

Civil Revision
PRESENT: The Hon'ble Justice Jyotirmay Bhattacharya
Judgment On : 19-02-2010.
C.O. No.1801 of 2008
with
CAN 553 of 2009
Sri Ramala Chowdhury & Anr.
-Vs-
Sri Suman Ghosh

Point:

Preemption: Whether the West Bengal Land Reforms Act is applicable in the area where Urban Land (Ceiling and Regulation) Act is applicable - West Bengal Land Reforms Act, 1955-S.8.

Fact: This application is directed against the judgment passed by Ld. Additional District Judge in an Appeal reversing the judgment passed by Ld. Civil Judge in pre-emption a at the instance of the preemptors/petitioners. The Ld. Appeal Court by following a Single Bench decision of this Hon'ble Court in the case of Swapan Kumar Kar & Ors. –Vs- Salil Kumar Dey & Ors. reported in (2004)2 CLJ 273 was of the view that the West Bengal Land Reforms Act is not applicable in the area where Urban Land (Ceiling and Regulation) Act is applicable.

Held: 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 pre-emption 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 incurium. (Paragraph – 11)

Cases Cited: Swapan Kumar Kar & Ors. –Vs- Salil Kumar Dey & Ors. reported in (2004)2 CLJ 273

Paschim Banga Krisak Samiti –Vs- State of West Bengal reported in (1996)2 CLJ 285

Punit Singh –Vs- Gour @ Gobinda Chandra Das reported in (2007)3 WBLR (Cal) page 93.

Rajit Neogi –Vs- Pradip Kumar Sen reported in 2010(1) CLJ (Cal) 81

For the Petitioner : Mr. S.P. Roy Chowdhury,

Mr. S. Roy Karmakar,
 Mr. Nani Gopal Chowdhury,
 Mr. Sanjoy Bhattacharya.
 For the Opposite : Mr. Bidyut Kr. Banerjee,
 Party. Mr. Kajal Kr. Roy.

The Court:

1. This application under Article 227 of the Constitution of India is directed against the judgment and order dated 6th May, 2008 passed by the learned Additional District Judge-cum-Judge, Special Court (E.C. Act), Hooghly at Chinsurah in Misc. Appeal No.140 of 2003 reversing the judgment and order dated 16.12.03 passed by the learned Civil Judge (Junior Division), 1st Court at Chandannagore in pre-emption Misc. Case No.36 of 1995, at the instance of the preemptors/petitioners.
2. Heard Mr. Roy Chowdhury, appearing for the pre-emptor/petitioner and Mr. Banerjee, learned Senior Counsel appearing for the opposite party/pre-emptee. Considered the materials on record including the order impugned. Let me now discuss the merit of this revisional application in the facts of the instant case.
3. The pre-emptor/petitioner filed an application under Section 8 of the West Bengal Land Reforms Act, 1955 for exercising his right of pre-emption in respect of transfer of the case land by raiyat/transferor in favour of the pre-emptee/purchaser on the ground of vicinage. Admittedly, the case land is situated within the Urban Agglomeration of Chandannagore wherein the Urban Land (Ceiling and Regulation) Act is in operation.
4. The pre-emptee/opposite party contested the said pre-emption proceeding by filing objection challenging the maintainability of the said application on the ground of bar of limitation as well as on the ground of its prematurity as the registration of the rectification deed was not completed as per Section 61 of the Registration Act at the time of filing of the said application for pre-emption. The pre-emptee also opposed the petitioner's prayer for pre-emption on various other

grounds. Since those grounds are not very much material for the present purpose, those grounds are not mentioned herein elaborately.

5. The learned Trial Judge was pleased to allow the pre-emptor's application for pre-emption

on contest holding that the application is maintainable and the pre-emptor is entitled to exercise his

right of pre-emption in respect of the said transfer on the ground of visinage.

6. The pre-emptee was aggrieved by the said order. Hence, the pre-emptee challenged the said

order in appeal before the learned Appellate Forum. The learned Appeal Court though held that the

application is not barred by limitation and is also not a defective one on account of its alleged

prematurity, but dismissed the said pre-emption proceeding by holding inter alia that the

application for pre-emption is not maintainable as the case land is situated within Chandannagore

Urban Agglomeration wherein Urban Land (Ceiling and Regulation) Act is applicable. The learned

Appeal Court was of the view that the West Bengal Land Reforms Act is not applicable in the area

where Urban Land (Ceiling and Regulation) Act is applicable. In fact, the learned Appeal Court

formed the said opinion by following a Single Bench decision of this Hon'ble Court in the case of

Swapan Kumar Kar & Ors. –Vs- Salil Kumar Dey & Ors. reported in (2004)2 CLJ 273 wherein an

identical view was expressed by a learned Single Judge of this Court by relying upon a Division

Bench decision of this Hon'ble Court in the case of Paschim Banga Krisak Samiti –Vs- State of

West Bengal reported in (1996)2 CLJ 285, in an identical situation.

