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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 3452 of 2005

IN THE MATTER OF :
An application under section 115(1) of the Code of Civil Procedure

-And-

In the Matter of:
Hazrat Ali and others
... Plaintiff-Petitioners

-Versus-

Government of Bangladesh and others
... Defendant-Opposite Parties

Mr. Md. Zahurul Alam, Advocate
... For the petitioners

Mr. Md. Shahiduzzaman, D.A.G. with
Mr. Md. Solaiman Howlader Mintu, A.A.G.
... For the Government

Mr. Swapan Kumar Datta, Advocate
.... For the opposite party Nos. 5 & 9

Judgment on: 02.07.2026

Md. Riaz Uddin Khan, J-

At the instance of plaintiffs Rule was issued calling upon the opposite party No. 1-12 to show cause as to why the impugned judgment and decree dated 23.04.2005 (Decree signed on 28.04.2005) passed by the Joint District Judge, 2nd Court, Jhalakati in Title Appeal No. 138 of 1992 dismissing the appeal and thereby affirming the judgment and decree dated 29.06.1992 passed by the Assistant Judge, Rajapur, Jhalakati in Title Suit No. 77 of 1986 dismissing the suit should not be set aside and/or pass such other or further order or orders as to this Court may deem fit and appropriate.

At the time of issuance of Rule the operation of the judgment and decree dated 23.04.2005 passed by the court of appeal below was stayed and both the parties were directed to maintain status-quo in respect of the possession of the suit land for a period of 06(six) months initially which was extended time to time.

Facts for disposal of this Rule in substance are that the petitioners and the predecessors of the opposite party Nos. 13-40 on 22.01.1986 as plaintiffs instituted Title Suit No.77 of 1986, in the Court of Assistant Judge Rajapur, Jhalakati against the defendant opposite party Nos.1-12, praying for a decree of declaration of rayati right and title over the schedule 'Ka' land and further declaration that the schedule ‘Kha' disputed Settlement cases are illegal, void, fraudulent and those are not binding upon the plaintiffs.

The suit land comprising 6 (six) plots described in schedule Ka is situated at Mouza Angaria, Upazila-Rajapur appertaining to S.A Khatian Nos.889, 898, 927 and 684 and plot Nos. 893,894,895,916,927 and 1027 belonged to Munser Ali Howlader, Taseuddin Howlader, Mokhtar Ali Howlader, Haji Asmat Ali Kha and Tanjer Ali and their names were correctly recorded in the S.A operation and the said land is situated towards the western side of the river Jangalia. Some *char* land was raised from the bed of the river Jangalia and gradually added 3.11 acres of *char* land i.e about 5 *biga* with the land contiguous to the aforesaid plots and became cultivable within 1356 B.S and the predecessors of the plaintiffs had been possessing the

same along with their original land. The said land was increased by accretion and subsequently, the predecessor of the plaintiffs got settlement of the said increased 5 biga land vide Settlement Case No. 77 R/65-66 and the predecessor of the plaintiffs paid salami and rent and got D.C.R. The rent was proportionately increased Vide S.A Khatian No.889,898,927 and 684 and the plaintiffs paid rents and got rent receipts. The plaintiffs claim for 3.11 acres of land ascertained by the government surveyor by creating present plot Nos.1139, 1140, 1141, 1142, 1144 and 1145 in trace map which was included in the Jamabandi register/rent roll. Settlement Case No. 77 R/65-66 was sent to the Additional Deputy Commissioner (Revenue), Barisal for approval but unfortunately it remained pending. The predecessors of the plaintiffs were of the view that the settlement had been approved and they had been possessing the said land by exercising right, title, interest and possession therein on payment of rent to the government. The plaintiffs came to learn that the defendant No.3 most illegally and fraudulently started 8 cases with a view to settling the disputed scheduled land in favour of the defendant Nos.4-9 and then the plaintiffs filed Misc. Petition No.1532/79-80 before the Additional Deputy Commissioner (Revenue) who without considering the materials on record and the provision of law rejected the same by his order dated 12.05.1981. The plaintiffs filed appeal being Appeal No.517/81 before the Commissioner, Khulna Division which was heard by the Additional Commissioner, Khulna and rejected the same by his order dated 04.09.1986. The suit land

