

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

Present:

Mr. Justice Muhammad Abdul Hafiz

Civil Revision No. 3753 of 2008

Md. Golam Shobhan and others
Pre-emptees-Appellants-Petitioners

Versus

Md. Abdus Sattar
Pre-emptor-Respondent-Opposite party
No. 1

Md. Sekandar Ali and another
Opposite Parties

Mr. Sajjad Ali Chowdhury, Advocate
for the pre-emptees-appellants-
petitioners

Mr. Zafar Sadeque, Advocate
for the pre-emptor-respondent-opposite
party No. 1

Judgment on 23.11.2022

This Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned Judgment and Order dated 30.7.2008 passed by the learned District Judge, Lalmonirhat in Miscellaneous Appeal No. 71 of 2006 dismissing the appeal and thereby affirming Judgment and Order dated 30.10.2006 passed by the learned Assistant Judge, Aditmari in Miscellaneous Case No. 12 of 2006 allowing the pre-emption case should not be set aside

and/or such other or further order or orders passed as to this Court may seem fit and proper.

The opposite party No. 1 as pre-emptor instituted a case for pre-emption under Section 96 of the State Acquisition and Tenancy Act being Miscellaneous Case No. 12 of 2006 in the Court of learned Assistant Judge, Aditmari, Lalmonirhat.

The pre-emptor's Case in short, is that the case land of C.S. Plot No. 875 measuring 1.63 acres of land along with non-suited Plot No. 610/1217 measuring .04 acres of land originally belonged to Sekandar Ali opposite party No. 2 whose name has been recorded in S.A. Khatian No. 244. Opposite Party No. 2 Sekandar Ali having been in possession sold .97 acres of land on 09.7.1998 out of 1.63 acres of land from Plot No. 875 to the pre-emptor opposite party No. 1. The opposite party No. 2 sold the rest .66 acres of land to the pre-emptees petitioners on 9.4.2005 beyond the knowledge of the preemptor opposite party No. 1 and possession was handed over to the preemptees-petitioners. The pre-emptor opposite party No. 1 came to know about the aforesaid sale on 19.1.2006 from the Registrar Office. The pre-emptor-opposite party is a co-sharer by purchase as well as contiguous land holder as such filed this case for pre-emption.

The pre-emptees contested the case by filling a written objection denying all the material allegations made in the plaint alleging that the case land originally belonged to opposite party No. 2 Sekandar Ali who for his necessity gave a proposal to the pre-emptor for taking mortgage which he declined and finding no way the opposite party No. 2 gave mortgage to the pre-emptees-petitioners for a period of 3 years in presence of the pre-emptor-opposite party fixing amount of Taka 41,000/- with a condition that the deed will be registered and at the same time an unregistered deed of reconveyance has also been executed on the same date. Thereafter the possession of the case land was handed over to the pre-emptees-petitioners within knowledge of the pre-emptor- opposite party. The pre-emptees petitioners since then has been possession in the case land. The impugned deed is not a sale deed.

The learned Assistant Judge, Aditmari, Lalmonirhat allowed the same by his Judgment and Order dated 30.10.2006. Being aggrieved the pre-emptees as appellants preferred Miscellaneous Appeal No. 71 of 2006 before the Court of learned District Judge, Lalmonirhat who disallowed the appeal by his Judgment and Order dated 30.7.2008 and hence the pre-emptees-appellants as

petitioners moved this application under Section 115(1) of the Code of Civil Procedure before this Court and obtained this Rule.

