

18 SCOB [2023] HCD 284

**HIGH COURT DIVISION
(Civil Revisional Jurisdiction)**

Civil Revision No. 1847 of 2016

**Most. Shamima Begum and another
Vs.
Most. Rezuana Sultana (Jhumur) and
others**

Mr. Md. Ahsan Habib, Advocate
.....for the petitioners
Mr. Md. Golam Rabbani, Advocate
.....for the opposite parties

Heard on: 07.06.2022 & 19.06.2022
Judgment on: 06.11.2022

Present:

Mr. Justice Md. Zakir Hossain

Editors' Note:

In the instant case it was the contention of the pre-emptors that behind their back the case land was transferred to the pre-emptee. Thereafter, being aware as to the sale of the property, the pre-emptor procured a certified copy of the deed and filed the pre-emption case within the stipulated time. On the other hand, the pre-emptee-opposite party No. 1 contended that before the execution of the sale deed, the pre-emptee-opposite party Nos. 2 & 3 approached the pre-emptors for selling the case land. But they refused to purchase the same and as per their advice, the opposite party Nos. 2 & 3 transferred the case land to the pre-emptee-opposite party No. 1. The trial Court dismissed the case and the appellate Court also dismissed the appeal concurring with the decision of the trial Court. On revision the High court Division held that the conduct of the pre-emptors before and after purchase amply proved that the pre-emptor-petitioners waived their right of pre-emption and as such, the pre-emption case was rightly dismissed by the trial Court. The High Court Division also observed that it is true that the right of pre-emption accrues after the deed entered in the volume as per section 60 of the Registration Act, 1908, but if the right of pre-emption is waived before and after registration, the Court may turn down the prayer of pre-emption otherwise, the equitable principle of waiver and acquiescence which operate as estoppels will be meaningless. Finally, the High Court Division recommended some amendments in section 24 of the Non-Agricultural Tenancy Act, 1949 to be considered by the legislators for the greater interest of the people of the country.

Key Words:

The right of pre-emption; Section 60 of the Registration Act, 1908; Section 96 of the State Acquisition and Tenancy Act, 1950; Section 24 of Non-Agricultural Tenancy Act, 1949; waiver, acquiescence; estoppel

If the right of pre-emption is waived by the conduct of the pre-emptors before and after purchase, the pre-emption case may be dismissed:

The conduct of the pre-emptors before and after purchase amply proved that the pre-emptor-petitioners waived their right of pre-emption and as such, the pre-emption case

was rightly dismissed by the trial Court. The petitioners intentionally relinquished of their statutory right and thereby waived the right of pre-emption. The Appellate Court assigning cogent reason concurred with the finding of the trial Court; therefore, it does not warrant for any interference by this Court. It is true that the right of pre-emption accrues after the deed entered in the volume as per section 60 of the Registration Act, 1908, but if the right of pre-emption is waived before and after registration, obviously the Court may turn down the prayer of pre-emption; otherwise, the equitable principle of waiver, acquiescence which operate as estoppels will be meaningless. Nothing is absolute in law; therefore, it cannot be held absolutely that the pre-emption right shall accrue only after registration of the deed and if it so, the equitable principles of waiver and acquiescence shall be futile and fruitless. (Para 25)

It is expected that the Government shall take necessary step to amend the provision of section 24 in line with the latest amendment of section 96 of the SAT Act, 1950 for the greater interest of the people of the country.

The following points may be considered by legislators:

