

12.12.2024
Ct. No. 22
Sl. No.148
KB

**In The High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

C.O. 127 of 2023

Rafikul Sk.

-versus-

**Din Mohammad Sk. since deceased
represented by his legal heirs Lilifa Bibi & Ors.**

**Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,
Mr. Samrat Chakraborty.
... For the petitioner.**

**Mr. Amit Baran Dash,
Mr. Rabiul Islam,
Ms. Ankana Sarkar.
... For the opposite parties.**

1. This revisional application has been filed assailing the judgment dated 30th July, 2019 passed in Misc. Appeal No.7 of 2015 (New) wherein Learned Additional District Judge, 2nd Fast Track Court, Berhampore, Murshidabad dealt with an appeal against the order passed by the Learned Civil Judge (Junior Division), 1st Court, Berhampore in connection with Misc. (Pre-emption) Case No.28 of 2011 under Section 8 of the West Bengal Land Reforms Act.

2. Learned Trial Judge at the time of disposal of the application under Section 8 of the West Bengal Land Reforms Act considered the evidence adduced by the parties and recorded his finding holding, inter alia, that the petitioner of the application was a co-sharer of

the subject property and on that score the application under Section 8 of the of the West Bengal Land Reforms Act was allowed in respect of subject property subject to payment of balance deficit sum of Rs.71,500/-.

3. Being aggrieved by and dissatisfied with the order passed in Misc. (Pre-emption) Case No. 28 of 2011 preemptee/petitioner herein preferred Misc. Appeal No.7 of 2015 wherein Learned Appellate Court also ratified the view taken by the Learned Trial Judge.

4. Learned Counsel appearing on behalf of the petitioner has relied on a case of *Barasat Eye Hospital reported in 2019 (14) SC ALE 90* and also relied on a principle enunciated in a case of *Abdul Matin Mullick vs. Subrata Bhattacharjee (Banerjee & Ors.) reported in (2022) 7 SCC 147*.

5. Learned Counsel appearing on behalf of the petitioner has submitted that the preemption application was not at all maintainable which was filed in violation of mandate of Section 8 of the West Bengal Land Reforms Act by not depositing entire consideration amount along with 10% of that amount at the time of filing preemption application.

6. Learned Counsel appearing on behalf of the opposite party has submitted that by the order of the Trial Court preemptor was directed to deposit the entire consideration along with 10% thereof prior to vesting of subject land to the preemptor/opposite party herein.

7. From the paragraph 6 of the application under Section 8 of the West Bengal Land Reforms Act it was found that at the time of filing application preemptor deposited only 11,000/- out of total consideration money to the tune of Rs.75,000/- along with 10% on that amount.

8. In Barasat Eye Hospital (supra) it was held in paragraphs 28, 31 and 34 that -

“21. Barasat eye hospital (supra) held in paragraph 28, 31 & 34 as follows:

28. We are, thus firmly of the view that the prerequisite 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.

31. 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 small eramounts, 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.

34. 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.”

9. Therefore, Hon’ble Apex Court in Barasat Eye Hospital (supra) remanded all the Courts regarding mandatory duty of the preemptor to comply the provision of Section 8(1) by way of depositing entire consideration money and 10% on that amount along with application seeking right of preemption.

10. Hon’ble Apex Court also disregarded the speculative exercise on behalf of the preemptor by depositing 50% of amount even. Such principle has been followed by the Hon’ble Apex Court in Abdul Matin Mullick (supra) by enforcing the text and spirit of the mandatory provision of law in paragraph 27 onwards which runs as follows:.

“27. The question now is as to what would be the nature of inquiry which has been envisaged to be carried out by the Munsif. If Section 9, as it reads, is perused, then first, the amount as mentioned in

the sale transaction is to be deposited, as per sub-section (1) of Section 8 of the said Act. Once that amount is deposited, the next stage is for the Munsif to give notice of the application to the transferee. The transferee thereafter, when enters appearance within the time specified, can prove the consideration money paid for the transfer “and other sums”. Such other sums, if any, are as “properly paid by him in respect of the land including any sum paid for annulling encumbrances created prior to the day of transfer, and rent or revenue, cesses or taxes for any period”. The inquiry, thus envisaged, is in respect of the amount sought to be claimed over and above the stated sale consideration in the document of sale because, in that eventuality further sums would have to be deposited. Even in the event that a pre-emptor raises doubts regarding the consideration amount, enquiry into the said aspect can be done only upon payment of the full amount, along with the application. In this aspect, the phrase “the remainder, if any, being refunded to the applicant” would include to mean the repayment of the initial deposit made along with the application, if considered to be excess. To give any other connotation to these sections would make both, the latter part of Section 8 of the said Act and the inception part of Section 9 of the said Act, otiose. We do not think such an interpretation can be countenanced.

