

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

**Single Bench:**

**Mr Justice Abdur Rahman**

**Civil Revision No. 4437 of 2010**

**In the matter of:**

Md. Yasin Ali Sheikh

*.....Preemptor-Respondent*

*Petitioner*

**-Versus-**

Md. Mohammad Ishaq and others

*.... Preemptees-Appellants*

*Opposite parties*

Mr Md. Zakir Hossain, Advocate

*...For the Petitioner*

*No one appears*

*...For the opposite parties*

**Date of Hearing: 29.7.2026, 30.7.2026, 06.08.2026 and  
10.08.2026 A.D.**

**Date of Judgment: 03.09.2026 A.D., Thursday,**

১৯ ভাদ্র, ১৪৩৩ বঙ্গাব্দ।

**JUDGMENT:**

**Abdur Rahman, J:**

This revisional application, at the instance of the petitioner, has been filed under section 115(1) of the Code of Civil Procedure, 1908. At the time of issuance of the Rule, the following order was passed:

"Let the records of the case be called for and a rule issue calling upon the opposite parties 1-3 to show cause as to why the impugned judgment and order dated 04.05.2009 of the learned Additional District Judge, 3rd Court Bogra in Miscellaneous Appeal No.12 of 2004, reversing those dated 20.10.2003 of the learned Assistant Judge, 1<sup>st</sup> Court, Bogra in Preemption Miscellaneous Case No. 60 of 1998 should not be set aside or pass such other or further order orders as to this Court may seem fit and proper."

The crux of the facts of the case is that the present petitioner, as the preemptor, filed a pre-emption Case in the Court of the learned Assistant Judge, 1<sup>st</sup> Court of Bogra. The preemptor contended that the disputed land originally

belonged to Asgar Sheikh and Korban Sheikh in equal shares, and upon Korban Sheikh's death, Asgar Sheikh became the sole owner of the land. Thereafter, Asgar Sheikh died leaving only son Rahim Box Sheikh and two daughters named Zamiran and Asiran and they became owners and possessors, and thereafter, Asiran died leaving her son Badiuzzman, who became co-owner and M.R.R. Khatian was prepared in his name under Khatian No. 17 and thereafter at the death of Zamiran her son Abdul Gani and two daughters opposite parties No. 14-15 became her heirs and at the death of Gani opposite parties No. 16-19 became his heirs and at the death of Badiuzzaman his six sons opposite parties No. 4-9 and three daughters opposite parties as 10-12 and only wife Zamila opposite party No.13 became his heirs. Hereinafter, upon Takiran's death, her son Rahim Baks became her heir, and after his death, his wife Abiran Bewa, opposite party No., and his two daughters, opposite parties No. 21-22, became his heirs and inherited the property. Pre-emptor is the co-sharer of the jote within the knowledge of the opposite parties but the opposite parties No. 4-8 and 1-9, collusively

executed a deed of sale deed being No. 4008 dated 8.9.1997, without any notice and facts of such transfer, which was disclosed on 28.08.98 and the pre-emptor became sure about the transfer on 31.08.1998, when they obtained certified copy and the pre-emptor by depositing the price of the land within 10% compensation filed the case for his claim of pre-emption.

On the other hand, the pre-emptee opposite parties contested the case by filing written objection denying material allegation of the case and resisted *inter alia* that at the death of Badiuzzaman the opposite parties No. 4-13 became his heirs and when the opposite parties No. 4-8 was being needed of urgent money, they expressed their desire for sale of their property in question and the opposite parties No. 1-3 agreed to purchase the land by the mediation of the pre-emptor and on 11.05.97 in a meeting of villagers price of land was fixed the price of the land at Tk.15,000/-only, and opposite parties No. 4-8 received Tk. 15,000/- within the knowledge of the pre-emptor and on 8.9.97 the pre-emptor was requested to be present in the office of Sub-Registrar to

be witness in the deed, but he disclosed that he obtained field parcha in the name of his father Rohis Baks, and the notice of transfer was duly served upon the preemptor and he was not interested to purchase the land for which his claim is barred under the principle of waiver, estoppel and acquiescence and since the field parcha was published in the name of the preemptor's father Rahim Baks he refused to purchase the same that the opposite parties No.1-3 got separated the record in recent survey and has been owning and possessing the land measuring 105 acres, but the preemptor with ill motive filed the case which is liable to be rejected.

