**District-Bagerhat.**

**IN THE SUPREME COURT OF BANGLADESH**

**HIGH COURT DIVISION,**

**(CIVIL REVISIONAL JURISDICTION)**

**Present:**

**Mr. Justice Md. Toufiq Inam**

**Civil Revision No. 3109 of 2017.**

Gopal Chandra Pal.

----- Pre-emptor-Respondent-Petitioner.

-Versus-

Md. Farooque Dider and others.

----- Opposite Parties.

Dr. Noor Mohammad, Advocate

----- For the Pre-emptor-Respondent-Petitioner.

None appears.

----- For the Opposite Parties.

**Heard On: 26.06.2025 & 01.07.2025.**

**And**

**Judgment Delivered On : 14th Day of July 2025.**

**Md. Toufiq Inam, J.**

The petitioner's application for pre-emption (Miscellaneous Case No. 13 of 2008) was allowed by the Senior Assistant Judge, Bagerhat Sadar, by judgment and order dated 13.07.2015. However, in Miscellaneous Appeal No. 44 of 2015 filed by the purchaser, the Additional District Judge, 2nd Court, Bagerhat, reversed the trial court's decision and disallowed the pre-emption. Aggrieved by that judgment, the pre-emptor has obtained this Rule, calling upon the opposite parties to show cause as to why the appellate court's judgment should not be set aside.

The background facts are as follows:

The petitioner, as pre-emptor, filed Miscellaneous Case No. 13 of 2008 under Section 96 of the State Acquisition and Tenancy Act, 1950, seeking pre-emption of 0.05 acres of land described in the petition schedule. The land, recorded under CS Khatian No. 27 and SA Khatian No. 33 of Mouza Bhattabaliaghata, PS Bagerhat, originally belonged to Bashanta, Adhir, and Fullura Bala. Bashanta's share was inherited by his sons, Shashadhar and Poritosh. After Shashadhar's death, his son Gopal Pal, the present petitioner, and his three brothers inherited his interest and became co-sharers in the jote.

The petitioner claims he first learned about the disputed sale on 08.03.2008 from one Lekdar Sheikh. Upon verifying the registered deed (No. 4155/07 dated 18.12.2007), he found that opposite party No. 2 (the vendor) had sold 0.05 acres of land to opposite party No. 1 (the purchaser) for Tk. 60,000. Alleging that the purchaser is a stranger to the jote and that the transfer was made without notice to him, the petitioner filed the pre-emption application on 13.03.2008.

The purchaser (opposite party No.1) contested the application by filing a written objection, denying the petitioner's claims. He asserted that the petitioner was aware of the sale beforehand and had even participated in related discussions. He also argued that the petitioner held land in excess of the statutory ceiling and was, therefore,

disqualified from claiming pre-emption. Additionally, the purchaser claimed to have spent over Tk. 2,00,000 to develop the land and construct a shop and would suffer irreparable loss if pre-emption were granted.

The trial court decided the following points:

Limitation: The registered deed in question was executed on 18.12.2007 and entered into the register on 12.02.2008 under Section 60 of the Registration Act. The application for pre-emption was filed on 13.03.2008, well within the statutory period of four months. As the cause of action for pre-emption accrues upon completion of registration, hence, the case is not barred by limitation.

Co-sharership by Inheritance: SA Khatian No. 33 (Exhibit 2/Ka) shows the name of Bashanta as a recorded tenant. The petitioner claims to be the son of Shashadhar, who was the son of Bashanta. This lineage was not specifically denied or challenged by the opposite parties. Therefore, the petitioner's status as co-sharer by inheritance stands uncontroverted.

Waiver, Estoppel, and Entitlement: The opposite party claimed that the pre-emptor had prior knowledge and voluntarily waived his right. However, no evidence of notice or documentary proof of waiver was produced. PW-1 (Pre-emptor) stated that although his co-sharers and

he himself had lands in various khatians in Bhattabaliaghata mouza, he could not say whether the total landholding was 100 acres, stating "I have to see the porcha." This candid admission shows the petitioner was not concealing any material fact. The statement does not prove possession beyond ceiling limits.

The trail court allowed the pre-emption. But the appellate court dismissed the pre-emption application solely on the ground that the pre-emptor possessed agricultural land in excess of the statutory ceiling. Being aggrieved by the appellate court judgment, the pre-emptor as petitioner moved this court in its revisional jurisdiction.

