

Present

MR. JUSTICE MD. JAHANGIR HOSSAIN

CIVIL REVISION CASE No. 4597 of 2014

In the matter of :

Md. Sirajul Islam

----- Pre-emptee-appellant-petitioner

Versus

Most. Amena Begum and others

----- Opposite-parties.

None appears

----- For the Pre-emptee-appellant-petitioner

Mr. Subrato Saha, Advocate

-----For the opposite parties.

Heard on 16.08.2023, 17.08.2023, 20.08.2023 and 21.08.2023

Judgment on 22st August, 2023

This Civil Revision has been filed by pre-emptee-appellant-petitioner against the judgment dated 31.08.2014 passed by the learned Joint District Judge, 2nd Court, Natore in Misc. Appeal No.45 of 2011.

The Rule was issued calling upon the opposite party no.1 to show cause as to why the impugned judgment and order dated 31.08.2014 passed by the learned Joint District Judge, 2nd Court, Natore in Misc. Appeal No.45 of 2011, affirming the judgment and order dated 15.05.2011 passed by the learned Senior Assistant Judge, Sadar, Natore, in Miscellaneous Case No. 66 of 2006 (Pre-emption) should not be set-aside and or pass such other or further order or orders as to this court may seem fit and proper.

Pending hearing of the Rule, let operation of the Judgment and order be stayed.

The facts leading to this Civil Revision in brief are that:-

The pre-emptee purchased some portion of land from the opposite party No.2 beyond the notice and knowledge of the pre-emptor, vide sale deed No. 4887 execution date 27.06.2004 and registration date 18.06.2006. The pre-emptor came to know about that sale by public voice on 09.10.2006 and became confirmed by taking certified copy of that sale deed. That the pre-emptor is the co-sharer by purchase in holding and also contiguous land holder but the pre-emptee being stranger to the holding. The pre-emptee enhanced the deed right to the actual value. The pre-emptee in his written objection stated that he went to the house of pre-emptor at Joypurhat there she denied to purchase the land in question but due to influenced by some other persons the pre-emptor instituted the pre-emption case which is liable to be dismissed with cost. Hence the case.

The learned trial court after discussing all the issues was place to allow the pre-emption case.

Being aggrieved by and dissatisfied with the judgment passed by the learned trial court, the Pre-emptee no.1 being appellant preferred a miss-appeal before the court of learned District Judge, Natore vide Misss-appeal No. 45/2011 which was heard by the learned Joint District Judge, 2nd Court, Natore who was pleased to dismiss the appeal

on 31.08.2014 and affirmed the judgment passed by the learned trial court on 15.05.2011 in Pre-emption Case No. 66/2006.

At the time of hearing none appears for pre-emptee appellant petitioner.

On the other hand Mr. Subrato Saha, learned Advocate for the pre-emptor respondent opposite party was present at the time of hearing and made submissions before the court.

It reveals from the revisional application that the pre-emptee took the grounds that both the judgment passed by the trial courts below are bad both in law and fact and suffering from same illegality and infirmity. Both the learned courts below failed to consider that according to amendment of the State Acquisition and Tenancy Act, 2006 (dated 20.09.2006) the right of pre-emption has been changed and as such the Pre-emption case is barred by the amendment Act.

Further he took grounds that both the learned courts below failed to consider that from whom the pre-emptor came to know about sale of land in question and fails to consider evidences on record properly.

On contradictory Mr. Subrato Saha, learned Advocate for the pre-emptor respondent opposite party submits that it is clearly admitted that the Pre-emptor is co-sharer and contiguous land holder of the said property. In the trial court pre-emptor adduced three witnesses and they were crossed by the pre-emptee. By adducing oral evidences and the documentary evidences says pre-emptor successfully proves his case that he is the co-sharer and contiguous land holder which is

elaborately discussed by the trial court and as well as the appeal court. He further submits that pre-emptor produced two witnesses before the trial court. They have also crossed by the learned Advocate for the pre-emptor. In the statement of witnesses and in the cross examination there is clearly admission that the pre-emptor is the co-sharer and the contiguous land holder of the said property. As such there are clear findings in both the lower courts judgments regarding the co-sharer and contiguous land holder. Upon such stage Mr. Subrato Saha, learned Advocate for the pre-emptor respondent opposite party took me to the Section 96 of the incidents of holdings of raiyats, and transfer, purchase and acquisition of lands which as 96. Right of Pre-emption – (1) If a portion or share of a holding of a raiyat is sold to a person who is not a co-sharer tenant in the holding one or more co-sharer tenants of the holding may, within two months of the service of the notice given under section 98, or, if no notice has been served under section 98, within two months of the date of the knowledge of the sale, apply to the Court for the said portion or share to be sold to himself or themselves.

