Bench:
Mr. Justice Md. Ruhul Quddus
and
Mr. Justice Kazi Ebadoth Hossain

First Miscellaneous Appeal No.166 of 2009

Md. Billal Hossain and another
... Appellants
-Versus-
Md. ShawkatAli and ten others
... Respondents

Mr. Probir Neogi, Senior Advocate with Tamanna Ferdous, Advocate
... for the appellants

Mr. Mahbubey Alam, Senior Advocate with Mr. Md. Ali Reza, Advocate
…for respondent No.1

Judgment on 17.02.2020

Md. Ruhul Quddus, J:

This first miscellaneous appeal is directed against judgment and order dated 17.05.2009 passed by the Joint District Judge, Arbitration Court No.7, Dhaka in Preemption Miscellaneous Case No. 27 of 2005 allowing preemption of the land as described in schedule kha of the preemption application.

Before starting dictation, Mr. Mahbubey Alam, learned Senior Advocate appearing for the preemptor-respondent tenders an application for amendment proposing addition of some parties, which we do not accept for the reason that the preemptor got sufficient opportunity to remove the defect of party, which he did not avail. Mr. Alam himself appeared in this matter and made exhaustive

submissions asserting that there was no defect of party. It is an old matter of 2009, we fixed it for hearing on 07.11.2019, heard it on several days and concluded the hearing on 09.02.2020. It is fixed for delivery of judgment today and there is no scope to prolong further the matter and fill up the lacuna, if any, by way of amendment at this stage.

The petitioner (respondent 1 herein) filed an application under section 96 of the State Acquisition and Tenancy Act, 1950 (SAT Act) read with section 24 of the Non-Agricultural Tenancy Act before the Fifth Court of Joint District Judge, Dhaka stating, *inter alia,* that the land appertaining to SA Khatian No. 64, Plots No. 158, 193 and 209 originally belonged to Haridas Mallick and Jamini Sundari Mallick. Another piece of land appertaining to SA Khatian No. 27, Plot No. 160 belonged to Sree Krishna Kumar Roy, who sold 31 decimals of land therefrom to Amena Khatun on 25.07.1955. Said Haridas Mallick and Jamimi Sundari Mallick sold 27 decimals of land from plot No.193 to Sheikh Ijjat Ali (father of the petitioner) and Mamtaj Uddin Mistree. Thereafter, Mamtaj Uddin Mistree, Haridas Mallick, Jamini Sundari Mallick and Amena Begum sold their entire land to Sheikh Ijjat Ali. In this way Sheikh Ijjat Ali became absolute owner of 1.29 acres of land in SA Khatian No. 64, Plots No. 209, 193 and 158 and 31 decimals of land in SA Khatian No. 27, Plot No. 160, which is described in schedule ka of the preemption application. While in peaceful possession and enjoyment of the same, Sheikh Ijjat Ali died leaving behind his six sons

including the petitioner, one daughter and widow. After death of Ijjat Ali, the petitioner became owner of the schedule ka land. Opposite party 3 Mrs. Anjuman Ara Latif was the owner of adjacent 1.33 acres of land appertaining to plots No.159, 191, 192 and 210 under SA Khatians No.138 and 66, which she purchased by three registered sale deeds dated 25.09.1985, 29.05.1985 and 03.10.1985. Although the case land was mentioned as homestead in SA Plot No. 191, it was a low agricultural land, which would be evident from subsequently corrected SA khatian. This land was described in schedule kha of the preemption application. Despite the petitioner was owner of the contiguous land, said Anjuman Ara (opposite party 3) sold the land to opposite parties 1 and 2 (appellants herein) on 13.01.2002. The petitioner came to know about the transfer on 03.07.2002, applied for certified copy of the registered sale deed on 13.07. 2002 and after obtaining the same filed the preemption application.