- (i) *Only the co-sharer tenant by inheritance can file pre-emption case under section 24 of the NAT Act.*
- (ii) *Transfer by way of sale only be pre-emptible and the pre-emption case has to file within two months from the date of registration as per section 60 of the Registration Act or if no notice is given under section 23 of the NAT Act within two months from the date of knowledge.*
- (iii) *The maximum period of filing pre-emption case shall not be more than two years from the date of expiry of the registration of the sale deed.*
- (iv) *The pre-emptor has to deposit consideration money along with 35% of the compensation of consideration money and an amount of 10% annual interest upon the amount of consideration money for the period from the date of execution deed of sale and to the date of filing the application for pre-emption.*
- (v) *The remaining co-sharer tenants by inheritance may join in the original application within two months from the date of service notice or within two months from the date of knowledge of registration of the deed.*
- (vi) *If pre-emption case is allowed, the pre-emptee has to execute a registered sale deed within stipulated time failing which the Court shall execute the registered deed and shall hand over the possession to the pre-emptor.*
- (vii) *Non-agricultural land or holding should be considered as synonym. If the non-agricultural land is recorded in different khatians by survey operation or by mutation proceeding, the right of pre-emption shall be ceased.*
- (viii) *The ceiling of the agricultural or non-agricultural land should not be more than twenty bighas in case of agricultural land and only five bighas in case of non-agricultural land and accordingly, consequential amendment has to be made in Bangladesh Land Holding (Limitation) Order, 1972(PO 98 of 1972), the Land Reforms Ordinance, 1984(Ordinance No. X of 1984) and Section 90 of the SAT Act (Act XXVIII of 1951).*
- (ix) *As per Rules of Business and Allocation of Business, it is the subject of the Ministry of the Land, therefore, the Ministry of Land may take necessary step to review the provisions of law relating to pre-emption as set out under Section 24 of the NAT Act.*

(Para 29)

JUDGMENT

Md. Zakir Hossain, J:

1. At the instant of the petitioners, the *Rule* was issued by this Court with the following terms:

“Records be called for.

Let a Rule be issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 28.02.2016 passed by the Joint District Judge, 2nd Court, Joypurhat in Miscellaneous Appeal No. 37 of 2011 affirming the judgment and order dated 17.07.2011 passed by the Senior Assistant Judge, Sadar, Joypurhat in Pre-emption Miscellaneous Case No. 07 of 2003 rejecting the case should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”

2. Facts leading to the issuance of the Rule are *inter alia* that the petitioner Nos. 1 & 2 as pre-emptors on 22-02-2003 instituted Pre-emption Miscellaneous Case No. 07 of 2003 under section 24 of the Non-Agricultural Tenancy Act, in short ‘the NAT Act’ before the Court of the learned Senior Assistant Judge, Sadar, Joypurhat against the opposite parties for pre-empting the land as described in the schedule to the pre-emption application contending *inter alia* that they are the co-sharers of the suit land by purchase and the opposite party Nos. 2 & 3 behind the back of the pre-emptors transferred the case land to the pre-emptee-opposite party No. 1. Being aware as to the sale of the property, the pre-emptor procured a certified copy of the deed on 04.12.2002 and filed the aforesaid suit within the stipulated time. The pre-emptee-opposite party No. 1 contested the pre-emption case contending *inter alia* that the pre-emption case is not maintainable in its present form and bad for defect of parties. It is also contended that before the execution of the sale deed, the pre-emptee-opposite party Nos. 2 & 3 went to him and approached the pre-emptors for purchasing the case land. But he refused to purchase the same as he has adequate land therein and as per their advice, the opposite party Nos. 2 & 3 transferred the case land to the pre-emptee-opposite party No. 1. After purchasing the case land by appointing local Ameen, the suit land was identified with the assistance of the pre-emptor No. 2 and with the help of the pre-emptor No. 2, a wall was constructed in the case land to the North and West boundaries of the case land which is about 2 to 2.5 feet and the pre-emptor No. 2 put his signature in the sketch map prepared by the local Ameen and the specific case of the opposite party is that the pre-emptors in order to harass the pre-emptee brought this case though the case is barred by principle of waiver, acquiescence and estoppels .

3. After conclusion of the trial, the learned Senior Assistant Judge was pleased to dismiss the pre-emption case holding the view that the pre-emption case is absolutely barred by principle of waiver, acquiescence and estoppels. Being aggrieved by and dissatisfied with the judgment and order of the trial Court, the pre-emptors preferred Miscellaneous Appeal No. 37 of 2011 before the Court of the learned District Judge, Joypurhat. After admitting the appeal, the learned District Judge transmitted the same to the Court of the learned Joint District Judge, 2nd Court, Joypurhat for disposal. Upon hearing, the learned Joint District Judge was pleased to dismiss the appeal concurring with the decision of the trial Court. Challenging the legality and propriety of the judgment and order of the Appellate Court, the pre-emptor being petitioner moved this Court and obtained the said Rule therewith.