raised from the bed of the river Jangalia within 1357 B.S in adjoining plot Nos.813, 814, 815 816, 927 and 4027 of the plaintiffs' raiyati land of mouza Angaria. The plaintiffs from their predecessors have been owning and possessing the said land and in 1365 B.S corresponding to 1958 AD. The government made an embankment in the *Char* land and the said accreted land was included with the plot Nos.813,814,815,816,927 and 1027 and the suit land does not fall within the ambit of President's Order No. 137 of 1972. The suit land was settled as accreted land lawfully in favour of the predecessor of the plaintiffs Vide Settlement case No.77R/65-66. Subsequently Settlement Case Nos.8-15 JK/ 78-79 were started illegally and collusively by suppressing the previous settlement case of the predecessor of the plaintiffs. The defendant Nos. 4-9 have got no possession of the suit land by the alleged settlement. Settlement Case Nos. 8-15 JK/78-79 are forged, fraudulent and all proceedings there under collusive and illegal and the defendant Nos.4-9 have not acquired any right, title and possession of the suit land.

The defendant No.1 and 4-9 contested the suit by filing separate written statements. The case of the defendant no.1 is *inter alia* that the suit land is situated at Uttampur mouza. The suit land raised from the bed of the river Jangalia before 1974 and became cultivable in 1974. Previously it was khas land and trace Map was prepared showing it khas land which was approved. The suit land was settled vide Settlement case Nos. JK 8-15/1978-79 and kabuliyat were registered and new khatian was opened in the names of settlement

holders and they have been possessing the suit land. The plaintiffs' case is false and not maintainable at all and liable to be dismissed.

The defendant Nos.4-9 filed joint written statement stating *inter alia,* that the suit is not maintainable in the present form. Although the suit land was not accreted land but the plaintiffs initially managed to obtain a forged lease vide Settlement Case No.77R/65-66 and it was not approved subsequently. The Misc Case No.1532/80 and the appeal No.517/81 filed by the plaintiffs were rejected rightly. The suit land was settled by the government with the defendant Nos.4-9 who were landless cultivators and the defendant Nos.4-9 have been owning and possessing the suit land. The statements of the plaint are false and concocted and the suit is liable to be dismissed.

At the trial the plaintiffs examined 3 witnesses while the defendants adduced 5 witnesses and both parties produced documents in support of their respective cases. The said Title Suit No.77 of 1986 was tried by Assistant Judge, Rajapur, who was pleased to dismiss the suit by the judgment and decree dated 29.06.1992. Against the said judgment and decree of the trial court the plaintiffs preferred Title Appeal No.138 of 1992 before the learned District Judge, Jhalakati which was ultimately disposed of by the Joint District Judge, 2nd Court, Jhalakati, who was also pleased to dismiss the appeal by the impugned judgment and decree dated 23.04.2005.

Being aggrieved by and dissatisfied with the impugned judgment and decree dated 23.04.2005 the plaintiffs instituted the instant Civil Revision before

this Court and obtained the Rule and order of stay and status-quo as stated at the very outset.

Mr. Md. Zahurul Alam, the learned advocate appearing for the plaintiff-petitioners submits that the impugned judgment is not a proper judgment of affirmance for that both the courts below acted illegally in not discussing and considering the evidence of P.Ws and material exhibits in its true perspective and arrived at an erroneous decision which has caused miscarriage of justice. The learned joint District Judge as appellate court acted illegally in affirming the judgment and decree of the trial court upon misreading, non-reading and misconstruing the evidence and materials on record and the provision of law. The learned Appellate court acted illegally in failing to consider exhibit-1, 2-2(Ga), 3, 4-4(Ga) and 5-5(Kha) and the report of the Advocate Commissioner appointed by the learned joint District judge and this evidence in court which clearly and specifically showed that the suit land is situated within the mouza Angaria, Upazila Rajapur and as such the court of appeal below has committed error of law in the decision occasioning failure of justice.

The learned advocate then submits that the learned joint District judge acted illegally in failing to consider that DW-1 admitted in his cross examination that they will not be affected if the plaintiffs get the decree in Plot Nos. 1139, 1140, 1141, 1142, 1144 and 1145 of the suit land and DW-2 also admitted in his cross examination that they have no claim over the said plots of land of Angaria mouza and since the DWs-1 and 2 admitted the claim of the plaintiffs, it is hit by

the provision of section 17, 21 and 31 of the Evidence Act.

