

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain

Mr. Justice Hasan Foez Siddique

Mr. Justice Mirza Hussain Haider

CIVIL APPEAL NO.140 OF 2009.

(From the judgment and order dated 05.04.2006 passed by the High Court Division in Writ Petition No.4309 of 2005.)

Secretary, Ministry of Housing and Public Works, Government of Bangladesh, Bangladesh Secretariat, Dhaka & others : Appellants.

=Versus=

M/S. Hanif Brothers and another : Respondents.

For the Appellants : Mr. Murad Reza, Additional Attorney General, instructed by Mr. Zainul Abedin, Advocate-on-Record.

For the Respondent : Mr. Mohammad Abdul Hai, Advocate-on-Record.

Date of hearing & judgment on : 17.05.2017

J U D G M E N T

Hasan Foez Siddique, J: This appeal is directed against the judgment and order dated 05.04.2006 passed by the High Court Division in Writ Petition No.4309 of 2005 directing the writ respondents to exclude the property, in question, from the 'Ka' list of the abandoned properties and to restore possession of the same.

The short facts, for the disposal of this appeal, are that Plot No.CES (A)-49, Gulshan, Road No.96, Gulshan Avenue, Gulshan Model Town, Dhaka (hereinafter referred to as the disputed property) was allotted to writ petitioner M/S. Hanif Brothers by the then Dhaka Improvement Trust by

allotment letter No.DIT/Gulshan/787 dated 01.09.1960 and accordingly, lease Deed No.4439 dated 29.04.1964 was executed and registered. While the writ petitioner had been in possession of the property, he was dispossessed by some miscreants after the war of liberation. Subsequently, the Government took over the control of the property as abandoned property and it was listed in the 'Ka' list of abandoned buildings published in the official Gazette on 13.09.1986. The writ petitioner on several occasions applied to the writ respondents for getting release and restoration of possession of the property in his favour but without any result. Ultimately, the writ petitioner filed Case No.300 of 1995 (Ka-25 Gulshan, Dhaka) under section 7(1) of the Abandoned Buildings (Supplementary Provisions) Ordinance, 1985 before the First Court of Settlement, Dhaka. The case was contested by the Government, i.e., the writ respondent No.1. The First Court of Settlement allowed the case by its decision dated 30.11.1997 and ordered for exclusion of the property from the 'Ka' list of Abandoned Buildings and to restore possession of the same to the writ petitioner. But the writ respondents did not comply with the said decision inasmuch as the writ petitioner on 07.07.1998,

16.05.1999, 27.02.2001, 17.07.2003 and 23.03.2005 made representations to exclude the property from the 'Ka' list of Abandoned Buildings and to restore his possession. Thus, the respondent No.1, filing writ petition, obtained Rule.

The High Court Division by the impugned judgment and order made the said Rule absolute. Then the appellants have preferred this appeal getting leave.

Leave was granted to consider the submissions that the respondent Abdur Rouf earlier filed Settlement case No.45 of 1990 before the First Court of Settlement, Dhaka for exclusion of the disputed property from 'Ka' list of the abandoned properties and the said settlement case was dismissed. Thereafter, suppressing the said facts he filed another case before the Court of Settlement which was allowed and, thereafter, he filed instant writ petition and managed to get the impugned order which was a fraud upon the Court.

Mr. Murad Reza, learned Additional Attorney General, appearing for the appellants, submits that earlier the respondent Abdur Rouf, on behalf of the present respondent M/S. Hanif, instituted Settlement Case No.45 of 1990 and the Court of Settlement dismissed the said case and by suppressing the said fact, he again filed

Settlement Case No.300 of 1995 and managed to get the order for exclusion of the suit property from 'Ka' list of abandoned properties which was a fraud so the subsequent order is a nullity

Mr. Mohd. Abdul Hai, learned Advocate-on-Record in his submission supported the judgment and order of the High Court Division.

It appears from the judgment and order passed in Settlement Case Nos.564 and 565 of 1988 and 45 of 1990 that all the cases were filed in respect of property appertaining to House No.49, CES(A), Gulshan, Road No.96, Gulshan Avenue, Dhaka for exclusion of the same from the 'Ka' list of the abandoned properties. The Court of Settlement dismissed those three cases by a common judgment and order dated 19.11.1995. Out of those three cases Abdur Rouf instituted Settlement Case No.45 of 1990. Said Abdur Rauf as Managing Partner of M/S. Hanif Brothers filed the aforesaid writ petition and Settlement Case No.300 of 1995.

It further appears from the judgment of those three cases including Settlement Case No.45 of 1990 filed by Abdur Rauf that the Court of Settlement observed that the Government allotted the disputed plot for accommodation of Ambassador of Afganistan after repairing the building thereon spending huge money. In the said judgment, it was

further observed that the original non-bengali owner Abdur Rouf was neither in occupation of the disputed house nor he was found available in the country. Though Abdur Rouf was the petitioner of the said Settlement Case No.45 of 1990 but he did not to appear before the Court of Settlement personally and his whereabouts being not known, the property, in question, appeared to have been legally included in the list of the Abandoned Buildings. Considering all the aspects those three cases were dismissed. Thereafter, suppressing the said fact the respondent M/S. Hanif Brothers represented by its managing partner Abdur Rouf instituted the second Settlement Case and managed to get the order from the Court of settlement and, thereafter, filing this instant writ petition obtained the impugned direction.

Every person is answerable for the truth of his statement. There is a legal maxim that tell the truth, the whole truth and nothing but the truth. Neither in the Court of Settlement nor in the High Court Division the writ petitioner respondent stated that earlier he filed settlement case which was dismissed on merit. He was totally silent about his earlier case and the observation made by the Court of Settlement inasmuch as it was his duty to bring it to the notice of the Court.

Such silence is fraud upon the Court because it was his duty to bring the truth the notice of the Courts. He concealed the material facts that there was a decision of the Court of Settlement that the disputed property has been enlisted as abandoned property rightly and that the said case was brought by the respondent. His second case was barred by law since his claim was negatived by the previous decision. A judgment obtained by playing fraud is a nullity and non-est in the eye of law. The writ petitioner, while obtaining the judgment of the High Court Division, suppressed the material document which amounted to fraud.

Since the judgment and order of the Court of Settlement has been obtained by practising fraud and pursuant to the said order, the writ petitioner-respondent managed to get the impugned judgment from the High Court Division, the same is a nullity.

Accordingly, we find substance in the appeal.

Thus, the appeal is allowed. The judgment and order of the High Court Division is hereby set aside.

J.

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