4. Mr. Md. Ahsan Habib, the learned Advocate appearing on behalf of the petitioners strenuously submits that the pre-emption case is not barred by principle of waiver, acquiescence and estoppels, nevertheless, the courts below concurrently found that the pre-emption case is barred by principle of waiver, acquiescence and estoppels. He further submits that the right of the pre-emption accrued after the registration of the deed but not before; therefore, the pre-emptor's right has not been extinguished and it accrued after registration of the deed. He further submits that during the measurement of the land, the pre-emptee-opposite party did not put his signature, therefore, the courts below emphasizing on the sketch map illegally held that the pre-emption case is barred by principle of waiver, acquiescence and estoppels.

5. In support of his contention, he relies on the decisions of the cases of *Hazi Mohammad Abdul Malek v. Jamal Hossain*, 12 ALR 2018 (AD) 157; *Syed Shamsul Alam v. Syed Hamidul Haque and others*, 69 DLR (AD) (2017) 339 and *Dewan Ali (Md) v. Md. Jasimuddin and others*, 60 DLR (AD) (2008) 73.

6. *Per contra*, Mr. Md. Golam Rabbani, the learned Advocate for the opposite parties submits that the Courts below concurrently found that the pre-emptors refused to purchase the case land and after purchasing, his consent and mediation, the peaceful possession of the case land was handed over to the pre-emptee and as such, the case is absolutely barred by principle of waiver, acquiescence and estoppels. Therefore, there is no apparent reason to interfere with the concurrent findings of the Courts below and as such, the Rule is liable to be discharged. In support of his contentions, he relies on the decisions of the cases of *Akhlasur Rahman and others v. Safarullah and others reported in 42 DLR (AD) (1990) 189*; *Rokeya Begum v. Abu Zaher*, 5 BLC(AD) (2000) 97 and *Sree Aumullaya Chandra Halder v. Md. Mohsin Ali Mondol and others*, 22 BLD(HCD)(2002) 572.

7. Heard the submissions advanced by the learned Advocates for both the parties along with convoluted question of law in involved in this case and perused the materials on record with care and attention and seriousness as it deserves.

Now, the pertinent question is whether the impugned judgment and order is liable to be interfered with by this Court. The learned Senior Assistant Judge after thoroughly discussing the evidence on record held:

“সাক্ষ্য পর্যালোচনায় দেখা যায় যে, ও.পি.ডব্লিউ-২ ও ৩ এর মৌখিক সাক্ষ্য দ্বারা প্রার্থীকগণ কর্তৃক নালিশী দলিলের পূর্বে নালিশী জমি খরিদ করতে অস্বীকৃতি জ্ঞাপন করা এবং অন্যত্র বিক্রির পরামর্শ দেওয়ার বিষয়টি পরিপূর্ণভাবে সমর্থিত হয়েছে। এক্ষেত্রে বলা যায় প্রার্থীকগণ *expressly* নালিশী জমি খরিদ করার দাবী পরিহার করেছেন। আবার মামলার পিডিংস পর্যালোচনায় দেখা যায় প্রার্থীকগণ ২ নং প্রতিপক্ষের দলিলের বিষয় সম্পর্কে কোন আপত্তি করেন নাই। এ কারণে যদিও প্রার্থীকগণের প্রিয়েমশন অধিকার ক্ষুণ্ণ হয় নাই, তথাপি প্রার্থীকদের নালিশী সম্পত্তির প্রয়োজনীয়তার পরিমাণ সম্পর্কে ধারণা দেয় এবং নালিশী সম্পত্তি অন্যত্র হস্তান্তরিত হওয়া সংক্রান্তে প্রার্থীকদের *impliedly* সম্মতি থাকার বিষয় প্রকাশ করে। ও.পি. ডব্লিউ-১, ২ ও ৩ সকলেই নালিশী জমির মাপযোগে সংক্রান্ত প্রত্যক্ষসাক্ষী। এই সাক্ষীগণের মৌখিক সাক্ষ্য হতে নালিশী দলিলের পরে ২নং প্রার্থীক স্বয়ং উপস্থিত থেকে নালিশী জমি মাপযোগ করে দেওয়ার দাবী সন্দেহাতীতভাবে প্রমাণিত হয়েছে। এক্ষেত্রে ২নং প্রার্থীকের সম্মতি প্রকাশ পেয়েছে। প্রার্থীকপক্ষের বিজ্ঞ আইনজীবী যুক্তিতর্ক শুনানীর সময় বলেছেন, নালিশী দলিলের তারিখে ২ নং প্রার্থীক তার কর্মস্থল নাটোরে ছিলেন। ফলে নালিশী দলিল সম্পর্কে প্রার্থীক অবগত থাকার দাবী প্রমাণিত হয় নাই। লক্ষ্যণীয় যে, নালিশী দলিলের তারিখে ২নং প্রার্থীকের নাটোরে থাকার বিষয়টি সাক্ষ্য দ্বারা প্রমাণিত নয়। তাছাড়া, নালিশী দলিলের পূর্বে সম্পত্তি অন্যত্র খরিদ করার পরামর্শ দেওয়া এবং নালিশী দলিলের পরে স্বয়ং উপস্থিত থেকে মাপযোগ করে দেওয়ার বিষয় সাক্ষ্য দ্বারা প্রমাণিত হওয়ায় দলিল রেজিস্ট্রেশনের তারিখে ২নং প্রার্থীক নাটোরে থাকার কারণে প্রার্থীকপক্ষ মামলায় কোন সুবিধা পাবেন না। নালিশী

