

**District- Pabna**

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

Present:

Mr Justice Md Atoar Rahman

**Civil Revision No. 2115 of 2003**

Md Nabab Ali being dead his heirs (a)  
Most Fatema Begum and others

...pre-emptee-opposite party-appellant-  
petitioners

- versus-

Most Meherunnessa being dead her heirs 1(a)  
Md Panjab Ali Biswas and others

...pre-emptor petitioner respondent-  
opposite parties

Mrs Shammi Akter, Advocate

....for the pre-emptee -opposite party-  
appellant-petitioner

Mr Md Abdul Haque, Advocate

... for the pre-emptor petitioner respondent-  
opposite parties

**Heard on: 28.11.2023, 30.11.2023 and  
12.12.2023**

**Judgment on 22.02.2024**

This Rule was issued on an application under section 115(1) of the Code of Civil Procedure 1908 calling upon the opposite party No 1 to show cause as to why the impugned judgment and order dated 20.11.2002 passed by the learned Joint District Judge, Pabna in Miscellaneous Appeal No 08 of 1988 affirming the judgment and order dated 31.01.1988 passed by the learned Assistant Judge, Ishurdi, Pabna

in Miscellaneous Case No 29 of 1986, should not be set aside and/or passed such other or further orders as to this court may seem fit and proper.

During issuance of the Rule operation of the impugned judgment and order dated 20.11.2002 was stayed.

The short facts for the purpose of disposal of the Rule are that the pre-emptor opposite party filed a miscellaneous case being Miscellaneous Case No 29 of 1986 under section 96 of the State Acquisition and Tenancy Act, 1950 for pre-emption in the Court of Senior Assistant Judge, Ishurdi stating *inter alia* that she was the contiguous land holder of the case land which was sold on 12.11.1985 by a registered deed of sale No 4692 to the pre-emptee-petitioner, a stranger to the case land, by the opposite parties No 2-5 without serving any notice upon her. Having heard about the sale on 23.03.1986 from the local chairman the pre-emptor obtained the certified copy of the sale deed on 21.04.1986 and filed the application for pre-emption as contiguous land holder.

The pre-emptee contested the suit by filing written objection denying the material allegations made in the application stating *inter alia* that the pre-emption case was barred by limitation and principle of waiver and acquiescence and bad for defect of party. It was also contended that after purchase the pre-emptee improved the case land spending taka 16,000.00.

The learned Assistant Judge after hearing the parties and perusing the evidence on record allowed the pre-emption case by his judgment and order dated 31.01.1988, against which the pre-emptee preferred an appeal being Miscellaneous Appeal No 08 of 1988 in the Court of District Judge, Pabna. On transfer the miscellaneous appeal was heard by the learned Joint District Judge, First Court, Pabna who was pleased to dismiss the same by the impugned judgment and order dated 20.11.2002.

Being aggrieved by and dissatisfied with the above judgment and order of the appellate court the pre-emptee-appellant moved this court with an application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and the order of stay.

Mrs Shammi Akter, the learned Advocate appearing on behalf of the petitioner has submitted that under sub-section (2) of section 96 of the State Acquisition and Tenancy Act, 1950 in an application under section 96(1) made by a tenant holding land contiguous to the land transferred, it was mandatory provision that all the co-sharer tenants of the holding and all the tenants holding lands contiguous to the land transferred and the transferee should be made parties. In the present case since one of the admitted contiguous land holders Rashed Khan (PW 3) was not made party the pre-emption case was hopelessly bad for defect of parties and, as such, the same was not maintainable in law. But both the learned Judges of the courts bellow committed an error of

law resulting in an error in their decisions occasioning failure of justice holding that the pre-emption case was not bad for defect of parties as said Rashed Khan had deposed as PW 3.

Mr Md Abdul Haque, the learned Advocate appearing on behalf of the opposite party has opposed the Rule as well as submissions so far made by the learned Advocate for the petitioner.

I have heard the submissions placed by the learned Advocates for both the sides and perused the record along with the impugned judgment and other connected papers on record.

It is not disputed that the pre-emptor is a contiguous land holder of the case land and the pre-emptee is a stranger. During hearing of the case in the trial court it was admitted that PW 3 Rashed Khan also one of the contiguous land holders who was not made party in the pre-emption case. Both the courts bellow held that since the said contiguous land holder Rashed Khan had deposed in the court as PW 3 the purpose of making party in the pre-emption application was served and accordingly it could not be said that the pre-emption case was bad for defect of party.

The application for pre-emption was filed before substitution of the present section 96 by the Act No XXXIV of 2006 of the State Acquisition and Tenancy Act, 1950. Under sub-section (1) of the previous section 96 a contiguous land holder was entitled to seek pre-

emption and under sub-section (2) of the said section it was mandatory provision that in such an application made by a tenant holding land contiguous to the land transferred, all the co-sharer tenants of the holding and all the tenants holding lands contiguous to the land transferred and the transferee should be made parties. In the present application made by the pre-emptor as a tenant of contiguous land only two of the other contiguous land holders were made parties as opposite parties No 6 & 7. Though as a tenant of contiguous land the pre-emptor was suppose to know all the tenants holding lands contiguous to the case land but she did not make party another tenant Rashed Khan. Without making party bringing said Rashed Khan in the court as PW 3 would not meet purpose of making party in the pre-emption proceeding as required under sub-section (2) of section 96. Thus, I am of the view that since one of the tenants holding lands contiguous to the case land Rashed Khan was not made party the pre-emption application was bad for defect of party and, as such, the same was not maintainable in law. But the learned Judge of the trial court erroneously allowed the pre-emption application holding that as said Rashed Khan had deposed in the court as PW 3 the purpose of making party in the pre-emption application was served and the learned Judge of the lower appellate court also committed an error of law resulting in an error in his decision occasioning failure of justice in dismissing the miscellaneous appeal.

Accordingly, I find substance in the Rule and, as such, the same deserves to be made absolute.

In the result, the Rule is made absolute, however, without passing any order as to costs. The impugned judgment and order dated 20.11.2002 passed by the learned Joint District Judge, Pabna in Miscellaneous Appeal No 08 of 1988 affirming those dated 31.01.1988 passed by the learned Assistant Judge, Ishurdi, Pabna in Miscellaneous Case No 29 of 1986 is set aside and the miscellaneous case is hereby dismissed. The pre-emptor shall be allowed to withdraw the deposited money.

Let the lower courts' records along with a copy of this judgment be transmitted at once.