

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Nuruzzaman
Mr. Justice Obaidul Hassan
Mr. Justice Borhanuddin
Mr. Justice M. Enayetur Rahim
Ms. Justice Krishna Debnath

CIVIL APPEAL NO.253 OF 2015

WITH

CIVIL REVIEW PETITION NO.94 OF 2014

WITH

CIVIL PETITION FOR LEAVE TO APPEAL NO.1311 OF 2010

(From the judgment and order dated 02.03.2014
passed by this Division in Civil Petition for
Leave to Appeal No.1029 of 2010)

Government of Bangladesh,
represented by the Deputy
Commissioner, Chittagong and
others

(In C.A. No.253 of 2015)

..... Appellants

Managing Director, Chittagong
Urea Fertilizer Project,
Rangadia, Upazilla Anwara,
District: Chittagong

(In C.R.P. No.94 of 2014)

..... Petitioner

Managing Director, Chittagong
Urea Fertilizer Limited,
Rangadia, Upazilla Anwara,
District: Chittagong

(In C.P. No.1311 of 2010)

..... Petitioner

=VERSUS=

Abdul Salam Chowdhury being
dead his heirs:1) (a) Fatema
Begum and others

(In all the cases)

..... Respondents

For the appellant :Mr. Sheikh Mohammad
Nos.1 and 2 Morshed, Additional
(In C.A. No.253 of 2015) Attorney General,
instructed by Mr.
Ferozur Rahman,
Advocate-on-Record

For the appellant :Mr. Tofailure Rahman
No.3 with Mr. A.M. Amin
(In C.A. No.253 of 2015) uddin, Senior Advocates
instructed by Mr. Nurul
Islam Chowdhury,
Advocate-on-Record

For the petitioner :Mr. Tofailure Rahman,
(In C.R.P. No.94 of 2014) Senior Advocate with Mr.
A.M. Amin Uddin, Senior
Advocates instructed by
Mr. Nurul Islam
Chowdhury, Advocate-on-
Record

For the petitioner :Mr. Tofailure Rahman,
(In C.P. No.1311 of 2010) Senior Advocate with Mr.
A.M. Amin Uddin, Senior
Advocates instructed by
Mr. Nurul Islam
Chowdhury, Advocate-on-
Record

For the Respondents :Mr. Probir Neogi, Senior
(In C.A. No.253 of 2015) Advocate (with Mr. Anita
Gazi Rahman, Advocate),
instructed by Mr. Md.
Taufique Hossain,
Advocate-on-Record

For the respondents :Not represented
(In C.R.P. No.94 of 2014)

For the respondents :Mr. Probir Neogi, Senior
(In C.P. No.1311 of 2010) Advocate (with Mr. Anita
Gazi Rahman, Advocate),
instructed by Mr. Zainul
Abedin, Advocate-on-
Record

Date of hearing :26.04.2022 and 27.04.2022
Judgment on :The 31st May, 2022

JUDGMENT

MD. NURUZZAMAN, J:

Delay in filing of the Civil Review Petition No.94 of 2014 and the Civil Petition for Leave to Appeal No.1311 of 2010 are hereby condoned.

This Civil Appeal, by leave, has arisen out of the judgment and order dated 02.03.2014 passed by this Division in Civil Petition for Leave to Appeal No.1029 of 2010 dismissing the same and affirming the judgment and order dated 31.01.2010 passed by the High Court Division in First Appeal No.304 of 1991 allowing the appeal, thereby setting aside the judgment and decree dated 29.02.1988 passed by the learned Subordinate Judge, Patiya, Chittagong in Other

Suit No.223 of 1984 and decreeing the Title
Suit No.223 of 1984.

Facts leading to filing of this civil
appeal, in short, are that the respondent
Abdul Salam Chowdhury, as plaintiff on
22.11.1979 instituted Other Suit No.182 of
1979 in the Second Court of Sub-ordinate Judge
(now Joint District Judge), Chittagong.
Subsequently, the said suit was transferred to
the Court of Sub-ordinate Judge, Patia,
District- Chittagong and renumbered as Other
Suit No.223 of 1984, impleading petitioner
Nos.1-6 as defendants on the averments that
the land described in the schedule to the
plaint belonged to Raj Chandra and Beni Mohan,
who created Jote No.1 in respect of the suit
land and settled the same with Osi Meah

Chowdhury in Dar-raiyati right. Osi Meah Chowdhury had been in continuous peaceful and uninterrupted possession of the suit land on payment of rent to the landlord. The jote right was sold in auction for arrears of rent in 1938 and the same was purchased by the Government. The Dar-raiyati right in respect of the suit land was not cancelled. After the death of Osi Meah Chowdhury, his son Abdul Gani Chowdhury had been in continuous, peaceful and uninterrupted possession of the suit land on payment of rent to the Government. Interest of Abdul Gani Chowdhury remained intact but he had to apply for confirmation of settlement of the suit land. The relevant authorities concluded settlement in his favour and accordingly, he paid rent,

salami, back rent and other dues as required under the law. Since there was a bar for getting settlement of the suit land within 20 miles area from the Chittagong Court Building no agreement was executed. Abdul Gani Chowdhury continued to paying rents fixed by the authority on the strength of his riayati tenancy right as well as right created in his favour as per order passed in Settlement Case No.35 of 1946-47. Accordingly, Khatian has also been prepared and finally published in his name on the strength of his possession of the suit land as a tenant under the Government. Subsequently, a part of suit land was acquired by the Government under L.A. Case No.201 of 1961-62 and compensation was

assessed on the basis of the S. A. Khatian in the name of Dar-raiyat Abdul Gani Chowdhury.

