

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 2464 of 2022

In the matter of:

Mrinal Kanti Chatterjee being dead his legal heirs
Shefali Chatterjee and others

...Pre-emptor-respondent-petitioners

-Versus-

Sheikh Humayun Kabir and others

...Opposite parties

Mr. Meinul Hasan, with
Mr. Shameem Khaled, Advocates

...For the petitioner

Mr. Kazi Shoayeb Hasan, Advocate

... For the opposite party No.1

Heard on: 11.11.2024, 23.02.2025, 20.04.2025, 23.04.2025,
29.04.2025, 30.04.2025, 06.05.2025 and 15.05.2025
Judgment on: 20.05.2025

Mrinal Kanti Chatterjee (being dead substituted by his legal heirs) as pre-emptor filed Miscellaneous Case No. 69 of 2006 (pre-emption) in the Court of Sadar Assistant Judge, Bagerhat to pre-empt the case land. The case was filed under Section 96 of the State Acquisition and Tenancy Act, 1950 (SA & T Act). The case was contested by the pre-emptee-opposite party No.1 Sheikh Humayun

Kabir. After conclusion of the trial and argument, the case was fixed for pronouncement of judgment on 04.11.2019.

On 04.11.2019, the trial Court noticed that the case was filed as per provisions of Section 96 of the SA & T Act as it stood before amendment and accordingly, the pre-emptor deposited an amount equivalent to 10% of the sale price as compensation. The trial Court held that the case ought to have been filed under the provisions of the amended Section 96 which requires deposit of compensation money @ 25% on the sale price and simple interest @ 8% per annum. The trial Court withdrew the case from judgment and fixed 24.11.2019 to deposit the shortfall amount. The pre-emptor complied with the order which is reflected in the order dated 17.11.2019 passed by the trial Court.

Challenging the order dated 04.11.2019, the pre-emptee filed Miscellaneous Appeal No. 32 of 2019 which was heard and disposed of by the learned Additional District Judge, Bagerhat, who, vide judgment and order dated 09.05.2020 allowed the miscellaneous appeal, set aside the order dated 04.11.2019 and directed the trial Court to dispose of the pre-emption case in accordance with the law. The appellate Court below further directed the trial Court not to consider the deposit of shortfall amount by the pre-emptor.

Challenging the order of the appellate Court below, the pre-emptor filed the instant civil revision and obtained the Rule on 19.06.2022.

The pre-emptee-opposite party No. 1 has contested the Rule.

The sale deed under pre-emption was executed and presented for registration on 05.09.2006 and was registered under Section 60 of the Registration Act, 1908 on 08.01.2007. Section 96 of the SA & T Act was substituted by way of amendment with a new Section 96 which came into effect on 20.09.2006. The case was filed on 18.10.2006.

The above-stated facts have raised a serious question of law as to when a registered sale deed is deemed to be effected for the purpose of pre-emption case. Does it operate from the date of execution/presentation for registration or from the date of actual registration? The fate of the instant case lies on the answer to the question.

There are some fundamental differences in the old and new Section 96 of the SA & T Act. As already noted earlier, one of the differences is in respect of the quantum of amount to deposit at the time of filing of the case and the consequence that follows for non-compliance of the said requirement. Under the old Section 96(3)(b), after filing of the pre-emption case along with deposit of

compensation money, the Court had the power to hold an inquiry as to the actual amounts of the consideration money, rent paid and the expenses incurred by the transferee and to direct the pre-emptor to deposit a further sum, if necessary, within such period as it thinks reasonable. In *Mosharaf Hossain (Md) vs. Rekha Khatun and ors.*, 74 DLR (AD) (2022) 146 the Apex Court held that under the old Section 96, any defect regarding the shortfall of deposit of consideration money was curable but under the new Section 96, the Court cannot inquire into what consideration amount was paid and there is no provision to allow the pre-emptor to deposit any shortfall of consideration money, compensation or interest. The Apex Court further held that under the new Section 96 the Court has no option but to dismiss the case if the requisite deposit in the Court is not made at the time of filing of the pre-emption case.