Dr. Noor Mohammad, learned Advocate for the petitioner, submits that the appellate court committed a manifest error of law in reversing the well-reasoned judgment of the trial court solely on the ground of alleged disqualification under the land ceiling law. He contends that the finding regarding landholding in excess of the ceiling is misconceived, as the appellate court failed to appreciate that the land in question was ancestral property and the petitioner, being one of four heirs of Shashadhar Pal, could not have inherited or possessed the entirety. Furthermore, a substantial portion of the petitioner's inherited land was acquired by the government, which fact was supported by documentary evidence (Exhibits 3–4 series).

He further submits that under Section 96 of the State Acquisition and Tenancy Act, 1950, the right of pre-emption is a statutory right, and any disqualification under the ceiling law must be strictly proved. In the present case, the burden of proving disqualification lay upon the opposite party under Section 4 of the Land Reform Ordinance, 1984, which was not discharged. Mere production of khatians without tracing title or accounting for government acquisition does not suffice to establish such disqualification.

He argues that the opposite parties failed to prove waiver, estoppel, or acquiescence by the pre-emptor. The pre-emptor had no notice of the sale and learned of the same from a third party shortly before filing the application. The oral testimony of OPW-1 regarding prior discussions and waiver was uncorroborated, implausible, and not supported by any documentary evidence. Even assuming that such discussions took place, they do not amount to a legal waiver of the right of pre-emption, which accrues only upon registration of the deed.

Dr. Noor Mohammad also submits that the trial court rightly found the application to be within limitation and established the petitioner’s status as a co-sharer by inheritance, both of which findings remained unshaken. The only omission was the trial court’s failure to consider the purchaser’s claim of post-sale development. However, the

petitioner does not dispute the purchaser's possession or construction and is willing to compensate him with a reasonable sum to be assessed by the court and is ready to comply with any equitable direction of the court regarding compensation. The impugned appellate judgment being legally unsustainable and perverse, is liable to be set aside.

None entered appearance on behalf of the opposite parties. Accordingly, the matter is being disposed of on its merits.

According to the petitioner, he first learned about the impugned sale on 08.03.2008 from one Lekdar Sheikh and, upon verification, discovered that the seller (opposite party No. 2) had transferred the land to a stranger (opposite party No. 1) by registered deed No. 4155/07 dated 18.12.2007 for a consideration of Tk. 60,000. Alleging that no notice had been served upon him and that the purchaser was not a co-sharer, he filed the application for pre-emption on 13.03.2008, well within the statutory time limit under Section 96 of the SAT Act.

The purchaser-opposite party contested the case, claiming that the pre-emptor had prior knowledge and had even discussed the transaction, and further contended that the pre-emptor was disqualified due to excess landholding. It was also asserted that the purchaser had developed the land and constructed a shop incurring a cost exceeding

Tk. 2,00,000, and would suffer irreparable loss if pre-emption were allowed.

The trial court framed several issues, including limitation, co-sharership by inheritance, estoppel and waiver, entitlement to development cost, and whether the petitioner is entitled to pre-emption. The court found that the case was filed within limitation, the petitioner was a co-sharer by inheritance, and the pleas of waiver and estoppel were unsubstantiated. It also held that the pre-emptor did not exceed the statutory land ceiling and was entitled to pre-emption. However, the trial court did not properly address the question of development cost.

The appellate court reversed the trial court's decision solely on the ground that the petitioner was disqualified from claiming pre-emption under Section 96 of the SAT Act due to land ceiling restrictions. It accepted documents produced by the opposite parties suggesting that the petitioner held 43.1796 acres (approximately 129 standard bighas) of land. However, the appellate court failed to appreciate that this land originally belonged to the petitioner's grandfather, and the petitioner, as one of four sons of Shashadhar Pal, could not have inherited the entire property. Moreover, the petitioner submitted Exhibits 3–4 series to prove that a substantial portion of his inherited land had been acquired by the government for public projects. The finding of the

appellate court that the petitioner exceeded the ceiling is, therefore, erroneous and not supported by the evidence on record.

It bears emphasis that disqualification under the land ceiling law must be established with clarity and precision. In this case, the petitioner's evidence regarding government acquisition of a large portion of his land effectively rebuts any presumption of excess holding. The opposite party, having failed to discharge the burden of proving otherwise, cannot rely on vague or incomplete records to claim disqualification. Under Section 4 of the Land Reform Ordinance, 1984, the burden lies on the pre-emptee to prove that the pre-emptor holds land in excess of the statutory ceiling. Mere production of khatians without tracing the title or accounting for acquisition does not discharge that burden.