Opposite parties 1 and 2 contested the case by filing two separate written objections. Opposite party 1 in his written statement denied the material allegations made in the preemption application and contended, *inter alia,* that the case was not maintainable, barred by limitation and defective for non-joinder of parties. The case land was not a contiguous land and there was no cause of action for filing the application. It was further stated that while in peaceful possession and enjoyment of the kha scheduled land, opposite party 3 declared to sell it. The petitioner did not offer the prevailing

market price while opposite parties 1 and 2 offered the highest market price and accordingly opposite party 3 transferred it to them. At the time of settling the price between the vendor and vendees, the petitioner was present and mediated the price negotiation. After transfer of the land, opposite parties 1 and 2 mutated the record in their names, developed the land and constructed a dwelling house thereon spending taka three lac in total. The market price of the property was enhanced to taka twenty lac by that time. The case land and that of the preemptor situated in different plots and khatians. There was another piece of land belonged to Abu Bakkar Siddique and Noor Mohammad, which separated the petitioner's land from case land. The petitioner had, therefore, no right to preemption of the case land. Moreover, at the time of transfer of the case land to Anjuman Ara in 1985, he had not raised any objection or asserted his right to preemption over the same and thus waived his right forever. Opposite party 3 already transferred 40 decimals of land from the western side to opposite parties 6 and 7 on 02.07.1995 and contiguity of the land was already severed. Thus the petitioner was not the owner of contiguous land. The petitioner did not add his mother, five brothers, only sister and one of the contiguous land owners Abu Bakkar Siddique as parties in the preemption application. It was also not clearly stated as to how he was owning and possessing the ka scheduled land, because it belonged to his father and he had co-sharers by inheritance. For all the reasons the application for preemption was liable to be rejected.

The objections taken and contention raised in the written objection filed by opposite party 2 was similar to that of opposite party 1.

On the aforesaid pleadings, the trial Court framed issues: (i) whether the case was maintainable in its present form, (ii) whether it was barred by limitation, (iii) whether there was defect of parties, (iv) whether the petitioner was entitled to the relief as prayed for and (v) what other reliefs he was entitled to.

The contesting parties, in support of their cases, adduced evidence both oral and documentary. In the midst of taking evidence of the petitioner (PW 1) the case was transferred to Joint District Judge, Arbitration Court No.7, Dhaka, where further hearing was held and the trial was concluded by pronouncement of the impugned judgment and order.

The petitioner deposed as PW 1 and stated he came to know about the transfer in question on 03.07.2002, got certified copy of the sale deed on 13.07.2002 and filed the case on 27.07.2002. He owned and possessed land at both the eastern and western side to the case land. He got the eastern sided land by way of inheritance and 40 decimals of land at the western side by judgment and order of Preemption Cases No. 22-23 of 2003. It was not correct to say that there was any defect of party in the preemption case. His father Sheikh Ijjat Ali died leaving behind his widow, one daughter and six sons including him. Of them his widow and one son already died. Opposite party 3 sold the case land secretly and it was beyond his

knowledge. Despite an order of injunction was operating against the preemptee-opposite parties 1 and 2, they constructed a two storied tin-shed house on the case land.

In cross-examination PW 1 stated that the opposite parties' house was situated 2/3 hundred meters away from the case land. He used to reside in Dhaka and also at his village home. His father had purchased the land of SA khatians No. 64 and 27, plots No. 160, 210, 193 and 158. He, however, could not say the RS khatian and plot numbers of the land. The case land was adjacent to his paternal land measuring 1.29 acres. He got 20 decimals of land in his share by an oral partition. In further cross-examination he stated "*আমি পৈত্রিক সম্পত্তির ১/৮ অংশের ছাহাম পাই। ১ একর ৬০ শতকের ১/৮ অংশে ২০ শতাংশ হয়। আমি ১৬০, ২০৯, ১৫৮ নং দাগে সম্পত্তি পেয়েছি। ১৬০ দাগে ৪ শতাংশ বাদ বাকী দাগ সমুহে পেয়েছি ১৬ শতাংশ*"

PW 1 could not remember the C S khatian number of the case land, but stated the SA and RS khatian numbers were 66 and 68 respectively. He did not file any preemption case, when the suit land was transferred to Anjuman Ara in 1985. After filing the present preemption case, he came to know that opposite party 3 had transferred 20 decimals of land to Delwar Hossain and Md. Rashed by sale deed No. 3348 dated 02.07.1995. The case land was situated at the eastern side of land purchased by Delwar, Rashed and Abu Bakkar. At the time of institution of the present proceeding, it was not known to him that they were owning a strip of land between the land owned by him and the case land. Opposite party 3 was related to

him as a co-villager. He used to reside in Dhaka since 1971. It was not correct to say that opposite party 3 had offered him several times to sell the land and he refused to purchase it or that he himself mediated the price negotiation between the vendor and vendees. They did not do any earthwork for development of the case land, but constructed a tin-shed house violating the order of injunction.

