Barasat Eye Hospital Thr. Its Rep. vs Kaustabh Mondal on 17 October, 2019

Equivalent citations: AIRONLINE 2019 SC 2075, (2019) 14 SCALE 90, AIRONLINE 2019 SC 2317

Author: Sanjay Kishan Kaul

Bench: K.M. Joseph, Sanjay Kishan Kaul

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1090 OF 2010

BARASAT EYE HOSPITAL & ORS. … Appel

VERSUS

KAUSTABH MONDAL …Respo

JUDGMENT

SANJAY KISHAN KAUL, J.

1. The right of pre-emption holds its origination to the advent of the Mohammedan rule, based on customs which came to be accepted in various courts largely located in the north of India. This law is stated to be largely absent in the south of India on account of the fact that it never formed a part of Hindu law in respect of property. However, this law came to be incorporated in various statutes, both, prior to the Constitution of India (for short 'the Constitution') coming into force, and even post that.1 The constitutional validity of such laws of pre-emption came to be debated before the Constitution Bench of this Court, in Bhau Ram2. There are different views expressed by the members of the Constitution Bench of five Judges, and also dependent on the various State legislations in this regard. Even though there were views expressed that this right of pre-emption is opposed to the principles of justice, equity and good conscience, it was felt that the reasonableness of these statutes has to be appreciated in the context of a society where there were certain privileged

classes holding land and, thus, there may have been utility in allowing persons to prevent a stranger from acquiring property in an area which has been populated by a particular fraternity or class of people. This aspect was sought to be balanced with the constitutional scheme, prohibiting discrimination against citizens on the grounds of only religion, race, caste, sex, place of birth or any of them, under Article 15 of the Constitution, and the guarantees given to every citizen to acquire, hold and dispose of property, subject only to the test of reasonable restriction and the interest of general public.

2. With the passage of time, such laws of pre-emption, which existed 1 Bhau Ram v. Baij Nath Singh & Ors. AIR 1962 SC 1476 2 supra in many States were abrogated, and it is only within a limited jurisdiction that it now prevails. One such enactment still in existence is the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the 'said Act'), an enactment with which we are concerned, and it is this very right of pre-emption, and the manner of its application under the said act, which was debated before us. The Preamble of the said Act sets forth the tone as under:

> "An Act to reform the law relating to land tenure consequent on the vesting of all estates and of certain rights therein [and also to consolidate the law relating to land reforms] in the State"

3. The category of land holders are defined under Section 2 of the said Act, and the relevant two provisions are extracted hereinunder:

> "2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,— ....
>
> (2) "bargadar" means a person who under the system generally known as adhi, barga or bhag cultivates the land of another person on condition of delivering a share of the produce of such land to that person; [and includes a person who under the system generally known as kisani [or by any other description] cultivates the land of another person on condition of receiving a share of the produce of such land from that person;] [, but does not include a person who is related to the owner of the land as— [Explanation.—A bargadar shall continue to be a bargadar until cultivation by him is lawfully terminated under this Act;]" ....

"[(10) "raiyat" means a person or an institution holding land for any purpose whatsoever;]"

4. The two relevant Sections for enforcement of the right of pre- emption are Sections 8 & 9 of the said Act, and we proceed to extract only the relevant part of the same:

> "8. Right of purchase by co-sharer or contiguous tenant.— (1) If a portion or share of a [plot of land of a raiyat] is transferred to any person other than a [co-sharer of a raiyat in the plot of land],[the bargadar in the plot of land] may, within three months of the date of such transfer, or] any [co-sharer of a raiyat in the plot of land] may, within three months of the service of the notice given under sub-section (5) of section

