

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 5910 of 2023

Al-Mostain Sir Billah and another

Plaintiff-respondent-petitioners

-Versus-

Mizanur Rahman Sheikh and others

Defendant-appellant-opposite parties

Mr. Ahmed Nowshed Jamil, Advocate

...For the petitioners

Mr. K.M. Mamunur Rashid, Advocate

... For the opposite party Nos. 1-10

Mr. Md. Abdul Hai, Senior Advocate

... For the opposite party No. 11

Heard on 21.10.2024 and 27.10.2024

Judgment on: 03.11.2024

In the instant civil revisional application filed under Section 115(1) of the Code of Civil Procedure (CPC), this Court on 13.11.2023 issued a Rule calling upon the opposite party Nos. 1-10 to show cause as to why the judgment and order dated 25.09.2023 passed by the learned Additional District Judge, 1st Court, Khulna in Miscellaneous Appeal No. 98 of 2021 allowing the appeal and thereby

reversing the judgment and order dated 05.10.2021 passed by the learned Assistant Judge, Rupsha, Khulna in Title Suit No. 102 of 2020 should not be set aside.

At the time of issuance of the Rule, this Court passed an ad-interim order staying operation of the judgment and order dated 25.09.2023 passed in the miscellaneous appeal.

Opposite party Nos. 1-10, who are private persons, and opposite party No. 11, namely Executive Engineer, Bangladesh Water Development Board (WAPDA) entered appearance in the Rule by filing separate power. The contesting opposite parties did not file any counter affidavit but produced some documents at the time of hearing the Rule.

The present petitioners as plaintiff filed the suit for permanent injunction. Admittedly, the suit land and other lands were requisitioned in L.A. Case No. 33/79-80 under the (Emergency) Requisition of Property Act, 1948. The suit land has not yet been requisitioned by publishing gazette notification under Section 5(7) of the Act, 1948. The WAPDA is the requiring body. The WAPDA constructed dam on part of the requisitioned land and part of the same remained unused which is the suit land. It is also admitted that the plaintiffs and defendant Nos. 1-10 were the owners of the suit land. It is further admitted that the owners of the land were given compensation money.

The plaintiffs' case is that they applied to the concerned authority for derequisition of the unused land. In that regard, the defendant Nos. 1-10 executed a Nadabi patra, an undertaking in favour of the plaintiffs on 21.12.1994 and also executed two registered power of attorney on 21.12.1995 and 31.12.1995 respectively stating that the plaintiffs would return the compensation money including the money received by the defendant Nos. 1-10 and if the unused land is released, the defendant Nos. 1-10 would not claim title of the same and the ownership of the land shall vest in the plaintiffs. The plaintiffs deposited the compensation money on 14.01.1996 in Bangladesh Bank through chalan No. 3/13. Possession of the unused land measuring 1.16 acre was handed over to the plaintiffs on 26.02.1996. Thereafter, R.S. Khatian in respect of the unused land was published in the names of the plaintiffs. The further case of the plaintiffs is that they created fisheries in the unused land and leased out the same to 3rd parties. However, the defendant Nos. 1-10 threatened the plaintiffs to dispossess them from the unused land and hence, the suit for permanent injunction.

The defendant Nos. 1-10 have not yet filed written statement. During pendency of the suit, the plaintiffs filed an application for temporary injunction. The defendant Nos. 1-10 filed written objection stating that the defendant Nos. 4, 9 and 10 and one Khan Jamal

applied to the WAPDA for getting lease of the suit land and that the defendants are in the possession of the same.

The trial Court allowed the application for temporary injunction. The defendants filed miscellaneous appeal which was allowed by the appellate Court below and the order of temporary injunction passed by the trial Court was set aside.

While allowing the application for temporary injunction, the trial Court observed that the plaintiffs established a *prima facie* arguable case and that they are in the possession of the suit land. The trial Court further found that the balance of convenience and inconvenience lies in favour of the plaintiffs. The appellate Court below did not discuss about the point regarding possession of the suit land. The appellate Court allowed the appeal holding that the suit land has not yet been derequisitioned and as such, the plaintiffs do not have any *prima facie* case.

I have heard the learned Advocates of both sides and perused the materials on record.

It is already noted that the requisitioned land including the unused land has not yet been acquisitioned by the government by publishing gazette notification under Section 5(7) of the Act, 1948. The appellate Court below referred to two documents, namely memo dated 22.03.1995 issued by the WAPDA and memo dated 10.09.2017 issued by the Land Acquisition Officer in support of its observation

that the suit land has not yet been derequisitioned. It is stated in the memo dated 10.09.2017 that there is no chance to release the unused land in favour of the original owners.

In the instant suit for permanent injunction, the issue is not about the ownership of land, rather, it is about whether the plaintiffs have any *prima facie* arguable case. It appears from Annexure-D3 which is a dakhnama dated 26.02.1996 issued by the District Canungo, Land Acquisition Section, Collectorate Khulna that the possession of the suit land comprising 1.16 acre, which is unused, was handed over to the plaintiffs on 26.02.1996. R.S. Khatian Nos. 1774 and 2188 in respect of the suit land were prepared in the names of the plaintiffs. The suit land has not yet been acquisitioned under Section 5(7) of the Act, 1948. The Deputy Commissioner of Khulna shall decide under Section 8 of the Act as to whether the suit land shall be released from requisition. No final decision has yet been taken. Therefore, before publication of the gazette notification under Section 5(7), the plaintiffs do have a *prima facie* arguable case.

In respect of possession, it appears that earlier the present defendants as plaintiffs filed Title Suit No. 192 of 2002 impleading the present plaintiffs as defendants for permanent injunction in respect of the suit land which was decreed on contest on 29.05.2003. The Title Appeal No. 172 of 2003 was allowed on 02.04.2005. The Rule issued in Civil Revision No. 1595 of 2005 by this Division was

discharged for non-prosecution on 20.07.2010. In the instant case, the trial Court categorically found that the plaintiffs are in possession of the suit land. Materials on record corroborate the finding of the trial Court. Mr. Md. Abdul Hai, the learned Senior Advocate appearing for the defendant No. 11 WAPDA, submits that the trial Court framed four issues but did not frame issue on point of possession. In my view, there is no necessity to frame an issue on point of possession for the reason that the same is impliedly included in issue No. 1 which relates to *prima facie* case. Mr. K.M. Mamunur Rashid, the learned Advocate appearing for the defendant Nos. 1-10 produced before me a document from which it appears that requiring body made a recommendation on 16.02.2018 to lease out the suit land to these defendants. However, the learned Advocate could not produce any document to show that the suit land has been leased out in favour of the defendants. The learned Advocate refers to the written objection in which it is stated that in respect of the suit land a criminal case was filed by the lessee of the plaintiffs against the defendants. The case was investigated by the PBI which had submitted report stating that the defendants are in possession of the suit land. However, no document in respect of the said criminal case has been produced before the trial Court or even before this Court.

Having found that the plaintiffs have *prima facie* arguable case, they made fisheries in the land and are in possession of the same and

thus, balance of convenience and inconvenience lies in favour of the plaintiffs and that they shall suffer irreparable loss which cannot be compensated in money if injunction is not granted, this Court finds that the order of temporary injunction passed by the trial Court was just and proper and the same was wrongly set aside by the appellate Court below. Accordingly, the Rule succeeds.

In the result, the Rule is made absolute. The Judgment of the appellate Court below is set aside and the judgment and order of temporary injunction passed by the trial Court is affirmed.