

7 SCOB [2016] AD 46

Appellate Division

PRESENT

Mr. Justice Md. Abdul Wahhab Miah

Mr. Justice Muhammad Imman Ali

Mr. Justice A. H. M. Shamsuddin Choudhury

CIVIL PETITION FOR LEAVE TO APPEAL NO. 3056 OF 2014

(From the judgment and order dated 11th of September, 2014 passed by the High Court Division in Civil Revision No. 1589 of 2013)

Md. Imtiaz Faruque (Imran) : ... Petitioner

= Versus =

Afsarunnessa Khatun Chowdhury and others : ... Respondents

For the Petitioner : Mr. Md. Ashad Ullah, Advocate,
instructed by
Syed Mahbubar Rahman Advocate-on-Record

For Respondent Nos. 1-10 : Mr. Mahmudul Islam, Senior Advocate,
instructed by
Mr. Md. Taufique Hossain
Advocate-on-Record

Respondent Nos. 11-24 : Not represented

Date of hearing & judgement : The 20th of April, 2015

(Emergency) Requisition of Property Act, 1948

Section 5 (7):

It is an admitted fact that the suit land was acquired in L.A. Case No. 06 of 1948-49 and although steps have been taken for release of the land from acquisition, the applicants have not succeeded in getting the land released. According to section 5 (7) of the (Emergency) Requisition of Property Act, 1948 the land having been duly acquired and compensation paid, it vests absolutely in the Government free from all encumbrances. Hence, the title in the property is no longer with the petitioner. We note from the plaint that the petitioner has not included any prayer for declaration of title and hence, in any event, the prayer for temporary injunction is not sustainable. ... (Para-11)

JUDGMENT

MUHAMMAD IMMAN ALI, J:-

1. This civil petition for leave to appeal is directed against the judgment and order dated 11.09.2014 passed by a Single Bench of the High Court Division in Civil Revision No. 1589 of 2013 discharging the Rule.

2. Facts of the case, in brief, are that the petitioner and the proforma-respondent Nos. 21-24 as plaintiffs instituted Title Suit No. 05 of 2002 in the Court of Joint District Judge, 4th Court, Dhaka praying for a declaration that the judgment and decree passed in Title Suit No. 152 of 1957 by the Munsif, 3rd Court, Dhaka on 28.05.1960 was not binding upon them. They stated, *inter alia*, that the land of Title Suit No. 152 of 1957 was part of C.S. Plot No. 67 under C.S. Khatian No. 174 and the total area of C.S. Khatian No. 174 of Mouja Dhanmondi, former Keranigonj Police Station and at present Dhanmondi Police Station was 60.13 acres and the superior landlords were Nezabot Ali Kha, Abdul Hakim and others. The land of the C.S. Plot No. 67 was owned and possessed by one Gopeswar Paul, son of late Bhubaneswar Paul as tenant under the superior landlord and C.S. record-of-rights was finally published in the name of tenant Gopeswar Paul. C.S. Plot No. 67 comprised an area of 38.48 acres. Said Gopeswar Paul while owning and possessing the said land died leaving behind two sons, namely Nilkanta Paul and Harekrishna Paul as his heirs. Subsequently, Harekrishna Paul died leaving behind only son Debraj Paul as his heir. Said Nilkanta Paul and Debraj Paul while possessing the said land, sold 4 bighas of specific chala land out of total 38.48 acres of land of C.S. Plot No. 67 to one Sreejukta Kiron Chandra Bandapadhaya, son of late Binod Chandra Bandapadhaya vide registered deed No. 1845 dated 14.07.1933 and delivered possession to him. Thereafter, Kiron Chandra Bandapadhaya sold his entire purchased 4 bighas land, equivalent to 1.33 acres with trees standing thereon to Md. Shahjahan Bhuiyan, son of late Moulvi Mohammad Abdul Wahab Bhuiyan, predecessor of the present petitioner and opposite party Nos. 21-24 vide registered sale deed No. 4623 dated 18.08.1948 and handed over possession to them and they are in possession of the said land jointly. The Government, for the construction of the residence of Government employees, acquired 16.75 acres of land including 1.33 acres of C.S. Plot No. 67 owned and possessed by Md. Shahjahan Bhuiyan vide Land Acquisition Case No. 06 of 1948-49 and compensation was prepared in his name for an amount of Tk. 3,976.11. But the Government did not take possession of the entire acquired land including the land owned and possessed by the predecessor of the petitioner as the said land was not needed for the purpose for which acquisition proceeding was started, and the said land is a small unspecified part of a bigger plot. The compensation was not withdrawn by the predecessor of the petitioner and the said amount was deposited in the Government Revenue Accounts. Since possession of 1.33 acres of land owned and possessed by the predecessor of the petitioner was not taken over by the Land Acquisition Department, the said land remained in the possession of the petitioner's predecessor Md. Shahjahan Bhuiyan who died on 18.02.1982. On the recommendation of the Ministry of Works and Housing, the then Prime Minister directed release of the unused acquired portion of land of the owners in possession on 18.03.1974, and also directed to take back the compensation money from those awardees who had taken compensation, and further directed to publish Gazette Notification immediately in that regard. But the said direction was not acted upon. Ultimately, in the year 1984 decisions were taken by the Government for implementation of the earlier decision. Mrs. Salma Bhuiyan, mother of the petitioner on 19.06.1989 filed an application to the Minister, Ministry of Land for releasing the said property form L.A. Case No. 06 of 1948-49 and he directed the Additional Deputy

