

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)

**Present:**

**Mr. Justice Md. Mozibur Rahman Miah  
and**

**Mr. Justice Md. Bashir Ullah**

**Civil Revision No. 1452 of 2016**

In the matter of:

An application under Section 115(1) of the Code of  
Civil Procedure, 1908

And

In the matter of:

Biswas Builders, represented by Alhaz Md. Nazrul Islam  
---Pre-emptee-Petitioner.

-Versus-

Ruhidas Saha being dead, his heirs Promila Saha and  
others.

---Pre-emptors-Opposite parties.

Mr. J.K. Paul with

Mr. Liton Acharjeea, Advocates

---For the petitioner.

Mr. Tapash Kumar Biswas, Advocate

--- For the opposite party Nos.1-5.

**Heard on 14.05.2024**

**Judgment on: 20.05.2024**

Md. Bashir Ullah, J

At the instance of the purchaser-pre-emptee in Pre-emption  
Miscellaneous Case No.47 of 2012 this Rule was issued calling upon the  
pre-emptor-opposite parties to show cause as to why the order No.21  
dated 03.11.2015 passed by the learned Joint District Judge, 2<sup>nd</sup> Court,  
Dhaka in Pre-emption Miscellaneous Case No.47 of 2012 rejecting the  
application filed by the pre-emptee-petitioner under Order VII Rule 11  
read with section 151 of the Code of Civil Procedure should not be set

aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, the operation of the impugned order No.21 dated 03.11.2015 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Dhaka in Pre-emption Miscellaneous Case No.47 of 2012 was stayed for six months which was lastly extended on 05.02.2018 till disposal of the Rule.

Facts, relevant for the disposal of the Rule, in short, are that the Pre-emptor-opposite parties filed Pre-emption Miscellaneous Case No.47 of 2012 impleading pre-emptee-opposite party No.1 under Section 96 of the State Acquisition and Tenancy Act stating *inter alia* that the case land originally belonged to Noni Gopal Saha, Panchananda Saha, Sudarshan Saha, sons of Late Lalit Mohan Saha, Jatindra Mohan Saha, son of Late Mohan Chandra Saha, Nikhil Chandra Saha, Suvash Chandra Saha sons of late Rejendra Chandra Saha. On 16.09.1952 Noni Gopal Saha, Panchanon Saha and Sudarshan Saha transferred 3.65 acres of land through three registered deeds bearing Nos. 3894, 3895 and 3896, including 60 decimals of land from S.A. Plot No. 193 in favour of Joshoda Lal Saha and delivered possession thereof. On 12.12.63 Jatindra Mohan Saha, Nikhil Chandra Saha and Subash Chandra Saha executed registered deed No. 3856 and 8666 for transferring 60 decimals of land from S.A. Plot No. 247 and R.S. Plot No. 706 including the land of other plots in favour of Joshoda Lal Saha and delivered possession thereof. In the above-mentioned way while Joshoda Lal had been owning and possessing the case land died leaving behind the pre-emptor-petitioners,

Ruhidas Saha, Akil Chandra Saha, Haru Kumar Saha, Bongshi Badan Saha, Gour Chandra Saha and opposite party No.6, Narayan Chandra Saha. Thus, the pre-emptor-opposite parties and seller-opposite party No.6 owned the case land. The pre-emptors including seller have been jointly owning, and possessing the case land by paying rent and taxes. On 26.08.2012, the pre-emptors came to know through local people that, the opposite party No.6 transferred the case land elsewhere behind their back. The pre-emptors upon searching came to know about the existence of the registered deed on 29.08.2012 and obtained the certified copy of the registered sale deed and found that their brother-opposite party no.6 transferred the case land to the pre-emptee-petitioner by registered sale deed dated 14.08.2012 who is a stranger purchaser in the case land and not the co-sharer in the case holding. Being aggrieved the pre-emptors filed the Pre-emption Miscellaneous Case by depositing consideration money, compensation and interest.

