District: Naogaon

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

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 2614 of 2012

In the matter of :

Md. Haider Ali and others
… Petitioners
-Versus-
Md. Ahmad Ali Dewan and others
…Opposite parties

Ms. Tahniyad Aziz, Advocate with
Mr. Mohammad Iftekhar Bin Salam, Advocate
…For the petitioners

Mr. Probir Ranjan Halder, Advocate with
Ms. Sonia Akter, Advocate
…For the opposite parties

Heard on: 13.11.2024, 20.11.2024 and 21.11.2024
Judgment on: 01.12.2024

Rule was issued on an application under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos.1-6 to show cause as to why the judgment and order dated 13.06.2012 passed by the Joint District Judge, Second Court, Naogaon

in Miscellaneous Appeal No. 73 of 2001, dismissing the appeal, affirming the judgment and order dated 19.08.2001 passed by the Assistant Judge, Seventh Court, Mohadevpur, Naogaon in Miscellaneous Case No. 06 of 1992 (pre-emption) should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule by an ad-interim order operation of the judgment and order dated 13.06.2012 passed by the Joint District Judge, Second Court, Naogaon in Miscellaneous Appeal No. 73 of 2001 was stayed and subsequently the said order of stay has been extended till disposal of the Rule on 22.02.2015.

The predecessor of the opposite party Nos. 1-6 as pre-emptor filed an application before the Assistant Judge, Mahadevpur, Naogaon under section 96 of the State Acquisition and Tenancy Act, 1950 to pre-empt the deed No. 11643 dated 30.11.1991 impleading the predecessor of the petitioners and others as opposite parties contending, *inter alia* that the property measuring an area of 2.19 acres of several plots appertaining to

C.S. Khatian No. 173, corresponding to S.A. Khatian No. 181 was originally belonged to Narendranath Tarafder and Surendranath Tarafder in equal share. Surendranath and Narendranath transferred 0.33 decimals of land of C.S. Plot No. 79 to Shoshodhor Mondol, Nalini Kanta and Dhirendra Mondol. S.A. Khatian No. 182 was duly prepared in their name. Shoshodhor Mondol and others transferred the said 0.33 decimals of land to Shafiulla, son of Ramjan Mondol. Subsequently, Shafiulla transferred the land to Purno Chandra and thereafter, said Purno Chandra transferred the said 0.33 decimals land on 23.12.1963 to the pre-emptor and his brother. The pre-emptor and his brother Asir Uddin while were in enjoyment and possession of the said 0.33 decimals of land, described under Schedule-'Kha', the R.S. Khatian No. 82 was duly prepared in their name. The further case of pre-emptor is that while the C.S. recorded owner Surendranath and Narendranath were enjoying 1.86 acres of land in equal share described in Schedule-'Ga', Narendranath died intestate leaving behind his sons, Shitanath and Bhogiroth, who inherited their

father's left property and thereafter transferred the said 8(eight) annas share of the property to the pre-emptor through registered kabala No. 2915 dated 14.03.1967. The pre-emptor after purchasing ½ of the property of 'Ga'-schedule is in possession of the same in ejmali together with the opposite party Nos. 2 and 3 by erecting a home stead thereon and in this way the petitioner became owner of the holding land contiguous to the land transferred by opposite party Nos. 2 and 3. It is further case of the pre-emptor is that after the death of Surendranath, son of Radha Raman Tarafder, his share was devolved upon his legal heirs, sons opposite party Nos. 2 and 3. The pre-emptee-opposite party No.1 upon misguiding the inexperienced sons of Surendranath managed to obtain a saf-kabala deed being No. 11643 dated 30.11.1991 regarding the 8 annas share of 'Ga'-schedule land at a consideration of Tk.10,000/- and thereby kept the fact of aforesaid transfer concealed. The pre-emptor on 08.01.1992 came to know about the aforesaid transfer from the pre-emptee-opposite party No.1 and thereafter upon obtaining certified copy having definite

knowledge regarding the transfer filed the application for pre-emption.

