

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

Present:

Mr Justice Md. Aminul Islam

Civil Revision No. 2551 of 2009

Md. Sultan Ahmed Khan

-----Plaintiff-Appellant-Petitioner

-Versus-

Government of the people's Republic of
Bangladesh, Represented by the Deputy
Commissioner, Khulna.

----- Defendant-Respondent-Opposite-Party

Mr. Ahmed Nowshed Jamil, with

Ms. Sayeda Shoukat Ara, Advocate

.....For the petitioner.

Mr. Md. Shah Newaz, A.A.G

.....For the opposite-party.

Heard on 11.07.2023 and

Judgment on 12.07.2023.

Md. Amimul Islam, J.

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 19.05.2009 passed by the learned Joint District Judge, 3rd Court, Khulna in Miscellaneous Appeal No. 54 of 2009 affirming the order dated 20.04.2009 passed by the learned Senior Assistant Judge, Khulna Sadar, Khulna in Title Suit No.

97 of 2009 rejecting the application for temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure 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 facts leading to the issuance of the Rule in a nutshell can be stated that the plaintiff-appellant-Petitioner instituted the original suit being Title Suit No. 97 of 2009 before the Court of Senior Assistant Judge, Khulna Sadar, Khulna for declaration that Memo No. জে, প্র খ /রাজস্ব/৬-উ-১/ ০৮-০৯ dated 12.04.2009 issued by the defendant is illegal, malafide, collusive and for permanent injunction restraining the defendant. The plaintiff got the lease 0350 acres of land from plot No. 2567 under khas khatian No.01 fully described “Ka” schedule in the plaint and started business after constructing therein. The suit land is a non agricultural land under khas khatian No.01 and the plaintiff filed an application before the Government Office to get the suit land by settled and considering the application the suit land was settled in favour of the plaintiff by initiating Miscellaneous Case No. 46 of 1996 ; thereafter the plaintiff filed another application for getting the suit land by settled permanently in the light of the Government Rules and the said application is still

pending for consideration ; that the plaintiff has been running his business by renewing D.C.R. ; suddenly on 16.04.2009 defendant issued a letter asking the petitioner to vacate the suit land immediately. Hence, the case.

Thereafter, the Plaintiff filed an application for temporary injunction under Order 39 Rule 1 and 2 and section 151 of the Code of Civil Procedure on 20.04.2009 against the defendant can not forcibly evict the plaintiff from the suit schedule land till disposal of the suit. After hearing both the parties the learned trial Court rejected the application for temporary injunction order dated 20.04.2009.

Being aggrieved by and dissatisfied with the said order dated 20.04.2009 the plaintiff filed a Miscellaneous Appeal No. 54 of 2009 before the Court of learned District Judge Khulna and the same was transferred to the Court of learned Joint District Judge, 3rd Court, Khulna for disposal. After hearing both the parties the learned Appellate Court below dismissed the Miscellaneous Appeal.

Being aggrieved by and dissatisfied with the impinged judgment and order dated 19.05.2009 passed by the learned Joint District Judge, 3rd Court, Khulna the plaintiff - appellant

- petitioner has preferred this Revisional application under Section 115(1) of the Code of Civil Procedure and obtained the instant Rule with granting an ad-interim order of status-quo.

Ms. Syeda Shoukat Ara, the learned advocate appeared on behalf of the petitioner while Mr. Shah Newaz and Mr. Md. Anisur Rahman, the learned Assistant Attorney General appeared on behalf of the opposite party and filing an affidavit-on-opposition.

Ms. Syeda Showkat Ara, the learned Advocate appearing on behalf of the petitioner during hearing of this Revisional application submits that the original suit being a suit for declaration that Memo No. জে.প্র.খ/রাজস্ব /৬-উ-১/০৮-০৯ dated 12.04.2009 issued by the defendant is illegal, malafide, collusive and filing an application for permanent injunction restraining the defendant.

The learned Advocate further submits that the petitioner is a leasee under the Government of the opposite party in Miscellaneous Case No. 40 of 1996 through D.C.R. Thereafter the plaintiff has been running his hotel business in the suit land by renewing D.C.R regularly. The plaintiff has no violation the

condition of the Government Rules. She further submits that the Courts below have totally failed to considering the Government's letter vide Memo No. ~~PCQ/IR-M-D-1080~~ dated 10.04.00 . She further submits that the petitioner has been in possession since getting lease 1996 through the Government of the opposite party. But though the lease period has already been expired, in spite of that his application for renewal of D.C.R is still under pending for consideration. and as such the plaintiff is entitled to get an order of temporary injunction against the opposite party and if he evicted from the suit land forcibly in that case he will irreparable loss and injury.