On recall PW 1 adduced in evidence the SA Khatians No. 64, 27 and 66 as exhibits-1 series, the previous sale deeds as exhibits: 2-6 series, sale deed dated 13.01.2002 as exhibit-7, RS Khatian No. 68 as exhibit-8 and some other documents including the judgment and orders passed in Preemption Cases No. 22-23 of 2003 as exhibits: 9-13 series.

PW 2 Md. Mohiuddin stated that the petitioner got property from the adjacent eastern side to the case land. In cross examination he stated: *বাদীর জমির দাগ নং ২০৯, ১৯৩। একদম দক্ষিনে ১৫৮ নং দাগ। পূর্বদিকে ২১১, ১৯০, ১৮৯, ১৬০ দাগ। পূর্ব দিকের ১৬০ দাগে বাদী সম্পত্তি পেয়েছে। পূর্ব দিকের ২১১, ১৯০, ১৮৯ বাদীর কোন জমি নেই, ... বাদী এই দাগ গুলিতে পৈত্রিক ওয়ারিশ সুত্রে ২০ শতাংশ জমি পায় মর্মে আমার জানা নেই। বাদী ১৫৮ দাগে ২০ শতাংশ ভুমি ভোগ দখল করে। বাদীর পৈত্রিক সম্পত্তির লাগ পুর্ব পার্শ্বে নালিশী দাগে দেলোয়ার, রাশেদ এবং আবু বক্কর সিদ্দিক নালিশী দাগে ১৯৯৫ ইং সনে ৩নং প্রতিপক্ষ হতে ৪০ শতাংশ ভুমি খরিদ করেছে। এই ভুমি প্রার্থী প্রিয়েমশন মুলে পেয়েছে। এই ৪০ শতাংশের পুর্ব পার্শ্বেই নালিশা ভুমি* ".

PW 2 further stated that a two storied tin-shed house was constructed and some banana trees were planted on the case land.

There was a road running from east to west in between plots No. 159 and 192.

PW 3 Al Mahmud Rakib, younger brother of the petitioner stated that the case land was surrounded by a cow-passage at the north, river Ichhamati at the south, land of Nurul Islam, Mojibur and others at the east, and the petitioner's own land at the west. He (petitioner) acquired one part of the land by inheritance from his father and the other part by way of preemption in different preemption cases.

In cross-examination PW 3 stated that they were six brothers and having one sister. Their mother and one of the brothers passed away. The case land and their paternal land situated at different khatians and plots, out of which 20 decimals belonged to the petitioner. It was not correct to say that the petitioner owned and possessed the entire 20 decimals of land in plot No. 158. He (petitioner) had no land in plots No. 211, 290 and 289 situated at the eastern side of the case land. There was a 14-feet wide road in between the case land and his paternal land.

The opposite parties also examined three witnesses including OPW 1 Fajal Mian, husband of opposite party 2 and brother-in-law of opposite party 1. OPW 1 stated that he was empowered by a power attorney to depose on their behalf. The petitioner was aware of the transfer and mediated between the vendor and vendees in price negotiation. At the time of handing over the possession of the case land in favour of opposite parties 1 and 2, adjacent land owners

Delwar, Abu Bakkar and Rashed were present. The case land was a low land and after purchase, they did earthwork and developed it by spending taka three lac. They also constructed two rooms, kitchen and cow-shed on the case land and planted nearly one hundred trees there. When opposite party 3 proposed the petitioner to purchase the land, he declined on the plea that he was residing in Dhaka and did not require the land. Opposite parties 1 and 2 purchased 133 decimals of land and already mutated the record. He produced the power of attorney in his name, and further produced the mutated record, duplicate carbon receipt and rent receipt in favour of opposite parties 1 and 2, which were marked as exhibits-ka series. The total land of the case plots was 173 decimals, out of which a strip of land was transferred to Abu Bakkar Siddique by sale deed No. 3347 (vide exhibit-kha) and another strip measuring 20 decimals of land to Delwar and Rashed by sale deed No.3348 both in 1995. Their land situated at the western side of the case land and the land of the petitioner was also at the western side, but next to their land. The petitioner did not file any preemption application against said Abu Bakkar, Delwar and Rashed in 1995. At the time of institution of the present proceeding, the petitioner had no land adjacent to the case land.

