April 30, 2024
Sl. No.25
Court No.19
s.biswas

CO 1360 of 2023

Khirode Chandra Mete @ Metya
vs.
Sk. Rejabul and another

Mr. Sanat Kumar Roy
... for the petitioner

1. The petitioner challenges the order dated January 3, 2022 passed by the learned Civil Judge (Junior Division), 1st Court, Tamluk, Purba Midnapore in J.Misc. (P) Case No.19 of 2014.

2. By the said order, the prayer of the petitioner under Section 151 of the Code of Civil Procedure to allow the deposit of deficit consideration money in the preemption application, was rejected. The court was of the view that the issue will be decided at the time of final hearing of the suit. More than two years have passed since such order. Now, the petitioner before this court is praying for liberty to deposit the shortfall. Such prayer cannot be allowed in view of the decision of **Barasat Eye Hospital and Ors vs Kaustabh Mondal reported in (2019) 19 SCC 767.**

3. 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."

4. 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.

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 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."

5. ***Abdul Matin Mallick vs. Subrata Bhattacharjee (Banerjee)*** reported in ***AIR 2022 SC 2175*** was also dealing with the issue of short deposit by a non-notified co-sharer, and the objection was with regard to inflated amount quoted in the sale deed. The Hon'ble Apex Court applied the law declared in ***Barasat Eye Hospital (supra)*** in the said case as well. The said ratio was applied to a pending proceeding. The relevant portions of ***Abdul Matin Mallick (Supra)*** are quoted below:-

"**2.1.** That the disputed property in question, which was the subject-matter of application for pre-emption before the Appropriate Authority under the West Bengal Land Reforms Act, 1955 (hereinafter referred to as "the 1955 Act") belonged to one Khudiram Bhattacharya, who died on 17-4-2001 leaving behind him, surviving his widow Purnima Bhattacharya who also died on 14-8-2001 and three sons, namely, Subrata, Debabrata and Ratan (the pre-emptors herein) and two daughters Kalyani and

Alpana, the vendors of the pre-emptee (appellant herein). On the death of Khudiram Bhattacharya and his widow, the aforesaid three sons and two daughters inherited the property in question each having undivided 1/5th share therein. The daughters of the original owner — Khudiram Bhattacharya sold their undivided 2/5th share in the property in question to the appellant herein — pre-emptee, Abdul Matin Mallick vide registered sale deed dated 23-11-2011. The sale in favour of the appellant by the daughters of the said Khudiram Bhattacharya was sought to be pre-empted by the sons of said Khudiram Bhattacharya on the ground that their sisters have transferred their undivided share in the property in question to the appellant, a stranger to the said property without serving statutory notice under sub-section (5) of Section 5 of the 1955 Act. The said application under Section 8 of the 1955 Act was registered as Misc. Pre-emption Case No. 8 of 2012 before the learned trial court.

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6.1. Thus, as observed and held by this Court in the aforesaid judgment in Bishan Singh [Bishan Singh v. Khazan Singh, AIR 1958 SC 838] , the right of pre-emption is "a very weak right". That being the character of the right, any provision to enforce such a right must, thus, be strictly construed. [Barasat Eye Hospital [Barasat Eye Hospital v. Kaustabh Mondal, (2019) 19 SCC 767 : (2020) 4 SCC (Civ) 810]]

6.2. The submission/contention on behalf of the pre-emptee that, as in the present case, along with the pre-emption application, the pre-emptors did not deposit the entire sale consideration with 10% additional sale consideration, and therefore their pre-emption application was not required to be further considered and no further enquiry as contemplated under Section 9 of the 1955 Act would be maintainable is concerned, identical question came to be considered by this Court in Barasat Eye Hospital [Barasat Eye Hospital v. Kaustabh Mondal, (2019) 19 SCC 767 : (2020) 4 SCC (Civ) 810] wherein at paras 23 to 33, it is observed and held as under : (SCC pp. 779-81)

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 precondition 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 pre-emption application. The aforesaid aspects have not been considered either by the first appellate court or even by the High Court in this case.

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7. Now, so far as the submission on behalf of the pre-emptors that they bona fide 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 1955 Act. 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.

8. Now, so far as the submission on behalf of the pre-emptors that the contention of non-deposit of the entire sale consideration with additional 10% of the 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 pre-emption application as without complying with the statutory requirements as mentioned under Section 8 of the 1955

Act, 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 pre-emption 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-fulfilment of the condition mentioned in Section 8 of the Act.

9. 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 Barasat Eye Hospital [Barasat Eye Hospital v. Kaustabh Mondal, (2019) 19 SCC 767 : (2020) 4 SCC (Civ) 810] and in light of the observations made by us hereinabove that along with 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 1955 Act 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 1955 Act.

