IN THE SUPREME COURT OF BANGLADESH HIGH COURT DIVISION (CIVIL REVISIONAL HIRISDICTION)

(CIVIL REVISIONAL JURISDICTION)

Civil Revision No. 3523 of 2000 In the matter of:

Habibur Rahman and another.

...Petitioners.

-Vs-

Executive Engineer and others.

....Opposite parties.

Mr. Swapan Kumar Dutta, Adv.

...For the petitioners.

Mr. Khan Md. Peer-E-Azam Akmal, DAG with

Mr. A.K.M. Mukhter Hossain, AAG

Ms. Sonia Tamanna, AAG

Mr. Md. Uzzal Hossain, AAG

...For the opposite parties.

Heard on: <u>16.11.2023 & 23.11.2023</u>

<u>And</u>

Judgment on: *The 27th January*, 2025

In an application under section 115(1) of the Code of Civil Procedure, 1908 rule was issued calling upon the opposite parties No. 1 and 2 to show cause as to why the judgment and order dated 24.04.2000 passed by the subordinate Judge, Barishal in Title Appeal No. 25 of 1998 reversing those of the trial court should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The short facts relevant for the disposal of this rule, is that, the present petitioner as plaintiff instituted Title Suit No. 47 of 1996 in the court of Senior Assistant Judge, Barishal Sadar, implicating the opposite party as defendant for declaration that the

<u>Present</u>

Mr. Justice Mamnoon Rahman

Memo as specified in Schedule Kha is illegal, collusive and not binding upon the plaintiff with a further prayer of decree of permanent injunction. The further case of the plaintiff-petitioner is that one Rajendra Nath the C.S. recorded tenant was the owner of the suit property and who permanently settled over the same to Taher Ali and in R.S. operation the name of tenant Taher Ali was according recorded in the R.S. Khatian No.8 431 and thereafter said Taher Ali, the R.S. recorded tenant settled his 008 acres of land out his entire 0102 acres of land in Chandiana title and also made over the possession of the same to one Dalilar Rahman at a rental of 12 taka 4 (four) anna only and who had been enjoying the same through the monthly bharatia by erecting a shop thereon and the same was also accordingly recorded in his name in R.S. and S.A. Khatian No.431/1 and 292 respectively under the R.S. Plot No.589. Thereafter R.S. and S.A. recorded tenant Dalilur Rahman having been the owner of the same gifted away his entire to his son Md. Abdur Rob who thereafter vide two registered sale deed dated 23.2.1986 sold the same to the plaintiff Nos. 1 and 2 and since the purchase they have been enjoying and occupying the same upon establishment of the "Modern Glass House", a famous glass business centre, then within the full knowledge of defendants opposite parties and they have also mutated their names in the Office of the Assistant Commissioner(Land) and Municipality by virtue of their

registered kabalas and have been paying rents and taxes accordingly but the defendant appellant opposite party No.1 vide his Memo No. 4888/2 dated 24.10.1995 asked the plaintiff respondent petitioners to handover the vacant possession of the suit property to him within seven days and the plaintiff petitioners upon a joint application to the defendant No. 2 opposed it and asked for the withdrawal of the same but the defendant No.2 illegally and whimsically rejected the prayer of the plaintiff petitioners and vide a further Memo No.504412 dated 28.11.1995 reiterate the previous order and thereafter on 4.12.1995, these petitioners by a legal notice through his learned Advocate asked them to withdraw their illegal memo but in reply to the same the defendant no.2 vide his Memo No. 5287 dated 12.12.1995 refused to withdraw the same and hence this suit was filed for the aforesaid reliefs.

The defendant Nos. 1 and 2 contested the suit by filing joint written statement denying all the material allegations made in the plaint. The case of the defendants, are that, the suit is barred by section 42/56 of the Specific Relief Act as well as section 107 of the Transfer of Property Act. The further case of the defendant opposite party is that the R.S. and S.A. record in the name of Taher Ali and Dalillar Rahman are false and the story of settlement as alleged by the plaintiff is also false and the story of further settlement to Dalilar Rahman by the recorded tenant Taher Ali is

also false and the then Government had acquired the same for construction of a public warehouse and the relevant documents of the same are with the title suit No. 309 of 1991 and the suit property are all through the public property and plaintiff respondent petitioner have had no title possession of the suit property and last of all they prayed for the dismissal of the suit.

