Present:

Justice Md. Farid Ahmed Shibli.

Civil Revision No. 3843 of 2008

Md. Abul Kalam and others

..... Petitioners.

-Vs-

Md. Entaj Ali Sheikh and others

……Opposite Parties.

Mr. M.A. Shahid Chowdhury, Advocate.

…... For the Petitioner.

Mr. Shah Hossain, Advocate

....For the Opposite Parties

Heard on : 06.11.2016, 07.11.2016 & 08.11.2016

Judgment on: 14.11.2016

Ratio: *Because of any fancy evasive objection or statement of the preemptee, it is not at all obligatory for the Trial Court to hold any inquiry to assess the actual consideration money of the case land under section 96(3)(b) of the State Acquisition and Tenancy Act. On the plea of a minor mistake or error of calculation caused due to latches of any particular lawyer, no Court shall deprive a party to the pre-emption case from exercising his statutory right, to which he is otherwise entitled to.*

Md. Farid Ahmed Shibli, J.

This Rule was issued upon the preemptors-opposite party to show cause as to why the impugned judgment and order complained of should not be set-aside and/or pass such other order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Civil Revision, in brief, are as follows:- The land under pre-emption with some other undisputed land originally belonged to Yead Ali, Hairati Sheikh and Kobed Sheikh, in whose names S.A khatian no. 325 was recorded. Kobed Sheikh died living behind only daughter Hamida Khatun and 2 brothers namely Yead Ali and Hairati Sheikh. Subsequently Hamida Khatun died living behind opposite party nos. 11-14 as her legal heirs. Again Yead Ali Sheikh died

living behind opposite party nos. 7-10 to inherit his share. On the other hand, Hairati Sheikh died living behind the preemptor-opposite party. Opposite party no. 7 namely Md. Anwar Hossain Sheikh sold out the case land under S.A khatian no. 325 with other undisputed land under S.A. khatian no. 320 doing a registered kabala having no. 6178 dated 29.06.2002(Ext.-“kha”) in favour of opposite party nos. 1-6, who were stranger. On 23.11.2002 obtaining true copy of the said kabala the pre-emptor (i.e. the petitioner of the original case) came to know about the transfer and then filed the application for pre-emption under section 96 of State Acquisition and Tenancy Act, 1956 (shortly “the Act”).

Pre-emptee-petitioner contested filing a written objection contending inter alia that the pre-emptors-opposite party did not deposit proper amount of the consideration money and compensation, which was a condition precedent for the application of pre-emption under section 96 of the Act. It has been claimed that the pre-emptee petitioners have been residing in the case land erecting dwelling house therein and also got the same developed planting different valuable trees costing Taka 50,000/-. According to the pre-emptee-petitioners, the application for pre-emption under section 96 of the Act was not maintainable and liable to be dismissed.

Mr. M.A. Shahid Chowdhury appearing for the preemptee petitioners and Mr. Shah Hossain appearing for the preemptor-opposite party have participated in hearing of this Civil Revision.

Mr. Chowdhury has made his submission hammering mainly the following 3 points:- *firstly*, the application under section 96 of the Act filed with consideration money and compensation having the deficit of Taka 7.78 is liable to be dismissed; *secondly*, the learned Courts below committed an error by not giving any direction to the pre-emptor-opposite party to pay development cost; and *thirdly*, after presentation of the application under section 96 of the Act and expiry of the statutory period the Courts below had no jurisdiction to give any more chance to the pre-emptor-opposite party to deposit Taka 7.78 as deficit consideration money or compensation.

Mr. Chowdhury has tailored his argument criss-crossing relevant legal and factual aspects of the matter in aid of the observation made in case of Akhtarun Nessa and another Vs. Habibullah reported in 31DLR(AD)(1979)88. The observation of their Lordships runs as follows:

"The statutory deposit being a condition precedent to the application being entertained its non-compliance renders the application liable to be dismissed. The direction for depositing the balance consideration money out of time is also illegal ad without jurisdiction."

