

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 2760 of 2017

Abdul Kadir and others

.....Petitioners.

-Versus-

Divisional Forest Officer and others

.....Opposite parties.

Mr. Tapash Kumar Datta, Advocate with  
Mr. Ruhul Amin, Advocate

.....For the petitioner.

Mr.Md. Insan Uddin Sheikh, D.A.G. with  
Mrs. Shovana Banu, A.A.G. and  
Mr. Mohammad Shafayet Zamil, A.A.G.

..... For the opposite parties.

Heard and judgment on 13<sup>th</sup> March, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 28.05.2017 passed by the Joint District Judge, 2<sup>nd</sup> Court, Gazipur in Title Appeal No. 163 of 2009 affirming those dated 29.03.2009

passed by the Assistant Judge, 3<sup>rd</sup> Court, Gazipur in Title Suit No. 191 of 2003 dismissing the suit should not be set aside.

Petitioners as plaintiffs filed Title Suit No. 191 of 2003 before the Court of Assistant Judge, 3<sup>rd</sup> Court, Gazipur for declaration that the land described in the schedule of the plaint belong to the plaintiffs and also for further declaration that the R.S. khatian prepared in the name of the defendants are erroneous.

Plaint case in short, inter alia, is that the suit land originally belonged to Bhawal Court of Wards Estate. On 15.02.35 AD vide lease file No. 1131/1349(S), 13 acres of land was leased out to Mullukjan as Patani Lease. In her name a separate khatian No. B/390 was prepared. During preparation of S.A. khatian, the land was recorded in S.A. khatian No. 556 in the name of Mullukjan and her brother Mohar Ali. Mullukjan gifted away her entire land in favour of the plaintiffs vide oral gift. Later she executed a Khola deed of gift in presence of the local elites. During preparation of R.S. record the land was initially recorded in the name of the plaintiffs as plot No. 724 and they were provided with bhujarat Khatian. Thereafter the land was erroneously recorded in R.S. khatian No.2 in the name of the defendants. In November,

1999, when the plaintiffs went to pay rent of the land, the tahshildar denied to accept the rent and disclosed the fact of record of the land in the name of the defendant and therefore the suit was filed.

Opposite parties contested the suit as defendant No. 1-3 by filing written statement denying the plaint case alleging, inter alia, that the suit land and other land was proclaimed as 'protected forest' vide Gazette Notification No. 38/1934 dated 12.01.1934. In accordance with the provisions of East Bengal State Acquisition and Tenancy Act and vide Gazette Notification No. 4836 L.R. and 4849 L.R. all acquired and vested forest land, vested in the name of the Government. Vide the Gazette Notification No. 3125/1955 dated 13.04.1955 in accordance with provisions of section 4 of the Forest Act 1927, the suit land was proclaimed as 'reserved forest'. Thus the forest department has acquired title over the land and no private persons has any right and title over the land.

Defendant Nos. 5-6 also contested the suit by filing written statement saying that Mullukjan transferred 1 acre land to defendant No.5 and another one acre to Abu Bakar Siddique vide

kabala deed No. 7090 and 7091 dated 26.07.1983. Abu Bakar Siddique thereafter transferred his one acre land to defendant No.6 vide kabala deed No. 22624 dated 02.10.1985. Thus the defendant No. 5-6 are owning of 2 acres of land in the schedule of the plaint.

By the judgment and decree dated 29.03.2009, the Trial court dismissed the suit on contest.

Challenging the said judgment and decree, petitioner preferred Title Appeal No. 163 of 2009 before the Court of District Judge, Gazipur, which was heard on transfer by the Joint District Judge, 2<sup>nd</sup> Court, Gazipur, who by the impugned judgment and decree dated 28.05.2017 dismissed the appeal and affirmed the judgment of the trial court.

Challenging the said judgment and decree, petitioner obtained the instant Rule.

Mr. Tapash Kumar Datta, the learned advocate appearing for the petitioner drawing my attention to the written statement together with the Gazette Notification as annexed as Annexure-A,B,C together with the C.S. khatian No. B/390 exhibited in court as Ext.2 submits that although the government claim that suit property was declared as protected forest by the Gazette