দলিলের পূর্বে নালিশী সম্পত্তির খরিদ করার দাবী পরিহার করা এবং নালিশী দলিলের পরে ১নং প্রতিপক্ষ বরাবর নালিশী সম্পত্তি হস্তান্তরিত হওয়ার বিষয়ে প্রার্থীকপক্ষের সম্মতি থাকার বিষয় শুধুমাত্র লিখিত আপত্তিতে কাগজে কলমে প্রকাশিত হয় নাই বরং মৌখিক সাক্ষ্য দ্বারা পুঙ্খানুপুঙ্খভাবে প্রমাণিত হয়েছে। এমতাবস্থায়, অত্র মোকদ্দমায় *estoppel* নীতি প্রয়োগ হতে কোন বাধা নাই। ঘটনা ও তথ্যের আলোকে রেকর্ডভুক্ত সাক্ষ্য প্রমাণ পর্যালোচনায় বর্তমান ক্ষেত্রে 42 DLR (AD) 189 পৃষ্ঠায় উল্লেখিত মামলার সিদ্ধান্ত অনুসরণযোগ্য। সার্বিক বিবেচনায় ওয়েভার, একুইসেন্স এন্ড এস্টোপেল এর নীতি দ্বারা বারিত সিদ্ধান্ত নেওয়া হলো।”

8. The Appellate Court concurred with the decision of the Trial Court holding the view that the pre-emptors refused to purchase the case land and after transferring the same at his presence and consent the case land was made over to the pre-emptee. In order to determine the intricate question of law involved in this case, we may ponder to *ratio* and *obiter* of some cases:

In the case of 12 ALR, *supra*, it was held:

“The High Court Division founded its reasoning on the fact that the pre-emptor admittedly refused to buy a minor’s property to avoid complication. In this respect, the Single Bench of the High Court Division was wrong because the legal position, as envisaged by section 96 of the State Acquisition and Tenancy Act, 1950 is that right to pre-emptive purchase accrues only after the property is sold, not before that, and that pre-emptive right does not exist, and is not enforceable before the sale, which principle is supported by the decision of this Division in *Fazaruddin v. Mayejuddin and others*, 44DLR (AD) 62.