In reply, Mr. Shah Hossain retorts stating the background and facts of Akhtarun Nessa's case (supra) are not at par with the instant case, so the cited case will not come to the help of the pre-emptee-petitioners of this case.

In Akhtarun Nessa's case (supra), the petitioner prayed for preemption of 2 plots out of 5 plots leaving aside the remaining 3 plots under the same khatian. In the cited case being a contiguous land owner the pre-emptor-petitioner got 2 plots pre-empted in his favour by dint of the judgment and order passed by the learned Sub-ordinate Judge. Against that judgment in an appeal, the High Court Division took the view that the order for partial pre-emption as given was not legal rather the pre-emptors ought to go for pre-emption of all 5 plots including the left out 3 plots, although the pre-emptor had no land contiguous to those 3 plots. On this finding the High Court Division directed the pre-emptor to pay up the balance consideration money with compensation for the remaining 3 plots. On that premise, their Lordships in the Appellate Division decided the matter observing that in such case the partial pre-emption should be allowed and the direction given by the High Court Division to make statutory deposit for the remaining 3 plots was illegal and without jurisdiction. Ultimately, their Lordships in the Appellate Division upheld the judgment and order passed by the Court of Sub-ordinate Judge setting aside the order passed by the High Court Division.

In the case of Akhtarun Nessa (supra), the High Court Division directed the pre-emptor to go for preemption depositing consideration money for the 3 new plots, regarding which the pre-emptor did not earlier make any prayer for pre-emption or deposit any part of the consideration money or compensation. In the instant case, as it appears, the pre-emptors-opposite party applied for preemption of the case land

under S.A. khtian no. 325 in which they were co-sharer by inheritance and at the time of presentation of the application for pre-emption they deposited Taka 63,150/-, which was short of Taka 7.78 but initially the Trial Court accepted the deposit and issued notices upon all including the pre-emptee-petitioners.

Juxtaposing the facts and background of the case of Akhtarun Nessa (supra) with the fact of this case, I do not find any substantive parity or similarity between them. So, on the fulcrum of the observation made in Akhtarun Nessa's case (supra) here the pre-emptee-petitioner cannot legally get prolific support or undo the impugned judgment and order passed by the Courts below.

Drawing this Court's attention to para-6 of the written objection dated 27.02.2003 enclosed with the L.C Record, Mr. Chowdhury submits that the pre-emptee-petitioner raised objection regarding the deposit made, but the learned Court below did not hold any inquiry or hear the parties on that matter rather at the time delivering judgment provided an opportunity for the preemptor-opposite party to pay the deficit deposits, which was completely illegal and beyond its jurisdiction.

Mr. Hossain contends that after receiving notices issued by the Trial Court although the pre-emptee-petitioners filed a written objection, but within the four-corners of that written objection they did not state any specific amount of consideration money actually paid by them in view of section 96 (3)(b) of the Act and that was why it was not legally

inevitable for the Court below to hold any inquiry or hear the parties on that matter.

At para-6 of the written objection the preemptee-petitioners has stated the follosings:- "6| cv_xi we‡ivax Kevjvi wecix‡Z RgvKZ.c‡bi I ¶wZc‡¶Y UvKv h_vh_ I AvBbvbyM bv nIqvq cv_xi †gvKÏgv Av‡`Ši ¶Yxq b‡n|"

Above version of the written objection neither discloses the amount of consideration actually paid for the case land nor contains any specific answer to the point of substance. Rather being opposite party nos.1-4 to the pre-emption case, the pre-emptee-petitioners, as it is revealed, have given a fancy objection making a sort of vague and evasive statement that the deposit of consideration money with compensation is not proper and legal. Because of any fancy evasive objection or statement of the preemptee, it is not at all obligatory for the Trial Court to hold any inquiry to assess the actual consideration money of the case land under section 96(3)(b) of the State Acquisition and Tenancy Act. In view of such a plight, I do not find any reason to castigate the impugned judgment and order in that score.