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 prerequisite 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, MANU/SC/0148/1959: 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 Abdul Matin Mallick vs. Subrata Bhattacharjee on 5 May, 2022 Indian Kanoon<http://indiankanoon.org/doc161868841/6> 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 preemption. 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 any 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 small 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.” 6.3 Therefore, deposit of the entire sale consideration with additional 10% of the sale consideration along with the pre-emption application is a statutory

and mandatory requirement and it is a pre-condition before any further enquiry as contemplated under Section 9 of the Act is held. In the present case, admittedly, the pre-emptors had not deposited the entire sale consideration with additional 10% of the sale consideration along with the preemption application. The aforesaid aspects have not been considered either by the First Appellate Court or even by the High Court in this case.

34. Now, so far as the submission on behalf of the pre-emptors that they bonafidely believed that the sale consideration mentioned in the sale deed is in favour of the vendee, who is an outsider (outside the family) was higher than the actual sale consideration and therefore, they did not deposit the entire sale consideration with additional 10% of the sale consideration along with the pre-emption application is concerned, it is to be noted that the aforesaid cannot be a ground not to comply with the condition of deposit as required under Section 8 of the Act, 1955. At the most, such a dispute can be the subject matter of an enquiry provided under Section 9 of the Act. As observed hereinabove, the enquiry under Section 9 with respect to the sale consideration in the sale deed would be only after the condition of deposit of entire sale consideration with additional 10% as provided under Section 8 of the Act has been complied with.

35. Now, so far as the submission on behalf of the pre-emptors that the contention of non-deposit of the entire sale consideration by the pre-emptors was not raised before the Courts below and has been raised for the first time before this Court, and therefore the same be not

considered/permitted to be raised now, is concerned, it is to be noted that the said contention would go to the root of the matter on maintainability of the preemption application as without complying with the statutory requirements as mentioned under Section 8 of the Act, 1955 the same is not maintainable. It is an admitted position that the pre-emptors had not deposited the entire sale consideration with additional 10% of the sale consideration along with the preemption application as required under Section 8 of the Act in the instant case. In view of the aforesaid admitted position, we have considered the submission on behalf of the appellant on non-fulfillment of the condition mentioned in Section 8 of the Act.

36. At this stage, it is required to be noted that even the High Court in the impugned judgment and order has permitted the pre-emptors to deposit the balance sale consideration. However, faced with the decision of this Court in the case of Barasat Eye Hospital and Ors. (supra) and in light of the observations made by us hereinabove that alongwith the pre-emption application, the pre-emptors have to deposit the entire sale consideration with additional 10% and only thereafter the further enquiry can be conducted as per Section 9 of the Act, 1955 and therefore, unless and until the same is complied with, the pre-emption application would not be maintainable, the High Court is not justified in permitting the pre-emptors to now deposit the balance sale consideration with additional 10% while deciding the revision application. Such a direction/permission/liberty would go against the intent of Section 8 of the Act, 1955.

37. In view of the above and for the reasons stated above, present appeals succeed. The impugned judgments and orders passed by the High Court and that of the First Appellate Court are hereby quashed and set aside. Consequently, the pre-emption application submitted by the original pre-emptors -respondent Nos. 1 to 3 herein stands dismissed. Respondent Nos. 1 to 3 – original pre-emptors are permitted to withdraw the amount, which they might have deposited either alongwith the pre-emption application and/or they might have deposited either alongwith the pre-emption application and/or any subsequent deposit pursuant to the orders passed by the High Court.

Present appeals are allowed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

Pending applications), if any also stands disposed of.”

11. In the premises set forth above, the preemption application under Section 8 of the West Bengal Land Reforms Act in the case at hand was not at all maintainable as it was filed not in compliance with the Section 8(1) of the West Bengal Land Reforms Act.

12. In such sequel, both the orders passed by the Learned Trial Judge in Misc. Case No. 28 of 2011 dated 30.07.2019 passed by the Learned Appellate Court in Misc. Appeal No.7 of 2005 stand set aside.

13. Interim order, if thereby any, stands vacated.

14. Preemptor/opposite party is at liberty to withdraw the amount deposited in connection with Misc. Case No.28 of 2011.

15. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

16. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Bibhas Ranjan De, J.)