
(1955) 08 CAL CK 0035
In the Calcutta High Court
Case No : Civil Revision Case No. 3511 of 1954

Sm. Muktabala Dassi	Vs	APPELLANT
Sm. Paritosh Dasi		RESPONDENT

Date of Decision : 24-08-1955

Acts Referred:

General Clauses Act, 1897 — Section 3
Presidency Small Cause Courts Act, 1882 — Section 20
Transfer of Property Act, 1882 — Section 3

Citation : (1957) 2 ILR (Cal) 963

Hon'ble Judges : Debabrata Mookerjee, J

Bench : Single Bench

Advocate : Golam Mohiuddin, for the Appellant; Monomohan Singh, for the Respondent

Judgement

Debabrata Mookerjee, J.—Two questions arise for consideration in the present rule. First, whether in an application for pre-emption under the West Bengal Non-Agricultural Tenancy Act, 1949, the value of property would include the value of the non-agricultural land together with structures standing thereon or only the value of the land itself without the structures; secondly, whether the requirement of the immediate landlord, a pre-requisite for the grant of an application for pre-emption merely connotes a desire to possess the land for purposes mentioned in Section 4 of the Act or there is an element of need in such requirement.

2. The opposite party applied for pre-emption u/s 24 of the West Bengal Non-Agricultural Tenancy Act, 1949, claiming that she was the immediate landlord of certain contiguous lands. The grounds on which she applied were that she had become the immediate landlord in respect of the tenancy by virtue of purchase of interest of the outgoing landlord, the land in question belonged to the applicant's son who died leaving a widow Durgabala as his sole heir. Durgabala then transferred her interest in the land to the Petitioner Muktabala on June 18, 1953, in accordance with the provisions of Section 23 of the Act. The opposite party was served with a notice on receipt of which she applied for pre-emption by an

application, dated September 22, 1953. She made a deposit of Rs. 200 along with the statutory 5 per cent, on that amount which, according to her, was the consideration money appearing in the notice with which she had been served. Her case further was that she required the land for purposes mentioned in Section 4 of the Act.

3. The Petitioner who was the purchaser resisted the application mainly on two grounds; first that the value of the property was very much more than Rs. 200 and that the kobala by which she made the purchase made it clear that she had actually paid a sum of Rs. 500. Consequently the deposit of Rs. 200 along with the statutory 5 per cent, on that amount was not a valid deposit within the meaning of the law. In the second place the Petitioner's contention was that the mere wish to possess the land was not enough to entitle the immediate landlord to ask for pre-emption of contiguous land.

4. The learned Munsif who dealt with the matter found that the opposite party had become the immediate landlord as the result of purchase of interest of the outgoing landlord. It was further found that the opposite party being the immediate landlord was entitled in law to ask for preemption on payment of a sum mentioned in the notice which was served upon her, and that since the land once belonged to the son of the opposite party it was only natural that the latter should require it as it was contiguous to her own land.

5. The kabuliyat by which the Petitioner purchased the plot in question mentioned in its body the sum of Rs. 500 as being the value of the property which presumably included the value of the land and the structures thereupon. The structures in the present case consisted of "tin sheds" and "thatched walls". The courts below appear to have proceeded on the footing that since they are not pacca structures the pre-emptor could exercise her right of pre-emption by paying only the price of the land and giving the Petitioner, that is to say, the purchaser the right to remove the structures. The learned Munsif observed that the thatched walls and the tin sheds which made up the structures could very well be "separated from the land without deteriorating their value" and in that view held that the land could be looked upon as separate unit different from the structures which the Petitioner was entitled to remove. As a matter of fact, time was given to the Petitioner to remove the structures within three months from the date of the order.

6. Upon the question of requirement of the opposite party the immediate landlord the learned Munsif held that "mere mention "that the applicant requires the land for residential purposes "would be sufficient".

