

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

**PRESENT:**

**Mr. Justice Hasan Foez Siddique**  
**Chief Justice**

**Mr. Justice Md. Nuruzzaman**

**Mr. Justice Borhanuddin**

**Mr. Justice M. Enayetur Rahim**

**CIVIL APPEAL NO.51 OF 2008.**

(From the judgment and order dated 20.11.2005 passed by the High Court Division in Civil Order No.4434 of 2005)

The Additional Deputy Commissioner (L.A.), Khulna and others. : Appellants.

**=Versus=**

Md. Kayem Ali and others : Respondents.

For the appellants : Mr. S.M. Munir, Additional Attorney General, instructed by Mr. Haridas Paul, Advocate-on-Record.

For the Respondent No.1: Mr. Bivash Chandra Biswas, Advocate -on-Record.

Respondent Nos.2-3 : Not represented.

***Date of hearing and judgment : 19-10-2022***

**J U D G M E N T**

**Hasan Foez Siddique, C.J:** This appeal is directed against the judgment and order dated 20.11.2005 passed by the High Court Division in Civil Order No. 4434 of 2005 summarily disposing of the civil revisional application upon setting side the judgment and order dated 08.09.2005 passed by the learned District Judge, Khulna in Civil Revision No.84 of 2005 directing the parties to maintain status-quo in

respect of the suit land till disposal of the suit.

The relevant facts, for disposal of this appeal, in short, are that the respondent as plaintiff instituted Title Suit No.123 of 2003 in the Court of Assistant Judge, Batiaghata, Khulna for permanent injunction alleging, inter alia, that the land measuring an area of 2.00 acres out of 38.87 acres from different plots of S.A. Khatian No.198, Sachibunia Mauza under Police Station Batiaghata, belonged to Younus Sheikh who got the same by purchase from Chaitanna Barai, Haripada Barai and Taraknath Barai. He transferred the same to Mohammad Abul Khayer who, in his turn, transferred the same to one Karimunnessa by registered kabala No.1792 dated 11.06.1954. Karimunnessa transferred the same to one Syed Abdur Rahim by registered kabala No.1956 dated 27.05.1957. Abdur Rahim transferred the same to Abdul Aziz vide Kabala No.1296 dated 19.04.1960. Lastly, Abdul Aziz transferred the property, in question, to the plaintiff vide registered kabala No.2579 dated 22.12.1965. The plaintiff has been possessing the same. The defendant Nos.3-5 have been trying to enter into the

possession of the suit land forcibly. Hence, the suit.

The plaintiff-petitioner, immediate after filing the suit, filed an application for temporary injunction stating the plaint case.

The defendant Nos.3-5 filed written objection against the application for temporary injunction contending that for the purpose of construction of 230/132KV power substation (Khulna-Iswardi and Bogra-Barapukuria 230 KV Transmission Line Project) the Deputy Commissioner, Khulna decided to acquire suit land and other lands. After observing all the formalities as provided in law acquisition proceeding was initiated in L.A. Case No.3 of 2002-03. Aforesaid acquisition proceeding was started before the institution of the suit.

The trial Court rejected the prayer for temporary injunction. Plaintiff filed Civil Revision No.84 of 2005 in the Court of District Judge, Khulna and prayed for ad-interim injunction which was rejected on 08.09.2005. Then the plaintiff filed second revisional application in the High Court Division and the High Court Division by the impugned order dated 20.11.2005 disposed of the

said application directing the parties to maintain status-quo in respect of possession of the suit land till disposal of the suit. Against which, the appellants have filed this appeal upon getting leave.

Mr. S.M. Munir, learned Additional Attorney General, appearing for the appellants, submits that the High Court Division has committed an error of law in disposing of the revisional application summarily with a direction to the parties to maintain status-quo in respect of possession of the suit land though the suit itself was not at all maintainable.

Mr. Bivash Chandra Biswas, learned Advocate-on-Record, appearing for the respondent No.1, in his submission, supports the order of the High Court Division and adds that the High Court Division has not committed any error of law in directing the parties to maintain status-quo in respect of possession of the suit land.

It appears that the plaintiff instituted the instant suit for permanent injunction restraining the defendant No.1 and 2 so that they could not disturb the possession of the

plaintiff in the suit land. The contesting defendant appellants contended that the suit itself was not at all maintainable as per provision of section 44 of the Acquisition and Requisition of Immovable Property Ordinance 1982. Since the Government decided to acquire the suit land for the purpose of establishing 230/132KV Power Sub-station which may be termed as public purpose, the trial Court rejected the application for temporary injunction. The learned District Judge, Khulna also rejected the prayer for ad-interim injunction. Against which, the plaintiff moved revisional application in the High Court Division who without hearing the other side most illegally directed the parties to maintain status-quo in respect of the possession of the suit land till disposal of the suit.

The order of the trial Court rejecting the prayer for temporary injunction was an appealable order as per provision of Order XLIII Rule 1 sub-Rule (r) of the Code of Civil Procedure. Since there is specific provision of law for preferring appeal and that revisional application before the District Judge was misconceived one, the learned District Judge

rightly rejected the application for ad-interim injunction. The High Court Division most illegally, without consideration as to whether civil revisional application was at all maintainable in the Court of District Judge or not and that the suit itself was barred under section 44 of the Acquisition and Requisition of Immovable Property Ordinance, 1982, or not erroneously directed the parties to maintain status-quo in respect of the suit land. Repeatedly this Division has observed that without hearing the other side the High Court Division should not pass any final order which may affect the other side adversely. The impugned order is an example of gross illegality committed by the High Court Division. Be it noted that Court itself is not authorised to make such ex parte order without giving the other side an opportunity of being heard.

Considering the aforesaid facts and circumstances, the order of the High Court Division is liable to be set aside.

Accordingly, the appeal is allowed. The Judgment and order of the High Court Division is set aside. The trial Court is directed to

dispose of the suit as expeditious as possible  
preferably within 6 months from the date of  
communication of this order.

**C.J.**

**J.**

**J.**

**J.**

**The 19<sup>th</sup> October, 2022**

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