

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Nuruzzaman
Mr. Justice Borhanuddin
Ms. Justice Krishna Debnath

CIVIL APPEAL NO.194 OF 2009

(From the judgment and order dated 09.09.2007
passed by the High Court Division in Civil
Revision No.4540 of 2007)

Government of Bangladesh, Appellants
Represented by the Deputy
Commissioner, Natore and
others

=VERSUS=

Most. Majeda Beowa and others Respondents

For the appellants :Mr. Md. Jahangir Alam,
Deputy Attorney General,
instructed by Mr.
Haridas Paul, Advocate-
on-Record

For the Respondents :Mr. Shahidul Islam,
Advocate, instructed by
Mr. Md. Nurul Islam
Chowdhury, Advocate-on-
Record

Date of hearing and :The 18th May, 2022
Judgment on

J U D G M E N T

MD. NURUZZAMAN, J:

This Civil Appeal, by leave, has arisen out of the judgment and order dated 09.09.2007 passed by the High Court Division in Civil Revision No.4540 of 2007 rejecting the revisional application summarily.

Facts leading to filing of this civil appeal, in short, are that the plaintiffs instituted Other Class Suit No.247 of 1996 in the Court of Assistant Judge, Natore stating, inter alia, that on 15.11.1996, the defendant No.4 claimed the suit property as Government khas land on the basis of acquiring the property by way of L.A. Case No.48 of 1966-67, the plaintiffs title became clouded and thus filed the suit for declaration of title contending, inter alia, that the suit land originally belonged to one Jahir Uddin Mondal. State Acquisition (in short S.A.) and Revisional

Survey (in short R.S.) Khatians have correctly been recorded in his name and a portion of the suit land was transferred by him to Sarjan Beowa and accordingly R.S. Khatian No.70/71 has been recorded in her name. Thereafter, Sarjan Beowa died childless leaving behind her brother Jahir Uddin and thereby said Jahir Uddin became full owner of the suit land, and then died leaving behind the plaintiff Nos.1-14 as his legal heirs, who are in possession of the suit land.

The Government as defendant contested the suit by filing written statement Stating, inter alia, that for construction and extension of road, the Government intended to acquire the suit land, accordingly L.A. Case No.48 of 1966-67 was started and a notice under section 3 of the Acquisition and Requisition Ordinance was

served on 10.04.1968 upon the party concern but, thereafter, since no objection was raised from either parties and thereafter, on payment of full compensation money, the Government took over the possession of suit land. The plaintiffs' suit is false and, as such, the same is liable to be dismissed with cost.

The trial Court decreed the suit in favour of the plaintiffs by the judgment and decree dated 26.09.2000.

On appeal being Title Appeal No.58 of 2001, the appellate Court dismissed the appeal and affirmed the judgment and decree of the trial Court by the judgment and order dated 04.06.2006.

Feeling aggrieved, by the judgment and decree dated 04.06.2006 passed by the District Judge, Natore, the defendant-appellants as

petitioners preferred Civil Revision No.4540 of 2001 before the High Court Division and obtained Rule.

In due course, a single Bench of the High Court Division upon hearing the petitioners rejected the application by the impugned judgment and order dated 09.09.2007.

Feeling aggrieved, by the impugned judgment and order dated 09.09.2007 passed by the High Court Division, the defendants as petitioners filed Civil Petition for Leave to Appeal No.477 of 2008 before this Division and obtained leave, which, gave rise to the instant appeal.

Mr. Md. Jahangir Alam, the learned Deputy Attorney General appearing on behalf of the appellants submits that in view of the fact that for the construction and extension of road, the

Government having intended to acquire the suit land and accordingly L.A. Case No.48 of 1966-67 having being started and notice under section 3 of the East Bengal (Emergency) Requisition of Property Act having been served on 10.04.1968 upon the owners concerned and no objection having been raised, from any quarter, the suit land having been finally acquired and possession having been taken on payment of full compensation money, but, the High Court Division erred in law in rejecting the revisional application summarily and maintaining the judgment and decree by the Courts below occasioning failure of justice in the case. He further submits that the suit of the plaintiffs being false and having been filed with the design to grab the suit property, and the High Court

Division erred in law in rejecting the revisional application summarily and maintaining the judgment and decree passed by the Courts below on an erroneous view. The learned Deputy Attorney General brought the original lower court's records of L.A. Case No.48 of 1966-67 and produced before the Court for perusal of the Court. Accordingly, we have perused the L.C. records of the L.A. Case No.48 of 1966-67 from which it transpires that land was acquired and compensation was paid and received by the Awardee.

