

22.06.2026
Ct No.2
D/L 93
Mujahid

CO 2987 of 2023
With
CAN 1 of 2024
CAN 2 of 2025

Durga Devi
Vs.
Rajendra Prasad & Anr.

Mr. Sundar Gopal Bhattacharyya
...for the petitioner

Mr. Swarup Banerjee
Mr. Sajal Kumar Ghosh
Mr. Arindom Chatterjee
Mr. Bishal Mondal
Mr. Atik Masud Molla
...for the opposite parties

1. Present petition has been filed challenging the order dated 17th May, 2023 in Pre-emption Case 11/2021 whereby the plea of the defendant/petitioner regarding maintainability of the pre-emption case was challenged. The plea was taken that along with the application the mandatory deposit of the consideration money together with a further sum 10% of that amount had not been made along with the application. It was stated that on this ground alone the pre-emption case is liable to be rejected.

2. The plea was opposed by the petitioner on the ground that the deposit was made within the time

limit, i.e., four months as provided under Section 8 of the West Bengal Land Reforms Act, 1955.

3. Briefly stated, the opposite party/petitioner filed a petition under Section 8 of the West Bengal Land Reforms Act on 31st November, 2021. Admittedly at the time of filing of the said case the opposite party/petitioner had not deposited the consideration amount along with 10% amount as provided in the statute. The opposite party/petitioner had contended that for the deposit of the amount, the challans were required to be passed by the competent court and only thereafter the petitioner in such case is entitled to deposit the said amount.

4. Learned trial court, on hearing of both the parties inter alia held that the opposite party/petitioner had deposited the entire sale consideration along with the additional 10% within the mandatory period and as such there was no violation of Section 8 of the West Bengal Land Reforms Act.

5. Section 8 of the West Bengal Land Reforms Act, 1955 provides as under:-

“8. Right of purchase by co-sharer or contiguous tenant.- (1) If a portion or share of a [plot of land of a raiyat] is transferred to any person other than a [co-sharer of a raiyat in the plost of land], [the bargadar in the plot of land] may, within three months of the date of such transfer, or] any [co-sharer of a raiyat in the plot of land] may, within three months of the service of the notice

given under sub-section (5) of section 5, or any raiyat possessing land [adjoining such plot of land] may, within four months of the date of such transfer, apply to the [Munsif having territorial jurisdiction,] for transfer of the said portion or [share of the plot of land] to him, subject to the limit mentioned in [section 14-M,] on deposit of the consideration money together with a further sum of ten per cent, of that amount:

9[Provided that if the bargadar in the plot of land, a (co-sharer of raiyat in a plot of land] and a raiyat possessing land [adjoining such plot of land] apply for such transfer, the bargadar shall have the prior right to have such portion or [share of the plot of land] transferred to him, and in such a case, the deposit made by other shall be refunded to them:]

10[Provided further that where the bargadar does not apply for such transfer and] a [co-sharer of a raiyat in the plot of land] and a raiyat possessing land [adjoining such plot of land] both apply for such transfer, the former shall have the prior right to have such portion or [share of the plot of land] transferred to him, and in such a case, the deposit made by the latter shall be refunded to him:

11[Provided also] that as amongst raiyats possessing lands [adjoining such plot of land] preference shall be given to the raiyat having the longest common boundary with the land transferred.”

6. Bare perusal of this provision makes it clear that upon depositing the stipulated amount the petitioner may apply to the learned Munsif, having territorial jurisdiction, for preemptory right within the time period as provided under Section 8 of the West Bengal Land Reforms Act, 1955. Section 9 of the West Bengal Land Reforms Act, 1955 provides that on the deposit as mentioned in Sub-section (1) of Section 8, the learned Munsif shall give notice of the

application to the transferee and proceed with further procedure of inquiry has provided in Section 9 of the West Bengal Land Reforms Act, 1955.

7. Learned counsel for the petitioner has relied upon Barasat Eye Hospital vs. Koustav Mondal, AIR OnLine 2019 SC 2317 and Abdul Matin Mallick vs. Subrata Bhattacharjee, AIR 2022 SC 2175. Learned counsel for the petitioner submits that it is a settled proposition that right of pre-emption is a very “weak right” and thus, there has to be strict compliance to the statutory provision. Learned counsel has further submits that in Abdul Matin Mallick (supra) it was specifically inter alia held that the pre-requisite to endeavour to exercise “weak right” is the deposit of amount of sale consideration and 10% levy on that consideration. Learned counsel submits that it was further inter alia held that Section 8(1) of the West Bengal Land Reforms Act will not be triggered off unless the deposit is made as per legislative scheme.

8. Learned counsel for the opposite parties submits on the other hand has submitted that the opposite party no.2 sold the suit premises to the petitioner on 4th October, 2021. Aggrieved of this, the petitioner filed a pre-emption application on 30th November, 2021. Learned counsel submits that on 8th December, 2021, the opposite party, i.e., petitioner submitted challans for deposit of the consideration

money plus addition 10% as prescribed under Section 8(1) of the West Bengal Land Reforms Act within the statutory period. Learned counsel submits that only thereafter the summons were issued by the learned trial court. Learned counsel submits that there is no violation on the part of the opposite party/petitioner. Learned counsel further submits that even in Barasat Eye Hospital (supra) it was inter alia held that if the amount has been deposited within the time limit, the further inquiry as required under Section 9 can be held.

9. I have heard learned counsel for the parties and perused the record carefully. There cannot be any doubt to the settled proposition that pre-emption is “weak right” and it has consistently been held that in order to enforce such right, the party invoking the jurisdiction has to strictly comply with the provisions of the law. Section 8 of the West Bengal Land Reforms Act specifically provides for deposit of the amount within the time limit prescribed under the Act. The combined reading of Section 8 and Section 9 also provides that only upon such deposit being made, the summons can be issued to the transferee by the learned Munsif. In Abdul Matin Mallick (supra), it was inter alia held as under:-

"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."

10. It is also advantageous to refer to para 34 of the Barasat Eye Hospital (supra):-

"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."

11. The combined reading of para 6.3 of Abdul Matin Mallick (supra), and para 34 Barasat Eye Hospital (supra) makes it clear that if the pre-emption case has been filed without deposit of the amount, no further inquiry can be held as required under Section 9 of the West Bengal Land Reforms Act. However, if

the amount has been deposited within the time limit as prescribed under Section 8, further inquiry as required under Section 9 of the West Bengal Land Reforms Act can be initiated in the present case. Admittedly, the summons were issued by the learned Munsif only after deposit of the amount. It is also not disputed that the inquiry was initiated under Section 9 of the West Bengal Land Reforms Act after deposit of the amount as required under Section 8 of the West Bengal Land Reforms Act.

12. It is also pertinent to mention here that the revisional jurisdiction has a very limited scope. The Court under this jurisdiction can interfere only when there is an apparent, illegality or perversity in the order of the learned trial court. This Court does not find any such illegality or perversity in the order of the learned Trial Court.

13. Accordingly, CO 2987 of 2023 is dismissed.

(Dinesh Kumar Sharma, J.)