

Present:

Mr. Justice Md. Salim

CIVIL REVISION NO.4517 OF 2023.

Mohammad Nurul Alam Chowdhury
alias Ukil and another

..... Pre-empte-Petitioners.

-VERSUS-

Sree Shibu Prashad Dutta and others

.... Pre-emptor-Opposite Parties.

Mr. Nur Mohammad Talukder with

Mr. Syed Nazmul Karim, Advocate.

..... For the petitioners.

Mr. Hazi Saifuddin Chowdhury,
Advocate

..... For the opposite parties.

**Heard on 24.04.2025,
29.29.06.2025, 30.06.2025,
08.07.2025 and 13.07.2025.**

Judgment on 16.07.2025

By this Rule, the opposite parties were called upon to show cause as to why the Judgment and order dated 10.05.2023, passed by learned Additional District Judge, 1st Court, Chattagram in Miscellaneous Appeal No.135 of 2017, disallowed the appeal in affirming the Judgment and

order dated 20.08.2017 passed by the learned Senior Assistant Judge, 2nd Court, Potiya Chowki, Chattogram in Preemption Miscellaneous Case No.01 of 2003 allowing the preemption should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The facts, in brief for disposal of the Rule, are that the opposite party Nos.1-5 as preemptors instituted Miscellaneous Case No.01 of 2003 before the Senior Assistant Judge, 2nd Court, Potiya Chowki, Chattogram for preemption of the case land under section 96 of the State Acquisition and Tenancy Act,1950 contending inter-alia that they are the co-sharer of the case holding instead the preemptor purchaser is a stranger to the case holding but the Opposite Party Nos. 6 and 7 transferred the case land to the preemptor purchaser without serving any notice to the preemptor Opposite Parties.

The pre-emptor purchaser contested the case by filing a written statement, denying all the material allegations made in the plaint, contending inter alia that the case is barred by limitation; that he purchased the case land from

the preemptive opposite parties Nos. 6 and 7 on 21.12.1995 and 12.02.1996 and took over the possession of the case land and enjoys the same without any intervention and devolved the land by expending huge amount.

The learned Senior Assistant Judge, 2nd Court, Potiya Chowki, Chattogram, framed the necessary issues.

Subsequently, the learned Senior Assistant Judge, 2nd Court, Potiya Chowki, Chattogram, by the Judgment and order dated 20.08.2017, allowed the preemption.

Being aggrieved, the pre-emptive-petitioner, as appellant, preferred Miscellaneous Appeal No.135 of 2017 before the District Judge, Chattogram. Eventually, the learned Additional District Judge, 1st Court, Chattogram, by the Judgment and order dated 10.05.2023, disallowed the appeal in affirming those passed by the trial Court below.

Being aggrieved, the pre-emptive-petitioner preferred this Civil Revision under section 115 (1) of the Code of Civil Procedure before this court and obtained the instant Rule.

Mr. Nur Mohammad Talukder, the learned Counsel appearing on behalf of the petitioner, submits that as per sub-section 3 of Section 96 of the State Acquisition and

Tenancy Act the pre-emptor failed to deposit the amount of case money or the value of the transferred holding with compensation money which is mandatory to deposit at the time of filing the preemption case. However, both the court below failed to consider the same and committed an error of law, resulting in an error in the decision and the failure of justice.

Mr. Hazi Saifuddin Chowdhury, the learned advocate appearing on behalf of the preemptor-opposite parties, submits that at the time of filing the case, the preemptors deposited an amount of sale proceeds of the case land within the period of limitation and thereafter due permission of the court deposited rest of the money along with compensation at the rate of 10%. Thereby, both the court below very justifiedly allowed the preemption case and rejected the plea taken by the pre-emptor.

I have considered the submissions advanced by the Bar, perused the Judgment of the courts below, and examined the oral and documentary evidence on the record. It appears that the opposite parties, being the pre-emptor, filed the instant case under Section 96 of the State Acquisition and Tenancy Act for

preemption of the case land. In order to prove the case, the preemptors examined as many as two witnesses and exhibited necessary documents. On the contrary, the pre-emptor-petitioner to prove his case examined as many as three witnesses and exhibited the essential documents.

I have scrutinized each deposition and cross-examination of the witnesses, as well as other material evidence available on record. Analyzing the evidence on record, it appears that, admittedly, the preemptors are the co-sharers of the case holding, but the preemptor seller sold the case land to the preemptor petitioner without serving any notice upon the preemptors as per the provision so enumerated in section 89 of the State Acquisition and Transfer Act. However, to substantiate the argument advanced by the Bar, the relevant law may be quoted as below:--

"Section 96 of the State Acquisition and Tenancy Act provide Right of Preemption, (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 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:

Provided that no application under this section shall lie unless the applicant is-

- a) a co-sharer tenant in the holding by inheritance, and
- (b) a person to whom sale of the holding or the portion or share thereof, as the case may be, can be made under section 90.

Provided further that no application under this section shall lie after expiry of three years from the date of registration of the sale deed.

(2) In an application under sub-section (1), all other co-sharer tenants by inheritance of the holding and the purchaser shall be made parties.

(3) An application under sub-section (1) shall be dismissed unless the applicant or applicants, at the time of making it, deposit in the court-

- (a) the amount of the consideration money of the sold holding or portion or share of the holding as stated in the notice under section 89 or in the deed of sale, as the case may be;

(b) compensation at the rate of twenty-five per centum of the amount referred to in clause (a); and

(c) an amount calculated at the rate of eight per centum simple annual interest upon the amount referred to in clause (a) for the period from the date of the execution of the deed of sale to the date of filing of the application for preemption."