7. There was an appeal against the order of the learned Munsif and the learned Subordinate Judge who dealt with it agreed with the conclusions reached by the learned Munsif. The learned Subordinate Judge held that the structures being temporary were separable and their value would not be impaired since they were not pacca structures and they could well be dismantled and removed by the

Petitioner. Upon the other question involved for decision the learned Subordinate Judge held that although there was no sufficient evidence in the case to "generate the court's "satisfaction" as regards the question of requirement of the pre-emptor, the circumstances that the land once belonged to the son of the opposite party was sufficient to show that her desire to acquire the property was tantamount to her requirement. In this view of the matter, the learned Judge overruled the contention raised before him that there was no evidence to satisfy the court that the opposite party required the land in question within the meaning of the Act.

8. As has been observed the kabuliyat by which the purchase was made by the Petitioner mentioned Rs. 500 as the value of the property including the land and the structures but in the Schedule attached to it, the land and the structures were separately valued. The learned Munsif observed that the registering officer quite properly struck off in his own hand the amount of consideration money shown in the notice and changed it into a smaller figure of Rs. 200 as representing the value of the land. The Munsif seems to think that it was within the competence of the registering officer to make the amendment in that manner in order that contents of the notice might be made conformable to the law. It is indeed difficult to appreciate this observation made by the learned Munsif. What the law lays down is that the registering officer shall refuse to register a document if the notice is not filed for the purpose of service upon the immediate landlord or the co-sharers. I can find no authority for the view that it is the duty of the registering officer to change the value mentioned by the person presenting a document and to put in the notice to be served upon the immediate landlord or the co-sharers a value different from the one mentioned to the deed itself.

9. The first question, therefore, that falls to be considered is whether the value of property would mean merely the value of the land or the value of the land and the structures standing upon it. Before reference is made to the relevant provisions in the statute, it is to be observed that the courts below seem to have thought that the structures if permanent or pacca would have gone with the lands but since they were tin sheds and thatched walls they could be considered severable and their value would not at all be impaired if removed from the land. As far as I can see there is no warrant for the view that a structure which is not pacca is not a part of the land. Section 2, Clause (7) of the West Bengal Non-Agricultural Tenancy Act defines pacca structure as structure constructed mainly of bricks, stones or concrete or any combination of these materials. But in the section which falls to be considered for the purpose of an application for pre-emption there is no reference whatever to structures being pacca or katcha. I fail to see the reasons which weighed with the courts below in holding that structures such as these could be considered as movable and they could very well be severed from the land without impairing their value. Immoveable property is not defined by the West Bengal Non-Agricultural Tenancy Act; but that Act in Sub-section (8) of Section 2 provides that all words and expressions used but not defined in the Act and used in the Bengal Tenancy Act, 1885, or the

Transfer of Property Act, 1882, have the same meanings as in those Acts.

10. Section 3 of the Transfer of Property Act says, Immovable property does not include standing timber, growing crops or grass but the expression "attached to the earth" means (a) rooted in the earth, as in the case of trees and shrubs ; (6) imbedded in the earth, as in the case of walls or buildings; (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

11. Section 3 of the General Clauses Act to which reference might perhaps be made in the absence of specific definition in the West Bengal Non-Agricultural Tenancy Act, defines Immoveable property" as including land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth. I wonder how the Court below could possibly have held that huts with tin roof were not immoveable property or that they could possibly be separated from the land and the value still left unimpaired. In the case of *Deno Nath Batabyal. v. Adhor Chunder Sett* (1900) 4 C.W.N. 470, a Bench of this Court held that tiled huts were immoveable property. The court was considering in that case the question whether for purposes of execution of a decree u/s 20 of the Presidency Small Causes Courts Act tiled huts could be considered as moveable property. The contention that such huts were moveable property was clearly negatived. The courts below, therefore, misdirected themselves in holding that the huts standing on the land were not immoveable property or that could be separated from the land and their value left unimpaired. The learned Munsif who dealt with the matter as the court of first instance makes the position clear in his order that had the structures been pacca he would have surely considered the structures being part of the land and in that event the land could not possibly have been separately valued. I am afraid this construction adopted by the trial court and affirmed by the court of appeal below cannot possibly be accepted.

