Present:

MR. JUST ICE S.M. EMDADUL HOQUE

Civil Revision No. 4160 of 2013.

IN THE MATTER OF:

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

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IN THE MATTER OF:

Riat Ali and others
..... Pre-emptee-petitioners
-Versus –

Rawshanara Khatoon and others
..... opposite parties.

Mr. Monisankar Sarker for
Mr. Surojit Bhattachargee, Advocates
….. for the petitioners.

Mr. Hassan Shaheed Qumruzzaman, Advocate
..... for the opposite parties.

Heard and Judgment on:16.01.2024.

S.M. Emdadul Hoque, J:

On an application of the petitioner Riat Ali and others under section 115(1) of the Code of Civil Procedure the Rule was issued calling upon the opposite party Nos.1 and 2 to show cause as to why the impugned judgment and order dated 10.10.2013 passed by the learned Additional District Judge, 1st Court, Jashore in Miscellaneous Appeal No.7 of 2012 dismissing the appeal affirming the order No.121 dated 17.11.2011 passed by the learned Joint District Judge, 1st Court, Jashore in Miscellaneous (pre-emption) Case No.117 of 2000 rejecting

the application for holding local investigation by a survey knowing Advocate Commissioner on certain points mentioned in the application should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Facts necessary for disposal of the Rule, in short, is that the opposite Nos.1 and 2 as pre-emptor instituted Miscellaneous Case No.117 of 2000 under Section 24 of the Non Agricultural Tenancy Act in the Court of Joint District Judge, 1st Court, Jashore against the pre-emptee opposite party petitioners.

The opposite parties contested the case by filing written objection denying all the material assertion of the case. Subsequently, the pre-emptee No.1 filed an application under Order XXVI rule 9 of the Code of Civil Procedure for local investigation of the case land by a survey knowing Advocate Commissioner regarding the development cost of the property on 17.11.2011.

The trial Court by its order No.121 dated 17.11.2011 rejecting the said application.

Against the said order of the trial Court the pre-emptee opposite parties preferred Miscellaneous Appeal No.7 of 2012 before the learned District Judge, Jashore the said appeal was heard by learned Additional District Judge, 1st Court, Jashore who after hearing the parties and considering the facts and circumstance of the case

dismissed the appeal and thereby affirming the judgment and order of the trial Court by its judgment and order dated 10.10.2013.

Being aggrieved by and dissatisfied with the impugned judgment and order of the Courts below the pre-emptee petitioner filed this revisional application under Section 115(1) of the Code of Civil Procedure and obtained the Rule.

Mr. Hassan Shaheed Quamruzzaman, the learned Advocate enter appeared on behalf of the opposite party No.1 through vokalatnama to oppose the Rule.

Ms. Monisankar Sarker, the learned Advocate appearing on behalf of the petitioners submits that the pre-emptee petitioners after purchasing of the case land making development and if the judgment will pass without ascertaining the same the petitioner will be deprived for getting the development cost. She further submits that this is a case for pre-emption under Section 24 of the Non-Agricultural Tenancy Act, and then the Court ought to have considered the development cost if claiming by the pre-emptee and since the pre-emptee filed application for local investigation for ascertaining the development cost as well as the another surrounding property and the petitioner also specially mentioned the development cost in his application and the pre-emptor opposite party did not raise any objection regarding the development cost and submits that the trial Court ought to have considered the said matter by appointing survey

knowing Advocate Commission as such both the Court committed serious error in law resulting in an error in the decision occasioning failure of justice. She prayed for making the Rule absolute.

On the contrary, Mr. Hassan Shaheed Quamruzzaman, the learned Advocate appearing on behalf of the opposite party No.1 submits that the application is misconceived one. He further submits that the case was filed on 07.11.2000 and the petitioner appeared in the said case and filed written objection on 05.01.2004 and in the meantime the parties adduced witnesses and they were duly cross-examined and at the end of the trial the pre-emptee-petitioners filed this application on 17.11.2006 and in such a case no scope to consider the said facts whether any development has been made by the petitioners and as such both the Court rightly rejected the application. He further submits that the pre-emptee petitioner has scope to prove the same by adducing evidence and no requirements for appointment of survey knowing Advocate Commissioner for local investigation. He prayed for discharging the Rule.