> 5, or any raiyat possessing land [adjoining such plot of land] may, within four months of the date of such transfer, apply to the [Munsif having territorial jurisdiction,] for transfer of the said portion or [share of the plot of land] to him, subject to the limit mentioned in [section 14M,]on deposit of the consideration money together with a further sum of ten per cent of that amount:
>
> xxxx xxxx xxxx xxxx xxxx" "9. Revenue Officer to allow the application and apportion lands in certain cases.—(1) On the deposit mentioned in sub-

section (1) of section 8 being made, the Munsif shall give notice of the application to the transferee, and shall also cause a notice to be affixed on the land for the information of persons interested. On such notice being served, the transferee or any person interested may appear within the time specified in the notice and prove the consideration money paid for the transfer and other sums, if any, properly paid by him in respect of the lands including any sum paid for annulling encumbrances created prior to the day of transfer, and rent or revenue, cesses or taxes for any period. The Munsif may after such enquiry as he considers necessary direct the applicant to deposit such further sum, if any, within the time specified by him and on such sum being deposited, he shall make an order that the amount of the consideration money together with such other sums as are proved to have been paid by the transferee or the person interested plus ten per cent of the consideration money be paid to the transferee or the person interested out of the money in deposit, the remainder, if any, being refunded to the applicant. The Munsif shall then make a further order that the portion or [share of the plot of land] be transferred to the applicant and on such order being made, the portion or [share of the plot of land] shall vest in the applicant." Facts:

5. Now turning to the limited contours of the facts of the present case. The appellants before us purchased the suit land from the raiyat holder of land, being R.S. Plot No. 488, measuring 15 decimals, located in Mouza Kalikapur, Barasat, West Bengal, in pursuance of the registered Sale Deed dated 27.5.2005. The stated consideration under the Sale Deed is Rs.5,21,000/-. The respondent before us is a raiyat holder of land contiguous to the suit land, sharing a common boundary line with the same. The respondent, thus, sought to exercise his right of pre-emption under Section 8 of the said Act by filing Misc. Case No.19/2005 before the Civil Judge (Junior Division), 3rd Court, Baruipur, on the ground of vicinage. The relevant aspect is that the respondent sought to dispute the apparent consideration set out in the Sale Deed vide this application by alleging that only a sum of Rs. 2,50,000/- had been paid as consideration for sale, and that an inflated sum had been set out in the Sale Deed as a result of collusion and conspiracy between the transferor and the transferee, being the appellants herein. On the basis of this assertion, the application was accompanied with only a deposit of Rs. 2,75,000/-, consisting of Rs.2,50,000/- as the principal consideration and Rs.25,000/- as the further levy of 10% on the principal consideration, in accordance with Section 8 of the said Act. The respondent sought leave to deposit any further sum, as may be determined by the court, at the time of trial.

6. The appellants objected to such an application and filed objections inter alia disputing the allegation of inflated consideration. In addition, the appellants filed an application in that case, under Section 9 of the said Act, explaining the manner in which the sum of Rs. 5,21,000/- had, in

fact, been paid by the appellants. This application was objected to by the respondent, by asserting that the balance amount could only be paid once the appellants proved the consideration that had been paid under the Sale Deed and in case the court found so, directions could be issued for payment of further sum, if any, at that time, when the application under Section 8 of the said Act would be allowed. One of the grounds for claiming so was that if the payment was made at a stage of filing the application under Section 8 of the said Act, then in the eventuality that the right of pre-emption was not enforced for any reason, there was no provision contained in Section 9 of the said Act for refund of the amount deposited.

7. The trial court found in favour of the respondent by opining that firstly, the actual consideration amount had to be proved by the transferee and secondly, on such inquiry being made, the balance could be deposited on a direction by the court. The court further opined that the sum was non-refundable since no specific provision was made regarding repayment of the excess consideration, if any.

8. The appellants took up the matter in Misc. Appeal No.286/2007, before the 11th Additional District Judge, Alipore, and succeeded in that appeal in terms of the order dated 31.1.2008. The conclusion of the appellate court was predicated on a reasoning that it was really not the jurisdiction of the court to decide the value of the suit property, and that Section 8(1) of the said Act clearly sets out that the person enforcing the right of pre-emption is required to deposit the full amount as "shown in the sale deed" between the transferor and the "stranger purchaser".

