

20 SCOB [2025] AD**APPELLATE DIVISION****Present:****Mr. Justice Md. Ashfaquul Islam****Mr. Justice S.M. Emdadul Hoque****Mr. Justice A.K.M. Asaduzzaman****CIVIL APPEAL No. 305 OF 2017**

(From the judgment and decree dated 06.05.2015 passed by the High Court Division in Civil Revision No.4050 of 2013)

Md. Obaidul Islam and others**... Appellants****-Versus-****Md. Abdul Mazid Mondal and others,****... Respondents**

For the Appellants

: Mr. Md. Ashraf Ali, Advocate instructed by
Mr. Md. Shafiqul Islam Chowdhury,
Advocate-on-Record.

For the Respondents

: Mr. Zainul Abedin, Senior Adv. With
Mr. B.M. Elias, Adv. instructed by
Mr. Mohammad Abdul Hai,
Mr. Md. Shahidul Islam, Advocate-on-Record.

Date of Hearing and Judgment

: 23-04-2025

Editors' Note:

Senior Assistant Secretary, Ministry of Rural Development and Co-operative issued a letter on 21.03.2005 selecting site of Pashapol Union Parishad Complex Building at Pashapol. The plaintiffs filed the present case arguing that the government earlier recognized the old site for Pashapol Union Parishad Office at Bariali Mouza where all the requirements for construction of the Complex Building were available. Ignoring that site the government's letter dated 21.03.2005 is illegal. The defendants denied the facts of the plaintiffs and stated inter-alia that Pashapol is the centre point of the Union. There are hut, Educational Institutions, mosque and others. They prayed for dismissal of the suit. The trial Court dismissed the suit. The Appellate Court allowed the appeal, reversed the judgment of the trial court and decreed the suit in favor of the plaintiffs. On revision the High Court Division affirmed the judgment of the Appellate Court. The defendants preferred leave to appeal before the Appellate Division while the leave was granted. The petitioners submit that the selection of site of Union Parishad is the business of the government and relates to policy matters and as such the plaintiffs have no locus standi to challenge such policy decision of the government. On the contrary, the contention of the respondents are- specific guidelines were given by circular dated 28.12.2005 issued by the Ministry of Local Government Rural Development and Co-operative vide its memo no. ইপ/অজন/০৬/২০০৫/১৬৮০(৫০১) in respect of selection of site by government. Those guidelines have not been followed in the impugned letter. The Appellate Division holds the view that shifting of site of the Union Parishad is a policy matter of the government and administrative decision. The

plaintiffs have no local standi to challenge the policy making power of the government and as such the appeal is allowed and suit is dismissed.

Key Words:

Declaration; selection of site of Union Parishad; representative character suit; policy decision of government; administrative decision

No locus standi to challenge the policy making power of government:

The petitioner-plaintiffs had no locus standi to challenge the policy making power of the government in any way. The shifting of site of the Union Parishad is a policy matter of the government as well as administrative decision, Plaintiff individual had no locus standi to challenge the same. **... (Para 14)**

JUDGMENT

A.K.M. Asaduzzaman, J:

1. This civil petition for leave to appeal is directed against the judgment and decree dated 06.05.2015 passed by the High Court Division in Civil Revision No. 4050 of 2013 affirming those dated 10.10.2013 passed by the learned Joint District Judge, 1st Court, Jashore in Title Appeal No. 02 of 2013 reversing those dated 07.01.2013 passed by the Senior Assistant Judge, Chowgacha, Jashore in Title Suit No. 23 of 2005 dismissing the suit.

2. Facts relevant for disposal of this matter in brief, are that Respondent Nos. 1-9 as plaintiffs instituted Title Suit No. 23 of 2005 before the Court of Assistant Judge, Chowgacha, Jashore against the petitioners praying for a declaration that the letter dated 21.03.2005 passed by the Senior Assistant secretary, Ministry of Rural Development and Co-operative is illegal, created, void ab-intio is liable to be cancelled.

3. Plaintiff Case in short inter alia is that, letter dated 21.03.2013 for site selection of Pashapol Union Parishad Complex building at Pashapol is illegal, Collusive, ultravires, invalid etc. setting up a plea in the plaint that government at any point of time recognized the old site for Pashapol Union Parishad Office is at Bariali Mouza at Kha Schedule land of the plaint where all the requirements for construction of the Union Parishad Complex building though available has been illegally ignored by the government and the government proposed site of the land of the construction of Pashapol Union Parishad Complex Building site having defective title and want of contiguity and less than the required area and is not having any contiguous market, school and want of communication network with the majority villages peoples support of Pashapol Union Parishad for which plaintiff appellants opposite party Nos. 1-9 in a representative character suit and hence they filed this suit.

