REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3499 OF 2022

Abdul Matin Mallick …Appellant(s)

Versus

Subrata Bhattacharjee (Banerjee) and Ors. …Respondent(s)

WITH

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Subrata Bhattacharjee (Banerjee) and Ors. …Respondent(s)

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Calcutta in C.O. NO. 4266 of 2016 by which the High Court has dismissed the said writ petition preferred by the appellant herein and has confirmed the order passed by the first Appellate Court allowing the application submitted by the

respondents herein – pre-emptors, the original respondents – revisionists before the High Court, the appellant herein - pre-emptee has preferred the present appeal arising out of SLP (C) No. 5394 of 2022.

1.1 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Calcutta in C.O. NO. 1153 of 2016 by which the High Court has allowed the said writ petition preferred by the respondents herein and has revived the execution case filed by the respondents for implementing the pre-emption order and has further directed that the executing court shall direct possession to be handed over to the pre-emptors in respect of the property in question positively within 31.08.2021, the appellant herein – pre-emptee has preferred the present appeal arising out of SLP (C) No. 4261 of 2022.

2. The facts leading to the present appeals in nutshell are as under:-

2.1 That the disputed property in question, which was the subject matter of application for pre-emption before the Appropriate Authority under the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the "Act, 1955") belonged to one Khudiram Bhattacharya, who died on 17.04.2001 leaving behind him, surviving his widow Purnima Bhattacharya who also died on 14.08.2001 and three sons namely Subrata, Debabrata and Ratan (the pre-emptors herein) and two daughters Kalyani and Alpana, the vendors of the pre-emptee (appellant

herein). On the death of Khudiram Bhattacharya and his widow, the aforesaid three sons and two daughters inherited the property in question each having undivided 1/5th share therein. The daughters of the original owner - Khudiram Bhattacharya sold their undivided 2/5th share in the property in question to the appellant herein - pre-emptee - Abdul Matin Mallick vide registered sale deed dated 23.11.2011. The sale in favour of the appellant by the daughters of the said Khudiram Bhattacharya was sought to be pre-empted by the sons of said Khudiram Bhattacharya on the ground that their sisters have transferred their undivided share in the property in question to the appellant, a stranger to the said property without serving statutory notice under Sub-Section (5) of Section 5 of the Act, 1955. The said application under Section 8 of the Act, 1955 was registered as Misc. Pre-emption Case No. 8 of 2012 before the learned Trial Court.

2.2 The learned Trial Court dismissed the said application for pre-emption as not maintainable mainly on the ground that since the vendors of the pre-emptee had transferred their entire share in the suit property, the application for pre-emption under Section 8 of the Act, 1955 is not maintainable.

2.3 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Trial Court dismissing the pre-emption application, pre-emptors preferred the appeal before the First Appellate

Court being Misc. Appeal No. 7 of 2014. The Appellate Court allowed the said appeal and set aside the order passed by the learned Trial Court and consequently allowed the application for pre-emption holding that even when a co-sharer of a plot of land transfers his entire share to any person other than a raiyat in the said plot of land, the application for pre-emption under Section 8 of the Act, 1955 would be maintainable.

2.4 Feeling aggrieved and dissatisfied with the order passed by the First Appellate Court allowing the pre-emption application, the purchaser – pre-emptee filed the present revision application before the High Court.

2.5 By the impugned judgment and order, the High Court has dismissed the said revision application and has not interfered with the judgment and order passed by the First Appellate Court, however, has granted the time to the pre-emptors to deposit the balance consideration money together with further sum of 10% of that amount by further period of 30 days.

2.6 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the purchaser – pre-emptee has preferred the present appeals.

3. Shri Anand, learned counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in dismissing the revision application and not interfering with the order passed by the First Appellate Court allowing the pre-emption application.

3.1 It is vehemently submitted by learned counsel appearing on behalf of the appellant that as such there was a non-compliance of the mandatory requirement of the deposit of the entire sale consideration with a further sum of 10% of the sale consideration as required under Section 8 of the Act. It is contended that it is an admitted position that at the time of submitting the application for pre-emption, the pre-emptors did not make any full deposit of the sale consideration with further 10% of the sale consideration alongwith the application for pre-emption.

3.2 It is urged that before any application for pre-emption is considered and further enquiry is conducted as required under Section 9 of the Act, deposit of the entire sale consideration with 10% more of the sale consideration is a condition precedent. That unless and until the said condition is satisfied and/or fulfilled the pre-emption application shall not be maintainable at all; that only thereafter the further enquiry as contemplated under Section 9 of the Act, 1955 shall have to be conducted. That in the present case, there is non-compliance of the statutory mandatory requirement as per Section 8 of the Act, 1955. Therefore, the pre-emption application was liable to be rejected.