During trial both the parties adduced evidence both oral and documentary. The trial court framed as many as nine Issues. The trial court also considered the submissions as advanced by both the parties materials on record and the evidence both oral and documentary and thereafter the trial court vide the impugned judgment and decree dated 11.01.1998 decreed the suit in favour of the plaintiff-petitioners. The defendants being aggrieved by and dissatisfied with the aforesaid judgment and decree passed by the trial court moved before the District Judge, Barishal by way of appeal being Title Appeal No. 25 of 1998. The same was eventually heard by the Subordinate Judge, 3rd court, Barishal who after hearing the parties, considering the facts and circumstances vide the impugned judgment and decree allowed the appeal and sent the case back on remand to write a fresh judgment on the basis of the observation made by the lower appellate court. The petitioners being aggrieved by and dissatisfied with the aforesaid judgment and decree passed by the lower appellate court moved before this court and obtained the present rule.

Mr. Swapan Kumar Dutta, the learned Advocate appearing on behalf of the petitioner-plaintiffs submits that the lower appellate court below without applying its judicial mind and without considering the facts and circumstances as well as evidence led by both the parties most illegally and in an arbitrary manner passed the impugned judgment and decree which requires interference by this court. He submits that in the present case in hand the plaintiff-petitioners adduced sufficient evidence to prove their right, title and possession in the suit property beyond all reasonable doubt. He further submits that in the trial court the plaintiff-petitioners not only adduced documentary evidence but adduced oral evidence to prove the possession as well as title in all manners. He further submits that in the present case in hand the chain is unbroken regarding the title of the plaintiff-petitioners as much as the impugned notice in the suit in question clearly speaks about the confirmation of possession by the plaintiff-petitioners. He further submits that the trial court on vivid discussion of the facts and circumstances materials on record evidence placed by the parties side by side and came to a clear conclusion that the plaintiffpetitioners are entitled to get the relief as prayed for. He also submits that the lower appellate without controverting the findings

arrived at by the trial court came to a conclusion that the trial court failed to dispose of the suit in a proper manner which requires interference by this court. The learned counsel also placed the impugned judgment and decree passed by both the courts below.

Mr. Khan Md. Peer-E-Azam Akmal, the learned Deputy Attorney General appearing on behalf of the opposite parties vehemently opposes the rule and submits that the court below on proper appreciation of the facts and circumstances, materials on record, evidence both oral and documentary passed the impugned judgment and decree passed by the court below which requires no interference by this court.

I have heard the learned Advocate for the petitioners as well as the learned Deputy Attorney General for the opposite parties. I have perused the impugned judgment and decree passed by the trial court as well as appellate court, revisional application, grounds taken thereon, L.C. Records as well as necessary papers and documents annexed herewith.

On perusal of the same, it transpires that while the plaintiff-petitioners enjoying the suit property exclusively without any interruption or any encumbrances. The defendant No. 1 issued a notice dated 24.10.1995 to vacant the premises within seven days from the date of the notice. The plaintiff-petitioners replied the same annexing all the papers and documents regarding their right,

title and possession and requesting the defendant No. 1 to withdraw the notice. Eventually, the defendant No. 1 refused to do so rather threatened for action and dispossession by force. Finding no other alternative the petitioners as plaintiffs instituted the suit before the trial court. It further transpires that the defendant Nos. 1 and 2 contested the suit by filing written statement denying all the material allegations made in the plaint. The positive case as raised by the defendants, are that, in the year 1905 the property was acquired by the government for the purpose of construction of godown in the said premises. It transpires that during trial the parties adduced evidence both oral and documentary.