The pre-emptee-petitioner contested the Pre-emption Miscellaneous Case by filing a written objection denying all material allegations brought in the application stating *inter alia* that there is no cause of action to file the pre-emption case and the same is not maintainable in its present form and manner. It is stated that the case land was originally owned and possessed by opposite party No.6 and he mutated his name for the case land. Afterwards, he transferred the same to pre-emptee-opposite party No.1 and delivered possession thereof. The sale deed was not entered in the volume of the registration office and for the said reason the cause of action did not arise because Section 60 of

the Registration Act was not complied with. The case land being changed to homestead has become non-agricultural land and for such reason the pre-emption case is not maintainable under section 96 of the State Acquisition and Tenancy Act (SAT Act). The case land is part of Biswas Lake City Project wherein the pre-emptee-petitioner has got few hundred bighas of land and for this reason massive development work is ongoing. The pre-emptee developed the case land by filling earth and made the said land as Bhati land. Thereafter the pre-emptee hanged a sign board in the case land for selling the same.

Soon after filing of the pre-emption case, the pre-emptor filed an application under Order 39, Rule 1 read with section 151 of the Code of Civil Procedure for injunction restraining the pre-emptee from evicting the pre-emptor from the case land on 09.10.2012.

The pre-emptee-petitioner filed written objection dated 23.08.2015 against the application for temporary injunction denying all material allegations brought in the injunction and prayed for rejection of the application.

Thereafter, the pre-emptee-petitioner filed another application under order VII rule 11 read with section 151 of the Code of Civil Procedure praying for rejection of the pre-emption application stating *inter alia* that there was no cause of action when the suit was filed on 01.10.2012 as the sale in question was not entered in to the volume of Sub-Registry Office till 01.10.2012 and as such the plaint is liable to be rejected due to want of cause of action at the time of filing of the case. The compensation upon the deed value is Tk. 6,22,500/- and one year

interest is Tk. 1,99,200/- so the pre-emptor ought to have paid in total Tk. 33,11,700/- but the pre-emptor paid less amount that is Tk. 1,66,000/- so according to section 96(3) of the State Acquisition and Tenancy Act the application is liable to be rejected.

The pre-emptors did not file any written objection against the application under Order VII Rule 11 of the Code of Civil Procedure.

Upon hearing both the parties, the learned Joint District Judge, 2<sup>nd</sup> Court, Dhaka by impugned order dated 03.11.2015 rejected the application filed under order VII Rule 11 of the Code of Civil Procedure.

Being aggrieved, the pre-emptee as petitioner preferred the instant Civil Revision and obtained this Rule and order of stay.

Mr. Liton Acharjeea, learned Advocate appearing on behalf of the pre-emptee-petitioner submits that there has been no cause of action in the case as the sale deed in question was not entered in to the volume of Sub-Registry Office till 01.10.2012 and as such the petition of preemption is liable to be rejected but the learned Court below without realizing the said aspect passed the impugned order and thereby committed an error of law resulting in an error in the decision that has occasioned failure of justice.

Learned Advocate further submits that the compensation upon the deed value is Tk. 6,22,500/- and one year interest is Tk. 1,99,200/-, so the pre-emptor ought to have paid in total Tk. 33,11,700/- but the pre-emptor paid less amount of Tk. 1,66,000/-, so according to section 96(3) of the State Acquisition and Tenancy Act, the application is liable to be rejected but the learned Court below without calculating the amount as

has been pointed out by the pre-emptee passed the impugned order and thus committed an error of law resulting in an error in the decision occasioning failure of justice.

*Per contra*, Mr. Tapash Kumar Biswas, learned Advocate appearing on behalf of the opposite party Nos.1(a) to 5 submits that the learned Joint District Judge, 2<sup>nd</sup> Court, Dhaka passed the impugned order very legally and rightly. Because the cause of action accrues on the date of the registration of the deed of sale. In support of his contention, the learned Advocate refers to the case of *Ayesha Khatun (Musammat) Vs. Musammat Jahanara Begum*, reported in 43 DLR (AD)(1991) 9.

Heard the submissions of the learned Advocates for both sides, perused the Civil Revision, impugned order passed by the trial Court, and other materials on record.

