

(1970) 02 CAL CK 0028
In the Calcutta High Court
Case No : Civil Revision Case No. 694 of 1962

Sailendra Nath Neogy

APPELLANT

Vs

Purnendu Sen and Others

RESPONDENT

Date of Decision : 13-02-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 141

Citation : AIR 1971 Cal 169 : 74 CWN 897

Hon'ble Judges : P.N. Mookerjee, J;Amiya K. Mookerji, J

Bench : Division Bench

Advocate : Lala Hemanta Kumar and Biswajit Ghose, for the Appellant;
Sachindra Chandra Dasgupta and Sankar Mukherjee, for the Respondent

Judgement

1. This Rule arises out of a proceeding for pre-emption u/s 24 of the West Bengal Non-Agricultural Tenancy Act, 1949. The opposite parties were the pre-emptors and the petitioner the pre-emptee.
2. The learned trial Judge allowed the application for pre-emption subject to payment of compensation, amounting to Rs. 400/-, to the petitioner for the alleged improvements, effected by him in the disputed land since his purchase.
3. The lower appellate court dismissed the petitioner's appeal against the aforesaid order of the learned trial Judge, allowing pre-emption in favour of the opposite parties, and upheld the said order for pre-emption. It also allowed the opposite parties' cross-objection against the grant of compensation by the learned trial Judge and dismissed the petitioner's claim in that respect.
4. The petitioner then obtained the present Rule, challenging the preemption order in question and disallowance of compensation.
5. In support of the Rule, several points were urged by Mr. Lala. The principal point, however, was the question of the vires of Section 24 of the West Bengal Non-Agricultural Tenancy Act, which was challenged on the ground that it was

violative of Article 19(1)(f) of the Constitution.

6. Mr. Lala also made another submission with some seriousness, namely, that, in the instant case, the opposite parties' claim for pre-emption on the ground of bona fide requirement of the disputed land, as contemplated under the said statute, could not be sustained in the absence of a clear finding in their favour that they had the necessary means for effecting the purpose, for which the land was required by them.

7. Other objections were also taken in the trial court and repeated in this Court, namely, that the opposite parties' claim for pre-emption was not for any recognised purpose under the above statute inasmuch as the purpose, for which the land was stated to be required by them, was not a purpose within the meaning of the connected Section 4 of the Act, and the pre-emptors (landlords) were not in khas possession of any contiguous land.

8. A point of limitation was also raised upon the ground that, although, in the instant case, notice of transfer was not served upon the opposite parties, they had full knowledge of the same and did not make their application for pre-emption within a reasonable time of the said knowledge.

9. Lastly, it was contended that, in any event, the petitioner was entitled to compensation, if any order for preemption was made against him, as the petitioner had made substantial improvements in the disputed land since his purchase.

10. In our view, however, on the materials before us, the instant Rule must fail.

11. On the question of vires of Section 24, the matter at present seems to be concluded against the petitioner by the decision of the Supreme Court, reported in *Shibsankar Nandy Vs. Prabartak Sangha and Others*, and, although Mr. Lala wanted to raise this question on a ground, different from that, actually and specifically considered by the Supreme Court in the above decision, it is clear that, so long as the said decision stands, this Court cannot go against it upon the footing that a particular aspect was not considered by their Lordships of the Supreme Court in the said decision. We would, accordingly, overrule this submission of Mr. Lala in support of this Rule.

12. On the question of relevant purpose (vide Section 4), also the purpose on which the instant requirement of the opposite parties is based, is certainly one, which would come within the residuary clause "other purposes",--be it considered in the light of *ejusdem generis* that is, as akin to a purpose, contemplated under Clause (b), namely, business purpose, or, under the wider interpretation of "other purposes", which of course, would be extreme or of an omnibus character. In this view, the petitioner's objection under this head, also, must fail and we would overrule it.

13. On the question of bona fide requirement from the point of view of the opposite parties' means, the records, no doubt, do not contain much evidence

on the point and there is also no specific finding in favour of the opposite parties by any of the courts below. It is to be remembered, however, that this aspect of the matter was not mooted by the petitioner in his objection or at the time of argument before the learned trial Judge or before the lower appellate court or even in the grounds of the present Rule. In this state of things, we are not inclined to entertain this contention, raised for the first time in this Court, or to allow or accept it, particularly when, on the evidence as it stands, the question of means does not appear to be wholly against the opposite parties. In the above view, we would overrule also this submission of Mr. Lala.

14. On the point of limitation, the matter appears to be concluded by the decision of the Special Bench of this Court in *Asmatoli Sharip Vs. Mujaharali Sardar and Others*, , and, accordingly, this point also must be decided against the petitioner.

15. On the question of the opposite parties' occupation or possession of contiguous plots, the finding of fact has concurrently been made in favour of the opposite parties by the two courts below and the same has to be accepted. But a point was raised that the opposite parties' title to such occupation or possession had not been established and reference was made to the cadastral survey records for the purpose. The revisional records, however, are in favour of the opposite parties and, over and above that, it is clear from the evidence on record that the tenants, if any, in respect of the said plots under the opposite parties or their predecessor had lost possession or had been dispossessed by the landlord for more than six years, which would *prima facie* extinguish the so-called tenants' title. In this state of things, the *prima facie* finding on the question of title must also be in favour of the opposite parties. Upon this view, the point of the opposite parties' occupation of contiguous lands must also be decided in their favour, as found by the two courts below.

16. Lastly, we come to the question of compensation. On this point, the two courts below have differed but, in our opinion, the lower appellate court has made the correct approach, so far as this aspect of the matter is concerned. The petitioner made the improvements, if any, at his own risk. His purchase was subject to the opposite parties' right of pre-emption. If he (petitioner) made any improvements in the meantime, he did so at his own risk and, when the relevant statute does not provide for any compensation, although, in other respects, it has dealt with the rights of the parties in detail, and when, further on equitable consideration alone, the matter would not stand differently here, it is not open to the petitioner to claim any compensation in the instant case.

17. In the premises, this Rule will fail and it will be discharged.

18. There will be no order as to costs.