

Present:

Mr. Justice Md. Salim

CIVIL REVISION NO.2349 OF 2014.

Md. Abdul Khalek, being dead, his heirs:

Md. Oyaz Kuruny and others

..... *Pre-emptee-Petitioners.*

-VERSUS-

Md. Monayem Hossain and others

.... *Pre-emptor-Opposite Parties.*

Mr. Bazlur Hasan, Advocate.

..... *For the petitioners.*

Mr. Fahad Mahmood Khan, Advocates

..... *For the opposite parties.*

Heard on 13.11.2024, 19.11.2024, 09.12.2024, 10.12.2024 and 15.12.2024.

Judgment on 18.12.2024.

By this Rule, the opposite parties were called upon to show cause as to why the Judgment and order dated 24.03.2014 passed by learned Joint District Judge, 1st Court, Naogaon in Miscellaneous Appeal No.73 of 2013, allowing the appeal and reversing the Judgment and order dated 30.07.2013 passed by the learned Assistant Judge, Dhamoirhat, Naogaon in Miscellaneous Case No.23 of 2011

rejecting the case should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts, in brief for disposal of the Rule, are that the opposite party Nos.1-4 as pre-emptors filed Miscellaneous Case No.23 of 2011 before the Assistant Judge, Dhamoirhat, Naogaon for preemption of 0.0375 acres of land under section 96 of the State Acquisition and Tenancy Act,1950 as co-sharer by inheritance into the case Khaitan contending inter-alia that, the preempte-opposite party No. 2 and 3, full sister of the preemptors through registered sale deed No. 4481 dated 05.10.2011 secretly sold the case land to the pre-empte-petitioner beyond their knowledge having served any notice prior to the transfer of the case land. Preempte purchaser is a stranger in the case holding. Preemptors had no knowledge about the transfer. Therefore, they filed the case within the limitation period from the date of knowledge.

The pre-empte-purchaser-petitioner contested the suit by filing a written objection contested the case contending inter-alia that the case is barred under section 96 of the

State Acquisition and Tenancy Act because the case land is a homestead in nature situated in the rural area. The case is barred by limitation, and the case land was transferred within the knowledge of the preemptor-opposite parties.

The learned Joint District Judge, 1st Court, Naogaon, framed necessary issues to determine the dispute involved between the parties.

Subsequently, the learned Assistant Judge, Dhamoirhat, Naogaon, dismissed the case by the Judgment and order dated 30.07.2013.

Being aggrieved, the pre-emptor opposite parties, preferred Miscellaneous Appeal No.73 of 2013 before the District Judge, Naogaon. Eventually, the learned Joint District Judge, 1st Court, Naogaon, by the Judgment and order dated 24.03.2014, allowed the appeal and thereby reversed the Judgment and order of the trial Court.

Being aggrieved, the pre-emptee-petitioner preferred this Civil Revision under section 115 (1) of the Code of Civil Procedure before this Court and obtained the instant Rule and an order of stay.

Mr. Bazlur Hasan, the learned advocate appearing on behalf of the preemptor-petitioner, submits that the case land being homestead situated in a rural area in rayati holding is excluded from preemption as provided by newly inserted section 96(16) of the State Acquisition and Tenancy Act, 1950, so the appellate Court below committed an error of law resulting in an error in the decision occasioning failure of justice in allowing the preemption, in misinterpreting the decision reported in 11 MLR(AD), 75, 3 ADC 97, and 20 DLR 1197.

Mr. Fahad Mahmood Khan, the learned advocate appearing on behalf of the preemptors-opposite parties, submits that the case land is agricultural in nature and situated in a rural area, so the appellate Court below, with proper appreciation of evidence on record, rightly allowed the preemption.

I have anxiously considered the submissions advanced by both parties, perusing the Judgment of the courts below and oral and documentary evidence on the records.

It manifests from the record that the pre-emptor opposite parties filed the instant preemption case under Section 96 of the State Acquisition and Tenancy Act, 1950, but the trial Court dismissed the preemption case on the ground that the suit land is a homestead situated in a rural area is barred under Section 96(16) of the State Acquisition and Tenancy Act, 1950.

