

In the Supreme Court of Bangladesh
High Court Division
(Civil Appellate Jurisdiction)

First Appeal No. 357 of 2010

In the matter of:

Shahajadpur Pourashava,
Shahajadpur, Sirajgonj,
represented by Chairman
himself, Halimul Haque Miru, son
of Md. Abu Taleb Mia, Village-
Monirampur, Police Station-
Shajadpur, District-Sirajgonj.

..... Defendant-Appellant.

Vs.

Association of the owners of
Warehouse Wholesaler,
Shajadpur Cloth Market,
represented by it's President Sha
Noor Mohammad and General
Secretary Fazlul Hoque, of
Sajadpur Cloth Market owners
Association, Police Station-
Shajadpur, District-Sirajgonj and
others.

..... Respondents.

Mr. M. Shamsul Haque with
Mr. Mohammd Saiful Islam,
Advocate

...For the Defendant-
Appellant.

Mr. Probir Neogi with
Mr. Suvra Chakrabarty with
Mr. Manzur-Al-Matin with
Mr. Tapos Bondhu Das with
Mr. Md. Sumon Ali, Advocates

....For the respondent No. 1.

**Heard on 07.08.2023 and
judgment on: 09.08.2023.**

SHEIKH HASSAN ARIF, J

1. This appeal, at the instance of the defendant No. 1 in
Other Class Suit No. 02 of 2006, is directed against

Present:

**Mr. Justice Sheikh Hassan Arif
And
Mr. Justice Biswajit Debnath**

judgment and decree dated 12.05.2010 (decree signed on 18.05.2010) passed by the Second Court of Joint District Judge, Sirajgonj in the said suit, thereby, decreeing the same in favour of the plaintiff-respondent.

2. **Background Facts:**

2.1 Facts, relevant for the disposal of the appeal, in short, are that the respondent No. 01 (a society of aratdars), as plaintiff, filed the said Other Class Suit No. 02 of 2006 before the Second Court of Joint District Judge, Sirajgonj seeking a declaration that collection of tolls by the ejaraders (toll collectors) from the members of the samity is illegal and beyond their power.

2.2 The case of the plaintiff, in short, is that the plaintiff society has 52 members of garments businessmen and it has a house on its own land at Shahjadpur garments hat situated on Plot Nos. 5356 and 5359 under khatian No. 01 of Dariapur mouza under Sahajadpur Police Station of Sirajgonj District. That the samity is registered as a trade union under Labour Directorate of Rajshahi Division having Registration No. Raj-2497 dated 01.09.2005. That the

said Sahajadpur hat conducts its business or operation for two days in a week, namely, Sunday and Wednesday. The members of the Samity purchase different garments from the said bazar/hat and store them in the said house of the Samity. That the said members of the Samity also borrow money from the samity when necessary and keep money with the samity as well. As against which, they pay a little amount of service charge to the Samity. That the Divisional Commissioner of Rajshahi issued memo No. এলজি/৮-৯/০৪-৩০৩(৭৫) dated 21.07.2004 containing therein some instructions as regards collection of tolls which includes the stipulation that such tolls cannot be collected more than once as against one product. That Sahajadpur Pourosova engaged ejaradar for collection of such tolls through tender and the said ejaradar has started collecting tolls from both sellers and purchasers in violation of the said instructions of the Divisional Commissioner issued by the aforesaid memo. It is further stated that although there are rules and instructions for collecting tolls, the said ejarader has not been following the same. The President and Secretary of the Samity then published a notification

in the Daily Karotowa on 23.02.2005 about it by issuing legal notice, and requested to demarcate the Sahajadpur garments bazar khatian area etc. which remained unheeded by the defendants. That, on 20.12.2005, the employees of the defendants declared that they would collect tolls as before and if the tolls were not paid, the aratders would not be allowed to continue their business. That since collection of tolls from seller and purchaser is illegal, the plaintiff has been compelled to file the said suit seeking declaration to that defect.

