

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

Present:

Mr. Justice Muhammad Abdul Hafiz

CIVIL REVISION NO. 457 OF 2016

Khulna District Council, Khulna and another
Defendants-Respondents-Petitioners

Versus

Bangladesh Inland Water Transport Authority
(BIWTA), Khulna
Plaintiff-Appellant-Opposite Party

Mr. Sherder Abul Hossain, Advocate with
Mr. Md. Harun or Rashid, Advocate with
Mr. Mohammad Eunos, Advocate
for the Defendants-Respondents-Petitioners

Mr. Rowshan Alam Khan, Advocate with
Mr. Md. Abdus Samad, Advocate
for the Plaintiff-Appellant-Opposite Party

Judgment on: 14.6.2023

This Rule was issued calling upon the opposite party to show cause as to why the impugned Judgment and Decree dated 10.1.2016 passed by the learned Joint District Judge, 4th Court, Khulna in Title Appeal No. 159 of 2013 allowing the appeal and thereby reversing the Judgment and Decree dated 30.6.2013 passed by the learned Senior Assistant Judge, Sadar, Khulna in Title Suit No. 31 of 1991 dismissing the suit should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The original title suit being Title Suit No. 31 of 1991 was filed by the plaintiff-opposite party praying for perpetual injunction against the present petitioners as defendants so that the defendants could not lease out the scheduled 5 Ferry Ghats or disturbing in the management of the plaintiff in those Ferry Ghats.

The Case of the plaintiff-opposite party is that the Scheduled Ferry Ghats are the property of the Khulna District Council under the Ministry of Local Government. As per the Governments' Order Khulna District Council and Inland Water Transport Authority (IWTA) under the Ministry of Shipping entered into a contract on 26th day of June, 1968 with some terms and conditions and transferred the Ferries to the IWTA with a view to providing improved facilities to the member of the public as well as to avoid dual control of Ferries in the port areas. The plaintiff had been maintaining the Ferries since 1968 and in the meantime the defendants on 15.1.1991 float tender notice for leasing out the Ferry Ghats. The defendants have no right to lease out the Ferry Ghats or to interfere with the management of those Ferry Ghats as such the defendants need to be restrained by perpetual injunction.

The Khulna District Council in filling a written statement contested the suit stating that as per decision of the Government the defendants entered into a contract with the then IWTA on

26.6.1968 and granted IWTA as licensee for maintaining the Ferry Ghats with condition that IWTA will pay the 50% of annual income from the Ferry Ghats at the beginning of every fiscal year started from 1968-69 to the defendants. The plaintiff being licensee never paid the 50% income to the defendants. The defendants took over the management of those Ferry Ghats, due to breach of terms and agreement dated 16.6.1968 then the plaintiff filed Title Suit No. 450 of 1980 praying for perpetual injunction and obtained an order of interim injunction on 07.7.1980 then the defendants filed Miscellaneous Appeal No. 211 of 1980 which was disposed of on 24.2.1991 with some observation directing the plaintiff to mitigate the dispute through concerned ministries and thereby the plaintiff became barred to claim the Ferry Ghats forever. The plaintiff being unsuccessful in Title Suit No. 450 of 1980 again filed the same suit which is not maintainable. The defendants are maintaining those Ghats since 1980 and the plaintiff has no possession, control and management in the Ferry Ghats as such the suit is liable to be dismissed with costs.

The Trial Court dismissed the suit then the plaintiff as appellant filed the appeal which was allowed by the Appellate Court below by the impugned judgment and decree.

Mr. Sherder Abul Hossain, learned Advocate for the defendants-petitioners, submits that Khulna District Council under the Ministry of Local Government has the permanent title over the foreshore and ferry Ghats and the BIWTA under the Ministry of Shipping was the license, of Khulna District Council by the agreement dated 16.6.1968. He further submits that the plaintiff was under compulsion to pay 50% of annual income from foreshore and ferry Ghats to the defendants with the satisfaction of the defendants in respect of actual income till the expiry of the terms of lease (terms No. 2 of the agreement dated 16.6.1968). The agreement dated 16.6.1968 was a recurring agreement i.e. to be effective by observing the terms of agreement unless the agreement will be redundant. The plaintiff could not show any scrap of document in respect of payment of 50% of annual income for foreshore and ferry Ghats after 1980. He then submits that both the plaintiff and the defendants are two department of two different Ministry of the Government. So interest claimed by both the plaintiff and the defendants is common interest of the Government and as such one department of the Government cannot file a suit against another department of the Government. It is like a suit against selfsame. The instant dispute must be solved by inter-ministerial meeting as per provision of Rule No. 10 of Rule of