12. The question whether the value of the land or the value of the land and the structures is to be indicated in the notice and ultimately paid by the pre-emptor falls next to be considered. Section 23 of the West Bengal Non-Agricultural Tenancy Act, 1949, provides that every transfer of non-agricultural land held by a non-agricultural tenant or of any portion or share of such land shall be made by a registered. instrument and the registering officer shall not accept for registration any such instrument "unless the sale price or where there is no sale price, the value of "the land or portion or share thereof transferred is stated therein "and unless it is accompanied by a notice giving the particulars "of the transfer in the prescribed form together with the process "fee prescribed for the service thereof on the landlord who is not "a party to the transfer". This section, therefore, requires that the sale price or whether there is no sale price, the value of the land or portion or share thereof has to be stated and notice must be given of the transfer in a prescribed form. The words used, therefore, are "sale price or the value of the land or share or "portion thereof". Section 24(2) provides that

the application for pre-emption will be dismissed unless the applicant for preemption at the time of making the application deposits into court the amount of the consideration money or the value of the property or portion or share thereof transferred as stated in the notice served on the applicant under the previous section. Under Sub-section (6) of Section 24 which deals with the question of dispute raised as to the correctness of the "amount of the consideration "money" as stated in the notice u/s 23, the court shall enquire into such disputes and determine the amount of the consideration money which the transferee has "actually paid" for the transfer of the property and the amount so determined shall be deemed to be the consideration money.

13. It is, therefore, reasonably clear that the legislature while using the word "land" in Section 23(1) uses the word "property" in Section 24(2) and again in Sub-section (6) of Section 24 uses the expression "consideration money" which the transferee has actually paid for the transfer of the property. As far as I can see the word "property" means and connotes both land and structures. The word "land" as used in Section 23(1) is not adhered to. The words "property" and "land" appear to have been interchangeably used, although it must be said that reference to the notice as mentioned in Section 23 is not infrequently made in the different parts of the provisions just mentioned. The question, therefore, arises as to what exactly was the intention of the legislature in this regard. Is it merely intended that the value of the land as distinct from the structures is to be stated in the notice or the value or the consideration money of "the property" which would surely include the land and the structures upon it, that is intended to be stated in the notice? Section 23(1) uses the word "sale price or the value of the land" and requires that a notice giving the sale price of the land should be served on the landlord; but in Section 24 where the legislature prescribes the duty of the pre-emptor it clearly says that the pre-emptor has to deposit the consideration money or the value of the property. Similarly in Sub-section (6) of Section 24 if there is a dispute as regards the actual price paid by the purchaser, the court is directed to find out the price "actually paid" for the transfer of the property. The word "property" is thus used more frequently than the word "land" and I cannot quite conceive that it was intended by the legislature, despite the use of the more compendious word "property" a pre-emptor can succeed in his application by paying only the price of the land without the structures standing on it. As I have said the word "property" is a word which has a wide import, at any rate wider than "land". That being so, it cannot be said that what is intended to be stated in the notice to be served upon the immediate landlord or a co-sharer is merely the value of the land; it must be the value of the property which would include the structures whenever such structures exist on the land.

14. Reference has been made to Section 26F of the Bengal Tenancy Act in this connection. That section provides the manner of giving notice to landlord and co-sharer under that Act. It says that a notice must be given of particulars of the transfer in the prescribed form together with process fee, prescribed for the service of the notice. Section 26F(2) of that Act provides that the application for