The learned advocate next submits that the private opposite parties have acquired settlement from the government for 15 years only not permanent i.e from 1386-1400 B.S vide settlement deed Nos. 2868, 2872, 2669 and 2673 which have already been expired. On the other hand, the predecessor of the petitioners earlier got the suit land from the government by order of the Revenue Circle Officer through Settlement Case No. 77 R/65-66 which took effect from 1st Baishakh of 1368 B.S on realization of 4 years arrear rents as salami as evident from order dated 01.06.1970.

The learned advocate for the plaintiff-petitioners lastly submits that the Joint District Judge failed to consider that the plaintiffs'q predecessor took settlement of the suit land which was their ancestral alluviated land with the original land accreted before 1954 and before the date of commencement of Part-V of the State Acquisition and Tenancy Act, 1950 which was acted upon 10th May, 1963. Since the plaintiffs got the suit land long before the P.O 72/1972 the P.O 137/1972 came into operation hence it has no manner of application in the present suit land. In support of his contention the learned advocate cited two decisions: the case of Abdul Mannan and others Vs Kulada Ranjan Mowali and others reported in 31 DLR (AD) 195 and Makku Mian and others Vs Ali Hossain Bhuiyan and others reported in BCR 1984 AD 60.

On the other hand Mr. Md. Shahiduzzaman, the learned Deputy Attorney General appearing for the Government submits that both the Courts below

concurrently found that the predecessor of the present plaintiff-petitioners claimed that they got settlement of the suit land from the Government showing order of Revenue Circle Officer who was not the proper authority. Admittedly the suit land belongs to the Government and the predecessor of the petitioners applied for settlement of the suit land which was ultimately rejected by the office of the Deputy Commissioner, the proper authority and this concurrent finding of the fact should not be disturbed by this Court sitting in a revisional jurisdiction. The plaintiff-petitioners did not acquire any title and possession over the suit land. The government gave permanent settlement of the suit land to various persons by executing Kabuliyat who are in possession. Since both the courts below concurrently found no title and possession of the petitioners hence this Rule should be discharged.

Mr. Swapan Kumar Datta, the learned Advocate appearing for the opposite party Nos. 5 and 9 adopted the submissions made by the learned Deputy Attorney General and then submits that the plaintiffs claim accreted land adjacent to S.A plot Nos. 893,894, 895, 916, 927 and 1027 under S.A Khatian No. 889, 898,927 and 684 and the plaintiffs' claim is that they got settlement of this increase of accreted land by Settlement Case No. 77 R/65-66 from the Revenue Circle Officer but ultimately plaintiff admitted that it was rejected by the A.D.C (Revenue) against which he filed Revision and Appeal up to the appellate jurisdiction but failed. In such view of the matter the plaintiffs have no right title and possession over the suit land.

Mr. Datta next submits that as per section 87 of the State Acquisition and Tenancy Act, 1950 the plaintiffs got no title and possession over the suit land as any land gained by accession whether from river or sea shall not be considered as an increment to the holding or tenancy and it shall absolutely vest in the government hence as per section 87 of the Act the plaintiffs got no right and title. The learned advocate further submits that as per section 87(3) of the State Acquisition and Tenancy Act this suit is abated and no Court should entertain any suit, application and other legal proceedings in respect of any such claim.

The learned advocate for the opposite parties finally submits that as per State Acquisition and Tenancy Act the accreted land absolutely vested on the government and in the present case the government after conducting survey including those land in mouza Angaria created a new mouza named Uttampur and settled those land to several persons including the contesting opposite parties through Misc. Case Nos. 8-15JK/1978-79, though the petitioners filed Misc Case No.1532/79-80 and appeal no.517/81 against that and lost up to the appellate forum hence this Rule should be discharged.

I have heard the submissions of all the parties, perused the revesional application along with the annexures. I have also perused the Lower Court Records including the plaint, written statement, depositions and the exhibited documents of all the parties. I have carefully examined the judgments and decrees passed by the courts below.

