

District: Barishal

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

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 3316 of 1991

In the matter of :

Abdul Hoq and others

... Petitioners

-Versus-

Tabiat Ali Sarif and others

...Opposite parties

No one appears for either of the parties.

Judgment on: 26.01.2025

Rule was issued on an application under section 115 of the Code of Civil Procedure calling upon the opposite party No. 1 to show cause as to why the judgment and order dated 25.03.1989 passed by the Additional District Judge, Second Court, Barishal in Miscellaneous Appeal No. 11 of 1980 affirming those of dated 21.09.1979 passed by the First Munsif, Barishal in Miscellaneous Case No. 98 of 1972, dismissing the case should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

The instant civil revisional application initially was filed before the then Barishal Bench and was registered as Civil

Revision No. 26 of 1990; subsequently the said revision has been transferred to this Court and renumbered as Civil Revision No. 3316 of 1991.

The matter has been sent before this Bench under the order of Hon'ble Chief Justice to dispose of the revisional application expeditiously as the same is a 34 (thirty four) years old matter, thus, it is taken for disposal on merit in absence of learned Advocates.

The petitioners filed Miscellaneous Case No. 23 of 1966 in the Second Court of Munsif, Barisal under section 96 of the East Bengal State Acquisition and Tenancy Act, 1966. The case of the petitioners is that opposite party Nos. 3-10 were the owners of the suit land and for realization of arrear of the rent Certificate Case No. 4931K of 1964-65 was started against them, the opposite party Nos. 1 and 2 purchased the suit land on 28.09.1964 in auction in pursuant to the certificate case. It is claimed that the sale proclamation and other notices were not served in the locality and those were suppressed in collusion with the process server; the auction purchasers, opposite party Nos. 1 and 2 did not take physical possession of the case land and as such the petitioners were not aware of the auction sale. The petitioners on 05.11.1966 came to know from Abdur Rahman, the P.W.2 the fact of said auction and after obtaining the certified copy on 7.02.1966, they have got the definite

knowledge. The petitioners are owners of the contiguous land to the land in question and co-sharer of some transferred plots. On the other hand the opposite party Nos. 1 and 2 are strangers. The petitioners are cultivators and they have no more land than 20/21 bighas in their possession. The petitioners' further case is that petitioner Nos. 1 and 3 (now deceased) were in possession of the suit land even prior to the auction sale, on the basis of an agreement for sale.

The opposite parties appeared in the case and filed written objection stating, inter-alia that the miscellaneous case for pre-emption is not maintainable under section 96 of the State Acquisition and Tenancy Act; the case is barred by limitation; the case is bad for defect of parties and all the owners of the contiguous land were not made party and the petitioners were not contiguous land owners of all transferred plots. The definite case of the opposite party No. 2 is that sale proclamation and other notices were duly served upon the certificate-debtors-opposite party Nos. 3-10 in presence of the petitioners. The auction purchaser-opposite parties took possession of the suit land through Court on 24.01.1965 by beating drum in the locality.

The Miscellaneous Case No. 23 of 1966 was transferred to the Munsif, First Court, Barishal for hearing and it was re-numbered as Miscellaneous Case No. 98 of 1972. Learned

Munsif caused to take oral and documentary evidences of both the parties and thereafter dismissed the case on contest by his judgment and order dated 21.09.1979 on the finding that the petitioners were aware of the auction sale since the date of auction and delivery of possession and as such the case is barred by limitation. Learned Munsif also found that the miscellaneous case is not maintainable for defect of parties.

Having been aggrieved the pre-emptor-petitioners filed Miscellaneous Appeal No. 11 of 1990 before the District Judge, Bakergong. On transfer the said appeal was heard by the Additional District Judge, Second Court, Barishal and by his judgment and order dated 25.03.1989 dismissed the appeal, affirming those of learned First Munsif, Barishal dated 21.01.1979 in Miscellaneous Case No. 98 of 1972.

Being aggrieved by and dissatisfied with the judgment and order of learned Additional District Judge, Second Court, Barishal, the pre-emptor-petitioners filed this revisional application and obtained the Rule.

No one appears for either of the parties to defend or contest the Rule.

On perusal of the record, it appears that the revisional application has been arisen out of the judgment and order passed in a miscellaneous case filed by the pre-emptor-

appellants-petitioners under section 96 of the East Bengal State Acquisition and Tenancy Act, 1950. It further appears that a property measuring an area of 4.59 acres was originally belonged to opposite party Nos. 3-10, which was put in auction for realization of arrear rent in Certificate Case No. 4921K of 1964-65 and the opposite party Nos. 1 and 2 on 28.09.1964 purchased the said property in auction, held in pursuant to the aforementioned certificate case and the auction purchasers were inducted into possession on 24.01.1965 in due process.

Learned First Munsif, Barishal in his judgment and order dated 21.09.1979 categorically found that the opposite party Nos. 1 and 2 purchased the land in question in auction, held in pursuant to Certificate Case No. 4131K of 1964-65 and the concerned officials delivered the possession to the opposite party Nos. 1 and 2 upon observing all the legal formalities on 24.01.1965 and the fact of delivery of possession has been proved by the O.P.W. 4. The pre-emption case was filed by the pre-emptor-petitioners on 07.02.1966. The trial Court categorically also found that the pre-emptor-petitioners had knowledge regarding the purchase and the possession of O.P.W. 1 since 24.01.1965, thus, the pre-emption case as has been filed under section 96 of the State Acquisition and Tenancy Act is hopelessly barred by limitation. Learned Additional District Judge, Second Court, Barishal in his

judgment and order upheld the aforesaid finding of the trial Court and thereby concurred with it's judgment and order.

This Court does not find any reason to interfere with the aforesaid concurrent findings of fact, based on material evidences.

Accordingly, the Rule is discharged without any order as to cost.

Send down the lower Courts' record.

Communicate the judgment and order at once.