On the other hand, the pre-emptee contested the application by filing written objection contending, *inter alia* that the original pre-emptee, father of the present petitioners requested for some land from the C.S. record tenant Surendranath Tarafder in order to erect a homestead to reside and accordingly on 02.03.1351 B.S. the said Surendranath Tarafder gave settlement of his 8 annas share of the 'Ga'-scheduled land to him fixing an yearly joma at Tk.1/-(one) upon receiving Tk.200/- as najrana or selami and since then the pre-emptee has been possessing the said property upon erecting a homestead thereon. During the S.A. settlement the pre-emptee was outside of his house and taking that advantage the said settled property was wrongly recorded in the name of the heirs of Surendranath Tarafder at the instance of some conspirators of the locality. Although the S.A. record was mistakenly prepared in the name of the heirs of Surendranath Tarafder but they never possessed the property in question. The pre-emptee is in

continuous and uninterrupted possession of the property in question and accordingly, the R.S. khatian No. 145 was duly prepared in his name and he got mutation of the property vide order dated 29.05.1989 through Mutation Case No. 2043 of 1988-89 and accordingly, holding No. 21/1 and 98/1 has been created in his name. Upon getting mutation and separate holding the pre-emptee has been possessing the property by paying rent to the Government. Further case of the pre-emptee is that wrong recording of the S.A. khatian in the name of opposite party Nos. 2 and 3 created cloud upon his title and as such, to remove the obstacle, he intended to get a Nadabinama deed from the opposite party Nos. 2 and 3, but due to some formalities, he was to get register a sale deed at a nominal consideration, which was actually not out and out a sale deed, rather a deed of Nadabinama and as such, no pre-emption application is maintainable against the said Nadabinama deed. The application of pre-emption is liable to be rejected.

Learned Assistant Judge considering the pleadings of both the parties framed as well as 7(seven) issues out of which issue No. 4 was, “whether the deed in question is a Nadabinama deed or out and out a sale deed?” To prove the respective case, the pre-emptor examined 6(six) witnesses and adduced documentary evidences. On the other hand, the pre-emptee examined 5(five) witnesses in support of his case and also adduced documentary evidences. On conclusion of trial the Assistant Judge of Mohadebpur, Naogaon by his judgment and order dated 19.08.2001 allowed the pre-emption application holding that the pre-emptor is the co-sharer by purchase as well as tenant holding land contiguous to the land transferred. It was also held that the deed in question is out and out a sale deed not a Nadabinama deed.

On being aggrieved, the legal heirs of pre-emptee being appellants filed Miscellaneous Appeal No. 73 of 2001 before the District Judge, Naogaon. On transfer the said appeal was heard by the Joint District Judge, Second Court, Naogaon and by his

judgment and order dated 13.06.2012 dismissed the appeal, affirming the judgment of the trial Court, save and except the finding of the trial Court that the pre-emptor is a co-sharer by purchase, controverting the aforesaid finding of trial Court it was also held that by creating separate joma and khatian the co-sharership by purchase of the pre-emptor has been ceased, thus, he may be entitled to get the pre-emption to be the tenant holding land contiguous to the land transferred.

On being aggrieved by and dissatisfied with the judgment and order dated 13.06.2012 passed by the Joint District Judge, Second Court, Naogaon in Miscellaneous Appeal No. 73 of 2001, the appellant-petitioners have filed this revisional application and obtained the Rule.

Ms. Tahniyad Aziz, learned Advocate appearing with Md. Mohammad Iftekhar Bin Salam, learned Advocate for the pre-emptee-petitioners submits that the predecessor of the petitioners, namely Khaibar Ali took settlement of the property in the year 1351 B.S. and since then he has been possessing the same by

erecting homestead and digging a pond. She next submits that while he was in actual physical possession of the land the R.S khtain No. 145 was prepared in his name and thereafter through Mutation Case No. 2043 of 1988-89 mutated his name and got separate holdings being No. 21/1 and 98/1 and thereby possessing and enjoying the property by paying rent to the Government. She further submits that since the S.A. record was wrongly prepared in the name of the heirs of Surendranath Tarafder, creating cloud and confusion upon the title of the pre-emptee and as such, to remove the said impediment the pre-emptee intended to get a Nadabinama deed from the said heirs, but due to the advise of some prudent well wishers and due to legal formalities the deed was executed and registered as a sale deed showing a nominal/minimum consideration. Taking the advantage of registration of the same in the form of sale deed, the pre-emptor filed this pre-emption case with malafide intention to grab the property. She further submits that the witnesses of the pre-emptee, in particular, O.P.Ws. 1, 2 and 3 in their evidences stated before the Court that the pre-