Notification Ext.A published on 12.01.1934 but the land which was being recorded in the name of Mullukjan Bibi, the predecessor of the plaintiffs, who obtained settlement of the land from the Bhawal Court of Estate got her name recorded in the C.S. khatian being plot No. 3/3332, 3/3333, 3/3334 are not there in the said Gazette Notification. The Gazette Notification, which was published on 02.04.1956 also not includes any land of Mullukjan and the Gazette Notification dated 13.04.1955 (Ext.C) also contented the similar fact as of annexure (Ext.A), which apparently proofs that property, which was settled to the plaintiffs are not been included as a forest land, either as a protected forest or reserved forest and as such the recording of R.S. khatian in the name of the Government as khas land is apparently illegal but the courts below totally failed to consider this aspect of this case and most illegally dismissed the suit. The learned advocate further submits that if the property of the plaintiff is taken as a reserved forest by the government, bata C.S. khatian would not be recorded and in the Gazette Notification published on 12.01.1934, it would be listed and it is of no use to express the desire of the government to take the property as reserved forest by the Gazette Notification

published on 05.12.2013. As such from the plain reading of the Gazette Notification dated 05.12.2013, it is apparent that property was never been recorded as reserved forest earlier before, vide Gazette Notification as stated above, published on 12.01.1934 and as such the findings of the court below to the effect that since the property was acquired by the government as reserved forest since 1934, the Bhawal Court of Wards Estate has got no authority to settle the property in favour of the plaintiff thereafter on 15.02.1935 as claim the plaintiff, which is wrong. The impugned judgment passed by the court below are passed, not applying the judicial mind, which is liable to be set aside.

Mr. Md. Insan Uddin Sheikh, the learned Deputy Attorney General appearing for the opposite party drawing my attention to the Gazette Notification, which are annexed to the lower court record as annexure Ext. A,B,C together with the latest Gazette Notification, which is annexed by way of supplementary affidavit dated 05.12.2013 submits that property has already been recorded as reserved forest by the Government vide Gazette Notification in the year 1935 and thereafter it was made confirm by different Gazette Notification published in the year 1956 and lastly

published on 05.12.2013. The property has correctly been recorded as a reserved forest or protected forest. The Bhawal Court of Wards Estate did not have any authority to settle the same to anybody and as such the document by the plaintiff are forged and concocted one, thereby plaintiff did not acquire any right title and interest over the suit land. The court below has rightly dismissed the suit. The impugned judgment since contains no illegality, it may be discharged.

Heard the learned Advocate and perused the Lower Court Record and the impugned judgment.

Plaintiffs claim that suit property was belonged to Bhawal Court of Wards Estate, the predecessor of the plaintiffs Mullukjan got settlement of 13 acres of land vide settlement (pattan) Nothi No. 1131/1341 (S) dated 13.03.1937 from the Court of Wards. The settlement paper (Pattan Nama) was executed by the Manager of the Court of Wards. Mullukjan paid rent to the Bhawal Estate. The rent receipts were exhibited in court as Ext.3 series and subsequently name of the Mullukjan was recorded in the C.S. khatian being No. B/390 (Ext.2) in separate bata dag No. 3/3332, 3/3333, 3/3334. Subsequently S.A. khatian was recorded in the

name of Mullukjan in S.A. khatian No. 556 as projabli khatian. Mullukjan paid rent to the government on the basis of S.A. khatian. During R.S. operation D.P. khatian No. 911 (Ext.4) was also prepared in the name of Mullukjan but finally published in the name of Bangladesh Government in khatian No. 02 as khas land. Since it was recorded wrongly in the name of the government, plaintiff filed this suit.

Government contested the suit by filing written statement.

In the said written statement government said that:

"প্রকৃত ঘটনা নিম্নরূপঃ-

(ক) গাজীপুর জেলার জয়দেবপুর থানাধীন ৪নং বারই পাড়া মৌজার সি.এস. ৩নং দাগ সহ অন্যান্য দাগ মূলতঃ ভাওয়াল কোর্ট অব ওয়ার্ড এস্টেট জমিদারের অধিভুক্ত ছিল। পরে ১৯৩৪ সনের ১২/০১/৩৪ ইং তারিখের গেজেট নোটিফিকেশন নং- ৩৮/১৯৩৪ এর মাধ্যমে প্রটেক্টেড বন ভূমি বলিয়া ঘোষিত হয়।

(খ) যেহেতু ১৯৫০ সনের ইস্ট বেঙ্গল এস্টেট একুইজিশন এন্ড টেন্যান্সি অ্যাক্ট অনুযায়ী ঢাকা/গাজীপুর জেলার সমস্ত জমিদারী সম্পত্তি একোয়ার করিয়া ১৯৫৬ সনের ২রা এপ্রিল তারিখের গেজেট নোটিফিকেশন নং-৪৮৩৬ এল.আর. ও ৪৮৪৯ এল.আর. অনুসারে সমস্ত