Thereafter, the learned Assistant Judge framed as many as 4 points for determinations, examined the witnesses adduced by both the parties, marked the documents in different exhibits, and after hearing, the learned Court was very much pleased to allow the prayer for pre-emption of the case, and upon observation that the opposite parties are stranger in the jote and the pre-emptor

is co-sharer in the jote and no notice was served upon them and the pre-emption case is maintainable.

Thereafter, the opposite parties No. 1-3, as the preemptees, being aggrieved by and dissatisfied with the judgment and order dated 20.10.03 passed by the learned Assistant Judge, preferred a Miscellaneous Appeal being No. 12 of 2004 before the learned District Judge, Bogra and then the case was transferred to the Court of the learned Additional District Judge, 3rd Court, Bogra for hearing and disposal of the appeal.

Thereafter, the learned Additional District Judge, after hearing both parties, was pleased to allow the appeal by setting aside the order dated 20.10.2003, upon observing that the transfer was effected and within the knowledge of the pre-emptor, thereby reversing the judgment and order of the learned trial Court.

**Mr. Md. Zakir Hossain**, learned Advocate appearing for the petitioner, submits that the learned Additional District Judge, while allowing the appeal, committed a manifest error

of law inasmuch as the appellate Court proceeded principally on the doctrine of waiver, without properly appreciating the material evidence on record and, in particular, without considering the petitioner's specific case that the transfer in question was effected without his knowledge and that he acquired knowledge of the same only on 28.08.1998. It is contended that, immediately upon acquiring such knowledge, the petitioner took steps to enforce his statutory right of pre-emption within the period prescribed by law. According to the learned Advocate, in the absence of proof that the petitioner had prior knowledge of the completed transfer and had consciously relinquished his statutory right, the doctrine of waiver could not lawfully have been invoked to defeat the claim for pre-emption.

He further submits that the learned Appellate Court committed a serious error of law in placing reliance upon an alleged Salishnama, which was neither properly proved nor authenticated in accordance with law and which, according to him, could not by itself constitute lawful and conclusive evidence of the petitioner's knowledge, consent, waiver or

relinquishment of his statutory right. It is argued that mere production of such an instrument, particularly when the petitioner was not a signatory thereto and no acknowledgement or endorsement of the petitioner appears therein, could not legally establish that he had consciously abandoned or waived his right of pre-emption. The learned Advocate contends that the learned Appellate Court, having relied upon such doubtful and insufficient evidence, arrived at an erroneous conclusion and thereby committed an error of law occasioning failure of justice.

Learned Advocate next submits that it is an admitted or otherwise established position on the record that the petitioner is a co-sharer tenant in the suit jote and the vendors, opposite party Nos. 4–8, were likewise co-sharer tenants therein. It is his contention that the purchaser-opposite party Nos. 1–3 were strangers to the jote and that, consequently, the petitioner was legally entitled to invoke the right of pre-emption in respect of the transfer made in favour of the said purchasers. He further submits that the petitioner was not duly served with the statutory notice

contemplated under section 89 of Act No. XXVIII of 1951 and that he came to know of the transfer only on 28.08.1998. The pre-emption proceeding having been instituted within the statutory period from the date of such knowledge, the claim was maintainable in law.

Learned Advocate further submits that the learned Assistant Judge, upon a proper appraisal of the oral and documentary evidence adduced by the parties, arrived at a reasoned finding that the opposite parties had failed to establish that the petitioner had been duly served with notice of the transfer. The learned trial Court also found that the petitioner and the vendor-opposite parties were co-sharer tenants by inheritance in respect of the suit jote, whereas the purchaser-opposite parties failed to establish their status as co-sharer tenants of the same jote by inheritance.