The record shows that, the case land belonged to Joshoda Lal Saha. He died leaving behind the pre-emptors, namely Ruhidas Saha, Akhil Chandra Saha, Haru Kumar Saha, Bongshi Badan Saha,(opposite party Nos.1-5) and the seller-opposite party No.6, namely Narayan Chandra Saha. After the demise of Joshoda Lal Saha, the pre-emptor-opposite party Nos.1 to 5 and their full brother seller-opposite party No.6 became the owner of the case land along with other lands. They were enjoying the possession of the case land by paying the rent and taxes as *ejmali* properties which were not partitioned. The pre-emptor-opposite party Nos.1 to 5 came to learn from the local people on 26.08.2012 that opposite party No.6 transferred the case land elsewhere beyond their knowledge. Being aware of the sale of the case land, the pre-emptor

procured certified copy of the registered sale deed No.21124 dated 14.08.2012 and found that the opposite party No.6 sold out the case land to the pre-emptee-petitioner who is a stranger purchaser. The pre-emptors are the co-sharers by inheritance in the case land and the pre-emptee-petitioner is not a co-sharer. Being aggrieved, the pre-emptors filed Pre-emption Miscellaneous Case No. 47 of 2012 before the Joint District Judge, Second Court, Dhaka on 01.10.2012 by depositing Tk. 24,90,000/- as consideration money, Tk. 6,22,500/- as compensation at the rate of 25% and Tk. 33,200/- calculated at the rate of 8% as simple annual interest on consideration money for two months at the time of filing of the case. Thus, the pre-emptors deposited a total amount of Tk. 31,45,700/- through challan No.6838 on 30.09.2012. We find no error in depositing the amount of compensation and interest. The pre-emptors filed the pre-emption case following the provisions of section 96 of the State Acquisition and Tenancy Act, 1950. For better understanding and appreciation the relevant portion of section 96 of the SAT Act is quoted below:

**“96 Right of pre-emption- (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 98, or, if no notice has been served under section 98, 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.

We find that the compensation rate is 25% of the consideration money which is clearly enshrined in clause (b) of sub-section (3) of section 96 of the SAT Act. The amount deposited as compensation by the pre-emptor is entirely correct. We also find that, the interest will be calculated at the rate of eight per centum simple annual interest upon the amount referred to the consideration money for the period from the date of the execution of the deed of sale to the date of filing of the application for pre-emption as provided in sub-section 3 clause (c). The pre-emptors filed the pre-emption Case on 01.10.2012 and the date of registration is 14.08.2012. So the period is 48 days, and the amount is Tk. 26,197. But the pre-emptors paid Tk. 33,200/- as interest, which is greater than the payable amount. So, the submissions made by the Advocate appearing on behalf of the pre-emptee-petitioner regarding calculation and interest can not be accepted.

It appears from the record that the sale deed was registered on 14.08.2012 and the pre-emptors knew about the transfer of the case land on 26.08.2012. They subsequently filed the pre-emption case on 01.12.2012. The impugned transfer was made beyond the knowledge of the pre-emptors. The sale deed was executed and registered on 14.08.2012 in favour of stranger pre-emptee by the full brother of the pre-emptors who are co-sharers by inheritance in the case land. The cause of action arose on 26.08.2012 when the local people informed the pre-emptors about such transfer by opposite party 6 and the pre-emptors

got definite knowledge after obtaining the certified copy of the impugned sale. Hence, the arguments advanced by the Advocate on behalf of the pre-emptee-petitioner to the effect that the case is premature and there is no cause of action as the deed in question was not entered in the volume of sub-registry office under section 60 of the Registration Act till 01.10.2012 has no ground to stand. The right of pre-emption accrues from the date of registration.

In this regard, we get support from the decision passed in *Ayesha Khatun Vs. Jahanara Begum and others*, reported in 43 DLR (AD)(1991) 9, wherein the Honourable Appellate Division held:

“It is now a settled principle of law that the cause of action under section 96 of the State Acquisition and Tenancy Act accrues on the date of the registration of the deed of sale, when registration is compulsory...”

We find that the learned Joint District Judge, 2<sup>nd</sup> Court, Dhaka has not committed any error of law resulting in an error in the decision that has ever occasioned failure of justice and hence, there occurs no illegality in the impugned order that calls for any interference by this Court.

In the result, the Rule is discharged. However, there will be no order as to costs.

The order of stay granted earlier by this Court at the time of issuance of the Rule is hereby recalled and vacated.

The learned Judge of the trial Court is directed to dispose of the Preemption Miscellaneous Case as expeditiously as possible preferably within 06(six) months from the date of receipt of the copy of this judgment and order.

Communicate the judgment to the concerned Court forthwith.

**Md. Mozibur Rahman Miah,J**

I agree

Aziz/abo