

ORDER SHEET
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

Civil Revision No.212-D of 2021

Adil Khalil Sattar

Versus

Saad Nasim Khan

S.No. of order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel, where necessary
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04.12.2024 Ms. Shaista Altaf, Advocate.

This petition in the form of civil revision questions the *vires* of order dated 4th September, 2020, whereby learned Additional District Judge, Fatehjang District Attock, while dismissing the appeal in *limine* preferred by the petitioner, affirmed the order and decree dated 12th October, 2019 passed by learned Civil Judge Class-II, Fatehjang (Attock).

2. Succinctly the facts necessary for adjudication of instant petition are that the petitioner instituted a suit for possession through pre-emption, averring therein that suit land was purchased by the respondent through mutation No.2729 dated 22nd December, 2015 in lieu sale consideration of Rs.9,00,000/-. As per averments contained in the plaint, the petitioner attained the knowledge of sale on 29th September, 2016 at 11:00 am through Mairaj-ud-Din when he was present in his regional office situated near Motorway Chowk Chungi No.26 Grand Trunk (G.T.) Road, Islamabad in presence of Anjum Akhtar, Muhammad Afzal and Naveed Akhtar Qayyum. It is the case of the petitioner that immediately on attaining the knowledge, he performed necessary Talbs in furtherance of his superior right of pre-emption. The respondent, while resisting the suit moved an application under Order VII Rule 11 of the Code of Civil

Procedure (V of 1908) (hereinafter referred to as “**C.P.C.**”) seeking rejection of plaint on the ground that it is barred by time. The application was though resisted by the petitioner through a written reply but same was allowed and plaint was rejected by way of order and decree dated 12th October, 2019. The petitioner, feeling dissatisfied from the rejection of plaint preferred an appeal under Section 96 of the **C.P.C.** before learned Additional District Judge, Fatehjang District Attock. The appeal was dismissed by way of impugned order dated 4th September, 2020, hence this petition under Section 115 of the **C.P.C.**

3. Learned counsel for the petitioner, while referring to Section 31 of the Punjab Pre-emption Act, 1991 submitted that no public notice was issued with regard to attestation of mutation as is required under the law. She added that limitation for filing a suit for pre-emption in such a case would start from the date of knowledge of the pre-emptor. While placing reliance on AMIR versus FALAK SHER and another (2003 CLC 1756) and MUHAMMAD KHAN versus MUHAMMAD HUSSAIN and 2 others (2002 YLR 1353), learned counsel contended that rejection of plaint was highly unwarranted and concurrent findings are thus not tenable.

4. Heard. Record perused.

5. Since petitioner is non-suited on the ground of limitation, so instead of delving into rigmarole of facts it would be apt to directly advert to the core issue. Section 30 of the Punjab Pre-emption Act, 1991 (hereinafter referred to as “**Act, 1991**”) prescribes the period of limitation for a suit to enforce the right of pre-emption, which reads as under :-

“**30. Limitation.**—The period of limitation for a suit to enforce a right of pre-emption under this Act shall be four months from the date:

- (a) of the registration of the sale-deed;
- (b) of the attestation of the mutation, if the sale is made otherwise than through a registered sale-deed;

- (c) on which the vendee takes physical possession of the property if the sale is made otherwise than through a registered sale-deed or a mutation; or
- (d) of knowledge by the pre-emptor, if the sale is not covered under paragraph (a) or paragraph (b) or paragraph (c)."

(Underlining supplied for emphasis)

It is manifestly clear from the above that in case a sale is made through mutation the limitation will be counted from the date of attestation of mutation and the pre-emptor is bound to bring his suit within four months from such date.

6. While advertng to the contention of learned counsel for the petitioner that no notice under Section 31 of the **Act, 1991** was since given at the time of attestation of mutation, so limitation would start running from date of knowledge; it is observed that from the plain reading of Section 30(b) of the **Act, 1991** it clearly manifest that in case of sale through mutation, the limitation would start running from the date of attestation of mutation. Subsection (d) clearly envisages that limitation for instituting a suit for pre-emption would commence from the date of knowledge by the pre-emptor only in cases not covered under preceding paragraphs.

