

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 1255 of 2008

IN THE MATTER OF :

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

-And-

In the Matter of:

Md. Mojibur Rahman Molla

..... Petitioner

Versus

Shakha Nath Mondol and others

.....Opposite parties

No one appears

.... For the parties

Heard and Judgment on: 29.08.2021.

Md. Riaz Uddin Khan, J-

In this matter Rule was issued calling upon the opposite party Nos. 1-4 to show cause as to why the impugned judgment and order complained of in the petition moved in court that day 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 said judgment and order was stayed.

It appears that the Rule was issued on the ground No. 3 of revisional application filed under section 115 of the Code of Civil Procedure. It further appears from the Rule issuing order dated 24.03.2008 that this court was not inclined to issue Rule on the ground No. 1.

No one appear to support or oppose the Rule.

The succinct facts of this case is that 4 pre-emptors filed an application under section 96 of the State Acquisition and Tenancy Act, 1950 for pre-emption of the land vide two registered deed dated 25.06.2000 and 05.07.2000. The petitioners claimed that they are co-sharers by inheritance of the case plots. The petitioners paid the value of the land as well as the usual compensation as per law.

Pre-emptee-opposite party No. 1 contested the case by filing a written objection. He contended that the application is bad for defect of parties and same is also liable to be dismissed on the principle of estoppel and also the case is not maintainable at all. His further case was that he improved the land by constructing huts on the suit land.

The learned Assistant Judge examined 3 witnesses for the petitioners and 3 witnesses for the contesting opposite party. The learned Assistant Judge also examined another witness, an Advocate Commissioner, who conducted a local inspection and submitted a report regarding the improvement of the case land. The learned Assistant Judge allowed the pre-emption of the case with a direction to the petitioners to pay taka 70,746 (seventy thousand seven hundred forty six) to the pre-emptee opposite party no. 1 (purchaser) within 45 days from the date of signing of the impugned order failing which the order in question would be stand dismissed.

Being aggrieved by and dissatisfied with the above order, the pre-emptors as appellant preferred miscellaneous appeal being No. 65 of 2006. The pre-emptee (purchaser) did not file any appeal.

The miscellaneous appeal was heard by the learned District Judge, Barishal who after hearing the miscellaneous appeal was pleased to dismiss the appeal on contest subject to the relaxation of stipulated period as stated in the order regarding the payment of improvement cost passed by the trial court. The learned District Judge was also pleased to observe that the trial court is at liberty to extend the time for payment of improvement cost as stated in the order.

Being aggrieved by and dissatisfied with the said judgment and order dated 30.01.2008 passed by the learned District Judge, Barishal the pre-emptee-opposite party filed the instant revisional application and obtained the Rule as stated above.

Admittedly the present petitioner who was the pre-emptee of the original case did not file any appeal. The Rule was issued only on the point of improvement cost. It appears that against the order of the trial court directing the pre-emptors to pay the improvement cost in favour of the present petitioner, the pre-emptee petitioner did not file any appeal. The point before us is whether the trial court was correct in passing the order to pay improvement cost in favour of the petitioner and whether in affirming that order the Appellate Court committed any error of law resulting in an error in decision occasioning

failure of justice. It appears from the record that the present pre-emptee petitioner (purchaser) filed an application for appointment an Advocate Commissioner to ascertain the nature of the development done on the case land and also the cost of such development. Accordingly an Advocate Commissioner was appointed and after holding a local inspection he submitted a report stating that the pre-emptee (purchaser) made improvement of the land in different ways. From the commissioner report dated 16.10.2004 placed before the court appears that under different heads the purchaser spend in total Tk. 70,746 (seventy thousand seven hundred forty six). Though the pre-emptors filed written objection against the said report but the learned Assistant Judge accepted the said report submitted by the Advocate Commissioner and passed the impugned order directing the pre-emptors to pay the improvement cost. On appeal filed by the pre-emptors the court of appeal below after considering the facts and law was pleased to dismiss the appeal but extend the time to pay the cost.

I have perused the revisional application and both the Judgment and orders passed by the courts below as well as the evidence on record along with the exhibits. It appears that both the courts below considered the Advocate Commissioner's report dated 16.10.2004 passed the impugned judgment and order. As the pre-emptee-petitioner (purchaser) has no grievance against the improvement cost to be paid to him by the pre-emptors, he did not

file any appeal and as such he has no reason to file the instant revisional application before this Court. On careful scrutiny I find that the pre-emptors are the co-sharers by inheritance for which they have the right to file the instant pre-emption application. Since the order of paying of improvement cost was in favour of the present pre-emptee-petitioner, he can not have any objection against that. He did not file any objection that the improvement cost was inadequate rather the improvement cost was ascertain on the papers submitted by himself before the court below.

In the above facts and circumstances of the case I find no substance in the instant Rule which is liable to be discharged.

In the result the **Rule is discharged**. However, without any order as to cost. The order of stay passed at the time of issuance of rule is hereby recalled and vacated.

Send down the Lower Court Record along with a copy of this judgment at once.