The learned Advocate also argues that the trial Court's findings, being founded upon the evidence on record, could not have been reversed by the appellate Court merely by

relying upon an unproved or insufficiently proved Salishnama and by invoking the doctrines of waiver, acquiescence and estoppel without recording proper findings as to the essential ingredients thereof.

It is further submitted that the learned Appellate Court, while reversing the judgment and order of the learned trial Court, did not properly meet or dislodge the material reasons assigned by the trial Court in support of its findings. According to the learned Advocate, a first appellate Court, although competent to reappraise the evidence, is nevertheless required to consider the reasons and findings recorded by the trial Court and, where it proposes to take a contrary view, to demonstrate why those findings are unsustainable. The failure to address the material findings of the trial Court, coupled with reliance upon an inadequately proved Salishnama, has, according to him, resulted in an erroneous reversal of the trial Court's decision and consequently occasioned a failure of justice.

Learned Advocate finally submits that the learned Additional District Judge proceeded on a misconception of law in treating the petitioner's alleged conduct as amounting to waiver, without first determining whether there was clear, conscious and unequivocal abandonment of the statutory right of pre-emption. A statutory right cannot lightly be treated as having been waived merely on the basis of alleged silence, presence at a meeting, or conduct which does not unequivocally demonstrate an intention to relinquish such right. In the absence of convincing evidence showing that the petitioner had full knowledge of the relevant transaction and deliberately elected not to exercise his right, the finding of waiver, according to the learned Advocate, was legally unsustainable. He therefore prays that the impugned judgment and order be set aside and that the judgment and order passed by the learned trial Court be restored.

**None appears on behalf of the opposite parties.**

I have heard the learned Advocate for the petitioner and perused the revisional application, the impugned

judgment and order, the judgment of the learned trial Court, and the materials available on record.

It appears from the pleadings and the evidence that the principal controversy between the parties centres around the question whether the petitioner, despite being a co-sharer tenant in the suit jote, had, by his alleged conduct, waived or otherwise lost his statutory right of pre-emption by reason of knowledge, acquiescence, estoppel or otherwise.

It is evident from the case record that the case of opposite party Nos. 1–3 is that they agreed to purchase the land through the mediation of the pre-emptor; that, in a meeting of the villagers held on 11.05.1997, the price of the land was settled at Tk.15,000/-; that the vendor-opposite party Nos. 4–8 received the said consideration money within the knowledge of the petitioner; and that, on 08.09.1997, the petitioner was requested to remain present at the office of the Sub-Registrar as a witness to the deed. It is further alleged that, at that time, the petitioner disclosed that he

was not interested in purchasing the land. On such basis, the purchaser-opposite parties contend that the petitioner had sufficient knowledge of the proposed transfer and, by his conduct, had abandoned his right, thereby attracting the principles of waiver, acquiescence and estoppel.

The aforesaid contention, however, has to be examined in the light of the statutory character of the right claimed by the petitioner and the evidence by which the alleged waiver is sought to be established.

Upon perusal of the judgment of the learned trial Court, I find that the learned Assistant Judge specifically considered the parties' status in relation to the suit jote. The trial Court observed that the purchaser-opposite party Nos. 1–3 neither claimed nor established that they were co-sharer tenants of the suit jote by inheritance. Although they claimed to be co-sharer tenants in respect of the adjoining plots, namely Dag Nos. 595 and 593, no documentary evidence was produced in support of such claim. On the contrary, the

petitioner and the vendor-opposite party Nos. 4–8 were found to be co-sharer tenants of the suit jote.

The learned trial Court further found that the preemptes 1-3 had not served notice upon the petitioner in accordance with the provisions of section 89 of Act No. XXVIII of 1951 in relation to the purchase of the suit jote property and that there was no satisfactory documentary evidence before the Court to establish that the statutory notice contemplated by law had been duly served upon the petitioner. The trial Court, upon consideration of the evidence, accordingly came to the conclusion that the petitioner was a co-sharer tenant by inheritance in the suit jote recorded in P.S. Khatian No. 2, whereas the purchaser-opposite parties had failed to establish their status as co-sharer tenants of the same jote by inheritance.