OPW 2 Md. Abul Hossain stated that he was familiar with both the parties. Before transfer of the case land, the petitioner was also offered to purchase the land, but he declined. There was a small signboard installed on the case land disclosing the intention of

opposite party 3 to sell the land and it was kept installed for one year. At the time of sale, it was a low land. After purchase by opposite parties 1 and 2, they filled it up and constructed a dwelling house thereon. There was land of Abu Bakkar, Rashed and Delwar in between the case land and the petitioner's land. OPW 2 denied the suggestion that there was no signboard on the case land.

OPW 3 Abdul Baten stated that he himself informed the petitioner about the intention of opposite party 3 of selling the case land. At that time, the petitioner stated it would be a bad investment for him. Thereafter, opposite parties 1 and 2 purchased it and subsequently they filled up the low land by earthwork.

In cross-examination OPW 3 stated that opposite party 3 did not come to him for selling the case land and it was not known to him whether she herself had given any offer to the petitioner.

After conclusion of hearing, learned Joint District Judge pronounced the judgment and order dated 17.05.2009 allowing the preemption case. Being aggrieved thereby, the preemptee-opposite parties 1 and 2 moved in this Court with the instant first miscellaneous appeal.

Mr. Probir Neogi, learned Senior Advocate appearing for the appellants submits that the law of preemption restricts the right of a land owner to dispose of his property in favour of any stranger and gives right to a co-sharer or adjacent land owner to preempt the land, if transferred without any notice on him. The law should, therefore, be construed very strictly towards the preemptor. Mr. Neogi then

submits that section 96 (2) of the SAT Act, which was in force at the material time before amendment in 2006, provided that in a preemption application filed by an adjacent land owner, he would implead all co-sharers/tenants of the adjacent land and that of the land transferred. In the present case, where the preemptor himself stated that his father Sheikh Ijjat Ali was the original owner of the adjacent land, who died leaving behind his widow, one daughter and six sons including the petitioner, it was incumbent upon him to implead all of them in the preemption application. In absence of them, the case must fail because of defect of party. Where addition of all co-sharers of the preemptor is an essential element in a preemption application under section 96 of the SAT Act, defect of party would be fatal and not curable. In support of his submission on this point Mr. Neogi refers to the case of *Sree Biraj Mohan Roy vs Binodini Roy and others*, 12 BLT (AD) 111.

Mr. Neogi further submits that at the time of filing the preemption application three other persons, namely, Rashed, Delwar and Abu Bakkar Siddique were admittedly owners-in-possession over the adjacent western sided land, by which contiguity of the preemptor's land was severed. By no stretch of imagination it can be said that he was an adjacent land owner at that time. He had, therefore, no *locus standy* to file the preemption application claiming him an adjacent land owner at the material time and for the same reason he had no cause of action to bring the proceeding. In support

of this branch of his submission Mr. Neogi refers to *Surat Sarder and others vs Afzal Hossain and others*, 49 DLR (AD) 99.

Learned trial Judge without considering these two vital legal aspects of the case, allowed the preemption case and committed wrong. The impugned judgment and order is, therefore, not sustainable in law, Mr. Neogi concludes.

Mr. Mahbubey Alam, learned Senior Advocate appearing for the respondent 1 at the outset submits that the collusive transfers of the strip of land cannot take away the petitioner's lawful right to preemption. From a critical assessment of evidence it would be clear that the so-called transfers to the opposite parties 6-7 and Abu Bakkar were never acted upon by handing over possession of the strip land in their favour. It was taken as an objection by the opposite parties 1 and 2 only to defeat the lawful claim of the petitioner. As soon as he came to know about the transfers, he filed two applications and already preempted the strip of land during pendency of the present application. For sake of argument, if any defect on contiguity of the petitioner's land was there at the time of initiation of the case, it was perfectly cured. At this stage there is no scope to agitate that the petitioner was not an adjacent land owner. In this regard Mr. Alam draws our attention to the sale deeds of Rashed, Delwar and Abu Bakar Siddique and the schedules appended thereto. He also refers to the sale deed in question, which does not indicate any sort of severability of land of the petitioner and the case land.