9. In the case of 69 DLR, *supra*, it was held:

“We have also perused the decision reported in 13 MLR (AD) 198 = 60 DLR (AD) 73 wherein it has considered whether the right of pre-emptor extinguishes by waiver, acquiescence and estoppels and found that the right of pre-emption arises on the date of the transfer of the disputed land. Therefore, there cannot be waiver of the right before its accrual. When not specifically proved by clean evidence on record, the contention of waiver of the right of pre-emption cannot be accepted. This decision also found that right of pre-emption accrues on the date of registration of the sale deed. The pre-emptive right of purchase of the case land accrued to the pre-emptor only after the case land was sold to the purchaser pre-emptee by its owner and not before. Pre-emptive right does not exist before sale and so it is not enforceable before sale. Any such right before sale is an inchoate and immature right. Hence no conduct of the pre-emptor before sale of the case land refusing to purchase the same or consenting to sale thereof to other can constitute waiver, acquiescence or estoppels demolishing his right of pre-emption. The bare requisite for extinction or demolition of pre-emptor right lies in the accrual or existence of such right. In the instant case, the facts and circumstances proved on evidence do not establish that the conduct of the pre-emptor amounted to waiver, acquiescence or estoppels affecting his right of pre-emption.”

10. In the case of 60 DLR, *supra*, it was held:

“The view taken in the aforesaid case of *Fazruddin* appears to be a better view. Right of Pre-emption accrues on the date of registration

of the sale deed. The pre-emptive right of purchase of the case land accrued to the pre-emptor only after the case land was sold to the purchaser pre-emptee by its owner and not before. Pre-emptive right does not exist before the sale and so it is not enforceable before sale. Any such right before sale is an inchoate and immature right. Hence no conduct of the pre-emptor before sale of the case land refusing to purchase the same or consenting sale thereof to another can constitute waiver, acquiescence or estoppel demolishing his right of pre-emption. The bare requisite for extinction or demolition of pre-emption right lies in the accrual or existence of such right. In the instant case, the facts and circumstances proved on evidence do not establish that the conduct of the pre-emptor amounted to waiver, acquiescence or estoppel affecting his right of pre-emption.”

11. In the case of 42 DLR, *supra*, it was held:

“Waiver and acquiescence in pre-emption: Facts proved in a particular case may give rise to waiver and acquiescence and a pre-emptor may be held to be estopped from enforcing his right of pre-emption. It will be a question for proper inference from the facts provided in each particular case as to whether the plea of waiver and acquiescence exists or not.”

12. It was also held:

“It is the abandonment of a right, and is either express or implied-it may be implied from conduct which is inconsistent with the continuance of the right.”

13. It was further held:

“In its proper legal sense, acquiescence implies that a person abstains from interfering while a violation of his legal rights is in progress-it operates by way of estoppel.”

14. In the case of 5 BLC, *supra*, it was held:

“The appellant waived her right of pre-emption by refusing to purchase the land transferred at the earliest opportunity and that she is stopped from repurchasing the land when the lower appellate Court had misread the evidence of PWs on question of acquiescence and estoppel and thereby committed an illegality in arriving at its decision and hence the High Court Division did not commit any illegality in exercise of its jurisdiction under section 115(1) of the Code of Civil Procedure.”

15. It was also held:

“It appears that the learned Single Judge on due consideration of evidence came to the finding that the appellant waived her right of pre-emption by refusing to purchase the land transferred at the earliest opportunity and that she is estopped from purchasing the land. The learned Judge in so holding rightly relied upon the decision in the case of Akhlasur Rahman & others vs Safarullah & other 14 BLD (AD) 20. In Akhlasur Rahman, this Division held..... “that the right (right of pre-emption) can be waived or relinquished

at an earlier date than on date of actual completion of sale under the law or thereafter.”

16. It was further held:

“No doubt, the plea of waiver and acquiescence is a question of interference to be drawn from the facts proved in a give case. The learned Singe Judge, in the instant case rightly noted that the lower appellate Court had misread the evidence of the DWs on question of acquiescence and estoppel and thereby committed an illegality in arriving at its decision and, as such, the learned Single Judge did not commit any illegality in exercise of his jurisdiction under section 115(1) of the CPC.”

17. In the case of 22 BLD, supra, it was held:

“A pre-emption may be held to be stopped from enforcing his right of pre-emption if he abandons such right either expressly or by implied conduct. Acquiescence implies that if a person abstained from interfering while a violation of his legal right is in progress it operates by way of estoppel. In the instant case, there are adequate evidence on record to prove that the petitioner hand knowledge of the sale made by his brother and he gave consent to the sale in question waiving his preferential right of purchase.”