I have heard the learned Advocate for both the sides, perused the impugned order of the Courts below and the papers and documents as available on the record.

This is a case for pre-emption under Section 24 of the Non Agricultural Tenancy Act, the provision of Non Agriculture Tenancy Act specially the sub-section 3 of Section 24 provides that after filing the

pre-emption case and appearing of the parties if any claim for development in the case land the Court after inquire of the same passed necessary order for depositing the cost along with the cost together with interest at the rate of six and a quarter per centum per annum with effect from the date on which the transferee made such payments or spent such amounts.

In pre-emption case under Section 24 of the Non-Agricultural Tenancy Act the Court ought to have considered all the matter of development cost. It is found that the petitioner appeared in the instant case and filed written objection on 05.01.2004 and the pre-emptor side produce the witness and they were duly cross-examined by the pre-emptee petitioner but subsequently at the end of the trial the petitioner field application for local investigation under Order XXVI rule 9 of the Code of Civil Procedure on 17.11.2006

It is the party to claim their right or any other relief sought for should be at the initial stage. But it appears that the pre-emptee petitioner did not file any application at the initial stage before the evidence has been started.

The sub-section 3 of Section 24 of the Non-Agricultural Tenancy Act as under:

> *"If such deposit is made, the Court shall give notice to the transferree to appear within such period as it may fix and to state what other sums he has paid in*

respect of rent for the period after the date of transfer or in annuling encumbrances the property and also what other amounts, if any, have been spent by him, between the date of the transfer and the date of service of the notice of the application, in erecting any building or structure or in making any other improvement in [the portion or share of the property] transferred. The Court shall then dirent applicant, including any person whose application under sub section (4) is granted, to deposit within such period as the Court thinks reasonable such amount as the transferee has paid or spent on these accounts together with interest at the rate of six and a quarter per centum per annum with effect from the date on which the transferee made such payments or spent such amounts:

Provided that if the correctness of any amount claimed to have been paid or spent by the transferee on any such account is disputed by any applicant the Court shall enquire into such dispute and, after giving the transferee an opportunity of being heard, determine the amount actually paid or spent by the transferee on any such account and

shall then direct the applicant to deposit the amount so determined with interest at the rate of six and quarter per centum per annum aforesaid within such period as the Court thinks reasonable."

On close reading of the aforesaid provision the Court ought to have settled the matter of development cost before commencement of the trial on considering the written objection and the prayer of the pre-emptee. But in the instance case since the pre-emptee did not claim the same at the initial stage after filing the written objection but he filed this application long after two years of the filing the case on 17.11.2006. Even the pre-emptee petitioner did not file any application under sub-section 3, whereas filed an application under Order XXVI rule 9 which is not applicable in the instant case.

However, for ends of justice since the pre-emptee petitioner claimed that he has spent some amounts for development of the case land after purchase of the land mentioning in the application. The Court may consider the same on the basis of the evidence on record as adduced by the parties and may give the parties to adduce additional evidence or evidence if requires for ends of justice and may dispose of the case considering the development cost before pronounce of judgment.

Considering the facts and circumstance of the case we find no merit in the Rule. However, since the applicant filed the application for

considering the development cost in a wrong section however, I am inclined to dispose of the Rule with the above view.

In the result, the Rule is disposed of.

The trial Court is directed to consider the application of the petitioner only for the development cost on the basis of the evidence on record as adduced by the pre-emptee-petitioner at the time of pronouncement of the judgment and if requires then direct the pre-emptor to deposit the said amounts for ends of justice.

The order of stay granted earlier by this court is hereby recalled and vacated.

Since this is a long pending case the trial court is directed to dispose of the pre-emption case as early as possible preferably within 06 (six) months from the date of receipt of this order in accordance with law and the observations as made above.

Communicate the order at once.

Obayedur, B.O.