

Present:

Mr. Justice Sheikh Abdul Awal

and

Mr. Justice S.M. Iftekhar Uddin Mahamud

In the Matter of:

First Miscellaneous Appeal No. 214 of 1997

Md. Eakub Ali Gain and others

....Plaintiff-appellants.

-Versus-

Government of Bangladesh represented by the

Deputy Secretary, Satkhira

.....Defendant-respondent.

None appears.

..... For the appellants.

A.K.M. Rezaul Karim Khandaker, D.A.G with

Mr. Md. Manowarul Islam Uzzal, A.A.G with

Mr. Md. Mukhlesur Rahman, A.A.G.

Ms. Papia Sultana, AAG .

..... For the respondents.

Judgment on 01.02.2026

Sheikh Abdul Awal, J:

This First Miscellaneous Appeal is directed against the order dated 09.09.1997 passed by the learned the then Subordinate Judge, 2nd Court, (In Charge), Satkhira in title Suit No. 67 of 1995 vacating order of for ad interim injunction dated 22.01.1995.

The brief fact relevant for disposal of this appeal is that the appellants as plaintiffs instituted Title Suit No. 67 of 1997 in the Court of the learned Subordinate Judge, 2nd Court, Satkhira on 22.10.1995 against the Government defendants for declaration of title in the suit land as described in the schedule of the plaint and also praying for a decree restraining the defendants from treating the suit land as khas land.

The case of the plaintiff in brief is that the land situated within P.S. Kaligonj Mouza Thalna, C.S. Khatian No. 5,6,7,8,9,11,24 and 27 totalling an area 20.64 acres originally belonged to Nalini Kumar Basu, Probhasini Basu, Hiron Kumar Basu, and Probin Kumar Bamu, and they used to cultivate the land through Sailaddin Gazi and father of Eakub Ali Gain and at one stage Nalini Kumar Basu and others settled the suit land to the plaintiffs on 10th Baishak, 1356 B.S. by executing an Amalnoma at a Salami of Tk. 1001/- and since then they have been possessing the suit land as owner for more than 12 years; that the S.A. record was wrongly prepared in the name of Nalini Kumar Basu and others and that the plaintiffs filed objection and thereafter the objection officer directed to prepare S.A record in the name of plaintiffs but the same was not complied with and thereafter the plaintiffs filed Mutation Case before the defendant No.3, who after inquiry gave an order for mutation and the plaintiffs have paid rent upto 1400 B.S. The defendants being encouraged by the rival party of the plaintiffs are trying to treat the suit property as khas land; that Additional Deputy Commissioner (Revenue), Satkhira and Additional Divisional Commissioner (Revenue), Khulna have passed two illegal orders relying on forged documents. Thereafter the plaintiffs have filed appeal challenging that orders before the Bhumi Appeal Board at Dhaka; that being persuaded the decisions of the Additional Deputy Commissioner (Revenue), Satkhira and Additional Divisional Commissioner (Revenue), Khulna, the defendant No.4 local Tahsilder on 26th Aswin 1402 B.S. corresponding to 9.10.95 threatened the plaintiffs to dispossess them from the suit land and hence, the suit.

Thereafter, while the suit was in progress the plaintiff-appellants on 20.10.1995 filed an application under Order XXXIX, Rule 1 and 2 read with section 151 of the Code of Civil Procedure for temporary

injunction restraining the defendants from dispossessing the plaintiffs from the suit property in treating the property as khas land.

The learned Subordinate Judge, 2nd Court, Satkhira upon hearing the parties by his order dated 20.10.1995 issued show cause notice upon the defendants fixing next date on 16.11.1995. In the meantime, the defendants entered appearance in the suit and prayed time and accordingly next date was fixed 30.11.1995 for filing written objection against the application for injunction. Thereafter on 21.11.1995 the plaintiffs filed an application under section 151 of the Code of Civil Procedure praying for injunction restraining the defendants from the illegal activities that is, dispossessing the plaintiffs from the suit land in treating the same as khas land.

The learned Subordinate Judge, 2nd Court, Satkhira after hearing the parties by his order dated 22.11.1995 granted ad-interim injunction restraining the defendants from dispossessing the plaintiffs from the suit land.

