

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 1839 of 2018

Swapan Biswas

... Petitioner

-Versus-

Prabir Barua and others

...Opposite-parties

Mr. Samiran Dasgupta, Advocate

...For the petitioner

Mr. Tushar Kanti Roy, Advocate

...For the opposite-party No. 1.

Heard on 08.07.24, 09.07.24, 10.07.24,14.07.2024 and

Judgment on 15th July, 2024.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioner calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 23.10.2018 passed by the learned Divisional Special Judge and Special District Judge, Chattogram in Miscellaneous Appeal No. $\frac{18 \text{ of } 2017 \text{ (New)}}{06 \text{ of } 2014 \text{ (Old)}}$ allowing the appeal and thereby reversing the judgment and order dated 28.11.2013 passed by the Senior Assistant Judge, Banskali, Chattogram in Pre-emption Miscellaneous Case No. 26 of 2012 rejecting the application under Sections 96(1)(b) and 96 (3)(b)(c) of the State Acquisition and Tenancy Act filed by the opposite-party

should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very narrow compus. The petitioner, as preemptor, filed Miscellaneous Case (Pre-emption) No. 26 of 2012 in the Court of Senior Assistant Judge, Banskhali, Chattogram against the opposite-party No. 1, as purchaser-preemptee along with others, as opposite party. Opposite-party No. 1 appeared in the case and filed an application on 25.09.2013 for dismissal of the miscellaneous case under sections 96(3)(b)(c) and 96(1)(b) of the State Acquisition and Tenancy Act, on the ground of limitation as well as for want of proper deposit. The application was resisted by the pre-emptor. The trial court after hearing by its order dated 28.11.2013 rejected the application.

Being aggrieved, by and dissatisfied with the judgment and order of the trial court, the purchaser-preemptee, filed Miscellaneous Appeal No. 06 of 2014 before the Court of learned District Judge, Chattogram. Subsequently, renumbered as Miscellaneous Appeal No. 18 of 2017 on transfer to the Court of learned Divisional Special Judge and Special District Judge, Chattogram who heard the appeal

and after hearing allowed the same and set aside the judgment and order of the trial court. At this juncture, the petitioner, moved this Court by filing this revision and obtained the present Rule and order of stay.

Mr. Samiran Dasgupta, learned Advocate appearing for the petitioner submits that transfer in question was made on 08.02.2006. Section 96 of the State Acquisition and Tenancy Act was amended in the year 2006 and came into force on 20.09.2006 on the date of publication in the official gazette. Section 96(18) provides that the amended section shall not apply to any transfer of any portion or share of a holding of a raiyat, made prior to coming into force of this section in the month of September, as such, the trial court while rejecting the application filed by the pre-emptee rightly held that the amendment has no retrospective effect and section 96(18) excluded the transfer made before the amendment came into force. Since section 96 of the State Acquisition and Tenancy Act was amended and came into force on 20.09.2006 and the transfer in question was made on 08.02.2006, as per sub-section (18) of section 96, the transfer will not attract the provision of new amendment in section

96, but the appellate court while allowing the appeal misread the provision of law and misconstrued the section 96 of the State Acquisition and Tenancy Act as a whole and wrongly observed that the case ought to have been filed by the petitioner upon deposit of 25% compensation instead of 8% and also wrongly held that the case is barred by limitation as it was filed beyond 3 years under amended section 96, as such, committed an error of law in the decision occasioning failure of justice.

Mr. Tushar Kanti Roy, learned Advocate appearing for the opposite-party No. 1 submits that the deed in question was executed and registered on 08.02.2006. As per section 60 of the Registration Act, the sale deed is considered to be registered after entering into the volume as a deed cannot be regarded as registered before the certificate endorsed thereon and signed, seal and dated in terms of the section 60 of the Registration Act. He submits that the deed in question entered in volume and certificated under section 60 in the year 2007 after the amendment came into force on 20.09.2006. He submits that for the purpose of cause of action for filing a pre-emption case, cause of action accrues on the date of registration of

the sale deed where registration is compulsory. Here the process of registration was completed in the year 2007 on 18.12.2007. On the date of completion of registration of the document amended section 96 came into play. Therefore, the petitioner ought to have complied with the provisions of section 96 as amended in filing the present pre-emption case.

He argued that section 96(1) provided limitation for filing a case within 02(two) months of the service of the notice under section 89, or, if no notice has been served within 02(two) months of the date of the knowledge of the sale, provided that no application under this section shall lie unless the applicant is amongst other, is a co-sharer by inheritance, amount of consideration and compensation at the rate of 25% along with 8% simple interest upon the consideration money is deposited in court and the same is filed within 3(three) years. In the instant case, admittedly, the pre-emption case was filed after 6 years and no deposit as required by law has been made by the preemptor.