একোয়ার্ড ও ভেষ্টেড বন ভূমি সরকারের কর্তৃত্বাধীনে ন্যাস্ত করা হয়। তাহা ছাড়া উক্ত দাগ গেজেট নোটিফিকেশন নং- ৩১২৫/১৯৫৫ তারিখ ১৩/৪/৫৫ইং মোতাবেক ১৯২৭ সনের বন আইনের ৪ ধারা অনুযায়ী সংরক্ষিত বন ভূমি হিসাবে প্রতিষ্ঠিত করার পদক্ষেপ গ্রহন করা হয়।

(গ) যেহেতু ১৯৫৬ সনের ২রা এপ্রিল তারিখের ৪৮৩৬ ও ৪৮৪৯ এল.আর, প্রকাশিত হওয়ার পর জমিদার বা অন্য কাহারো কোন দাবী বা স্বত্ত্ব বন বিভাগের জমির উপর থাকিতে পারে না। সুতরাং নালিশী ভূমির উপর বাদী গণের কোন স্বত্ত্ব নাই। সংশ্লিষ্ট বন ভূমি বন বিভাগের সম্পূর্ণ দখল ও রক্ষনাবেক্ষনে আছে।"

As per written statement, the defendant case is that property was belonged to Bhawal Court of Wards. Vide Gazette Notification dated 12.01.1934, it was taken as protected forest. Subsequently it was further disclosed in the written statement that after the promulgation of State Acquisition and Tenancy Act in the year 1950, all property of the Ex-jaminder it was acquired by the government, which was reflected through Gazette Notification published on 02.04.1956 and vide Gazette Notification dated 13.04.1955. As per section 4 of the Forest Act, it was asked to take the property as a forest land. It was further stated therein that since the property/jaminder was acquired by the government vide

Gazette Notification published on 02.04.1956 right title of the plaintiffs was abolished and vested to the government.

Taking into consideration of all these fact together with the written statement it can be held that property as been asked to declare as protected forest vide Gazette Notification published on 12.01.1934 was not acted upon, rather it was acquired by the government as khas land after the promulgation of State Acquisition and Tenancy Act, 1950, which would be reflected vide Gazette Notification published on 02.04.1956. Plaintiff submitted S.A. khatian and claimed that they paid rents and government has accepted the rent from them. S.A. khatian was published obviously after promulgation of S.A. & T Act. In the said khatian, the name of Mullukjan is there and the rent receipts, which has submitted in court as Ext.6 series also shows that government has accepted the rent from the plaintiff predecessor Mullukjan Bibi. By these document, plaintiff try to prove that property was not been acquired by the government after the promulgation of State Acquisition and Tenancy Act or the property was not been taken as reserved forest by the Gazette Notification published on 12.01.1934. Gazette Notification

published in the year 1934 although contains the plot No.3 of Baroipara Mouja as protected forest with different plots but there are some marking of different arrears of some plots, which has been excluded there. The plot, which has been published in the name of the plaintiffs in C.S. bata khatian, which is exhibited in court as Ext. 2 are not there. Accordingly publication of R.S. khatian, government khas land appears to have no basis at all. The Gazette Notification, which has filed by way of supplementary affidavit dated 05.12.2013 is not there in the lower court record and accordingly not been considered by the court below while delivering the judgment. To the story of publications all enlistment of property as reserved forest by way of supplementary affidavit dated 05.12.2013 is a subsequent improvement, whether it was been acted upon or not by way of giving any objection or not is a matter to be decided on fact by adducing evidence, which has not come forward before the court while the impugned judgment was passed. Accordingly the judgment passed on the evidence already on there is not sufficient to hold that property was acquired by the government in the year 1934 or subsequently by way of Gazette Notification published in the year 1935 and

1956. It is thus apparent from the above observation that the Gazette Notification published on 12.01.1934 and subsequently on 02.04.1956 and on 13.04.1955 were not been acted upon or rather it can be said that it has got no connection with the present suit land. Moreso the publication of S.A. khatian in the name of Mullukjan Bibi, the predecessor of the plaintiff as well as taking rent from the petitioner apparently proved that plaintiffs, property was not been acquired by the government either as a reserved forest or a protected forest. The plaintiffs settlement or the document filed before the court since not been declared as a forged or not been acted upon, rather the possession has been ascertained by the P.Ws. apparently proved that plaintiff has got possession over the suit land on the basis of their settlement taken from the Ex-jaminder. The court below totally failed to appreciate all these aspect of this case and dismissed the suit most illegally.

I thus find merit in this rule.

In the result, the Rule is made absolute and the impugned judgment and decree passed by the court below is hereby set aside and the suit is decreed.

The order of status-quo granted earlier is hereby recalled and vacated.

Send down the L.C.R along with the judgment at once.