

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: THE HON'BLE JUSTICE DEBANGSU BASAK
SAT/10/2024

ANITA SINGH ... APPELLANT

VS.

BIMLA LALL AND OTHERS ... RESPONDENTS

For the appellant : Ms. Sweta Yadav
[through virtual mode]

For the respondents : Ms. Anjili Nag, Sr.Adv.
Ms. Sohini Biswas

Heard on : February 25, 2026

Delivered on : February 25, 2026

DEBANGSU BASAK, J.

1. Second appeal arises out of the judgement and decree of affirmation dated August 13, 2024 passed in other Appeal No. 4 of 2024 affirming the judgement and decree dated December 28, 2023 passed in other Suit No. 27 of 2018.

2. Appellant filed other Suit No. 27 of 2018 seeking specific performance of contract dated June 19, 2001 in respect of land bearing survey No. 8/P, measuring an area of 0.80 hectares, situated at Sippighat, South Andamans. Such suit was dismissed

by the learned trial judge on the ground of the defendant being a non-occupancy tenant and therefore was entitled to non-occupancy right in terms of Regulation 159(8) of the Regulations of 1966 which a non transferable right. On appeal, it was held that Regulation 159(8) was mandatory while concurring within the view of the learned trial judge.

3. Second appeal was admitted by an order dated September 6, 2024 when the following questions of law were framed :

- “i) Whether the provision of Regulation 159(8) of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulations, 1966 is a mandatory provision or directory in nature.?”*
- ii) Is the competent authority empowered to change the nature of a land recorded as NOR to be converted into a land under OR on the prayer of the recorded tenant*
- iii) Is an agreement to sale a NOR land voidable or void?*

4. Regulation 159(8) of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulations, 1966 is as follows :

159.

(8) The interest of a non-occupancy tenant shall be non-transferable:

Provided that nothing in this sub-section shall prevent a grantee from mortgaging or transferring his interest in any land to secure payment of any loan made to him by the Government or a Cooperative Society or an institution established for a public, religious or charitable purpose or a bank or shall affect the right of the Government or such cooperative society,

institution or bank, as the case may be to sell such interest for the recovery of such loan in execution of decree or order of any court.

5. Regulation 159(8) of the Regulations of 1966 is required to be read in the context of Regulation 151 (1)(C) which is as follows :

“151 (1) A tenant shall be liable to be ejected from his holding by an order of the Sub-Divisional Officer made on any of the following grounds, namely

... ..

... ..

(c) he has transferred his interest in such land in contravention of the provisions of this Regulation or any rule made thereunder.”

6. It is trite law that, when, a penalty is prescribed for violation of a provision of law, then, such provision is required to be treated as mandatory in nature.

7. In the facts and circumstances of the present case, Regulation 159(8), prohibits transfer of interest of non occupancy tenant.

8. The consequence of non adhering to such prohibition is prescribed in Regulation 151(1)(c) which makes such tenant liable to be ejected, if he transfers his interest in the land in contravention of the provisions of the Regulations of 1966 or any Rule thereunder.

9. Suit was filed for specific performance of an agreement for sale. Agreement for sale was entered into by a non occupancy tenant with the plaintiff. Defence taken in the suit was that, the agreement for

sale is unenforceable in view of Regulation 159(8) of the Regulations of 1966.

10. Learned Trial Judge, found in favour of the defendant. Judgment of the appeal Court is in affirmation of the rejection of the suit passed by the learned Trial Judge.

11. In view of the discussions above, the first issue framed by the Division Bench while admitting the second appeal on September 6, 2024 is answered by holding that the provisions of Regulation 159(8) of the Regulations, 1966 is mandatory.

12. With the deepest of respect, the second issue framed does not arise out of the pleading filed in the suit. The prayer in the plaint are as follows:-

- I. *A Decree directing the defendant No. 1, 2 & 3 to execute and register the Sale Deed in favour of the plaintiff in respect of suit land by enforcing the contract for sale dated 19th June 2001;*
- II. *Temporary injunction order restraining defendant no. 1,2 & 3 from interfering with and disturbing the possession of the plaintiff over the suit land and/or restraining them from alienating, transferring, conveying and selling the suit land to any third party till disposal of the above suit;*
- III. *Cost and expenses incidental in filing the above suit;*
- IV. *Any other and/or further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the above case."*

13. Plaintiff did not seek any relief with regard to change of the nature of the land in the suit.

14. Admittedly, when the contract, specific performance of which is sought for in the present suit, was entered into, no application for conversion was made. No prior permission was sought for or obtained to enter into the subject contract in terms of Regulation 159(8) of the Regulation of 1966. Consequently, the penal provision of Regulation 151(1) (c) of the Regulations of 1966 stood attracted.

15. The third question of law framed by the order dated September 6, 2026 is answered by holding that since, the provisions of Regulation 159(8) of the Regulations, of 1966 are mandatory, an agreement for sale of a non occupancy right land cannot be enforced as the same is void. At least, it is voidable at the instance of any of the parties entering into such agreement for sale.

16. **SAT/10/2024** is therefore dismissed without any order as to costs.

(**DEBANGSU BASAK, J.)**