Thereafter, the Abdul Gani Chowdhury had filed an application before the A.D.C. (Rev.), Chittagong against the report of the R.D.C. which was recorded as Miscellaneous Case No.3 of 1972-73 and by order dated 22.08.1972 A.D.C. (Rev.) cancelled the S.A. Khatian no. 191 in respect of the suit land standing in the name of Abdul Gani Chowdhury on the finding that the Khatian was fraudulently prepared. Against the said cancellation order, Abdul Gani Chowdhury filed a revisional application being No.57 of 1972 before the Divisional Commissioner, Chittagong who transferred the case to the Secretary, Ministry of Land Administration, Bangladesh

and the said miscellaneous case was numbered as Miscellaneous Petition No.181 of 1973. After hearing, the said case was sent back on remand to the A.D.C. (Rev.), Chittagong, who by order dated 24.04.1975 decided against Abdul Gani Chowdhury. Against the aforesaid order, Abdul Gani Chowdhury filed a revisional application before the Secretary, Land Administration and Land Reforms, Dhaka but the petition was rejected on 05.08.1979.

That, thereafter, Abdul Gani Chowdhury died leaving plaintiffs as his surviving heirs and the plaintiffs having come to know about the aforesaid incidents case, thus, filed the present suit. The Suit land was recorded as Jote No.1 and the predecessor of the plaintiffs had been in possession as raiyati right holder

for more than the period of limitation. The plaintiffs are thus tenant under the Government and the defendants have no jurisdiction to remove the plaintiffs from the legal and actual possession for a period beyond the period of limitation, since the time of their predecessor. Hence the plaintiffs are entitled to be declared as tenants under the Government. Sixty acres of land have been acquired for Chittagong Urea Fertilizer Project out of the suit land comprising 115.41 acres mentioned in the schedule of the plaint. With these averments plaintiffs prayed for a declaration that the plaintiffs are entitled to get compensation for 60 acres in respect of the suit land acquired for Chittagong Urea Fertilizer Project as per schedule "B" to the

plaint.

The defendant Nos.1 and 2 contested the suit by filing joint written statements denying the material allegations made in the plaint, contending, inter alia, that the suit land is out and out Government Khas land since long time. The plaintiffs and their predecessor being very influential men in the area always have/had an eagle's eye over the suit land, with that end in view of the plaintiffs' predecessor might have created some rent receipts and other papers without any basis. The Government did not recognize the plaintiffs or their predecessor as tenants at any stage. In all the proceedings in the revenue Courts the plaintiffs have lost as they and their predecessor always failed to produce any

documents of their alleged title. The suit land is Government khas land for which they are not bound to pay any compensation from the Government as prayed for. The plaintiffs have no right and title on the suit land, but to grab the suit property, they have created some forged and fabricated papers by dint of which they cannot get any title in their favour against the Government, the rightful owner of the suit land. The collusive and fraudulent S.A. Khatian created by the plaintiffs' predecessor having already been cancelled in accordance with law, the plaintiffs' present suit for simple declaration is not maintainable.

The defendant No.6, Managing Director of Chittagong Urea Fertilizer Project contested

the suit without filing any written statement. However, defendant No.6 as petitioner filed Civil Petition For Leave To Appeal No.1311 of 2018 which is delayed by 136 days.

Civil Review Petition No.94 of 2014 filed by the Managing Director, Chittagong Urea Fertilizer Project praying for reviewing the judgment of Civil Petition for Leave to Appeal No.1029 of 2010 which is also delayed.

On conclusion of the trial, the learned subordinate Judge(now Joint District Judge), Chittagong considering the evidences and documents on record dismissed the suit by his judgment and decree dated 29.02.1988.

Feeling aggrieved, by the judgment and decree dated 29.02.1988 passed the trial Court, the plaintiffs-respondents preferred First

Appeal No.12 of 1988 before the High Court Division, Sessions at Chittagog. Eventually, the said First Appeal No.12 of 1988 was transferred to the High Court Division, Dhaka and renumbered as First Appeal No.304 of 1991 (Dhaka).

A Division Bench of the High Court Division upon hearing the parties, allowed the appeal, setting aside the Trial Court judgment and decreed the Title Suit No.223 of 1984 by the impugned judgment and decree dated 31.01.2010.