On perusal of the findings arrived at by the trial court, it transpires that to prove the title and possession the plaintiffs adduced evidence both oral and documentary before the trial court the plaintiffs adduced all the relevant record of rights and deeds to prove their unbroken chain. The trial court after consideration the same held as follows;

वामीशरक्षत विद्ध क्रिमनी युक्टि-वर्क कानीन प्रमग्न निर्दमन करतन य, वामीश्रक्ष प्रि. व्रिम, व्यात. व्यम व्यवश व्यम, व्य, दिक्कींग्न व्यक्तिंग्न उग्नातिम उग्नािश्यक मानश्व मूल मानिक मथनकात व्यावमूत तव व्यत निकंछ श्रेट्ट श्रेट्ट श्रेट्ट विश्वाि विशव २७.०२.५৯৮৬ व्यतिथ दिक्किष्टिक्व कवना मिनम् मृल विद्यािश्म वृम्यि मानिक मथनकात विवामी कर्व्क वामी श्राक्षत मथन श्रीक्व। विवामीश्रक्ष विद्यािश्म श्रादिक म्वाता वामीत मथन श्रीकात कित्या वामीश्राक्त उश्राां उग्नािश इक्ष

করেন। যদিও বিবাদীপক্ষ বাদী পক্ষের স্বত্ব সম্পর্কে বর্ণনা পত্রে অস্কীকৃতি মূলক বক্তব্য রাখেন। কিন্তু বাদীপক্ষের সি.এস, আর, এস ও এস, এ রেকর্ডের ব্যাপারটি অস্বীকার করার মতন কোন দালিলিক প্রমানাদি এবং কোন তথ্যগত वसुनिष्ठं প্रমানাদি স্বাক্ষ্য প্রমান প্রদর্শন করিতে সক্ষম হয় নাই। বিবাদীপক্ষ সি. এস ৩১৮ নং খতিয়ানের ৩৯৯ নং দাগের ভুমি সরকার কর্তৃক অধিগ্রহনের দাবী করেন। কিন্তু অধীগ্রহনের কোন কাগজ পত্র বিবাদী পক্ষ কর্তৃক উপস্থাপিত করিতে পারেন নাই। বিবাদীপক্ষ আর, এস ৪৩১ আর, এস ৪৩১/১ নং এস, এ ২১২ নং খতিয়ানের রেকর্ড অশুদ্ধ বলিয়া বর্ণনা পত্রে উল্লেখ করেন। কিন্তু অশুদ্ধ রেকর্ড এর বিরুদ্ধে এত দিন পর্যন্ত কোন আপত্তি উত্থাপন করেন নাই। কিংবা कान पाकष्मा पासित कतिया तिकर्छ সংশোধन कितवात कान शप्तक्रिश तन नांरे। किश्वां कांन মाकष्ममां मारात कतियां तिकर्छ मश्माधन कतिवात कांन পদক্ষেপ নেন নাই। याহা ডি, ডব্লিউ-১ হারুন অর-রশিদ জেরায় স্বীকার করিয়াছেন। বাদীপক্ষ কোন তারিখে অবৈধ ভাবে প্রবেশ করিয়াছিলেন উহার कान मन जातिथ विवामी পक्षित्र लािंगि वर्गनाग्न वा विवामीत्मत जवानवन्मीत्ज উল্লেখ নাই। এমন কি ডি, ডব্লিউ-১ তাহার জেরায় ও তদবিষয় কোন সন তারিখ উল্লেখ করিতে সক্ষম হয় নাই। ফলে দেখা যায় যে, বাদীপক্ষ তাহাদের পূর্ববর্তী আমল হইতে ৬০ বছরের উদ্ধকাল যাবৎ বিরোধীয় ভূমিতে স্বত্ববান মালিক দখিলকার এবং record of right তাদের নামে পূর্ববর্তীক্রমে থাকায় এবং বর্তমান মোকদ্দমাস্বত্বের ঘোষণা নিমিত্ত না হওয়ায় স্বত্ব সম্পর্কিত বিস্তারিত তথ্যাদি প্রমাণ করার অবশ্যকতা নাই। বাদীপক্ষের পি, ডব্লিউ-১, পি, ডব্লিউ-৩, পি, ডব্লিউ-৪ এই সাক্ষীগন ৬০ বছরের উদ্ধকার যাবৎ বিরোধীয় ভূমিতে বাদীগনের পূর্ববর্তী ভোগ দখল করেন, ইহা প্রমানিত। বাদী পক্ষের

