

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 2500 OF 2013

IN THE MATTER OF:

An application under section 115(1) of the
Code of Civil Procedure. (Against Order)

-And-

IN THE MATTER OF:

Md. Abdus Satter Miah and another

--- Preemptee-Appellant-Petitioners.

-Versus-

Most. Fatema Khatun and others

--- Preemptor-Opposite Parties.

Mr. Md. Mahbubur Rahman with

Mr. Md. Kawser Ali, Advocates

--- For the Preemptee-Appellant-Petitioners.

Mr. Humayun Kabir Sikder, Advocate

---For the Preemptor-Respondent- O. P. No. 1.

**Heard on: 19.07.2023, 30.07.2023 and
07.08.2023.**

Judgment on: 07.08.2023.

At the instance of the present preemptee-appellant-petitioners, Md. Abdus Satter Miah and another, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 02.04.2013 passed by the learned Joint District Judge, Court No. 1, Sirajgonj in the Miscellaneous Appeal No. 76 of

2011 disallowing the appeal and thereby affirming judgment and order dated 21.08.2011 passed by the learned Assistant Judge, Kamarkhand, Sirajgonj in the Miscellaneous Case No. 15 of 2007 (Preemption) allowed the application for preemption should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present preemptor-respondent- opposite party No. 1 as the petitioner filed the Miscellaneous Case No. 15 of 2007 in the court of the learned Assistant Judge, Kamarkhand, Sirajgonj under section 96 of the State Acquisition & Tenancy Act, 1950 claiming a right of preemption upon the suit land described in the schedule of the plaint. The said petitioner claimed that the total land measuring 1.52 acres originally belonged to Entaz Mollah and Nuru Mollah. Nuru Mollah died leaving behind his heirs including his full brother Entaz Mollah and the R. S. Record was published in their names. Ziaton Bewa wife of Nuru Mollah died leaving behind 3 daughters who are the preemptors, namely, Fatema, Khodeza and Zobeda. The said Entaz Mollah died leaving behind 3 sons, namely, Amir Hossain, Babu and Saiful and 3 daughters, namely, Bulbuli, Chanu and Lebu Khatun and the land was subsequently transferred to the next successors,

namely, Amir Hossain and Lebu Khatun. The preemptor is the co-sharer by inheritance in the said case jote (-জাত) and she was never served with a notice for sale nor she was any knowledge thereabout the said purchasers are the strangers.

The said purchasers contested the said case by filing a written statement contending, *inter alia*, that the property was sold to them by the owner of the land being preemptee-seller-respondent No. 2. The preemptees constructed a homestead after filling the said land with earth and also running their business and they have spent in total Tk. 2,15,250/- (Two Lac Fifteen Thousand Two Hundred and Fifty) and these matters are admitted facts.

The learned Assistant Judge, Kamarkhand, Sirajgonj as the learned trial court heard the matter and allowed the preemptors right by the judgment and order dated 21.08.2011. Being aggrieved a miscellaneous appeal was preferred by the present preemptee-appellant-petitioners as being the Miscellaneous Appeal No. 76 of 2011 in the court of the learned District Judge, Sirajgonj which was subsequently sent to the learned Joint District Judge, Court No. 1, Sirajgonj for hearing who after hearing disallowed the appeal and thereby affirmed the judgment

and order of the learned trial court by his judgment and order dated 02.04.2013.

Mr. Md. Mahbubur Rahman, the learned Advocate appearing along with the learned Advocate Mr. Md. Kawser Ali submits that the value of expenditure was decided by the learned trial court who upon receipt of the factual report from the Advocate Commissioner who submitted a report before the learned court for taking a decision as to the expenditure which was improper and not acceptable.

The present Rule has been opposed by the present preemptor-respondent-opposite party No. 1.

Mr. Humayun Kabir Sikder, the learned Advocate, appearing on behalf of the present preemptor-respondent-opposite party No. 1 submits that the learned courts below came to a concurrent finding as to the right created under the provision of section 96 of the State Acquisition and Tenancy Act, 1950 for preemption which is admitted by the parties.

Apart from this, in support of the claim of the preemptee-purchaser-appellant-petitioners adduced witnesses and filed some documents to prove their case while the preemptor-opposite party adduced 3 witnesses and filed some documents to

prove the case under section 96 of the Act, 1950 and the learned trial court has given findings in his judgment and order which reads as follows:

...“Learned trial court observed in his judgment that “OPW-1, আঃ ছাত্রর তাহার জবানবন্দীতে বলেন, আমি বর্তমান মাটি ফে-ল ভরাট ক-র বাড়ী ক-রছি। ৩ টি ঘর তুলছি। গাছপালা লাগাইয়াছি। ১ টি আঠা-রা হাত আংশিক পাকা। ১ টি ১৩ হাত এবং ৭ হাত এবং আর একটি ১৪ হাত। মোট ৩ টি ঘর আমার মোট ২,১৫,২৫০/- টাকা খরচ হ-য়-ছ।”...

In view of the above findings of the learned trial court and the learned appellate court below has to take a decision whether or not this revisional application is valid or not. The most important part of this case of the development cost to get by the preemptee-purchaser-petitioners.

In this regard, I have carefully examined the report submitted by the learned Advocate Commissioner after making a proper assessment of the valuation which is a total amount of Tk. 92,000/-, whereas, the claim of the present preemptee-petitioners is more than this amount.

In view of the above report submitted by the learned Advocate Commissioner and also in view of the claim made by

the learned Advocate for the present preemptee-petitioners as to the large amount of Tk. 2,15,250/- (Taka Two Lac Fifteen Thousand Two Hundred and Fifty).

I have perused the lower court records and also the petition submitted before this court I am of the opinion that the reasonable amount would be Tk. 1,15,000/- (Taka One Lac Fifteen Thousand) which the preemptor must pay to the preemptee-petitioners on the basis of the present market value.

On the basis of the above discussions, I am inclined to dispose of the Rule as this Rule does not have merit any further.

Accordingly, the Rule should be disposed of with the modification of spending money.

In the result, the Rule is hereby disposed of with the following directions:

The preemptor-respondent-opposite party No. 1, Most. Fatema Khatun, is hereby directed to pay Tk. 1,15,000/- (Taka One Lac Fifteen Thousand) to the preemptee-purchaser-appellant-petitioner Nos. 1 and 2, Md. Abdus Satter Miah and Most. Sharia Begum, within 3 (three) months from the date of the receipt of this judgment and order upon the land as they have spent filling by the earth.

The preemptee-purchaser-appellant-petitioners are hereby also directed to be given an execution as Registry Kabala Deed to the preemptor-opposite party No. 1, Most. Fatema Khatun, within the same period of time, otherwise, the preemptor-opposite party No. 1 would get the same by the learned trial court.

The interim order passed by this court at the time of issuance of this Rule staying the operation of the impugned judgment and order dated 02.04.2013 passed by the learned Joint District Judge, Court No. 1, Sirajgonj in the Miscellaneous Appeal No. 76 of 2011 affirming the judgment and order dated 21.08.2011 passed by the learned Assistant Judge, Kamarkhand, Sirajgonj in the Miscellaneous Case No. 15 of 2007 (Preemption) is hereby recalled and vacated.

The concerned section of this court is hereby directed to send down the lower courts records along with a copy of this judgment and order to the learned courts below immediately.