Mr. Sajjad Ali Chowdhury, the learned Advocate for the pre-emptees-appellants-petitioners, submits that the learned Appellate Court below as well as the Trial Court did not frame any issues and did not come into an independent finding on each issues which was mandatory provision according to (Amendment) Ordinance (XXLVIII of 1983) of the Code of Civil Procedure and under Order XX rule 5, Order XIV rule 2 and Order XV rule 3 of the Code of Civil Procedure. In this regard he has referred a case of Fazlur Rahman Vs Rayab Ali reported in 30 DLR (AD)30. He further submits that the impugned Judgment and Order passed by the Courts below is not sustainable in law as because in a pre-emption case the fulfillment of condition laid down in Section 90 and proviso to Section 96(1) of the State Acquisition and Tenancy Act, 1950 has not been discussed and in absence of such finding the application for pre-emption cannot be succeeded. In this regard he has referred a case of Nayeb Ali and others Vs Akhtar Rahman and others reported in 29 DLR (HC) 153. He lastly submits that under the above submission this Rule may kindly be disposed of and sent back the instant case on remand to the Trial Court with a

direction to dispose of the case within 3 months from the date of receipt of the order.

Mr. Zafar Sadeque, the learned Advocate for the pre-emptor-respondent-opposite party No. 1, submits that right and status of the pre-emptor being a co-sharer by purchase as well as adjacent land holder of the case land was established by concurrent finding of the Courts below in respect where as pre-emptor-opposite party No. 1 by adducing both oral and documentary evidence proved his no knowledge about the disputed transfer as well as disputed deed of sale and hence concurrent finding of both the Courts below is not required to be interfered with and as such the Rule is liable to be discharged. He further submits that the pre-emptees-petitioners claimed that pre-emptor had knowledge about the disputed transfer as he mediated between the pre-emptees and opposite party No. 2 in respect of unregistered deed of reconveyance but the said contentions of the pre-emptees-petitioners were not proved by adducing evidences and thus both the Courts below rightly concurrently disbelieved the case of pre-emptees due to lack of proof and as such the Rule is liable to be discharged. He next submits that though it was

argued by the learned Advocate for the pre-emptees-petitioners that preemptor-opposite party No. 1 did not mention in the application for pre-emption that he had not more than 60 (sixty) bighas of land but it is apparent from paragraph No. 5 of the application for pre-emption where the pre-emptor clearly stated that he has no land more than 15 bighas and in written objection of the pre-emptees Nos. 1-3 where they did not oppose such statement of possessing of land by the pre-emptor and thus as per section 103 of the Evidence Act, 1872 the pre-emptees failed to discharge their duty of proving that pre-emptor has a land of 60 bighas of land and as such concurrent Judgments of both the Courts below are not required to be interfered with this Hon'ble Court and instant Rule is liable to be discharged. He lastly submits that pre-emptor-opposite party No. 1 in support of his application for pre-emption rightly and successfully proved his right to pre-emption, knowledge about the disputed deed of sale as well as impleading necessary parties in the said miscellaneous case for pre-emption by adducing both oral and documentary evidences which is within ambit of section 96 of the State Acquisition and Tenancy Act, 1950 and as such concurrent

Judgments of both the Courts below not required to be interfered with this Court and the instant Rule is liable to be discharged.

Heard the learned Advocates for both the parties and perused the record.

This is a case for pre-emption under Section 96 of the State Acquisition and Tenancy Act, 1950. Both the Courts below upon perusing the material evidence on record came to the concurrent finding of fact that the pre-emptor has been able to prove his case by adducing evidences. There is no misreading or non-consideration of evidence by the Courts below and the pre-emptees-petitioners could not point out any misreading and non-consideration of evidence on record and thus this Court cannot interfere with the concurrent findings of facts.

Considering the facts and circumstances of the case I find no substance in the Rule, rather I find substance in the submissions of the learned Advocate for the pre-emptor-opposite party No. 1.

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

The impugned Judgment and Order dated 30.7.2008 passed by the learned District Judge, Lalmonirhat in Miscellaneous Appeal No. 71 of 2006 dismissing the appeal and thereby affirming the Judgment and Order dated 30.10.2006 passed by the

learned Assistant Judge, Aditmari in Miscellaneous Case No. 12 of 2006 allowing the pre-emption case is hereby up-held.

The order of stay granted earlier by this Court is hereby vacated.

Send down the lower Courts record with a copy of this Judgment to the Courts below at once.