

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

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 3957 of 1991

Shafi Ullah being dead, his legal heirs, Abu
Yousuf and others.

..... Petitioners.

-Versus-

Kazal Chandra Majumder and others.

..... Opposite parties.

No one appears

..... For the petitioners.

No one appears

..... For the opposite parties.

Heard on: 21.07.2025, and
Judgment on: 28.07.2025.

This Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 25.05.1988 passed by the learned Subordinate Judge, Lakshmipur in Miscellaneous Appeal No. 193 of 1985 dismissing the appeal and thereby affirming the judgment and order dated 30.11.1985 passed by the learned Upazilla Munsif, Raipur, Lakshmipur in Miscellaneous Case No. 27 of 1983 filed under section 96 of State Acquisition And Tenancy Act, 1950 (shortly, the Act, 1950) allowing the pre-emption application should not set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Relevant facts for disposal of the Rule are that the present opposite party No. 1 as pre-emptor filed the pre-emption case being Miscellaneous Case No. 4 of 1981 in the Court of the then 2nd Munsif,

Lakshmipur under section 96 of the Act, 1950 impleading the predecessor of the present petitioners and others to pre-empt the case land. Subsequently, the case was transferred to the Court of the then Upzila Munsif, Raipur, Lakshmipur for trial and was renumbered as Miscellaneous Case No. 27 of 1983. The case of the pre-emptor, in short, is that the pre-emptor is the co-sharer of the case holding by inheritance and the pre-emptee Nos. 1 and 2 are stranger, who purchased the suit property from the pre-emptee No. 3 with a consideration of Taka 3,000/- by a Kabala deed dated 23.01.1978 without serving any notice to the pre-emptor. The purchasers kept the fact of the sale concealed from the pre-emptor for three years. On the first part of Paush, 1387 B.S., the pre-emptor for the first time came to know about the said transfer, and thereafter, on 02.01.1981, by obtaining the certified copy of the said transfer, confirmed about the said transfer and then filed the case.

The pre-emptee Nos. 1 and 2 (purchasers) contested the said Miscellaneous Case by filing a written objection denying the material allegations made in the application for pre-emption. The case of the pre-emptee Nos. 1 and 2, in short, is that the pre-emptee Nos. 1 and 2 are businessmen. The pre-emptee No. 3 (vendor) in urgent need of money took a loan of Taka 3,000/- from them and executed the sale deed with a condition of reconvey. Accordingly, the vendor returned the money on 28.03.1978 and got the case land re-conveyed by a registered deed of the same date. All the aforementioned acts took place within the knowledge and active participation of the pre-emptor. The pre-emption application filed on false averments is liable to be dismissed.

During the trial, both parties adduced both oral and documentary evidence in support of their respective case. The documentary evidence adduced by the parties were duly exhibited.

After the conclusion of the trial, the learned Munsif, by the judgment and order dated 13.11.1985 allowed the pre-emption.

Against the said judgment and order the present petitioner preferred Miscellaneous Appeal No. 193 of 1985 in the court of District Judge, Lakshmipur which was subsequently transferred to the court of learned Subordinate Judge, Lakshmipur who by the judgment and order dated 25.05.1988 dismissed the same and thereby affirmed the judgment and order passed by the trial court.

Being aggrieved thereby the petitioner filed this civil revision and obtained the Rule and an order of stay.

No one appears to contest the Rule.

I have perused the revisional application and other materials on record including the impugned judgment and order.

It appears that the present opposite party No.1 as pre-emptor filed the miscellaneous case to pre-empt the case land. It also appears that the case land was transferred by a registered deed dated 23.01.1978 and the miscellaneous case was filed on 12.01.1981, i.e. after 3 years from the date of registration of the impugned deed.

The purchaser contended that the vendor, in urgent need of money, took a loan and executed the impugned deed with a condition of reconvey. Accordingly, the vendor returned the money on 28.03.1978 and got the case land re-conveyed by a registered deed of the same date

(exhibited-A), so no right of pre-emption exists on the date of filing the pre-emption application. Per contra, the pre-emptor contended that as soon as the original sale took place, he acquired a right of pre-emption; the subsequent sale would not stand in the way of pre-emption. He also contended that the subsequent sale to the vendor is fraudulent just to deprive him of his right to pre-emption. Both the courts below accepted the said view of the pre-emptor.

Therefore, the question to be adjudicated is after retransferring the case land to the original vendor by a registered sale deed dated 23.01.1978, whether the right of pre-emption was in existence on the date of filing the preemption application, i.e. on 12.01.1981.

A similar question arose in the case of Shafi Khan vs. Mannujan Hussain, reported in 35 DLR (AD)(1983) 227, wherein the land under pre-emption was sold on 28.03.1974 which was retransferred on 31.10.1974, and the pre-emption application was filed on 01.11.1974. Both the trial Court and this Division held that the subsequent kabala for retransfer was fraudulent, intending to defeat the pre-emption and allowed the pre-emption. Our apex Court reversed the said judgment and held to the effect:-

“ The question before us is simple, whether the sale by Abdul Bari Khan which took place on 28 March 1974 remained inforce when the petition for pre-emption was filed on 01.11.1974. The obvious answer is that there was no transfer subsisting on 01.11.1974, simply because the land went back to the vendor on 31.10.1974.”

In the present case, from the record, it appears that the original transfer took place on 23.01.1978, the land went back to the vendor on

28.03.1978 (Exhibit-A), the pre-emptor filed the petition for pre-emption on 12.01.1981, i.e., three years after the retransfer. I find no reason to call the sale, which took place through a registered deed three years before the filing of the case, fraudulent with the intent to deprive the pre-emption. Therefore, as per the above-mentioned view of our apex court, on the date of filing the pre-emption application, there was no transfer subsisting, hence the pre-emptor was not entitled to get the land under pre-emption.

Both the courts below in passing the impugned judgment and order failed to consider this aspect of the case and thereby committed an error of law resulting in an error in the decision occasioning failure of justice and the same is liable to be interfered with.

In the above facts and circumstances, I am inclined to make the Rule absolute.

Accordingly, the Rule is made absolute.

The impugned judgment and order dated 25.05.1988 passed by the learned Subordinate Judge, Lakshmipur in Miscellaneous Appeal No. 193 of 1985 affirming the judgment and order dated 30.11.1985 passed by the learned Upazilla Munsif, Raipur, Lakshmipur in Miscellaneous Case No. 27 of 1983 are hereby set aside.

The order of stay granted earlier by this Court is hereby recalled and vacated.

The pre-emptor is at liberty to withdraw the deposited money.

Send down the L.C.R. along with a copy of this judgment to the concerned court for information and necessary action.

Kashem B.O