

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 1336 of 2008

IN THE MATTER OF:

An application under section 115(1) of the
Code of Civil Procedure, 1908

-And-

In the Matter of:

Md. Azizur Rahman and others

... Plaintiff-Respondent-Petitioners

Versus

Government of Bangladesh and others

...Defendant-Appellant-Opposite Parties

None for the parties

Judgment on: 20.01.2025

Md. Riaz Uddin Khan, J-

Rule was issued asking the opposite parties to show cause as to why the order dated 24.03.2008 passed by the Joint District Judge, Kishoregonj in Miscellaneous Appeal No. 25 of 2008 staying the operation of the order of temporary injunction dated 10.02.2008 passed by the Senior Assistant Judge, Kishoregonj in other class suit No. 24 of 2007 should not be set aside and/or such other or further order or orders should not be passed as to this court may deem fit and proper.

At the time of issuance of Rule the parties were directed to maintain status-quo as to the possession of the suit property till disposal of the Rule or until further order as the case may be.

The succinct facts are that the present petitioners as plaintiffs instituted Title Suit No. 24 of 2007 in the court of Karimagonj Senior Assistant Judge, Kishoregonj praying for a decree of declaring their title to the suit land stating *inter alia* that the plaintiffs are owners and possessors of the suit land, an area measuring 70 decimals out of 307 decimals of C.S. plot No.315 of Khatian No. 246, by way of inheritance; that for the last 100 years, predecessors of the plaintiffs and the plaintiffs themselves have been possessing and enjoying the suit land by specific demarcation within the knowledge of all including the defendants. The plaintiffs constructed structures on the suit land and the said structures are being used as Rice Mills, Flower Mills and Godown and also some structures used as shops. The S.A. and R.S. record-of-rights prepared in the names of the plaintiffs as private land and the opposite party Nos. 5 and 6 for the first time on 15.02.2007 claimed that the suit land is the Government Land as Hat-Bazar and asked the plaintiffs to remove their structures from the suit land for which the suit is filed for declaration of title of the suit land.

The plaintiffs also filed an application praying for temporary injunction under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure and after hearing the plaintiffs, the trial court by the order dated 01.03.2007 issued show cause upon the defendants and also directed the parties

to maintain *statusquo* in relation to the possession of the suit land.

Thereafter, the defendant Nos. 1 to 6 filed written objection against the said application for temporary injunction denying the material allegations made in the application for temporary injunction and stated *inter alia* that an area measuring 68 decimals of plot No. 315 of S.A. Khatian No. 131 is recorded as काल्दा and at present as Bazar, according to section 20(2) of the State Acquisition and Tenancy Act, 1950; the suit land is a Non-retainable land and the Government also acquired the said land as Hat and Bazar under the provision of Ordinance No. 12 of 1967.

The learned Senior Assistant Judge after hearing the parties by the order dated 10.02.2008 restrained the defendant-opposite parties by an order of temporary injunction on the finding that the Suit Land was duly recorded both in the S.A and R.S record-of-rights in the names of the plaintiffs and the Government took no steps for correction of the said records.

The defendant-opposite parties being aggrieved by the said order of temporary injunction dated 10.02.2008 preferred an appeal being Miscellaneous Appeal No. 25 of 2008 before the District Judge, Kishoregonj with an application for stay operation of the order of temporary injunction dated 10.02.2008 passed by the Senior Assistant Judge. Thereafter, the defendant appellants on 24.03.2008 filed an application before the District Judge, without

notice upon the plaintiff-respondents to put up the records of appeal for hearing the application for stay on that date and the learned District Judge allowing the said prayer stayed the operation of the order of temporary injunction dated 10.02.2008 passed by the Senior Assistant Judge by the impugned order dated 24.03.2008.

Being aggrieved by and dissatisfied with the order 24.03.2008 passed by the District Judge, Kishoregonj in Miscellaneous Appeal No. 25 of 2008 staying the operation of the order of temporary injunction dated 10.02.2008 passed by the Senior Assistant Judge, Kishoregonj, the plaintiff-petitioners preferred this civil revision before this Court.

No one appears to support or oppose the Rule when the matter was taken up for hearing.

In the civil revision application the plaintiff-appellants stated that the application for stay filed by the defendant-appellants is neither verified nor supported by affidavit and no sufficient cause was shown in the said application as required under law and the said application was not received by the opposite parties and it is manifestly clear that the impugned order dated 24.03.2008 was passed on an off-date, not fixed for hearing without affording any opportunity to the respondent-petitioners for hearing.

It is further stated by the petitioners that after passing the impugned order by the District Judge staying the order of temporary injunction passed by the Senior Assistant Judge the opposite

party No. 4 by his letter dated 27.03.2008 requested the Government Pleader for their future course of action since the order of temporary injunction was stayed by the District Judge. Government Pleader on the same day made his opinion which is as under:

"আপনার বিগত ইং ২৭/০৩/২০০৮ তারিখের ৪৩১/আরএম নং স্মারকের সহিত সহকারী কমিশনার (ভূমি) করিমগঞ্জ এর ইং ২৭/০৩/২০০৮ তারিখে ৯০ নং স্মারক সম্বলিত পত্রের কপি প্রাপ্ত হইয়া জানিতে পারিলাম যে, কিশোরগঞ্জ জেলা জজ আদালতে ২৫/২০০৮ মিছ আপিল মোকদ্দমার বর্তমান অবস্থা কি এবং পরবর্তী করণীয় কি এই বিষয়ে জরুরী ভিত্তিতে দিক নির্দেশনা বা মতামত দেওয়ার জন্য আমাকে অনুরোধ করা হইয়াছে।