সাক্ষীদেরকে বিবাদীপক্ষ হইতে জেরা করিয়া কোন অংসংগতি বা কোন রকম দুর্বলতার সুযোগ পায় নাই। বিবাদীপক্ষ হইতে বিরোধীয় ভূমি তাহারা দখল करत रेंश প্रমान कतिए मक्षम रहा नारे । वामी भक्ष जात्रभूर्वक कान जातिए। বিরোধীয় ভূমিতে প্রবেশ করিয়াছে তাহা বিবাদী পক্ষ প্রমান করিতে পারেন নাই। ইহা ব্যাতীত বাদী পক্ষ মহামান্য উচ্চ আদালতের বিভিন্ন রুলিং উপস্থাপন করেন যাহা নিম্নে বর্নিত হইল। ৩০ ডি.এল.আর পৃষ্ঠা-৮১ (এস, সি)। ৩৩, ডি, এল, আর পৃষ্ঠা-১২৬। ১৪ ডি, এল, আর পৃষ্ঠা-৫৮৩। ১৪ পি, এল, ডি, পৃষ্ঠা-১২৭ (ঢাকা) ১৮ ডি, এল, ञाর, পৃষ্ঠা ১০৭। ১৮ ডি, এল, ञाর পৃষ্ঠা-(९१४) এই क़िलः छिल जव মाकमभात क्यात প্রযেজ্য। এই क़िलः এর বিরুদ্ধে বিবাদী পক্ষের বিজ্ঞ কৌশলী ইহা খন্ডন করিয়া এর চেয়ে আরো উত্তম নজীর আদালতে উপস্থাপন করিতে সক্ষম হয় নাই। এই সকল আইনের নজির সমূহে holding over সর্ম্পকিত তথ্য সমূহ দারা ও তাহাদের আর ও দখল সর্ম্পকিত বৈধতা প্রমান করেন । সুতরাং বাদী পক্ষ তাহাদরে পূর্ববর্তীক্রমে বিরোধীয় ভূমিতে স্বতুবান মালিক দখিকার আছেন। বাদীপক্ষ দখলে আছে তাহা বিবাদী পক্ষের নোটিশ দ্বারা ও প্রমাণিত হওয়ায় বিবাদীপক্ষ কূর্তক আইনের আশ্রয় ব্যাতীত বাদীপক্ষকে বিরোধীয় ভূমি হইতে উৎখাত করিবার প্রচেষ্টা প্রতিহত করিবার জন্য দেওয়ানী আদালতে প্রার্থীত প্রতিকার ব্যাতীত অন্য কোন <u> मुर्याण वामीत हिल ना । विवामीणणरक ित्रञ्चारी निरुष्धाः वार्तम द्वाता द्व-</u> আইনী ভাবে বাদীপক্ষকে উৎখাত করিবার প্রচেষ্টা বন্ধ করিবার আদেশ পাইতে অধিকারী এ প্রসঙ্গে মহামান্য উচ্চ আদালতে একটি রুলিং দেওয়া গেল। "Long possession over against a right-full owner. Injunction will be Right-full owner cannot him by force

but will have to established his right by du process in the court of law" 36 D.L.R page-242 উপরোক্ত মতে বাদীপক্ষ তাহাদের সম্পর্নরূপে প্রমাণ করিতে সক্ষম হইয়াছে। অতএব, ৬ নং বিচার্য বিষয় বাদী পক্ষের গৃহীত হইল।

The main contention as raised by the defendants relates to an acquisition but on meticulous perusal of the judgment and decree passed by the trial court as well as L.C. Records, it transpires that the defendants failed to adduce any single papers to that effect though the defendants stated in the written statement and evidence that all the records were wrongly prepared in the name of the plaintiffs, but no step was taken to rectify the same in any stages. So, on meticulous perusal of the papers and documents, it transpires that the plaintiffs proved their right, title and possession in the suit property. The lower appellate court while passing the impugned judgment and decree sent the case back on remand without any cogent reason. On perusal of the judgment and decree passed by the lower appellate court, it transpires that the lower appellate court miserably failed to advert the findings arrived at by the trial court regarding the right, title and possession. Admittedly, in a fit case this court as well as the lower appellate court has the right to send the case back on remand but the reasons stated by the lower appellate court is not at all satisfactory.

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Hence, I find substance in the instant rule. Accordingly, the

instant rule is made absolute. The impugned judgment and decree

passed by the lower appellate court is hereby set aside and the

judgment and decree passed by the trial court is hereby affirmed.

Send down the L.C. Records to the concerned court below

with a copy of the judgment at once.

However, there shall be no order as to cost.

(Mamnoon Rahman,J:)

Emdad.B.O.