

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K.M. Zahirul Huq

First Appeal No. 01 of 1997

Md. Ibrahim Sarker being dead his heirs: Mst.
Marufa Begum and others

..... appellants

-Versus-

Director, Bangladesh Armed Services Board
and others

..... respondents

Mr. Shahjada Al-Amin Kabir, Advocate

..... for the appellants

Mr. Abdullah Al Mamun, Advocate

..... for the respondents

Judgment on 02.06.2025

Bhishmadev Chakrabortty, J:

This appeal at the instance of the plaintiff is directed against the judgment and decree of the then Subordinate Judge, Court 2, Dinajpur passed on 20.10.1996 in Other Class Suit No. 95 of 1994 dismissing the suit.

The plaint case, in brief, is that the suit property described in schedule 'Kha' to the plaint originally belonged to the Ministry of Defence. The then Government of Pakistan had acquired lands for rehabilitation of the retired army personnel. A Military Family Rehabilitation Officer (MFRO) was appointed to maintain and manage such properties situated in different places. The MFRO used to make proposal for allotment of the aforesaid landed property to the retired soldiers subject to the approval of Allotment Committee of the concerned Ministry. Upon such approval lease used to have been

given and deeds executed to the allottees. The plaintiff as a Subedar of Army retired from service in 1972. Subsequently the Armed Forces Board appointed him as the Secretary of the Dinajpur district. The plaintiff filed an application to get lease 15 acres of landed property described in schedule 'Kha' to the plaint. In response thereto the Board allotted the land to him on 09.02.1976. Mr. Jamal Atahar, the then MFRO issued the allotment letter to the plaintiff and forwarded a copy of it to the Management Committee. Subsequently the plaintiff took possession of the land. The Committee approved the aforesaid allotment on 07.07.1980. In the meantime Mr. Jamal Atahar was removed from his post and the plaintiff was appointed as MFRO. After obtaining approval, a lease deed was executed and registered in the name of plaintiff on 06.05.1985. He was then transferred to another district and one Mr. Hafizur Rahman was appointed in his place. Subsequently, the Board brought charge against the plaintiff for misappropriation of money of the Board and corruption. But the Board without giving any opportunity to him of being heard issued a letter on 12.05.1992 placing him under compulsory retirement and though Clause 3 of it cancelled allotment of the property given lease to him. It has been further alleged in the plaint that Mr. Hafizur Rahman with ill motive brought false allegation against the plaintiff of misappropriation and the Board without affording him any opportunity of defence issued the said letter cancelling the allotment. Furthermore, Mr. Hafizur Rahman had a personal grudge against him

because the latter had cancelled allotment of land of the former. The Board cannot cancel a long term lease of land on the ground of alleged misappropriation of Board's fund. The plaintiff then instituted the suit praying for a declaration that Clause 3 of the impugned office order is illegal, inoperative and without jurisdiction.

Defendants No. 1-4 contested the suit by filing a set of written statement. They contended that the suit was not maintainable in the present form and manner; that there was no cause of action in filing the suit and it was barred by the principles of *waiver*, *acquiescence* and *estoppel*. They further stated that the plaintiff after retirement from military service was appointed as Secretary of the Board of Dinajpur district on 06.09.1973. He took allotment 15 acres of land situated at Goraghat within Dinajpur district on 09.02.1976. But he was not entitled to get allotment more than 5 acres. The plaintiff influenced the concerned authorities to get allotment of 15 acres of land in violation of customs of the Board. During 12 years tenure as MFRO he misappropriated office fund of tk. 1,77,171.50/-, He neglected his official duties causing series of litigations regarding properties of the Board. He arbitrarily spent government fund for his own. For the aforesaid reason Mr. Mir Mosharaf Hossain, Secretary of the Board at Bogura was given appointment in his post on 22.04.1991. In an inspection about the allegation it was found that he did not maintain proper office accounts. Then a Court of Inquiry headed by Major Mr. Mukul Kumar Dey was formed. Before the inquiry