9. It was now the turn of the respondent to assail this order by preferring a petition, being CO No.1289/2008, under Article 227 of the Constitution, before the High Court of Calcutta, under its civil revisionary jurisdiction. It may be added herein that after the first appellate court passed the order, the trial court passed another order dated 7.4.2008, directing the respondent to deposit the balance amount in terms of the order of the appellate Court, and this order was also challenged in another petition, being CO No.1291/2008. The High Court allowed both these applications vide order dated 24.7.2008. In construing the jurisdiction of the court in cases of pre-emption, as set out in Sections 8 & 9 of the said Act, the High Court opined that a pre-emptor was entitled to raise an issue about the stated sale consideration, and on such inquiry being complete, the Munsif could always direct deposit of the balance amount. A refund to the transferee would, thus, only arise if it was found that the pre-emptor was liable to pay an amount less than what had been deposited. In coming to this conclusion, the decision of the Division Bench of the Calcutta High Court, in Sahid Ali v. S.K. Abdul Kasem3 was relied upon. The High Court also took strength from similar Sections under the local Acts, i.e., Section 26F of the Bengal Tenancy Act, 1885 and Section 24 of the West Bengal Non-Agricultural Tenancy Act, 1949, which provided for 'penal' consequences in cases of non-deposit of the entire amount, i.e., rejection of the application for pre-emption. In the absence of such a 'penal' consequence under Sections 8 & 9 of the said Act, it was opined that the application for pre-emption without full deposit could not be rejected on that premise. The effect of this, thus, would be that an application could be entertained on 'short deposit' of the consideration amount and only on final adjudication by the Munsif would the occasion arise to deposit the balance amount.

Right of Pre-emption:

> 10. In order to appreciate the aforesaid provisions relating to the right 3 (1994) 1 CHN 202 of pre-emption, it would be appropriate to refer to an extremely lucid judgment of this Court by Justice K. Subbarao (as he then was), setting forth the contours of the right of pre-emption in Bishan Singh & Ors. v.

Khazan Singh & Anr.,4 in a four Judge Bench judgement. The Bench proceeded to discuss the view of different Courts on this right of pre- emption, as found in the following:

> a. Plowden, J. in Dhani Nath v. Budhu5.
>
> b. Mahmood, J. in Gobind Dayal v. Inayatullah6.
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> c. Mool Chand v. Ganga Jal7.
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> 11. In view of the aforesaid elucidation, it was opined that the pre-

emptor has two rights: first, the inherent or primary right, i.e., right for the offer of a thing about to be sold; and second, the secondary or remedial right to follow the thing sold. The secondary right of pre- emption is simply a right of substitution, in place of an original vendee and the pre-emptor is bound to show not only that his right is as good as that of that vendee, but that it is superior to that of the vendee. Such superior right has to subsist at the time when the pre-emptor exercises his 4 AIR 1958 SC 838 5 136 P.R. 1894 6 (1885) ILR 7 All 775, 809 7 (1930) ILR 11 Lahore (F.B.) 258, 273 right. The position is thereafter summarized in the following terms:

> "11. .....(1) The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase i. e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place."
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> 12. We would like to emphasise an important aspect which emerges from the aforesaid that, apart from the elucidation of the legal position in this behalf, right is "a very weak right." That being the character of the right, any provision to enforce such a right must, thus, be strictly construed.
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> 13. An interesting aspect which supports the aforesaid view, albeit, in the context of the period of limitation with respect to the exercise of the pre-emption right, has been

elucidated by this Court in Gopal Sardar v.

Karuna Sardar8. The discussion proceeds on the basis of the earlier 8 (2004) 4 SCC 252 judicial pronouncements and a conclusion was reached that Section 5 of the Limitation Act, 1963 cannot be pressed into service in aid of a belated application made under Section 8 of the said Act, seeking condonation of delay. The right of pre-emption under Section 8 of the said Act was observed to be a statutory right, besides being a weak one, and thus, had to be exercised strictly in terms of the said Section with no place for consideration of equity.

14. In a comparatively recent decision, in Kedar Mishra v. State of Bihar9, a three Judge Bench had an occasion to deal with the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. We may notice that the right of pre-emption contained in Section 16(3) has since been repealed. The relevant provision reads as under:

> "16 – Restriction on future acquisition by transfer etc. ....
>
> (3) (i) When any transfer of land is made after the commencement of this Act to any person other than a co-sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the document of the transfer, to make an application before the Collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the said deed:
>
> 9 (2016) 7 SCC 478 Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten percent thereof is deposited in the prescribed manner within the said period." The object of the aforesaid sub-section was observed to be to secure consolidation, by giving a right of re-conveyance to a co-sharer or raiyat to an adjoining area, to facilitate the use of land in a more advantageous manner and to prevent fragmentation. It was categorically observed that "...In terms of Section 16(3)(i), no pre-emption application shall be entertained by the Collector unless the purchase money together with a sum equal to 10% thereof is deposited by the person claiming right of pre-emption in the prescribed manner within the said period."10

15. We are conscious of the fact that the proviso begins with a negative connotation of "no such application shall be entertained", but yet the observations are relevant and germane.

