

District-Jessore.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 4417 of 2006.

Most. Hoshneara Begum.

---- Pre-emptee-Appellant-Petitioner.

-Versus-

Md. Iqbal Hossain.

---- Pre-emptor-Respondent-Opposite Party.

Md. Azaharul Islam and others.

---- Respondent-Opposite Parties.

Mr. Hasan Shaheed Quamruzzaman, Advocate

---- For the Pre-emptee-Appellant-Petitioner.

Mr. Gazi Md. Mamunur Rashid, Advocate

---- For the Pre-emptor-Respondent-Opposite Party.

Heard On: 26.10.2025.

And

Judgment Delivered On: 03.11.2025.

Md. Toufiq Inam, J.

This Rule, at the instance of the pre-emptee-petitioner, was issued calling upon the opposite parties to show cause as to why the judgment and order dated 25.06.2006 passed by the learned Additional District Judge, 2nd Court, Jessore in Miscellaneous Appeal Nos. 39 of 2003 (analogously heard with Miscellaneous Appeal Nos. 39 of 2003), affirming the judgment and order dated 29.05.2003 passed by the learned Additional Assistant Judge, 2nd Court (In-charge), Jessore in Miscellaneous Case No. 98 of 1998 allowing the prayer for pre-emption,

should not be set aside or such other order passed as to this Court may seem fit and proper.

The facts, in short, are that the pre-emptor instituted Miscellaneous Case No. 98 of 1998 under section 96 of the State Acquisition and Tenancy Act, 1950, alleging that the case land originally belonged to opposite parties Nos. 2 and 3, namely Barek Ali and Montaj Ali, recorded under S.A. Khatian No. 110 and R.S. Khatian No. 108, appertaining to Plot No. 148. Barek Ali died leaving behind his heirs, opposite parties Nos. 4–6, while Montaj Ali died leaving no heirs. Subsequently, portions of the said land were sold to the pre-emptor and his co-sharers, and the pre-emptor along with other co-sharers became owners and possessors of the entire holding in 16 annas share. It is alleged that one of the co-sharers, opposite party No. 2, transferred a portion of the case land measuring 0.05 decimals to a stranger, the pre-emptee-petitioner, by a registered sale deed dated 25.06.1997 for Tk. 30,000/-. The pre-emptor claimed that no notice of such transfer was served upon him, and upon learning of the transfer from the husband of the pre-emptee, he obtained a certified copy of the deed and filed the instant case seeking pre-emption on the ground of co-sharership.

The pre-emptee-petitioner contested the case by filing a written objection denying the material allegations and contending that the pre-emptor had no subsisting interest in the case holding; that the case was

barred by estoppel, waiver, acquiescence, and defect of parties; and that he was neither a co-sharer nor a contiguous landholder. It was further stated that the husband of the pre-emptee had earlier orally gifted his portion of land to her, whereupon she constructed a pucca house, and later, to regularize the boundary encroachment caused by the construction, opposite party No. 2 sold 0.05 decimals of land to the pre-emptee through the impugned sale deed dated 25.06.1997. It was asserted that the pre-emptor was present at the local meeting and aware of the transaction; therefore, his subsequent claim of pre-emption was mala fide and not maintainable.

The learned trial court, upon framing five issues, recorded the evidence of one witness from the pre-emptor's side and two witnesses from the pre-emptee's side. On consideration of the oral and documentary evidence on record, the trial court found that the pre-emptor successfully proved his co-sharership in the holding and his possession therein, while the pre-emptee failed to establish that she was either a co-sharer or contiguous landholder within the meaning of section 96 of the State Acquisition and Tenancy Act, 1950. The trial court accordingly allowed the prayer for pre-emption.

Being aggrieved, the pre-emptee preferred Miscellaneous Appeals Nos. 39 of 2003 before the learned District Judge, Jessore, which were transferred to the learned Additional District Judge, 2nd Court, for

disposal. The appellate court, upon hearing both sides and considering the materials on record, concurred with the findings of the trial court and dismissed both appeals by judgment and order dated 25.06.2006. Being further aggrieved, the pre-emptee-petitioner has preferred the present revision before this Court and obtained the Rule.