In such circumstances, the finding of the learned trial Court that the purchaser-opposite parties were strangers to the suit jote cannot, in my view, be brushed aside without a

proper examination of the evidence and the reasons assigned in support thereof.

It further appears that the learned Appellate Court placed considerable reliance upon the Salishnama allegedly prepared in connection with a meeting held on 11.05.1997. The appellate Court observed that the appellant produced evidence in support of the Salishnama before it and that the said witness was not effectively cross-examined by the petitioner. The appellate Court further noticed that the Salishnama purportedly contained the signatures of as many as 22 persons and that O.P.W.-2, Md. Jalal Uddin Sheikh, was also a witness thereto. The appellate Court then relied upon the recital therein that Yasin Ali, who was allegedly present at the meeting, had been requested to sign the bainapatra as a witness but declined to do so and left the meeting. On that basis, the appellate Court inferred that the petitioner had knowledge of the proposed transaction and, having remained present at the Salish meeting without objecting to the transaction in the manner expected by the Court, had subsequently been disentitled from claiming pre-emption.

With respect, the aforesaid reasoning requires closer scrutiny.

The mere existence of a Salishnama, even if witnesses had signed it, does not by itself establish every fact or recital contained therein against a person who is not shown to have executed, acknowledged or otherwise adopted the document. More importantly, where the consequence sought to be attached to such document is the extinguishment or loss of a statutory right, the evidence must be sufficiently cogent to establish a conscious and unequivocal relinquishment of that right. The mere fact that a person was allegedly present at a meeting or was requested to sign a document does not necessarily establish that he knowingly and intentionally abandoned a statutory right available to him upon the completion of the transfer.

The distinction between **knowledge of a proposed sale** and **knowledge of the completed transfer giving rise to the statutory right of pre-emption** is also material. A person may have knowledge that negotiations for sale are taking place,

or even that a sale is contemplated, without thereby necessarily acquiring the legally relevant knowledge upon which the period for exercising a statutory right of pre-emption is to be reckoned. The appellate Court, therefore, was required to determine, upon the evidence, the precise nature, extent and date of the petitioner's knowledge and whether such knowledge was accompanied by a clear and intentional relinquishment of the right conferred by statute.

**NATURE AND CONSEQUENCE OF THE WAIVER,  
ACQUIESCENCE AND ESTOPPEL :**

The doctrine of waiver, acquiescence and estoppel, though founded upon considerations of fairness and good conscience, cannot be applied mechanically. A waiver ordinarily entails the intentional relinquishment of a known right. Acquiescence involves conduct from which a clear inference may properly be drawn that the person concerned accepted or stood by the transaction notwithstanding knowledge of the circumstances affecting his right. Estoppel, on the other hand, rests upon the principle that a person

who, by his declaration, act or omission, intentionally causes or permits another to believe a particular state of affairs to be true and to act upon such belief cannot subsequently, in appropriate circumstances, be permitted to contradict that representation to the prejudice of the person who relied upon it.

Thus, the essential element is not mere silence, but conduct which, in the circumstances of the particular case, unequivocally demonstrates knowledge, intention and conduct sufficiently clear to justify the legal consequence sought to be imposed.

A person who is legally entitled to object to a transaction cannot ordinarily be deprived of his right merely because he did not object at the earliest possible moment, unless the surrounding circumstances establish that he had full knowledge of the relevant facts and nevertheless deliberately elected to abandon or relinquish the right, or that his conduct induced the other party to alter his position to his prejudice. The Court must therefore be slow to infer

waiver where the alleged waiver is founded upon ambiguous conduct, mere silence, or an equivocal act.

In the present case, the learned Appellate Court principally relied on the Salishnama and the petitioner's alleged presence at the Salish meeting. But the petitioner admittedly did not sign the Salishnama. There is also no endorsement or acknowledgement of the petitioner appearing on the said document by which it can be conclusively inferred that he consciously accepted the sale transaction or expressly relinquished his statutory right of pre-emption.