Rival Contentions:

16. Learned counsel for the appellants sought to rely on the elucidation 10 Kedar Mishra v. State of Bihar (supra) of the right of pre-emption, as set out in the Bishan Singh & Ors.11 case, to contend that the right being defined as a "very weak right", the provisions of the Section should be read as they are. Section 8(1) of the said Act prescribes that the right has to be exercised "on deposit of the consideration money together with further sum of 10% of that amount:

> ..." Thus, the trigger for the very right has to be the full stated consideration plus (+) 10% of the consideration amount. The question of recourse to Section 9, it was thus contended, would not arise till the amount was so deposited, and within the given time. Secondly, it was contended that Section 9 of the said Act, as it reads, could not be said to contemplate an inquiry into the amount of consideration set out in the sale deed, but the inquiry was confined to any further amounts, if any, claimed by the vendee. In substance, the plea was that the Sections should be given their plain meaning.
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> 17. On the other hand, learned counsel for the respondent contended that if unrealistic or arbitrary considerations are shown in the sale deed, they cannot bind the pre-emptor as that would amount to perpetuating a fraud. His contention was that on deposit of what the pre-emptor

11 supra believes to be the appropriate consideration, an application could be filed under Section 8(1) of the said Act, and thereafter an inquiry in that behalf would proceed under Section 9 of the said Act; otherwise, there would be no meaning to the power conferred on the Munsif to make an inquiry, as he considers necessary, and that portion would be otiose. This is as against the plea of the appellants, that to construe so, would amount to making the latter part of Section 8(1) otiose as discussed aforesaid, and also make nugatory, the first sentence of Section 9(1), which begins with "on the deposit mentioned in sub-section (1) of Section 8"

18. Learned counsel for the respondent sought to refer to the judgments of the Calcutta High Court, in the Sahid Ali case12, Jyotish Chandra Sardar v. Hira Lal Sardar13, as also to two other cases, in Amitava Shit v. Bablu Kundu14 and Smt. Aparna Maity v. Smt. Purabi Das15.

19. If one may say so, the latter two are really in the nature of orders, not elucidating any law, other than relying on the principles set out in the 12 (supra) 13 ILR 1971 (1) Calcutta 213 14 2014(1) CHN (Cal) 744 15 C.O. No.3859/2015 AGM 2016 decided on 19th December, 2016 Sahid Ali16 case (a Division Bench view, as against the Single Judge Bench view in the latter two cases). The Sahid Ali17 case, in turn, has relied upon the judgment in the Jyotish Chandra Sardar18 case.

20. The common thread which goes through all these judgments is that an inquiry into the stated consideration was envisaged under Section 9 of the said Act, on a conjoint reading of Sections 8 & 9 of the said Act. It may be noticed that the Jyotish Chandra Sardar19 case sets out a factual matrix where the mechanism for deposit of the amount was not enforced and, thus, despite the endeavour of the pre-emptor to deposit the amount, such amount could not be deposited. An important aspect examined, while distinguishing the views taken in respect of the Bengal Tenancy Act, 1885 and of the West Bengal Non-Agricultural Tenancy Act, 1949, was that those enactments provided for "penal consequences" and, thus, construction of those provisions would have to be different, as compared to the said Act.

Discussion:

16 supra 17 supra 18 supra 19 supra

21. We have examined the rival contentions of the parties and considered it appropriate to set forth the history of the right of pre- emption, as it may possibly have larger ramifications, especially when we are informed that there are other cases pending consideration before the Calcutta High Court.

