

Satish Chandra Sarkar and anr. Vs. Sandhya Sarkar and ors.

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SooperKanoon Citation : sooperkanoon.com/877216

Court : Kolkata

Decided On : Jan-31-2005

Reported in : 2005(4)CHN519

Judge : Jyotirmoy Bhattacharya, J.

Acts : [West Bengal Land Reforms Act, 1955](#) - Sections 8, 8(2), 9, 10 and 21(3);
;West Bengal Land Reforms (Amendment) Act, 1972 - Section 7; ;[Constitution of India](#) - Articles 226 and 227

Appeal No. : C.O. No. 1922 of 2004

Appellant : Satish Chandra Sarkar and anr.

Respondent : Sandhya Sarkar and ors.

Advocate for Def. : Biswajit Basu and ;M.L. Sarkar, Advs.

Advocate for Pet/Ap. : Nibaran Das and ;Jiaul Haque, Advs.

Disposition : Application rejected

Judgement :

Jyotirmoy Bhattacharya, J.

1. This application under Article 226 of the [Constitution of India](#) is directed against an appellate order passed in connection with a pre-emption proceeding on 20th

May, 2004 by the learned Additional District Judge, Fast Track Court-11, Ranaghat, District Nadia in Misc. Appeal No. 66 of 2001 reversing the judgment and order dated 5th May, 2001 passed by the learned Civil Judge, (Junior Division), 1st Court, Nadia in Misc. Case No. 107 of 1989.

2. The pre-emptee is the petitioner before this Court.

3. The application for pre-emption was rejected by the learned Civil Judge, Junior Division, 1st Court, Nadia on the grounds that since the land sought to be pre-empted was purchased by the bargadar, application for pre-emption does not lie in view of the exemption was mentioned in Section 8(2)(e) of the West Bengal Land Reforms Act. Being aggrieved by, and dissatisfied with, the said order, the pre-emption opposite party preferred an appeal being Misc. Appeal No. 66 of 2001 before the learned Additional District Judge, Fast Track Court-II, Ranaghat, Nadia. It appears that the learned Appellate Court after considering the materials on record, allowed the said application for pre-emption holding that the pre-emptors are contiguous owners and they applied to exercise their right of pre-emption within the period as prescribed under the statute. The learned Appellate Court disbelieved the claim of the petitioner-pre-emptee to the effect that the pre-emptee was a bargadar in respect of the suit property under the transferer prior to the impugned sale. The said finding was arrived at by the learned Appellate Court by relying upon the report submitted by the BL & LRO, Hanskhali, Nadia in terms of a reference under Section 21(3) of the West Bengal Land Reforms Act.

4. The instant application under Article 227 of the [Constitution of India](#) is directed against such an order.

5. The only point which has been canvassed by the learned Advocate appearing for the petitioners before this Court is that since the transfer in favour of the bargadar is exempted from pre-emption within the meaning of Section 8(2)(e) of the said Act, the learned First Appellate Court erred in allowing the application for pre-emption.

6. Heard the learned Advocates for the parties. Considered the materials on record.

7. On perusal of the defence of the pre-emptee regarding his claim of bargadarship, it appears that the pre-emptee tried to resist the claim of the pre-emptors on the ground of his right of bargadarship in the case land since prior to the impugned sale.

8. On perusal of Section 8(2)(e) of the said Act, it appears to me that all transfer in favour of the bargadars are not exempted from pre-emption. It, is only those transfer in favour of the bargadar where after such transfer the total land of the bargadar including the land so transferred does not exceed one acre in area in the aggregate, are exempted from pre-emption.

9. For the sake of convenience the provision under Section 8(2)(e) is set out hereunder:

'(2) Nothing in this section shall apply to--

(a) a transfer by exchange or by partition, or

(b) a transfer by bequest or gift, or

(c) a 1 (***) mortgage mentioned in Section 7, or

(d) a transfer for charitable or religious purposes or both without reservation of any pecuniary benefit (for any individual, or)

(e) a transfer of land in favour of a bargadar, in respect of such land if after such transfer, the transferee holds a raiyat land not exceeding one acre (or 0.4047 hecta hectare) in area in the aggregate.

Explanation.--All orders passed and the consequences thereof under Sections 8, 9 and 10 shall be subject to the provisions of Chapter IIB.

(3) Every application pending before a Revenue Officer at the commencement of Section 7 of the West Bengal Land Reforms (Amendment) Act, 1972 shall, on such commencement, stand transferred to and be disposed of by the Munsif having jurisdiction in relation to the area in which the land is situated and on such transfer every such application shall be dealt with from the stage at which it was so

transferred and shall be disposed of in accordance with the provisions of this Act, as amended by the West Bengal Land Reforms (Amendment) Act, 1972.'

10. On perusal of the objection filed by the pre-emptee, it appears that the pre-emptee did not even pleaded that even after such transfer his total land including the said land does not exceed one acre of land.

11. Thus even assuming that the pre-emptee was the bargadar in respect of the case land still then his purchase cannot be exempted from pre-emption unless the pre-emptee can show that he comes within the exempted clauses.

12. There is nothing on record to show that even the pre-emptee proved the said condition as to whether after such transfer he holds land less than one acre in aggregate.

13. In my view, in order to get exemption, the pre-emptee is required to plead and prove the requirement of the conditions as contained in Section 8(2)(e) of the said Act.

14. In such view of the matter, I find no merits in this application. The application, thus, stands rejected.

15. The order of the learned Appellate Court, thus, stands affirmed.