

14/24

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present:**

Mr. Justice Sardar Tariq Masood  
Mr. Justice Amin-ud-Din Khan  
Mr. Justice Syed Hasan Azhar Rizvi

(AFR)

**Civil Petition No.2148-L/2022**

*Against the judgment dated  
15.04.2022 passed by the  
Lahore High Court, Lahore in  
Civil Revision No.2108 of 2014.*

*Muhammad Riaz*

*....Petitioner*

**Versus**

*Muhammad Akram etc.*

*.Respondents*

For the petitioner:

Mr. Muhammad Jawad Zafar, ASC  
through video link from Lahore.

For the respondents:

Mr. Haroon Dugal, ASC.  
Ch. Akhtar Ali, AOR.

Date of Hearing:

25January 2024

**ORDER**

**Amin-ud-Din Khan, J.** Through this petition filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 leave has been sought against the judgment dated 15.04.2022 passed by the learned Lahore High Court whereby Civil Revision No. 2108 of 2014 filed by the petitioner was dismissed.

2. The petitioner is the vendee and the defendant in a suit for pre-emption filed by the respondents-plaintiffs. He filed the written statement and contested the suit. Both the parties produced their oral as well as documentary evidence in order to prove their respective pleadings and contentions. Following the conclusion of trial, the learned trial court dismissed the suit vide judgment and decree dated 28.04.2009. Appeal filed there-against was allowed and the suit was decreed by the learned first appellate court. Revision was filed by the vendee-defendant-petitioner but it was dismissed. Hence, this petition.

3. After hearing the learned counsel for the petitioner, notice was issued to the other side. Learned counsel for the plaintiffs-respondents is present. We have heard the learned counsel for the parties at length.

4. The right of pre-emption is a piratical right, and the pre-emptor must prove the essential conditions for the exercise of such right in accordance with the provisions of Section 13 of the Punjab Pre-emption Act, 1991 ("**Act 1991**"). It goes without saying that a pre-emptor, without proving the performance of *Talb-i-Muwathibat* and *Talb-i-Ishhad* strictly in accordance with the provisions of Section 13 of the Act, 1991, cannot succeed. In the context of this particular case, the respondents, to prove the factum of *Talb-i-Muwathibat*, asserted that they received information about the sale of the suit land on 05.02.2004 at 12 noon through one Ghulam Mustafa while they were sitting in their house. They immediately exercised their right of pre-emption during the same meeting. Ghulam Mustafa (the informer) appeared as PW-2 and supported the stance of the respondents by asserting that he received information about the sale of the suit land from one Muhammad Basharat who met him at Pasrur on 05.02.2004 and thereafter he informed the respondents about it the same day. They then jointly made *Talb-i-Muwathibat* in the same meeting. However, during cross-examination, PW-2 (the informer) disclosed that respondent No. 2, Muhammad Ashraf, announced to exercise his right of pre-emption one or two minutes after respondent No. 1, Muhammad Akram. Admittedly, there is a delay of one or two minutes in the making of *Talb-i-Muwathibat* by respondent No. 2. The question before this Court now is whether this defect is sufficient to non-suit the respondents.

5. Explanation (I) to Section 13 of the Act 1991 provides the definition of '*Talb-i-Muwathibat*.' It states that '*Talb-i-Muwathibat*' means an **immediate demand** by a pre-emptor, in the sitting or meeting (*Majlis*) in which he has come to know of the sale, declaring his intention to exercise the right of pre-emption. The term 'immediate demand' *supra* is of immense importance and remained under discussion and interpretation before this Court in various cases. Particularly, a five-member bench of this Court in the case of Mian Pir Muhammad and another versus Faqir Muhammad through L.Rs. and others (**PLD 2007 Supreme Court 302**) while referring to Black's Law Dictionary, as well as various other decisions on the subject, concluded that the condition of immediate demand means that *Talb-i-Muwathibat* has to be performed in the same meeting and sitting, without any loss of time and as soon as information of the sale was received by the pre-emptor. The relevant paragraph of the above judgment is reproduced hereunder for convenience:

*“4. It is observed that great emphasis and importance is to be given to this word in making of Talb-i-Muwathibat and it is necessary that as soon as the pre-emptor acquired knowledge of the sale of pre-empted property he should make immediate demand for his desire and intention to assert his right of pre-emption **without the slightest loss of time.**”*