emptee is in possession of the property in question for the last 30(thirty) years prior to filing of the pre-emption case. The positive case of the pre-emptee is that after getting settlement of the property he is enjoying the same by erecting house and digging pond therein and R.S. Khatian No. 145 has been duly prepared in his name. The property has been also mutated in his name which categorically proved that the property has been owned and possessed by the pre-emptee even long before the execution of the deed in question, but both the Courts below failed to consider the said aspect of the case. She next submits that O.P.Ws. 4 and 5 categorically deposed before the Court in favour of the case of pre-emptee by stating that O.P.W. 4 is the scribe, who prepared the deed in the form of sale deed instead of Nadabinama deed. Because, in their opinion, the Nadabinama deed has no legal validity and as such the scribe along with others suggested to execute and register a deed of sale instead of Nadabinama. The O.P.W. 5 who is the attesting witness of the deed. He also deposed supporting the pre-emptee’s case stating

that upon his advice the deed was executed and registered as sale deed instead of Nadabinama without paying any consideration. In spite of that both the Court's below upon misconception of law, misreading and misconstruing the evidences on record ignored the aforesaid evidences holding that the deed in question is out and out a sale deed. On the basis of said wrong finding also held that the pre-emption case is maintainable and thereby committed error of law in the decision occasioning failure of justice. She continues to submit that the executors of the deed executed and signed it knowing fully well that the same is a Nadabinama deed without having any consideration.

On the other hand, Mr. Prabir Ranjan Halder, learned Advocate appearing with Ms. Sonia Akhter, learned Advocate for the pre-emptor-opposite party submits that both the Courts below concurrently found that the pre-emption application is maintainable, in particular, the pre-emptor being tenant holding land contiguous to the land transferred and thus, has possessed the right to pre-emption under section 96 of the State Acquisition and

Tenancy Act, 1950. He next submits that both the Courts below categorically found that the deed in question is a sale deed and from the recital of the deed, both the Courts below found that a consideration of Tk.10,000/- has been handed over, and thereby allowed the pre-emption case. The concurrent findings of fact of both the Court's below is immune from interference in revision, unless there is misreading, misconstruing or non-consideration of the evidences on record.

In reply to the submission of learned Advocate for the petitioner, Mr. Halder submits that the terms of a written sale deed cannot be altered or contradicted by oral evidence and such oral evidence is inadmissible under the provision of sections 91 and 92 of the Evidence Act, 1872.

In support of the submission, he referred the case of Abdul Gafur and others Vs. Md. Abdur Razzak and others reported in 62 DLR(AD) 242 and the case of Haji Nayeb Ali Vs. Md. Amir Hossain and others reported in 7 ALR(AD) 136.

Heard learned Advocates of both the parties, perused the revisional application together with the lower Court's record. Having gone through the relevant provisions of law.

It appears that the pre-emptor-opposite party filed the pre-emption case under section 96 of the State Acquisition and Tenancy Act, 1950 claiming himself as the co-sharer by purchase as well as being the holder of contiguous land to the land transferred under deed No. 11643 dated 30.11.1991. The property under pre-emption is the 8 annas share of a piece of land measuring 1.86 acres appertaining to C.S. Khatian No. 173 plot Nos. 73, 78, 79, 80/412.

