

District-Rajshahi

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

Civil Revision No. 3230 of 2009

Zobed Ali Sarker being dead his heirs-
Md. Anowarul Islam and others

..... Petitioners

Versus

Government of Bangladesh, represented by
the Deputy Commissioner, Rajshahi, and
another

..... mn..Opposite
parties

Mr.Istiak Ahmed, Advocate

.....For the petitioners

Mr.Md.Shafiquel Islam Siddique, D.A.G. with

Mr.Mohammad Nurul Amin, A.A.G.

Mr.Sajid Ahamed Choudhury, A.A.G.

..... For the opposite parties

Present:

Mr. Justice Gobinda Chandra Tagore

Heard on: 05.03.2024, 24.04.2024, and
Judgment on:06.05.2024.

1. In this Civil Revision, the Rule was issued calling upon opposite party No.1 to show cause as to why the impugned judgment and decree dated 10.06.2009 passed by the learned Joint District Judge, 2nd Court, Rajshahi in Title Appeal No.197 of 2001 affirming the judgment and decree dated 10.07.2001 passed by the learned Senior Assistant Judge, Godagari, Rajshahi in Other Class Suit No.18 of 1993, dismissing the suit should not be set aside and/or why such other or further order

or orders as to this Court may seem fit and proper, shall not be passed.

Pending the hearing of the Rule, the parties were directed to maintain the *status quo* in respect of possession and position of the suit land initially for 4(four) months. Subsequently, the period of *status quo* was extended from time to time.

2. The petitioners as plaintiffs instituted Other Class Suit No.18 of 1993 in the Court of learned Senior Assistant Judge, Godagari, Rajshahi for declaration of title in the suit land described in the schedule to the plaint.
3. The plaintiffs' case, in short, is that the land of lot No.1 belonged to S.A. recorded tenant Soudamoni. She sold the land to plaintiff No.1 on 29.03.1973. Accordingly, plaintiff No.1 has been possessing the same. The land of lot Nos.2 and 3 belonged to plaintiffs Nos.2 and 3. Accordingly, their names were correctly recorded in the S.A. Khatian. They have been in possession of their land on payment of rent to the Government. The land of lot Nos.4-5 belonged to the S.A. recorded tenants, plaintiff No.4-5. They have been in possession of their land on payment of rent to the Government. Fakir Sheikh and Tahimunnessa

Bewa were the owners of the land of lot No.5. They sold their share to Habironnessa. Accordingly, the R.S. Khatian was finally published in her name. Subsequently, she exchanged that land with the land of plaintiff Nos.6-10. Accordingly, they are in possession of the land obtained by them by way of exchange from Habironnessa. On 12.07.1992, plaintiff No.2 went to the office of the local Tahsildar for payment of rent in respect of the land of lot Nos.2 and 3 but, the Tahsildar refused to accept the rent upon disclosing that the said land has been recorded in the R.S. Khatian in the name of the Government but, the R.S. Khatian prepared in the name of the Government is wrong and illegal. Hence, the plaintiffs filed the suit for declaration of title.

4. Defendant No.1 contested the suit by filing a written statement denying the material contents of the plaint and contending, *inter alia*, that the suit land has been recorded in Khas Khatian No.1. Subsequently, defendant No.2 acquired the land for construction of a road from Rajshahi to Nowabgonj locally known as Rajshahi-Nowabgonj Mohasarak. The plaintiffs have no right, title,

or interest in the suit land and hence, the suit is liable to be dismissed.

5. During the trial, the plaintiffs examined 3(three) witnesses while the defendants examined only 1(one) witness. In support of their case, the plaintiffs produced as many as 15 documents which were marked as exhibits 1-15 while, defendant No.1 exhibited only R.S. Khatian No.1 which was marked as exhibit-Ka.
6. After hearing both the parties, the Trial Court by the judgment and decree dated 10.07.2001 (decree signed on 16.07.2001) dismissed the suit.
7. Against the judgment and decree of the Trial Court, the plaintiffs preferred Title Appeal No.197 of 2001 in the Court of Learned District Judge, Rajshahi. The appeal was transferred to the 2nd Court of Learned Joint District Judge, Rajshahi for its disposal. The Court of Appeal below after hearing both the parties by the judgment and decree dated 10.06.2009 (decree signed on 18.06.2009) dismissed the appeal and thereby, affirmed the judgment and decree of the Trial Court.
8. Against the judgment and decree of the Court of Appeal below, the plaintiff-appellants as petitioners filed the instant Civil Revision and

obtained the Rule and the interim order of *status quo* as stated above.

