

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

Present:

Mr. Justice Md. Badruzzaman.

Civil Revision No. 3596 of 2012.

Md. Selamat Ullah Miji

...Petitioner.

-Versus-

Most. Solema Begum and others

....Opposite parties.

Mr. Md. Muzahedul Islam, with

Mr. Abdul Karim, Advocates.

...For the petitioner.

Mr. Gowranga Chandra Kar, Advocate.

...For the opposite parties.

Heard on: 17.12.2023, 18.12.2023 and 11.02.2024.

Judgment on: 18.02.2024.

This Rule was issued calling upon opposite party No. 1 to show cause as to why judgment and order dated 30.08.2012 passed by learned Additional District Judge, Chandpur in Civil Revision No. 11 of 2011, dismissing the revision and affirming judgment and order dated 06.01.2011 passed by learned Assistant Judge Faridgonj, Chandpur in Miscellaneous Pre-emption Case No. 01 of 2007 rejecting an application under Order VI rule 17 of the Code of Civil Procedure for amendment of plaint along with the prayer for accepting outstanding deposit.

Relevant facts, for the purpose of disposal of this Rule, are that opposite party No. 1 as pre-emptor filed Pre-emption Case No. 1 of

2007 in the Court of Assistant Judge Faridgonj, Chandpur under section 96 of the State Acquisition and Tenancy Act for enforcement of the right of pre-emption of 0.11 acre of land transferred vide registered deed No. 62900 dated 07.12.2006. During filing of the application the pre-emptor deposited the consideration of Tk. 60,000/= with compensation at the rate of Taka 10%. The Case was contested by the petitioner pre-emptee by filing written objection contending, *inter alia*, that the pre-emption case is not maintainable and barred under section 96(3) of the State Acquisition and Tenancy Act.

In course of trial, the pre-emptor adduced three witnesses and the pre-emptee purchaser adduced three witnesses to prove their respective case and the case was fixed for argument hearing. At that stage the pre-emptor filed an application under Order VI rule 17 of the Code of Civil Procedure to introduce the fact that balance 15% of the consideration money and interest for an amount of Taka 800/= from 07.12.2006 to 11.01.2007 has been deposited, vide Challan. The pre-emptee opposite party No. 1 filed written objection against the application stating that there was no scope under the provision of State Acquisition and Tenancy Act to deposit balance compensation after filing of the case and accordingly, the application for amendment seeking to acceptance of balance deposit is not maintainable.

Upon hearing the parties, the trial Court vide order dated 06.01.2011 rejected the application fixing next date for argument hearing. Said order dated 06.01.2011 was challenged by the pre-emptor in Civil Revision No. 11 of 2011 before the learned District Judge, Chandpur which was heard by learned Additional District

Judge, Chandpur, who, after hearing the parties, dismissed the revision by affirming the order of the trial Court by the impugned judgment dated 30.08.2012.

Opposite party No. 1 has entered appearance by failing Vokatnama to contest the Rule.

Mr. Md. Muzahedul Islam, learned Advocate appearing for the petitioner submits that due to *bona fide* mistake on the part of the learned Advocate for the pre-emptor the entire amount as provided under sub-section (3) of section 96 of the State Acquisition and Tenancy Act could not be deposited at the time of filing of the application for pre-emption and the Court has authority to accept deficit compensation after filing of the case but the trial Court as well as the revisional Court upon misconception of law refused to accept the deficit deposit, thus committed an important question of law resulting in an error in the decision occasioning failure of justice and as such, interference is called for by this Court. In support of his contention, learned Advocate has referred to the case of Serina Begum and another vs. Mofizul Islam and ors 42 DLR (AD) 77.

Against the above contention of the learned Advocate for the petitioner, Mr. Gowrango Chandra Kar, learned Advocate appearing for opposite party No. 1 submits that in view of the provision under sub-section (3) of section 96 of the State Acquisition and Tenancy Act, entire consideration money together with the required compensation and interest must be deposited when the pre-emption application is filed and the Court has no jurisdiction to accept the balance deposit after filing of the pre-emption case and as such, the Court of revision committed no illegality in affirming the order of the trial Court refusing to accept the balance deposit of the pre-emptor

and as such, interference is not called for by this Court. In support of his contention, learned Advocate has referred to the case of Akhtarun Nessa and another vs. Habibullah and ors 31 DLR (AD) 88.

I have heard the learned Advocates for both the parties, perused the application for pre-emption, the application for amendment of the plaint, written objection filed against the application as well as the written objection filed against the pre-emption miscellaneous case and the orders passed by the Courts below.

If any party files an application under section 96 of the State Acquisition of Tenancy Act to enforce the right of pre-emption he is required to fulfill some conditions provided in section 96 of the Act. Sub-section (3) of section 96 specifically provided for the pre-emptor to deposit consideration, compensation and interest at the time of filing of the application for pre-emption. Sub-section (3) of section 96 is quoted below:

“(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 execution of the deed of sale to the date of filing of the application for pre-emption.”

Sub-section (3) of section 96 of the State Acquisition and Tenancy Act clearly provides a mandatory provision of law which must be complied with at the time of filing of the pre-emption application. The sub-section requires that an application for pre-emption must be accompanied by a deposit of the entire consideration money of the property transferred together with compensation at the rate of 25% upon the consideration money plus an amount at the rate of 8% simple interest upon the amount of consideration money from the period of the execution of the sale deed to the date of filing of the application for pre-emption. That statutory deposit being a condition precedent to the application being entertained, its non-compliance renders the application liable to be dismissed. This view finds support in the case of *Akhtarun Nessa and another vs. Habibullah and ors* 31 DLR (AD) 88.

In *Serina Begum and another vs. Mofijul Islam and ors* 42 DLR (AD) 77, as has been referred to by the learned Advocate for the petitioner, a partial pre-emption was sought for and a partial amount was deposited by lump-sum calculation of the consideration and when the defendants of the said case raised objection, the pre-emptor deposited rest amount after making calculation. In the instant case the pre-emptor did not sought for partial pre-emption but he sought for pre-emption of the entire land transferred by the deed of sale and there was no necessity or requirement of calculation of any amount of consideration or compensation because of the fact that the suit land has been transferred for a consideration

of Taka 60,000/=. As per section 96 (3) of State Acquisition and Tenancy Act the pre-emptor was required to deposit the consideration money along with 25% compensation of the consideration money plus 8% annual interest upon the consideration money as provided in sub-section (3) but he deposited the consideration money of the deed plus 10% compensation thereof. Accordingly, the decision reported in 42 DLR (AD) 77 is not applicable in this case.

On perusal of the impugned judgment as well as the order passed by the trial Court, it appears that the trial Court upon proper appreciation of the materials and relevant provision of law, rightly refused to except balance compensation in the name of amendment of the plaint and accordingly, I am of the view that the Court of revision did not commit any important question of law resulting to erroneous decision in affirming the order of the trial Court. This Rule merits no consideration.

In the result, the Rule is discharged and the orders of the Courts below are upheld. There shall be no order as to costs.

Order of stay granted earlier is hereby vacated.

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

(Justice Md. Badruzzaman)