Mr. Alam further submits that the facts and circumstances of the case reported in 12 BLT (AD) 111 are quite distinguishable with the present case as the parties in the said case were co-sharers and some other co-sharers in the same land were not made parties. In the present case the petitioner made interrogatory, in response to which opposite parties 1 and 2 failed to supply any names, who were not impleaded and the question of defect of party ended there. The same opposite parties now cannot raise objection at appellate stage, so far it relates to defect of party. It is apparently clear that the petitioner was owning the adjacent land, he approached the Court within the prescribed time-limit and all the co-sharers of the holdings transferred were impleaded as parties in the application. Learned trial Judge discussed all the evidence, properly assessed the same and rightly allowed the case. There is no reason of interference with the judgment and order of preemption. In support of his submission Mr. Alam refers to the cases of *Golenur Begum vs Haji Khalilur Rahman alias Kalu and others*, 4 MLR (AD) 143; *Abdul Baten vs Abdul Latif Sheikh and others*, 45 DLR (AD) 26 and *Aysha Khatun (Musammat) vs Musammat Jahanara Begum and others*, 43 DLR (AD) 9.

We have considered the submissions of the learned Advocates of both the sides and gone through the evidence and other materials on record. Learned trial Judge allowed the preemption application on the grounds that the evidence of the OPWs so far those were related to prior offer to the preemptor and his refusal/unwillingness to

purchase the case land was beyond pleading; that the alleged defect of party was cured by order dated 22.08.2007; and that nothing was mentioned in the power of attorney or in the evidence of OPW 1 as to why opposite parties 1 and 2 were not able to appear before the Court and depose in person. Their failure to explain the reason was virtually acceptance of the preemptor's claim.

It is a settled principle of law that the petitioner/plaintiff is to prove his own case. So, the learned Judge ought to have discussed the pleading and evidence of the preemptor and the necessary elements of a preemption application and its scope under section 96 of the SAT Act before proceeding towards assessment of evidence of the OPWs and finding out the weakness of the opposite parties. The inconsistency in the evidence of OPWs as mentioned by the trial Judge could be a supporting ground for allowing the preemption, if the elements of section 96 of the Act were there. It appears that by order dated 22.08.2007 opposite parties 8-12 were added as parties, who were owners of the surrounding land, but question arose for non-joinder of the preemptor's co-sharers, namely, his mother, sister and brothers. In the application for amendment dated 22.08.2007 the preemptor simply stated that they were not the owners of adjacent land and as such were not necessary parties. The persons named against serial No. 5 and 7 (meaning his mother Mst. Jarina Khatun and brother Md. Selim) as mentioned in the answer filed by opposite parties 1 and 2 in response to the interrogatory died in the meantime. But it was not clarified why they were not necessary parties, when

admittedly they were co-sharers of the preemptor. Learned Judge also did not discuss anything in the judgment about their status of co-sharership.

The Power of Attorney Act, 1882 that was in force at the material time did not speak of any mandatory provision of mentioning reason of delegation of power in order to make a power of attorney effective and so is the position in the law of agency as provided in Chapter X of the Contract Act, 1872. Section 185 of the Contract Act rather says that no consideration is necessary for creating an agency. It is needless to say that an attorney is also an agent of the donor/principal of a power of attorney. A simple power of attorney authorizing any person to do a particular act, which the donor/principal can do lawfully, is perfectly workable. The donor/principal's failure to explain any reason in the written instrument as to why it is not possible for him to do the act and deed in person and for which delegation of power to an attorney to do that act and deed is necessary, would not invalidate a power of attorney. OPW 1 produced the power of attorney and stated that he deposed on behalf of opposite parties 1 and 2 as their constituted attorney, and the preemptor did not challenge its authenticity, nor did he raise any objection to his (OPW 1's) competence to record evidence on behalf of the opposite parties. Learned Judge was, therefore, not correct to say that because of not mentioning the reason of opposite parties' inability/failure to appear in person, the preemptor's claim was impliedly accepted.

For appreciation of the first point on defect of party as raised by Mr. Neogi and finding of the trial Court that defect of party was cured by order dated 22.08.2007, it would be helpful to go through sub-section (2) of section 96 of the SAT Act that was in force at the material time. The said sub-section (2) runs as follows:

> *"(2) In an application made under sub-section (1) by a co-sharer tenant or co-sharer tenants, all other co-sharer tenants of the holding and the transferee shall be made parties; and in such an application made by a tenant holding land contiguous to the land transferred, all the co-sharer tenants of the holding and all the tenants holding lands contiguous to the land transferred and the transferee shall be made parties."*