Commissioner (L.A.) Dhaka to submit report after inquiry. Accordingly, the Additional Deputy Commissioner (L.A.), Dhaka after inquiry submitted report on 26.06.1989 to the Ministry of Land. In the said report it was clearly stated that the petitioners were in possession of the said property by constructing structures. The petitioner's property not having been released, they filed Title Suit No. 133 of 2001 in the Court of the Joint District Judge, 3rd Court, Dhaka against the Government for declaration of their 16 annas right, title and interest in the said 1.33 acres of land and the said suit is pending for disposal. The opposite party Nos. 1-18 or their predecessor got their names recorded in respect of 50 decimals of land out of total 1.33 acres of the aforesaid land of C.S. Plot No. 67 at the field level in the recent Dhaka City Survey and they filed appeal under Rule 31 of the State Acquisition Tenancy Rules, 1955 framed under State Acquisition and Tenancy Act, 1950 and from the said case record, the petitioner found photocopy of the certified copy of the judgment and decree dated 28.05.1960 passed in Title Suit No. 152 of 1957 of the Court of Munsif, 3rd Court, Dhaka and the petitioner came to know that the opposite party Nos. 1-18 or their predecessor, suppressing the facts of the earlier title deed, possession of the petitioner's predecessors as well as acquisition proceedings, obtained a decree in respect of unspecified 50 decimals of land out of total 38.48 acres of land. The petitioner does not claim any interest in the suit land of the Title Execution Case No. 32 of 1962 but claim different land by way of earlier title document because of the question of the identity of the suit land. The said judgment and decree has cast cloud upon the right, title, interest and possession of the suit land of the petitioner because of identity of the suit land and the decretal land. As the heirs of late Md. Shahjahan Bhuiyan, they filed Title Suit No. 05 of 2002 before the District Judge, 4th Court, Dhaka against the opposite party Nos. 1-18 and prayed for declaration that the judgment and decree passed on 28.05.1960 in Title Suit No. 152 of 1957 of the 3rd Court of Munsif, Dhaka is not binding upon the plaintiffs of the present suit.

3. During pendency of the Title Suit No. 05 of 2002 with a view to pre-empt the possible judgment of the suit, the defendant-opposite party Nos. 1-18 forcibly tried to dispossess the petitioner from the suit land and as such, the petitioner and the opposite party Nos. 21-24 on 18.05.2009 filed an application under Order 39, Rules 1 and 2 read with section 151 of the Code of Civil Procedure.