Mr. Hossain submits that because of mere non-application of mind of the then Advocate engaged in the Trial Court such arithmetical mistake took place, which was very insignificant and completely unintentional. By no stretch of the imagination it can be accepted as a believable story that a party, who could pay Taka 63,150/-, should not be able to pay a small amount of Taka 7.78 only. I find strong force to hold that on the plea of a minor mistake or error of calculation caused due to

latches of any particular lawyer, no Court shall deprive a party to the pre-emption case from exercising his statutory right, to which he is otherwise entitled to.

Referring to the decision given in the case Serina Begum and another Vs. Mofizul Islam and others, 42 DLR (AD)(1990)77 and in the case of Abdus Sobhan Sheikh Vs. Kazi Moulana Jabedullah, 52 DLR(2000)289, Mr. Hossain vehemently argues that by opposing the preemptor-opposite party to make deficit deposit of Taka 7.78 in true sense the pre-emptee-petitioners have been trying to achieve something indirectly frustrating the very preemption proceeding which is to be guarded strongly , otherwise the very purpose of the right as envisaged in section 96 of the Act would go in vain. Both the Appellate and Trial Court, as it is gathered, have made concurrent findings that the preemptors-petitioner should be given an opportunity to exercise their right of preemption making deposit of the deficit sum. I find no error in the above findings and direction given by the Courts below.

Mr. Chowdhury has drawn this Court's attention to the additional written objection dated 01.03.2005, filed by opposite party nos.2-4 in the Trial Court and submits that the pre-emptee-petitioners had developed the case land costing them Taka 50,000/-, whereas in this regard the learned Courts below have not given any direction upon the pre-emptors-opposite party, for want of which the impugned judgment and order have lost their legal propriety.

In reply, Mr. Hossain contends that the story of development, as claimed, has not been substantiated in the Trial Court by adequate evidence. He further contends that within the four-corners of the Revision Petition no such ground has been taken by the pre-emptee-

petitioners, so this Court of revision cannot fall upon to decide this question of fact or give any direction regarding development cost as entreated by Mr. Chowdhury.

Keeping the above submission of learned Advocates in mind I have gone through the relevant part of the Lower Courts Records and not found a single scrap of paper in support of the claim of development cost. It appears that the pre-emptee-petitioners did not lead any dependable evidence or examine witness in that score. In view of such predicaments, it is hardly possible for this Court to believe in the story of development cost and that is why the second point, as raised by Mr. Chowdhury, is answered in negative.

Now let us discuss the third point agitated by Mr. Chowdhury, who contends that no Court has any jurisdiction or authority, after acceptance of an application under section 96(1) of the Act or at any time out of the statutory period to provide the pre-emptors-opposite party to deposit any deficit amount. In the instant case the pre-emptee-petitioners in their written objection did not raise any specific objection against the amount of deposit stating the actual consideration money paid by them for the case land and the said fact of deficit deposit, which was only Taka 7.78, was detected by the Trial Court itself at the time of delivering judgment. So, in view of the decision given in the case of Serina Begum (supra) this Court is inclined to hold that both the Courts below had fair and equitable jurisdiction to consider the prevailing situation and adjudicate the matter awarding a reasonable opportunity to

the preemptors-opposite party to make the deficit deposit even beyond the statutory time-limit. So, the third point, as raised, does not deserve any consideration.

Regard being had to the discussion as made above and facts and circumstances to the case, It becomes clear like anything that the impugned judgments and order of both the Appellate and Trial Court below do not suffer from any error of law or legal infirmity and that is why this Civil Revision cannot succeed.

Consequently, the Rule is discharged without any order as to costs. The order of stay granted earlier by this Court is hereby vacated.

Let copy of this judgment be sent down to the concerned Courts below at once.