4. Defendant Nos. 1/12-16, 2-5/18 and 6-11 filed separate written statements and defendant Nos. 6-11 supported the statements of the defendant Nos. 1/12-16 denying all the material allegations made in the plaint stating inter alia that the suit is barred by limitation, defect of parties. The government has approved to establish the Union Parishad Complex at ga scheduled land. The Union Council earlier took initiative to establish the complex in the year 1976 at first. But the Union Parishad Chairman ignoring the said initiative most arbitrarily established the complex at the very north side of the union in the year 1977. Pashapol Mouza is at the centre of the union and the communication is good. There is a Hut, High School, Health complex, mosque, primary school is situated at this place. Almost 12618

inhabitants out of 17719 inhabitants of the said union live in surrounding villages of Pashapol. Therefore it is suitable place to construct Union Parishad Complex. Hence the suit is liable to be dismissed.

5. Trial Court after considering the evidence and hearing the parties dismissed the suit by its judgment and decree date 07.01.2013.

6. Being aggrieved there against plaintiffs preferred Title Appeal No. 02 of 2013 before the Court of District Judge, Jashore, which was heard on transfer by the Joint District Judge, 1st Court, Jashore, who by the impugned judgment and decree dated 10.10.2013 allowed the appeal and after reversing the judgment of the trial court decreed the suit in favour of the plaintiffs.

7. Challenging the said judgment and decree defendant-petitioners preferred Civil Revision No. 4050 of 2013 before the Hon'ble High Court Division. By the impugned judgment and decree dated 06.05.2015 Hon'ble High Court Division discharged the rule and affirmed the judgment of the Appellate Court.

8. Challenging the said judgment and decree of the Hon'ble High Court Division, the instant leave petition was preferred and leave was granted on the following grounds.

1. *Because the Apex Court of the country has already decided that the selection of site of Union Parishad is the business of the Government and relates to Policy matter connecting the administration and as such the plaintiffs has no locus standi to challenge such policy decision of the government and as such the present suit of the plaintiffs is not at all maintainable. But the honorable High Court Division and the Appellate Court has failed to appreciate the settled principle of law and most illegally decreed the suit and as such the judgment and decree passed by the High Court Division is liable to be interfered with.*
2. *Because the subject matter of the suit is shifting of site of Pashapol Union Parishad from mouza Bariali to mouza Pashapol. Plaintiffs filed the instant suit on representative capacity for a declaration that the order dated 21.03.2005 passed by the Senior Assistant Secretary, Ministry of Local Government, Rural Development and Co-operative is illegal, collusive and without authority. From the evidence it appears that the said decision was taken after observing all legal formalities. Instant suit is not maintainable under section 42 of the Specific Relief as the plaintiff has no right to any legal character or to any property. Moreover, the site selection is the business of the Government relating to policy matter and as such the plaintiff had no locus standi to file the suit and as such the judgment and decree passed by the High Court Division is liable to be interfered with.*

9. Mr. Md. Ashraf Ali, the learned Advocate appearing for the petitioners submits that the Apex Court of the country has already decided that the selection of site of Union Parishad is the business of the government and relates to policy matters concerning the administration, and as such the plaintiffs have no locus standi to challenge such policy decision of the government, hence the present suit of the plaintiff is not at all maintainable. But the High Court Division and the Appellate Court have failed to appreciate the settled principle of law and most erroneously decreed the suit, as such the judgment and order passed by the High Court Division calls for interference by this division. He further submits that the subject

matter of the suit is shifting of site of Pashapol Union Parishad from Mouza Bariali to Mouza Pashapol. The plaintiffs filed the instant suit in representative capacity for a declaration that the order dated 21.03.2005 passed by the Senior Assistant Secretary, Ministry of Local Government, Rural Development and Co-operative is illegal, collusive and without authority. From the evidence it appears that the said decision was taken after observing all legal formalities. The instant suit is not maintainable under section 42 of the Specific Relief Act as the plaintiff has no right to any legal character or to any property. Moreover, the site selection is the business of the government concerning policy matters, and as such the plaintiffs had no locus standi to file the suit, and as such the judgment and order passed by the High Court Division calls for interference by this Division.

