21.05.2024
Ct. No. 19
Sl. No.06
Cp

C.O. No. 1149 of 2022

Dhangauri Patel
Vs.
Smt. Priyanka Jaiswal & anr.

Mr. Pradip Saren
Mr. Soumik Ghosh
Ms. Saheli Hembrom

... for the petitioner.

1. Affidavit of service is taken on record.
2. Despite service, none appears on behalf of the opposite parties. The order impugned is an appealable order. Learned advocate insists that this court must interfere with the order impugned as the order suffers from perversity.
3. The petitioner has challenged an order dated March 11, 2022, by which the learned Civil Judge (Junior Division), 2nd Court, Hooghly rejected an application for pre-emption on the ground that the entire consideration money along with 10% thereof had not been deposited. According to the learned court the decision in Barasat Eye Hospital and Ors. vs Kaustabh Mondal, reported in (2019) 19 SCC 767, would squarely apply in this case. The learned court was of the view that no opportunity could be given to the petitioner to deposit the balance consideration along with 10% thereof, upon completion of an enquiry with regard to the actual valuation of the

property and as to whether an inflated amount had been quoted in the deed of sale, only to prevent preemption.

4. Learned advocate for the petitioner submits that the learned court had erred in law in passing the order impugned and this court under Article 227 of the Constitution of India should interfere by exercising the general power of superintendence.

5. Admittedly, an order dismissing a preemption application is an appealable order. However, the jurisdiction of this court has been invoked by the petitioner on the ground that the learned court acted illegally and with material irregularity in passing the order impugned. In my view, the learned court rightly passed the order by applying the decision of Barasat Eye Hospital (supra). The law has been laid down in the following manner by the Hon'ble Apex Court.

6. In paragraph 34 of the decision in Barasat Eye Hospital (supra), the Hon'ble Apex Court considered whether an extension of time could be given to make good the short deposit. It was held that if the application for pre-emption was filed within the period of limitation with a deficit amount and the balance amount was also deposited within the period of limitation, the situation could have been different. However, extension of time to deposit the amount beyond the period stipulated by law, was not permissible and no extension could be granted. The right of pre-emption would be triggered off only upon deposit of

the entire consideration along with 10% of the amount, but the balance consideration could not be allowed to be deposited beyond the period of limitation. Section 5 of the Limitation Act, was not applicable in a proceeding under Section 8 of the West Bengal Land Reforms Act. The court was not left with any discretion to extend the time to deposit the consideration amount. Relevant paragraphs of Barasat Eye Hospital (supra) are quoted below:-

> "**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]
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> **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."

7. The law has been settled. An enquiry envisaged under Section 9 of the West Bengal Land Reforms

Act, 1955 could only be done when the entire consideration was deposited along with 10% levy. Even if the premptor contended that the sale consideration was inflated, it was his obligation to comply with the legal mandate. The relevant paragraphs in Barasat Eye Hospital (supra) are quoted below:-

> "26. Now turning to Section 9 of the said Act, from which, apparently, some judgments of the Calcutta High Court have sought to derive a conclusion that an inquiry into the stated consideration is envisaged. However, the commencement of sub-section (1) of Section 9 is with "on the deposit mentioned in sub-section (1) of Section 8 being made..." Thus, for anything further to happen under Section 9 of the said Act, the deposit as envisaged under Section 8 of the said Act has to be made. It is only then that the remaining portion of Section 9 of the said Act would come into play.
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> 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 called for, from the pre-emptor. In that context, the additional amount 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 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."

8. There is no scope for interference under Article 227 of the Constitution of India as the judgment is not perverse.

9. Under such circumstances, the revisional application is dismissed. There shall be no order as to costs.

10. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)