The contention of the pre-emptee-petitioner is that he got the land through settlement from the C.S. recorded tenant, Surendranath Tarafder on 02.03.1351 B.S. through hukumnama upon settling an yearly joma of Tk.1(one) and against a najrana or salami of Tk.200.00 and thereafter, the pre-emptee was inducted into physical possession into the property and since then he has been possessing the said land by erecting house and digging pond

thereon. The R.S. Khatian No. 145 was duly prepared in the name of pre-emptee, but the corresponding S.A. khatian was wrongly and mistakenly prepared in the name of the heirs of C.S. recorded tenant, Surendranath Tarafder, which creates cloud and confusion upon his title and as such, to remove the cloud and impediment he intended to get a deed of Nadabinama from the opposite party Nos. 2 and 3, the heirs of C.S. recorded tenant Surendranath Tarafder, but due to formalities and upon advise of well wishers the deed was executed as sale deed instead of Nadabinama. Admittedly, the deed in question has been executed and registered in the form of sale deed. It is the specific case of pre-emptee that the deed in question is not a sale deed, rather it is a Nadabinama deed executed and registered due to meet the formalities and upon advise of well wishers, without passing of any consideration.

Now, under the law of the land, the pre-emptee is to prove his case independently and unambiguously that his deed of the year 1991 was actually a Nadabinama deed.

Now let us see, how far the pre-emptees (subsequently the original pre-emptee has been substituted by his legal heirs) have been able to prove their case.

Section 101 of the Evidence Act, 1872 provided "Burden of proof- Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

And under section 103, it is provided "Burden of proof as to particular fact- The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

From combined reading of the aforementioned provisions, keeping in mind the fact of the case in hand, the pre-emptee wishes the Court to believe the existence of the fact that the deed

in question is a Nadabinama deed, not an out and out sale deed and (since they are in exclusive possession and enjoyment of the suit property in question from the year 1351 B.S) thus, only to remove the impediment or confusion over his title, he intended to get a Nadabinama deed. Because, the S.A. record was prepared wrongly and mistakenly in the name of the heirs of the C.S. recorded tenant, but due to the legal formality the deed was registered as a sale deed without actually passing of any consideration.

During trial, the pre-emptee died intestate leaving his legal heirs, out of them Md. Haider Ali, son of deceased opposite party No. 1 examined in the witness box of the Court in support of the case of pre-emptee and stated that on 02.03.1351 B.S. his father got settlement of the 8 annas share of the scheduled property from Surendranath, and was inducted into possession thereby erecting house and digging pond he started residing thereon. He also deposed that the R.S. Khatian No. 145 was duly prepared in his father’s name and his father has mutated his name through

Mutation Case No.2043 of 1988-89 and thereby enjoying the property upon paying rent to the Government. The S.A. khatian was wrongly prepared in the name of Surendranath's sons and as such, his father obtained a Nadabinama from the sons of Surendranath. It was not a sale deed, no consideration was actually handed over, although in the deed a nominal consideration was mentioned. The certified copy of the R.S. Khatian No. 145, the mutation khatian, DCR, khajna dakhilas have been exhibited as Exhibit-'Ka' series.

O.P.W. 2, Md. Ajgor Ali categorically stated in his deposition that "নালিশী জমিতে প্রতিপক্ষদের পুকুর, গাছপালা, শ্যালো মেশিন ও বাড়ী এবং দোকান আছে। নালিশি জমিতে অবস্থিত একটি বাড়ির বয়স ১৫/১৬ বছর এবং অন্যটির বয়স অনুমান ৩০/৩৫ বছর।"

O.P.W. 3, Md. Hafiz Uddin categorically deposed that "পুরাতন বাড়ীর বয়স ২৮/৩০ বছর, এই বাড়ী দুটি প্রতিপক্ষদের বাবা খয়বর তৈরী করেছে।"

From the aforesaid evidences, it transpires that the pre-emptee has been possessing the land for last 28-35 years and the R.S. record was prepared in his name long before execution of the alleged sale deed and the property was mutated in the name of pre-emptee before the deed in question was executed and he used to pay rent to the Government.

