

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Shivakant Prasad

C.O. No. 3502 of 2014

Sri Ranjit Kumar Mondal

Vs.

Sri Pankoj Mukhopadhyay & Ors.

For the Petitioner	:	Mr. Partha Sarathi Bhattacharyya Mr. Kumaresh Dalal Mr. R. Bhattacharya
For the Opposite Parties	:	Mr. Md. Jiaur Rahaman Mr. Samir Chakraborty
Heard On	:	01.10.2015
CAV on	:	01.10.2015
Judgment On	:	23.12.2015

SHIVAKANT PRASAD, J.

The judgment dated 31st May, 2014 passed by the Additional District Judge, 2nd Court, Raiganj, Uttar Dinajpur in Misc. Appeal No. 4 of 2012 thereby setting aside the order dated 31.1.2012 passed in Misc. Case No. 74 of 2002 by the Civil Judge, Junior Division, Raiganj, Uttar Dinajpur is under challenge in this application.

Moot issue which arises for consideration in the present application under the scheme of Article 227 of Constitution of India is whether an application for preemption under Section 8(1) of West Bengal Land Reforms Act (hereinafter referred to as the Act) is maintainable in case of land which is by nature 'Bastu'.

The petitioner filed Misc. case No. 74 of 2002 under Section 8 of the Act before the learned Civil Judge, Junior Division, Raiganj, Uttar Dinajpur on the grounds inter alia that petitioner shares a common boundary with the suit property and as contiguous holder of the common boundary he has a right of preemption of the suit property.

He alleged that the opposite parties namely, Pankoj Mukhopadhyaya, Tapas Kumar Chanda and Debasis De had purchased the suit property by way of a Registered Deed from Chandan Kumar Das without informing the petitioner.

The opposite parties entered appearance before the learned Court and contested the preemption case by filing written objection and contended inter alia that the suit property in Dag No. 1130 consists of 23 decimals of land as mentioned in RSROR being No. 1120 has been recorded in the name of Mukunda Chandra Das. The said Mukunda Chandra Das was issueless out of his first wedlock and thereafter he married for the 2nd time and 11 children were born out of their wedlock. Prafulla Kumar Das, son of Mukunda Chandra Das was the father of Chandan Kumar Das, Alope Kumar Das, Pradip Kumar Das, Sujit Kumar Das and Biswajit Das and therefore, the legal heirs of Prafulla Kumar Das viz., his five sons and one wife together possessed 1/11 out of 23 decimals of land by way of succession and by way of purchase from co-sharers named Bijoy Kumar Das, Saibya Rani Das, Dipu Gupta, Ashis Kumar Das, Sadhan Kumar Das. The said 5 sons of Prafulla Kumar Das namely, Chandan Kumar Das, Alope Kumar Das, Pradip Kumar Das, Sujit Kumar Das and Biswajit Das sold 2.60 decimals of land to the petitioner by way of 5 registered deeds in the year 1985 and thereafter sold 4.95 decimals of land to Nehar Sarkar in the West and at last sold 5.85

decimals of land of Misc. Case No. 74 of 2002. Thus, the above mentioned vendors do not have any other land in the suit property. The opposite parties being defendants in Misc. Case No. 74 of 2002 further contended that Prafulla Kumar Das was suffering from kidney disease for a long time his brothers in need of approximately Rs. 5 lakhs offered the petitioner to purchase the suit property to which the petitioner did not accept the offer. So, the opposite parties sold the suit property to one Nihar Sarkar who being another co-sharer, shares a common boundary in the suit property and specifically contended that the suit property as recorded in the RSROR is 'Bastu' and the application for preemption is not maintainable. Accordingly, the opposite parties prayed for dismissal of the said case.

The learned Trial Judge allowed the Misc. case by granting an order of preemption on contest with cost on 31.1.2012.

The opposite parties on being aggrieved by and dissatisfied with the order of preemption preferred Misc. Appeal No. 4 of 2012 before the learned District Judge and on being transferred to the learned Additional District Judge, 2nd Court, Raiganj, Uttar Dinajpur, appeal was heard and learned Appeal Court set aside the order of preemption dated 31.1.2012 with observation that the RSROR being finally published carries presumptive value as to correctness of record unless rebutted which shows that the suit property in question is by nature 'Bastu' by placing reliance on the citations viz. (2007)3 WBLR Cal. 93 and (2012) 3 WBLR, Cal. 309 and allowed Misc. Appeal by the impugned order dated 31st May, 2014 which is under challenge before this Court.

