

Present:
Mr. Justice Md. Salim

CIVIL REVISION NO.4484 OF 2016
WITH
CIVIL REVISION NO.1429 OF 2014

Mosammat Morium Khatun :Pre-emptee-Petitioner.
(In both the Civil Revisions)

-VERSUS-

Md. Akhiluddin Sheikh and :Pre-emptor-Opposite Parties.
others : (In both the Civil Revisions)

For the Petitioner : Mr. Ranjan Chakravorty, Advocate
(In both the Civil Revision)
For the Opposite Party No.1 : Mr. A.S.M.M. Kabir Khan, Advocate
(In both the Civil Revision)

Heard on 18.05.2025, 27.05.2025,
: 28.05.2025, 23.06.2025,
24.06.2025 and 08.07.2025.

Judgment on : **11.08.2025**

Since the same questions of law and facts involved in both the aforesaid Civil Revisions, which arise out of the same judgments and orders, have been taken up together for hearing and now being disposed of by this common Judgment.

By the Rule in Civil Revision No.4484 of 2016 are directed against the Judgment and order dated 30.11.2015 passed by the learned Joint District Judge, 1st Court, Rajbari in Miscellaneous Appeal No.26 of 2010 disallowed the appeal and affirming the Judgment and order dated 06.06.2010 passed by

the learned Assistant Judge, Pangsha, Rajbari in Miscellaneous Case No.18 of 2005 allowing the preemption on condition to pay development cost of Tk.1,00,000/- should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

In Civil Revision No.1429 of 2014 are directed against the Judgment and order dated 23.11.2011 passed by the learned Joint District Judge, 1st Court, Rajbari in Miscellaneous Appeal No.20 of 2010 allowing the appeal in setting aside the development cost Tk. 1,00,000/- and reversing the Judgment and order dated 06.06.2010 passed by the learned Assistant Judge, Pangsa, Rajbari in Miscellaneous Case No.18 of 2005 allowing the preemption on condition to pay development cost of Tk.1,00,000/- should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Facts relevant for disposal of the Rules are that the opposite party No.1 herein as pre-emptor preferred Miscellaneous Case No.18 of 2005 before the Assistant Judge, Pangsha, Rajbari against the pre-emptee petitioner under Section 96 of the State Acquisition and Tenancy Act,1950 for preemption of the case land contending inter-alia that the

preemptor is a co-sharer of the case holding as well as the contiguous land owner on the contrary, the pre-emptee seller sold the case land to the pre-emptee purchaser, who is a stranger to the case holding, by a kabala dated 14.02.2005, without serving any notice upon the pre-emptor under Section 89 of the State Acquisition and Tenancy Act.

The petitioner herein, as the pre-emptee purchaser, contested the case by filing a written objection, contending, inter alia, that the pre-emptee seller had sold the case land to the pre-emptee purchaser with due mediation of the pre-emptor. Therefore, the instant case is barred by the principles of estoppel, waiver, and acquiescence, and thus, the Rule is liable to be discharged.

The learned Assistant Judge, Pangsha, Rajbari, framed the necessary issues to substantiate the dispute between the parties.

Subsequently, the learned Assistant Judge, Pangsha, Rajbari, by the Judgment and order dated 06.06.2010, allowed the preemption of the Miscellaneous Case on the condition of paying the development cost of Tk 1,00,000/-.

Being aggrieved by the above Judgments and orders, the pre-emptee, as appellant, preferred an appeal, being

Miscellaneous Appeal No. 26 of 2010, and Miscellaneous Appeal No. 20 of 2010 was preferred by the pre-emptor before the District Judge, Rajbari for setting aside the development cost. Eventually, the learned Joint District Judge, 1st Court, Rajbari, by the Judgment and order dated 23.11.2011, allowed the Miscellaneous Appeal No.20 of 2010, reversing those passed by the trial Court below; disallowed the Miscellaneous Appeal No.26 of 2010 preferred by the preemptee and thereby affirmed the Judgment and order passed by the trial Court below by the judgment and order dated 30.11.2015.

Being aggrieved by the above Judgment and order dated 30.11.2015 and 23.11.2011 respectively, the pre-emptee petitioner preferred these two Civil Revision No.4484 of 2016 and 1429 of 2014 before this Division under Section 115(1) of the Code of Civil Procedure and obtained these Rules.

Mr. Ranjan Chakravorty, the learned Counsel appearing on behalf of the petitioner in both the Civil Revision, submits that the appellate court below, being the last court of facts, did not consider the evidence on record and, under a misconception of law and facts, most illegally dismissed the Miscellaneous Appeal No. 26 of 2010, affirming those passed by the trial Court below and allowed the Miscellaneous Appeal No. 20 of 2010

with misconception of law. He then submits that both the court below failed to consider that the suit was barred by the principle of stopple, waiver and acquiescence. Then he referred to the case of Rahima Begum vs. Md. Abdul Baten, reported in 44 (HCD) 414, submits that, after purchasing the case land, the preemptee started living therein by erecting huts, and this is her only dwelling house. Hence, the case land is not preemptable as per Section 6 of the Land Reform Ordinance.