Feeling aggrieved by the impugned judgment and decree dated 31.01.2010 of the High Court Division, the Government and others as petitioners herein, preferred the Civil

Petition for Leave to Appeal No.1029 of 2010 before this Division.

This Division after hearing the parties, dismissed the said petition by the impugned judgment and order dated 02.03.2014.

Feeling aggrieved by the impugned judgment and order dated 02.03.2014 passed by this Division, the Government and others as petitioners herein, preferred the Civil Review Petition No.132 of 2014 before this Division and obtained leave, which, gave rise to the instant appeal.

Mr. Sheikh Mohammad Morshed, the learned Additional Attorney General appearing on behalf of the appellant Nos.1 and 2 in Civil Appeal No.253 of 2015 has submitted that the S.A. Khatian has no basis and by the said khatian

Abdul Gani Chowdhuiy did not acquire any title in the suit land and the plaintiffs failed to establish their title, so they are not entitled to get a decree that they are raiyats under the Government and, as such, there is an error apparent on the face of record and, as such, considering the same, the instant appeal may kindly be allowed.

The learned Additional Attorney General, at the time of review hearing, further pointed out that the judgment dated 02.03.2014 passed by this Division did not consider that the plaintiff-respondents have failed to prove the basis of their title. Because, exhibit-2 series submitted by the plaintiff respondents were not proved in accordance with law, by adducing any competent witness as required by the law. This

aspect of the exhibit-2 series were not considered by this Division at the time of passing the judgment in affirming the judgment of the High Court Division. He added that this Division earlier opined that "... The High Court Division has elaborately discussed all the evidence and materials on record observing that the Jote land originally belonged to Raj Chandra and Beni Mohan who created Jote No.1 and gave settlement with Osi Meah Chowdhury in Dar-raiyati right. That jote right was sold in auction for arrears of rent and the same was purchased by the Government. The right, title and interest of the then dar-raiyati was not cancelled and the same remained intact under the law. After the state acquisition, relationship of landlord and tenant had been

established between the Government and Abdul Gani Chowdhury by operation of law, some portion of the land was acquired by the Government under L.A. Case No.201 of 1961-62 and compensation assessment roll was rightly prepared in the name of Abdul Gani Chowdhury on the basis of S.A. Khatian, physical possession and continuous payment of rent. The High Court Division looked at Settlement Case No.35 of 1946-47, Exhibit-3(Ka) in consequence of which order was passed for settlement of the land in favour of Abdul Gani Chowdhury as evidenced by Exhibit-5. It was further observed that S.A. Khatian and R.S. Khatian were prepared correctly in the name of Abdul Gani Chowdhury, son of Osi Meah Chowdhury, which clearly proved

continuous and uninterrupted possession of the plaintiffs and their predecessor since 1939..."

This view of this Division was not justified, because dakhila and R.S. record cannot be treated as basis of title. Therefore, this Division committed error which is apparent on the face of the record. So, the impugned judgment of this Division is required to be reviewed. The learned Additional Attorney General, in addition, further submitted that the exhibit-2 series are the dakhila of tenant's part which was issued under the signature of one Sree Rohini Ranjan Datta. However, it appears from the exhibit-2 series as produced by the plaintiffs that the landlords were Sree Benimohon Das, Sree Mohim Chandra Das, Sree Ombika Charon Das, Sree

Horiproshannyo Das, all are sons of late Jatramohon Das, Sree Nirod Boran Das, Sree Ridoy Ranjan Das, Sree Bibvuti Ranjan Das, Sree Chitta Ranjan Das, all are sons of late Sharoda Ranjan Das. It does not reflect that Ruhini Ranjan Datta was a landlord nor it is apparent from the evidence on record that he has any authority to sign in the Dhakila's. So, it is crystal clear that Sree Rohini Ranjan Das who is the so-called signatory in the alleged Dhakilas neither landlord nor the authorized person of the landlord. The plaintiffs have failed to prove the said Dhakilas in accordance with law, even, on behalf of the plaintiffs, no witness was adduced to that effect. So, by dint of such dakhilas, the plaintiffs were not able to prove the plaint case for having the

declaration of title, the trial Court though noticed the events in its judgment after discussing the evidence. However, at the time of hearing of the appeal, the High Court Division did not controvert such finding of trial Court. However, it was not discovered and not agitated by the learned Counsel of the appellant at the time of hearing of the civil petition, inadvertently, although it was the basic question to determine the legality and propriety of the dakhilas and further the basis of the title of the plaintiffs. This pertinent legal question was not discussed and resolved in the judgment, at the time of hearing of Leave to Appeal No.1029 of 2010 dated 02.03.2014, though the trial Court discussed the matter elaborately. It is, therefore,

crystal clear that there was an error on the face of the record.

The learned Additional Attorney General pointed out that the most pertinent question is that the plot numbers and khatian no. and quantum of land described in the schedule of the suit are quite different to that of exhibit-2 series which is abundantly clear on comparison of the schedule and the dakhilas. This pertinent question was not resolved by this Division. From which it is apparent that the judgment pronounced by this Division earlier has not occasioned to decide the title without resolving this point of the case under review. Such error is apparent on face of the record.