18. It was also held:

“So far the second ground taken by the learned appellate court is concerned, it appears that the petitioners’ right of pre-emption is said to have been barred by the principle of waiver and acquiescence as it has been found by evidence that the petitioner refused to purchase the case land at the time of payment of earnest money and that the sale transaction was completed with a consent and full knowledge of the co-sharer petitioner. It appears that both the courts below have concurrently found on the basis of available evidence on record that the petitioner was not only aware of the transfer made by his own brother but he had also give consent to the transaction having involvement in the negotiation. On perusal of the evidence, it appears that there are sufficient corroborative evidences in proof of such contention. So I am not inclined to interfere with such contention.”

19. The petitioner No. 2 examined himself as PW-1. His evidence has not been supported by any other witnesses as no corroborative evidence was advanced by the pre-emptor. In his evidence, he states that the opposite party No. 1 and opposite party Nos. 2-3 behind his back without giving him any proposal for selling out the property created a sale deed. He states to the effect-

“নালিশী জমি আমার খুব প্রয়োজন।” তিনি আরো স্বীকার করেন, “আমি এম.আর.আর ১৩৪৬ নং খতিয়ান এর সম্পত্তি নিয়ে মামলা করেছি। এই খতিয়ানের প্রজাদের মধ্যে কজন জীবিত, কজন মৃত বলতে পারব না। এই খতিয়ানের সকল প্রজা এবং তাদের ওয়ারিশদের পক্ষ করেছি। সাক্ষী আরজি দেখে বলেছে যে, “আমি এম.আর.আর খতিয়ানের প্রজাদের পক্ষ করি নাই। আমি জয়পুরহাট শহরে মোট ৫০ শতক জমি খরিদ করেছি। আমার খরিদকৃত ৫০ শতক জমি বাবদ আমার নামে আর.এস খতিয়ান হয়েছে। এই ৫০ শতক জমি জয়পুরহাট পৌর এলাকার মধ্যে।” তার সাক্ষ্যে তিনি আরো বলেন যে, “নালিশী দাগের দখলকারদের সকলকে পক্ষ করি নাই।”

20. O.P.W-1, Md. Abu Bakkar Siddique, aged-73, in his evidence states:

“নালিশী জমির লাগা উত্তর-দক্ষিণে লম্বা একটি রাস্তা এবং রাস্তার পূর্ব পাশে প্রার্থক আফজালের দোতলা বাড়ি আছে। নালিশী জমির লাগা পশ্চিমে প্রার্থকের নিজ নামীয় ১৬.৫ শতক ফাঁকা

জমি আছে। এই ১৬.৫ শতক জমির লাগা পূর্বে আনুমানিক আরো ৫ শতক জমি ২নং প্রার্থকের আছে। এই জমিতে প্রার্থকের পাকা বাড়ি নির্মাণাধীন আছে। নালিশী জমির লাগা উত্তরে ১নং প্রার্থকের ৫ শতক জমি ফাঁকা আছে। নালিশী জমির লাগা রাস্তার পূর্ব পাশে আনুমানিক ২০ শতকের উপর প্রার্থকের পাকা প্রাচীর ঘেরা আরো একটি বাড়ি আছে। নালিশী জমি বিক্রির পূর্বে প্রার্থককে বারবার(একাধিকবার) প্রস্তাব নিয়ে গেছি। প্রার্থক তার অনেক জমি থাকায় নালিশী জমি কিনতে অস্বীকৃতি জানায়।”

21. O.P.W-2, aged-72, in his evidence states:

“আমি নালিশী জমি প্রথমে প্রার্থকদের বরাবর বিক্রির প্রস্তাব নিয়ে যাই।” তিনি জেরায় বলেন যে, “আফজাল বরাবর বিক্রির প্রস্তাব নিয়ে গেলে সে খরিদ করার আশ্বাস দিয়ে একাধিকবার সময় নেয়। আমি মোট ২ বার গিয়েছি।” তিনি আরো বলেন যে, “দলিলের ৫ দিন পর মাপঝোপ করা হয়। মাপঝোপের সময় ১ নং প্রতিপক্ষের বা তার স্বামী উপস্থিত ছিল না। মাপঝোপের সময় আফজালসহ ৫/৬ জন উপস্থিত ছিল। স্কেচ ম্যাপে সই করেছে ৪ জন।”