**(Emphasis Supplied)**

6. Later, this Court in the case of *Muhammad Nazeef Khan versus Gulbat Khan and others* (2012 SCMR 235) while examining the definition of "sale" under section 2(d) and section 13(1) of the Khyber Pakhtunkhwa Pre-emption Act, 1987 held that the pre-emptor is required to make *Talb-i-Muwathibat* immediately upon receiving information of the sale regardless of whether the conditions laid down for completion of sale have been fulfilled. The relevant paragraph of the above judgment is reproduced hereunder for ease of reference:

*“7. For the purpose of exercise of the right of pre-emption, sale must be complete in all respect in accordance with its definition given in section 2(d) of the Act, namely, permanent transfer of the property and payment of valuable consideration. The right, therefore, cannot be exercised until the two conditions exist. The said definition of "Sale" becomes relevant when controversy arises as to whether or not the property in question was sold, conferring right of preemption on the pre-emptor/plaintiff. The fulfilment or otherwise of the two conditions mentioned in section 2(d) of the Act, however, may not be relevant in the context in which the word "Sale" in subsection (3) of section 13 of the Act has been used. **The latter provision mandates the pre-emptor to make immediate demand in the same sitting or meeting in which he acquires knowledge of the sale. This stringent provision does not allow the preemptor to postpone the making of Talb-e-Muwasibat in order to make further inquiry or probe as to whether or not the sale was complete in all respects. The Talb is to be made regardless of the credibility of the information.**”*

**(Emphasis Supplied)**

7. Similarly, this Court in the case of *Bashir Ahmed versus Muhammad Zaman* (2021 SCMR 134) observed that the use of the word ‘immediate demand’ in section 13 *supra* is significant and cannot be undermined and concluded that a delay of two hours in making the demand of *Talb-i-Muwathibat* is not an immediate demand and such delay is fatal to a successful claim of pre-emption. The relevant paragraph of the above judgment is reproduced hereunder for convenience:



“4. We now consider whether a two hour delay in making the demand of Talb-i-Muwathibat is fatal to a pre-emption suit. The Explanation to subsection (1) of Section 13 of the North-West Frontier Province Pre-emption Act, 1987 states that, Talb-i-Muwathibat 'means immediate demand by the preemptor in the sitting or meeting (Majlis) in which he has come to know of the sale declaring his intention to exercise the right of pre-emption. **The use of the word immediate is significant and cannot be undermined; a delay of two hours in making the demand of Talb-i-Muwathibat is not an immediate demand and such delay is fatal to a successful claim of pre-emption.**”

**(Emphasis Supplied)**

8. It would be relevant to mention here that this Court before *Bashir Ahmed's case* supra has already held in the case of *Mst. Rooh Afza versus Aurangzeb and others* (2015 SCMR 92) that even a delay of 10 to 15 minutes before the exercise of such right (Talb-i-Muwathibat) is fatal to the case of the pre-emptor. The relevant observation by this Court is reproduced hereunder for ease of reference:

“11...we find that the case of the appellant for making Talb-i-Muwathibat in accordance with law stood demolished as without any justification she consumed 10-15 minutes to discuss the matter with her family members before taking the decision of exercising her right of pre-emption in respect of the suit land. In the statute, use of the word "immediate" in the context of "Talb-i-Muwathibat" has its own meaning and significance, thus no redundancy can be attributed to it to accommodate a pre-emptor, who has not been vigilant in making such "Talb". The lapse of 10-15 minutes before the exercise of such right (Talb-i-Muwathibat) was, thus, fatal to the case of the appellant.”

**(Emphasis Supplied)**

9. It is evident from the record that there is no dispute regarding the making of Talb-i-Muwathibat by both respondents. However, a delay of one or two minutes surfaces in the case of respondent No. 2. Upon a careful examination of the portion of the evidence of the PW-2 (the informer), as reproduced by the learned trial court in its judgment, it becomes apparent that respondent No. 1 initiated Talb-i-Muwathibat first, followed by respondent No. 2. It can be inferred that respondent No. 2 waited for respondent No. 1 to complete his declaration of Talb-i-Muwathibat before making his own declaration, resulting in a brief delay of one or two minutes. We are mindful of the established principle that as soon as the pre-emptors acquire knowledge of the sale of the pre-empted property, they should make an immediate demand of their desire and intention to assert their right of pre-emption without the slightest loss of time.

