

(1977) 05 CAL CK 0025
In the Calcutta High Court
Case No : C.R. No. 1429 of 1975

Anil Kumar Mondal and Others	Vs	APPELLANT
Amulya Charan Mondal and Others		RESPONDENT

Date of Decision : 27-05-1977

Acts Referred:

West Bengal Non-Agricultural Tenancy Act, 1949 — Section 23, 24, 24(1)

Citation : 81 CWN 920

Hon'ble Judges : S.K. Dutta, J

Bench : Single Bench

Advocate : Rebati Nath Sarkar, for the Appellant;

Judgement

Salil Kumar Datta, J.—This Rule arises out of pre-emption proceeding. It appears that the opposite parties purchased a portion of the disputed non-agricultural holding on March 10, 1969. Thereafter the remaining portion of the holding was purchased on September 19, 1969 by the petitioners, This purchase was sought to be pre-empted by the pre-emptees opposite parties by filing an application dated September 1, 1970. This application was allowed by the learned Munsif on the finding that the holding was an agricultural one. On appeal the Appellate Court found that the holding was a non-agricultural one and allowed the pre-emption. The present Rule has been obtained by the pre-emptees against this decision. The only point which has been raised is that the opposite parties did not come up with the pre-emption application within the statutory period which is four months for the service of notice of transfer u/s 23 of the West Bengal Non-Agricultural Tenancy Act, 1949. There is no dispute that in this case no notice was served on the pre-emptors u/s 23 of the said Act. The question now is what will be the time limit for filing an application for pre-emption u/s 24 of the Act in respect of non-notified co-sharers.

2. The Act does not lay down any provision fixing the period within which a non-notified co-sharer has to apply for pre-emption.

3. Mr. Sarker, learned Advocate appearing for the petitioner submitted that a notice u/s 26C of the Bengal Tenancy Act in respect of the impugned transfer was served on the pre-emptors but they did not move even within four months thereof which was the date of their knowledge. According to him even if there is no provision for fixing the time limit for filing application for pre-emption in respect of non-notified co-sharers, the time should be four months from the date of knowledge of the impugned transfer.

4. Similar question came for consideration in *Prasanta Kumar Giri and Ors. vs. Gangadhar Rout* 81 C.W.N. 580=1977 C.H.N. 357 in which it was held following *Asmatoli vs. Mujaharali*, 52 C.W.N. 64 that in case of non-notified co-sharer, in absence of any provision in the statute, there is no period of limitation fixing the time limit for filing the application for pre-emption before the authority under the provisions of the West Bengal Land Reforms Act.

5. Similar consideration will prevail in respect of the Non-agricultural Tenancy Act, 1949, so that under this Act also there is otherwise no limitation in respect of non-notified co-sharer for pre-emption. The petitioners' case that the time for pre-emption should at least run from the date of knowledge and be four months from such date, is not acceptable in view of the decision in *Asmatoli's* case. It was laid down there that it is not permissible for the court to substitute words "knowledge of transfer" for words "service of notice" as used in 26F of the Bengal Tenancy Act. Such action would be to legislate and not to interpret the law as it stands. Since the Legislature inadvertently or otherwise omitted to provide any period of limitation for such application by non-notified co-sharer, the court should be not in position to say that the application should be rejected if not made within reasonable time. A limitation has however been provided under the Limitation Act, 1963. The application for pre-emption has to be filed to the Court u/s 24(1). Article 137 of the Limitation Act, 1963, as was held in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, , is not confined to proceedings under the CPC but it applies also to all proceedings before the Court under the provision of any Act. So that as the application for pre-emption under this Act will have to be filed in Court. Article 137 will apply which provides for three years limitation from the date when the right to apply accrues. Accordingly for non-notified co-sharer, the limitation is three years from the date the right to apply arises.

The instant application is accordingly maintainable being within three years from the date of the impugned transfer.

The rule accordingly is discharged, there will be no order for costs.