The plaintiffs in 1986 by filing the instant Title Suit no.77 of 1986 claimed 3.11 acres of land

which is accreted land of S.A Plot Nos. 893, 894, 895, 816, 927 and 1027 of S.A khatian Nos. 889, 898, 927 and 684 of mouja Angaria, upazilla Rajapur under Jhalakati District which has been recorded in the latest government survey as plot Nos. 1139, 1140, 1141, 1142, 1144 and 1145. The further claim of the plaintiff-petitioners is that the aforesaid accreted *char* land measuring 3.11 acres when it becomes cultivable in the year 1356 B.S the predecessor of the plaintiffs got possession of that land as they were possessing the adjacent aforementioned land of S.A. khatian. After came into operation of the State Acquisition and Tenancy Act, 1950 they got the settlement of the land through Settlement Case No. 77 R/65-66 and they paid salami and rent and got DCR and rent receipts from the government. They thought that the settlement was approved by the office of the Deputy Commissioner but recently they came to know that their settlement was not approved and the land was given settlement to defendant Nos. 4-9 under Miscellaneous Case Nos. 8-15JK/78-79. After came into know about such settlement, the predecessor of the plaintiffs filed objection before the Additional Deputy Commissioner (Revenue) by filing Misc Case No.1532/79-80 which was rejected on 12.05.1981 against which the plaintiffs filed appeal being No. 517/1981 before the Divisional Commissioner, Khulna which was also rejected by order dated 04.09.1986. Thereafter, the plaintiffs filed this suit. From the above averment it is admitted that the plaintiffs though initially got settlement by order of the Revenue Circle Officer but it was not ultimately approved by the office of the Deputy Commissioner i.e

the government, the ultimate authority for the purpose according to law. I have examined the orders passed by the Revenue Circle Officer dated 25.05.1966 and 01.06.1970 and the orders passed by the ADC (revenue) dated 11.04.1980, 17.06.1980, 15.07.1980, 02.09.1980, 14.101980 and 15.05.1981 as well as the order passed by the Additional Commissioner, Khulna Division dated 04.09.1986. From those orders it appears that though the Revenue Circle Officer passed order for settlement of the suit land in favour of Munser Ali and others but it was not approved by the Government i.e the Deputy Commissioner. The plaintiffs though claimed that they paid rent to the government but on examination of rent receipts it appears that those are paid in the year 1986. Hence, the plaintiffs did not get settlement from the government rather the government gave settlement of the said land after conducting survey of the area to the defendant opposite party Nos. 4 to 9. Against which the plaintiff-petitioners went up to the appellate forum unsuccessfully. Section 87 of the State Acquisition and Tenancy Act, 1950 deals with the matter which runs as follows-

"Section-87. **Right in land gained by accession from recess of river or sea.**

(1)-Notwithstanding anything contained in any other law for the time being in force, when any land has been gained by accession, whether from the recess of a river or of the sea, it shall not be considered as an increment to the holding or tenancy to which it may be thus annexed, but shall vest absolutely in the Government of the People's Republic of Bangladesh and shall be at their disposal.

(2) The provision of sub-section (1) shall apply to all lands so gained whether before or after the 28th June, 1972, but shall not apply to any land so gained before the said date if the right of a Malik to hold such land as an increment to his holding was finally recognized or declared by a competent authority or court before the date of commencement of the State Acquisition and Tenancy (Sixth Amendment) Order, 1972 (President's Order No.137 of 1972) under the law then in force.

(3) All suits, applications, appeals or other proceedings for the assertion of any claim to hold, as an increment to any holding, any land gained or alleged to have been gained from the recess of a river or of the sea, pending before any court or authority on the date of commencement of the said Order, shall not be further proceeded with and shall abate and no court shall entertain any suit, application or other legal proceedings in respect of any such claim."

From the plain reading of the aforesaid section it is clear that after came into the operation of the said section of State Acquisition and Tenancy Act, 1950 irrespective of any other provisions contained in any other law when any land is gained by accession whether from river or of sea it shall not be considered increment to the holding or tenancy to which it may be annexed and shall vest absolutely in the government of the Peoples Republic of Bangladesh and shall be at the disposal of the government and this provision of the sub section 1 shall apply to all land so gained before or after the 28th June, 1972 but shall not apply to any land before the said date if the right to hold such

land as an increment to his holding was finally recognised or declared by a competent authority or court before the date of commencement of the State Acquisition and Tenancy Act (6th amendment) Order of 1972 (President's Order No. 137 of 1972) under the law then in force.