Mr. Shahidul Islam, the learned Advocate appearing on behalf of the respondents made submissions in support of the impugned judgment and order of the High Court Division.

But on perusal of the L.C. records of L.A. Case No.48 of 1966-67 concedes that Awardee

accepted the compensation and case land was rightly acquired by the authority.

We have heard the learned Deputy Attorney General for the appellants and the learned Advocate for the respondents. Perused the impugned judgment and connected other materials on record.

On perusal of the judgments and orders of the learned Assistant Judge and District Judge as appellate court it is to be noted that both of the court decreed and affirmed the suit on grounds that the appellant-defendant i.e. the Government did adduce no oral or documentary evidence concerning the pivotal acquisition of the suit land through L.A. case of 48 of 66-67 and the same was recorded in the S.A. and R.S.

Khatians in the name of the predecessors of the plaintiffs.

In the case of Executive Engineer, Roads and Highways and Ors vs Abirun Begum and Ors cited in LEX/BDAD/0111/2017 this Division accepting L.A. case records as public documents observed concerning the evidentiary value and status of the L.A. case records as follows:

"In fact the defendants did not produce Ext. 2 or Ext. 2 series. They produced Ext. Ka, which is a copy of the L.A. case records. It being a public document, the appellate Court accepted this exhibit as genuine and proof of title because it was attested copy of the records relating to the L.A. case. Our view is that the

appellate Court was correct in accepting that Ext. Ka was admissible and it is proof of the existence of the land acquisition case by which the defendants acquired title to the suit land."

Concerning the presumptive value of S.A. and R.S. Khatians published in the name of the predecessors of the plaintiffs, section 144A of the State Acquisition and Tenancy Act, 1950 asserts that:

"Presumption as to correctness of record of rights

144A. Every entry in a record-of-rights prepared or revised under section 144 shall be evidence of the matter referred to in such entry, and

shall be presumed to be correct until
it is proved by evidence to be
incorrect."

Referring the explanation of the Judicial
Committee of Privy Council on the nature of an
entry in a record of right in the ensuing words

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"A record of rights has been described
by Sir Henry Maine as a detailed
statement of all rights in land drawn
up periodically by the functionaries
employed in setting the claims of the
Government to its shares of the rental
..... Though it does not create a
title, it gives rise to a presumption
in its support, which prevails until

its correctness is successfully
impugned."

It has expressed in the case of Dakas Khan Vs. Ghulam Khan Qasim reported in I.L.R. 45 Cal. 793, 28 C.L.J. 441 this Division decided in many decisions established that this presumptive value is not conclusive proof, rather, very much rebuttable.

The aforementioned view was maintained by this Division in the case of Akrab Ali and others vs. Zahiruddin Kari and others reported in 30 DLR (AD) (1978) 81 and reiterated in the case of The Chief Engineer, Roads and Highway Directorate vs. Asaduzzaman Siddique and Ors. reported in 69 DLR(AD) (2017) 440 that mere record of rights does not create a title. As such, merely entries of the predecessors of the

plaintiffs in the S.A and R.S. Khatians without any documents of title or ownership did not create of the respondents-plaintiffs title over the suit land. And the mere presumption arisen in its support, by the said S.A. and R.S. record of rights fails as its correctness is successfully impugned by the presence of the L.A. case records.

As the L.A. case records are public documents, mere the facts that they were not submitted and exhibited in the courts below that cannot be a ground for defeating public interest and justice.

Moreso, said S.A. and R.S. records of right were published in the name of the previous owners from whom through L.A. Case No.48 of 1966-67, the land in question was

acquired. We are, therefore, of the considered view that such record of rights neither established the right title of the previous owners or their heirs upon the suit properties, because of acquisition of the said property.

Accordingly, we find merit in the submissions of the learned Deputy Attorney General for the appellant.

The reason elaborated above we find that the impugned judgment and order of the High Court Division do call for interference.

In the result, this Civil Appeal is allowed, however, without any order as to cost.

The Other Class Suit No.247 of 1996 is dismissed.

J.

J.

J.

The 18th May, 2022
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