

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

**PRESENT:**

**Mr. Justice Hasan Foez Siddique,**  
**Chief Justice**  
**Mr. Justice M. Enayetur Rahim**  
**Mr. Justice Jahangir Hossain**

**CIVIL APPEAL NO. 472 OF 2016.**

(From the judgment and decree dated 06.06.2010 passed by the High Court Division in First Appeal No.283 of 1993)

Government of Bangladesh, represented by the Deputy Commissioner, Satkhira & others : Appellants.

**=Versus=**

Debisahor Agriculture and Fish Farming Co-operative Society Limited & others : Respondents.

For the Appellants : Mr. Sheikh Mohammad Morshed, Additional Attorney General (with Mr. Mohammad Saiful Alam, Assistant Attorney General & Sayem Mohammad Morshed, Assistant Attorney General), instructed by Mr. Haridas Paul,, Advocate-on-Record.

For the Respondent No.1 : Mr. Probir Neogi, Senior Advocate, instructed by Mr. Bivash Chandra Biswas, Advocate-on-Record.

Respondent No.2-98: Not represented.

***Date of hearing* : 31.01.2023 & 07.02.2023.**

***Date of judgment* : 07.02.2023.**

**J U D G M E N T**

**Hasan Foez Siddique, C. J:** This civil appeal is directed against the judgment and decree dated 06.06.2010 passed by the High Court Division in First Appeal No.283 of 1993

reversing those dated 27.10.1993 passed by the then Subordinate Judge, Satkhira in Title Suit No.52 of 1985.

The relevant facts, for disposal of the appeal, in short, are that the respondent No.1 instituted the aforesaid suit for declaration of its title stating that the suit land along with other lands covering an area of 111.39 acres appertaining to S.A. khatian No.169 originally belonged to Hazari Lal Sarnaker and others. Hazari Lal Sarnaker submitted his statement as per provision of President Order No.98 of 1972 expressing his desire to keep 33.24 acres of land of plot No.290. Said Hazari Lal Sarnaker transferred the suit land to the plaintiff by several kabala deeds and delivered possession. The plaintiff came to know that the defendant No.3 has passed an order making the said land khas. Hence, was the suit.

The defendant - appellant contested the suit contending, inter alia, that the suit was not maintainable and same was barred by limitation. Their specific case, in short, was that the suit land originally belonged to Hazari Lal Sarnaker who surrendered the said land along with other lands as per provision of P.O.98 of 1972 as

excess land. Making said land khas, the Government leased out the same to landless people who have been possessing the same. The suit should be dismissed.

The trial Court, on consideration of the evidence on record, dismissed the suit. The plaintiff preferred First Appeal. The High Court Division, by the impugned judgment and decree, allowed the appeal, thereby, decreed the suit upon setting aside the judgment and decree of the trial Court. Against the judgment and decree of the High Court Division, the Government preferred this appeal upon getting leave.

Mr. Sheikh Mohammad Morhsed, learned Additional Attorney General, appearing for the appellant, submits that the as per provisions of P.O. No.98 1972, the right, title and interest of the property in question have been vested in the Government free from all encumbrances the High Court Division erred in law in setting aside the judgment and decree of the trial Court.

Mr. Probir Neogi, learned Senior Counsel appearing for respondent No.1 in his submissions supported the judgment and decree of the High Court Division. He submits that the land in

question had been transferred by the admitted original owner in favour of the respondent Debisahor Agriculture and Fish Farming Co-operative Society Limited. Accordingly, after purchased, the respondent has been possessing the suit land, the High Court Division upon proper appreciation of the evidence and law connected thereto has decreed the suit rightly, there is no error in the judgment and decree of the High Court Division.

The respondent, Debisahor Agriculture and Fish Farming Co-operative Society Limited has instituted the instant suit for simple declaration of its title in respect of the land measuring an area of 33.24 acres out of 37.15 acres of land of plot No.240 and S.A. khatian No.169. The suit land and the other lands measuring an area of 111.09 acres of S.A. khatian No.169 originally belonged to Hazari Lal Sarnaker who transferred the suit land to the respondent No.1 by several kabla deeds alleged to have been executed and registered in favour of the respondent No.1.

It is the case of the Government that Hazari Lal Sarnaker surrendered the suit land as per provisions of Presidential Order No.98 of 1972.

It appears from the statements submitted by Hazari Lal Sarnaker of as per provisions under Article 7 read with Article 12 of the Bangladesh Land Holding (Limitation) Order, 1972 (Presidential Order No.98 of 1972) that he surrendered the suit land along with other lands to the Government. Since the suit land was surrendered by its owner as excess lands to the Government under Presidential Order No.98 of 1972, we are of view that the right, title and interest and possession of the same has been vested in the Government free from all encumbrance.

In view of the above provisions of law the Government became the absolute owner of the same. Thus, the subsequent transfer by the Hazari Lal Sarnaker in favour of the plaintiff in 1977 did not confer any title to it.

Upon consideration of the aforesaid facts and circumstances, we are of the view that the High Court Division has committed error of law in allowing the appeal upon setting aside the judgment and decree of the trial Court which has caused a total failure of justice. Accordingly, we find substance in this appeal.

Thus, the appeal is allowed. Judgment and decree passed in First Appeal No.283 of 1993 is hereby set aside.

**C.J.**

**J.**

**J.**

**The 7<sup>th</sup> February, 2023.**  
/words-943 /