Thus, the said appeal was allowed and the order allowing pre-emption passed by the learned

Trial Judge was set aside in the said appeal.

Hence, the instant revisional application has been filed by the pre-emptor/petitioner herein.

7. Thus, it is crystal clear that the fate of this revisional application is dependent upon the

legality of the judgment passed by the learned Single Judge of this Hon'ble Court in the case of

Swapan Kumar Kar & Ors. –Vs- Salil Kumar Dey & Ors. (supra) relying on which the impugned order was passed by the learned Appeal Court. In fact, an identical view with regard to applicability of West Bengal Land Reforms Act in an area wherein Urban Land (Ceiling and Regulation) Act is in operation, was expressed by another learned Single Judge of this Hon'ble Court in the case of Punit Singh –Vs- Gour @ Gobinda Chandra Das reported in (2007)3 WBLR (Cal) page 93.

8. As a matter of fact I had the occasion to deal with the legality of the decision passed by a learned Single Judge of this Court in the case of Swapan Kumar Kar –Vs- Salil Kumar Dey (supra) earlier, while dealing with another revisional application in the case of Rajit Neogi –Vs- Pradip Kumar Sen reported in 2010(1) CLJ (Cal) 81 wherein an identical issue was raised regarding applicability of Section 8 and 9 of the West Bengal Land Reforms Act in an area where the West Bengal Land (Ceiling and Regulation) Act is in operation. While dealing with the said revisional application, this Court elaborately discussed the legality of the decision rendered in the case of Swapan Kumar Kar (supra) and ultimately held that the decision of the learned Single Judge in the case of Swapan Kumar Kar (supra) is a judgment in per incurium as the said judgment was delivered without taking note of the provision of Section 1(2) of the West Bengal Land Reforms Act which provides that the provisions contained in the said Act is applicable to the whole of the West Bengal excepting the excluded area as mentioned therein. Since this Court also elaborately discussed the effect of the Division Bench decision of this Hon'ble Court in the case of Paschim Bangal Krishak Samity –Vs- the State of West Bengal (supra) in the said decision, this Court does not think it necessary to repeat the same herein once again. But this much this Court wants to make it clear that the Urban Agglomeration of Chandannagore does not fall within the excluded area of

as per Section 1(2) of the West Bengal Land Reforms Act, 1955.

9. In this connection this Court feels the necessity to consider further the provision of Section 14(J) of the West Bengal Land Reforms Act which is the only provision which provides that ceiling on land held by a raiyat containing in chapter II-B of the West Bengal Land Reforms Act will have an overriding effect. The said provision is set out hereunder.

14J. "Provisions of Chapter II-B to have overriding effect.- The provisions of this Chapter shall have effect notwithstanding anything to the contrary contained elsewhere in this Act or in any other law for the time being in force or in any custom, usage or contract (express or implied) or in any agreement, decree, order, decision or award of any Court, Tribunal or other authority:

Provided that nothing in this Chapter shall apply to any vacant land in an Urban Agglomeration as defined in the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976)."

10. The said provision, thus, makes it clear that though the provisions of the said chapter have the overriding effect notwithstanding anything to the contrary contained elsewhere in the said Act or in any other law for the time being in force or in any custom, usage or contract (express or implied) or in any agreement, decree, order, decision or award of any Court, Tribunal or other authority, but the proviso thereto makes it clear that nothing in this chapter shall apply to any vacant land in an Urban Agglomeration as defined in the Urban Land (Ceiling and Regulation) Act, 1976 meaning thereby that the vacant land in the Urban Agglomeration cannot be taken into consideration for assessing the ceiling limit of the raiyat's family under the West Bengal Land Reforms Act.

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 pre-emption 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 incurium. In fact, while deciding the earlier revisional application in the case of Rajit Neyogi (supra), an unreported decision of the Hon'ble Supreme Court in the case of Civil Appeal No.4126 of 1996 Samir Kumar Sen –Vs- 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.

12. As a matter of fact the very same issue regarding applicability of the provision relating to pre-emption 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 pre-emption 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 pre-emption 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 reversed and the said application for pre-emption

was allowed on merit. A revisional application filed by the pre-emptee against the said judgment of the learned District 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 the necessity for remanding the said proceeding back to the learned Trial Judge for rehearing the pre-emption 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". 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.

14. 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 Chandannagore Urban Agglomeration cannot be raised before the learned Appeal Court as the said issue is decided finally herein.

15. The learned Appeal Court is requested to expedite the hearing of the appeal as far as possible and to make an utmost endeavour to dispose of the same preferably within a period of six months from the date of communication of this order. The revisional application is, thus, disposed of with the above observation. Urgent xerox certified copy of this order, if applied for, be given to the parties, as expeditiously as possible.

(Jyotirmay Bhattacharya, J.)