22. The historical perspective of this right was set forth by the Constitution Bench of this Court, as far back as in 1962, in the Bhau Ram20 case. The judgment in the Bishan Singh & Ors.21 case preceded the same, where different views, expressed in respect of this law of pre- emption, have been set out, and thereafter the position has been summarized. There is no purpose in repeating the same, but, suffice to say that the remedial action in respect of the right of pre-emption is a secondary right, and that too in the context of the "right being a very weak right." It is in this context that it was observed that such a right can be defeated by all legitimate methods, such as a vendee allowing the claimant of a superior or equal right to be substituted in its place. This is not a right where equitable considerations would gain ground. In fact, the effect of the right to pre-emption is that a private contract inter se the 20 supra 21 supra parties and that too, in respect of land, is sought to be interfered with, and substituted by a purchaser who fortuitously has land in the vicinity to the land being sold. It is not a case of a co-sharer, which would rest on a different ground.

23. The second aspect of importance is that given the aforesaid position, even the time period for making the deposit, under Section 8(1) of the said Act, has been held to be sacrosanct, in view of the judgment of this Court in the Gopal Sardar22 case. The very provision of Section 8(1) of the said Act came up for consideration and, as held in that case, if the time period itself cannot be extended and if Section 5 of the Limitation Act would not apply, while interpreting Section 8 of the said Act, then the requirement of deposit of the amount along with the application, within the time stipulated is sacrosanct. The amount to be deposited is not any amount, as that would give a wide discretion to the pre-emptor, and any pre-emptor not able to pay the full amount, would always be able to say that, in his belief, the consideration was much lesser than what had been set out. If we read the judgment in the Gopal Sardar23 case, in its true 22 supra 23 supra enunciation and spirit, there is sanctity attached to both, the amount and the time frame. There cannot be sanctity to the time frame, incapable of extension even by the Limitation Act, and yet, there be no sanctity to the amount.

24. In the context of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, the recent view of this Court, in the context of the relevant provision (now repealed 24), itself puts a pre-condition for the exercise of the right of pre-emption, by requiring the deposit of the full stated purchase money and 10% of the purchase amount. In our view, it makes no difference that the proviso in Section 16(3) of that Act states that "...no such application shall be entertained...", in the context of filing of applications, without the deposit of the full amount. We may say so because, if we turn to Section 8(1) of the said Act, the right of pre-emption is activated "on deposit of the consideration money together with the further sum of 10% of that amount." Thus, unless such a deposit is made, the right of a pre-emptor is not even triggered off. The provisions of Section 8 are explicit and 24 Vide Section 2 of The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2019 clear in their terms.

25. Now turning to Section 9 of the said Act, from which, apparently, some judgments of the Calcutta High Court have sought to derive a conclusion that an inquiry into the stated consideration is envisaged. However, the commencement of sub-section (1) of Section 9 is with "on the deposit mentioned in sub-section (1) of section 8 being made..." Thus, for anything further to happen under Section 9 of the said Act, the deposit as envisaged under Section 8 of the said Act has to be made. It is only then that the remaining portion of Section 9 of the said Act would come into play.

26. The question now is as to what would be the nature of inquiry which has been envisaged to be carried out by the Munsif. If Section 9, as it reads, is perused, then first, the amount as mentioned in the sale transaction is to be deposited, as per sub-section (1) of Section 8 of the said Act. Once that amount is deposited, the next stage is for the Munsif to give notice of the application to the transferee. The transferee thereafter, when enters appearance within the time specified, can prove the consideration money paid for the transfer "and other sums." Such other sums, if any, are as "properly paid by him in respect of the land including any sum paid for annulling encumbrances created prior to the day of transfer and rent or revenue, cesses or taxes for any period." The inquiry, thus envisaged, is in respect of the amount sought to be claimed over and above the stated sale consideration in the document of sale because, in that eventuality further sums would have to be called for, from the pre-emptor. In that context, the additional amount would have to be deposited. Even in the event that a pre-emptor raises doubts regarding the consideration amount, enquiry into the said aspect can be done only upon payment of the full amount, along with the application. In this aspect, the phrase "the remainder, if any, being refunded to the applicant" would include to mean the repayment of the initial deposit made along with the application, if considered to be excess. To give any other connotation to these Sections would make both, the latter part of Section 8 of the said Act and the inception part of Section 9 of the said Act, otiose. We do not think such an interpretation can be countenanced.