pre-emption shall be dismissed unless the applicant at the time of making it deposits in Court the amount of consideration money or the value of the transferred portion or share of the holding, as stated in the notice, together with the compensation at the rate of 10 per cent, of such amount. The word "holding" is itself defined in Section 2 of the Bengal Tenancy Act and it means a parcel or parcels of land or an undivided share thereof held by a rdiyat or an under-rdiyat and forming the subject of a separate tenancy. It is to be observed that in the Bengal Tenancy Act the word "holding" is used and adhered to throughout, whereas in the West Bengal Non-Agricultural Tenancy Act the words "land" and "property" are interchangeably used. Therefore a conclusion derived from the words employed in the Bengal Tenancy Act cannot possibly help solution of the question as to whether the legislature intended that the value to be mentioned in a notice u/s 23 of the West Bengal Non-Agricultural Tenancy Act should be the value of the land only and not the value of the land and structures, if any, standing on it. On the other hand, as I have already indicated, the language used in the different Sub-sections of Sections 23 and 24 which deal with the question of pre-emption, leads to the conclusion that the words "land" and "property" have been interchangeably used and therefore where there are structures on the land, both the land and the structures have to be paid for before the right of pre-emption can be exercised by the immediate landlord. In this view the provisions of the Bengal Tenancy Act do not appear to furnish a safe basis for the conclusion as respects the real intent of the legislature in the case where a right of pre-emption is sought to be exercised under the West Bengal Non-Agricultural Tenancy Act. It is to be observed that Sub-section (6) of Section 24 is a section which takes away very much from the irrevocable character of a notice which is the feature of one u/s 26C or 26F of the Bengal Tenancy Act. Sub-section (6) of Section 24 of the West Bengal Non-Agricultural Tenancy Act contemplates a dispute as regards correctness of the value mentioned in the notice. Therefore a notice under this Act cannot be said to have that kind of finality which attaches to a notice under the Bengal Tenancy Act. Once there is a dispute as regards the correct value of the property, it becomes the duty of the court to enquire into the question and arrive at its own value as respects the price actually paid for the property by the purchaser. "When such a determination is made u/s 24(6) that becomes the amount which is payable by the pre-emptor. That being the position I think the finality of the amount slated in the notice under the corresponding section of the Bengal Tenancy Act cannot possibly be attached to a notice u/s 22 of the West Bengal Non-Agricultural Tenancy Act, 1949.

15. As has been already observed the deed of sale showed that the Petitioner had paid actually Rs. 500 but in the schedule attached to the deed the land was valued at Rs. 200 and the structures at Rs. 300. The registering officer amended the figure in his own hand. I do not see what authority he had to do it; and as far as I can see the form prescribed u/s 6 of the Non-Agricultural Tenancy Act Rules nowhere show that the value of the land has to be shown. The relevant column is col. 13 of the form and that reads thus "consideration money or value

as set forth in the "document of transfer or sale price in the case of sale in execution "of a decree or certificate or market value determined by a court "in case of foreclosure of mortgage". This item nowhere indicates that the value of the land must separately be mentioned in the notice; on the other hand, it mentions "consideration money" or value as set forth in the "document of transfer"; quite clearly the deed of sale showed that Rs. 500 was the amount paid by the Petitioner. I do not think the registering officer was at all obliged to correct the notice in his own hand and put a value different from the one which appeared from the body of the deed itself. The mere fact that the schedule to the document made separate mention of the value of the land and of the structures makes no difference at all. The different provisions of Section 24 to which I have referred make it abundantly clear that the legislature intended that the value of the property which must include the land and the structures, if any, upon it has to be mentioned in the notice.

16. The other contention which requires examination is whether it is enough for the landlord to merely express a wish to acquire the land contiguous to his own of which he is the immediate landlord. Clause (6) of the proviso attached to Section 24(1) of the West Bengal Non-Agricultural Tenancy Act reads as follows:

The immediate landlord of the non-agricultural tenant shall not have any right to purchase under this section unless the non-agricultural land or the share or portion thereof so transferred is contiguous to any land in the actual possession of the landlord and the court is satisfied that such land or share or portion thereof is required for use by such landlord for any of the purposes specified in s. "4".