Mr. Meinul Islam, the learned Advocate appearing for the pre-emptor-petitioner, refers to various provisions of the SA & T Act, the Registration Act, 1908, the Transfer and Property Act, 1882 and the cases of *Oli Ahmed Chowdhury being dead his legal heirs and ors. vs. Md. Osman Gani and ors.*, 4 LNJ (2015) 548, *Abdul Matlob and anr. vs. Md. Anowar Hossain and ors.*, 31 BLT (HCD) 2023 141 and *Alhaj Md. Maruf Hasan Swapon and anr. vs. Kohinur Aziz and ors.*, Civil Revision No. 1345 of 2014, date of judgment 28.10.2014 (*unreported*) and submits that the statutory provisions as interpreted in

the reported and unreported cases make the position very clear that once a kabala is registered and certificate of registration is signed, sealed and dated by the registering officer under Section 60 of the Registration Act, the same shall operate from the time of its execution as per Section 47 of the Registration Act or from the time when it was first duly presented for registration under Section 75(3) of the same Act. Mr. Meinul Islam refers to new Section 96(18) of the SA & T Act and submits that the new Section 96 shall not apply to any transfer of any portion or share of a holding of raiyat or any application made under Section 96 made prior to coming into force of the State Acquisition and Tenancy (Amendment) Act, 2006. Mr. Meinul Islam lastly submits that in the attending facts and circumstances of the case, the old Section 96 shall apply to the case although the same was filed after coming into force of the new Section 96.

Mr. Kazi Shoayeb Hasan, the learned Advocate appearing for the pre-emptee-opposite party No. 1, also refers to various provisions of various statutes as well as the cases of *Mosharaf Hossain vs. Rekha Khatun* 74 DLR (AD) (2022) 147 (*supra*), *Md. Moslemuddin and another vs. Md. Abdul Hakim and others*, 1995 (III) BLT SC (AD) 134, *Abdul Motalib vs. Iman Ali Mollah and others*, 42 DLR (AD) (1990) 123, *Md. Rejwan Baki and others vs. Md. Mahbub-UL-Hoque and others*, 30 BLD (HCD) 2010 109 and *Ayesha Khatun*

vs. Musammat Jahanara Begum and others, 43 DLR (AD) (1991) 9 and submits that the reported cases decided by the Appellate Division have unequivocally settled the law that for the purpose of Section 96 (both old and new) of the SA & T Act, registration means the date when the sale deed is registered and certificate of registration is signed, sealed and dated by the registering officer under Section 60 of the Registration Act and the same, for the purpose of pre-emption case, cannot be given retrospective effect under Sections 47 and/or 75(3) of the Registration Act.

Mr. Meinul Islam's argument is that once a sale deed is registered under Section 60 of the Registration Act, it operates retrospectively, on the other hand, Mr. Kazi Shoayeb Hasan's arguments is that Section 60 has no retrospective effect for the purpose of pre-emption case filed under Section 96. Let us visit the statute laws and the case laws.

In the old Section 96 of the SA & T Act, the term "transferred" has been used. "Transfer" includes, inter alia, 'a transfer by private sale' [Section 82(7) of the SA & T Act]. In the new Section 96, the term "sold" has been used. Under Section 54 of the Transfer of Property Act and Section 17 of the Registration Act, the sale of land can only be made by a registered instrument.

Sections 52 and 58 of the Registration Act deal with matters related to duties of registering officers when a document is presented for registration and particulars to be endorsed on documents admitted to registration. Sections 59 to 61 of the Registration Act are relevant in the case in hand. Those are reproduced below:

“59. The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.

60. (1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word “registered,” together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

61. (1) The endorsements and certificate referred to and mentioned in section 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.

(2) The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.”

Section 47 of the Registration Act is also relevant. Section 47 runs as follows:

“47. A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.”

In case of refusal by the Sub-Registrar to register a document, the aggrieved person, subject to the grounds of refusal, may either appeal to the Registrar under Section 72 or apply to the Registrar under Section 73 to get the document registered. If the Registrar orders or directs the document to be registered and the same is registered, such registration shall take effect as if the document had been registered when it was first duly presented for registration [Sections 72(2) and 75(3) of the Registration Act].

The new Section 96(18) of the SA & T Act, which has been relied on by Mr. Meinul Islam, is quoted below:

“96(18). 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 of this Act, made prior to

coming into force of the State Acquisition and Tenancy Amendment Act, 2006.”

The argument advanced on behalf of the pre-emptor-petitioner is based on three cases. First case is ***Oli Ahmed Chowdhury***, 4 LNJ 548 (*supra*). In this case, the case land was transferred on 30.08.2001. The pre-emption case was filed on 19.12.2001. The case land was included within the periphery of Poursava on 10.07.2003. The kabala under pre-emption was registered under Section 60 of the Registration Act on 12.07.2003. This Division referred to the cases reported in *Md. Dewan Ali*, 13 MLR (AD) 198 [wrongly mentioned as 13 MLR (AD) 202] and *Ayesha Khatun*, 43 DLR (AD) 9 and held that in view of Section 47 of the Registration Act, the kabala shall be deemed to have been operated from the date of its execution *i.e.* from 30.08.2001 when the case land was not within the periphery of Poursava and accordingly, the case under Section 96 of the SA & T Act was maintainable.

