

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Miscellaneous Appeal No. 224 of 2017

In the matter of:

Mustafizur Rahman Khan Raju being dead his
heirs and others

... Appellants

-Versus-

Alhaj Oliur Rahman and others

... Respondents

Ms. Rimi Nahreen, Advocate

...For the appellants

None represented

....For the respondents

Heard and Judgment on 16.01.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Mohi Uddin Shamim

Md. Mozibur Rahman Miah, J.

At the instance of the predecessor of the present appellant nos. 1-4 Rina Khanam who was the defendant no. 9 in Title Suit No. 77 of 2014, this appeal is directed against the judgment and order dated 18.06.2017 passed by the learned Joint District Judge, 3rd court, Sylhet rejecting an application filed under Order 39 Rule 4 of the Code of Civil Procedure.

The salient facts leading to preferring this appeal which has been stemmed from the application for stay are:

The present respondent nos. 1-4 as plaintiffs originally filed the aforesaid suit seeking following reliefs:

(ক) নিম্ন ১ম তপশীল বর্ণিত ভূমি সম্পর্কে বাদীগণ ও ১৭-২১ নং

মোবাবিলা বিবাদী অনুকূলে স্বত্ব ঘোষণা হওয়ার;

এবং

(খ) নিম্ন ১ম তপশীলের অন্তর্গত ২য় তপশীল বর্ণিত ১ ও ২

নং বিবাদী কর্তৃক মোসাম্মৎ রীনা খানম বরাবরে ১৯৮২ ইংরেজীর

২৪৩১০নং সাফ কবালা দলিল এবং মকরম আলী খানের স্ত্রী সিরাজুন্নেছা

খানম কর্তৃক মোসাম্মৎ রীনা খানম বরাবরে ১৯৮২ ইংরেজীর ২২৭২২ নং

রেজিস্ট্রী দানপত্র দলিল জাল, যোগাযোগী, পন্ড অকার্যকর, বাতিল এবং

তন্মর্মে বাদী পক্ষ বাধা নহে মর্মে ঘোষণা সহ অত্র মামলার রায় ডিক্রীর

একটি স্বচ্ছ নথি ১৩-১৪ নং বিবাদীর কার্যালয়ে প্রেরিত হইয়া সংশ্লিষ্ট

বালাম নথিতে নোট করার নির্দেশ দেওয়ার;

এবং

(গ) মোছাঃ রীনা খানম নামীয় ৯৬/১ নং নামজারী খতিয়ান

বাতিল হওয়ার মর্মে ঘোষণা হওয়ার;

এবং

(ঘ) মাননীয় আদালতের ন্যায় বিচারে বাদী পক্ষ আর যে যে

উপকার পাওয়ার বিবেচিত হন তাহা পাওয়ার;

এবং

(ঙ) সর্বাবস্থায় খরচসহ মামলার ডিক্রী পাওয়ার;

After filing of the said suit the above plaintiffs on 03.09.2014 also filed another application under Order 39 Rule 1 of the Code of Civil Procedure restraining the defendant nos. 10-12 from disbursing the compensation money in regard to the second schedule of land in any one's favour. The defendant nos. 10-12 also filed written objection denying all the material allegation so made in the plaint contending *inter*

alia that, they made a requisition to the Deputy Commissioner, Sylhet for acquiring 6.37 acres of land for expansion of Kailas Tila Gas field and accordingly LA case no. 12 of 2013 was initiated and that very 0.07 acres of land was acquired in favour of the requiring body. However, in terms of the acquiring process, the respective affected person had duly been notified where both the plaintiffs and the defendant prayed for compensation and centering that very dispute, a suit is still pending though the compensation money was kept retained with the the Deputy Commissioner, Sylhet. However, the said application for temporary injunction was taken up for hearing by the learned Joint District Judge, 3rd court, Sylhet and vide order no. 2 dated 03.09.2014 the said application was granted restraining the defendant nos. 10-12 from disbursing the compensation money in favour of the defendant-respondent nos. 1-9 when a show cause notice was also issued asking the defendants to give reply within 7 days. After passing the said order, the defendant nos. 1-9 entered appearance in the suit and on 27.03.2017 filed an application under Order 39 Rule 4 of the Code of Civil Procedure for setting aside the said interim order dated 03.09.2014. The application so filed by the defendant nos. 1-9 was then taken up for hearing by the learned judge and vide impugned order dated 18.06.2017 rejected the same holding that, no cogent reason has been assigned for setting aside the interim order. It is at that stage, the predecessor of the present appellant nos. 1-4 Ms. Rina Khanam preferred this appeal and at the time of admitting the appeal, this court also stayed operation of the impugned order for a period of 06(six) months which was subsequently

extended from time to time and finally it was extended on 11.03.2018 till disposal of the appeal.

Ms. Rimi Nahreen, the learned counsel appearing for the appellants upon taking us to the impugned order at the very outset submits that, since the defendant nos. 1-9 got the property through sale deed and they have mutated their name in the khatian and have been enjoying title and possession over the suit property, so the plaintiff has got no right, title and interest therein and to claim the compensation money in their favour.

The learned counsel further contends that, since there has been clear legal bar to pass any interim order against the government without hearing them so provided in Order 39 Rule 5A of the Code of Civil Procedure yet the learned judge of the trial court without considering the said legal aspect very abruptly rejected the application so filed by the predecessor of the present appellants which cannot be sustained in law.

The learned counsel further contends that, in the meantime the plaintiff and defendant came to a compromise and they have filed application before the court below but for pendency of the rule that very application cannot be disposed of but in any case, the order of injunction so passed by the learned judge of the trial court vide order no. 2 restraining the defendant nos. 10-12 cannot be sustained in law and the appeal may be allowed and the order of stay granted at the time of admitting the appeal be continue till disposal of the suit.

None represented for the plaintiffs-respondents in this appeal.

We have considered the said submission so placed by the learned counsel for the appellants and perused the application and the legal provision so have been enunciated in Order 39 Rule 5A of the Code of Civil Procedure. We have also very carefully gone through the impugned judgment and order where we find that, the learned judge while rejecting the application so initiated by the predecessor of the present appellants found that no reason has been assigned but it is the bounden duty of the learned judge to assert and apply legal provision while disposing of any matter no matter any party presses it or not. Since a restrained order has been passed against government machineries herein the defendant nos. 10-12, the authority authorize to disburse the compensation money to the affected person so the court should have heard the said authority but without doing so the learned judge in a very slipshod manner passed the impugned order. Furthermore, similar provision is there in section 56(d) of the Specific Relief Act where it has been clearly been postulated that, without hearing the government no interim order can be passed.

Given the above facts circumstances and settled legal provision we don't find any iota of substance in the impugned order which is liable to be set aside.

Accordingly, the appeal is allowed however without any order as to costs.

The order dated 18.06.2017 passed in Title Suit No. 77 of 2014 is hereby set aside resulting in the order passed earlier dated 03.09.2014 stands dismissed.

Let a copy of this order be communicated to the court concerned forthwith.

Mohi Uddin Shamim, J.

I agree.

Kawsar/A.B.O.