(1934) 05 CAL CK 0003

In the Calcutta High Court

Secy. of State APPELLANT

Vs

Sukh Chand Saw and Others RESPONDENT

Date of Decision : 15-05-1934

Acts Referred:
Bengal Tenancy Act, 1885 — Section 26F

Citation : AIR 1934 Cal 749 : 152 Ind. Cas. 557

Hon'ble Judges : M.C. Ghose, J

Bench : Division Bench

Judgement

M.C. Ghose, J.—These two Rules were issued calling upon the opposite party to show cause why the order complained of should not be modified as prayed for in the petitions. The matter arises out of the fact that the opposite party purchased portions of two raiyati holdings at Rs. 90 and Rs. 35 and the Secretary of State who is the landlord in due course filed applications for pre-emption u/s 26-F, Bengal Tenancy Act. The learned Munsif has allowed the applications for pre-emption on payment of the amounts as required by Section 26-F. But in addition to the payments required by Section 26-F the Munsif has also directed the landlord, the Secretary of State, to pay the amount of Rs. 16 to the purchaser on account of certain improvements which he had effected on the land and this payment was directed to be made before the pre-emption is allowed u/s 26-F. It is urged by the the learned Government Pleader that the Court below had no jurisdiction to direct the payment of the sum of Rs. 16 alleged to have been paid by the opposite party for the improvements. It is clear that Section 26-F does not mention any payment to be made on account of improvements and the argument of the learned Government Pleader appears prima facie to be correct. On behalf of the opposite party it is urged that the sale was effected on 4th July 1931. But the application for pre-emption was not made until 6th January 1933 nearly eighteen months after the sale. As to this the learned Government Pleader''s observation is that the application was made within two months of the receipt of the notice and no ground of limitation was taken by the opposite party.

2. In the next place it is urged on behalf of the opposite party that u/s 26-F(7) when a transferee is divested of his right, title and interest he shall for the purposes of Clauses (a),(c) and (d), Section 156, be deemed to be a raiyat ejected from his holding by proceedings for his ejectment commencing on the date on which the landlord applied to the Court Under Sub-section (1) for pre-emption and u/s 82(2), when the Court makes an order for ejectment of a raiyat it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements and shall make an order of ejectment conditional on the payment of that amount to the raiyat. On behalf of the petitioner it is urged that u/s 26-F, CIause (5) if the deposits required under the previous clauses of Section 26-F are made the Court shall make an order allowing the application and this clear provision cannot in law be said to be governed by the provisions of Section 26-F(7) and Section 82 of the Act. In my opinion, this argument is correct. Section 26-F(5) clearly leaves no discretion to the Court to make an order of pre-emption conditional on the payment of the value of the improvements. The value of improvements if any, must be sought for in a separate proceeding. In the result the Rules are made absolute with costs: hearing fee, one gold mohur for both the Rules.