3.3 Learned counsel appearing on behalf of the appellant has heavily relied upon the decision of this Court in the case of **Barasat Eye Hospital and Ors. Vs. Kaustabh Mondal, (2019) 19 SCC 767** (paras 23 to 33).

3.4 Making the above submissions and relying upon the above decision, it is prayed to allow the present appeals.

4. Present appeals are opposed by Shri Mainak Bose, learned Senior Advocate appearing on behalf of the contesting respondents. It is vehemently submitted that as such the learned Trial Court dismissed the pre-emption application as not maintainable on the ground that since the vendors of the pre-emptee have transferred their entire share in the suit property, the application for pre-emption under Section 8 of the Act, 1955 would not be maintainable. It is submitted that however, in view of the binding decision of the High Court in the case of **Sk. Sajhan Ali & Ors. Vs. Sk. Saber Ali & Anr.** reported in **2016 (1) W.B.L.R (Cal) 133** by which it has been held that even when the entire share of a co-sharer in the plot of a land is transferred to any person other than a raiyat in the said plot of land, the application for pre-emption under Section 8 of the Act, 1955 would be maintainable. It is therefore submitted that the First Appellate Court rightly set aside the order passed by the learned Trial Court and allowed the pre-emption application, which is rightly not interfered with by the High Court.

4.1 It is submitted that whether an application under Section 8 would be maintainable when a co-sharer of a plot of land transfers his entire share to any person other than a raiyat in the said plot of land, is answered in the affirmative by the Larger Bench of the High Court in the

case of **Naymul Haque and Ors. Vs. Allauddin Sk. and Ors.** reported in **2019(1)CLJ(CAL)488.**

4.2 Now, so far as the submission /contention on behalf of the appellant that as the pre-emptors did not deposit the entire sale consideration with 10% higher than the sale consideration and therefore, the pe-emption application was not maintainable is concerned, it is vehemently submitted that as such the said contention was not raised either before the Courts below and/or even before the High Court, and it has been raised for the first time before this Court.

4.3 It is further submitted that alongwith the pre-emption application, the pre-emptors did not deposit the entire sale consideration with 10% additional sale consideration as the pre-emptors bonafide believed that the sale consideration mentioned in the sale deed was on a higher side. It is submitted that thereafter the entire sale consideration with additional 10% has been deposited by the pre-emptors pursuant to the order passed by the High Court. Therefore, even the condition mentioned in Section 8 has now been complied with; therefore, the contention raised now regarding non-deposit of the entire sale consideration with 10% additional sale consideration shall no longer be available to the appellant.

4.4 Making the above submissions, it is prayed to dismiss the present appeals.

5. We have heard the learned counsel for the respective parties at length.

6. At this outset, it is required to be noted that pre-emptors submitted the application before the learned Trial Court under Section 5 of the Act, 1955, in respect of the share sold by their sisters. Therefore, the contesting respondents herein – the original pre-emptors sought to exercise their right as pre-emptors under the provisions of the Act, 1955. The right of the pre-emption has been elaborately dealt with and considered by a Four Judge Bench of this Court in the case of **Bishan Singh Vs. Khazan Singh, AIR 1958 SC 838**, wherein at paragraph 11, it is observed and held as under: -

> "*11*. … (1) The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase i.e. the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place."

6.1 Thus, as observed and held by this Court in the aforesaid judgment, the right of pre-emption is "a very weak right". That being the

character of the right, any provision to enforce such a right must, thus, be strictly construed. **[Barasat Eye Hospital and Ors. (supra)]**

6.2 The submission/contention on behalf of the pre-emptee that, as in the present case, alongwith the pre-emption application, the pre-emptors did not deposit the entire sale consideration with 10% additional sale consideration, and therefore their pre-emption application was not required to be further considered and no further enquiry as contemplated under Section 9 of the Act, 1955 would be maintainable is concerned, identical question came to be considered by this Court in the case of **Barasat Eye Hospital and Ors. (supra)** wherein at paragraphs 23 to 33, it is observed and held as under: -

> **"23.** The historical perspective of this right was set forth by the Constitution Bench of this Court, as far back as in 1962, in *Bhau Ram case* [*Bhau Ram* v. *Baij Nath Singh*, AIR 1962 SC 1476]. The judgment in *Bishan Singh case* [*Bishan Singh* v. *Khazan Singh*, AIR 1958 SC 838] preceded the same, where different views, expressed in respect of this law of pre-emption, have been set out, and thereafter the position has been summarised. There is no purpose in repeating the same, but, suffice to say that the remedial action in respect of the right of pre-emption is a secondary right, and that too in the context of the "right being a very weak right". It is in this context that it was observed that such a right can be defeated by all legitimate methods, such as a vendee allowing the claimant of a superior or equal right to be substituted in its place. This is not a right where equitable considerations would gain ground. In fact, the effect of the right to pre-emption is that a private contract inter se the parties and that too, in respect of land, is sought to be interfered with,

and substituted by a purchaser who fortuitously has land in the vicinity to the land being sold. It is not a case of a co-sharer, which would rest on a different ground.