The learned Additional Attorney General has next submitted that it is admitted fact as per pleadings of the plaint that S.A. Khatian No.191 published in the names of the plaintiffs was cancelled by the ADC (Revenue), Chattogram against which the plaintiffs as petitioners fought upto last tire of the Government but lost. In the prayer of the suit, the plaintiff neither challenged the aforementioned order nor prayed for declaration that cancellation of the S.A. record was wrong. So, without seeking any redress against that order of cancellation, the plaintiffs cannot get any declaration of title for the suit land.

In the same breath, the learned Additional Attorney General has submitted that it was further admitted in the plaint that through

L.A. Case No.201/61-62 part of the suit land was acquired. But the plaintiffs have failed to plead in the plaint that they have got the award money, although the Chattogram Urea Fertilizer Project is situated in the suit land, the plaintiffs have further failed to sought any consequential relief against the Government as well as Chattogram Urea Fertilizer Project and, as such, the suit was not maintainable. This question of law neither discussed nor resolved by the High Court Division and this Division in earlier occasion and, as such, the impugned judgment of this Division is required to be reviewed. Learned Additional Attorney General has submitted that exhibit-2 series are outcome of fraud and

forgery by dint of which no title was conferred upon the plaintiffs.

Mr. Tofailure Rahman with Mr. A. M. Amin Uddin, the learned Senior Counsels appearing on behalf of the appellant No.3 in Civil Appeal No. 253 of 2015, Civil Review Petition No.94 of 2014 and Civil Petition for Leave to Appeal No.1311 of 2010 has submitted that they supported the submissions made by the learned Additional Attorney General appearing on behalf of the appellant Nos.1 and 2 in Civil Appeal No.253 of 2015. Mr. A.M. Amin Uddin in respect of Civil Petition for Leave to Appeal has submitted that the plaintiff respondents instituted a suit for simple declaration of title without seeking any consequential relief having without any exclusive possession and

title over the suit properties. The plaintiff respondents at the trial having measurably failed too to prove their right, title and possession, therefore, the trial Court rightly dismissed the suit after proper appreciation of the evidences available on records, the learned Judges of the High Court Division upon misappreciation the evidences, facts and laws in its true perceptions, erroneously, therefore, reversed the judgment and decree of the trial Court below. He further has apprised the Court that the plaintiff respondents having concurrently failed to prove the right, title and possession in the revenue Court and the Court of Joint District Judge, Patia, Chattogram, but the learned Judges of the High Court Division erroneously found that plaintiff

appellants were in continuous possession of the suit land such finding is not according to materials on record, rather, misreading of the evidence, therefore, he prayed for setting aside the judgment of the High Court Division and of this Division.

Mr. A.M. Amin Uddin, the learned Senior Counsel very candidly took us through exhibit-5 and referred the order sheets of Settlement Case No.35 of 46-47 and pointed out that there is neither final order of settlement nor any conveyance was made in favour of the predecessor of the plaintiffs. Thereafter, he took us through exhibit-I referring the names of the possessors and occupiers as tenants of the Government, because, it is a khas Mohol land, however, the plaintiff's predecessor

hopelessly failed to prove his Dar-raiyate Pattan by producing any documentary evidences or adducing any oral evidences to that effect which calls for interference by this Division. He has lastly submitted that it is admitted fact that Chattogram Urea Fertilizer Project is situated in the 60 bighas' of land, at the time of establishment and construction of infrastructure, there is not an iota of documents that the predecessors of the plaintiffs had taken any legal steps objecting such construction. Therefore, the suit for declaration simplicitor is not maintainable.

Mr. Probir Neogi, the learned Senior Counsel with Mrs. Anita Gazi Rahman, the learned Advocates appearing on behalf of the respondents in Civil Appeal No.253 of 2015,

Civil Review Petition No.94 of 2014 and Civil Petition for Leave to Appeal No.1311 of 2010 made submissions in support of the impugned judgment of the High Court Division as well as of this Division. He has submitted that in Chittagong S.A. and R.S. khatians are called P.S. and B.S. khatians respectively. P.S. khatian being S.A. khatian has no presumption of correctness of entry therein, but B.S. khatian being R.S. khatian has legal presumption of correctness of entry under section 144A of the State acquisition and Tenancy Act, and in the instant case, both P.S. and B.S. khatians having been prepared in the name of the predecessor of the plaintiffs, the ground of appeal in this respect is misconceived, and the High Court Division while

allowing the first appeal and this Division in dismissing the leave petition rightly drew legal presumption of title in favour of the plaintiffs on the basis of B.S. Khatian and, as such, considering the same, the instant appeal may kindly be dismissed.