As to the question of development cost, the record reflects that the trial court failed to correctly appreciate the evidence. The purchaser in his written objection claimed to have constructed a shop and spent over Tk. 2,00,000 on development. This assertion was supported by his oral testimony as OPW-1, who specifically deposed: "১৮.১২.২০০৭ খ্রিঃ তারিখে দলিল হয় । রেজিঃ হওয়ার পরের দিন দখল বুঝিয়ে দেয় । ছায়েল, আঃ আজিজ বিশ্বনাথ ভদ্র, দিপকদের উপস্থিতিতে দখল দেয় । আমি বিলান জমিতে মাটি কেটে ভরাট করেছি । পাকা wall করি । টিনসেড দিয়ে ছাড় করি । অনুঃ ১,৫০,০০০/- (এক লক্ষ পঞ্চাশ

হাজার) টাকা খরচ করি ।" This testimony remained unshaken during cross-examination.

Furthermore, PW-1 (pre-emptor), during cross-examination, candidly admitted: "নালিশী জমিতে পাকা ঘর উপরে টিন সেড আছে । ঘর করে ফেলে রাখা । বছর খানেক হল ঘরটা করেছে ।" This admission corroborates the purchaser's claim that construction had been made on the land after registration. There is no dispute that the development was carried out post-transfer, and the pre-emptor did not challenge either the nature or extent of the construction.

It is well-settled that in cases of pre-emption, where the purchaser has made bona fide improvements on the land after the sale and prior to service of notice or institution of the case, he is entitled to equitable compensation for such development. In the instant case, the purchaser entered into possession upon registration of the deed, filled the land, constructed a pucca wall, and erected a tin-shed structure at an unrefuted cost of approximately Tk. 1,50,000. As such, the purchaser is legally entitled to reimbursement of this amount by the pre-emptor as a condition for pre-emption.

Upon consideration, it appears that PW-2, an independent timber trader, deposed: "I know both the pre-emptor and the purchaser and the case land. I do timber business near the case land. I informed the

pre-emptor about the sale of the case land. At that time, the land was vacant." This testimony is crucial. It supports the petitioner's claim that he was informed only shortly before the filing of the application. It also contradicts the purchaser's version of the land being improved by development.

By contrast, the evidence of the opposite parties lacks credibility. OPW-1 (Purchaser) claimed that "The pre-emptor himself discussed the sale first on 29.11.2007. No final decision was taken that day. On 14.12.2007, a final discussion was held with the pre-emptor, the vendor, Aziz Fakir, and Dipok. Tk. 60,000 was fixed as deed value. I wanted to put Tk. 80,000 as value, but the pre-emptor assured me he would not deposit amanot, so I agreed to Tk. 60,000." This version is not supported by any documentary proof or by any independent witness. Moreover, it is inherently improbable that a prudent purchaser would reduce the deed value on the basis of an oral assurance from the pre-emptor not to enforce his legal right. Even if such a discussion occurred, it does not amount to legal waiver of the statutory right.

OPW-2 Abdul Aziz reiterated the version of OPW-1 but failed to corroborate any specific act of waiver by the pre-emptor. His testimony, like OPW-1's, appears to be interested and uncorroborated. In law, mere knowledge of a transaction is not equivalent to waiver or

estoppel. No evidence was produced to show that the pre- emptor voluntarily relinquished his statutory right.

It is settled law that the right of pre-emption accrues only after the sale is completed, specifically upon the registration of the sale deed. In Fazaruddin vs. Maijuddin, reported in 44 DLR (AD) 62, the Appellate Division held that the statutory right of pre-emption cannot be defeated by mere verbal assurance unless other facts and circumstances clearly establish a case of acquiescence or waiver. This principle aligns squarely with the statutory scheme of Section 96 of the SAT Act, which recognizes the right to pre-empt only after a valid transfer.

Thus, under Section 96 of the SAT Act, the statutory right of pre-emption arises only upon the completion of a sale through registration of the deed. Any conduct by the pre-emptor prior to the accrual of this right is legally irrelevant for the purposes of waiver, acquiescence, or estoppel. Such waiver or acquiescence must be established through clear and unequivocal conduct occurring only after the right has come into existence.

Accordingly, **the Rule is made absolute**.

**The judgment and order dated 21.06.2017** passed by the learned Additional District Judge, 2nd Court, Bagerhat in Miscellaneous

Appeal No. 44 of 2015 **is hereby set aside, and the judgment and order dated 13.07.2015** passed by the learned Senior Assistant Judge, Bagerhat Sadar, in Miscellaneous Case No. 13 of 2008 **is restored, with a modification that the pre-emptor shall pay a sum of Tk. 1,50,000 (one lakh fifty thousand)** to the opposite party-purchaser as compensation for the development carried out on the case land.

Let the records be sent down along with this judgment at once.

**(Justice Md. Toufiq Inam)**

Ashraf /ABO.