Thereafter, the defendant on 29.01.1996 filed an application for vacating the order of injunction stating that the suit land is a khas land and on the other hand just after receiving the show cause notice the defendants on 16.11.1995 entered appearance in the suit and prayed time to file written objection and accordingly the learned Subordinate Judge, 2nd Court, Satkhira fixed next date on 30.11.1995 to file written objection against the application for injunction and before that fixing date the plaintiffs on 21.11.95 filed an application under section 151 of the Code of Civil Procedure for ad-interim injunction. The learned Subordinate Judge, 2nd Court, Satkhira on 22.11.95 before the fixing date most illegally granted ad-interim ad-interim injunction behind the knowledge of the defendants. The defendant government used to control and possess the suit land by giving year to year lease

to landless people, who used to fishing there; that the plaintiffs have no right, title, possession in the suit land.

The learned Subordinate Judge after hearing the parties by the impugned order No.40 dated 09.09.1997 allowed the application of the defendants filed under section 151 of the Code of Civil Procedure vacating the order of injunction dated 22.11.1995.

Being aggrieved by the aforesaid impugned order dated 09.09.1997 passed by the learned the then Subordinate Judge, 2nd Court, Satkhira the plaintiff-appellants filed this First Miscellaneous Appeal before this Court.

No one found present to press the appeal on repeated calls.

In view of the fact that this petty old appeal arising out of an interlocutory order has been dragging before this Court over a period of 28 years, we are, inclined to take it up for disposal on merit as per materials on records.

On scrutiny of the record, it appears that the learned Subordinate Judge, 2nd Court, Satkhira after hearing the injunction application by its order dated 20.10.1995 issued show cause notice upon the defendants fixing next date on 16.11.1995 for hearing and thereafter Government entered appearance in the suit and prayed time for filing written objection against the application for injunction and accordingly next date was fixed 30.11.1995. Pending hearing of the said application dated 20.10.1995 the plaintiffs on 21.11.1995 filed another application under section 151 of the Code of Civil Procedure praying for ad interim injunction restraining the defendants from their illegal activities and the learned Subordinate Judge by his order dated 22.11.1995 allowed the application for injunction. Thereafter, the Government on knowing about the matter filed an application for vacating the ex parte order of injunction and the learned Subordinate

Judge after hearing both the parties by the impugned order dated 09.09.1997 allowed the application of the defendants and vacated the order of injunction dated 22.11.1995 on the findings that :

অত্র মামলায় উভয় পক্ষের বিজ্ঞ কৌশলীর বক্তব্য শ্রবণ করিলাম। মামলার নথি এবং অর্ডারশীট পর্যালোচনা করিলে দেখা যায় যে, এই বাদীপক্ষ কর্তৃক আনীত অস্থায়ী নিষেধাজ্ঞার দরখাস্তের বিরুদ্ধে আপত্তি দাখিলের জন্য ইং ৩০/১১/১৫ তারিখ দিন ধার্য ছিল। ইত্যবসরে বাদী পক্ষে দেওয়ানী কার্যবিধি আইনের ১৫১ ধারায় দরখাস্ত দাখিল করিয়া ২২/১১/১৫ তারিখে এই বিবাদীর বিরুদ্ধে অস্থায়ী নিষেধাজ্ঞার আদেশপ্রাপ্ত হইয়াছেন মর্মে দেখা যায়।

This order certainly indicates that the learned Subordinate Judge considered all aspects of the matter and thereafter, recorded the order dated 09.09.1997. The trial court also observed that the suit land is khass land of the government and the plaintiffs could not make out a prima-facie case in their favour. The reasonings given by the learned Subordinate Judge for vacating the order of injunction dated 22.11.1995 appear to us to be proper and sound and we, do not find any reason to differ from it.

Further, an ex-parte order of injunction (temporary injunction granted without hearing the other side) against the Government is generally frowned upon and considered legally unsustainable if it is passed without complying with strict procedural requirements, such as recording reasons for urgency and ensuring service of notice. In this case, we find no such ground exists whatsoever.

In any view of the matter, having regard to the fact as aforesaid, this appeal must fail. No interference is, therefore, called for.

In the result, the appeal is dismissed without any order as to costs. The order of status-quo granted by this Court stands vacated. The trial Court concerned is directed to dispose of this old suit within

3(three) months from the date of receipt of this order, if the suit is pending, as yet.

Communicate this order at once.

S.M. Iftekahar Uddin Mahamud, J:

I agree.