It is contended by the learned Counsel for the petitioner that the schedule property at Raiganj, Uttar Dinajpur do not fall within the excluded

area in terms of Section 1(2) of the West Bengal Land Reforms Act, 1955 and in view of amended definition of land, provisions of Section 8 of the West Bengal Land Reforms Act, 1955 claiming preemption is maintainable.

It is further submitted that it cannot be held that the preemption under Section 8 of the Act is not maintainable if the land is by nature 'Bastu'.

It would be apt to reproduce the relevant Sections relating to definition of land, homestead and extent of application of the West Bengal Land Reforms Act, 1955 Section 2(7) reads as under—

“land” means land used for the purpose of livestock breeding, poultry farming, dairy or land comprised in tea garden, mill, factory workshop, orchard, hat, bazaar, ferries, tolls or land having any other sairati interests and any other land together with all interests, and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to earth;

Explanation.- “Homestead” shall have the same meaning as in the West Bengal Estates Acquisition Act, 1953 (West Bengal Act 1 of 1954).”

The definition of homestead land in terms of Section 2(g) of the West Bengal Estates Acquisition Act, 1953 provides—

(g) “homestead” means a dwelling-house together with –

Any courtyard, compound, garden, out-house, place of worship, family graveyard, library, office, guest-house, tanks, wells, privies, latrines, drains and boundary walls annexed to or appertaining to such dwelling house.”

Section 1(2) of the Act provides as under—

“It extends to the whole of West Bengal (except the area described in Schedule I of the Calcutta Municipal Corporation Act, 1980 (West Bengal Act LIX of 1980) but not excepting the area included in the said Schedule, which, immediately before the coming into force of the Calcutta Municipal Corporation (amendment) Act, 1983 (West Bengal Act XXXII of 1983) was comprised in the Municipality of Jadavpur, South Suburban of Garden Reach).

Provided that the State Government may, time to time by notification in the Official Gazette, extend and bring into force the provisions of the Act, in whole or in part, to such part or parts of the area described in Schedule I of the Kolkata Municipal Corporation Act, 1980 (West Bengal Act LIX of 1980), with effect from such date or dates as may be specified in the notification.”

Therefore, pre-emption under Section 8 of the Act is applicable to the land of every description including lands forming part of non-agricultural tenancy which came within the purview of the said Act.

Learned Counsel for the petitioner has referred to a decision reported in 1997 (II) CHN 20 wherein it has been observed in paragraph 11 that as per substituted definition of land as introduced by the West Bengal Land Reforms Act (Amendment) Act, 1981 and also the substituted Section 3A as introduced by the West Bengal Land Reforms Act (Amendment) Act, 1986, land of every description including lands forming part of non-agricultural

tenancy, all came within the purview of the West Bengal Land Reforms Act (Amendment) Act, 1955 and as such, preemption under Section 8 of the Act could also be available of such lands.

The judgment of 1997 (2) CHN 20 (Prafulla Kumar Maity vs. Amal Krishna Misra and Others) did not consider the provisions of Section 1(2) of the West Bengal Land Reforms Act, 1955 but paragraphs 11, 12, 13, 14 of the cited decision is relevant for the purpose of deciding as to whether pre-emption is available in respect of 'Bastu' land.

In a judgment in 2004 (2) CLJ (Cal) 273 (Swapan Kumar Kar and other Vs. Salil Kumar Dey and others) it was held by the learned Single Judge in the case of a land covered under the provisions of Urban Land (Ceiling and Regulations) Act, 1976 that there will be no question of pre-emption of said land under Section 8(1) of the West Bengal Land Reforms Act, 1955 and claim of pre-emption under Section 8(1) of the West Bengal Land Reforms Act, 1955 is not applicable.

The case of Paschim Banga Bhumijibi Krishak Samity and others vs. State of West Bengal and others reported in 1996 (2) CHN 212 was taken note of and in paragraph 42 of the said judgment it is clearly indicated that the provisions of West Bengal Land Reforms Act, 1955 have no manner of application in respect of matters covered by Urban Land Ceiling Act but the said Act will have application to agricultural land situated within the said area.

In a judgment reported in 2007 (3) WBLR (Cal) 93 (Punit Singh Vs. Sri Gour @ Gobinda Chandra Das and Others) it was observed that pre-emption is not maintainable in case of Bastu land.