The applicability of this provision has been elaborately explained and discussed in the case of Abdul Mannan and others Vs Kulada Ranjan Mowali and others reported in 31 DLR (AD) 195 (supra). In that case the original suit was filed in 1948. Speaking for the Court his lordship D.C. Bhattacharya, J opined that section 87 (new) purports to take away all lands gained by accession before 28.06.1972 which a tenant acquired under Alluvion and Diluvion Regulation (Bengal Reulation XI) of 1825 as also such accession as have taken place after Part-V of the State Acquisition and Tenancy Act had come into force. This provision is applicable only to the accreted land and such a situation arose when all the rent receiving interest were acquired by the government under sub-section (4) of section 3, which is to the effect that on and from the date specified in the notification issued under section 3(1), all interests of rent-receivers vested absolutely in the Government. Having regard to the legal consequences flowing from the notifications issued under section 3 of the Act, no retrospective effect can be given to the provision of section 87(2) of the Act, in most of the cases, beyond 14.04.1956, as the said provision read with that of section 3(1) does not purport to extinguish or nullify any right which has been created under the provision of this very

statute, of which this newly enacted section 87 is a part. The legislative authority was contemplating a situation in section 87, which could arise only after the coming into force of part-V of the Act in the area in which the accreting lands are situated. The retrospectivity of the provision of section 87(2) cannot therefore be pushed beyond the date of commencement of part-V of the Act in the area where the accretion in question has taken place. Examining all the provisions relevant for the purpose the apex Court opined that it is therefore reasonable to conclude that there was never any intention on the part of the legislative authority to extend the restrospectivity of section 87 beyond 14.04.1956 or such other date as may have been specified in any earlier notifications under section 3(1) of the Act. The above view of our apex Court was also affirmed by the same Court in the reported case in BCR 1984 AD 60 (supra). In this reported case the original suit was filed on 16.10.1965.

In the light of the above celebrated decisions let us consider the present case. The plaintiffs though claimed that the suit land was gained from the river Jangalia in 1356 BS and got the land from their landlord by paying increased rent but could not prove the same by any iota of evidence by showing any zamindary dakhila to that effect. They further claimed that the part-V of the State Acquisition and Tenancy Act came into force in the area on 10th May, 1963 and thereafter they got settlement of the suit land by the government through Misc Case No.77R/65-66 in the year 1970 and produced order passed by the Revenue Circle

Officer to that effect before the trial court but admitted that this settlement was not finally approved by the government i.e the Deputy Commissioner. Part-V of the State Acquisition and Tenancy Act came into force for the first time in Bengal (now Bangladesh) by notification dated 2nd April, 1956 with effect from 14th April, 1956 and the plaintiffs claimed that in the area of the suit land it came into force on 10th May, 1963 but they filed this suit in 1986. The plaintiff could not prove that the increment land of their holding gained or alleged to have been gained from the recess of the river Angalia was finally recognised or declared by any competent authority or court. Though the plaintiffs got recognition of the same by the Revenue Circle Officer through Settlement Case No.77 R/65-66 but admittedly it was not approved by the office of the Deputy Commissioner, the competent authority. The suit is clearly an afterthought one when the government settled the suit land permanently with the defendant nos.4-9 through Misc Case Nos.8-15JK/78-79. The plaintiffs' submitted rent receipts also support this view as those are obtained in 1986. On the other hand the government claimed that the suit land was accreted before 1974 which became cultivable in 1974 and after conducting survey, preparing sketch map creating new Khatian and plots the government gave permanent settlement to the landless cultivators and they are in possession. It is the admitted position that though plaintiffs claim they got settlement in the year 1970 but admitted that was not finally approved by the office of the Deputy Commissioner. The plaintiffs could not prove that the land was accreted to their lands

before 1956 which they got by paying increased rents. Moreover, it was not finally recognised or declared by a competent authority or Court before the commencement of the State Acquisition and Tenancy (Sixth Amendment) Order 1972. In that view of the matter, applying the ratio decided in the reported case in 31 DLR (AD)195 as mentioned above, I do not find any reason as to why section 87 of the State Acquisition and Tenancy should not be applicable in the present case. In other words I am of the firm view that the section 87 of the State Acquisition and Tenancy Act shall apply in the instant case. Additionally, as per sub section 3 of section 87 of the Act the court should not have entertained this suit in 1986 as it was barred for assertion of the claim to hold as an increment land of holding alleged to have been gained from the recess of a river. However, this revision is also abated as per section 87(3) of the Act.

In the facts and circumstances of the case and the position of law as discussed above I am constrained to hold that the plaintiff-petitioners did not get any right title and possession of the suit land. Hence, the Rule has no merit which is destined to fail.

In the result, the Rule is **discharged**, however, without any order as to cost. The interim order passed by this court at the time of issuance of Rule stands vacated.

Send down the Lower Court Records along with a copy of this judgment at once.

Ziaul Karim
Bench Officer