

13.02.2023.  
p.b.  
Sl. No.19.

C.O. 2470 of 2017

Sri Laksman Ray  
Vs.  
Sri Shankar Mukhopadhyay & Ors.

Mr. P. P. Roy,  
Mr. Susenjit Banik.  
.....for the petitioner.

Mr. Debabrata Roy,  
Mr. Apurba Krishna Das.  
.....for the opposite party.

Both the parties are represented by their respective learned advocates.

I have heard learned advocates for the contesting parties at length. The present revisional application is now taken up for passing appropriate order.

The instant revisional application under Article 227 of the Constitution of India has been filed challenging the impugned judgment and order dated 28<sup>th</sup> April, 2017 as passed by learned Additional District Judge, 7<sup>th</sup> Court, Paschim Medinipur, in Miscellaneous Appeal No.80 of 2014. By the impugned judgment, learned 1<sup>st</sup> Appellate Court set aside the order dated 30<sup>th</sup> June, 2014 as passed by learned Civil Judge (Junior Division), Ghatal, District Paschim Mednipur, in J. Misc. Case No.30 of 2010 in a proceeding under Section 8 and 9 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the said Act).

It is pertinent to mention herein that in J. Misc. Case No.30 of 2010 the preemptors' application for preemption was disallowed by the learned Civil Judge (Junior Division), Ghatal. However, by the impugned judgment while setting aside the order as passed in J. Misc. Case No.30 of 2010, learned appellate court allowed such preemption application. The preempty felt aggrieved and thus preferred the instant revisional application.

In support of the instant revisional application, learned advocate for the revisionist/preempty at the very outset draws attention of this Court to the copy of the preemption application as filed before the learned trial court. It is contended on behalf of the revisionist/preempty that on bare perusal of paragraph 3 of the said preemption application, it would reveal that under the deed in question, both the suit property and a non-suit property was sold at a consideration of Rs.90,000/-. It is further submitted that on perusal of paragraph 4 of the said preemption application, it would also reveal that the preemptor prior to filing the preemption application assessed the consideration money of the said sale deed to the tune of Rs.10,000/- as per his own estimation thus deposited Rs.10,000/- + Rs.1,000/- totalling to Rs.11,000/- towards statutory deposit for initiation of enquiry of a preemption within the meaning of Sections 8 and 9 of the said Act.

It is contended on behalf of the revisionist that in view of the decision of **‘Barasat Eye Hospital Vs. Kaustav Mondal’** in **Civil Appeal No.1090 of 2010 dated 17<sup>th</sup> October, 2019** and the judgment as passed in the case of **‘Abdul Matin Mullick Vs. Subrata Bhattacharya (Banerjee) & Ors.’** as passed in **Civil Appeal No.3499 of 2022 dated 5<sup>th</sup> May, 2022** as passed by the Hon’ble Apex Court of India, it has become settled law that prior to filing of a preemption application under Section 8 and 9 of the said Act, the entire consideration money along with 10% of the said amount has mandatorily got to be deposited. It is contended further that in the event such deposit is not made, the Hon’ble Apex Court has made it clear that no extension of time would also be granted for making the deposit in full. It is argued that since before the learned trial court, the entire consideration money together with 10% of the said consideration amount has not been deposited, the preemption application as filed by the preemptor of the opposite party cannot be succeeded and held to be maintainable.

Per contra, learned advocate for the preemptor’s opposite parties in course of his argument draws attention of this Court to the certified copy of the impugned judgment, it is argued by him that learned 1<sup>st</sup> Appellate Court while disposing the said appeal came to a finding that since the valuation of the suit land and non-suit land

have not been segregated, learned Appellate Court is very much justified in coming to a finding that the consideration amount for the suit land was Rs.65,000/- and, since 10% of the said Rs.65,000/- has also been deposited, the rigour of the aforesaid two decisions of the Hon'ble Supreme Court cannot be made applicable in this instant revisional application.

On perusal of the entire materials as placed before this Court and upon hearing learned advocates for both the sides this Court has got no hesitation in mind that it has become settled law after pronouncement of judgment of the '**Barasat Eye Hospital**' (supra) and '**Abdul Matim**' (supra) that the provisions for deposit of money as enunciated in Section 8 of the said Act has got to be mandatorily followed, that is to say, at the time of filing the preemption application, the deposit of the entire consideration money together with further sum of 10% of the said amount shall have to be mandatorily deposited and that there cannot be any extension of time to deposit such amount, since the same is against the legislative mandate. It is not disputed by both the parties that in respect of the suit property such entire deposit has not been made.

In course of his argument, learned advocate for the preemptors/opposite parties failed to clarify on what basis learned 1<sup>st</sup> Appellate Court in the impugned judgment

estimated the valuation of the suit property to the extent of Rs.65,000/- in absence of any cogent evidence which ought to be available from the trial court record. In considered view of this Court, the estimation of the valuation of the suit land to the tune of Rs.65,000/- as made by the 1<sup>st</sup> Appellate Court is totally faulty and is not based either on any oral or documentary evidence.

In view of such, the instant revisional application being No.2470 of 2017 is hereby allowed. The impugned judgment and order dated 28<sup>th</sup> April, 2017 as passed by learned Additional District Judge, 7<sup>th</sup> Court, Paschim Medinipur, in Miscellaneous Appeal No.80 of 2014 is hereby set aside.

Consequently, the order dated 30<sup>th</sup> June, 2014 as passed by learned Civil Judge (Junior Division), Ghatal, District Paschim Mednipur, in J. Misc. Case No.30 of 2010 is hereby upheld.

With the aforementioned observation, the instant revisional application is disposed of.

Leave is granted to the present opposite party no.1 and 2 to withdraw the amount as deposited by him in J. Misc. Case No.30 of 2010 in the Court of the learned Civil Judge (Junior Division), Ghatal, District Paschim Mednipur.

Department is directed to send copies of this judgment both to the learned 1<sup>st</sup> Appellate Court as well as to the learned trial court for their information and record.

Urgent photostat certified copy of this order, if applied, for shall be given to the parties as expeditiously as possible.

**(Partha Sarathi Sen J.)**