Mr. Hasan Shaheed Quamruzzaman, learned Advocate appearing on behalf of the pre-emptee-petitioner, submits that both the courts below failed to consider the evidence on record in its proper perspective and thereby arrived at an erroneous conclusion. He argues that the pre-emptor failed to prove his subsisting interest and that the case was hit by the bar of land ceiling under the provisions of the Land Reform Ordinance, 1984. He further submits that the pre-emptor was aware of the transfer long before the institution of the case and hence the application was barred by limitation as well as waiver and acquiescence. According to the learned Advocate, the courts below misread and misconstrued the evidence and hence the concurrent findings are liable to be interfered with.

Mr. Gazi Md. Mamunur Rashid, learned Advocate appearing for the opposite party-pre-emptor, on the other hand, supports the impugned judgments and submits that both the trial and appellate courts upon proper assessment of oral and documentary evidence concurrently held that the pre-emptor was a co-sharer in the case holding. He contends that

the transfer was made in favour of a stranger, that no notice under section 96(4) of the S.A.T. Act was served upon the co-sharers, and that the pre-emptor's right of preference accrued immediately upon such transfer. He further submits that the plea of land ceiling disqualification or waiver was neither proved by the petitioner nor substantiated by any evidence.

Having heard the learned Advocates appearing for the respective parties and on careful perusal of the records, it appears that the pre-emptor-opposite party instituted Miscellaneous Case No. 98 of 1998 under section 96 of the State Acquisition and Tenancy Act, 1950 for pre-emption of the case land. It is also on record that earlier, the pre-emptor had filed another Miscellaneous Case No. 86 of 1997 in respect of a portion of the same holding, which was dismissed on contest by the trial Court. The subsequent Misc. Case No. 98 of 1998 was, however, allowed, and the appellate Court on reappraisal of evidence affirmed the same. Being aggrieved, the pre-emptee-petitioner moved this revisional application under section 115(1) of the Code of Civil Procedure, and obtained the present Rule.

The learned Advocate for the petitioner submits that both the trial and appellate Courts acted without lawful authority in allowing pre-emption despite the admitted fact that the pre-emptor had already transferred a substantial portion of his land from the same khatian prior to filing the

case, and thereby lost his status as a co-sharer or adjoining landholder. He further contends that as the pre-emptor's total landholding exceeded the ceiling limit prescribed by section 90 of the SAT Act, his claim was legally barred, and therefore the concurrent findings are liable to be set aside.

On the other hand, the learned Advocate for the opposite party pre-emptor supports the impugned judgments and submits that the Courts below concurrently found, on the basis of documentary and oral evidence, that the pre-emptor was a co-sharer in the holding at the time of transfer and had also adjoining land, satisfying the conditions of section 96. He further argues that the question of land ceiling is a collateral consideration and cannot be used to defeat a statutory right of pre-emption arising from co-sharership.

Upon careful consideration, this Court finds that both the trial and appellate Courts have meticulously discussed the relevant khatian entries, sale deeds, and the testimony of witnesses in determining the status of the pre-emptor. The findings that the pre-emptor continued to possess some land in the same khatian at the time of transfer, and thus retained co-sharership, are findings of fact based on evidence. It is well-settled that such concurrent findings of fact, when based on proper appreciation of evidence, cannot be interfered with in revisional

jurisdiction unless there is manifest misreading or non-reading of evidence, which is not found in the present case.

As regards the issue of land ceiling, it is observed that the bar under section 90 of the SAT Act relates primarily to acquisition or retention of agricultural land in excess of the prescribed limit, and not to the exercise of a right of pre-emption per se. Moreover, the pre-emptee-petitioner has failed to produce any authentic record showing that the pre-emptor, by virtue of the present pre-emption, would exceed the ceiling limit. The mere assertion without supporting evidence cannot render the pre-emption claim void.

It also appears that both Courts below concurrently held that the pre-emptor had fulfilled all statutory requirements: timely filing, deposit of consideration money, and the existence of co-sharership or adjacency. These are essentially factual matters, and this Court sitting in revision cannot substitute its own opinion for that of the Courts below unless the impugned orders suffer from any jurisdictional error or legal infirmity apparent on the face of the record.

In the instant case, no such illegality or irregularity has been demonstrated. The findings are not perverse, nor based on any misapplication of law. Therefore, this Court finds no ground to interfere with the concurrent judgments and orders passed by the Courts below.

Accordingly, the Rule is **discharged**.

The impugned judgments and orders passed by the Courts below are hereby **affirmed**. The order of stay granted at the time of issuance of the Rule stands vacated.

Let the Lower Court Records be sent down at once.

(Justice Md. Toufiq Inam)

Ashraf/ABO.