17. It is, therefore, reasonably clear that in order to succeed in an application for pre-emption the immediate landlord must have contiguous land and that he should require the land sought to be pre-empted for any of the purpose mentioned in Section 4, viz., industrial, residential, manufacturing or other allied purposes. It is to be observed that the mere expression of wish by the immediate landlord is not enough. He must require the land for one of the specified purposes. Those purposes are indicated in Section 4 of the Act. Furthermore, he must require the land for use and the court must be satisfied that he does so require it. The finding of the courts below to the effect that since the land in question belonged to the deceased son of the applicant, it is only natural that she should wish to exercise her right of pre-emption in respect of it and that when her wish is expressed she would be entitled to pre-empt, is a finding which in my view is wholly unsatisfactory. The courts below appear to have completely overlooked the clear words of the statute. Under Clause (b) of the proviso to Sub-section (1) of Section 24 it is not enough that the pre-emptor should require it, but the court must be satisfied that he so requires it. It is of course true that word "require" has been used without any qualification whatever. It is not a case where the requirement is qualified in any manner, nevertheless the section taken as a whole seems to indicate that the mere expression of wish on the part of the

pre-emptor is not enough. The fact that the deceased son of the pre-emptor possessed the land without more, would not be sufficient ground for allowing the application for pre-emption. She must require the land and "the court must also be satisfied that she so requires it. A mere expression of wish that she wanted to possess the land not the mere fact that she made an application for pre-emption was sufficient to induce the court to think that the applicant was entitled to pre-empt under the law. Merely subjective considerations cannot prevail when the satisfaction of the court is clearly provided for. There must be some sort of objective standard by reference to which the requirement of the pre-emptor has to be judged and decided upon. In the case of Nagendra Nath Gupta v. Shri Mohit Kumar Pandit (1955) 59 C.W.N. 984 Lahiri, J. in constructing the word "require" in the Calcutta Thika Tenancy Act has held that there must be an element of need in such requirement. The present case is stronger. The legislature has expressly provided for the court's satisfaction about the requirement of the pre-emptor under the West Bengal Non-Agricultural Tenancy Act. There is no such provision in Calcutta Thika Tenancy Act and yet it has been held in the case just referred to that the requirement of the landlord must have an element of need in it. I, therefore, hold that the courts below misdirected themselves in thinking that the mere fact that the pre-emptor applied for pre-emption proved her requirement. The court has to be satisfied about the requirement and there must be some evidence to give rise to such satisfaction.

18. The learned Munsif while dealing with the question of the value of the property observed that if a question arose as to the adequacy of the amount of consideration money or the value of the property sought to be pre-empted, he should have no hesitation to hold that Rs. 200 was the consideration money. I am afraid the learned Munsif misappreciated the scope of Sub-section (6) of Section 24. That Sub-section means and implies that if there is a dispute as respects the value there must be an enquiry and the court must determine the amount of consideration money which is to be paid, and upon such determination the purchaser would be required to pay the amount so determined. This means that there should be an enquiry under Sub-section (6) of Section 24. Such enquiry must be directed along proper lines and the question must be decided upon evidence legally received for the purpose of enabling the court to come to a correct decision. Sub-section (6) does envisage an independent enquiry in which evidence must be taken by the court for the purpose of determining the amount of consideration of the property in question.

19. In view of what I have held I think that the main question involved for consideration in the case were not properly appreciated by the court below. The question as regards the requirement of the pre-emptor was not considered in the proper perspective nor the question whether it is the value of the property or merely the value of the land which the applicant must pay in order to pre-empt was appreciated either.

20. The orders complained of must, therefore, be set aside and the matter

remitted to the court of the Munsif to be dealt with in accordance with law and in the light of the observations made. If necessary, the learned Munsif will decide upon evidence the question of the value of the property concerned, that is to say, the land and the structures upon it and then come to a decision. The other question as respects requirement of the pre-emptor will also be gone into and a proper decision reached.

21. The result, therefore, is that this Rule is made absolute and the orders of the courts below are set aside and the matter remanded to the court of first instance. There will be no order as to costs.