Business of the Government of Bangladesh. Mr. Hossain next submits that the plaintiff has filed suit for 5 Ferry Ghats suppressing the facts that two Ferry Ghats have been handed over to the Roads and High Ways in the year of 1981 and since then Roads and High Ways are managing the Ghats. He further submits that the lease agreement in question is a recurring agreement and the plaintiff must have to prove his performance as per agreement to justify its locus standi but here in this case it is admitted by the Exhibit No. 8 the plaintiff offered Tk. 10,950.14 as compensation of Ferry Ghats only but the plaintiff never offered or paid compensation for foreshore land so the plaintiff has no locus standi to maintain the suit. He then submits that the Appellate Court below neither discussed nor adverted the findings of the Trial Court as such the impugned Judgment and Decree is not a proper Judgment of reversal as per provision of Order 41 rule 31 of the Code of Civil Procedure and the injunction as prayed for by the plaintiff is hit by the provision of Section 56(d), (f) and (k) of the Specific Relief Act and considering the aforesaid facts and legal positions your lordship may kindly be pleased to make the Rule absolute upon setting aside the judgment and decree passed by the learned Appellate Court below.

Mr. Rowshan Alam Khan, learned Advocate for the plaintiff-opposite party, submits that the learned Appellate Court below lawfully and rightly observed that there is a clause of deed dated 26.06.1968 that "in default of payment referred to in the foregoing paragraph by the first party to the second party within three months from beginning of the each financial year, the money shall be realizable by the second party in accordance with law", which proves that if the plaintiff failed to pay the compensation money as per said deed, the defendants have every right to realize the same through Court of law; the learned Appellate Court below also observed that the defendants have no right to cancel the said deed as the said deed is a result of Government decision and the same will be cancelled by the Government decision as per law. The learned Appellate Court below further observed that the defendant No.1 in his cross examination stated that "the deed dated 26.06.68 is not cancelled till today" i.e. they failed to prove the case by adducing evidence and also failed to prove that the plaintiff did not pay the compensation money to the defendants. He next submits that a suit for permanent injunction the factum of possession should be the main consideration not the title of the party which should be decided on consideration of detailed merits; in this case the plaintiff is in possession and also have right, title and interest

over the Ghats-in-question since long. Admittedly the defendants have failed to prove their possession over the suit property. Thus, according to law in absence of title and possession the defendants are not entitled to get any relief. He next submits that the plaintiff-opposite-party has been owning, possessing, controlling and smoothly running the said ghats-in-question peacefully since long 47 years by dint of deed dated 26.06.1968, gazette notifications and also different notifications by the Government. The learned Appellate Court below after carefully and judicially considering the evidence, facts and circumstances of the case has been pleased to allow the appeal by reversing the judgment and decree of the learned Trial Court and passed the order of permanent injunction restraining the defendants Nos. 1-2 to lease out the scheduled ghat namely (1) Rupsha Ghat Ferry, (2) Customghat Ferry, (3) Jelkhana Ghat Ferry, (4) Kalibari Ghat Ferry and (5) Moheshwarpasha-Doulatpur Ghat Ferry. He lastly submits that the above evidence, facts and circumstances of the case, the plaintiff is the absolute owner/ possessor of the said Ghat-in- question and have exclusive right to own, possess, control and to give lease for better functioning of the said Ghats.

Heard the learned Advocates for the parties and perused the record.

Considering the facts and circumstances of the case, my view in this matter is as follows:-

“বিষয়টি সম্পর্কে স্থানীয় সরকার মন্ত্রণালয় ও নৌপরিবহন মন্ত্রণালয় যৌথভাবে সিদ্ধান্ত নিবো।”

In the result, the Rule is disposed of.

Send down the lower Courts record with a copy of this Judgment to the Courts below at once.