In the said judgment the provisions of Urban Land (Ceiling and Regulations) Act, 1976 was taken note of but the provisions of the West Bengal Land Reforms Act, 1955 was not taken into consideration and in para 15 of the judgment it would be found that the learned Single Judge observed that the property under reference does not come within the scope and ambit of Section 8 of the West Bengal Land Reforms Act, 1955 and as such there could be no order of pre-emption.

In case of Sri Ramala Chowdhury and Another Vs. Sri Suman Ghosh reported in 2010 (1) CLJ (Cal) 556 it was observed that the provision relating to preemption under the West Bengal Land Reforms Act, 1955 is applicable in respect of a transfer of an urban vacant land within the Howrah Municipality and such observation had been given in paragraph 18 of judgment reported in 2010 (1) CLJ (Cal) 556 (Sri Ramal Chowdhury and Another vs. Sri Suman Ghosh). In paragraph 16 of the cited judgment it has been observed that there is no specific provision in Urban Land (Ceiling and Regulations) Act, 1976 wherein it was provided that the laws relating to preemption under Sections 8, 9 and 10 of the West Bengal Land Reforms Act, 1955 will not be applicable in case of a transfer of any urban vacant land within the urban agglomeration. In para 16 of the judgment reported in 2010(1) CLJ (Cal) 556 it was observed that the decision taken by two different Single Judges of this Hon'ble Court reported in 2004(2) CLJ 273 and 2007(3) WBLR (Cal) 93 (Punit Singh Vs. Sri Gour @ Gobinda Chanda Das and Others) do not lay down any law with binding effect and both the decisions have been held to be per in curium.

It is contended on behalf of the opposite parties that the property under reference cannot come within the scope and meaning of Section 8 of

the Act and there could be no application for preemption in respect of 'Bastu' land. It is submitted that in Paschimbanga Bhumijibi Krishak Samity –vs.- State of West Bengal (Supra) it has been observed that the question of definition of land is academic in as much as the question which has to be imposed and answered in the said appeal predominantly is as to whether the State Legislature had legislative competence to enact the impugned amending acts, if they had the legislative competency, the question as to whether non-agricultural land and other lands can be included within the purview of WBLR Act would be a futile exercise. In terms of Item 18 of the list 2 of the 7th Schedule of the Constitution of India there cannot be any doubt that the State has the legislative competency to make any legislation both in respect of agriculture as also non agricultural land.

At this juncture it is necessary to consider another Act, namely Urban Land(Ceiling & Regulation) Act, 1976 as it is an admitted position that the provision of the said Act would have some repercussion as regards construction of the said Act. Urban Land Ceiling Act was enacted to provide for exemption of ceiling on vacant land in urban agglomerations, for acquisition of such land in excess of the said limit to construction of building on such land and for matter connected thereunder with a view to prevent the concentration of Urban Land in the hands of a few person and speculations and profiteering therein and with a view to bringing about an equitable distribution of land in a urban agglomeration to subserve the common good. The Urban Land (Ceiling & Regulation) Act is also protected under Article 31A, 31B and 31C of the Constitution of India.

Bestowing upon an anxious consideration to the rival submissions of the parties, I find that the definition of the land having undergone a

revolutionary change and land of every description having now come to the purview of the Act, the distinction so long made between agricultural and non-agricultural land for the purpose of granting relief under Section 8 and denying such relief to a raiyat holding non-agricultural land has now been wiped out, therefore, Section 8 would be now attracted in respect of land of every description in as much as, the change in the definition of land in Section 2(7) of the Act, non-agricultural land also comes within the purview of the West Bengal Land Reforms Act, then no such occasion would now arise for a raiyat holding non-agricultural land to apply under Section 24 of the West Bengal Non-Agricultural Tenancy Act for the purpose of pre-emption and application for pre-emption under Section 8 of the Act would be maintainable in respect of a land in the nature of 'Bastu'.

[See. Ref. Shri Ramala Chowdhury & Anr Vs. Suman Ghosh (Supra) and Sabri Properties Pvt. Ltd. Vs. CTS Industries Ltd. 2015 (2) CHN (Cal.) 410] are latest in point of time. Thus, I hold that the judgment in Misc. Appeal No. 4 of 2012 passed by learned Court of Appeal cannot be sustained. Revisional Application being C. O. No. 3502 of 2014 is accordingly allowed by answering the moot issue in the affirmative.

However, there shall be no order as to costs.

Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SHIVAKANT PRASAD, J.)