committee he admitted of receiving tk. 2,55,750/- for allotment of land but did not deposit tk. 1,80,000/- in the treasury and retained the amount with him. The interest on that sum would have been at tk. 91,281.50/-. The plaintiff in writing on 25.09.1992 admitted that he misappropriated the fund and requested to allow him to pay the amount in installments. The defendants rejected his request and directed him to deposit full amount within a stipulated time. He failed to comply with the direction. Consequently, the concerned Ministry through a letter dated 05.05.1992 passed order for his compulsory retirement and to recover the misappropriated amount from his pension and gratuity and finally cancelled the allotment of the suit property to him. The said order was reaffirmed and approved by the authority. There is no illegality in cancelling the allotment and as such the suit would be dismissed.

On pleadings the trial Court framed as many as 8 issues. Among them the vital issues were whether the suit is barred under section 42 of the Specific Relief Act and whether order of the defendant cancelling the allotment of 'Kha' schedule property is illegal.

In the trial, the plaintiff examined 3 witnesses and submitted documents exhibits 1-9. On the other hand, the defendants examined 4 witnesses and their documents were exhibits Ka-Na. However, the Subordinate Judge dismissed the suit deciding the material issues

against the plaintiff. Being aggrieved by the plaintiff moved in this Court with the present appeal.

Mr. Shahjada Al-Amin Kabir, learned Advocate for the appellant taking us through the materials on record submits that the appellant got allotment of the suit property from the competent authority. Mr. Jamal Atahar, Secretary of the Board allotted 15 acres of land as described in schedule 'Kha' to the plaintiff and issued allotment letter on 09.02.1976. In the Board meeting held on 09.06.1979 the allotment was duly approved. The appellant signed in the lease agreement and finally got permanent lease registered on 06.02.1985. At the relevant time the appellant himself was MFRO and he executed the lease deed by putting his signature as lessor. Since he had the authority to sign in the agreement as lessor there was no illegality in putting signatures in the lease deed in both the capacities. Furthermore, in the departmental proceedings no allegation or charge was brought against him that he obtained lease by committing fraud or exercising his power as MFRO. No question was put to him in the inquiry about the illegality of the lease or of violating any Rules in obtaining allotment. Therefore, the cancellation of the allotment of the property by Clause 3 of the impugned office order is clearly illegal having been issued in violation of law. The trial Court failed to evaluate the facts and law properly and erred in law in dismissing the suit. Therefore, the appeal would be allowed and the suit be decreed.

Mr. Abdullah Al Mamun, learned Advocate for the respondents on the other hand supports the impugned judgment. He then submits that the appellant influenced the concerned authority to obtain allotment of 15 acres of land although he was not entitled to more than 5 acres as per his rank. In the lease agreement, the appellant put his signatures both as lessor and lessee which renders the lease invalid in the eye of law. Fraud vitiates everything and since the plaintiff took lease fraudulently it would be considered as *void ab initio*. The authority upon inquiry found the appellant guilty of serious misconduct including misappropriation of huge amount of money belonged to the Board. He failed to repay the misappropriated amount despite direction to do so. Therefore, the authority correctly imposed him punishment of compulsory retirement and cancelled the allotment of suit property to recover the defalcated amount. The allotment and lease were cancelled legally. The trial Court correctly appreciated the evidence and documents on record and dismissed the suit. Therefore, this appeal having no merit would be dismissed.

We have considered the submissions of both sides, scanned oral evidence of witnesses and gone through other materials on record. The appellant was admittedly an army officer of the then East Pakistan. After independence he retired from service in 1972. It is also admitted that he was appointed as MFRO in 1973 and continued in the post till 1991. In the allotment letter exhibit-2 dated 09.02.1976 it is found that Mr. Jamal Atahar acting as Secretary of the Defence

Services Board allotted the aforesaid property to the appellant. It is further found from exhibit-Da-3, *i.e.*, fourth meeting of the management and allotment Board that the headquarter recommend the allotment and the Board in its meeting held on 09.06.1979 approved it. In that meeting allotments for other retired officers were also approved. The registered lease deed dated 06.02.1985 exhibit-7 shows that the appellant put his signatures both as lessor and lessee. He was the MFRO at the material time and authorized officer to do so. There was no legal bar for him to put signatures in both the capacities. He signed in as lessor in his official capacity using the official seal and in his personal full name as lessee.

