submits that the purchase consideration of the sale transaction in question was Rs.6,67,000/-. The petitioner further submits that the opposite party no.1 has no land contiguous to the schedule

property and has no right to pre-empt on the case property. The petitioner submits that the petitioner/pre-emptor at the time of filing the preemption case has not deposited the entire consideration money on the levied amount and without intimating anything to the petitioner on 18.02.2021, the opposite party no.1 filed a put up application and moved another application contending information about deposit of an amount of Rs.4,03,700/- towards the arrear deposit through challan. Learned court below, without giving any opportunity of hearing to the petitioner on 18.02.2021, passed the impugned order and allowed the petition filed by the opposite party no.1 about deposit of Rs.4,03,700/-.

Referring *Barasat Eye Hospital & Ors. vs. Kaustabh Mondal* reported in (2019) 19 SCC 767, the petitioner strenuously argued that the preemption application filed with short deposit is not maintainable and the learned trial Judge without considering the same simply allowed the opposite party no.1 to deposit the money and thereby regularized the short deposit which is contrary to the judgment passed by the Apex Court in the said judgment.

The petitioner further submits that while passing the impugned order, learned court below failed to appreciate that once the preemption application being declared as illegal by the judgment of the Hon'ble Supreme Court, the same cannot be regularized by allowing further deposit. The court below while passing the impugned order had acted mechanically which is liable to be set aside.

Learned counsel appearing on behalf of the opposite parties submits that he has deposited the entire consideration money and the learned court, by its impugned order, has allowed the petitioner for the aforesaid deposit.

He further submits that an inflated amount of consideration price is shown on the face of the deed and as such, challenging the consideration price, he did not deposit the entire consideration price before the court below at the time of filing of the case. However, he has deposited the entire amount subsequently.

He further submits that the issue raised by the petitioner in this case has been referred by a coordinate Bench of this court before a Larger Bench in CO 785 of 2021.

Considered the submissions made by both the parties.

Admitted position in the present case is that the preemption case was filed in the year 2019 on the ground of having adjacent longest common boundary. Admittedly, at the time of filing of the application, the consideration price appearing on the face of the deed along with 10% levy was not deposited but subsequently, in order to deposit the opposite parties herein filed a put up petition before the court below on 18.02.2021. The petitioner alleged that without hearing the petitioner herein, the court below passed the impugned order wherein the court below passed the challan at the risk of the party. Accordingly, by passing the challan, the court below has not declared any right in favour of the petitioner nor the petitioner has accrued any right in

respect of continuation of the preemption case in question by making subsequent deposit of the rest consideration amount on 18.02.2021.

In *Barasat Eye Hospital & Ors. (supra)*, the Supreme Court observed as follows:-

“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.”

Though, learned counsel appearing on behalf of the opposite parties submits that the selfsame issue has been referred to a Larger Bench for adjudication by this Court in CO 785 of 2021, but it appears that the subject matter of reference in the said revisional application is different, which runs as follow:-

“Whether a pre-emption application under Section 8 of the West Bengal Land Reforms Act, 1955, on the ground of co-sharership, 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%, on the allegation that the price shown in the deed was inflated and the actual consideration money paid according to the pre-emptor is the lesser amount deposited with the pre-emption application and that no notice under

Section 5 of the said Act was served on the co-sharer/pre-emptor.”

Here, admittedly, the pre-emptors/opposite parties are not the co-sharers and the pre-emption has been sought for on the ground of adjacent land holder. Accordingly, the aforesaid reference has got no connection with the present case and the judgment passed by the Apex Court in *Barasat Eye Hospital (supra)* is squarely applicable in the present case as the case involved in the *Barasat Eye Hospital (supra)* was that the pre-emptor had sought for preemption claiming that the preemptor is a holder of land contiguous to the suit land sharing a common boundary line. Accordingly, present pre-emption case is not maintainable.

In view of the above and also in view of the settled position of law, the impugned order no.15 dated 18.02.2021 passed by the learned Civil Judge (Junior Division), Additional Court, Chandernagore in Pre-emption Misc. Case No.13 of 2019 directing further continuance of pre-emption case is hereby set aside.

Accordingly, CO 2054 of 2021 is allowed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)