

(2014) 08 CAL CK 0070

Calcutta High Court

Case No: CR 885 of 1994 and CAN 11972 of 2013

Sankari Bala Biswas

APPELLANT

Vs

Dhirendranath Biswas

RESPONDENT

Date of Decision: Aug. 8, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27
- Limitation Act, 1963 - Section 5
- Registration Act, 1908 - Section 61
- West Bengal Land Reforms Act, 1955 - Section 10, 19(9), 5, 8, 8(1)

Citation: (2015) 1 CHN 541

Hon'ble Judges: Subrata Talukdar, J

Bench: Single Bench

Advocate: Shyamaprasanna Roychowdhury, Ld. Senior Counsel and Tapas Bhattacharya, Ld. Counsel, Advocate for the Appellant; Sadhan Kumar Halder, Ld Counsel and Riha Trivedi, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Subrata Talukdar, J.

This civil revisional application challenges the Order impugned dated 22nd September, 1993 passed by the Learned First Additional District Court, Krishnanagar, Nadia in Misc. Appeal no. 72 of 1992 in preemption proceedings. By the said impugned Order the Learned First Appellate Court was pleased to set aside the Order of the Learned 3rd Civil Court (Junior Division) at Krishnanagar in Misc. Case no. 31 of 1993.

2. The petitioner-preemptor has challenged the Learned First Appellate Court's Order by filing this civil revisional application numbered CR 885 of 1994. The preempees are arrayed as the opposite parties. The Order of the Learned Trial Court dated 29th April, 1992 in Misc. Case no. 31 of 1999 held in favour of the

petitioner-preemptor on the following score:-

a) That the petitioner-preemptor was the adjacent owner of the suit premises. Therefore, on the ground of being the adjacent owner the petitioner is entitled to claim the rights of a preemptor. The claim of the petitioner to being a bargadar in the suit premises under the original owners was not accepted by the Learned Trial Court.

b) While holding that the petitioner-preemptor is an adjacent owner of the suit premises the Learned Trial Court took into consideration the partition of the suit premises by a deed no. 202 dated 7th September, 1965. The Learned Trial Court was of the view that there was partition of the suit premises by metes and bounds and such partition could not be disproved by the opposite parties. The deed number of the partition with evidence has been submitted before the Learned Trial Court by the petitioner-preemptor.

c) In respect of valuation of the suit premises the Learned Trial Court was pleased not to interfere with the same. According to the preemptor the valuation of the suit land was inflated for the purpose of denying preemption. The suit land was valued at Rs. 40, 000 when, according to the petitioner-preemptor the value could not have been more than Rs. 20, 000. The petitioner-preemptor had deposited a sum of Rs. 20, 000, which, according to him, was the true value while filing the pre-emption proceedings. Thereafter the full balance value of Rs. 22, 000, i.e. value of the land plus statutory compensation was deposited by the petitioner-preemptor before the Learned Trial Court.

3. In the light of the above noted reasoning the Learned Trial Court was pleased to decree Misc. Case no. 31 of 1990 in favour of the petitioner-preemptor. The petitioner-preemptor was directed to deposit the remaining value with statutory compensation within one month from the date of the Order of the Learned Trial Court.

4. Being aggrieved the opposite party-preemptee approached the Learned First Additional District Court, Nadia by filing Misc. Appeal no. 72 of 1992. By the Order impugned before this Court dated 22nd September, 1993, the Learned First Appellate Court held as follows:-

a) That the Learned Trial Court was wrong in arriving at the conclusion that the preemptor was an adjoining co-sharer. While it was admitted by the Learned First Appellate Court that the petitioner-preemptor purchased land by two different "Kobalas" and is in possession of such land, there is nothing on record to show the claim of the petitioner-preemptor that there was no partition between the co-sharers. According to the Learned First Appellate Court, excepting a bare statement that there was a partition deed no. 202 dated 7th January, 1965, no proof of such partition by way of submitting an original partition deed nor a certified copy thereof has been brought into evidence by the petitioner-preemptor. As the

opposite party-preemptor have denied the fact of such partition, such partition was not admitted by the Learned First Appellate Court and her status as adjoining owner was refused.