He has further added that the exhibit-I series proved that the predecessors of the plaintiffs were in possession of the suit land, therefore, dismissing the civil petition for leave to appeal. This Division committed no error, rather, affirming the judgment of the High Court Division is the correct appreciating of the evidence on record. This Division while dismissing the Civil Petition discussed the pros and cons of the suit and judgment of First Appeal and Civil Petition, however, petitioner

appellants having failed to point out any legal infirmity to interfere with the judgment of the High Court Division, this Division rightly dismissed the Civil Petition. He very candidly apprised the Court, the arguments advanced by the learned Additional Attorney General is not grounds on the face of the record which does not call for interference in reviewing of appeal, hence, the appeal is liable to be dismissed.

He further submits that in view of the provisions of section 19 sub-section (3) of the State Acquisition and Tenancy Act, 1950 having contemplated- " and the publication shall be conclusive evidence that the record has been duly prepared or revised under this Chapter.", in case of a dispute between private parties

regarding genuineness of S.A. record, there will be no presumption of correctness of entry in the said record, but in a dispute between a citizen(s) and the Government, the Government is legally stopped from questioning the genuineness of a finally published S.A. record by operation of law. He next submits that the instant appeal arises out of leave granted on a civil review petition, so, the scope of review under Order XLVII, Rule 1 of the Code of Civil Procedure and Order XXVI, Rule 1 of the Supreme Court of Bangladesh (Appellate Division) Rules, 1988 is the scope of appeal in the instant case. It is further clear from the Rule 8, Order XXVI of the Appellate Division Rules, 1988. In Rule 8, "final disposal of the first application for review" means disposal of the

appeal where leave is granted on review petition. Otherwise, the word "final" would bear no meaning. So, by the disposal of this appeal, "the final disposal" of the review petition upon which leave was granted will be made. There is no ground whatsoever to review the impugned judgment inasmuch as the Appellate Division found that the High Court Division on elaborate discussion of all the evidence and materials on record found that after the state acquisition, relationship of landlord and tenant had been established between the Government and Abdul Gani Chowdhury, predecessor-in-interest of the plaintiffs, by operation of law, some portion of the land was acquired by the Government under L.A. Case No.201 of 1961-62 and compensation assessment

roll was rightly prepared in the name of Abdul Gani Chowdhury on the basis of S.A. Khatian, physical possession and continuous payment of rent. He also submit that the instant appeal is devoid of any merit inasmuch as in the impugned judgment the Appellate Division found -"the High Court Division looked at Settlement Case No.35 of 1946-47, Exhibt-3(Ka) in consequence of which order was passed for settlement of the land in favour of Abdul Gani Chowdhury as evidenced by Exhibt-5. It was further observed that S.A. khatian and R.S. khatian were prepared correctly in the name of Abdul Gani Chwodhury, son of Osi Meah Chowdhury, which clearly proved continuous and uninterrupted possession of the plaintiffs and their predecessors since 1939." He further submits

that the rent receipts/dakhilas (Exhibit-2 series) dating back to the month of Magh, 1926 B.S. and the Duplicate Carbon Receipt (Exhibit-3 series) having been admitted into evidence and marked exhibits without any objection, the defendant-appellants cannot be allowed at this stage to contend 'plaintiffs' predecessors might have created some rent-receipts and other papers', more so, when this submission of the appellant at the time of hearing of the leave petition was rejected by this Hon'ble Court finding - " we note that the defendants did not file any documentary evidence nor examined any witness to prove their case nor cross-examined any of the plaintiffs' witnesses. The High Court Division found that the plaintiffs' predecessor and thereafter, the plaintiffs were

in continuous and uninterrupted possession of the suit land since settlement from the landlord in 1939. This is evidenced by the dakhilas and rent receipts issued by the Government, which have not been challenged. The petitioners took no step to substantiate their half-hearted contention that the plaintiffs' predecessors might have created some rent receipts and other papers." He further submits that the suit is not barred by limitation due to non-filing of the suit within 6 years from the cancellation of S.A./P.S. khatian as it is settled principle of law that the plaintiff is not bound to institute a suit for declaration that the cancellation of record is wrong. He can wait and when an invasion of his rights is made, he can come and sue for a declaration of

the title on the ground that the record is wrong. Such a suit will be in time if brought within 6(six) years from the date of the threatened invasion. He finally submits that in view of the cumulative effect of the provisions of sections 101, 102, and 103 of the Evidence Act, it is well settled by a long line of decisions that unlike criminal proceedings, the fate of civil suits/proceedings is decided by the preponderance of evidence, in other words the comparative weight, worth and quality of evidence led by the parties, and, as such, no review of the judgment dated 02.03.2014 passed by the Appellate Division affirming the judgment and decree passed by the High Court Division is warranted by the preponderance of evidence in the instant case.

