

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Lutfur Rahman

Civil Revision Case No. 1581 of 2023.

In the matter of:

Md. Ataur Rahman.

.....Pre-emptee-Petitioner.

-Versus –

Noor Jahan Begum being dead her legal heirs sons
1 (a) Muktar Ali and others

..... Pre-emptor-opposite parties.

Mr. Golam Ahmed, Advocate

.....Pre-emptee-Petitioner..

Mr. Surojit Bhattacharjee, Advocate.

..... Pre-emptor-opposite parties.

**Heard on:20.10.2025, 21.10.2025 and Judgment
on:13.11.2025.**

Md. Lutfur Rahman, J.:

This Rule was issued granting leave calling upon the opposite party No.1 to show cause as to why the judgment and order dated 15.09.2022 passed by the learned District Judge, Sunamganj in Civil Revision No. 14 of 2021 rejecting the revisional application and thereby affirming the judgment and order dated 04.04.2021 passed by the learned Assistant Judge, Jamalganj, Sunamganj in Pre-emption Miscellaneous Case No.7 of 2017 keeping the decision pending regarding the commissioner report should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Short facts relevant for the disposal of the Rule are that the opposite party No.1 filed Pre-emption Miscellaneous Case No. 20 of 2012 on 08.07.2012 which was renumbered as Pre-emption Miscellaneous Case No. 7 of 2017 impleading the petitioner as purchaser pre-emptee, opposite party Nos.2-5 as sellers pre-emptees and other opposite parties for pre-emption of the case land measuring 5 (five) decimals of land. The purchaser pre-emptee appeared in the case by filing written objection and denying the claims of the pre-emptor and he prayed for dismissing the case. By this time one witness was examined and cross-examined as P.W.1. Thereafter the petitioner filed an application before the learned Assistant Judge, Jamalganj, Sunamganj for local inspection by a survey knowing Advocate Commissioner stating that in Paragraph No.15 of his written objection he had clearly stated that at the end of the month of December, 2010 he had developed the case land by filing earth worth about Tk. 45,000/- and the same was admitted by the pre-emptor in her cross examination and as such a local inspection is very much necessary etc. The learned judge allowed the application and appointed an Advocate Commissioner who after inspection filed a report on 29.11.2018 and he was examined as CW-1. The present petitioner filed an objection against the Advocate Commissioner's report. The learned Assistant Judge, Jamalganj, Sunamganj by order

dated 04.04.2021 kept the decision pending opining that the decision regarding the commissioner's report will be taken at the time of trial finally. Against the said order the pre-emptee-petitioner on 19.09.2021 preferred Civil Revision No.14 of 2021 before the District Judge, Sunamganj. The learned District Judge after hearing the revision rejected the same by impugned judgment and order dated 15.09.2022. Hence this revision under section 115(4) of the Code of Civil Procedure.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 15.09.2022 the petitioner preferred this revisional application and obtained rule.

Mr. Golam Ahmed, the learned Advocate for the petitioners takes me to the revisional application, impugned orders and other relevant documents and submits that the petitioner developed the land after purchasing the same and it is admitted by the pre-emptor P.W.1 in her cross examination in the words “” খরিদ বিক্রয় ২০১০ সনের ডিসেম্বর মাসে হয়, নালিশা ভূমিতে মাটি ভরাট করে বাসা বাড়ি তৈরীর উপযোগী করা হয়েছে, ২০১০ সালের ডিসেম্বর মাসের শেষ দিকে ১নং প্রতিপক্ষকে আমি মাটি ভরাট করতে নিষেধ করি, সে নিষেধ মানেনি.....” But the Advocate commissioner being biased reported that no development had been done on the suit land and thereafter the pre-emptee petitioner submitted an objection which ought to have been disposed of but the trial court passed an order dated 4.04.2021 to the

effect that and the objection raised by the petitioner against the commissioner's report would be considered at the end of the trial. He further submits that "the commissioner's report needs be either accepted or rejected by the court without delay, otherwise justice will be frustrated and multiplicity of suits will arise but both the court's below failed to appreciate the same which causes error in decision resulting error of law occasioning failure of justice". That the trial court below kept the commission report and the objection thereto to be disposed of at final hearing failing to consider that without disposal of the commissioner's report continuation of the trial or conclusion of the trial will be illegal and prejudicial to the pre-emptee.

He next submits that in a pre-emption case if there is claim of development a local inspection to this effect becomes necessary and after local inspection both parties have opportunity to raise objection and the court requires to dispose of the commissioner's report and objection if any and then proceeds with trial but in the instant case the trial court kept the objection pending with the opinion to determine the same at the end of the trial which is illegal, perverse and the revisional court without considering the proportion of law rejected the revision which is also perverse and not tenable in the eye of law.

Mr. Surojit Bhattacharjee, the learned Advocate appearing for the opposite party No. 1 submits that the impugned orders suffer from no illegality and thus prays for discharging the rule.

I have heard the learned Advocate for both the parties and also perused the record.

It appears that after purchase of the case land the petitioner developed the same by filling earth worth about Tk. 45,000/- which is admitted by the pre-emptor opposite party No.1 P. W. 1 in her cross examination saying " খরিদ বিক্রয় ২০১০ সনের ডিসেম্বর মাসে হয়, নালিশা ভূমিতে মাটি ভরাট করে বাসা বাড়ি তৈরীর উপযোগী করা হয়েছে, ২০১০ সালের ডিসেম্বর মাসের শেষ দিকে ১নং প্রতিপক্ষকে আমি মাটি ভরাট করতে নিষেধ করি, সে নিষেধ মানেনি..... but the Advocate Commissioner being biased reported that the case land had not been filled up by earth and the court's below failed to appreciate that without disposing of the commissioner's report along with the objection thereto trial cannot be continued or concluded. Both the court's below committed error of law in observing that the commission's report and the objection to the commissioner's report would be considered at the end of the trial.

The object of local investigation is to obtain evidence which from its very nature can only be obtained on the spot and to elucidate any point which is left doubtful on evidence taken before the court. A commissioner's report is evidence in the suit and it is the duty of the

court to consider it before reaching any conclusion. The court should dispose of any application in respect of commission report and objection if any as soon as possible and should not keep any application in relation thereto pending to be decided later one simply stating that objection can be taken and irrelevant things may be deleted from the commission's report at the end of trial. It appears on the face of the commission report that it has been biased and the court should come to a finding upon careful consideration of the report as well as the objection. A commission report is evidence in the suit and the court should consider it before it reaches its conclusion. Reference may be made from the case reported in Venktaraman Vs. Pannusami, AIR1935, Madras, 918.

Thus, I see that both the courts below committed error of law in not disposing of the commission report as well as the objection by observing that those would be considered at the final trial, i.e. end of the trial.

Therefore, the objection to the commission's report should be disposed of, either be accepted or rejected by the court prior to proceeding with the trial.

I find substance in the submission of the learned lawyer for the petitioner.

As a result the rule is made absolute.

The judgment and order dated 15.09.2022 passed by the learned District Judge, Sunamgonj in Civil Revision No. 14 of 2021 rejecting the revisional application and thereby affirming the judgment and order dated 04.04.2021 passed by the learned Assistant Judge, Jamalgonj, Sunamgonj in Pre-emption Miscellaneous Case No.7 of 2017 is hereby set aside.

The trial court is directed to dispose of the commission's report and objection filed against the commissioner's report by the pre-emptee on merit and then proceed with the trial.

The ad-interim order is hereby recalled and vacated.

However, there is no order as to costs.

Communicate the judgment and order to the concern Court at once.

(Md. Lutfor Rahman,J)