b) On the point of valuation the Learned First Appellate Court arrived at the finding that the preemptor had deposited only Rs. 22, 000 though he was required to deposit Rs. 44, 000 in terms Section 8(1) read with Section 9 of the West Bengal Land Reforms Act (for short WBLR Act). According to the Learned First Appellate Court the preemptor failed to adduce convincing evidence on the score that an inflated value of the suit premises has been entered in the "Kobala" dated 7th January, 1985 executed in favour of the preempees.

According to the Learned First Appellate Court a clear reading of Sections 8 & 9 of the WBLR Act makes it clear that the preempee is required to deposit the consideration money along with statutory compensation on which the sale sought to be preempted become effective. In this case the preemptor having failed to deposit the sale price of Rs. 44,000 along with statutory compensation, the application for pre-emption was liable to be dismissed.

c) The Learned First Appellate Court further came to the finding that the application for preemption was premature. Although the "Kobala" was executed in favour of the preempees on 7th January, 1985, the registration was completed only on 24th August, 1990 u/s 61 of the Registration Act. The petitioner-preemptor obtained a certified copy on 8th June, 1990 and filed the application for pre-emption on 12 June, 1990.

5. According to the Learned First Appellate Court the right to preemption is not available on the basis of an unregistered document and such right being inchoate cannot be canvassed before the Court in a premature application.

6. Accordingly Misc. Appeal no. 31 of 1990 was dismissed and preemption denied.

7. Sri Shyamprasanna Roychowdhury, Ld. Senior Counsel with Sri. Tapas Bhattaacharya, Ld. Counsel appearing for the petitioner-preemptor has seriously assailed the Order of the First Appellate Court on the following grounds of fact and law:-

First, that the Learned First Appellate Court went wrong in holding that the application for pre-emption was premature since it was filed even before the deed was registered. In this connection, the Learned First Appellate Court failed to notice a landmark judgment reported in Krishna Chandra Pramanik and Others Vs. Hari Sadan Sahana and Another, The Hon"ble Court while considering the right of a preemptor to apply before registration of sale deed is complete u/s 61 of the Registration Act, 1908, was pleased to hold that when, pending the pre-emption proceedings the sale deed was registered, in such circumstances the application cannot be dismissed as one based on an inchoate right. Rather the said application

should be treated as made on the date when the applicant's right matured, i.e. after completion of registration of sale deed.

8. The Hon'ble Bench following AIR 1915 CALCUTTA 103 was categorical in observing as follows:-

"However weak the right may be it is a right conferred by the statute and it is not meant to be frustrated on unsubstantial technicalities."

9. Therefore, according to Sri. Roychowdhury, the Learned First Appellate Court could not have brushed aside under the carpet the right of the petitioner-preemptor to claim pre-emption on the basis of registration of a sale deed during the pendency of the pre-emption proceedings. The conclusion of the Learned First Appellate Court that the pre-emption petition was premature cannot be sustained on the test of law.

10. On the point of valuation Sri. Roychowdhury, took this Court to a plain reading of the provisions of Sections 8 & 9 of the WBLR Act which provide as follows:-

"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 plot 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 14M on deposit of the consideration money together with a further sum of ten per cent of that amount:

Provided that if the bargadar in the plot of land, a co-sharer of a 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 others shall be refunded to them:

Provided further that where the bargadar does not apply for such transfer and a co-sharer of a raiyat in a 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.

"9. Munsif to allow the application and apportion lands in certain cases.-On the deposit mentioned in sub-section (1) of section 8 being made, the Munsif shall give notice to be affixed on the land 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 percent 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 plot of land be transferred to the applicant and on such order being made, the portion of share of the plot of land shall vest in the applicant.