The fact of possession of pre-emptee has been categorically admitted by P.W. 2, Sitanath Tarafder who deposed in his deposition "সুরেন্দ্রনাথ তরফদার আমার কাকা। নালিশি জমির অর্ধাংশ আমাদের ও অর্ধাংশ কাকার ছিলো। সুরেন্দ্রনাথ তরফদার ইংরেজী ১৯৬৩-৬৪ সাল পর্যন্ত এ দেশে ছিলো।" and in his cross, he categorically admitted that "সুরেন্দ্রনাথের আট আনা অংশে ১নং প্রতিপক্ষ খয়বরের বাড়ী। খয়বর যখন নালিশি জোতে আসে তখন সুরেন ছিল।"

P.W. 5, Samsuddin also categorically admitted the possession of pre-emptee in his deposition that "আমি হারুনের বাড়ী চিনি। সাবেক বাড়ি-ঘর ভেঙ্গে আজ থেকে ৬/৭ বছর আগে বর্তমান বাড়ি-ঘর করেছে।" and in cross he stated that "নালিশী জোতে হারুনদের আগেও বাড়ী ছিল, এখনও আছে।"

The aforesaid testimony of 2(two) PWs categorically admitted the long possession of pre-emptee even before the execution of the deed in question of the year 1991.

From the oral evidences of the P.Ws as well as O.P.Ws together with the documentary evidences, it appears that the pre-emptee, Khaibar Ali was inducted into possession by the C.S. recorded tenant Surendranath Tarafder, who left the country in the year 1963-64 and the said Khaibar Ali has been possessing the suit property by erecting house, digging pond mutating his name through Mutation Case No. 2043 of 1988-89, R.S. Khatian No. 145 was prepared in his name and after splitting of the jama, getting separate holding being Nos. 21/1 and 98/1, all of those were happened before the execution of the pre-emptible deed in question. He has been possessing and enjoying the property by paying rent to the Government (Exhibit-'Ka' series).

In Section 3 of the Transfer of Property Act, 1882, under the 'interpretation clause' the word 'attested' has been defined as follows:

" 'attested', in relation to an instrument, means [and shall be deemed always to have meant] attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary"

Under section 68 of the Evidence Act, 1872 it is provided that:

"68. Proof of execution of document required by law to be attested- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for purpose of proving its execution, if there be an attesting

witness alive, and subject to the process of the Court and capable of giving evidence:"

On a bare combined reading of the aforementioned provisions, it appears that when a document is required by law to be attested within the meaning of section 3 of the Transfer of Property Act, 1882, the contents of the said deed and it's execution shall be proved by at least one attesting witness. It is to be mentioned here that the executants of the deed has not come forward to depose in contrary to the pre-emptee.

The O.P.W 4, namely Dhoronikanta Mondal, who is the scribe of the deed, has proved his signature as scribe of the deed (Exhibit-'Gha') and deposed that he knows the attesting witness Asgor Ali, through whom he was assigned to prepare the deed and the parties to the deed came to execute a Nadabinama deed in order to remove the confusion created due to wrong recording of khatian. The piece of his deposition is as follows:

> "দাতা গ্রহীতা একটি নাদাবী দলিল করতে আসে রেকর্ড ভুলের জন্য। কিন্তু নাদাবী দলিল না করে দিয়ে আমি ও আজগর বুদ্ধি করে কবলা দলিল করে দেই। কোন টাকা পয়সা আদান-প্রদান হয়নি।"

O.P.W. 5, Asgor Ali Mondol is the attesting witness of the deed in question, who categorically proved his signature in the deed (প্রদর্শনী-ঙ), and deposed in the manner as quoted below:

> "দলিলে দাতা গ্রহীতারা আমার নিকট নাদাবী দলিল করতে আসে আর,এস রেকর্ড গ্রহীতার নামে হয়েছে জন্য, কিন্তু গ্রহীতার নামে S.A. খতিয়ান না হওয়ায় তারা নাদাবী দলিল করতে আসে। তখন আমি নাদাবী দলিলের মূল্য নেই মর্মে বলিলে দাতা-গ্রহীতারা খোষ কবলা দলিল করে। এই দলিলের বাবদে কোন টাকা আদান-প্রদান হয়নি। রেজিষ্টির জন্য শুধুমাত্র দলিলের একটি মূল্য ধরতে হয় জন্য মূল্য ধরা হয় দলিলে।"

Under section 106 of the Evidence Act, 1872 it is provided that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

From the above, it appears that when any particular fact with all it's peculiarities is specially within the knowledge of any particular person or persons, the burden of proving the fact is upon him or them.

