

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 1700 of 2018

Oli Ahammed

.....Petitioner.

-Versus-

Mossammat Anwara Begum and others

.....Opposite parties.

Mr. Ehata Samsul Karim, Advocate

.....For the petitioner.

None appears.

..... For the opposite parties.

Heard and judgment on 24th July, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 01.03.2018 passed by the District Judge, Chattagram in Miscellaneous Appeal No. 25 of 2017 reversing those dated 22.11.2004 passed by the Assistant Judge, Mirsari, Chattagram in Miscellaneous Case No. 16 of 2002 allowing the pre-emption should not be set aside.

Petitioner as pre-emptor filed Misc. Case No. 16 of 2002 before the Court of Assistant Judge, Mirsari, Chattagram for pre-emption against the opposite parties under section 96 of the State Acquisition and Tenancy Act, (S.A. & T. Act).

Plaint case in short, inter alia, is that quantum of land of the suit B.S. Dag No. 54 is total 173 decimals, which was recorded in the two B.S. khatian i.e. B.S. khatian No.166 and 158. B.S. khatian No. 166 was recorded in the name of the petitioner's father Monir Ahammed and the B.S. khatian No. 158 was recorded in the name of Badsha Miah and Sarajul Hoq. The pre-emptor-petitioner is the sharer in the suit dag but the vendor-opposite party sold out the suit land in favour of the pre-emptee-opposite party beyond his knowledge.

Opposite party as pre-emptee contested the case by filing written objection denying the plaint case alleging, inter alia, that her father transferred the land contiguous to the suit plot in favour of her mother in 1965. Their mother had no male issue. So she and her sister have been living in the said contiguous land. The pre-emptee opposite party further stated that the case land is contiguous to their dwelling house and the petitioner's house is far

from the suit land. So pre-emptee opposite party prayed for the dismissal of the case.

By the judgment and order dated 22.11.2004, the Assistant Judge allowed the pre-emption.

Challenging the said judgment and order, pre-emptee opposite party preferred Misc. Appeal No.7 of 2005 before the Court of District Judge, Chattagram, which was heard on transfer by the Divisional Special Judge, Chattagram (it was renumbered as Misc. Appeal No. 25 of 2017), who by the impugned judgment and order dated 01.03.2018 allowed the appeal and after reversing the judgment of the trial court rejected the misc. case.

Challenging the said judgment and order, pre-emptor obtained the instant rule.

Mr. Ehata Samul Karim, the learned advocate appearing for the petitioner drawing my attention to the judgment of the court below submits that admittedly petitioner was found to be a co-sharer in the suit holding as well as contiguous land holder and the trial court found that the pre-emptee is a contiguous land holder but the appellate court upon wrong presumption held that pre-

emptor since is residing permanently in the suit property and now is possessed the case land by purchaser as a contiguous land holder of the suit land and accordingly allowed the appeal and rejected the pre-emption case most illegally. Pre-emptee admittedly a co-sharer in the suit land and as per provision as laid down under section 96 of the State Acquisition & Tenancy Act he is entitled to get order of pre-emption first. In the absence of a co-sharer tenant, a contiguous land holder can come for claiming pre-emption but in the judgment of the appellate court i.e. nothing to show that the pre-emptee was a co-sharer in the suit jote accordingly if it is taken into consideration that he is a tenant as well as tenant of contiguous land holder, but he cannot get privilege to get pre-emption against a co-sharer tenant in the suit jote. The learned advocate further submits that the appellate court totally making out a 3rd case that the pre-emptee purchaser since have more requirement to obtain the suit property to possess accordingly he discarded the claim of the pre-emptor to pre-empt the suit land, which is beyond the logic as well as provision as laid down under section 96 of the State Acquisition & Tenancy Act. In that view of the matter since the appellate court committed

illegality in rejecting the pre-emption case, the impugned judgment is not sustainable in law, which is liable to be set aside.

Although the matter is posted in the list for several days as well as today fixed for delivery of judgment with the name of the learned advocate appearing for the opposite parties but none appears to oppose the rule.

Heard the learned Advocate and perused the Lower Court Record and the impugned judgment.

This is a case for pre-emption under section 96 of the State Acquisition and Tenancy Act, which was instituted long before the amendment of the provision as laid down under section 96 of the State Acquisition & Tenancy Act (which is amended in the year 2006). Both the court below upon concurrently findings found that pre-emptor is a co-sharer tenant in the suit jote. Pre-emptee claim that the suit property was sold to him within the knowledge of pre-emptor but upon going through the judgment of the court below, nowhere it is found that pre-emptor had prior knowledge about the sale and the case was filed beyond the period of limitation and accordingly is barred by law. Trial court upon

considering the evidences has found that pre-emptee purchaser is not even a tenant of contiguous land holder and mother, may be a tenant of contiguous land holder but since still alive pre-emptee as being the daughter of a mother cannot claim to be a tenant contiguous land holder. However since there is nothing to show in the judgment of the court below that pre-emptor is not a co-sharer tenant in the suit property and is not entitled to get pre-emption the findings of the appellate court on the point that the land in question has got more requirement by the contiguous land holder, a pre-emptee is not acceptable under law and for which the pre-emptor legal claim cannot be ignored. Section 96 of the State Acquisition and Tenancy Act provides that: a co sharer tenant or a tenant by contiguous land holder can claim pre-emption of a land if it is sold to outsider, within period of 4 months from the date of knowledge. Accordingly the co-sharer tenant has got the first privilege to get the pre-emption. In the absence of co-sharer tenant, contiguous land holder can come into picture with claim for pre-emption. The instant case when admittedly pre-emptor is found to be a co-sharer tenant in the suit jote, he will get privilege to get the pre-emption against a tenant by contiguous land holder,

if there any. In the instant case trial court upon elaborate discussion on evidence on record found that pre-emptee purchaser, was not even a tenant of contiguous land holder and cannot get any preemption.

In view of the matter the appellate court committed illegality rejecting the pre-emption case.

I thus find merit in this rule.

In the result, the Rule is made absolute and the impugned judgment and order passed by the appellate court is hereby set aside and the judgment and order passed by the trial court is upheld.

The order of stay granted earlier is hereby recalled and vacated.

Send down the L.C.R and communicate the judgment at once.