11. Calling upon the Court to notice the aforementioned provisions, Sri. Roychowdhury has strenuously argued that the requirement of statute is that the Learned Court considering the pre-emption petition may after such enquiry as it considers necessary, direct the applicant-preemptor to deposit such further sum, if any, within time specified by the Court and on such sum being deposited, he shall make an order that the amount of the consideration money together with such other sums as proved to have been paid by the transferee or the person interested plus 10% of the consideration money be deposited to the transferee or the person interested out of the money in deposit.

12. According to Sri. Roychowdhury in the teeth of a statutory mandate requiring the Court to accept further sums of the value of the suit premises, the Learned First Appellate Court could not have abruptly closed the issue throwing the petitioner-preemptor out on the ground of non-deposit.

13. In support of the above contention Sri. Roychowdhury relies on 1986 1 CLJ ([Dwijapada Haldar Vs. Prafulla Chandra Haldar,](#)

14. In Re: Sadhan Chandra Samanta & Ors. Vs. Jaladhi Bala Dasi & Anr. (supra) is an authority on the point:-

- i) Whether a joint application for preemption is maintainable in law;
- ii) Whether one deposit jointly by two applicants is maintainable.

15. The decision in Sadhan Chandra Samanta (supra), to the mind of this Court, is not strictly applicable to the facts of the present case.

16. In Re: Dwijapada Halder Vs. Prafulla Chandra Halder (supra) is an authority applicable to the facts of this case. In Dwijapada Halder's case this Court held at para 11 that an application for preemption u/s 8(1) of the WBLR Act cannot be rejected if a co-sharer of a holding made a short deposit of the consideration money at the time of filing such application. In the opinion of the said Hon'ble Single Bench, "Whether the consideration money is deposited, it would be sufficient

compliance of Section 8(1) of the Act, if the applicant deposits the balance of consideration money when the Revenue Officer makes a final Order either granting or refusing preemption after the amount of consideration money payable by the preemptor has been adjudicated u/s 9(1) of the Act."

17. Sri Roychowdhury therefore submits that the Learned First Appellate Court could not have dismissed the claim for preemption on the ground of short deposit by the petitioner-preemptor. Furthermore, it is not disputed that during the pendency of the preemption proceedings the petitioner-preemptor had deposited the balance consideration money along with statutory compensation being the full value of the "Kobala" dated 7th January, 1985.

18. The third submission of Sri. Roychowdhury is on the point of acceptance of additional evidence by way of submitting the Deed of Partition no. 202 of 1965. Sri. Roychowdhury, at this stage, refreshes this Court on the references by the Learned Trial Court and by the Learned First Appellate Court on the factum of the said Deed of Partition no. 202 of 1965. Such observations of the two Courts have been noticed by this Court in the earlier portions of this judgment.

19. It is worth reiterating that while the Learned Trial Court proceeded on the basis that there was reference to the Deed of Partition no. 202 of 1965 between the co-sharers and hence granted preemption on the basis of co-sharership to the petitioner, the Learned First Appellate Court negated such plea on the ground that excepting a bare whisper there is no proof or evidence of the existence of such a Deed of Partition.

20. Sri Roychowdhury by filing CAN 11972 of 2003 seeks to demonstrate before this Court that the Deed of Partition referred to on behalf of the petitioner-preemptor before the Learned two Courts as aforesaid, being Deed no. 202 of 1965, the certified copy of the same was obtained by the petitioner-preemptor only on 15th January, 2013. Therefore by filing CAN 11972 of 2013 annexing the said Deed of Partition no. 202 of 1965 Sri. Roychowdhury urges for acceptance of the same by way of additional evidence.

21. Sri Roychowdhury also refreshes this Court on the provisions of Order 41 Rule 27 and submits that such additional evidence should be accepted in the light of the Learned First Appellate Court disallowing the preemption on the ground of non-availability of the Deed of Partition. He points out that before both the Learned Trial Court and the First Appellate Court the Deed of Partition was referred to for considering the co-sharership of the suit premises and the extent of the right of the petitioner to claim preemption on the basis of such co-sharership.

