(1934) 08 CAL CK 0007

In the Calcutta High Court

Abdul Hai APPELLANT

Vs

Abdur Rahman and Others RESPONDENT

Date of Decision : 14-08-1934

Acts Referred:
Bengal Tenancy Act, 1885 — Section 26F, 26F(3), 76

Citation : AIR 1935 Cal 258

Hon'ble Judges : Guha, J

Bench : Division Bench

Judgement

Guha, J.—The rule in this case was issued by this Court on an application arising out of a proceeding u/s 26-F, Ban. Ten. Act. The opposite parties in the Rule Syed Abdur Rahman and Syed Abdul Mannan filed an application before the Munsif, First Court, Kandi, District Murshidabad, to exercise the right of pre-emption, on deposit of a sum of Rs. 55 only, in regard to a sale of a holding in favour of the petitioner Syed Abdul Hai. The sale was in respect of the lands appertaining to the holding with structures standing thereon; in one part of the conveyance in favour of the petitioner, the value of the land was stated to be Rs. 50 and the structures were separately valued at Rs. 150. The consideration for the sale mentioned in the document and the purchase money paid by the petitioner was however Rs. 200. The application u/s 26-F before the Court was on the footing that the pre-emptors were only required to deposit the amount of consideration for the land appertaining to the holding sold, together with compensation at the rate of ten per cent on such amount, as mentioned in that provision of the law. The petitioner in this Court raised the objection before the Munsif, that the application u/s 26-F was not maintainable inasmuch as the pre-emptors were not entitled to et the property on depositing Rs. 55 as done by them; the petitioner''s case before the Court below was that inasmuch as the entire purchase money paid by him, the amount of Rs. 200 with the amount of compensation payable under the law, had not been deposited, the application u/s 26-F must be dismissed.

2. The munsif, overruled the objection raised by the petitioner, on the ground that the structures on the land, although they were improvements as contemplated by Section 76, Ben. Ten. Act, could easily be dismantled, and it could not therefore be said, that they were inseparable from the tenancy. The Munsif further observed that in the Kabala, the value of the land and of the structures were separately specified, showing that the structures were separable from the land. In the above view of the case before it, the Court below allowed the application u/s 26-F, Ben. Ten. Act, overruling the objection of the petitioner. The main question raised in support of the rule, was that inasmuch as the entire purchase money with the statutory compensation was not deposited, the Court below acted illegally and with material irregularity in entertaining and granting the application u/s 26-F, Ben. Ten. Act. There is no question that the consideration for the sale to the petitioner of the holding with structures standing thereon which were improvements within the meaning of Section 76, Ben. Ten. Act was Rs. 200. The value of the land and the value of the structures were separately stated in the concluding part of the conveyance; and the points argued before me were three in No. 1. Does a holding as defined by the Bengal Tenancy Act include structures raised on the land forming the subject of a tenancy, structures which were improvements as contemplated by Section 76 of the Act? 2. What was the significance of the words ''consideration'' and ''value'' as used in Section 26-F, Ben. Ten. Act? 3. Could the applicant u/s 26-F, Ben. Ten. Act get relief without depositing the entire amount of consideration money mentioned in the conveyance and compensation as provided by that section?

3. For the purpose of this case, the definition of ''a holding'' as contained in the Bengal Tenancy Act has to be considered with the definition of improvement'' contained in that Act; and taking the two definitions together, an improvement used with reference to a holding, must, in my judgment, be considered to be appurtenant to a holding, and cannot be considered as something separable from the holding merely because the improvement in the shape of structures on the land are removable. The holding as contemplated by the Bengal Tenancy Act, and the holding in regard which an application under S, 26 F of the Act was entertainable, must be held to include structures raised on the same, if these structures fall within the category of improvements as contemplated by the Bengal Tenancy Act. In regard to the second point argued before me, there appears to be no question that consideration money as used in Section 26 E is the purchase money in cases of sales; the value of the property as mentioned in that section is referred to in case of exchange, gift or bequest, as specifically mentioned in Section 26D, Ben. Ten. Act. What is to be taken into account in the matter of deposit u/s 26F is the consideration money paid by the purchaser for which the property was sold. In the present case, the property was sold for Rs, 200/-the land which was subject of a tenancy was separately valued at Rs. 50/- the value of the structures standing on the land, improvements effected by the tenant, and which improvements were appurtenant to the tenancy, was stated to be Rs. 150/-What was required to be deposited by an applicant for pre-emption

under the law was the entire consideration money for the sale of the property, the tenancy including the improvements in the shape of structures standing on the land forming the subject of the tenancy.

4. The last question arising for consideration in the case is connected with the points already discussed above. The applicant u/s 26F could not get relief without depositing the entire amount of consideration mentioned in the conveyance, and statutory compensation. This position appears to be manifest from the provision contained in Section 26F itself. Sub-section (2) of this section makes it incumbent upon the applicant for pre-emption to deposit the consideration money paid by the purchaser of the property, together with compensation indicating that the right of pre-emption conferred by law is exercisable only when the purchaser in the position of the petitioner, has been fully compensated for payments made by him in connection with the sale effected in his favour. Then it appears to be very significant that Sub-section (3), 26E, makes it obligatory upon the applicant for pre-emption to deposit all further sums which the transferee has paid in respect of rent for period after the date of transfer, or as the landlord''s transfer fee, or in annulling encumbrance on the property: encumbrance must here relate to all that it is appurtenant, and include structures standing on the land which is the subject of the tenancy. This provision, to my mind makes it reasonably clear that any amount paid by the transferee in connection with or for the purpose of perfecting his title to the tenancy and its appurtenances, has to be made good by a pre-emptor. The tenant of the holding after making improvements conveys his interest in the tenancy which extends to the improvements. Any person seeking to exercise the right of pre-emption in respect of the tenancy, must under the law, pay the purchaser all that has been paid by the purchaser for transfer of the entire interest of the tenant, including not only the consideration money paid by the purchaser for the property sold land and structures, structures being appurtenant to the tenancy as improvement to the same, but also other payments made by the transferee, as specified in Section 26F (3). In the above view of the case the intention of the legislature as expressed in Section 26F, taking that provision of the law as a whole, is clear that an application under that section could not be entertained unless the entire purchase money mentioned in the conveyance, with the statutory compensation, was deposited in Court, by the person seeking to exercise the right of pre-emption. The entire consideration money for the transfer of the tenancy, including the consideration or value of the structures standing on the same had to be taken into consideration and consideration money for structures standing on the land, which were improvements, could not be kept out of account, in the matter of making a deposit as contemplated by Section 26E, Ben. Ten. Act. It was therefore wholly immaterial if the structures were separately valued, and the value separately stated in the conveyance. It was also of no consequence whether the structures could be easily dismantled or not.

5. The result of the conclusions I have arrived at, as mentioned above, is that

this rule must be made absolute. The order of the Court below passed on 11th April 1934, is set aside; and the case is sent back, to that Court for calling upon the applicant u/s 26F, Ben. Ten. Act, to make further deposit in accordance with the decision of this Court for enabling them to get the relief claimed by them, in the matter of their exercise of a right of pre-emption. The entire purchase money, Rs. 200/-with the statutory compensation must be deposited within a month from the date of arrival of the record in the lower Court. On failure to make a deposit in accordance with this decision, the application before the Court below u/s 26F, Ben. Ten. Act, will stand dismissed. The rule is made absolute. The petitioner is entitled to his costs in this Court, as also his costs in the Court below. The hearing fee in this Court is fixed at 2 gold mours.