

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 163 of 2007

IN THE MATTER OF :

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

-And-

In the Matter of:

Nasiruddin Mollah and others

... Pre-emptee-Petitioners

-Versus-

Motaleb Mollah and others

...Pre-emptor -Opposite Parties

None

... For the petitioners

Mr. Zahirul Alam Babar, Advocate

... For the Opposite Party No.1

Judgment on: 19.05.2026

Md. Riaz Uddin Khan, J-

At the instance of the pre-emptees this Rule was issued calling upon the preemptor-opposite party No.1 to show cause as to why the impugned judgment and order dated 17.08.2006 passed by the Joint District Judge, 2nd Court, Gopalganj in Miscellaneous Appeal No.03 of 2005 reversing the judgment and order dated 16.01.2005 passed by the Senior Assistant Judge, Tungipara, Gopalganj in Miscellaneous Case No.04 of 2002 rejecting the application for pre-emption should not be set aside and/or or such other or further order or orders should not be passed as to this Court may deem fit and proper.

At the time of issuance of Rule the operation of the impugned judgment and order passed by the Joint

District Judge, 2nd Court, Gopalganj was stayed for a period of 06(six) months which was later extended till disposal of the Rule.

Facts in a nutshell for disposal of this Rule are that the opposite party No.1 as pre-emptor filed miscellaneous case No.04 of 2002 under section 96 of the State Acquisition and Tenancy Act, 1950 before the court of Senior Assistant Judge, Tungipara, Gopalganj against the present petitioners and others contending *inter alia* that that the preemptor and his step sister Fakitonnesa, mother of the pre-emptee-seller inherited the case land jointly and in the last survey the case land was recorded in the D.P Khatian Nos. 860, 59, 1756, 1755 and 858 correctly in their names. After the death of Fakitonnesa, the preemptee-seller Majeda Begum inherited a portion of share of deceased Fakitonnesa. Though the case property was recorded in the name of his step sister Fakitonnesa but in fact the case land had been possessing by the pre-emptor and the case land was never possessed by Fakitonnesa or her daughter Majeda Begum. Majeda Begum without serving any notice to the pre-emptor sold the case land measuring 26 decimals by a registered Kabala Deed being No.1304 dated 16.10.1996 to the Pre-emptees (Petitioner Nos.1-4 herein) who are the strangers in the suit holding. They neither disclosed about their purchase nor went on possession of the case land and for the first time on 25.01.2002 the outsider purchasers (petitioner Nos.1-4) disclosed as to purchase of the case land in presence of Awal Mollah, Zafor Mollah, Harun Mollah and Hachen Mollah from whom the preemptor on that date came to know about such sale of the case land. Had the Pre-

emptor knew about the sale of the case land earlier, he would purchase the same, hence the case.

The preemptee-petitioner Nos.1-4 contested the case by filing a written objection denying all the material allegations contending *inter alia* that the case is barred by limitation and bad for defect of parties. The preemptor and the Pre-emptee Nos.1-4 had been living in the same homestead at side by side. The preemptor was the maternal uncle of Majeda Begum, the preemptee-seller. The mother of the seller, Fakitonna used to cultivate her portion of the case land by her son Awal and Harun and after the death of Fakitonna they used to possess the same on behalf of Majeda Begum. The vendor Majeda Begum at first requested the preemptor to purchase the case land but he refused to purchase the same for want of money and the preemptor negotiated the Pre-emptee-Purchasers to purchase the same and settled consideration money also. The Pre-emptees purchased the case property on 16.10.1996 vide Deed No.1394 and took possession through the Pre-emptor and therefore the claim of the Pre-emptor-Opposite Party No.1 for pre-emption right in respect of case land was not maintainable and liable to be rejected.

The Senior Assistant Judge, Tungipara, Gopalganj was pleased to frame as many as 5 issues to determine the case. During trial the Pre-emptor examined as many as 3 witnesses and the Pre-emptee-Purchasers also examined 3 witnesses in support of their case. The Senior Assistant Judge after conclusion of trial dismissed the case by his Judgment and Order dated 16.01.2004. Against the said judgment and order the pre-emptor being appellant preferred Miscellaneous

Appeal No.03 of 2005 in the Court of District Judge, Gopalganj which was ultimately transferred to the Joint District Judge, Second Court, Gopalganj for disposal and the court of appeal below after hearing the appeal allowed the same by its Judgment and Order dated 17.08.2006 and thereby reversed the judgment and order passed by the trial court.