10. In view of the above and for the reasons stated above, the present appeals succeed. The impugned judgments and orders passed by the High Court [Abdul Matin Mallick v. Subrata Bhattacharjee (Banerjee), 2019 SCC OnLine Cal 3853] , [Subrata Bhattacharjee (Banerjee) v. Abdul Matin Mallick, 2021 SCC OnLine Cal 3548] and that of the first appellate court are hereby quashed and set aside. Consequently, the pre-emption application submitted by the original pre-emptors — Respondents 1 to 3 herein stands dismissed. Respondents 1 to 3 — original pre-emptors are permitted to withdraw the amount, which they might have deposited either along with the pre-emption application and/or any subsequent deposit pursuant to the orders passed by the High Court.

6. In the decision of ***Chitta Ranjan Misra vs. Subrata Majhi and others decided in CO 451 of 2023*** this Court discussed the scope and the effect of the decision in ***Barasat Eye Hospital (supra)***. The said application for preemption in the case decided by this Court was also on the ground of non-notified co-sharership. This Court held that the law laid down in ***Barasat Eye Hospital (supra)*** was a law declared and it had a retrospective effect. The relevant portions are quoted below:-

> "Upon a meaningful reading of the decision, it is evident that the object of the said decision was to put to rest the controversy in respect of exercise of such a weak right, especially in the matter of short deposits. The Apex court took note of the fact that the decision would have a far larger ramification, as many cases were pending before this High Court on this point. Secondly, the law was in existence since 1955, but the interpretation of the same in respect of the requirement to deposit the consideration amount was finally put to rest in the decision of ***Barasat Eye Hospital (supra)***. It was a law declared on the point and will have a retrospective effect. The Hon'ble Apex Court was of the view that if short deposits were allowed, a weak right would give rise to speculative suits.
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> In the decision of ***Abdul Matin (supra),*** a similar view was taken by the Hon'ble Apex Court upon relying on the decision in ***Barasat Eye Hospital (supra)***. The Hon'ble Apex Court was dealing with Misc. Preemption Case No.8 of 2012 which had been filed before the trial court. The Misc.

preemption case was dismissed by the trial court. Misc. Appeal No.7 of 2014 was preferred. The Misc. Appeal was allowed and the order of the learned trial court was set aside. The application for pre-emption was allowed on the ground of co-sharership. The first appellate court allowed deposit of the balance consideration money. Aggrieved, the pre-emptee approached the High Court. The High Court dismissed the revisional application by upholding the order of the first appellate court and also upholding the decision of the first appellate to allow a belated deposit of the balance consideration money. Such order was challenged in Civil Appeal No.3500 of 2022. In such a pending proceeding, the decision of Barasat Eye Hospital (supra) was referred to and it was held that the learned lower appellate court was not justified in permitting the preemptor to deposit the balance consideration money with additional 10% and the High Court was also not justified in upholding such decision.

Thus the Apex Court applied the decision of ***Barasat Eye Hospital (supra)*** even in a pending preemption case of 2012, and set aside the order of the High Court passed in C.O.4266 of 2016. The decision of Barasat Eye Hospital (supra) was rendered in 2019.

In the decision of ***Assistant Commissioner, Income Tax Rajkot v. Saurashtra Kutch Stock Exchange Ltd., reported (2008) 14 SCC 171***, the Hon'ble Apex Court held as follows:-

> '35. In our judgment, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time,

the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.'

In the decision of ***P.V. George and Others v. State of Kerala and others, reported in (2007) 3 SCC 557***, the Hon'ble Apex Court held that the law declared by a court will have retrospective effect if not otherwise stated to be so specifically. The decision of the Hon'ble Apex Court was a law declared on the point that deposit of the full amount stated as the sale consideration together with further deposit of 10% was a precondition to filing an application under Section 8(1) of the West Bengal Land and Land Reforms Act, 1995. The conflicting legal position was clarified, interpreted, rectified and altered. The decision has a retrospective effect and will apply to pending proceedings."

7. The decision in **Maya Debnath vs. Uttam Sarkar and another** in ***CO 2086 of 2021*** is distinguishable on facts. The trial court had already allowed deposit of the shortfall, long before, However, in C.O No. 2516 of 2016, and C.O. No. 622 of 2021, His Lordship took a different view.

8. In ***Abdul Matin Mallick (supra)*** the Hon'ble Apex Court held that the ratio of **Barasat Eye Hospital** (supra) would apply even to pending cases. In this case, admittedly, full consideration had not been paid at the time of filing of the preemption application. The prayer to allow the deposit of short fall after

10 years from filing the pre-emption application is misconceived, contrary to law and rejected.

9. The revisional application stands dismissed accordingly.

10. There shall be no order as to costs.

(Shampa Sarkar, J.)