He argued that in a pre-emption case, since cause of action accrues from the date of registration of document under section 60

this case is hit by section 96 as amended in the year 2006, as such, the appellate court while allowing appeal and setting aside the judgment and order of the trial court rightly held that present pre-emption case is not maintainable under section 96 as amended in the year 2006 and it has committed no error in the decision occasioning failure of justice. In support of his such submissions he has referred to the case of Abdul Motalib vs. Iman Ali reported in 42 DLR (AD) 123.

Heard the learned Advocates of both the parties, have gone through the revisional application, application in pre-emption case under section 96 of the State Acquisition and Tenancy Act, application under sections 96(1)(b) and 96(3)(b)(c) of the State Acquisition and Tenancy Act, filed by the preemptee-opposite party for rejection of pre-emption case.

Admittedly, the transfer in question was made on 08.02.2006. This miscellaneous case was filed on 28.06.2012 after 6 years of execution and registration of the sale deed claiming knowledge of transfer made by opposite party No. 2 on 21.06.2012. Admittedly, sale deed in question entered into volume on 18.12.2007. Section 96

of the State Acquisition and Tenancy Act amended and came into force on and from 20.09.2006. The petitioner-preemptor claimed that the transfer made in the instant case before amendment of section 96 and came into force on 20.09.2006 as such, nothing of this section shall apply to such transfer and the preemptor rightly filed the case under old provisions of section 96, hence, the case is well maintainable in law.

On the other hand, the opposite-party claimed that mere execution and registration of a sale deed on a certain date before amendment of section 96 does not create cause of action for filing a pre-emption case, unless the registration is completed under section 60 of the Registration Act. In the instant case, admittedly, the deed in question entered into volume on 18.12.2007 and certificated, signed, sealed and dated in terms of section 60 of the Registration Act. As a proposition of law as decided by our court and accepted that the cause of action for pre-emption accrues on the date of registration of the kabala where registration is compulsory, as such, since the cause of action for the pre-emption case arises on and from 18.12.2007, the

pre-emption case ought to have filed under the provisions of amended section 96 of the State Acquisition and Tenancy Act.

Admittedly, the instant case has been filed under the old section 96. To appreciate the submissions made by both the learned Advocates for the parties, Section 96(18) of the State Acquisition and Tenancy Act may be looked into which run thus:

“(18) Nothing in this section shall apply to any transfer of any portion or share of a holding of a raiyat or any application under section 96 of this Act, made prior to coming into force of the State Acquisition and Tenancy (Amendment) Act, 2006”.

Earlier to amendment of state Acquisition and Tenancy Act, section 96(1) contained that “if a portion of share of a holding of raiyat is transferred” but by the new amendment the word “transferred” has been replaced by word “sold”. In Section 96 subsection (18) contain the word “transfer” in line with old section 96(1) not in line with new section 96(1). The word sold simply means, sale of property with consideration, but the transfer is not only sale, it includes sales, exchanges, gifts, Heba-bil-Ewaz, leases and mortgages and in ordinary meaning shifting of any property from

one place to another. Before amendment of section 96 all the transfers including the transfers mentioned above could have been preempted under old section 96, but in the present amendment a pre-emption shall lie only in respect of sale, not in respect of other transfers.

The word “transfer” has not been defined in the State Acquisition and Tenancy Act. The word transfer used in sub-section (18) of section 96 includes all kinds of transfers as defined in Transfer of Property Act. Section 5 of the Transfer of Property Act defined that transfer of property means an act by which a living person convey property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and “to transfer property” is to perform such Act. A transfer takes effect from the date of execution of deed. With the execution and registration of a sale deed owner of the property lost his right, title and interest in the property vesting the same in the purchaser. After purchase the purchaser acquired title in the property and he also acquired right to get his name mutated in the khatian, payment of rents, enjoyment by erecting houses thereon and got right to transfer

the same to any other persons even before entering the sale deed into volume under section 60 of the Registration Act. Because of not entering a sale deed in the volume under section 60 of the Registration Act, there is no law to treat the purchaser not to be an owner of the property and has no right to transfer the same to any other persons. Whenever, a deed is registered under the Registration Act, transferring the property in favour of purchaser, the purchaser acquired title in the property by virtue of the sale deed. In case of filing a pre-emption case under section 96 of the State Acquisition and Tenancy Act, cause of action finally accrues on the date of completion of the procedure of registration of the deed under section 60 after entering into volume, sealed, signed and certificated by the registering officer being followed by us as an established precedent handed down by past Judges not provided in section 96 of the State Acquisition and Tenancy Act. This principle is only applicable, as we understand, in a pre-emption case for the purpose of cause of action and counting the period of limitation for filing a case, not in respect of transfer of the property under the Transfer of Property Act. Cause of action is a bundle of fact. For filing a pre-emption case two