Second case is ***Abdul Matlob***, 31 BLT 141 (*supra*). In this case, the kabala under pre-emption was registered while the old Section 96 was in force. The pre-emption case was filed on 29.11.2010 *i.e.* after coming into force of the new Section 96 but on advice of the engaged lawyer, who was unaware of the new Section 96, the pre-emptor deposited 10% of the compensation money as was required under the old Section 96 instead of $25\%+8\%=33\%$ as required under the new

Section 96. After being aware of the new law, the pre-emptor filed an application to deposit the balance amount which was allowed by the trial Court but rejected by the appellate Court below citing new Section 96(3). Relying on the case of *Serina Begum vs. Mofizul Islam*, 42 DLR (AD) 77, which was decided under the old Section 96 wherein the Apex Court allowed the pre-emptor's prayer to deposit the balance compensation money, this Division upheld the trial Court's order on the ground that the pre-emptee in his written objection did not raise any specific objection regarding the deficit deposit which was Tk. 2,300 and that the pre-emptor, on detection of the same, made written application before the trial Court to deposit the balance amount of Tk. 2,300. Be it mentioned that the case of *Mosharaf Hossain*, 74 DLR (AD) (*supra*) 146 was not referred to by this Division.

Third case is *Alhaj Md. Maruf Hasan Swapon* (Civil Revision No. 1345 of 2014, date of judgment 28.10.2014) (*unreported*) (*supra*), wherein the kabala under pre-emption was presented for registration on 07.09.2006. The pre-emption case was filed on 19.11.2006 upon deposit of 10% compensation money under the old Section 96 although the case was filed after coming into effect of the new Section 96. The question of law raised before this Division was whether the pre-emptor was required to deposit money as per provisions of the

new Section 96(3) although the kabala was presented for registration before coming into force of the new Section 96(18).

Relying on the new Section 96(18), this Division observed:

“However, the legislature was not oblivious of the transfers that took place before the commencement of the Amending Act, 2006. Accordingly, the legislature gave prospective effect to the entire new section 96 provision. This is clear from sub-section (18) of the substituted section 96 as quoted above.

It follows that the new section 96 as a whole including sub-section (3) is not applicable to a transfer document which was executed and presented for registration before 20-09-2006. Similarly where a document was executed and presented for registration before the said commencement but the pre-emption case is instituted after such commencement the new section is not applicable to the case, rather the old section will be applicable.

It is noted that when a kabala is executed and presented for registration on payment of consideration the act of the parties to the transfer is complete. The official act of recording or registering the document in the volume of the Sub-registry office is for other purposes, one of those being for reckoning the limitation period for filing a pre-emption case. Such registration or entry of a document in the volume of that office after commencement of the Amending Act, 2006 will not affect the operation of the old section 96 to a case that is instituted under the old section whether before or after commencement of the Amending Act, 2006.”

Be it mentioned that neither Section 47 of the Registration Act nor any case law was cited in the unreported case.

Now, I turn to other cases, some of which have been referred to by learned Advocate of pre-emptee-opposite party, in which the question as to when a kabala under pre-emption is deemed to registered and effected was answered.

It was held in *Muhammad Meher Ali Mondal vs. Muhammad Karam Ali Laskar*, 17 DLR 365 that:

“It is section 60 of the Registration Act which supplies the answer to the question as to when a document is considered to be registered... In our view, the language of section 60 admits of no doubt that it is the certificate in compliance with the provision of this section that makes a document a registered document. The document cannot be regarded as registered before the certificate is endorsed thereon and signed, sealed and dated in terms of section 60, nor has it to wait for acquiring the character of a registered document till after compliance with the other provisions that follow section 60. Their Lordships of the Privy Council having had an occasion to refer to this section in the case of *Muhammad Ewaz V. Birj Lal* (ILR 1 All 465) observed that, "the certificate is that which gives the document the character of a registered instrument.”

The above-quoted ratio was approved and applied by the Appellate Division in *Abdur Rahman @ Abdul Rahman vs. Maklis Ali*, 31 DLR (AD) 118 wherein the kabala under pre-emption was

presented for registration on 29.07.1972, the pre-emption case was filed on 08.08.1972 and the kabala was registered under Section 60 of the Registration Act on 11.08.1972. It was held that the cause of action for pre-emption accrues on the date of registration of the kabala where registration is compulsory and further that the pre-maturity of the pre-emption case was cured during its pendency.