7. So far scope and extent of Section 31 of the **Act, 1991** is concerned, it is noticed that it exclusively deals with the issuance of public notice by the officer registering the sale deed or attesting the mutation of a sale within two weeks of registration or attestation as the case may be whereas limitation for instituting a suit for pre-emption is to be regulated by Section 30 of the **Act, 1991**. From the bare perusal of both the provisions it can be observed with naked eyes that both these provisions deal with two entirely different situations. I feel no hesitation to observe that Sections 30 & 31 of the **Act, 1991** are neither having any nexus nor dependent on each other rather both are independent having no effect or impact on each other. Thus even in case of non-issuance of notice in terms of Section 31

of the **Act, 1991** there would be no adverse effect on the provision of Section 30 regulating the limitation for instituting a suit for pre-emption. Guidance in this respect can be sought from Mst. KAUSAR PARVEEN versus MUHAMMAD IQBAL (PLD 2012 Supreme Court 760). The relevant extract from the same is reproduced below :-

“4. We have examined both the judgments and have also applied our mind to the provisions of sections 30 and 31 of the Act. In our candid view, both these sections are independent of each other having no effect and impact on each other. Though it is mandated by section 31 of the Act that a public notice be issued in terms thereof, but by no stretch of interpretation this provision (Section 31) can be held to regulate and control the period of limitation prescribed by Section 30, which section in clear and unequivocal terms prescribes **"the period of limitation for a suit to enforce a right of preemption under this Act shall be four months from the date--(a) of the registration of the sale-deed"**. If the intention of the legislature was to make the above period of limitation subject and subservient to the requirement of section 31, the legislature would have clearly indicated its intention by the use of appropriate expression and/or words in either of the two sections, such as, that subject to the issuance of a notice under section 31 the period of limitation shall be four months in the cases covered by subsections (a) and (b) of section 30. But, this is not so and, therefore, we cannot read into section 30 by implication or on the basis of any other rule of interpretation the provisions of section 31 and the requirement of notice as a condition precedent for computing the period of limitation and to hold that if the absence thereof (the notice), the date of knowledge shall be the starting point of four months limitation.

5. As regards the question about the effect and interaction of section 30(d) and the preceding clauses (a)(b)(c) thereto, it may be held that section 30 has four parts/components, each of which is a separate and independent provision in its self contemplating different eventualities for the purpose of limitation of four months, the language in this context of all the clauses of the section are clear and unambiguous, section 30(d) is not an exception to clauses (a) to (c), rather it is a residual provision and would only come into play if none of the preceding clauses are applicable/attracted. But, where a case is covered by any specific earlier clause, clause (d) cannot be resorted to. In view of the above, this appeal has no merit and is accordingly dismissed.”

8. In the case of QASIM ALI versus REHMATULLAH (2005 SCMR 1926) the Supreme Court of Pakistan while interpreting Sections 30 & 31 of the **Act, 1991** held as under:-

“4. We have heard the learned counsel for the petitioner at length. The provisions of section 30 of the Act read as under:--

"30. Limitation. The period of limitation for a suit to enforce a right of pre-emption under this Act shall be four months from the date:---

- (a) of the registration of the sale deed;
- (b) of the attestation of the mutation, if the sale is made otherwise than through a registered sale deed;
- (c) on which the vendee takes physical possession of the property if the sale is made otherwise than through a registered sale deed or a mutation; or
- (d) of knowledge by the pre-emptor, if the sale is not covered under paragraph (a) or paragraph (b) or paragraph (c)".

It would thus, appear that in the present case, paragraph (a) of section 30 of the Act was attracted and the date of the registered sale-deed was terminus a quo for computing the limitation period. The other paragraphs of section 30 (ibid) would have no application. Moreover, the provisions of section 30 operate proprio vigore and are independent of section 31 of the Act. The period of limitation for filing the pre-emption suits is governed by section 30 and not by section 31 of the Act. Even otherwise the official acts by the public authorities are presumed to have been regularly performed. In the case of *Muhammad Ramzan v. Lal Khan* 1995 SCMR 1510, involving the sale through a mutation the pre-emptor was deemed to have acquired the knowledge of attestation of mutation of sale within two weeks thereof. The impugned judgment does not suffer from any legal infirmity so as to call for interference by this Court. This is not a fit case for grant of leave to appeal."