He has referred the precedents of the cases as mentioned herein below on behalf of the respondents which are as follows:

Sl.No.	Name of the parties	Citation	Pages
1.	Rai Keshab Chandra Banerjee Bahadur and another Vs. Madan Mohan Poddar	40 C.W.N.22	1-3
2.	Rai Kiran Chandra Roy Bahadur and others Vs. Tarak Nath Gangopadhyay and others	40 C.W.N.566	4-5
3.	Faiz Ahmed Vs. Shafiul Alam	2 BLC 195	6-10
4.	Ishaque (Md.) Vs. Ekramul Hoque Chowdhury	54 DLR(AD)26	11
5.	Chinibash Pramanik Vs. Md. Nurul Hossain Molla	7 BLD(AD)103	12-14
6.	Mostoshir Ali Vs. Arman Ali	42 DLR(AD)12	15

We have heard Mr. Sheikh Mohammad Morshed, the learned Additional Attorney General for the appellant Nos.1 and 2 in Civil Appeal No.253 of 2015. Mr. Tofailure Rahman with Mr. A. M. Amin Uddin for the appellant No.3 in Civil Appeal No.253 of 2015 and petitioner in Civil Review

Petition No.94 of 2014 and Civil Petition No.1311 of 2010 and Mr. Probir Neogi for the respondents in all cases. Perused the impugned judgment of this Division and other materials on record.

We have to envisage carefully the crux of the matter if the review petition is justified according to Article 105 of the Constitution of the People's Republic of Bangladesh for reviewing the judgment as sought by them. The Article 105 of the Constitution provides provision for reviewing the same judgment of this Division which runs as follows:

"105. The Appellate Division shall have power, subject to the provisions of any Act of Parliament and of any rules made

by that division to review any judgment pronounced or order made by it."

According to the provisions of Article 105 of the Constitution the Supreme Court of Bangladesh (Appellate Division) Rules, 1988 have been framed. In part IV of the Rules, Order XXVI provides detailed provisions for review of the judgment and order of this Division. Rule 1 of the Order XXVI provides as follows:

"1. Subject to the law and the practice of the Court, the Court may, either of its own motion or on the application of a party to a proceeding, review its judgment or order in a Civil proceeding on

grounds similar to those mentioned in Order XLVII, rule 1 of the Code of Civil Procedure and in a Criminal proceeding on the ground of an error apparent on the face of the record."

On perusal of the judgment of this Division dated 02-03-2014, it is apparent on the face of the judgment that, the point raised by the Additional Attorney General for reviewing in the aforesaid judgment, it is admitted fact that, the suit property originally belonged to landlord Sree Benimohon Das, Sree Mohim Chandra Das, Sree Ambika Charon Das, Sree Horiproshannya Das, all are sons of Jatramohon Das and Sree Nirod Boron Das, Sree Redoy Ranjan Das, Sree Bibhuti Ranjan Das, Sree Chiro Ranjan Das, all are sons of Sharoda

Ranjan Das. The plaintiffs produced the aforesaid dakhilas, exhibits-2 and 2(Ka) before the Court, however, to prove the same, they neither examined the signatory Sree Rohini Ranjan Datta to clarify his position and authority nor any other competent witness according to provisions of section 65 and 67 of the Evidence Act, i.e. to prove the hand writing and contents of the said exhibit series. Our considered view, therefore, is that on the face of the record such error is apparent from which it could be concluded that if at the time of hearing of the civil petition, this error was deducted the result of the judgment would have been otherwise, because, such dakhilas as exhibits-2 to 2(kha) never confer the title of the plaintiffs. It is

admitted in the plaint that, the said Jote right of the owner was sold in auction for arrears of the rent in 1938 which was purchased by the then Government. However, it was argued that the settlement in favour of the plaintiffs was not interrupted or cancelled by the Government. Rather, the Government accepted the rent from the Abdul Goni Chowdhury, the predecessor of the plaintiffs which was proved by the exhibits-2(ga)-2(cha).

It is apparent on the face of the record that, the quantum of land described in the schedule of the plaint and in the aforesaid exhibits-2(ga)-2(cha) are clearly distinguished, not only that, in exhibit-2(ka), there is no mention of the khatian or plot number, rather, mentioned only jomabondi No.191. In exhibit-

2(gha), it appears that, it is further improved by the plaintiff that, in the aforesaid exhibit, it has been written Jomabondi No.191. However, further improved the khatian No.200 and Mouja Gobadia of Towji No.133. Although, in exhibit-2(ga), there is no date of the rent receiving employee. However, in exhibit-2(ga), there is a date i.e. 13.04.1967 by the rent receiving employee of the Tohshil Office. It is apparent from the exhibit-2(uma) that, in this dakhila of rent receipt, there is further improvement wherein mentioned the Dag Nos.4, 5, 6 and 399 and the classification of the land is null. Although, earlier to rent receipt and exhibits-2(ka) and 2(ga), there is no mention of the nature of the suit land. In that view of the matter, we have gone through the plaint of

the suit. On perusal of the averment of the
plaint and description of the schedule land
wherefrom it is apparent on the face of the
record that there is quite different
description which are as follows:

"Schedule: Mouza Gobadia, P.S.
Anwara, Chittagong, P.S. Khatian,
Chittagong, R.S. Khatian No.66
Jote No.1 RS. Plots No.399/371/5/6
comprising of 115.41 acres. P.S.
Kh.191/200-P.S. Khat-24/371/391/5
and 6 schedule-A-55.41 acres
schedule-B 60.0 acres."