Now, I turn to Sections 47, 72(2) and 75(3) of the Registration Act. To reiterate, under Section 47 a registered document operates from the time which it would have commenced to operate if no registration had been made and not from the time of its registration. Under both Sections 72(2) and 75(3), registration, following the order of the Registrar, takes effect from the date when the document was first duly presented for registration before the Sub-Registrar. In view of the provisions of Sections 47, 72(2) and 75(3) to be read with Section 60 of the Registration Act, the question is what would be the effective date of registration of a document in a situation where registration under Section 60 is completed after few days or months or years of the presentation of the document for registration. It is the argument of the learned Advocate for the pre-emptor-petitioner that the effective date of registration in pre-emption cases would be the date of the presentation of the document for registration.

Similar argument was raised in *Abdul Motalib*, 42 DLR (AD) 123 (*supra*) wherein the kabala under pre-emption was presented for

registration on 26.02.1976. The pre-emptor came to know about the sale on 16.12.1976. The pre-emption case was filed on 22.12.1976. The kabala was registered under Section 60 on 13.04.1978. It was argued that the transfer of pre-emptable land effected by a registered document is to take effect under Section 47 and in view of Section 75(3), it shall take effect as least from 26.02.1976 after its registration on 13.04.1978 and thus, the pre-emption case having been filed on 22.12.1976 was barred by limitation. The Appellate Division followed and applied *Muhammad Meher Ali Mondal* 17 DLR 365 and *Abdur Rahman* 31 DLR (AD) 118 and held that when registration is compulsory, the date of accrual of the right of pre-emption is not the date of execution of the deed of sale or any other earlier date or the date of presentation for registration but the date on which the deed of sale is registered under Section 60 of the Registration Act and the title effectively passes. In respect of Section 47, it was observed that the section is called in aid to decide the claims of two competing kabalas from the same vendor. It is designed to protect a vendee from the fraudulent operations of a vendor. The section applies when the same vendor successively transfers the same property to different purchasers at different times. Section 47 has nothing to do with accrual of right of pre-emption.

In *Ayesha Khatun*, 43 DLR (AD) 9 (*supra*), the deed of sale was executed on 20.03.1979. The pre-emption case was filed on

20.07.1979. The deed of sale was registered on 21.07.1980. The Apex Court held:

“This case involves interpretation of both section 96 of the State Acquisition and Tenancy Act, and section 47 of the Registration Act. It is now a settled principle of law that the cause of action under section 96 of the State Acquisition and Tenancy Act accrues on the date of the registration of the deed of sale, when registration is compulsory-see *Abdur Rahman vs. Maklis Ali* 31 DLR (AD) 118. This is because the right of pre-emption arises on the completion of the transfer. It could not be said to have completed earlier by reason of section 47 of the Registration Act though thereunder the instrument of transfer commences to operate from earlier date. If, however, an application for pre-emption is filed before the completion of the transfer i.e. the registration of the sale, as in the appellant's case, it is not to be dismissed on the ground of prematurity if the deed of transfer is registered during the pendency of the pre-emption proceeding-see *Lebu Miah Vs. Ganesh Chandra*, 34 DLR (AD) 220 and *Aftab Mia Vs. Wahab Ali*, BCR 1982 (AD) 87.

We therefore, hold that the appellant's application for pre-emption is maintainable, but she is not entitled to pre-emption because her right as a contiguous landholder that accrued on 21st July, 1980 had been undermined by respondent's right of co-sharership by purchase that had accrued earlier on 23rd March, 1979. The respondent appears to have stolen a march. Her right accrued on the basis of section 47 of the Registration Act but the appellant's right

accrued as per provision of section 96 of the State Acquisition and Tenancy Act.” (*underlinings are mine*)

In ***Md. Moslemuddin***, 1995 (III) BLT SC (AD) 134 (*supra*), the kabala was executed on 18.01.1978 and registered on 22.01.1981. In this case, the question was raised as to whether for the purpose of pre-emption, the date of transfer would be the date of registration of the kabala or the date of execution of the kabala as per Section 47 of the Registration Act. The Apex Court held that this is a question which has been long settled by a series of decisions to the effect that 'transfer' within the meaning of section 96 of the State Acquisition and Tenancy Act is completed when a certificate is issued by the registering officer that the document has been registered. Registration is a process which is completed on the date this certificate is issued. This has nothing to do with the date from which the transfer takes effect. For the purpose of filing an application for pre-emption, it is the date of registration which is of material importance.