10. On the other hand, Muhammad Basharat Ali, from whom PW-2 (the informer) received information regarding the sale of the suit land, appeared as DW-3 and contradicted the account given by PW-2 (the informer). He asserted that he did not meet the informer in Pasrur on 05.02.2004, nor did he inform him about the sale of the suit land. We believe that the fact of the sale of the suit land is a fact that can be seen, such as, by observing or taking part in the sale transaction or by seeing the sale deed or sale mutation. The person who conveys the information of the fact of sale must be a person who has observed the fact of sale and it is he who can then pass on the said fact to another person(s). Thus, the chain of information regarding the sale, starting from the very first person with direct knowledge and passing it on to the person who lastly informs the pre-emptor, must be complete. Only the complete chain of the source of information of the sale can establish the essential elements of *Talb-i-Muwathibat*, which are: (i) the time, date and place when the pre-emptor obtained the first information of the sale, and; (ii) the immediate declaration of his intention by the pre-emptor to exercise his right of pre-emption, then and there, on obtaining such information. Reference in this regard may be made to the case of Farid Ullah Khan versus Irfan Ullah Khan (2022 SCMR 1231). In the present case, such chain of the source of passing on the information, as to the fact of the sale of the suit land has not been proved as Muhammad Basharat Ali has categorically refused to meet and share the information about the sale of the suit land with Ghulam Mustafa (the informer). The entire case of the respondents regarding the issuance of *Talb-i-Muwathibat* built on the hearsay evidence of Ghulam Mustafa (the informer) falls to the ground due to an incomplete chain of information about the sale of the suit land. Therefore, the learned trial court correctly observed that when the source of information provided by the informer is not proved, the transmission of this information to the respondents also becomes highly doubtful. However, both the learned first appellate court and the learned High Court failed to take note of this important fact of the matter and set-aside the judgment and decree of the learned trial court. Therefore, we feel no hesitation to hold that the respondents failed to prove the validity of *Talb-i-Muwathibat* made by them for exercising their right of pre-emption over the suit land.

11. Now we advert to the other important aspect of the matter. There is no cavil to the legal proposition that the pre-emption is a personal right and a pre-emptor is required to prove it through his own statement as per law declared by this Court in the cases of Dilshad

Begum v. Mst. Nisar Akhtar (2012 SCMR 1106), Nawab Din through L.Rs. v. Faqir Sain (2007 SCMR 401) and Abdul Qayyum v. Muhammad Sadiq (2007 SCMR 957). It is on record that respondent No. 2 (Muhammad Ashraf) did not appear as a witness before the learned trial court to substantiate his claim nor did he attempt to produce an attorney on his behalf. It was also not the case of respondent No.2 that he was suffering from some disability to appear before the court. Therefore, his failure to appear in the witness box would adversely affect his right of pre-emption. Clearly the evidence of respondent No.2, which would have been the best evidence has been withheld by the respondents. Consequently, in accordance with Article 129(g) of the Qanun-e-Shahadat Order, 1984, an adverse inference can also be drawn against him. Although respondent No. 1, the other pre-emptor, appeared as a witness, it did not provide any help to respondent No. 2. Therefore, the suit, to the extent of respondent No.2, is liable to be dismissed on this score too, therefore, no partial or full decree can be passed in favour of other pre-emptor.

12. Foregoing in view, the learned trial court is fully justified in dismissing the suit of the respondents as they failed to prove the validity of *Talb-i-Muwathibat* made by them for exercising their right of pre-emption over the suit land. In its thorough analysis of the relevant law and available facts, the learned trial court has arrived at a sound and reasoned conclusion that is both legally sound and just. That being so, this petition is converted into an appeal and the same is allowed. Resultantly, the judgments passed by the learned first appellate court and the learned High Court are set aside and that of the learned trial court dismissing the suit is restored.

Islamabad  
25 January 2024.  
(Mazhar Javed Bhatti)  
APPROVED FOR REPORTING.