The Court of Appeal below relies upon the case of Abdul Khaleque Vs. Abdul Noor and Ors reported in 11 MLR(AD) 75, 6 BLD(AD) 130, 3 ADC 97, and 20 DLR 1197 allowed the claim of preemption on the ground that a co-sharer transferred non-agricultural land in a rural area to a stranger, and the suit land is Basat-Bithi. Therefore, the suit land is pre-emptible under Section 24 of the Non-Agricultural Tenancy Act.

It appears that, admittedly, the preemptors, as co-sharers of the case jote, filed the instant case. The preemptors examined two witnesses, and the preemptor petitioner examined four OPWs to prove their respective cases. I have anxiously scrutinized depositions and cross-examinations of both parties. Their evidence shows that the

case land is admittedly situated in a rural area, and classification is Bhati in nature and used for agricultural purposes.

Further, from the alleged deed of transfer Exhibit-'Ka' it appears that the case land was mentioned as agricultural land(Jami). Moreover, the land has been identified as Bhati in Exhibit-1; R.S. Dag No.200, R.S. Khatian No.42, and R.S. Dag No.199 under R.S. Khatian No.43. Therefore, it appears to me that character of the case land is Bhati and admittedly situated in a rural area.

Now, it is a settled provision of law by our Apex Court that any land recorded in Khatian as Bagan Bari, Bhati, Bari but situated outside the municipal area should fall within the definition of agricultural land. This view gets support from the case of Chittaranjan Saha Vs. Md. Mortuza Mollah and Ors reported in 14 ALR (AD) 41 it was held that—

"It is necessary to keep on record that admittedly the case land is outside the municipal area, and merely because in the khatian, it was recorded as Bagan Bari, Bari, and Bhati, and it did not become a non-agricultural

land. Such kind of land clearly falls within the definition of agricultural land."

Considering the facts and circumstances and relying upon the decision as mentioned above, it appears that the case land is preemptable under section 96 of the State Acquisition and Tenancy Act, and the appellate Court, though rightly reversed the finding of the trial court and allowed the preemption but wrongly mentioned that the case was required to be file under Section 24 of the East Bengal Non-Agricultural Tenancy Act,1949 instead of section 96 of State Acquisition and Tenancy Act as the case land is Basat-Bithi.

Now, it is settled proposition of law that mention of a wrong provision or omission to mention the provision containing the source of power will not invalidate an order where such power exists. This view gets support from the case of Union of India Vs. Tulsiram Patel, AIR 1985 (SC) 1416, 1477:

"It is also well settled that where a source of power exists, the exercise of such power is referable only to that source and not to some other source under which

were that power exercised, the exercise of such power would be invalid and without jurisdiction. Similarly, if a source of power exists by reading together two provisions, whether statutory or constitutional, and the order refers to only one of them, the validity of the order should be upheld by construing it as an order passed under both those provisions. **Further, even the mention of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate an order where the source of such power exists.”**

In the instant case, the preemptors, as co-sharers in the Khaitan, are entitled to initiate a preemption Case under section 96 of the State Acquisition and Tenancy Act. Therefore, it appears that they have rightly initiated the preemption case under section 96 of the State Acquisition and Tenancy Act since the case land is admittedly situated outside the municipal area, and the land's classification is Bithi, i.e., agricultural.

Consequently, it appears to me that the Judgment of the appellate Court below does not suffer from any legal

infirmity, so the impugned Judgment is well founded in accordance with law and based on the materials on records, which cannot be interfered with by this Court exercising revisional power under Section 115 (1) of the code. However, the trial court below appears to have clearly fallen into an error of law in holding that the case is barred under section 96(16) of the State Acquisition and Tenancy Act.

Resultantly, the Rule is discharged with cost. The impugned Judgment and order dated 24.03.2014 passed by learned Joint District Judge, 1st Court, Naogaon in Miscellaneous Appeal No.73 of 2013 is hereby affirmed.

Let the order of stay granted at the time of issuance of Rule is hereby vacated.

Communicate the Judgment with lower courts' records at once.

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(Md. Salim, J).