24. The second aspect of importance is that given the aforesaid position, even the time period for making the deposit, under Section 8(1) of the said Act, has been held to be sacrosanct, in view of the judgment of this Court in *Gopal Sardar case* [*Gopal Sardar* v. *Karuna Sardar*, (2004) 4 SCC 252]. The very provision of Section 8(1) of the said Act came up for consideration and, as held in that case, if the time period itself cannot be extended and if Section 5 of the Limitation Act would not apply, while interpreting Section 8 of the said Act, then the requirement of deposit of the amount along with the application, within the time stipulated is sacrosanct. The amount to be deposited is not any amount, as that would give a wide discretion to the pre-emptor, and any pre-emptor not able to pay the full amount, would always be able to say that, in his belief, the consideration was much lesser than what had been set out. If we read the judgment in *Gopal Sardar case* [*Gopal Sardar* v. *Karuna Sardar*, (2004) 4 SCC 252], in its true enunciation and spirit, there is sanctity attached to both, the amount and the time-frame. There cannot be sanctity to the time-frame, incapable of extension even by the Limitation Act, and yet, there be no sanctity to the amount.

25. In the context of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, the recent view of this Court, in the context of the relevant provision (now repealed [Vide Section 2 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019.]), itself puts a precondition for the exercise of the right of pre-emption, by requiring the deposit of the full stated purchase money and 10% of the purchase amount. In our view, it makes no difference that the proviso in Section 16(3) of that Act states that "… no such application shall be entertained

…", in the context of filing of applications, without the deposit of the full amount. We may say so because, if we turn to Section 8(1) of the said Act, the right of pre-emption is activated "on deposit of the consideration money together with the further sum of 10% of that amount". Thus, unless such a deposit is made, the right of a pre-emptor is not even triggered off. The provisions of Section 8 are explicit and clear in their terms.

26. Now turning to Section 9 of the said Act, from which, apparently, some judgments of the Calcutta High Court have sought to derive a conclusion that an inquiry into the stated consideration is envisaged. However, the commencement of sub-section (1) of Section 9 is with "on the deposit mentioned in sub-section (1) of Section 8 being made…" Thus, for anything further to happen under Section 9 of the said Act, the deposit as envisaged under Section 8 of the said Act has to be made. It is only then that the remaining portion of Section 9 of the said Act would come into play.

27. The question now is as to what would be the nature of inquiry which has been envisaged to be carried out by the Munsif. If Section 9, as it reads, is perused, then first, the amount as mentioned in the sale transaction is to be deposited, as per sub-section (1) of Section 8 of the said Act. Once that amount is deposited, the next stage is for the Munsif to give notice of the application to the transferee. The transferee thereafter, when enters appearance within the time specified, can prove the consideration money paid for the transfer "and other sums". Such other sums, if any, are as "properly paid by him in respect of the land including any sum paid for annulling encumbrances created prior to the day of transfer, and rent or revenue, cesses or taxes for any period". The inquiry, thus envisaged, is in respect of the amount sought to be claimed over and above the stated sale consideration in the document of sale because, in that eventuality further sums would have to be called for,

from the pre-emptor. In that context, the additional amount would have to be deposited. Even in the event that a pre-emptor raises doubts regarding the consideration amount, enquiry into the said aspect can be done only upon payment of the full amount, along with the application. In this aspect, the phrase “the remainder, if any, being refunded to the applicant” would include to mean the repayment of the initial deposit made along with the application, if considered to be excess. To give any other connotation to these sections would make both, the latter part of Section 8 of the said Act and the inception part of Section 9 of the said Act, otiose. We do not think such an interpretation can be countenanced.

28. In our view, when the inquiry is being made by the Munsif, whether in respect of the stated consideration, or in respect of any additional amounts which may be payable, the pre-requisite of deposit of the amount of the stated consideration under Section 8(1) of the said Act would be required to be fulfilled. The phraseology “the remainder, if any, being refunded to the applicant” would have to be understood in that context. The word “remainder” is in reference to any amount which, on inquiry about the stated consideration, may be found to have been deposited in excess, but it cannot be left at the own whim of the applicant to deposit any amount, which is deemed proper, but the full amount has to be deposited, and if found in excess on inquiry, be refunded to the applicant.

29. We are, thus, firmly of the view that the pre-requisite to even endeavour to exercise this weak right is the deposit of the amount of sale consideration and the 10% levy on that consideration, as otherwise, Section 8(1) of the said Act will not be triggered off, apart from making even the beginning of Section 9(1) of the said Act otiose.