22. O.P.W-3, Md. Shariful Islam in his evidence states:

“আমি পক্ষদের চিনি। নালিশী জমি চিনি। আমি রাজমিস্ত্রি। প্রার্থী ও প্রতিপক্ষদের বাড়িতে কাজ করেছি। নালিশী জমি বিক্রির পূর্বে আমি আফজালের কাছে বিক্রির প্রস্তাব নিয়ে গিয়েছিলাম। আফজাল কিনতে অস্বীকৃতি জানায় এবং অন্যত্র বিক্রি করার কথা বলেছে। তারপর, প্রার্থকদের জ্ঞাতসারে নালিশী জমি বিক্রি করি। মাপঝোপ করে সীমানা প্রাচীর দেওয়া হয়। নালিশী জমির সীমানা প্রাচীর আমি দিয়েছি।” তিনি জেরায় কৌশলে আরো বলেন যে, “স্কেচ ম্যাপে আমি, আফজাল ও আমিন সাহেব সই করেছে।”

23. The pre-emptor No. 2 (P.W-1) himself admitted that he did not make all the co-sharers as party to the pre-emption case and he admitted that he purchased 50 decimals of land including the case land within Joypurhat, Pourashava and R.S record was duly prepared in their names and as such, their co-sharership in the holding as well as in the case land has been ceased as per law and therefore, he has got no *locus standi* to file the aforesaid pre-emption case. The pre-emptors have 50 decimals of land within Joypurhat, Pourashava, but the pre-emptee has got no land except the case land measuring 6.5 decimals.

24. Unfortunately, the pre-emptors after waiving their right instituted the pre-emption case to snatch the property of the pre-emptee. In this respect, the relevant portion of the famous poems of Nobel laureate Rabindranath Tagore may be read thus:

“এ জগতে, হায়, সেই বেশি চায় আছে যার ভূরি ভূরি-
রাজার হস্ত করে সমস্ত কাঙালের ধন চুরি।”

25. The conduct of the pre-emptors before and after purchase amply proved that the pre-emptor-petitioners waived their right of pre-emption and as such, the pre-emption case was rightly dismissed by the trial Court. The petitioners intentionally relinquished of their statutory right and thereby waived the right of pre-emption. The Appellate Court assigning cogent reason concurred with the finding of the trial Court; therefore, it does not warrant for any interference by this Court. It is true that the right of pre-emption accrues after the deed entered in the volume as per section 60 of the Registration Act, 1908, but if the right of pre-emption is waived before and after registration, obviously the Court may turn down the prayer of pre-emption; otherwise, the equitable principle of waiver, acquiescence which operate as estoppels will be meaningless. Nothing is absolute in law; therefore, it cannot be held absolutely that the pre-emption right shall accrue only after registration of the deed and if it so, the equitable principles of waiver and acquiescence shall be futile and fruitless.

26. It cannot be denied that the scarcity of the urban land is increasing day by day; therefore, the pre-emption by co-sharer by purchase should be discouraged by reviewing and revisiting section 24 of Non-Agricultural Tenancy Act. Section 96 of the State Acquisition and Tenancy Act, in short, the SAT Act was amended by Act XXXV of 2006 considering the socio-economic perspective of the country, but in the meantime, 73 years have been elapsed

of enacting NAT Act, 1949. By lapse of time, a conspicuous revolution has taken place and urbanization has been tremendously progressed; therefore, the law does require to be reviewed for the greater interest and welfare of the people of the country. In this respect, I am of the view that a comparative distinction between the two should be mentioned here for better appreciation.

27. For better understanding and appreciation, relevant provisions of section 96 of SAT Act, 1950 may be read thus:

96. (1) If a portion or share of a holding of a raiyat is sold to a person who is not a co-sharer tenant in the holding, one or more co-sharer tenants of the holding may, within two months of the service of the notice given under section 89, or, if no notice has been served under section 89, within two months of the date of the knowledge of the sale, apply to the Court for the said portion or share to be sold to himself or themselves:

Provided that no application under this section shall lie unless the applicant is-

(a) a co-sharer tenant in the holding by inheritance; and

(b) a person to whom sale of the holding or the portion or share thereof, as the case may be, can be made under section 90:

Provided further that no application under this section shall lie after expiry of three years from the date of registration of the sale deed.