22. He has further argued that in the light of settled judicial authority of this Court even without acceptance of the additional evidence the preemptor can be treated to be a contiguous co-sharer of the suit premises. In this connection he relies upon Ishan Chandra Ghatak Vs. Sasadhar Maity, wherein an Hon"ble Single Bench of this

Court was pleased to decide in favour of the preemptor by holding as follows:-

"It is not necessary that the holding referred to in Section 8 must belong to only one person alone that the entire share of the raiyat in the holding must be transferred for bringing a case u/s 8 of the WBLR Act."

23. On this point he also relies on Smt. Bula Kundu Vs. Sri Nirmal Kumar Kundu and Another, wherein an Hon"ble Single Bench at para 17 thereof held as follows:-

"In my opinion, in order to maintain application for preemption on the ground of adjoining ownership, it is not necessary that the applicant must be the full owner of the adjoining holding. Even a co-sharer of the adjoining holding may apply for preemption. Similarly, I do not find any substance in the contention of Sri. Banerjee that preemptor must have land adjoining the portion of the land which has been transferred by the disputed transaction. The language of Section 8 of the Act makes it clear that the applicant for preemption must be adjoining owner of the holding part of which has been transferred by the disputed transaction. Therefore, even if a holding consists of three plots e.g. (a),(b) and (c) and the preemptor is a co-sharer of the adjoining holding consist of three different plots e.g. (d), (e) and (f) and if by the disputed transaction a part of the plot (a) has been transferred, a co-sharer of holding consisting of plot nos. (d), (e) and (f) can maintain such application although there is no common boundary line between the plot (a) of the holding consisting of plot (a), (b) and (c) and the holding consisting of plot nos. (d),(e) and (f). As pointed out in the case of Ishan Chandra Ghatak Vs. Sasadhar Maity, relied upon by Mr. Roychowdhury appearing on behalf of the opposite parties, in Section 8 there is no qualifying word to "holding" and thus it is not necessary that the preemptor must be holding land adjoining the actual land sold by the disputed transaction.

24. The ghost of the Deed of Partition no. 202 dated 7th September, 1965 has haunted both the Learned Trial Court and the Learned First Appellate Court. It has been already mentioned earlier in this judgment that both the Learned Trial Court and the Learned First Appellate Court have noticed the said Deed of Partition. Sri. Roychowdhury relying upon the application filed on behalf of the petitioner for acceptance of additional evidence numbered CAN 11972 of 2013 has pleaded at paragraphs 3 & 4 thereof as follows:-

"3) That the preemptor/petitioner could not procure the certified copy of the said Deed of Partition and as such she could not submit a copy of the said Deed of Partition in the Learned Trial Court, though existence of said partition was categorically mentioned in the pleading and/or evidence by the preemptor/petitioner, before the Learned Trial Court. 4) That ultimately the petitioner has been successful in obtaining certified copy of the said Deed of Partition being no. 202 of 1965 on 15.01.2013. That the petitioner and her husband (now dead) made attempt to collect copy of said Deed of Partition from Registration Office when the preemption case was heard but they were told from the

Registration Office that there was no trace of said Deed of Partition.

Copies of the Deeds are annexed as Annexure "X".

25. He further submits that the said Deed of Partition should be accepted as additional evidence and such additional evidence should be considered at the time of hearing. As ordained under the provisions of Order 41 Rule 27 of the Code of Civil Procedure, the acceptance of the additional evidence would demonstrate the specific contiguous nature of the co-sharership of the preemptor qua the suit property. If such additional evidence is accepted and allowed to be adduced at the time of hearing then the preemptee will be allowed to lead evidence in rebuttal once the matter is remanded for hearing to the Learned Trial Court on the basis of such additional evidence.

26. However, if the application for acceptance of additional evidence is not accepted by this Court even then, in view of the authority of cases decided by this Court, the petitioner-preemptor can be treated to be a contiguous co-sharer. In support of the second proposition Sri. Roychowdhury reiterates the decision reported in 2000 CWN 776.