2.3 The suit was contested by Shahajadpur Pourashava as defendant No. 01 and the ejarader concerned as defendant No. 02 by filing written statements. However, defendant No. 02 did not contest the suit any further after filing such written statement. The case of the contesting defendant, namely, Shahajadpur Pourashava (defendant No. 01), is that collection of tolls from the Sahajadpur hat is under the jurisdiction of the said Pourashava as per relevant applicable laws and, accordingly, they engaged the said ejarader for collection of tolls through tender

process. It is also contended that the hat area covers the area under Plot Nos. 5306, 5307, 5308, 5310 and 5538 of the Dariapur mouza under the Pourashava and that the statements as regards collection of tolls from both the purchaser and seller, as alleged in the plaint, is a false story. It is further contended that the Pourashava has been collecting tolls through the ejarader as per the rate approved by the Divisional Commissioner of Rajshahi and such rates are posted at different places of the hat. Therefore, according to them, the suit is liable to be dismissed, as the same does not have any cause of action.

2.4 Upon such contesting pleadings, the Court below framed five issues in the following terms;

- 1) Whether the suit is maintainable in its present form;
- 2) Whether the suit suffers from defect of parties;
- 3) Whether the suit is barred by limitation;
- 4) Whether the collection of tolls by the said ejarader on behalf of the Pourashava, both from the purchaser and seller, is illegal;
- 5) Whether the plaintiff is entitled to get relief as prayed for.

2.5 To establish its case, the plaintiff produced three witnesses, including the Secretary of the samity as P.W. 01, and produced certain documents, which were marked as Exhibits-1 to Exhibit-9. As against which, the defendant-Pourashava produced three witnesses, but did not produce any documentary evidence. Thereafter, the Court below, after hearing the parties, decreed the suit in favour of the plaintiff on contest against defendant No. 01 and ex-parte against other defendants and, thereby, declared that the collection of tolls by the defendant No. 01-Pourashava and/or its nominated ejarader from both the purchaser and seller in the hat under 'Ka' schedule is illegal and beyond their authority. Being aggrieved by this decree, the Pourashava (defendant No. 01) has preferred this appeal.

2.6 The appeal is contested by the plaintiff as respondent No. 01 through learned advocate Mr. Md. Sumon Ali.

3. **Submissions:**

3.1 Mr. M. Shamsul Haque, learned advocate appearing for the defendant No. 01-appellant, has, in fact, frankly submitted that since the Pourashava, by its

written statement, denied the allegation that it was collecting any toll through its ejarader from both the purchaser and seller in the hat concerned, the Court was not required to pass any decree in favour of the plaintiff, as the plaintiff did not have any cause of action to file the said suit.

3.2 As against above, Mr. Md. Sumon Ali, learned advocate appearing for plaintiff-respondent, submits that if the claim of the Pourashava is that they are not collecting any tolls as alleged by the plaintiff, it does not have any case in this appeal against the impugned judgment and decree.

4. **Deliberations, Findings and Orders of the Court:**

4.1 The only point for determination in this appeal is whether the Court below has passed the impugned judgment and decree lawfully. It appears from the pleadings of the parties, in particular the written statement of defendant No. 01, that the defendant No. 01 categorically denied the allegation that the Pourashava and/or its ejarader has been collecting any tolls from both the purchaser and seller at the said hat. As against this pleading, it appears that the

allegation of the plaintiff is that they have been collecting tolls from both the purchaser and seller. Therefore, we are of the view that the parties before the Court below in fact did not have any dispute on any issue to be settled by the contesting hearing. Therefore, the Court below could have passed the decree on the mere admission of the defendant No. 01 as made out in its written statement to the effect that it was not collecting any toll as alleged by the plaintiff.

4.2 This being so, we do not find any cogent reason as to why the Pourashava has preferred this appeal, particularly when the impugned judgment has declared that collection of toll by the Pourashava and/or its ejarader from both the purchaser and seller is illegal in view of the aforementioned notification and/or instructions given by the Divisional Commissioner of Rajshahi. In addition, it appears from the written statement of the defendant No. 01 that it has been collecting toll as per rate fixed by the Divisional Commissioner. Therefore, we have in fact no real issue in this appeal for disposal, particularly

when the appellant did not have any real cause to file this appeal. This being so, this appeal should fail.

4.3 Therefore, we, hereby, modify the declaration part of the decree in the following terms:

“Collection of tolls by the defendant No. 01- Pauroshava and/or its nominated ejarader from the members of the plaintiff-society, as mentioned, under Ka schedule, is illegal and beyond authority.

4.4 In the result, the appeal is disposed of. The ad-interim order, if any, thus stands recalled and vacated.

Send down the lower Court records at once.

.....
(Sheikh Hassan Arif, J)

I agree.

.....
(Biswajit Debnath, J)