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December2025
Ct. No. 17
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

Before:
THE HON'BLE JUSTICE BISWAJIT BASU

C.O. 424 OF 2024
(Assigned)

Debasish Saha & Ors.
VS.
Sri Madan Mohan Saha

For the Petitioners : Mr. Debdutta Basu
Mr. Sudip Sarkar
Mr. Bitun Sarkar

For the Opposite Party : Mr. Sounak Bhattacharya
Mr. Chandranath Sarkar
Mr. Sounak Mandal
Mr. Abhirup Halder
Mr. Anirban Saha Roy
Ms. Bipasha Bhattacharyya

Heard on: 24.11.2025, 01.12.2025

Judgment on: 01.12.2025

BISWAJIT BASU, J:

1. The pre-emptees in a proceeding under Sections 8 and 9 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to '**as the said Act of 1955**' in short) are the petitioners of the instant revisional

application under Article 227 of the Constitution of India, which is directed against the Order no. 36 dated July 01, 2023 passed by the 3rd Court of learned Civil Judge (Junior Division), Baruipur, Dist : 24 Parganas (South) in Misc. Pre-emption Case No. 38 of 2016.

2. The petitioners in the said proceeding had taken out an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the application for pre-emption on the ground that the pre-emptor has failed to deposit the entire consideration money together with a further sum of 10% of that amount, as required under Section 8 (1) of the said Act of 1955. The learned Trial Judge, by the order impugned, has dismissed the said application holding, *inter alia*, that the actual consideration price can only be decided on full-fledged trial and upon evidence.

3. Mr. Debductta Basu, learned advocate for the petitioners submits that the consideration price mentioned in the impugned deed was Rs. 2,30,625/-. In terms of Section 8(1) of the said Act of 1955, the pre-emptor, the opposite party herein is required to deposit the consideration money together with a further sum of 10% of that amount, admittedly the pre-emptor has failed to comply with the said requirement, as such cannot maintain the application for pre-emption.

4. Mr. Basu further submits that in view of the judgments of the Hon'ble Supreme Court in the case of **BARASAT EYE HOSPITAL**

AND ORS vs. KAUSTABH MONDAL, reported in **(2019) 19 Supreme Court Cases 767** and in the case of **ABDUL MATIN MALLICK vs. SUBRATA BHATTACHARJEE (BANERJEE) AND ORS.**, reported in **(2022) 7 Supreme Court Cases 147**, the issue is no longer *res integra*, the learned Trial Judge though had considered the said judgments but erroneously has held that to ascertain the actual consideration price, a full-fledged trial is necessary.

5. Mr. Sounak Bhattacharya, learned advocate for the opposite party submits that in the impugned deed, the memo of consideration is missing which signifies that no consideration passed in the transaction, therefore, according to him, the requirement of Section 54 of the Transfer of Property Act, to complete a sale has not been fulfilled, he then refers to the West Bengal Amendment in the Indian Stamp Act, 1899 (hereinafter referred to as '***the said Act of 1899***' in short) to contend that the market value and the set-forth value in the deed are different, therefore, till the said issue is decided, the application for pre-emption cannot be dismissed for non-payment of the set-forth value.

6. Heard learned advocate for the parties, perused the materials-on-record.

7. The issue whether the pre-emptor, to exercise the right of pre-emption under Section 8 of the said Act of 1955, is required to deposit the entire consideration money together with a further sum of 10% of

that amount, in view of the two successive judgements of the Hon'ble Supreme Court in the cases of **BARASAT EYE HOSPITAL (supra)** and **ABDUL MATIN MALLICK (supra)** is no longer *res integra*.

8. The pre-emptor admittedly did not deposit the entire consideration price. In the impugned deed the consideration price has been clearly mentioned, lack of memo of consideration has no consequence so far the compliance of the requirement to deposit the consideration price to exercise the right of pre-emption. Whether the pre-emptees have actually paid the consideration price mentioned in the deed is an irrelevant consideration to decide an application under Section 8 of the said Act of 1955.

9. Non-payment of consideration price does not affect the sale, however it is not open to the pre-emptor to challenge the legality and propriety of the impugned deed in the present proceeding besides such challenge is self defeating. No doubt the set-forth value in the deed may not match with the market value but investigation in the said issue in the present case is completely irrelevant because in the impugned deed the consideration price has been mentioned, therefore, reference of the relevant provision of the Indian Stamp Act, (State Amendment) on the definition of market value is misplaced.

10. The Impugned deed since is disclosing the consideration price, the learned Trial Judge has committed jurisdictional error in deferring the issue for adjudication on evidence, particularly in view of the

proposition of law laid down by the Hon'ble Supreme Court on the said issue by the aforementioned two judgments.

11. Summing up the discussion made above, this Court is of the opinion the order impugned is not sustainable and is accordingly set aside. The application filed by the pre-emptees under Order VII Rule 11 of the Code is allowed; consequently the application for pre-emption being Misc. Pre-emption Case No. 38 of 2016 is rejected.

12. C.O. 424 of 2024 is allowed without any order as to costs.

13. Parties to act on the server copy of this order, duly downloaded from the official website of this Court

14. Urgent photostat certified copy of this judgment/order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU, J.)