10. Mr. B.M. Elias, the learned Advocate appearing for the respondents opposes the submission made by the petitioners and the grounds taken in the petitioners and submits that for selection the site by the government specific guide lines were given by the circular dated 28.12.2005 issued by the Ministry of Local Government Rural Development and Co-operative, Government of Bangladesh vide its memo no. ইপ/অঙন/০৬/২০০৫/১৬৮০(৫০১). But those guidelines has not at all been followed in issuing the memo is dispute as such the same is illegal as it found by the appellate Court in passing the impugned judgment find no illegality in the impugned judgment and decree passed by the appellate court that the aforesaid findings of the Hon'ble High Court Division are the concernment finding of facts based on the material evidence on record and as such Hon'ble High Court Division discharge the rule on merit and he submits that as per said circular the authority should select the site of the Union Parishad Complex and for such selection there is none but he council or parishad of the Union should take the decision at first. Such decision about selection by the council should be taken in a meeting of the council (parishad) but in the instant case any resolution of the council (parishad) took decision to establish their office in their own land and such fact was also reported by the Upazilla Nirbahi Officer such report is exhibited as exhibit 5 in the trial court. The Deputy Commissioner also made some recommendation (exhibit-6) but without following such decision of the council (parishad) subsequent recommendation by the Upazilla Nirbahi Officer and Deputy Commissioner without any reason of shifting for the office or complex of the Union Parishad from its own land to another land was made that the High Court Division further found that but in the instant case it appears that the guideline provided in that circular or the decision of the Union Parishad has not been followed that the judgment of High court Division is based on the material evidence on record.

11. He further submits that the civil court is always competent to examine the legality and illegality in issuing impugned letter dated 21.03.2005 issued by the Senior Assistant Secretary, Ministry of Local Government Rural development and Co-operative, Government of Bangladesh regarding administrative approval and as such suit was not barred by any law. He further submits that civil court is always competent to examine the legality and illegality in issuing impugned letter dated 21.03.2005 issued by the Senior Assistant Secretary, Ministry of Local Government Rural Development and Co-operative, Government of Bangladesh regarding administrative approval and as such suit was not barred by any law. He further submits that the impugned letter dated 21.03.2005 was illegal collusive ineffective and void so the plaintiffs have got locus standi to challenge the illegality and as such suit was quite maintainable.

12. Admittedly the Union Parishad named Pashapol under P.S.- Chowgacha, District-Jashore composed of 17 villages named Bariali, Howli, Duriali, Maligati, Surewsharkati, Raniali, Kaliakunid, Palua, Borogobindapur, Gopinathpur, Bil Erol, Burulia, Dosh Pakia,

pashapol, Raghunathpur, Barsha Ranga and Banbahuda. Plaintiffs are inhabitants of 10 villages out of those 17 villages. Since long before the office of Pashapol Union Parishad is running on 65 decimals of land belonged to said Parishad appertains to Plot Nos. 2426 and 2427, 2466 and 2467 of mouza Bariali. On 05.01.1977 by executing a registered deed of gift Sree Upendra Nath Mondal, Sree Ajit Kumar Mondal and Sree Pagol Chandra Mondal of village- Bariali donated the said land for the office of the said union parishad where in the said union parishad building was established. Deputy Commissioner, Jashore by memo dated 09.12.2004 sent a report with recommendation to construct the Union Parishad Complex in Mouza Pashapol, in the same report, he proposed a different land measuring 51.75 acres in Mouza Pashapol and mentioned that the chairman of the Union Parishad and its 08 members were in favour of constructing the complex in Pashapol but infact such report is false and baseless and challenging the said report and subsequently proceedings and the administrative approval of the Senior Assistant Secretary, Ministry of Local Government, Rural Development and co-operative for construction of the said Union parishad complex in aforementioned newly proposed land in Mouza-Pashapol and hence plaintiffs filed the instant suit.

13. Trial Court while deciding the suit although upon considering the circular dated 18.12.2005 regarding selection land as well as referring to decision of the Appellate Division in the case of Md. Abdul Motaleb Sarker and others Vs. Md. Laskar Ali and others reported in 15MLR(AD)2010 page 231 found that

"The site selection is the business of the Government and relates to policy matter concerning the administration and the petitioner as plaintiff had no locus standi to challenge such a policy decision of the Government."

14. Upon going through the fact of this case, together with the judgment cited by the trial court, which was not properly been addressed by the Apex Court, We are of the view that the petitioner-plaintiffs had no locus standi to challenge the policy making power of the government in any way. The shifting of site of the Union Parishad is a policy matter of the government as well as administrative decision, Plaintiff individual had no locus standi to challenge the same. The High Court Division as well as the Appellate Court by deciding the matter and considering the same, passed the impugned judgment arbitrarily.

15. In view of the above discussion, We thus find substance in the appeal. Accordingly, the appeal is allowed and the judgment and decree passed by the High Court Division and Appellate Court are hereby set aside and the judgment of the Senior Assistant Judge is restored and the suit is dismissed, however, without any order as to costs.

16. Communicate the judgment at once.