

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashefa Hussain

**Civil Revision No. 4392 of 2016**

Md. Ansar Ali and another

.....petitioners

-Versus-

Md. Mahbur Rahman and others

----- Opposite parties

No one appears

----- For the petitioners

Mr. Bhabesh Chandra Mustafi, Advocate

----- For the Opposite Parties.

Heard on: 19.11.2018, 22.11.2018,

27.11.2018 and

Judgment on 28.11.2018

Rule was issued calling upon the opposite party No. 1 & 2 to show cause as to why the impugned Judgment and order dated 29.09.2016 passed by learned District Judge, Gaibandha in Miscellaneous Appeal No. 30 of 2015 affirming the judgment and order dated 29.10.2014 passed by the learned Assistant Judge, Shaghata in Miscellaneous Case No. 19 of 2008 should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

The preemptor as applicant instituted Miscellaneous Case No. 19 of 2008 before the court of Assistant Judge Shaghata for preemption of the case land impleading the present plaintiffs as defendant. The trial court upon hearing passed judgment and order dated 29.10.2014 allowing the case for preemption. Being

dissatisfied with the order of the trial court allowing preemption on behalf of the preemptor applicant the defendant in the case being (petitioner in this civil revisional application) as appellant preferred Miscellaneous Appeal No. 30 of 2015 which was heard by the District Judge, Gaibandha. Upon hearing both sides the District Judge, Gaibandha disallowed the appeal and thereby affirmed the judgment in Miscellaneous Case No. 19 of 2008 passed by the Trial Court allowing the preemption case. Being aggrieved by the judgment and order passed by the appellate court Miscellaneous Appeal No. 30 of 2015 the instant petitioners pre-emptee filed civil revisional application before the High Court division which is before me for disposal.

The plaintiff-preemptor-opposite parties case stated in their application in the miscellaneous case inter-alia is that the preemptor and the Vendor and their brothers are co-sharers to the case land. The vendor being opposite party No. 3 in the miscellaneous case being brother of the preemptors sold the case land to the pre-emptee who is neither a co-sharer nor contiguous owner and the property was sold by the vendor bother beyond the knowledge of the preemptors. It is also the preemptor's case that no notice was served upon that the preemptor's under the statutory provisions of section 89 of the State Acquisition and Tenancy Act, 1950. It is also the preemptor's case that the impugned purchase deed and the purchase by the pre-emptee is

unlawful in the eye of law and therefore is not sustainable and the preemptor is lawfully entitled to gain preponderance to purchase of the case land at the value as mentioned in the sub-kabala deed.

On the other hand the present petitioner being pre-emptees in the case as opposite parties filed a written objection contesting the case and denied the material allegations. It is the pre-emptee's case inter-alia that they are landless persons and that the land was sold by the vendor brothers within full knowledge of the preemptors. It is also stated that the preemptors were actively involved in the negotiation regarding the purchase and that before selling the land a proposal was given to the preemptors to purchase the land but they did not do so. It is further stated that pre-emptee-opposite party No. 1 in the case pursuant to purchase developed the land upon spending considerable amount of money. It is further stated that the pre-emptee actually paid a larger sum of money than the value inserted in the sub-kabala deed, that is the sub-kabala deed stated an amount of 60,000/- (sixty thousand) as purchase money but in reality the pre-emptee paid Tk. 88,000/- (eighty eight thousand). It is the case of the pre-emptee that the miscellaneous case filed by the preemptor has no merits and ought to be rejected.

The matter appeared several days in the cause list for hearing but however none appeared for the petitioners while Mr. Bhabesh Chandra Mustafi, Advocate represented the opposite parties. I am inclined to dispose of the matter for ends of justice.