(2) In an application under sub-section (1), all other co-sharer tenants by inheritance of the holding and the purchaser shall be made parties.

(3) An application under sub-section (1) shall be dismissed unless the applicant or applicants, at the time of making it, deposit in the Court-

(a) the amount of the consideration money of the sold holding or portion or share of the holding as stated in the notice under section 89 or in the deed of sale, as the case may be;

(b) compensation at the rate of twenty five per centum of the amount referred to in clause (a); and

(c) an amount calculated at the rate of eight per centum simple annual interest upon the amount referred to in clause (a) for the period from the date of the execution of the deed of sale to the date of filing of the application for preemption.

(Emphasis supplied)

28. For better understanding and appreciation, relevant provisions of section 24 of NAT Act, 1949 may also be read thus:

24. (1) If a portion or share of the non-agricultural land held by a non-agricultural tenant is transferred, one or more co-sharer tenants of such land may, within four months of the service of notice issued under section 23 and, in case no notice had been issued or served, then within four months from the date of knowledge of such transfer, apply to the court for such portion or share to be transferred to himself or to themselves, as the case may be.

(2) The application under sub-section (1) shall be dismissed unless the applicant at the time of making it deposits in Court the amount

of the consideration money or the value of the portion or share of the property transferred as stated in the notice served on the applicant under section 23 together with compensation at the rate of five per centum of such amount.
(Emphasis supplied)

29. In the above backdrop, it is expected that the Government shall take necessary step to amend the provision of section 24 in line with the latest amendment of section 96 of the SAT Act, 1950 for the greater interest of the people of the country.

The following points may be considered by legislators:

- (i) *Only the co-sharer tenant by inheritance can file pre-emption case under section 24 of the NAT Act.*
- (ii) *Transfer by way of sale only be pre-emptible and the pre-emption case has to file within two months from the date of registration as per section 60 of the Registration Act or if no notice is given under section 23 of the NAT Act within two months from the date of knowledge.*
- (iii) *The maximum period of filing pre-emption case shall not be more than two years from the date of expiry of the registration of the sale deed.*
- (iv) *The pre-emptor has to deposit consideration money along with 35% of the compensation of consideration money and an amount of 10% annual interest upon the amount of consideration money for the period from the date of execution deed of sale and to the date of filing the application for pre-emption.*
- (v) *The remaining co-sharer tenants by inheritance may join in the original application within two months from the date of service notice or within two months from the date of knowledge of registration of the deed.*
- (vi) *If pre-emption case is allowed, the pre-emptee has to execute a registered sale deed within stipulated time failing which the Court shall execute the registered deed and shall hand over the possession to the pre-emptor.*
- (vii) *Non-agricultural land or holding should be considered as synonym. If the non-agricultural land is recorded in different khatians by survey operation or by mutation proceeding, the right of pre-emption shall be ceased.*
- (viii) *The ceiling of the agricultural or non-agricultural land should not be more than twenty bighas in case of agricultural land and only five bighas in case of non-agricultural land and accordingly, consequential amendment has to be made in Bangladesh Land Hodling (Limitation) Order, 1972(PO 98 of 1972), the Land Reforms Ordinance, 1984(Ordinance No. X of 1984) and Section 90 of the SAT Act (Act XXVIII of 1951).*
- (ix) *As per Rules of Business and Allocation of Business, it is the subject of the Ministry of the Land, therefore, the Ministry of Land may take necessary step to review the provisions of law relating to pre-emption as set out under Section 24 of the NAT Act.*

30. Having regards to the facts and circumstances of the case, I am of the view that the Rule is devoid of any substance and accordingly, it shall fall through.

31. In the result, the Rule is discharged, however, without passing any order as to costs.

32. Let a copy of the judgment with LCRs be sent down to the Court below at once.

33. A copy of the judgment also be transmitted to the Secretary, Ministry of Land for taking necessary step.