More importantly, the appellate judgment does not disclose any clear finding that the petitioner, with full knowledge of the completed transfer and of his statutory right arising therefrom, intentionally and unequivocally abandoned such right. Nor does the judgment demonstrate by sufficient evidence that the purchaser-opposite parties altered their position in reliance upon any specific

representation made by the petitioner so as to attract the doctrine of estoppel in its strict legal sense.

On the contrary, the learned trial Court, upon appraisal of the evidence, found that the petitioner was a co-sharer tenant of the suit jote by inheritance and that the purchaser-opposite parties had failed to establish that they were co-sharer tenants of the same jote. The trial Court further found absence of proof of due service of the statutory notice upon the petitioner. These findings go to the root of the petitioner's entitlement to invoke the statutory right of pre-emption.

It is true that a statutory right, like any other legally enforceable right, may, in an appropriate case, be lost by a legally established waiver, acquiescence, or estoppel. But such a conclusion must necessarily flow from clear and convincing facts and circumstances. The burden cannot be discharged merely by producing an alleged Salishnama containing recitals which have not been sufficiently connected with an unequivocal act of relinquishment on the

part of the person whose statutory right is sought to be defeated.

I am also unable to accept the approach of the learned Appellate Court that, merely because the petitioner allegedly remained present at the Salish meeting and did not sign the bainapatra as a witness, he must necessarily be deemed to have waived his statutory right. Refusal to sign a document may, at the highest, establish refusal to authenticate or associate oneself with that document; it does not, without more, necessarily constitute a conscious abandonment of a statutory right which arises upon fulfilment of the statutory conditions.

Furthermore, the learned Appellate Court, while reversing the judgment of the learned trial Court, did not adequately address the material findings recorded by the trial Court concerning the co-sharer status of the petitioner, the status of the purchaser-opposite parties, and the alleged absence of statutory notice. Those findings were material and directly relevant to the maintainability and sustainability

of the pre-emption claim. A reversal of the trial Court's judgment required a reasoned consideration of those findings and a clear explanation as to why they were legally or factually unsustainable.

In my considered view, the learned Appellate Court, instead of properly resolving those material issues, placed predominant reliance upon the Salishnama and proceeded on an inference of waiver which was not supported by sufficiently cogent evidence. The appellate Court thereby failed to appreciate the distinction between mere knowledge of negotiations or a proposed transfer and the conscious relinquishment of a statutory right arising from an actual transfer.

The principle is well settled that **waiver is essentially a matter of intention**, and where waiver is sought to be inferred from conduct, such conduct must be unequivocal and inconsistent with the continued assertion of the right. A mere ambiguous act, omission or silence cannot, without more, be converted into an intentional abandonment of a

statutory entitlement. Likewise, acquiescence requires knowledge and conduct from which acceptance may reasonably and unequivocally be inferred, while estoppel requires the foundational elements necessary to prevent a party from resiling from a representation or conduct upon which another has acted to his prejudice.

Tested against the aforesaid principles, I find that the conclusion reached by the learned Appellate Court that the petitioner had waived his right of pre-emption was not founded upon adequate and legally sufficient evidence. The appellate Court also failed to properly controvert or dislodge the material findings and reasons recorded by the learned trial Court.

Accordingly, I find substance in the submissions advanced by the learned Advocate for the petitioner. The impugned judgment and order of the learned Additional District Judge, insofar as it reversed the judgment and order of the learned Assistant Judge on the ground of waiver, acquiescence and estoppel, cannot be sustained in law.

In view of the foregoing discussion, I find merit in the Rule.

Accordingly, the **Rule is made absolute.**

The impugned judgment and order passed by the learned Additional District Judge in the appeal is hereby **set aside**, and the judgment and order passed by the learned trial Court allowing the petitioner's claim for pre-emption is **restored.**

There shall, however, be **no order as to costs.**

The office is hereby directed to send down the Subordinate Courts Records (SCR) along with a copy of this judgment forthwith.

Order accordingly.

*(Abdur Rahman, J.)*