Further Mr. Subrato Saha, learned Advocate for the pre-emptor respondent opposite party took me to the amendment of this law which is as The State Acquisition and Tenancy Act, 1950 (E.B.Act No.XXVIII of 1951) amendment Act 2006 where it is held “96. Right of Pre-emption-(1) If a portion of share of holding of raiyat is sold to a person who is not a co-sharer tenant in the holding one or more co-sharer tenants of the holding may, within two months of the service of the notice given under section 89, or, if no notice has been served under

section 89 within two months of the date of the knowledge of the sale apply to the Court for the said portion or share to be sold to himself or themselves.”

As such the submission of the learned advocate is the pre-emptor filed the case for pre-emption based on co-sharer of the land and as well as the contiguous land holder land in question. He submits even the pre-emptor lost his right as contiguous land holder but the amendment upheld his right as co-sharer. In this case the story is different because the pre-emption case has been filed before the law. The amendment has been executed on 20 September 2006 and the said case has been filed on 15.10.2006. But the deed was executed before the amendment i.e. 18.06.2006.

Lastly Mr.Saha, learned Advocate for the pre-emptor respondent opposite party submits that the pre-emptor filed the case within the preferry of section 96 of the State Acquisition and Tenancy Act.

Mr.Saha, learned Advocate for the pre-emptor respondent opposite party further submits that the pre-emptee in his written objection and the grounds of this revision stated that he offered the pre-emptor he purchase the land but she denied to accept his offer and was not willing to buy the landing question. But in the trial court it did not adduce any witness upon the offer and denied of the pre-emptor. As such there is no discussion upon this point i.e. weaver and acquisition statutory rights. So the learned Trial Court and Appeal Court after discussion the evidences and laws correctly passed the decision. The

learned Appeal Court after meticulously discussion up held the judgment of the Trial Court. In support of his submission he referred 51 DLR (HC), Page-134, wherein it is held that-“The statutory right of pre-emption cannot be defeated by a casual plea of waiver and acquiescence unless a clear case of estoppels is made out by cogent and convincing evidence and unless by conduct the pre-emptor is proved to be in loco parentis with the pre-emptee and he has taken an active part in bringing about the disputed transfer.”

In support of his submission he referred 44 DLR (AD) (1992), Page-62, wherein it is held that-“Right of pre-emption-Waiver and acquiescence-Statutory right of pre-emption cannot be taken away by mere verbal assurance of the person having such right, unless other facts and circumstances clearly make out a case of acquiescence or waiver.”

Earlier I have discussed about the absent of the petitioner-pre-emptee. Bu the learned Advocate for the pre-emptor respondent opposite party placed before me the Lower Court judgment, Appeal Court judgment and the relevant paper with the record and relevant laws and amendment of the laws and decisions of our Apex Court. I have carefully examined the records and both the judgment of the Trial Court and Appeal Court. It reveals there are elaborate discussion about the statement of the witnesses and the regarding the point of co-sharer and contiguous land holder of the land in question and the relevant laws of the State Acquisition and Tenancy Act. It appears the Appeal Court and Trial Court both clearly appeared in the correct decisions. Though

the question of Waiver and acquiescence-Statutory right were not discussed in the judgment of both Lower Courts. But Mr. Subrato Saha by submitting the decisions which is in 44 DLR (AD) and 51 DLR (HC) which is discussed earlier in this judgment. So the settle principle also in favour of the pre-emptor opposite party.

Mr. Subrato Saha, learned Advocate for the pre-emptor respondent opposite party in this case in his long argument give support by presenting the proper laws and the decisions of our Apex Court and the learned Advocate for the pre-emptee petitioner which is appreciated by this Court.

Upon such fact and circumstances and the above discussion it appears both the learned Trial Court and Appeal Court by discussing all the evidences and laws find correct decision. I do not find any reason to interfere upon the impugned judgments both the learned Trial Court and Appeal Court.

Hence the judgment of the both the learned Trial Court and Appeal Court are upheld.

In the result the rule is discharged.

The order of stay granted earlier by this Court stands vacated.

Send down the L.C.Rs and a copy of this judgment be transmitted to the concerned Court at once.