Being aggrieved by and dissatisfied with the said judgment and order dated 17.08.2006 the pre-emptee purchasers preferred the instant civil revision before this Court and obtained the Rule and order of stay as stated at the very outset.

No one appears for the petitioners to press the Rule though it was appearing in the list with names of the advocates for more than 4 months.

Mr. Zahirul Alam Babar, the learned advocate appearing for the preemptor-opposite party No.1 submits that the trial court without considering the evidence on record dismissed the pre-emption case on misreading and non consideration of evidence on record. On the other hand the court of appeal below after considering all aspect of the case elaborately discussing the depositions of all the PTWs and OPWs and other evidence on record allowed the pre-emption case. From the depositions it is crystal clear that the pre-emptor was in possession of the suit land and though the disputed sale has been occurred 06(six) years ago before filing of the instant pre-emption case but the pre-emptee purchasers never went for possession of the suit land. The full brother of the pre-emptee seller deposed in the court in favour of the pre-emptor saying that the pre-emptor was in possession of the suit land. All the

PTWs unequivocally stated that they heard for the 1st time on 25th January 2002 corresponding to 2nd মাঘ in front of a shop from the purchaser pre-emptee that the suit land was sold out. Even if for sake of argument, the PTW-2 Awal Mollah knew about the disputed sale after two years that does not necessarily mean that the preemptor also knew it at that time. Mr. Babar submits that the trial court on misconception on law and facts rejected the pre-emption case on the ground of limitation but the appellate court below rightly held that the case was not barred by limitation.

I have heard the learned advocate for the opposite party No.1, perused the revision petition. I have also examined the lower court records including the pre-emption petition, written objection, depositions of both parties and exhibited documents. I have carefully examined both the judgments and orders passed by the courts below.

It appears from the judgment of the trial court that it rejected the pre-emption case on the ground of limitation on the finding that it is presumable that the pre-emptor was in the knowledge of the sale within 2(two) years of the sale as PTW-2, Awal Mollah in his cross examination admitted that he knew it two years after the date of Kabala. On the other hand the appellate court below discussed elaborately the depositions of all the PTWs and OPWs and came to the conclusion that the case is not barred by limitation. There is no dispute that the preemptor is the co-sharer of the case land and the purchasers are strangers in the case holding. Both the courts below held that the case is not bad for defect of parties or barred by the

principles of *estoppel, waiver and acquiescence*. The only point before this Court is whether the case was barred by limitation or not, on which the trial court's finding was reversed by the appellate court below. The preemptor examined himself as PTW-1 who stated that on 25.01.2002 for the first time he came to know about the disputed sale from Awal Mollah and others. He further stated that he was in possession of the case land and the purchasers never went to possession. These versions of depositions were supported by PTWs-2 and 3: both of them stated that they were informed about the disputed sale by the purchaser on 25.01.2002 and on that date they disclosed it to the preemptor. The preemptees claimed that the seller possessed the case land through her brother Awal Mollah but this Awal Mollah as PTW-2 categorically stated in his deposition that the seller or purchasers never went to possession rather the preemptor was all through in possession of the case land. It is the clear case of the pre-emptor that he could know about the sale of the disputed land on 25th January 2002 from Awal Mollah, Zafor Mollah, Harun Mollah and Hachen Mollah who could know from the purchaser Nasir Mollah and this deposition was supported by PTW-2 Md. Awal Molla who is the full brother of the pre-emptee seller. This deposition was also supported by PTW-3 Hachen Mollah. On the other hand OPWs could not prove that after purchase the pre-emptee-purchasers went for possession of the suit land rather the OPWs gave contradictory statements regarding the date of possession of the pre-emptee purchasers. The court of appeal below elaborately discussing the evidence on record rightly came to the conclusion that

the case was not barred by limitation and allowed the preemption case.

Considering all the aspect of the case as discussed above I am of the view that the pre-emptor has successfully proved his case. In that view of the matter, I do not find any reason to interfere with the judgment and order passed by the learned Joint District Judge and as there is no merit the Rule is liable to be discharged.

In the result the Rule is **discharged**. The order of stay granted earlier by this Court stands vacated.

Send down the lower court records along with a copy of this judgment at once.