তৎপ্রেক্ষিতে আপনাকে জানানো যাইতেছে যে, মোঃ আজিজুর রহমান গং করিমগঞ্জ সিনিয়র সহকারী জজ আদালতে জেলা প্রশাসক গং বিরুদ্ধে ২৪/২০০৭ নং অন্য প্রকার মোকদ্দমা দায়ের করিয়া অস্থায়ী নিষেধাজ্ঞার প্রার্থনা করিলে পর মাননীয় আদালত উভয় পক্ষেও উপর স্থিতিবস্থার আদেশ দেন। পশ্চাৎ সরকার বিবাদী পক্ষ স্থিতাবস্থার আদেশের বিরুদ্ধে লিখিত আপত্তি দাখিল করিয়া উভয় পক্ষের শুনানী অন্তে বিগত ইং ১০/০২/২০০৮ তারিখের ২১ নং আদেশ বলে স্থিতাবস্থার আদেশ vacate করিয়া অস্থায়ী নিষেধাজ্ঞার আদেশ জারী করা হয়। অতঃপর সরকার বিবাদী পক্ষ ঐ মত অস্থায়ী নিষেধাজ্ঞার আদেশের অসম্মতিতে মাননীয় জেলা জজ আদালতে ২৫/২০০৮ নং মিছ আপিল দায়ের করিয়া ইং ১০/০২/২০০৮ তারিখে ২১ নং অস্থায়ী নিষেধাজ্ঞার আদেশের কার্যকারিতা স্থগিত থাকার প্রার্থনা করিলে মাননীয় জেলা জজ বাহাদুর ইহার শুনানী গ্রহণ করিয়া বিগত ইং ২৪/০৩/২০০৮ তারিখে ০৩ নং আদেশমূলে অস্থায়ী নিষেধাজ্ঞার আদেশের কার্যকারিতা পরবর্তী নির্দেশ না দেওয়া পর্যন্ত স্থগিত করেন। যেহেতু অস্থায়ী নিষেধাজ্ঞার আদেশের কার্যকারিতা বর্তমানে আর বহাল ও বলবৎ নাই সেই হেতু সরকার পক্ষে করণীয় কোন কাজ করিতে আইনগত কোন বাধা নাই। তবে পরবর্তী আদেশ ও নির্দেশ সম্পর্কে মাঝে মধ্যে খোঁজ খবর রাখিতে হইবে। ইহাই আমার অভিমত।"

The petitioners submitted that the records of the appeal submitted before the learned District Judge on a date not fixed for hearing as per prayer made by the opposite parties for hearing of the application filed praying for stay which was

passed not on the date fixed for hearing but on the day not fixed for hearing inasmuch as the impugned order passed without sufficient legal notice to the respondents of the appeal, the impugned order is void being violative of the principle of the natural Justice and the court of appeal below committed an error of law resulting in an error in the decision occasioning failure of justice.

The petitioners would submit that the plaintiff-petitioners filed the suit for declaration of their title to the suit land and the said suit is still pending and the opposite parties are very much party to the pending suit. In the circumstances, opposite parties as it appears from the opinion of the Government Pleader dated 27.03.2008, may evict the petitioners from the suit land during pendency of the title suit and if the opposite parties succeeded in evicting the petitioners that would be an affront to judicial proceeding and pre-empt the judgment. During the pendency of the suit, the opposite parties being a party to the suit cannot take any action which would affect the fate of the pending suit and the court of appeal below without considering the aforesaid facts and legal position of the suit passed the order of stay.

The petitioners would further submit that as per Order XLI, Rule 5 of the Code of Civil Procedure, appellate court only on sufficient cause can stay operation of the order of temporary injunction passed on merit after hearing the

parties but the court of appeal below passed the impugned order without sufficient cause. The order of temporary injunction as granted by the Senior Assistant Judge on consideration of the materials on record and after hearing the parties cannot be interfered without hearing the plaintiff-petitioners and as such the impugned order passed without jurisdiction. The impugned order is a Non-speaking order, passed without assigning any reason in support of the order and as such court of appeal below committed an error of law resulting in an error in the decision occasioning failure of justice in staying the operation of the order of temporary injunction passed by the Senior Assistant Judge.

I have gone through the records available before me and the contents of the application and it appears that this Court while issuing the Rule directed the parties to maintain *statusquo* as to the possession of the suit property till disposal of the Rule or until further order as the case may be. It further appears that the opposite parties did not appear to oppose the Rule or to vacate the interim order passed by this Court though the notice was duly served upon them. I am informed by the office that the Miscellaneous Appeal no. 25 of 2008 as well as the Other Class Suit No. 24 of 2007 is still pending before the respective courts below. Since there was no order of stay of proceedings of the suit the trial should have proceeded with the suit as suit for declaration of title has nothing to do with the fate of ad-

interim injunction. The appellate court below also could have disposed of the Miscellaneous Appeal. However, it did not happen. Meanwhile, 17 years have been passed and the parties are maintaining the *statusquo* in relation to the possession of the suit property. In such circumstances the trial of the suit itself should be concluded as early as possible following the legal procedure.

In the facts and circumstances discussed above, I am of the opinion, ends of justice would be best served if the instant Rule is disposed of directing the parties to continue in maintaining the status-quo in relation to possession of the Suit Land maintaining its nature and character till disposal of the Other Class Suit No. 24 of 2007 unless the trial court during trial thinks it proper to pass any order for ends of justice. The Miscellaneous Appeal No. 25 of 2008 pending before the court of District Judge, Kishoregonj is hereby disposed of as it has lost its efficacy the District Judge is directed to take note of it and pass order accordingly disposing the miscellaneous appeal. The trial court is directed to conclude the trial expeditiously keeping in mind that the original suit is of the year 2007.

Resultantly, the Rule is **disposed of** with above observations.

Communicate the judgment and order at once.