It appears that Sub-section 3 of Section 96 of the State Acquisition and Tenancy Act stipulates that an application for preemption must be accompanied by a deposit of the entire consideration money of the property transferred, as stated in the notice under Section 89, together with compensation at the rate of 10% thereof. The statutory deposit being a condition precedent to the application being entertained, its non-compliance renders the application liable to be dismissed. This view also gets support from the case of Md. Rubiul Isalam and others – Vs- Sultan Mahmud, died leaving behind his heirs Md. Abu Hasnat (Bulbul) and others reported in XVIII ADC (AD) 177 wherein their Lordship of the Appellate Division observed that--

"From a conjoint reading of the above provisions of law it is divulged that sub-section 3 of Section 96 of the Act requires that an application for preemption must be accompanied by deposit of the entire consideration money of the property transferred as stated in the notice under section 89, together with compensation @ 10% thereof. The statutory deposit being a condition precedent to the application being entertained, its non-compliance renders the application liable to be dismissed. Therefore, direction for depositing the rest statutory compensation deposit and consideration out of time would not cure the lacuna, thus, is also illegal and without jurisdiction."

This view is also supported by the case of Akhtarun Nessa and another vs. Habibullah and others reported in 31 DLR (AD) 88, wherein their Lordship of the appellate Division observed that-

"Further question for consideration is as to whether the direction given by the High Court Division for depositing the balance consideration money out of time is warranted by the law ? Sub-section (3) of

section 96 of the Act requires that an application for preemption must be accompanied by deposit of the entire consideration money of the property transferred as stated in the notice under section 89 together with compensation @10% thereof. The statutory deposit being a condition precedent to the application being entertained, its non-compliance renders the application liable to be dismissed. The direction for depositing the balance consideration money out of time is also illegal and without jurisdiction."

In the instant case, it appears that the preemptive petitioner as purchaser purchased the case land from the preemptive seller opposite parties Nos. 6 and 7, on 21.12.1995 and 12.02.1996, and the total valuation of the suit was 1,98,000/-. On the contrary, The pre-emptors opposite parties instituted the instant suit on 01.01.2003, depositing the portion of the consideration money of Tk. 96,585/-, and the rest of the consideration money, along with compensation money, was deposited on 23.10.2003.

It is also notable that at the time of depositing the 1st installment of Tk. 96,585/-. The pre-emptor could not file

any application before the court to deposit the remaining amount within a stipulated time as per the proviso so enumerated in sub-section 3 of section 96 of the State Acquisition and Tenancy Act.

It further appears that the appellate court below, while disallowing the appeal, affirmed the findings of the trial court below, with reference to the case of Mohiuddin (Md.) Vs. Md. Nazir Hossain Patwary and others reported in 11 MLR (AD) 420. In the above-cited case, the pre-emptor deposited the consideration money with the permission of the court within 4 months of filing the case. However, in the present case, it appears that the pre-emptors failed to obtain the court's permission by filing an application to deposit the remaining consideration money along with 10% compensation money thereof within the stipulated time at the time of filing the instant preemption case. Moreover, they deposited the remaining consideration money with compensation money after ten (10) months of filing the case. Therefore, it appears that the appellate court below has failed to appreciate that the preemptors was unable to deposit the entire consideration money of the case land

transferred as stated in the notice under section 89 of the Act, together with compensation @ 10% thereof as per the provision so enumerated in sub-section 3 of section 96 of the State Acquisition and Tenancy Act. Moreover, the appellate court below failed to consider that the State Acquisition and Tenancy Act, 1950, is a special law wherein the statutory provision for deposit of consideration money with compensation for filing a case for preemption under the Act is provided as a condition precedent with consequence. This view gets support from the case of Md. Rubiul Islam and others -Vs- Sultan Mahmud, died leaving behind his heirs, Md. Abu Hasnat (Bulbul) and others reported in XVIII ADC (AD) 177 wherein their Lordship of the Appellate Division observed that—

“From a conjoint reading of the above provisions of law it is divulged that sub-section 3 of Section 96 of the Act requires that an application for pre-emption must be accompanied by deposit of the entire consideration money of the property transferred as stated in the notice under section 89 together with compensation @ 10% thereof. The statutory deposit

being a condition precedent to the application being entertained, its non-compliance renders the application liable to be dismissed. Therefore, direction for depositing the rest statutory compensation deposit and consideration out of time would not cure the lacuna, thus, is also illegal and without jurisdiction.”

Considering the above facts, circumstances, the law, and the preponderant jurisprudence, it appears that the above-cited case is not applicable in the instant case.

Considering the qabove facts and argument placed by both the parties I am of the firm view that the pre-emptor failed to deposit the entire consideration money of the property transferred together with compensation @ 10% at the time of filing the miscellaneous case that violates the provision so enumerated in sub-section 3 of Section 96 of the State Acquisition and Tenancy Act. Therefore, the appellate court as well as the trial court below committed an error of law which calls for interference by this court.

Resultantly, the Rule is made absolute without any order as to cost.

The impugned Judgment and order dated 10.05.2023 passed by the learned Additional District Judge, 1st Court, Chattogram in Miscellaneous Appeal No.135 of 2017, affirming the Judgment and order dated 20.08.2017 passed by the learned Senior Assistant Judge, 2nd Court, Potiya Chowki, Chattogram in Preemption Miscellaneous Case No.01 of 2003 are hereby set aside.

Let the order of stay granted by this Court Rule be vacated.

Communicate the Judgment with the lower courts' records at once.

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(Md. Salim, J).