27. Per contra Sri. Sadhan Halder, Learned Counsel appearing on behalf of the opposite party-preemptee has argued that the preemption proceedings are not maintainable inasmuch as the same are premature. Sri. Halder has submitted as follows.

28. First, the sale deed was presented for registration on 7th January, 1985. The petition made for obtaining certified copy of the sale deed was made on 8th June, 1990. The registration of the sale deed was completed on 24th August, 1990. The preemption petition before the Learned Trial Court was filed prior to the registration of the sale deed.

29. Sri. Halder therefore argues that in view of the provisions of Section 19(9) of the WBLR Act the preemption petition is premature. He relies on the following decisions in support of his contention:-

- i) 2007 3 WBLR CALCUTTA 93 (Punit Singh Vs. Sri. Gour @ Gobinda Chandra Das & Ors.; para-18);
- ii) 2002 CLJ 423 (First headnote & para 4);
- iii) [Tapan Krishna Das Vs. Hazi Sajjad Ali Khan and Others,](#)
- iv) 2006 2 CLJ 227 (para 4);
- v) 2000 1 CHN 712 (Ranjit Kumar Dey Vs. Smt. Dipti Rani Guchait & Ors.; paras 2 and 4).

30. Relying on the aforementioned decisions Sri. Halder submits that the preemption petition being premature must be dismissed as not maintainable.

31. On the point of co-sharership of the preemptor-petitioner Sri. Halder relies upon the following decision:- [Sk. Samser Ali Vs. Serina Bibi](#), in which an Hon"ble Single Bench held against co-sharership of the preemption on the facts of that case.

32. On the point of acceptance of additional evidence Sri. Halder has submitted that if such additional evidence is allowed to be accepted then it must be in accordance with the provisions of Order 41 Rule 27 of the Code of Civil Procedure. He has argued that acceptance of such additional evidence is not maintainable at this belated stage and none of the conditions stated under Order 41 Rule 27 are satisfied.

33. In this connection he has relied upon the following decisions:-

i) [Venkatasubramaniya Chettiar \(Died\), V. Shyam Sundar and V. Swaroop Sundar Vs. Perumal Chettiar and Others,](#)

ii) 2012 2 ICC 366 (Prasanta Kumar Roy Vs. Ganapati Ghosh & Ors.; para-18);

iii) [N. Kamalam \(Dead\) and Another Vs. Ayyasamy and Another,](#)

iv) [Gavala Ankamma and Others Vs. Gavala Mahalaxmi and Others,](#)

v) 2013 4 ICC 197 (Harbans Singh Vs. State of Punjab and Ors.);

vi) [Roop Chand Vs. Gopi Chand Thelia,](#)

34. Heard the parties and considered the materials on record.

35. This Court finds that the plea of acceptance of additional evidence raised by the petitioner is bonafide in the facts and circumstances of the present case. The Deed of Partition has been noticed by both the Learned Trial Court and the Learned 1st Appellate Court. The said Deed of Partition is a material piece of evidence relevant for deciding the point of co-sharership claimed by the petitioner-preemptor.

36. This Court is of the considered opinion that the preemptor was prevented from sufficient cause from obtaining the said Deed of Partition at the stage of hearing before the first two Courts. This Court is also of the opinion that there is no reason to believe in the light of the claim put forward by the petitioner-preemptor that in the event the petitioner-preemptor would have come into possession earlier of the said Deed of Partition could have any reason to withhold the same from the first two Courts.

37. In such circumstances this Court finds substance in the pleadings made in CAN 11972 of 2013 to the effect that the said registered Deed of Partition pertaining to the year 1965 could not be obtained by the petitioner-preemptor in spite of the best efforts of both herself and her husband. This Court notices that the husband of the petitioner, who was assisting her in the preemption proceedings died in the year 2009 and the certified copy of the said Deed of Partition was obtained only on 15th January, 2013. Thereafter CAN 11972 of 2013 was affirmed on the 18th of March,

2013 annexing the certified copy of the said Deed of Partition to the same.

