(1977) 10 CAL CK 0002

Calcutta High Court

Case No: C.R. Case No. 1005 of 1971

Satish Chandra Kuila		APPELLANT
	Vs	
Kalipada Maity		RESPONDENT

Date of Decision: Oct. 3, 1977

Acts Referred:

- Constitution of India, 1950 - Article 14
- West Bengal Land Reforms Act, 1955 - Section 3, 8

Citation: 82 CWN 184

Hon'ble Judges: G.N. Roy, J; Banerjee, J

Bench: Division Bench

Advocate: Bejaendra Mohan Mitra, for the Appellant; Suprakash Banerjee and Samarjit Gupta for the State of West Bengal, for the Respondent

Judgement

G.N. Roy, J.

This Rule is directed against the order dated 4th January, 1971, passed in Pre-emption Appeal no. 1 of 1969 by the learned Munsif, Dantan, reversing the order passed by the Revenue Officer, Contai, in Pre-emption Case No. 38 of 1966. The petitioner in the instant rule is the pre-emptee and the opposite party made an application for pre-emption against the petitioner on the ground of (sic) u/s 8 of me West Bengal Land Reforms Act. It has been held by the learned Munsif in disposing of the said pre-emption appeal No. 1 of 1969 mat the applicant held the (sic) plots of lands in respect of the lands sought to be preempted excepting four plots, namely, plots nos. 565, 665, 662/3330 and 661. The said four plots were not contiguous plots and pre-emption was not allowed in respect or these lands but in respect of other lands the application for preemption was allowed. Mr. Matter, learned Advocate appearing for the petitioner challenged this appellate order of pre-emption on four grounds. Mr. Mitter firstly contended that the appellate court having held that all the land covered by the document of transfer were not similar and the price of such lands also varied, the learned Munsif erred in arbitrarily fixing the valuation by

taking average puce of the area of the lands in question from the total valuation given in the document of transfer.

2. Mr. Mitter contended that it was the duty or the learned Munsif to (sic) determine the valuation of each of the plots in respect of which the order or pre-emption was to be passed. It appears to us that in the instant case, the plots of lands in respect of which the application for pre-emption was not allowed were more valuable lands being bamboo grove and beter grove and as such by taking an average mean of the total price fixed for all the lands in the document of transfer, the present petitioner has not suffered in any way and mere is no reason to interfere with the order of the learned Munsif on that score. But we agree on principle that the court should determine me valuation of the land in respect of which the order for pre-emption should be passed.

3. Mr. Mitter next contended that the impugned order must also fall as (sic) pre-emption is not permissible in law. Mr. Mittter contended that as pre-emption was allowed only in respect of some plots excluding in the aforesaid four plots, the learned Munsif was not justified in passing the order of pre-emption in respect of a portion of the holding. In such circumstances, according to Mr. Matter, pre-emption should have been allowed in respect of the entirety of the lands. It may be pointed out at this stage that by allowing partial pre-emption, Mr. Mitter''s client has not suffered in any way. On the contrary, such order for partial pre-emption excluding the aforesaid four plots has enured to the benefit of the petitioner because no order for preemption has been passed against him in respect of the said four plots. But apart from this, it appears to us that on the ground of vicinage order of preemption should be made in respect of those plots which really are contiguous to the plots of the applicant. It is quite evident that the concept of vicinage is of recent origin and in the Bengal Tenancy Act such concept was not introduced. Mr. Mitter relied on two decisions of this court reported in 42 C.W.N. 288 Surabala v. Rukmini and 38 C. W. N. 654 Beharilal v. Pulinbehari for the aforesaid proposition that partial pre-emption is not permissible in law. We may point out that such decisions can be clearly distinguished from the facts and circumstances of the instant case and apart from anything else, the question of vicinage had not been considered in those decisions inasmuch as the pre-emption on the ground of vicinage was not known in the Bengal Tenancy Act.

4. Mr. Mitter next contended that the application for pre-emption is barred by limitation. In support of this contention Mr. Mitter pointed out that although the application for pre-emption was made within four months from the date of registration of the document in question but the execution of the said document having been made earlier, the date of transfer should be deemed to have been made from the date of execution in view of the provisions of section 47 of the Indian Registration Act. We are unable to accept this contention of Mr. Mitter.

5. Mr. Suprakash Banerjee, the learned Advocate appears for the State of West Bengal pursuant to a notice given on the learned Advocate General of West Bengal because a challenge was thrown as to the vires of section 8 of the West Bengal Land Reforms Act in so far as pre-emption on the ground of vicinage was concerned. Mr. Banerjee has rightly painted out that the limitation will run from the date of the registration of the document and not from the date of execution of the same and such contention was also considered by this court in Gosto Behari Das Vs. Smt. Rajabala Dei and Another, and it was held in the said decision that limitation will run from the date of registration and not from the date of execution of the document. It may also be pointed out in this connection that if the proposition that limitation will run from the date of execution of a document and not from its registration as accepted to be correct, the right of pre-emption may be easily defeated by a purchaser by intentionally presenting his document of transfer for registration after expiry of four months from the date of execution of the same.

6. Mr. Mitter lastly contended that the application for pre-emption is also not maintainable because the lands sought to be pre-empted do not form any holding within the definition of the "holding" under the West Bengal Land Reforms Act. In this connection Mr. Mitter refers to sub-section (6) of section 3 of the West Bengal Land Reforms Act. It has been provided for in the said sub-section that holding moans land or lands hold by a raiyat and treated as a unit for assessment of revenue. Mr. Mitter contended that for becoming a ''holding'' the land should not only be held by a raiyat out the land must be treated as a separate not for assessment of revenue. This contention of Mr. Mitter cannot be accepted because this point was not taken in the courts below and no evidence wasted by Mr. Mitters client to show that the lands in question do not form any unit for assessment of revenue. As all the contentions of Mr. Mitter fall, this Rule is discharged but we make no order as to costs. As stated earlier, a notice of the Rule was served on the learned Advocate General because a point was taken in the rule that section 8 is ultra vires the Constitution because the provision for pre-emption on the ground of vicinage was contrary to Article 14 of the Constitution of India. But the said contention cannot be accepted inasmuch as it has already been, held by this court in earlier decisions that the West Bengal Land Reforms Act having been included in the schedule 9 of the Constitution of India, the vires of section 8 of the West Bengal Land Reforms Act, cannot be challenged any further.

Banerjee, J.

I agree.