The learned Advocate also further submits that the balance of convenience and inconvenience in favour of the plaintiff and against the defendant. He lastly submits that both the Courts below have committed an error of law resulting in an error in the decision occasioning failure of Justice and thereby impugned judgment and order is liable to be set aside.

Mr. Shah Newaz, the learned Assistant Attorney General appearing on behalf of the opposite party oppose the Rule and he submits that the suit is not maintainable under the preview of law and the Courts below have justified in holding that the suit is

not tenable in the eye of law. He further submits that the disputed land is the non agricultural khas land of the Government and listed out yearly by virtue of collecting the lease money. But the lease holder did not renewal the D.C.R and he did not paid the lease money yearly and possess the khas land unauthorized. Thereafter, the Government issued a letter on 16.04.2009 to vacate the suit land immediately against the petitioner. The Government did not evict the construction forcibly. The plaintiff has no right and title to award injunction against the Government. He lastly submits that both the Courts below rightly and correctly rejected the application for temporary injunction. There is no illegality and infirmity which calls for interference by this Court. Therefore, the Rule is liable to be discharged.

Heard the learned Advocates of both sides, perused the impugned judgment and order dated 19.05.2009 passed by the Appellate Court below and the judgment and order dated 20.04.2009 passed by the Trial Court including all other connected papers and documents.

On perusal of the papers along with the certified copies of the original application of the temporary injunction, & relevant documents it transpires that the present petitioner being plaintiff

instituted the original Suit No. 97 of 2009 for declaration that Memo No. P.CÖL/iR-W-D-108-0 dated 12.04.2009 issued by the defendant is illegal, malafide, collusive and for permanent injunction restraining the defendant.

Scrutinizing the relevant papers, it is obvious to note that admittedly, the petitioner obtained the lease in the schedule land through DCR of the Government. The suit land is a non agricultural land under Khas Khatian No.01. The petitioner started a hotel business after constructing structure therein. Thereafter the petitioner filed an another application for getting the suit land for permanent lease as per of the Government Rules though the aforesaid application is still pending for consideration. The petitioner has been running his hotel business by renewing DCR regularly; in the meantime the City Corporation, Khulna is the owner of the schedule land and send a notice upon the plaintiff petitioner. Then the petitioner filed a Miscellaneous Case being No. 141 of 1987 in the Divisional Commissioner, Khulna against the aforesaid notice. Thereafter the Divisional Commissioner has declared that the Government opposite party rightly granted the lease in favour of the petitioner. Again Roads and Highway division send a notice vide

memo No. 4627(500) dated 23.09.2009 upon the petitioner for claiming ownership in the Schedule land. Then the petitioner filed a Title Suit No. 241 of 1991 before the learned Senior Assistant Judge, Khulna for declaration that the aforesaid notice is illegal and malafide. After hearing the learned Senior Assistant Judge decreed the suit in favour of the petitioner by his judgment and order dated 29.06.1992. In such way the petitioner has been in possession since 1996 and running his hotel business till now. Admittedly, the opposite party granted lease in the schedule land in favour of the petitioner but the opposite party on 16.04.2009 issued a letter asking the petitioner to vacate the suit land immediately. It is a fact that admittedly, the petitioner has been in peaceful possession in the suit schedule land since getting lease from the Government opposite party. It is apparent that the learned Trial Court as well as the Appellate Court below during disposal of the application for temporary injunction and the Miscellaneous Appeal felt the necessity to entire into the merit of the suit land it was a concurrent findings of the Courts below that prior to disposal of the original suit on merit after taking evidence from the sides of the respective parties, at this stage it

cannot be ascertained as to who between the two parties in the actual legal position in the suit schedule land.

Nevertheless, in view of the facts and circumstances of the case I have reason to incline such a view that prior to disposal of the original suit on merit. The order of status-quo which is prevailing from the very beginning appears to be a just and appropriate relief at this stage to avoid further complicacy and multiplicity of cases and to maintain peace and harmony in the schedule land.

Therefore, I find merit in this Rule.

Hence, in the result, the Rule is made absolute without any order as to cost with a direction to the parties concerned to maintain status-quo in respect of possession and position of the suit land till disposal of the original suit on merit.

The learned Trial Court is also directed to dispose of the original suit on merit after taking evidence within 1 (one) year from the date of receipt of this judgment and order positively.

Communicate the judgment and order at once.