

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 286 of 2006

IN THE MATTER OF :

An application under section 115(1) of the
Code of Civil Procedure.

-And-

In the Matter of:

Md. Ali Hossain and others

.....Petitioners

Versus

Abdur Rouf and others

.....Opposite parties

No one

.... For the petitioners

Mr. Md. Ahia, Advocate

..... For the Opposite parties

**Heard on 03.01.2022 and Judgment on:
04.01.2022.**

Md. Riaz Uddin Khan, J-

Rule was issued calling upon the opposite party Nos. 1 and 2 to show cause as to why the judgment and order dated 21.08.2005 passed by the learned Joint District Judge, 1st Court, Meherpur in Misc. Appeal No. 01 of 2005 reversing the judgment and order dated 20.11.2004 passed by the learned Senior Assistant Judge, Meherpur in Misc. Case No. 37 of 1998 should not be set aside and or such other or further order or orders passed as to this court may seem fit and proper.

At the time of issuance of Rule this court directed the parties to maintain status-quo in respect of possession of the suit land for a period of 06 months initially which was extended time to time.

Succinct facts for disposal of this Rule is that the petitioners filed pre-emption miscellaneous case before the learned Senior

Assistant Judge, Meherpur claiming that the disputed property under C.S. khatian No. 145 of plot No. 322 measuring an area of 7.34 acres of land including disputed 60 decimals of land belonged to Kulson Bibi and Duboy Mondal. At the death of Kulson Bibi Duboy Mondal became the owner of the land who died leaving his wife Kariman and 2 sons Noor Mohammad and Elamuddin and 3 daughters namely Komi Bibi, Halima and Ashera as his heirs and thereafter Noor Mohammad died leaving his mother Kariman, only son Rawshan Ali and daughter Nasiton Bibi as his heirs and Nasiton Bibi died unmarried for which her brother Rawshan Ali became her heir. The property under S.A. Khatian No. 156 measuring an area of 7.34 acres of land was recorded in the name of Elamuddin, Rawshan, Kariman, Komi Bibi, Halima and Ayesha Khatun. Kariman died before 1961 for which Rawshan Ali, her only son, did not get any property by way of inheritance. Elamuddin died leaving his wife Meherunnessa, daughter Abeda Khatun and 5 sons who inherited the property of Elamuddin. Halima and Ayesha gifted their share to their nephew Ali Hossain and others. Elamuddin, Halima and Ashera got 4.43 acres of land under C.S. Khatian No. 145, S.A. Khatian No. 156 by way of amicable settlement and Rawshan Ali and Maki Bibi got rest 2.91 acres of land. Accordingly R.S. Khatian No. 483 was published in the name of Rawshan Ali and R. S. Khatian No. 184 was published in the name of Ali Hossain and others in respect of 4.43 acres of land and out of 60 decimals of land under old plot No. 322, 30 decimals were recorded under R.S. Khatian No. 184, plot No. 582 and rest 30 decimals of land was recorded under R.S. Khatian No. 183, plot No. 583 and the rest land under R.S. khatian No. 184 was recorded in the name of Elamuddin and others in respect of 30 decimals out of 60 decimals. Elamuddin died leaving 5 sons, his wife and a daughter i.e. the petitioners and the opposites-party Nos. 4-5 as his heirs and the petitioners thus became the co-sharer in the disputed jote land. The petitioner Nos. 1-4 sold out 53 decimals of land from

khatian No. 484 to petitioner No. 5 on 08.01.1998. The property measuring 60 decimals of land was divided into two parts: 30 decimals in each side from which opposite-party No. 3 got 30 decimals of land from the north side and Elamuddin along with his sisters got 30 decimals from south side. Then Halima and Ashera gifted their property to opposite-party Nos. 1-4. At the death of Elamuddin petitioner Nos. 1-5 and his daughter Abeda became his heirs and Abeda relinquished her right from the disputed land after getting her share from another Khatian. Opposite party No. 3 Rawshan Ali sold 30 decimals of land to opposite-party Nos. 1-2 on 09.10.1997 from old plot No. 322 corresponding to R. S. Plot No. 583 and the said purchaser-opposite-party Nos. 1 and 2 are strangers to the case land. Disputed 30 decimals of land out of 60 decimals of old plot No. 322 converted into R.S. plot No. 583 was recorded in the name of opposite-party No. 3. The disputed land under R.S. Plot No. 583 is situated at the south of the disputed R.S. Plot No. 583 which is adjacent to north of R .S. Plot No. 582 and adjacent to east of the R.S. Plot No. 592 belongs to them and plot No. 584 belongs to one Farid is on the west side of the disputed land. In the north of the disputed land Farid and on his south one Faruq and on his south one Abdul are in possession and the petitioners and others have in total about 27 bighas of land near the disputed jote for which the disputed land is required by them. The petitioners came to know about the transfer of the land from the local people and finally came to know clearly on 18.05.1998 after obtaining the certified copy of the disputed deed for which the case for preemption.