27. In our view, when the inquiry is being made by the Munsif, whether in respect of the stated consideration, or in respect of any additional amounts which may be payable, the pre-requisite of deposit of the amount of the stated consideration under Section 8(1) of the said Act would be required to be fulfilled. The phraseology "the remainder, if any, being refunded to the applicant" would have to be understood in that context. The word "remainder" is in reference to any amount which, on inquiry about the stated consideration, may be found to have been deposited in excess, but it cannot be left at the own whim of the applicant to deposit any amount, which is deemed proper, but the full amount has to be deposited, and if found in excess on inquiry, be refunded to the applicant.

28. We are, thus, firmly of the view that the pre-requisite to even endeavour to exercise this weak right is the deposit of the amount of sale consideration and the 10% levy on that consideration, as otherwise, Section 8(1) of the said Act will not be triggered off, apart from making even the beginning of Section 9(1) of the said Act otiose.

29. We are not inclined to construe the aforesaid provisions otherwise only on the ground that there are no so called "penal provisions" included. The provisions of Sections 8 & 9 of the said Act must be read as they are. In fact, it is a settled rule of construction that legislative provisions should be read

in their plain grammatical connotation, and only in the case of conflicts between different provisions would an endeavour have to be made to read them in a manner that they co-exist and no part of the rule is made superfluous.25 The interpretation, as we have adopted, would show that really speaking, no part of either Section 8, or Section 9 of the said Act is made otiose. Even if an inquiry takes place in the aspect of stated consideration, on a plea of some fraud or likewise, and if such a finding is reached, the amount can always be directed to be refunded, if deposited in excess. However, it cannot be said that a discretion can be left to the pre-emptor to deposit whatever amount, in his opinion, is the appropriate consideration, in order to exercise a right of pre-emption. The full amount has to be deposited.

30. We may also note that, as a matter of fact, the pre-emptor in the present case, i.e., the respondent has not filed any material to substantiate even the plea on the basis of which, even if an inquiry was held, could a 25 British India General Insurance Co. Ltd. v. Captain Itbar Singh, AIR 1959 SC conclusion be reached that the stated consideration is not the market value of the land.

31. We also believe that to give such a discretion to the pre-emptor, without deposit of the full consideration, would give rise to speculative litigation, where the pre-emptor, by depositing smaller amounts, can drag on the issue of the vendee exercising rights in pursuance of the valid sale deed executed. In the present case, there is a sale deed executed and registered, setting out the consideration.

32. We are of the view that the impugned order and the view adopted would make a weak right into a 'speculative strong right', something which has neither historically, nor in judicial interpretation been envisaged.

33. The last question which arises is whether the respondent can now be granted time to deposit the balance amount. When the direction was so passed, in pursuance of the order of the appellate court, the respondent still assailed the same. The requirement of exercising the right within the stipulated time, in respect of the very provision has been held to be sacrosanct, i.e., that there can be no extension of time granted even by recourse to Section 5 of the Limitation Act.26

34. As we have discussed above, once the time period to exercise a right is sacrosanct, then the deposit of the full amount within the time is also sacrosanct. The two go hand-in-hand. It is not a case where an application has been filed within time and the amount is deficient, but the balance amount has been deposited within the time meant for the exercise of the right. We are saying so as such an eventuality may arise, but in that case, the right under the application would be triggered off on deposit of the amount which, in turn, would be within the time stipulated for triggering the right. That not having happened, we are of the view that there cannot be any extension of time granted to the respondent now, to exercise such a right. This is, of course, apart from the fact that this speculative exercise on behalf of the respondent has continued for the last fourteen years, by deposit of 50% of the amount.

35. We may add here that it may not be appropriate to envisage a situation where a person not succeeding in the right of pre-emption is 26 Gopal Sardar v. Karuna Sardar (supra) deprived of the

amount deposited. The vendee cannot appropriate this amount. The State should not be permitted to appropriate this amount. Then, the only sequitur would be that the amount should be refunded back to the pre-emptor.

36. The aforesaid being the position, the respondent is entitled to the refund of the amount deposited by him, together with interest, if any, earned on the same, in case it has been kept in an interest bearing deposit.

37. The appeal is accordingly allowed in the aforesaid terms, leaving the parties to bear their own costs.

38. We hope that our view should put the controversy in respect of this “weak right” of pre-emption to rest.

.....J. [Sanjay Kishan Kaul] .....J. [K.M. Joseph] New Delhi.

October 17, 2019.