situations have been mentioned in Section 96(1) of the Act, those are; a co-sharer of the holding may, within four months (now 2 months) of the service of the notice given under section 89, or, if no notice has been served under section 89, within four months (now two months) of the date of knowledge of the transfer, apply to the court for the said portion of land “transferred” by a co-sharer. No provisions provided in Section 96(1) of the Act that “a co-sharer of the holding may within four months (now 2 months) from the date of registration of sale deed under section 60 of the Registration Act may apply to the court for the said portion of land. In the event of service of notice under section 89 upon the pre-emptor and receipt of the same by the co-sharer whether limitation can be saved by not filing case on the ground that the deed under section 60 of the Registration Act has not been sealed, signed and certificated by the registering officer on the date of receipt of notice by the pre-emptor. If it is so, limitation mentioned in section 96 will be of no use and will become redundant and the intention of legislature will be frustrated. Apart from this if a sale deed valued at Tk. 99/- only not required to be registered under the registration act and usually not

sealed, signed and certificated by registering officer in that case which date would be cause of action for filing the case has not been addressed and decided by the apex court in any case as yet. It is also not decided whether a pre-emption case lies against an unregistered deed of sale. Moreover, there is no law that a property cannot be sold by an unregistered sale deed not required to be registered or the purchaser will not acquire title in the property sold.

If a deed is executed and registered in the month of January and the pre-emptor filed pre-emption case in the month of March before sealed, signed and certificated by registering officer under section 60 of the Registration Act, question of prematurity comes. If the sale deed in question registered under section 60 of the Act and entered into volume after 5 years, why the pre-emptor and pre-emptees as well as the court should wait upto such date for accruing cause of action for disposal of the case giving an undue advantage to the pre-emptor and a long rope with which to hang the pre-emptee, after such a lapse of time? Is there any provision of law provided in any act about consequences if such situation arises? Cause of action for filing case against a registered deed or unregistered sale deed for

the same nature of cases (pre-emption) cannot be different and selectively chosen for each individual cases as the legislature provides no such provisions in law. However, beyond this, we are unable presently to explore further scenario of avenue or redress under the law given that such point was not raised or submitted upon at any length by the parties to the present petitioner, leaving those to be decided and or revisited by the apex court.

It is also to be noted that in all legal proceedings, reference of any transfer made mentioning the deed number and date of registration i.e, the date of presentation for registration not the date of completion of registration under section 60 of the Registration Act as the transfer is effective from the date of transfer not from the date of completion of registration.

From plain reading of sub-section (18) of section 96 it is clear that nothing in this section shall apply to any transfer of any portion or share of holding of a raiyat or any application under Section 96 is made prior to coming into force of the State Acquisition and Tenancy (Amendment) Act, 2006. Sub-section (18) has been inserted keeping in mind that the transfers made before the amendment shall

not attract any new provisions of the Act, otherwise it would not have inserted in the new enactment, considering the fact that completion of registration of documents under section 60 of the Registration Act in our country takes 2 to 5 years time. This sub-section (18) has no connection with the registration of the documents under section 60 of the Registration Act. Since the transfer made on 08.02.2006 and the amendment came into force on 20.09.2006, under sub-section (18), the amended section 96 is not applicable in the present case for all intent and purposes. Provision of section 60 of the Registration Act has been made applicable for counting the period of limitation for filing pre-emption case within 4 months under old law and 2 months under the present law though such provision is totally absent in section 96 of The State Acquisition and Tenancy Act and it has no applicability in respect of transfer made before the amendment came into force, because the word “or” is used in sub-section (18), not used the word “and” before the words “any application under section 96 of this Act, made”. If the word “and” is used in place of the word “or”, the interpretation would have been otherwise, but the framers of law consciously used the

word “or” instead of “and” to give a right to the pre-emptor to file pre-emption cases for the portion of land transferred. Therefore, the petitioner rightly filed the pre-emption case under old section 96 and the trial court rightly held as such, but the appellate court while allowing the appeal took into consideration the amended section 96 as a whole giving priority to accrual of cause of action for filing pre-emption case from the date of registration of the deed under section 60 of the Registration Act, without appreciating the provisions in sub-section (18) of Section 96 of the State Acquisition and Tenancy Act, which exempted the provision of new section in filing and claiming pre-emption under old section, as such, the appellate court has committed an error of law in the decision occasioning failure of justice.

Taking into consideration the above, I find merit in the Rule as well as in the submissions of the learned Advocate for the petitioner.

In the result, the Rule is made absolute, however, without any order as to costs.

The judgment and order of the appellate court is hereby set aside and the judgment and order passed by the trial court is hereby restored.

The trial court is hereby directed to dispose of the Miscellaneous Case (Pre-emption) No. 26 of 2012 within shortest possible time preferably within 06(six) months from the date of receipt of this judgment and order positively.

Order of *stay* granted at the time of issuance of the Rule stands vacated.

Communicate a copy of the judgment to the Court concerned at once.