30. We are not inclined to construe the aforesaid provisions otherwise only on the ground that there are no

so-called “penal provisions” included. The provisions of Sections 8 and 9 of the said Act must be read as they are. In fact, it is a settled rule of construction that legislative provisions should be read in their plain grammatical connotation, and only in the case of conflicts between different provisions would an endeavour have to be made to read them in a manner that they co-exist and no part of the rule is made superfluous. [*British India General Insurance Co. Ltd.* v. *Itbar Singh*, AIR 1959 SC 1331] The interpretation, as we have adopted, would show that really speaking, no part of either Section 8, or Section 9 of the said Act is made otiose. Even if an inquiry takes place in the aspect of stated consideration, on a plea of some fraud or likewise, and if such a finding is reached, the amount can always be directed to be refunded, if deposited in excess. However, it cannot be said that a discretion can be left to the pre-emptor to deposit whatever amount, in his opinion, is the appropriate consideration, in order to exercise a right of pre-emption. The full amount has to be deposited.

31. We may also note that, as a matter of fact, the pre-emptor in the present case i.e. the respondent has not filed any material to substantiate even the plea on the basis of which, even if an inquiry was held, could a conclusion be reached that the stated consideration is not the market value of the land.

32. We also believe that to give such a discretion to the pre-emptor, without deposit of the full consideration, would give rise to speculative litigation, where the pre-emptor, by depositing smaller amounts, can drag on the issue of the vendee exercising rights in pursuance of the valid sale deed executed. In the present case, there is a sale deed executed and registered, setting out the consideration.

33. We are of the view that the impugned order and the view adopted would make a weak right into a “speculative

strong right", something which has neither historically, nor in judicial interpretation been envisaged."

6.3 Therefore, deposit of the entire sale consideration with additional 10% of the sale consideration alongwith the pre-emption application is a statutory and mandatory requirement and it is a pre-condition 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 alongwith 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.

7. Now, so far as the submission on behalf of the pre-emptors that they bonafidely believed that the sale consideration mentioned in the sale deed is in favour of the vendee, who is an outsider (outside the family) was higher than the actual sale consideration and therefore, they did not deposit the entire sale consideration with additional 10% of the sale consideration alongwith the pre-emption application is concerned, it is to be noted that the aforesaid cannot be a ground not to comply with the condition of deposit as required under Section 8 of the Act, 1955. At the most, such a dispute can be the subject matter of an enquiry provided under Section 9 of the Act. As observed hereinabove, the enquiry under Section 9 with respect to the sale consideration in the sale

deed would be only after the condition of deposit of entire sale consideration with additional 10% as provided under Section 8 of the Act has been complied with.

8. Now, so far as the submission on behalf of the pre-emptors that the contention of non-deposit of the entire sale consideration with additional 10% of the sale consideration by the pre-emptors was not raised before the Courts below and has been raised for the first time before this Court, and therefore the same be not considered/permitted to be raised now, is concerned, it is to be noted that the said contention would go to the root of the matter on maintainability of the pre-emption application as without complying with the statutory requirements as mentioned under Section 8 of the Act, 1955, the same is not maintainable. It is an admitted position that the pre-emptors had not deposited the entire sale consideration with additional 10% of the sale consideration along with the pre-emption application as required under Section 8 of the Act in the instant case.

In view of the aforesaid admitted position, we have considered the submission on behalf of the appellant on non-fulfillment of the condition mentioned in Section 8 of the Act.

9. At this stage, it is required to be noted that even the High Court in the impugned judgment and order has permitted the pre-emptors to deposit the balance sale consideration. However, faced with the

decision of this Court in the case of **Barasat Eye Hospital and Ors. (supra)** and in light of the observations made by us hereinabove that alongwith the pre-emption application, the pre-emptors have to deposit the entire sale consideration with additional 10% and only thereafter the further enquiry can be conducted as per Section 9 of the Act, 1955 and therefore, unless and until the same is complied with, the pre-emption application would not be maintainable, the High Court is not justified in permitting the pre-emptors to now deposit the balance sale consideration with additional 10% while deciding the revision application. Such a direction/permission/liberty would go against the intent of Section 8 of the Act, 1955.

9. In view of the above and for the reasons stated above, present appeals succeed. The impugned judgments and orders passed by the High Court and that of the First Appellate Court are hereby quashed and set aside. Consequently, the pre-emption application submitted by the original pre-emptors – respondent Nos. 1 to 3 herein stands dismissed. Respondent Nos. 1 to 3 – original pre-emptors are permitted to withdraw the amount, which they might have deposited either alongwith the pre-emption application and/or any subsequent deposit pursuant to the orders passed by the High Court.

Present appeals are allowed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

Pending application(s), if any also stands disposed of.

…….J.
[M.R. SHAH]

NEW DELHI;
May 05, 2022.

…….J.
[B.V. NAGARATHNA]