Mr. A.S.M.M. Kabir Khan, the learned Advocate appearing on behalf of the preemptor opposite party in both the Civil Revision, submits that since the trial court below as well as the court of appeal below concurrently allowed the preemption, and there is no misreading or non reading of material evidence or misconstruction of any document the concurrent finding cannot be interfered with by the revisional court; that the preemptor after filing the case obtained an temporary injunction by the trial court below regarding the case land and during the period of temporary injunction the preemptee erected huts therein so the preemptee shall not gets the benefit of the Section 6 of the Land Reform Ordinance.

We have anxiously considered the submissions of the learned advocates of both parties and perused the revisional

applications, the Judgment, and the materials on record from both the Court below. It appears that the pre-emptor filed the instant Miscellaneous Case for preemption of the case land with contention that he is a co-sharer of the case holding as well as the contiguous land owner on the contrary, the pre-emptee seller sold the case land to the pre-emptee purchaser, who is a stranger to the case holding, by a kabala dated 14.02.2005, without serving any notice upon the pre-emptor. On the contrary, the pre-emptee claimed that the pre-emptee seller had sold the case land to her with the due mediation of the pre-emptor, so the principles of estoppels, waiver, and acquiescence bar the case.

In order to prove the case, the preemptor examined as many as 2(two) witnesses and exhibited necessary documents. On the other hand, the preemptee examined as many as 4(four) witnesses and exhibited material evidence.

We have thoroughly scrutinized each deposition and cross-examination of the witnesses, as well as the material evidence on record. Analyzing the above witnesses, it appears that P.W. 1, the pre-emptor, in his deposition gave details of the case story, and P.W. 2 corroborated the evidence of P.W. 1. Except for some minor discrepancies, no such material

contradiction or omission is noticed, by dint of which these witnesses can be disbelieved. Besides this, OP. W. 1 - OP. W. 4 in their chief despite trying to corroborate the pleadings case of the preemptee, but they have been discredited in their cross-examination.

Having come across the evidence on records it manifests that the preemptor has successfully discharge his onus of proff and the courts below concurrently in their observation and findings based on evidence on records, rightly and judiciously held that the pre-emptor is a co-sharer of the case holding, and no notice was served upon the pre-emptor under Section 89 of the State Acquisition and Tenancy Act before the transfer of the case land upon the pre-emptee, and the suit was not barred by the principles of estoppel, waiver, or acquiescence.

We have anxiously considered the Rahima Begum's case (supra) wherein it was held that:-

Under the new law, the homestead is exempted from all legal process, and the transferee is not liable to be evicted therefrom by any means.

We are entirely in agreement with the above citation. Admittedly, Section 6 of the Land Reform Ordinance 1984 provides for a clear bar exempting the homestead from legal

process and protecting the owner from being evicted therefrom by any means. But each case defends upon its own merit, facts and circumstances. In the instant case, it appears that, after filing the instant Miscellaneous case, the preemptor filed an application before the trial court under Order 39, Rule 1 of the Code of Civil Procedure, for restraining the preemptee from improving the case land or erecting any hut or construction on the case land. Accordingly, the trial court below allowed the application and restrained the preemptee from improving the case land or erecting any hut or construction on the case land in any manner.

It also manifests from the record that the preemptor has been able to prove his onus of proof by adducing oral and documentary evidence that the preemptee erected huts in the case land during the period of the above temporary injunction. Therefore, the contention raised by Mr. Chakravorty has no substance.

Furthermore, it appears that the trial court below allowed preemption, subject to payment of the cost of TK. 1,00,000.00/- (one lac). In contrast, the preemptor, as appellant, preferred Miscellaneous Appeal No. 20 of 2010 before the District Judge, Rajbari. Eventually, the learned Joint District Judge of the 1st

Court, Rajbari, allowed the appeal and set aside the order for the payment of the development cost of Tk.1,00,000.00 (one lakh). In contrast, the preemptee preferred this Civil Revision No. 429 of 2014.

Analyzing the evidence on record, it appears that, admittedly, after purchasing the case land, the preemptee devolved the case land by filling earth on it. Therefore, it appears that the trial court below rightly allowed preemption, subject to payment of the cost of TK. 1,00,000.00/-(one lac) as a development cost. However, the Court of Appeal below, by a separate Judgment and order dated 23.11.2011, setting aside the order for the development cost of Tk.1,00,000.00 (one lakh). On the other hand, the Court of Appeal below, by the Judgment and order dated 30.11.2015, disallowed the Miscellaneous Appeal No.26 of 2010, preferred by the preemptee, and affirmed the whole Judgment and order of the trial court below.

Considering the above facts and circumstances of the case, and discussions made hereinabove, the Rule in Civil Revision No. 4484 of 2016 is discharged. And the Rule in Civil Revision No. 1429 of 2014 is absolute without any order as to costs.

The Judgment and order dated 06.06.2010 passed by the learned Joint District Judge, 1st Court, Rajbari in Miscellaneous Appeal No.20 of 2010, allowing the appeal is hereby set aside. However, the Judgment and order dated 06.06.2010 by the learned Assistant Judge, Pangsra, Rajbari, in Miscellaneous Case No. 18 of 2005, allowed preemption on the condition of paying the development cost of Tk. 1,00,000/- ,is hereby affirmed.

Communicate the Judgment and send down the lower court records at once.

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(Md. Salim, J).