

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Revisional Jurisdiction)

**Present:**

**Mr. Justice S.M. Masud Hossain Dolon**

**Civil Revision No. 1504 of 2021**

Md. Hafizur Rahman.

.... Pre-emptee-petitioner.

-Versus-

Mst Tahmina Begum and others

.... Pre-emptor-opposite parties.

No one appears for the petitioner.

Miss. Syeda Nasrin, Advocate with  
Mr. Md Razu Howlader Palash, with  
Mr. Bibek Chandra, with  
Mr. Anwar Hossain, with  
Mr. Md Golam Kibria, with  
Ms. Jannat Peya, Advocates  
.... for the opposite parties.

**Heard on: 12.05.2024, 13.05.2024 &  
Judgment on: 14.05.2024**

This Rule was issued calling upon opposite-party No. 1, to show cause as to why judgment and order dated 07.03.2021 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Naogaon in Miscellaneous Appeal No. 91 of 2018 allowed the appeal and granted pre-emption in favour of the pre-emptor opposite party No. 1 thereby reversed the judgment and order dated 12.08.2018 had passed by the Senior Assistant Judge, Naogaon in Pre-emption Miscellaneous Case No. 08 of 2010 who rejected the prayer for pre-emption of the pre-emptor

opposite party No. 1 filed under section 24 of the Non Agricultural Tenancy Act, 1949 should not be set-aside and/or such other or further order or orders pass as to this court may seem fit and proper.

Facts for disposal of the Rule are that, the opposite party No. 1 as pre-emptor filed Miscellaneous Case being No. 08 of 2010 under section 24 of the Non Agricultural Tenancy Act, 1949 before learned Senior Assistant Judge, Naogaon against the pre-emptee petitioner of the case land stating, inter alia, that pre-emptor is the co-sharer by inheritance in respect of the case land from pro-forma opposite party No. 2 without informing the pre-emptor the case land was transferred hence the case.

The pre-emptee petitioner had contested the suit by filing a written statement and denied all the material allegations of the case.

The learned Senior Assistant Judge, Naogaon after scrutinized oral and documentary evidences had adduced by the parties in support of their respective claims, rejected the miscellaneous case by judgment dated 12.08.2018 against which pre-emptor opposite party No. 1 filed Miscellaneous Appeal No. 91 of 2018 before learned District Judge, Naogaon who transferred the same to learned Joint District Judge, 2<sup>nd</sup> Court, Naogaon for disposal. After hearing the parties, learned Joint District Judge allowed the appeal and reversed the judgment and order had passed by learned Senior Assistant Judge,

Naogaon by judgment and order dated 07.03.2021 against which the pre-emptee-purchaser was moved the instant revisional application and obtained Rule.

No one appears for the petitioner though the case was repeatedly posted to the daily cause list of this Court with the name of learned Advocate for the petitioner.

Miss. Syeda Nasrin, the learned Advocate on behalf of the opposite party No.1 submits that the learned Appellate Court had been considering all the materials on record and heard both the parties allowed the miscellaneous appeal. He further submits that pre-emptor is the co-sharer by inheritance in respect of the case land. He did not know about the transfer. In this regard she referred the case of Aminullah vs Serajul Huq, reported in 65 DLR (AD) 83, in the case of Aminul Islam vs Abdul Sukkur, reported in 73 DLR (AD), 57 and in the case of Amjad Hossain Vs Mir Mohammad, reported in 19 ALR (HCD), 149.

I have heard the learned Advocate for the opposite party No.1, perused the lower courts record and all other relevant papers as well as the judgments and orders passed by both the Courts below. It appears that the property was transferred on 14.07.2008 and he filed miscellaneous case for mutation being No. 2203/Naogaon/2009-2010 then on 31.01.2010 pre-emptor obtained the certified copy of the said

deed and filed the pre-emption case on 01.02.2010 under section 24 of the Non-Agriculture Tenancy Act. In the present case admittedly the deed was executed on 14.07.2008 but the registration under section 60 of the Registration Act was not completed till 31.01.2010. The settled principle of law is that unless the transfer deed is registered under section 60 of the Registration Act or the pre-emptor came to know about the said transfer, cause of action of pre-emption does not arise. Admittedly the pre-emption case was filed on 01.02.2010, immediately after coming to know about the transfer upon obtained the certified copy of the transfer deed filed the pre-emption case within 4 months of the statutory period of limitation from the date of knowledge of such transfer. So, it is clear that the pre-emption case was not barred by law.

In respect of other contention as to whether the pre-emptor is a co-sharer or not, the trial court and lower appellate court upon discussed all the facts and circumstances of the case came to a conclusion that the petitioner and opposite party No. 2 are husband and wife and also co-sharer tenants to the case holding by a registered deed. In section 24 of the Non-Agricultural Tenancy Act, it is provided that if a co-sharer tenant owns a portion of land in any plot, he is to be treated a co-sharer in the entire plot even if the land of that plot is recorded in more than one khatian. Aminullah (Md) and other vs

Serajul Huq and others, 65 DLR (AD) 82 and Selina Gulshan Ara Gul Hasna vs Mashiur Rahman being dead his legal heirs 1(Ka) Asmaul Husna and others 73 DLR (AD) 54. Thus in spite of the fact that pre-emptor is still a co-sharer in the case plot.

In view of above facts and circumstances of the case, I find no illegality in the judgment and order passed by the learned appellate court and rightly reversed the judgment of the trial court.

Accordingly, the Rule is discharged, however, any order as to costs.

The order of stay granted earlier by this court is hereby vacated.

Send down the L.C.R along with a copy of this judgment to the concerned Court at once.