38. Therefore, this Court finds it fit to direct that the additional evidence brought on record by the petitioner-preemptor pertaining to the certified copy of the said Deed of Partition no. 202 dated 7th January, 1965 be accepted as additional evidence to be considered by the Learned Trial Court. The Learned Trial Court on the receipt and acceptance of such additional evidence shall thereafter proceed to issue notice to the opposite parties, who shall then be entitled to raise objection to the same, if any. The matter is remanded to the Learned Trial Court to hear and determine the claim to co-sharership advanced by the petitioner-preemptor on the basis of such additional evidence. The Misc. Case no. 31 of 1990 be heard within a period of three months from the date of communication of this order by the Learned Trial Court without granting unnecessary adjournments to either parties and on its own merits.

39. On the point of valuation this Court is in agreement with the submission of Sri. Roy Chowdhury that the petitioner-preemptor is eligible to deposit the deficit value, if any, of the suit property during the pendency of the preemption proceedings. Admittedly, in the facts of the present case the deficit value of Rs. 22,000 out of the total sale consideration along with the compensation amount has been deposited by the petitioner-preemptor in compliance with the provisions of Sections 8 and 9 of the West Bengal Land Reforms Act.

40. On the point argued for and against by both parties whether the petition claiming preemption was premature or not this Court notices that the judgment and order of the Hon"ble Division Bench reported in [Krishna Chandra Pramanik and Others Vs. Hari Sadan Sahana and Another](#), was succeeded by among others two decisions of this Court reported in 2000(1) CHN 712 (Ranjit Kumar Dey Vs. Deepti Rani Guchaita and Ors.) and 2006(2) CLJ 227 (Gautam Das Vs. Nirbhay Chandra Chowdhury and Ors.). While the decision reported in 2000(1) CHN 712 was declared by 3 Hon"ble Judges, the decision reported in 2006(2) CLJ 227 was declared by an Hon"ble Single Bench.

41. To the mind of this Court in 2000(1) CHN 712 the principle of law enunciated in [Krishna Chandra Pramanik and Others Vs. Hari Sadan Sahana and Another](#), was neither referred to nor considered. The said decision in 2000(1) CHN 712 is an authority, inter alia, on the point that Section 5 of the Limitation Act has no application to a proceeding u/s 8 of the West Bengal Land Reforms Act. The Hon"ble 3-Bench decision affirmed a decision of an earlier Division Bench reported in 1999(1) CHN 365 which, in turn affirmed a decision in 1994(1) CLJ 106.

42. However, the Hon"ble Division Bench in the decision reported in 2006(2) CLJ 227 (supra) was pleased to hold that if a sale is not complete within the meaning of Section 61 of the Registration Act, 1908, it would not be considered to be a transfer in the eye of law in terms of the provisions of Section 8 of the West Bengal Land Reforms Act, 1955. To the further mind of this Court at paragraph 6 of the decision

reported in Krishna Chandra Pramanik and Others Vs. Hari Sadan Sahana and Another, the Hon"ble Division Bench was pleased to come to almost the same conclusion that till the registration is not complete the petitioner-preemptor does not accrue a right to pray for injunction inasmuch as injunction can be asked for only if the claimant proves to have an existing right and there is a breach of such existing right. Therefore, the Hon"ble Division Bench was pleased to hold the view that the right of the petitioner-preemptor to relief is dependent on the maturing of such relief only upon registration of the concerned land by the vendor of the preemptee.

43. In the backdrop of the above discussion this Court is of the considered opinion that considering the respective ratios of the decisions reported in 2006(2) CLJ 227 (supra) and Krishna Chandra Pramanik and Others Vs. Hari Sadan Sahana and Another, although no final or interlocutory relief can be meted out to a preemptor till completion of the registration of the deed of the land in question, there is no bar to the maintainability of the application u/s 8 of the West Bengal Land Reforms Act, 1955 during the period of presentation of such deed and subsequent completion of its registration.