On careful study of the rent receipt
exhibits-2, 2(ka)-2(cha), there is a clear
distinction in the garb of plot number between
the exhibits-2 series and schedule of the

plaint. Those pertinent errors were neither pointed nor discussed in the earlier judgment of this Division which has been revealed to us at the time of hearing of the instant appeal, thus, those are new discovery on the face of the record.

In view of the above discrepancy in the exhibit-2 series with the schedule of the plaint, it is apparent on the face of the record that, those points were neither pointed out either of the party nor considered at the time of hearing of the earlier Civil Petition.

The learned Senior Counsel Mr. Probir Neogi did not assail the aforesaid points in his submissions. Therefore, it cannot be opined that, those points were considered at the time of hearing of the Civil Petition for Leave To

Appeal No.1029 of 2010. The case laws referred by him do not support in the present case.

It is further divulged from the Exts.3 and 3(ka), the copies of duplicate carbon receipt books, there is no plot number, khatian number of the suit land, rather, it has been written in Ext.3 in column from whom receipt name of Abdul Gani Chowdhury, in column on whose account, the P. Case No.85 of 46-47 and Ext.3(ka), it has been written that Case No.35 of 46-47 without describing any khatian number, plot number or quantum of land. So, it could not be concluded that those two exhibits were issued in respect of the suit plots. Although, at the judgment dated 02.03.2014 passed by this Division, this vital documents were not considered in its true perspective. Though,

further mentioned the Settlement Case No.35/1946-47 as Ext.3(ka), showing that suit land was settled in favour of Abdul Gani Chowdhury. It appears, however, from Ext.5, it is an order sheet without mentioning any case number. However, on perusal of the context of the order sheet, it is apparent which quoted below:

"The subject matter of the case was R.S. Plot Nos.399, 5 and 6, appertained to Khatian No.1, wherein, it has been written that, this jote was purchased by the Government in rent sale vide rent Suit No.1595 of 1934. R.S. Case No.78 of 1941/42 was started. But the case had to be dropped for want

of suitable candidates since then the land has been lying in khas possession of the Government. Original rent of the said jote was Rs.40/- but the special Summary Officer reduced the rent by Rs. 8/- and the annual rent was fixed at Rs.32/- but the Jotedar even could not pay that amount. So, with the result was purchased. In my opinion, land now be settled with the applicant at the recorded rent of Rs.40/-, 1/4- E. Case No.2/3-Salami 10 times the rent. In all is to pay Rs. 443/7/-. After payment hang A. Notice inviting objection if any."

From the above context, it is vividly clear that thereafter, the appropriate authority never settled the above mentioned case property in accordance with law. However, the High Court Division and this Division in the judgment found that vide Ext.5-suit property was settled in favour of the predecessor of the plaintiffs. This view of this Division and High Court Division were errors apparent on the face of the record. In such view of the matter, we find substance in the submission of the learned Additional Attorney General.

In the impugned judgment, this Division also observed that the S.A. and R.S. khatians were prepared correctly in the name of Abdul Gani Chowdhry, son of Haji Osi Meah Chowdhury

which was clearly proved continuous and uninterrupted possession of the plaintiffs and their predecessor since 1939. However, in the following paragraph, this Division opined that "the High Court Division observed that entries in the S.A. and B.S. records provides prima face evidence in regards to title. However, this Division observed that we cannot agree with this observation of law. Under Our law it can be said that R.S. Khatian provides evidence of possession and prima face evidence of title. But the same cannot be said about S.A. records." So, we have to consider the S.A. and R.S. records which have been marked as Ext.1 wherein whether there is any error apparent on the face of the record.

On perusal of the Ext.1, it appears that under District-Chattogram, Mouza-Gobadia, J.L. No.7, Khatian No.66, Towji No.34611 have been written in the R.S. porcha wherein in the column of বিবরণ ও দখলকার, it has been clearly written that, khas mohal Potia and in the column অত্র স্বত্বের বিস্তারিত দখল, namely-Ram Chandra, son of Loke Chandra Datta, Kali Mohon, Dokkhina Ranjan, both are sons of Jonnyochandra Datta, Norendra Lal, Femrendra Nath, both of sons of Monmohon Datta which do not support the possession and title of the plaintiffs and their predecessors, however, the name of Beni Mohon appears in the column. So, it is vividly clear that said Beni Mohon was not the sole owner of the suit jote. In the class of land, it has been written Khal, Baluchar and Plot

Nos.56 and 3099, Bata-1. Such description in the exhibit-1 not in toto identical as of the schedule of the suit and specifically quantum of land written in the schedule and Ext.1 series are clearly distinguished. Moreover, it is apparent on the face of the record that, earlier findings and observations of this Division are not supporting the above mentioned exhibits. It is, therefore, apparent on the face of the record that there is an error in the exhibit-I which is apparent on the face of the record.