In ***Md. Rejwan Baki***, 30 BLD 109 (*supra*), the case property was transferred on 24.11.2005. The pre-emptor filed the pre-emption case on 15.08.2007 claiming himself as a contiguous land owner of the case property. Meanwhile, the new Section 96 of the SA & T Act came into effect on 20.09.2006. The new Section 96 debarred a contiguous land owner from invoking the right of pre-emption. The pertinent question raised in the case was whether the transfer was

made before or after amendment. This Division referred to *Abdul Motalib* 42 DLR (AD) 123, *Muhammad Meher Ali Mondal* 17 DLR 231, *Md. Moslemuddin* 1995 (III) BLT (AD) 134 and other case laws and new Section 98(18) of the SA & T Act and held that admittedly the sale deed was registered under Section 60 of the Registration Act after 20.09.2006 and as such, the pre-emptor was barred by the new Section 96 from claiming the right of pre-emption as a contiguous land owner inasmuch as transfer for the purpose of pre-emption is not the transfer by execution of the sale deed but transfer as per Section 60 of the Registration Act.

In *Ram Saran Lall and ors. vs. Domini Kuer and ors.*, AIR 1961 SC 1747, the parties were Hindus but they were governed by the Muslim Law of pre-emption as available to them by custom. The main question before the Indian Supreme Court was when can the demand for pre-emption be exercised. The majority opinion of the Court, by a 3:2 verdict, decided that such demand can be made only after completion of the sale and that sale is complete not only after registration of the sale deed but only after the registered document is copied in the Registration Office as provided under Section 61 of the Registration Act. In respect of Section 47 of the Registration Act, the Indian Supreme Court observed:

“Section 47 of the Registration Act does not, however, say when a sale would be deemed to be complete. It only permits

a document when registered, to operate from a certain date which may be earlier than the date when it was registered. The object of this section is to decide which of two or more registered instruments in respect of the same property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale, when the instrument is one of sale.”

The cases of *Abdul Motalib* 42 DLR (AD) 123, *Ayesha Khatun* 43 DLR (AD) 9 and *Md. Moslemuddin* 1995 (III) BLT SC (AD) 134, all decided by the Appellate Division, make it very clear that the word “transfer” mentioned in the old Section 96 of the SA & T Act means completion of registration of the kabala under Section 60 of the Registration Act when the title effectively passes. This proposition law equally applies to the words “sold” mentioned in the new Section 96(1) and “transfer” in new Section 96(18). The Appellate Division further declared the law in the cited cases that if a pre-emption case is filed before registration of the kabala the same is not liable to be dismissed on the ground of prematurity. The defect of prematurity is cured when the kabala is registered during pendency of the proceeding. In respect of Sections 47 and 75 of the Registration Act, the Appellate Division handed down the law in unequivocal terms that those sections do not apply to the pre-emption case and have nothing to do with accrual of right of pre-emption. Same view was taken by the Indian Supreme Court.

Finally, the Apex Court in *Mosharaf Hossain* 74 DLR (AD) 147 (*supra*) declared the law that deposit of shortfall of consideration money at the time of filing of the pre-emption case under the new Section 96 of the SA & T Act is not curable and leaves the Court no option but to dismiss the case.

The law declared by the Appellate Division is binding on the High Court Division (Article 111 of the Constitution). The question of law that the right of pre-emption accrues on the date of registration of the deed of sale, when registration is compulsory, has stood the test of time and is now a *stare decisis*, an established precedent handed down by past judges [per Mustafa Kamal, J. in *Abdul Motalib*, 42 DLR (AD) 123]. Accordingly, I am unable to follow the cases referred to by learned Advocate of the pre-emptor-petitioner which were decided by this Division.

Reverting back to the case in hand, the kabala was presented for registration on 05.09.2006. The new Section 96 of the SA & T Act came into effect on 20.09.2006. The case was filed on 18.10.2006. The kabala was registered on 08.01.2007. According to the law declared by the Appellate Division, the case was premature. Since the case was filed after coming into effect of the new Section 96, the pre-emptor was legally bound to deposit the amount calculated as prescribed by the new Section 96, failure of which renders the case liable to be dismissed. The pre-emptor did not deposit the requisite

amount at the time of filing of the case. Therefore, the case was liable to be dismissed. The subsequent event of registration of the kabala cures the defect of prematurity but does not alter the fate of the pre-emptor for the reason that in any event he had already breached the mandatory provision of the new Section 96. The trial Court was right in holding that the case was filed under new Section 96 but was wrong in giving the pre-emptor the opportunity to deposit the amount in respect of shortfall of consideration, compensation and interest. The appellate Court below ought to have dismissed the case.

In the result, the Rule is discharged. The pre-emption case is dismissed under the new Section 96(3) of the State Acquisition and Tenancy Act.