

In the Supreme Court of Bangladesh

High Court Division

(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Emdadul Huq

Civil Revision No. 1345 of 2014.

In the matter of:

Alhaj Md. Maruf Hasan Swapon and another.

.....Petitioners.

Versus.

Kohinur Aziz and others.

.....Opposite parties.

Mr. Abdur Razzak Khan with

Mr. Nurul Huda, Advocates.

..... For the petitioners.

Mr. Mohammad Eunos, Advocate.

..... For the opposite parties.

**Heard on:** 7.9.14, 8.9.14 and 17.9.2014 .

**Judgment on:** 28.10.2014.

The Rule issued in this Civil Revision under section 115(4) of the Code of Civil Procedure, 1908 (shortly the Code, 1908) is about sustainability of the judgment and order dated 05.03.2014 by which the learned Additional District Judge, 8<sup>th</sup> Court, Dhaka rejected Civil Revision No.232 of 2012 and thereby affirmed the order dated 24.09.2012 passed by the learned Assistant Judge, 9<sup>th</sup> Court, Dhaka

in Preemption Miscellaneous Case No.69 of 2006 rejecting an application filed by the pre-emptee for dismissal of the case.

The opposite party No.1 as pre-emptor filed the above noted preemption case for getting preemption some land as co-sharer in heritage from his father being a co-sharer of purchase. The transfer of the case land was on the basis of a kabala executed and presented or registered on 7.9.2006. The case was filed on 19.11.2006. The preemptor at the time of filing the case deposited the consideration of the kabala and 10% thereof compensation.

The pre-emptee petitioners appeared and filed an application for rejection of the pre-emption application on 19.10.2010 on two grounds namely the case land is Industrial plot and therefore the case was not maintainable under section 96 of the Act, 1950 the pre-emptee also filed written objection on 11-09-2011 raising objection inter alia that the pre-emptor has not complied with the provision of section 96(3) as amended by the State Acquisition and Tenancy amendment Act, 2006 which requires deposit of 25% consideration as consideration and the additional 8% as interest.

Thereafter the trial court took up the application for rejection of plaint for hearing.

After hearing both sides the learned Assistant Judge by order dated 24-09-2012 rejected the pre-emptee's application on the

ground that the additional amount of deposit as required by the amended section 96(3) has been deposited by the pre-emptor with the permission of the Court.

Against the said order the pre-emptee filed Civil Revision No.232 of 2012 which after contested hearing was rejected by the Additional District Judge by the impugned judgment and order dated 05.03.2014.

The learned Additional District Judge concurred with the finding of the trial court to the effect that the additional amount of money was deposited with the permission of the Court.

At the hearing of this Revision Mr.Abdur Razzak Khan, the learned Advocate for the pre-emptee petitioners submits that although the transfer took place before the commencement of the amendment Act, 2006 on 20.9.2006 the case was filed after that date i.e. on 19.11.2006.

The learned Advocate next submits that on the date of filing of the case the amended provision was in force and therefore the pre-emptor was under legal obligation and to make a deposit of the consideration money and 25% compensation and additional 8% as interest.

The learned Advocate next submits that since the pre-emptor has failed to do so the case liable to be dismissed as per amended section 96(3).

Mr. Mohammad Eunos, the learned Advocate for the pre-emptor opposite parties in reply submits that since the transfer took place on 7.9.2006 the amended provision of section 96(3) is not applicable to a pre-emption case against the transfer that took place before the commencement amendment Act.

In this connection Mr. Mohammad Eunos draw my attention and submission sub-section 18 of the substituted section 96.

Mr. Eunos also submits that the application for rejection of the pre-emption application is not maintainable as it is not regular suit.

On perusal of the materials on record it appears that the only issue raised in this case is that whether a pre-emptor is required to make deposit of money in accordance with the amendment section 96(3) in relation to a transfer document that was executed and presented and registration before the commencement of the Act.

Before consideration of this legal issue it is to be noted that the order passed by the trial Court is an appealable order under the old section 96 (3) new section 96 (15).

It appears that this aspect was not in this case by the courts below and it was erroneously registered a Civil Revision and disposed of.

However on perusal of the materials on record it appears that the learned Additional District Judge considered the factual aspects and also the legal aspect in his own way and dispose the revision. In such view I hold that the case registered and disposed as revision may be treated an appeal and his will not prejudice any of the parties.

On perusal of the materials on record it appears that the admittedly transfer document was executed and registered on 7.9.2006 i.e. before commencement of State Acquisition and Tenancy Amendment Act, 2006 which published in the Gazette on 20.9.2006. The section 1(2) of this Act provides ..... Which means Law came into force on 20.9.2006.

It further appears that the section 96 of the Act, 1950 was substituted as a whole. The new section contends the provision with regard to various aspects of pre-emption and contend some new concepts compared to the earlier section 96. Some of this new concepts are change in the title of the pre-emption namely contiguous land holder 2) change in limitation period and change in

the amount of deposit to be made by an intended pre-emptor. The amount has been increased from 10% to 25% with an additional 8% interest.

It further appears that famous of the law concepts about in fact such and accordingly gave a new provision a prospective in other words this is clear from sub-section 18 as quoted below under line added.

“Nothing in this section shall apply to any transfer of any portion or share of holding of a raiyat or any application under section 96 of this Act, made prior to coming into force of the State Acquisition and Tenancy Amendment Act, 2006.”

It is evident that the expression any transfer of any portion made in his of the Act clearly refers to a transfer that document that took place before 20.9.2006.

In the instant case since the transfer took place on 7.9.2006 the new provision introduced by the amendment Act including the requirement additional deposit as mentioned above will not apply to the pre-emption case in question.

Although the pre-emptor has deposit misconception and it was not necessary. The courts below also did not notice the sub section 18 as quoted above and recorded their own finding in rejecting application filed by the pre-emptor.

Though reasoning of the courts below are not correct of their decision sustainable.

In view of the above, I hold that this Rule has no merit.

In the result, the Rule is discharged.

The stay order granted earlier stands vacated.

No order as to costs.

Send at once a copy of the judgment and order to the courts below.

The learned Assistant Judge is directed to proceed with the case in accordance with the law.

B. Hossain.