Reference to the above effect can also be made to *Mian ASIF ISLAM versus Mian MUHAMMAD ASIF and others* (PLD 2001 Supreme Court 499).

9. Needless to mention that as compared to the **Act, 1991** almost similar provisions in the form of Sections 31 & 32 are available in the Khyber Pakhtunkhawa Pre-emption Act, 1987. In the case of Civil Petitions Nos.642 and 643 of 2012 In KHIZAR HAYAT versus In C.P. No.642/2012: *SARD ALI KHAN, ETC. In C.P. No.643/2012: BADSHAH KHAN* (NLR 2013 Civil 459), while interpreting Section 31 & 32 of the Khyber Pakhtunkhawa Pre-emption Act, 1987 the Supreme Court of Pakistan held as under :-

"4.....The case of Maulana Nur-ul-Haq (supra) was squarely based upon the provisions of sections 31 and 32 of the N-W.F.P Pre-emption Act, 1987 and the argument advanced by the learned counsel for the petitioner in that case was identical to the contention of the learned counsel for the petitioner put forward in the present case. It had been held by this Court in the said case as follows:

"7. The next point for determination relates to the date from which the period of limitation for a suit to enforce a right of preemption arising from a registered sale deed is to be computed. The explicit and

mandatory provisions of section 31 of the Act leave no room for doubt that in case of a sale effected through a registered sale-deed the period of one hundred and twenty days shall be computed from the date of registration of the sale-deed. The contention that if the Registrar falls to issue public notice envisaged by the mandatory provisions of section 32 of the Act the period of limitation is to be computed from the date of knowledge by the pre-emptor is misconceived. Such a provision is neither contained in section 31 of the Act nor can be read into it in view of settled law that Court cannot supply '*casus omissus*'.....”

After having gone through the principles laid down in the judgments *supra*, no cavil left that period of limitation would be computed keeping in view of mandate of Section 30 of the **Act, 1991** which clearly provides four months for the institution of the suit from the date of attestation of mutation and not from the date of knowledge alleged in the plaint.

10. So far judgments relied upon by learned counsel for the petitioner are concerned, it is observed that in view of law laid down by the Supreme Court of Pakistan in the cases referred hereinabove, there would remain no binding force in the judgments referred by learned counsel for the petitioners as in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 when judgment of the Supreme Court of Pakistan decides a question of law or is based upon or enunciates a principles of law, be binding on all other courts in Pakistan.

11. Before moving further, it is necessary to mention here that mutation in question even otherwise was quoted as exchange but the petitioner while disputing its nature termed it as sale mutation but in view of hurdle of limitation in the way of petitioner there is no need to discuss this aspect of the matter. Admittedly mutation in question was attested on 22nd December, 2015 in favour of respondent. The petitioner, while asserting his superior right of pre-emption instituted the suit on 15th October, 2016 which was clearly beyond the prescribed period of time. Section 3 of the

Limitation Act 1908 casts a duty upon the court to examine in the first instance as to whether proceedings brought before it are within time or otherwise, irrespective of the fact that any of the parties to the *lis* have raised such question or not.

12. There are concurrent findings of the two courts of competent jurisdiction which are apparently founded on the well settled principles of law. The scope of revisional jurisdiction is circumscribed to the eventualities mentioned in Section 115 of the **C.P.C.** The revisional powers are limited and can only be exercised when the petitioner(s) succeed(s) in establishing that the impugned order or judgment suffers legal infirmities, hedged in Section 115 of Code *supra*. The revisional jurisdiction can only be invoked, if some patent illegality is floating on the surface of record. No jurisdictional defect or material irregularity is pointed out by the petitioner in the order and judgment under challenge, therefore, I am of the considered view that the instant petition having no merits is **dismissed in limine**.

(MIRZA VIQAS RAUF)
JUDGE

APPROVED FOR REPORTING

JUDGE

*Shahbaz Ali**