Under the case in hand, the O.P.W Nos. 4 and 5, who were present at the time of execution of the deed and at the time of

preparation of the same. The particular fact which is the core point of the dispute i.e. whether the claimed facts of pre-emptee is true or false, are witnessed by a few persons, the deed holder, the executants, the attesting witnesses, the scribe and the registering official. Among them the registering officer is involved in the process in mere an official and legal capacity, the attesting witness and the scribe together with the deed holder have come forward and deposed in support of the case of pre-emptee, thus, have discharged the onus lied upon them under sections 101, 103 and 106 of the Evidence Act, 1872 and proved the particular facts with all it's peculiarities.

In the case of the Chief Executive Officer, Rangpur District Consumers' Co-operative Stores Limited Vs. the Federation of Pakistan reported in 7 DLR 611, fact was that the Director of Textile booked 73 bales of textile goods from Narayanganj to be received by the plaintiff-consignee at the Nilphamari Railway Station. When the consignment arrived, the consignee received only 64 complete bales out of 73 and one incomplete bale. The

shortage was noted in a short certificate of the consignment by the Station Master of Nilphamari Railway Station. The plaintiff filed the suit in the year 1949 asserting its entitlement to claim damages with all incidental charges. It was mentioned that there was a 'Written Tariff' of Railway Administration, wherein the terms and conditions and procedure of packing any goods and the tariff has been specified. In the said rules it was specified that how textile goods should be first packed in thick paper, then waterproof pitch paper and finally covered with double canvas.

Under the said suit their Lordships held that the claimant is to discharge firstly the burden of proof that the packing was done in accordance with the Tariff Rules, their Lordship found that the plaintiff failed to produce any evidence to establish his claim, because, the condition of packing was within the peculiar knowledge of the claimant or his agent.

In the case in hand, since one of the attesting witnesses and the scribe have deposed in confirmation of the plea of pre-emptee that the deed-in-question is a Nadabinama deed, not a sale deed

and no consideration was handed over. The requirement of section 106 read with sections 101 and 103 of the Evidence Act, 1872 having been fulfilled.

Reading together the aforementioned evidences with those of the evidences of possession, in particular, the Exhibit-'Ka Series' and taking into consideration the evidences of O.P.W. 2 and O.P.W 3 and the admission of P.W. 2 and P.W. 5, who categorically proved and admitted the long possession of pre-emptee-petitioner in the land in question, even before 25 to 30 years of the execution of the deed in question.

In such context, only one conclusion can be arrived at that actually the deed No. 11643 dated 30.11.1991 was a deed of Nadabinama in the form of a sale deed and the both the Courts below upon misreading, misconstruing and upon non-consideration of the evidences available in record arrived at a wrong finding that the deed in question is out and out a sale deed.

Regarding the contention of Mr. Halder, learned Advocate for the opposite party that the recital of a written sale deed cannot

be altered by oral evidence. In the case of Baseruddin Pramanik -Vs- Golapjan Bewa reported in 48 DLR 137, it was held that in a pre-emption proceeding to reveal the truth whether the transfer in question is really a sale or not, can be looked into so that law/justice cannot be violated/defeated by the unscrupulous person. Moreover when from the evidences on record, it is proved that the pre-emptee is in possession of the property for last 60-65 years (Surendranath inducted him into possession before leaving the country in 1964-65), the R.S. khatian was prepared in his name, he was paying rent to the Government upon mutating his name; then only one conclusion can be drawn that upon wrong advise the pre-emptee obtained the sale deed instead of Nadabinama. Therefore, this Court does find merit in the Rule.

Accordingly, the Rule is made absolute without any order as to cost.

The judgment and order dated 13.06.2012 passed by the Joint District Judge, Second Court, Naogaon in Miscellaneous Appeal No. 73 of 2001, dismissing the appeal, affirming the

judgment and order dated 19.08.2001 passed by the Assistant Judge, Seventh Court, Mohadevpur, Naogaon in Miscellaneous Case No. 06 of 1992 (pre-emption) is hereby set aside and the pre-emption application filed under section 96 of the State Acquisition and Tenancy Act, 1950 by the pre-emptor-opposite party is hereby rejected as not maintainable.

Send down the lower Courts' record.

Communicate the judgment and order at once.

Obaidul Hasan/B.O.