44. On the basis of the above reasoning this Court finds substance in the argument of Sri. Roy Chowdhury that the Learned 1st Appellate Court erred in holding that the preemption application was premature.

45. A final point is raised by Sri. Halder that the suit property is "bastu" land and no preemption proceedings can lie in respect of such land.

46. Per contra Sri. Bhattacharya assisting Sri. Roychowdhury has produced a judgment of an Hon"ble Single Bench of this Court reported in 2010 1 CLJ 81 (Rajat Neyogi Vs. Pradip Kr. Sen) wherein the Learned Court held as follows:-

"11. If both the said Acts are considered simultaneously side by side, this Court finds that there is no specific provisions in either of the said Acts wherein it was provided that the laws relating to preemption under Sections 8, 9 and 10 of the West Bengal Land Reforms Act will not be applicable in case of transfer of any urban vacant land within the Urban Agglomeration. As such, this Court still holds the view that the decisions taken by two different Single Benches of this Hon"ble Court in the cases referred to above do not lay down any law which has any binding effect and both the aforesaid decisions are thus held to be decisions in per incuriam.

12. In fact while deciding the earlier revisional application in the case of Rajat Neyogi (supra), an unreported decision of the Hon"ble Supreme Court in the case of Civil Appeal no. 4126 of 1996 Samir Kumar Sen v. Madan Mohan Seth, could not be discussed as the said decision escaped my notice at the relevant time. But since an identical issue was decided by the Hon"ble Supreme Court in the said decision, this Court feels that the effect of the said decision should be discussed herein.

As a matter of fact the very same issue regarding applicability of the provision relating to preemption under the West Bengal Land Reforms Act in respect of transfer of any land within Howrah Urban Agglomeration was an issue and the said issue was decided by the Hon"ble Supreme Court in the said case wherein it was held that the provisions relating to preemption under the Land Reforms Act is applicable in respect of a transfer of an Urban vacant land within Howrah Municipality.

13. On perusal of the said decision, this Court finds that the application for preemption was dismissed by the Learned Trial Judge on the preliminary issue regarding maintainability of the said proceeding as the case land was situated within the Howrah Municipality i.e. within the Howrah Urban Agglomeration. The Learned Trial Judge held that the provisions of the West Bengal Land Reforms Act were not applicable in respect of the land situated in the Urban Agglomeration. The Learned Appeal Court, however, did not approve the said findings of the Learned Trial Judge and thus the findings of the Learned Trial Judge was also dismissed by the High Court. The order of the High Court was challenged before the Hon"ble Supreme Court in the Special Leave Petition. While disposing of the Special Leave Petition, the Hon"ble Supreme Court felt necessity for remanding the said proceeding for giving fresh decision on its merit. The parties were given liberty to adduce further evidence in support of their respective stands. While remitting it back to the Learned Trial Judge for fresh decision in the manner as aforesaid, Their Lordships held that "however, the appellant shall not be entitled to raise the question that the provisions of the Act are not applicable to the lands within the Municipal area".

14. In view of the aforesaid decision of the Hon"ble Supreme Court, this Court has no hesitation to hold that the judgment of the Learned Appeal Court cannot be sustained. Accordingly, the judgment of the Appeal Court stands set aside, The Learned Appeal Court is, thus, directed to re-hear the said appeal for fresh decision on the merit of the said appeal. It is, however, made clear that the maintainability of the said application because of the situation of the case land within the Chandannogore Urban Agglomeration cannot be raised before the Learned Appeal Court as the said issue is decided finally herein.

47. This Court, in respectful agreement with view expressed in 2010 1 CLJ 81 negates the final contention of Sri. Halder and holds that the suit property is not an area excluded from the applicability of the provisions on preemption enshrined in the WBLR Act.

48. CR 885 of 1994 is accordingly disposed of with the above observations.

49. There will be, however, no order as to costs.

50. Urgent certified photocopies of this judgment, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.