From a plain reading of the above quoted law it is clear that in an application for preemption by a tenant holding the contiguous land, all his co-sharers amongst others are to be made parties. In the instant application the petitioner clearly stated that his father Sheikh Ijjat Ali, since deceased had purchased the contiguous land and he died leaving behind his widow, one daughter and six sons including him. He did not plead in the preemption application that the land left by Sheikh Ijjat Ali was ever partitioned by metes and bounds. No partition deed, khatian or any other documentary evidence was adduced in evidence to prove partition of the contiguous land among the heirs and successors of late Sheikh Ijjat Ali. PW 1, the petitioner stated in evidence that there was an oral partition and he got 20 decimals of land in his share, of which he got 4 decimals from plot

No. 160 and 16 decimals from other plots. PW 2 stated in cross-examination that the petitioner got land in plots No. 209, 193, and 160. In the next breath he made a different statement that the petitioner owned and possessed entire 20 decimals of land in plot No.158 and further stated that there was a road between plots No. 159 and 192. PW 3 denied that the petitioner was possessing his entire share in plot No.158. In addition, he stated there was a 14-feet wide road in between the case land and their paternal land. If this statement was correct, contiguity of the land was severed thereby. The other co-sharers were not examined to support the "oral" partition. The oral evidences of PWs 1-3 in support of "oral" partition of their paternal land were beyond pleading and also contradictory to each other, upon which no factual inference on partition of the adjacent land can be drawn. It is a well settled proposition of law that oral partition is not a partition in the eye of law.

Opposite party 1 in paragraph 14 (cha) of his written objection specifically stated that the petitioner's mother, sister, five brothers and one of the strip land owners named Abu Bakkar Siddique were not made parties in the case. This objection was sufficient to make them parties in the case. Opposite party 2 in paragraph 13 (cha) of her written objection raised similar objection regarding defect of party, though it was not that much specific. It appears from record that opposite parties 1 and 2 answered the interrogatory on 26.07.2007 where they clearly mentioned 13 names including the

petitioner's five brothers, one sister and mother, namely, ABM Al-Faruque, ABM Al-Mahmud, ABM Al-Mizan, ABM Al-Helal, Md. Selim, Mst. Sadia Akter, all sons and daughter of late Sheikh Ijjat Ali; Mst. Jarina Khatun, widow of late Sheikh Ijjat Ali and also mentioned the name of Abu Bakkar Siddique, one of the strip land owners, but they were not added in the preemption application. Their answer was recorded by the trial Court by order dated 26.07.2007. Learned Advocate for the respondent is, therefore, not correct to submit that the opposite parties did not respond the interrogatory and the controversy on defect of party ended there. In fact the appellants answered the interrogatory, in which event it was incumbent upon the petitioner to add all his co-sharers and the strip land owner as parties. It further appears that before filing the application for amendment dated 22.08.2007, the petitioner had filed two other applications on 20.10.2003, one for amendment under Order VI, rule 17 and another under Order 1, rule 10 of the Code of Civil Procedure for addition of opposite parties 4-7, which were allowed by order dated 17.11.2003. In the cases of *Akhtarun Nessa and another vs Habibullah and others*, 31 DLR (AD) 88; *Abdus Samad others vs Md. Sohrab Ali and others*, 33 DLR (AD), 113 and *Indrajit Kundu and others vs Bwjoy Krishna Kundu being dead his heirs Biswajit Kundu and others*, 7 BLT (AD) 386 preemption applications were held not maintainable for not impleading co-sharers as parties therein. In the cited case of *Sri Biraj Mohan Roy vs Binodini Roy*, 12 BLT (AD) 111 preemption application failed because of not

impleading two brother-cum-co-sharers of the preemptor and two other co-sharers of the same khatian. All the said cases are relevant in the instant preemption application.

In the case of *Golenur Begum vs Haji Khalilur Rahman alias Kalu and others,* 4 MLR (AD) 143, the preemptee raised objection on defect of party and disclosed the names who were not impleaded at a belated stage of trial. He lost in all Courts. The Appellate Division dismissed the leave petition holding that the preemption application was not defective for non-joinder of necessary parties. It is already mentioned that the contesting opposite parties in their written objections raised specific objection on defect of party, answered the interrogatory by supplying the names of necessary parties and put suggestion to PW 1 during his cross-examination, which he flatly denied. It appears that Mr. Alam has cited the case of *Golenur Begum* on the wrong notion that the opposite parties did not answer the interrogatory.