The pre-emptee-purchaser-opposite-party Nos. 1 and 2 contested the case by filing written objection contending inter-alia that the case is not maintainable for defect of parties and barred by limitation and their case in brief is that Rawshan Ali was the owner of 3.83 acres of land including disputed 30 decimals of land under

R.S. Khatian No. 483, R.S. Plot No. 583. They have purchased the disputed land from that Rawshan Ali within the knowledge of the petitioners at a consideration of taka 12,000/- as fixed by the petitioners themselves. The petitioners had no land in the disputed khatian and they are not co-sharers and even they got no property in any side adjacent to the disputed land, rather they (purchasers) have the land adjacent to the disputed land. They are owners of RS plot no.584 measuring .52 acres adjacent to the west of the disputed land and also owners of RS plot no.593 measuring .23 acres of land adjacent to the east of the disputed land. The pre-emptor-petitioners with ill-motive want to get the disputed property at taka 12,000/- which is actually valued at taka 25,000/- and since the case is tainted with ill-motive it is liable to be rejected.

The pre-emptor-petitioners examined 3 witnesses while the pre-emptee-purchasers examined 2 witnesses and both the parties produced some documents which were marked as exhibits. After hearing both the parties the trial Court by his judgment and order dated 20.11.2004 allowed the pre-emption on the findings that though the petitioners are not co-sharers by in-heritance but are co-sharers of the contiguous land.

Against the said judgment and order the pre-emptee opposite party Nos. 1 and 2 preferred miscellaneous appeal before the learned District Judge, Meherpur which was ultimately heard by the Joint District Judge, 1st court, Meherpur who was pleased to allow the appeal by setting aside the judgment and order of the trial court on the findings that the pre-emptors are not the co-sharers by in-heritance or owners of the contiguous land rather the purchaser-opposite party Nos. 1 and 2, pre-emptees are the owners of the contiguous land. The appellate court further found that though the petitioners claimed that they are the owners of the contiguous land but did not make parties of all the owners of the contiguous land for which the case is barred by defect of parties.

Being aggrieved by and dissatisfied with the said judgment and order passed by the learned Joint District Judge, 1st Court, Meherpur the pre-emptors filed the instant Civil Revision and obtained the Rule and order of status-quo as stated at the very outset.

When the matter was taken up for hearing which was in the daily cause list for last couple of days with the names of the learned advocates, no one for the petitioners came up to support the Rule. However, it appears from the revisional application that the pre-emptor-petitioners took 4 grounds to assail the impugned judgment passed by the lower appellate court. The petitioners would submit that admittedly the property belonged to Duboy Mondal and subsequently his heirs became owners of the land and there was amicable partition amongst them. Though subsequently R.S. Khatian was divided into two plots (dag) but two plots are adjacent to each other and the petitioners are in possession of 30 decimals of land out of 60 decimals of C.S. Plot No. 322 and it is clear that the preemptor-petitioners are the owners and possessors of land to the disputed plot and the learned trial court after discussing regarding the boundaries of the suit land came to a correct decision that the preemptors are adjacent land holders and allowed the case but the appellate court without discussing regarding the boundaries of the disputed land most erroneously found that the petitioners are not the contiguous land holders. The 2nd ground is that the trial court after discussing the evidence and perusing the exhibits after due consideration held that the old plots of disputed land is of CS plot no. 322 which has been converted into two R.S. Plots which are adjacent to each other but the appellate court without reversing the findings of trial court reversed the judgment and order of trial court which is not proper judgment of reversal. Their 3rd ground is that the petitioners as preemptors made party all the contiguous land holders for which

trial court decided issue No. 3 regarding defect of parties in favour of the petitioners and also decided issue No. 2 regarding point of limitation and appellate court did not give any observation regarding those issues and virtually he did not reverse any of the findings including the point of contiguous land ownership but in a non speaking term he allowed the appeal by setting aside the judgment and order of the trial court. The 4th and final ground of the petitioners is that they have successfully proved that they filed the case within time by implicating all the necessary parties and they being the co-sharers of old plot No. 322 and adjacent land holders of disputed plot measuring 60 decimals which was divided into 30 decimals each in two plots and as such they are entitled to preempt the disputed land but the learned Joint District Judge having failed to examine the records properly rejected the preemption case by allowing the appeal and thus committed an error of law resulting in an error in the decision occasioning failure of justice.

Mr. Md. Ahia, the learned Advocate appearing for the opposite party Nos. 1 and 2 submits that the preemptors claimed the disputed property as a co-sharers by inheritance but both the courts concurrently found that though their predecessor was the owner of C.S. Khatian but S.A. and R.S. Khatian was subsequently recorded in the names of other persons for which the petitioners are not the co-sharers of the disputed land. He next submits that though the trial court found the petitioners are the owners of the contiguous land of the disputed property but the appellate court specifically and categorically reversed that findings with observation that the petitioners utterly failed to show by giving the index map of the land and the boundaries of the disputed property that they are the owners of the contiguous land.

