

(1992) 07 CAL CK 0040

Calcutta High Court

Case No: None

In Re: Smt. Namita
Biswas

APPELLANT

Vs

RESPONDENT

Date of Decision: July 27, 1992

Acts Referred:

- West Bengal Land Reforms Act, 1955 - Section 14M, 5, 8, 8(1), 9
- West Bengal Non-Agricultural Tenancy Act, 1949 - Section 24, 24(2)

Citation: 96 CWN 1121

Hon'ble Judges: N.K. Mitra, J

Bench: Single Bench

Advocate: Biman Bose and Giti Das, for the Appellant;

Final Decision: Dismissed

Judgement

N.K. Mitra, J.

The short question involved in this case is, whether an application for pre-emption u/s 8 of the West Bengal Land Reforms act, 1955 is maintainable, even if the pre-emptor does not deposit the consideration money together with statutory interest along with such application or in other words, whether such deposit is a condition precedent. The petitioner who was the pre-emptor, raised an objection on the ground of maintainability to the opposite party's filing application u/s 8 of the Land Reforms Act for pre-emption without depositing the consideration money plus interest along with such application as provided in Section 8 (1) of the aforesaid Act. By the impugned order, the said objection was negated by the learned Munsif and the said order is being challenged in revision.

2. It is stated in Section 8 (1) of the West Bengal Land Reforms Act, 1955 as follows :-

8(1) Right of purchase by co-sharer or contiguous tenant - If a portion or share of a holding of a raiyat is transferred to any person other than a co-sharer in the holding,

[the bargadar in the holding may, within three months of the date of such transfer, or] any co-sharer raiyat of the holding 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 holding, 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 holding to him subject to the limit mentioned in [section 14-M], on deposit of the consideration money together with a further sum of ten percent of that amount.

3. It may be pointed out that right of pre-emption was also given u/s 26-F of the Bengal Tenancy Act, 1885 the relevant portions of which are quoted below :-

Section 26F(2) - The application shall be dismissed, unless the applicant or applicants at the time of making it, deposit in Court the amount of consideration money or the value of the transferred portion or share of the holding, as stated in the notice, together with compensation at the rate of ten percent of such amount"

4 The right of pre-emption was also given u/s 24 of the West Bengal Non-Agricultural Tenancy Act, 1949 as follows :

Section 24 (2) - The application under sub-section (1), i.e., application for pre-emption of non-agricultural land, shall be dismissed unless the applicant at the time of making it deposits in Court the amount of consideration money or the value of the property or the portion or share thereof transferred as stated in the notice...together with compensation at the rate of five perecentum of such amount."

5. The above provisions of the Bengal Tenancy Act and the West Bengal Non-Agricultural Tenancy Act, thus made it clear that the application for preemption, filed under either of the said Acts was liable to be dismissed unless the applicant at the time of making such application, deposited in Court the amount of consideration money together with compensation at the specified rate. No such penal provision, however, has been provided in Section I; (1) of the West Bengal Land Reforms Act, 1955 and in the absence of any such provision, it cannot be said that the condition of depositing the consideration money together with interest as imposed by Section 8(1) of the West Bengal Land Reforms Act, 1955 has to be fulfilled by the pre-emptor at the time of making an application for pre-emption under the West Bengal Land Reforms Act, 1955 or in other words, such condition is a condition precedent and/or mandatory.

6. Reference may also be made on this point to the Division Bench Judgement of this Hon"ble Court in the case of Sadhan Chandra Samanta & Ors. V. Jaladhi Bala Dasi & Anr. 1986 (1) CLJ 170 wherein Chittatosh Mookerjee and Susanta Chatterjee, JJ. relying upon the earlier Division Bench decision of this Court in the case of Jyotish Chandra Sardar Vs." Hira Lai Sardar, ILR 1971 (1) Cal. 213, corresponding to 1969 CLJ 215, held inter alia, as follows :

Thus, section 8 of the West Bengal Land Reforms Act has not made it imperative to deposit the consideration money and the compensation thereon at the time of making pre-emption application or that in default thereof the application would be dismissed. Sub-Section (1) of Section 8 of the West Bengal Land Reforms Act, according to the Division Bench, in the case of Jyotish Chandra Sardar vs. Hiralal Sardar (supra), indicated the condition upon which the transfer in favour of the pre-emption is to be made rather than the manner in which the application u/s 8 is to be made.

7. Again, Section 9(1) of the West Bengal Land Reforms Act, 1955, which is reproduced below states inter alia that on the deposit mentioned in subsection (1) of Section 9 of the aforesaid Act being made, the Court shall give notice of the application to the transferee, and shall also cause a notice to be affixed on the land for the information of persons interested -

"Section 9(1) - On the deposit mentioned in sub-section (1) of Section 8 being made, the "[Munsif] shall give notice of the application to the transferee, and shall also cause a notice to be affixed on the land for the information of persons interested. On such notice being served, the transferee or any person interested may appear within the time specified in the notice and prove the consideration money paid for the transfer and other sums, if any, properly paid by him in respect of the lands including any sum paid for annulling encumbrances created prior to the date of transfer, and rent or revenue, cesses or taxes for any period. The [Munsif] may after such enquiry as he considers necessary direct the applicant to deposit such further sum, if any, within the time specified by him and on such sum being deposited, he shall make an order that the amount of the consideration money together with such other sums as are proved to have been paid by the transferee or the person interested plus ten per cent of the consideration money be paid to the transferee or the person interested out of the money in deposit, the remainder, if any, being refunded to the applicant. The [Munsif] shall then make a further order that the portion or share of the holding be transferred to the applicant and on such order being made, the portion or share of the holding shall vest in the applicant.

8. Reading Sections 8(1) and 9(1) of the West Bengal Land Reforms Act together and in view of the opening words of the said section 9(1) it is thus quite clear that an application for pre-emption can be filed by the pre-emptor without depositing the consideration money together with interest at the time of making such application, but till such deposit is made, the application will remain in dormant state and no action will be taken by the Court with regard to such application, and only when the consideration money and the interest are deposited, the Court will proceed further in the matter. The deposit of consideration money and the interest, therefore, are matters of procedure so far as dealing with the pre-emption application by the Court is concerned, but such deposit cannot be treated to be a condition precedent for filing such an application.

9. Accordingly, if the consideration money together with interest are not deposited along with an application for pre-emption filed u/s 8(1) of the West Bengal Land Reforms Act, 1955, that can at best be treated to be a procedural defect which is always curable but such procedural defect would not make the substantive application for pre-emption under the said Section not maintainable.

10. Accordingly, I find no infirmity or illegality in the impugned order passed by the learned Munsif, and as such, I am not inclined to interfere with the same. The Revisional application therefore, stands dismissed without any order as to costs. This order will also govern the other revisional applications, namely, in re: Sri Samir Kumar Biswas; Sm. Archana Deb; Sri Somnath Biswas; Sri Makhan Sengupta; Sri Manabendra Sankar Das; Smt. Rina Das; Sri Rabi Sankar Deb; Sri Sishu Ranjan Paul; Smt. Swati Biswas and Smt. Sujata Deb.