A preemption case is unlike other civil litigations, where defect of party can be cured by way of amendment/addition of party at any stage. In the present case the opposite parties raised specific objection to defect of party, answered the interrogatory filed by the preemptor and cross-examined him on that point, but the preemptor failed to add the non-joined co-sharers. He did also not plead and prove that his paternal land was partitioned by mets and bounds and they were no more co-sharers in his paternal land.

Let us see whether at the time of initiation of the case the petitioner was a contiguous land owner and had *locus standy* to initiate the preemption proceeding. The case land was appertaining to plots No. 210, 191, 192 and 159. The adjacent western part of the said plots was already transferred to Abu Bakkar, Delwar and Rashed back in 1995. After initiation of the present case, the preemptor instituted two other preemption proceedings, namely, Preemption Cases No. 22-23 of 2003 (vide exhibits: 9-9/ka and 13-13/ka) and preempted the said strip of land during pendency of the present proceeding. PW 2 stated in his evidence that Delwar, Rashed and Abu Bakkar had purchased 40 decimals of land to the petitioner's paternal land from its eastern side, and that the case land situated at the eastern side of the said 40 decimals. The evidence of PW 2 as referred to above and subsequent preemption of said 40 decimals of intervening strip land by the petitioner proved that at the material time he was not a contiguous land owner. It further proved that the strip of land was really transferred to the aforesaid three transferees and it was not a sham transection. Section 96 (1) of the SAT Act that was in force at the material time provided that if a portion or share of a holding was sold to a stranger, the tenant, amongst others, holding land contiguous to the land transferred could apply for preemption. The petitioner being not contiguous land owner at the time of transferring the case land had, therefore, no *locus standy* to file the preemption application. This cannot be an acceptable reason that the fact of transferring the strip of land was

not known to him. The strip land was transferred by two registered sale deeds, which were accessible public documents. Any person interested to preempt the land could know about the transfer easily by an inquiry into the concern land registry office.

In *Aysha Khatun (Musammat) vs Musammat Jahanara Begum and others*, 43 DLR (AD) 9 question of cause of action for filing a preemption application being the date of registration of sale deed was involved. The present case was defective for non-joinder of necessary parties despite specific objection raised by the opposite parties, answer made to the interrogatory and putting suggestion to the petitioner (PW 1) to that effect during cross-examination. The petitioner's *locus standy* in view of section 96 (1) of the SAT Act is another feature in the present case, which the preemptor was lacking at the time of transfer of the case land by registration of sale deed. Prematurity on the ground of filing the case before completion of registration of sale deed as dealt with in 43 DLR (AD) 9 and filing of a preemption application without having any *locus standy,* as in the present case, are quite different. In a preemption proceeding under section 96 of the SAT Act, the preemptor cannot acquire *locus standy* subsequent to transfer of the land. We do not accept the submission of Mr. Alam that by way of subsequent preemption, the defect of contiguity of land was perfectly cured. If by way of subsequent purchase/preemption, one can preempt a piece of land adjacent to the land purchased/preempted, which was transferred long before his first purchase/preemption, then each and every piece

of land can be preempted by a land greedy person, which is not the purpose of preemption law.

In *Abdul Baten vs Abdul Latif Sheikh and others,* 45 DLR (AD) 26, the preemptee acquired co-sharership during pendency of the preemption application and his learned Advocate argued that interrogatory procedure would not apply in preemption proceeding, which the Appellate Division overruled. On subsequent acquisition of co-sharership the Appellate Division observed:

> "…*If a preemptee is not a co-sharer at the time of transfer or at the time of institution of the preemption proceeding, as in the present case, and if he becomes co-sharer in the case holding during the pendency of the preemption proceeding, as also in the present case, he does not become a transferee to a co-sharer either at the time of transfer or at the time of institution of the preemption proceeding. The right of preemption accrued to the preemptor is not affected by the subsequent acquisition of co-sharership by the preemptee".* (paragraph 4)

In the case in hand no such point is raised. The ratio quoted above does not help the preemptor in any manner. It rather goes against him by analogy that subsequent acquisition of ownership over the contiguous land by the preemptor will not make him eligible for preemption. The preemptor must have *locus standy* at the time of transfer of the land.

Learned trial Judge without considering these vital legal aspects of the case allowed the preemption application by the impugned judgment and order, which is not tenable in law.

In the result, the first miscellaneous appeal is allowed and the impugned judgment and order is set aside.

Send down the lower Court's record.

Kazi Ebadoth Hossain, J:

I agree.

Shebo/Bo