This Division earlier in the judgment dated 02.03.2014 opined that the respondents herein and their predecessors also in possession of the suit land which was clearly proved continuous and uninterrupted possession

in the plaintiffs. However, in view of the such opinion, there is no discussion of evidence on record except S.A. and R.S. khatian. We have already discussed the S.A. and R.S. Khatians as exhibit-1 series, but we find that the documents produced before us through paper books are not identical to the suit property. Therefore, such opinion regarding the possession cannot be upheld; rather, it is required to be reviewed, because, in the earlier judgment, there is an error which is apparent on the face of the record.

On perusal of the judgment dated 02.03.2014 passed by this Division, it is divulged that to prove the title except Ext.2 series, there is no other documentary evidence.

We have already discussed about the Ext.2 series and found that such documents never prove the title of the plaintiffs. Even then, earlier this Division found that as per observation of the High Court Division, the settlement with Osi Meah Chowdhury as Dar-Raiyati right was not cancelled or his right, title and interest was remained intact under the law. This view according to settle principle of law was an error on the face of the record, as it was a misconceived and misreading of the contents of the exhibit-2 series because those exhibits were not proved by any of the competent witness in accordance with law. Moreso, those exhibits do not reflect the payment of rent upto date, rather, shows the few years of period before independence of

Bangladesh. Those exhibits were not also proved by the plaintiff-respondents in accordance with the provision of the Evidence Act.

Another pertinent aspect of the appeal is that earlier opinion of this Division endorsing and upholding the view of the High Court Division to the effect that Dar-rayat right was not disturbed by auction purchase of the Mohal i.e. the suit land by the Government. If such, right title and interest were not disturbed by purchasing the suit land, by auction at the instance of the Government. In that case, the Abdul Gani Chowdhury or his heirs are not supposed to file the application for further settlement of the suit property in their favour. So, it appears that in one side, this Division opined that the right, title and

interest of the then Dar-Raiyat was not cancelled and on the other hand, it observes that the further settlement from the Government prayed for by the Abdul Gani Chowdhury had been justified. Such contrary view was an error apparent on the face of the record which was not discussed and considered by this Division. So, the earlier judgment required to be reviewed.

Moreso, the plaintiffs' in the prayer portion of the suit, never sought for any consequential relief according to section 42 of the Specific Relief Act. Therefore, the existence of the Chattogram Urea Fertilizer Factory Project showed that they have already possessed more than 60 (sixty) bighas of land. Although, the plaintiffs prayed for

compensation of the said property and described that property was requisitioned by the Government vide L.A. Case No. 201 of 1961-62. But the plaintiffs have failed to produced any order of award amounting any taka or payment of such award in favour of them. Rather, it appears that the Deputy Commissioner, Chattogram, at the starting point of acquisition cancelled the S.A. record for which the plaintiffs as respondents herein fought up to the highest tire of the Government. Even then, in the prayer portion of the suit, the plaintiffs never sought for any consequential relief in this regard, from which it is abundantly clear that decreeing the suit without possession was clearly an error. Because, suit was not maintainable in the

present form and manner. Therefore, it is apparent on the face of the record, dismissing the Civil Petition No.1029 of 2010 was an error apparent on the face of the record which required to be reviewed for the ends of justice.

However, admittedly (as asserted in the plaint), the so called Jote created by the land lords of the Dar-raiyat (under Raiyat) was sold in public auction and the Government purchased the same in the auction. If it is so, then without any sort of documentary evidence of title i.e. any conveyance, it is less than credible that the claimed Dar-raiyati right remained intact under Government since 1938, i.e. after the said auction purchase.

Admittedly, no agreement was executed between the Government and the plaintiffs or their predecessor in respect of the suit land.

The plaintiffs too admitted that there was a bar in getting settlement of the suit land since the suit land was situated within 20 miles from the Chittagong Court Building.

In addition, the SA (PS) Khatian published in the name of the predecessor of the plaintiffs was duly cancelled and they turned no stone unturned to undo the said cancellation but failed.

Moreover, the High Court Division as well as this Division inaccurately decided that after the enforcement of the State Acquisition of Tenancy Act, 1950, there established a land lord and tenant relationship between the

Government and the plaintiffs. For the establishment of a land lord and tenant nexus linking the Government and the ancestor of the plaintiffs there should exists a lawful affiliation between them prior to the enactment. In our opinion the plaintiffs' side was not able to set up such a tie.

Without taking into account these errors apparent on the face of the record, the High Court Division as well as this Division decreed the suit.

Therefore, we are of the considered view that the arguments advanced for the review petitions are merit worthy.

Accordingly, this appeal is allowed.

The judgment passed by this Division in Civil Petition for Leave to Appeal No.1029 of

2010 is reviewed. Consequently, judgment of the High court Division is set aside and the judgment and decree of the Trial Court is hereby restored and the suit is dismissed.

The Civil Review Petition No.94 of 2014 and the Civil Petition for Leave to Appeal No.1311 of 2010 are disposed of in the light of the judgment of Civil Appeal No.253 of 2015.

J.

J.

J.

J.

J.

The 31st May, 2022
Hamid/B.R/*Words 7,309*