Learned Advocate for the opposite parties being preemptors in the case submits that the courts below upon proper appraisal of evidences and witness allowed the case and those being given judiciously and lawfully given need not be interfered with. He submits that both courts below came upon concurrent findings that the opposite parties also failed to prove during trial that the preemptor was involved in the negotiation for purchase. He contends that no statutory notice was served upon the preemptors under section 89 of the State Acquisition and Tenancy Act 1950 and therefore the sub-kabala deed executed between the vendors of the pre-emptee are not sustainable in the eye of law. He submits that admittedly the preemptors and the vendor are co-sharers by inheritance while the preemptee is a stranger and it could not be proved at any point during trial that the sale was done within the knowledge of the preemptors nor could they prove that they were otherwise involved in the negotiation. From the records he shows that although the preemptor claimed developing the property pursuant to purchase however he could not prove development of the property by credible evidences given that the courts below in their findings

observed that no labourers were brought in as witness by the preemptee to support their claim of developing the case land. He further contends that the preemptors claim that the value paid as consideration money as stated in the sub-kabala deed dated 21.01.2007 is not larger than the amount actually paid is not sustainable. He argues that the amount in the kabala deed shall be deemed to be the amount paid in the eye of law. In this context he cites a decision of this court in the case of Aumullaya Chandra Haldar Vs Mohsin Ali Mandal reported in 54 DLR (2002) page 500 which is reads as here under:

*Whatever may be the actual payment of consideration, the parties are bound by the recital of the kabala in question and if the consideration written in the kabala is deposited along with the statutory compensation such deposit cannot be considered to be insufficient or inadequate.*

In support of his statutory right of preemption the learned Advocate for the preemptors-opposite parties in the civil revisional application cited a decision of our Apex Court in the case of Fazaruddin Vs Maijuddin reported in 44 DLR (AD)(1992) page-62 which is reproduced here under:

*Right of pre-emption-Waiver and acquiescence- Statutory right of pre-*

*emption cannot be taken away by mere verbal assurance of the person having such right, unless other facts and circumstances clearly make out a case of acquiescence or waiver.*

He concludes his submissions upon assertion that the pre-emptee-petitioner's case bears no merits and ought to be discharged for ends of justice.

Heard the learned advocate for the opposite parties, perused the application materials and records including the judgments of the courts below. It transpires that the courts below came to consistent findings of facts. Both courts found that the pre-emptees in the case could not prove that the preemptors were involved in the negotiations and further could not prove that the sale was within their knowledge. The courts below came to a finding that the pre-emptees claimed development in the property pursuant to purchase, but however could not be prove the claim to development of the property by bringing any daily labourer as a witness. It is also evident from the records that no statutory notice under the provisions of Section 89 of the State Acquisition and Tenancy Act 1950 was issued upon the preemptor before sale of the case land. The preemptees petitioners claimed in the civil revisional application to the effect that the land was purchased at a higher value than the value mentioned in the

Kabala Deed. In addressing this particular claim, I am in respectful agreement with the decision by this Division cited before me in the case of Aumullaya Chandra Haldar Vs Mohsin Ali Mandal reported in 54 DLR (2002) page 500 as reproduced here under:

*Whatever may be the actual payment of consideration, the parties are bound by the recital of the kabala in question and if the consideration written in the kabala is deposited along with the statutory compensation such deposit cannot be considered to be insufficient or inadequate.*

I have also taken into consideration the decision of our Apex Court in the case of Fazaruddin Vs Majjuddin reported in 44 DLR (AD)(1992) page-62 which is reproduced here under:

*Right of pre-emption-Waiver and acquiescence- Statutory right of pre-emption cannot be taken sway by mere verbal assurance of the person having such right, unless other facts and circumstances clearly make out a case of acquiescence or waiver.*

I am in respectful agreement with the principles of our Apex Court and which is binding on me. Therefore in the absence of credible evidences of any facts and circumstances making out a case of acquiescence or waiver, I am inclined to hold that the present opposite parties preemptors are lawfully entitled to purchase the case land.

By the foregoing discussions made above, under the facts and circumstances and the submissions of the learned Advocate for the opposite parties including the decisions cited before me, I am of the considered view that the courts below arrived upon correct findings of facts and there has been no error of law in the case and therefore those call for no interference.

In the result the Rule is discharged without any order as to costs.

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

Send down the lower Court records at once.

Communicate the order at once.