He then submits that the appellate court found that the opposite party Nos. 1 and 2 are the owners of the contiguous land

by proving the exhibit- Kha(1) and Kha(2). Showing the written objection the learned Advocate submits that the opposite party Nos. 1 and 2 in their written objection clearly stated that they are the owners of the contiguous land of the disputed property which has been proved by the exhibit- Kha(1) and exhibit- Kha(2).

He further submits that for the sake of argument even if the petitioners could prove that they are the owners of the contiguous land and are in dire necessity of the disputed land which they have failed to prove rather they claimed that they have more than 27 bighas of land adjacent to the disputed jote. He finally submits that even if the petitioners are the owners of the contiguous land and the pre-emptee-purchasers are also owners of the contiguous land in that case there cannot be any preemption against a same degree of co-sharer.

I have heard the submissions of the learned Advocate for the opposite parties, perused the revisional application along with the annexures therewith and both the judgments and orders passed by the courts below. I have also perused the lower court record, depositions of both the parties including the exhibits.

It is admitted position that Rawshan Ali was the owner of 3.83 acres of land in R.S. Khatian No. 483 of Dag No. 583 and the opposite party Nos. 1 and 2 purchased the disputed land from said Rawshan Ali. It appears from the exhibit-'3-Ka', the R.S. Khatian No. 483 that Rawshan Ali was the owner of the Khatian and there is no other co-sharer in that Khatian. The petitioners claimed that the property of the Khatian was ejmali in the C.S and S.A. record but during R.S. operation it was recorded separately. Both the courts below concurrently found that the preemptors are not the co-sharers of disputed R.S. Khatian by inheritance or by purchase though in the plaint they claimed so but the trial court found them as the holders of contiguous land of disputed Khatian while

appellate court reversed that finding of the trial court. It appears from the application for preemption that the preemptors claimed that they are also the owners of the contiguous land but in the schedule they did not give the boundaries of the disputed land. Preemptor-Petitioners claim that 30 decimals out of 60 decimals of CS plot no. 322 was recorded in RS plot no.582 of RS Khatian no.184 prepared in the name of their father Elamuddin. Their further case is that the land of RS plot no.582 is the contiguous land of disputed land of RS plot no.583 of RS Khatian no.483. Be that as it may, even if they are the owners of contiguous land they cannot claim right of preemption against the same degree of co-sharer who also claimed that they are the owners of contiguous land. Now, I have to consider how far the opposite parties could prove their assertion that they are the holders of contiguous land.

It transpired from record that opposite party Nos. 1 and 2 produced exhibit - Kha(1) and Kha(2) which are the R.S. Khatian Nos. 346 and 202 and produced the RS map of the area before the appellate court. It appears that the opposite party no.1 along with his brothers and others are the owners of the R.S. plot no. 593 with some other plots of RS khatian no.346 measuring 22 decimals of land adjacent to west of the disputed land and the father of the opposite party no.1 was the owner of the RS plot no.584 of RS Khatian No. 202 measuring 52 decimals of land adjacent to the east of the disputed land and according to RS Map lands of those Khatians are adjacent to the land of disputed khatian. The RS map also shows that the RS plot no.582 of RS Khatian no.184 (Exhibit-3) prepared in the name of the petitioners along with their father Elamuddin is adjacent to the disputed land of RS plot no.583. So the finding of the lower appellate court that the preemptors are not holders of contiguous land of disputed land is not correct. I have already discussed that the pre-emptee-purchasers are the holders of the contiguous land of the disputed land so they cannot be

treated as total strangers of the disputed land. Since the opposite party Nos. 1 and 2 are the owners of the land of R.S. Plot no.593 of RS Khatian No. 346 and RS plot no.584 of RS Khatian no.202 which are contiguous land of the disputed land, the preemption case filed by the petitioners is not maintainable at all. The purchasers, preemptee-opposite parties have successfully proved by producing adequate documentary evidence that they are the owners of the contiguous land and as such the preemptors have no right of preemption. Because, there cannot be any right of preemption against the same degree of co-sharer under section 96(1) of the State Acquisition and Tenancy Act, 1950.

In the above findings and discussions it is clear that the preemptor-petitioners have failed to prove that they are the co-sharers of the disputed Khatian. Though they claimed that they are the owners of the contiguous land but it is noticed that the preemptee-opposite party-purchasers are also the owners of the contiguous land. So there is no substance in the present Rule and for the reasons and observations made above I am constrained to discharge the Rule.

In the result, the **Rule is discharged**, however, without any order as to cost.

The order of status-quo earlier passed by this court is hereby recalled and vacated. The judgment and order passed by the lower appellate court reversing the judgment and order passed by the trial court is thereby affirmed with the above mentioned observations.

Send down the lower court record along with a copy of this judgment and order to the trial court at once.