4. Respondent Nos. 1-11 as defendants of the suit filed written statements stating, *inter alia*, that their predecessor purchased the land measuring an area of 50 decimals of C.S. Plot No. 67 out of total 38.48 acres of land vide registered deed No. 3075 dated 21.5.1953 from Debraj Paul and that on the same day A.M. Nur Meah and 2 others purchased 46 decimals of land from the same Debraj Paul and the said land is situated on the northern side of the land purchased by them. On 05.12.1955 aforesaid A.M. Nur Meah and others dispossessed the decree-holder opposite party Nos. 1-18, consequently, they filed Title Suit No. 152 of 1957 in the Court of Munsif and that suit was decreed in favour of the predecessors of the opposite party Nos. 1-18.

5. After hearing the parties the learned Joint District Judge by his order dated 14.11.2012 rejected the application filed under Order 39, Rule 1 and 2 read with section 151 of the Code of Civil Procedure for temporary injunction.

6. Against the said order passed by the Joint District Judge, 4th Court, Dhaka, the plaintiffs preferred Miscellaneous Appeal No. 317 of 2012, which was heard by the learned Additional District Judge, who by his judgment and order dated 05.05.2013 dismissed the appeal.

7. Being aggrieved by the said judgment and order of the appellate Court the plaintiff filed Civil Revision No. 1589 of 2013 before the High Court Division and obtained Rule, which was discharged by the impugned judgment and order. Hence, the petitioner has filed the instant civil petition for leave to appeal before this Division.

8. Mr. Md. Ashad Ullah, learned Advocate appearing on behalf of the petitioner submits that the petitioner and proforma respondent No. 20 to 24 claimed title to the property by way of inheritance and are in exclusive possession of the suit land since 18.08.1948 and hence, the High Court Division erroneously upheld the order of the lower Courts rejecting the application for injunction. He further submits that the High Court Division failed to consider that the land concerned in Title Suit No. 152 of 1957 and the suit land are not the same and also that the petitioner was not party to the said title suit and hence, the result of the suit is not binding upon the petitioner. Finally, he submits that the High Court Division and the Courts below failed to notice that in view of the long standing exclusive possession of the petitioner in the suit land and title by way of registered deed dated 18.8.1948 balance of convenience and in-convenience is in favour of the petitioner and hence, the High Court Division erred in discharging the Rule.

9. Mr. Mahmudul Islam, learned Senior Advocate appearing for the respondent Nos. 1-10 made submission in support of the impugned judgment and order of the High Court Division.

10. We have considered the submissions of the learned Advocates for the parties concerned, perused the impugned judgment and other connected papers on record.

11. It is an admitted fact that the suit land was acquired in L.A. Case No. 06 of 1948-49 and although steps have been taken for release of the land from acquisition, the applicants have not succeeded in getting the land released. According to section 5 (7) of the (Emergency) Requisition of Property Act, 1948 the land having been duly acquired and compensation paid, it vests absolutely in the Government free from all encumbrances. Hence, the title in the property is no longer with the petitioner. We note from the plaint that the petitioner has not included any prayer for declaration of title and hence, in any event, the prayer for temporary injunction is not sustainable.

12. In the impugned judgment the High Court Division observed that as per the admission of the plaintiff-petitioner the suit land of Title Suit No. 05 of 2002 was acquisitioned vide L.A. Case No. 06 of 1948-49 and that the plaintiff-petitioner is yet to be successful in releasing the said suit property from the list of acquisition and requisition and that his right to the suit land is yet to be established. It was further noted that there is no record of rights in respect of the suit land in the name of the plaintiff-petitioner and that there is no rent receipt to show that the plaintiff-petitioner is in physical possession in the suit land. The High Court Division concluded that “the plaintiff-petitioner is yet to establish his right, title and possession in the suit land by way of releasing the suit land from the list of acquisition and requisition. So long the plaintiff-petitioner is unable to establish his title and possession in the suit-acquired land he cannot get any relief of temporary injunction.”

13. In the light of the discussion above, we find that the impugned judgment does not suffer from any illegality or infirmity and does not call for any interference. Accordingly, the civil petition for leave to appeal is dismissed.