It is admitted that a departmental inquiry was held against him regarding misappropriation of funds and unauthorized holding of money of the Board. The Court of inquiry headed by Major Mukul Kumar Dey asked him 107 questions about the allegation so brought against him. On going through the inquiry report exhibit Gha-Gha-1 we find that in the inquiry no question was put to him or allegation was brought that he took allotment of the property and got the lease deed registered in his name by committing fraud or abusing his power. The learned Advocate for the respondent failed to produce any Rules or guidelines that the appellant was not entitled to get allotment more than 5 acres of land. No charge of fraud or violation of Rules in getting allotment and obtaining its lease was brought against him. The authority found him guilty of misappropriation of funds and

irregularities in allotting land to other retired officers. As punishment the authority by office order dated 12.05.1992 sent him on compulsory retirement and in addition to that the allotment of land was cancelled. The defendant cancelled his allotment as under;

“জনাব মোঃ ইব্রাহিম সরকার (বিজেও ৩৫৭৩১) সুবেদার এসএনডি (অবঃ) এর নিকট হইতে সরকারী পাওনা আদায় এবং সরকারী কাজে অসাধু পছা অবলম্বনের কারনে শাস্তিমূলক ব্যবস্থা গ্রহণের অতিরিক্ত পদক্ষেপ হিসাবে প্রতিরক্ষা মন্ত্রণালয়ের অনুমোদন ক্রমে তাহার নামে ৯ ফেব্রুয়ারী ১৯৭৬ ইং তারিখে দিনাজপুর জেলার অন্তর্গত প্রতিরক্ষা কলোনীর নিম্ন তপসিল বর্ণিত যে তিনটি বাড়ী ও ১৫ একর জমি বরাদ্দ করা হয়, তাহার বরাদ্দ প্রতিরক্ষা মন্ত্রণালয়ের পত্র নং বি-৫/ডি-৫/৯২/৮৪ তারিখে ১৭ বৈশাখ ১৯ বাং/৩০ এপ্রিল ১৯৯২ ইং এর সরকারী আদেশে বাতিল করা হইল।”

It is found that the allotment to the appellant was cancelled in addition to his punishment for other reasons without bringing any charge against him of influencing the authority in getting allotment or committing fraud in taking lease of the suit property. The authority cannot cancel the allotment of land and permanent registered lease deed merely inserting a clause in an office order in addition to his punishment imposed for misconduct and misappropriation of government money. We do not find anything on record to hold that the appellant obtained the allotment by abusing his official position and power. The competent authority allotted him the property which was duly approved in the board meeting. Although the authority

always reserves the right to cancel an allotment as well as a lease of any leaseholder but it must have been done as per law. If the allotment is found to have been taken by influencing the authority fraudulently or any terms of the lease agreement is breached by the lessee, in that case the allotment and lease may be cancelled. Clause 9 of the standard lease agreement contains provisions for cancellation of lease on specific reason. In the present case on perusal of evidence on record both oral and documentary, it is found that the authority without bringing any allegation against the appellant of breach of any terms of lease agreement or of taking allotment fraudulently simply cancelled the allotment showing unrelated reasons treating the same as an additional punishment for misconduct and misappropriation of fund of the Board.

Since by Clause 3 of the impugned office order the appellant's right to property has been infringed, he rightly instituted the suit seeking relief against it. The trial Court misdirected and misconstrued in its approach of the matter and dismissed the suit merely on the ground that the plaintiff put his signatures both as lessor and lessee, which was not the reason for canceling the allotment.

In the premises above, we find that the trial Court erred in law and fact in dismissing the suit.

The appeal, therefore, bears merit and accordingly it is allowed. Consequently, the suit is decreed. No order as to costs. Communicate this judgment and send down the lower Court records.

A.K.M. Zahirul Huq, J:

I agree.