9. Having placed the Civil Revision, Mr. Istiak Ahmed, learned Advocate for the plaintiff-petitioners submits that both the Courts below failed to appreciate that the defendant-respondent-opposite parties failed to show any basis of the preparation of the suit land in Khas Khatian No.1 while, the defendants also failed to prove that the suit land was acquired for construction of Rajshahi-Nowabgonj road. The learned Advocate further submits that the plaintiffs do not claim any land recorded as Rajshahi-Nowabgonj road in the S.A. map and as such, the land recorded as Rajshahi-Nowabgonj Sarak beyond the S.A. map is illegal and has no force in law and accordingly, both the Courts below ought to have decreed the suit.
10. On the other hand, Mr. Md. Shafiquel Islam Siddique, learned Deputy Attorney General along with Mr. Mohammad Nurul Amin and Mr. Sajid Ahamed Choudhury, learned Assistant Attorney General on behalf of the defendant-respondent-opposite party Government submits that as per the R.S. Khatian, the suit land is a road namely, Rajshahi-Nowabgonj road and as such, the plaintiffs cannot

claim any land of the road. However, upon examining the pleadings of both parties as well as other relevant documents on record, the learned Deputy Attorney General submits that since in the S.A. map, there was a road and subsequently, no land has been acquired, the Government is entitled to maintaining the road as per the S.A. map without acquiring any further land because the plaintiffs have not challenged the S.A. Khatian or the S.A. map.

- 11.** At this stage, Mr. Istiak Ahmed, learned Advocate for the plaintiff-appellant-petitioners conceded that the plaintiffs would not claim any land beyond the S.A. map and khatian. However, if any land in excess of the land described in the S.A. map and khatian is recorded as any road shall be deemed to have been recorded erroneously or wrongly and, in that case, both the Courts below ought to have appreciated that the plaintiffs are entitled to get a decree in respect of the excess land beyond the S.A. map and khatian of the road.
- 12.** I have perused the Civil Revision along with the records of the Courts below and heard the learned Advocates for the petitioners and the learned Deputy Attorney General for the opposite parties.

- 13.** Admittedly, as per the S.A. map and khatian, there is a road locally known as Rajshahi-Nowabgonj Road. But as per the plaintiffs' case, beyond the land recorded as a road in the S.A. map and khatian, some other lands of the plaintiffs have been included in the road even, without acquiring the same and as such, the excess land recorded as road in the R.S. Khatian No.1 beyond the S.A. map and khatian of the same road. Khatian is liable to be declared to have been recorded wrongly and erroneously. I do not find any conflict on this point between both sides.
- 14.** Accordingly, the Government is entitled to maintain the road as per the S.A. map and khatian. However, if any land is recorded in the R.S. Khatian beyond the land recorded as road in the S.A. map and khatian is liable to be declared to have been recorded as such wrongly or erroneously. However, the Government is always at liberty to broaden the road as it feels necessary upon acquiring any land whether it belongs to the plaintiffs or anybody else.
- 15.** In such facts and circumstances, both parties shall mutually determine the road as per the S.A. map and khatian within 6(six)months from the date

of receipt of a copy of this judgment and decree and if any land is recorded in the R.S. Khatian beyond the S.A. map and khatian as the road is declared to have been recorded wrongly or erroneously. However, the Government may maintain the R.S. Khatian as it has been prepared upon acquiring the excess land beyond the S.A. map and khatian.

16. With the above findings and observations, the Rule is disposed of.
17. Accordingly, the impugned judgments and decrees passed by the Courts below are set aside and Other Class Suit No.18 of 1993 is decreed that the plaintiff-appellant-petitioners have title to the suit land pertaining to the suit S.A.Khatian and S.A.Map excluding the land if any recorded as the Rajshahi-Nowabgonj Road under the S.A.Operation and not under the R.S.Operation.
18. The interim order of *status quo* is hereby recalled and vacated.
19. However, there would be no order as to costs.
20. Send down the records of the Courts below immediately.