

Present

Mr. Justice Mohammad Ullah

Civil Revision No. 1053 of 2020

Md. Zahirul Islam @ Md. Zahurul  
Islam Zahir

... Plaintiff-appellant-petitioner

-Versus-

Court of Wards Bhawal Raj Estate  
represented by its manager having  
its office at 141-143, Motijheel  
Commercial Area, Motijheel, Dhaka,  
and others

... Defendant-respondent-opposite parties

Mr. Md. Khalilur Rahman, with  
Mr. Md. Rashidul Karim, Advocates  
... For the petitioner

Mr. Md. Tassadder Raihan Khan  
... For the opposite parties

Heard on : 15.02.2023,  
16.02.2023, 27.02.2023,  
09.03.2023, 12.03.2023,  
13.03.2023, 27.03.2023,  
02.04.2023 and 05.04.2023

**Judgment on: 21.06.2023**

On an application under section 115(1) of  
the Code of Civil Procedure, at the instance  
of the plaintiff-appellant-petitioner, this  
Court vide order dated 31.08.2020 issued the  
Rule calling upon the defendant-respondent-  
opposite party No.1 to show cause as to why  
the impugned judgment and decree dated

12.02.2020 passed by the learned Additional District Judge, 8<sup>th</sup> Court, Dhaka in Title Appeal No.13 of 2019 disallowing the appeal affirming the judgment and decree dated 29.10.2018 passed by the learned Senior Assistant Judge, 1<sup>st</sup> Court, Dhaka in Title Suit No.532 of 2014 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.

At the time of issuance of the Rule, the parties were initially directed to maintain the status quo concerning possession of the suit land for six months. Lastly, on 22.08.2022, the status quo period was extended until the Rule was disposed of.

The relevant facts necessary for the disposal of the Rule are as follows:

The petitioner, as plaintiff on 27.11.2014, instituted Title Suit No.532 of 2014 against the principal defendant No.1, Court of Wards, Bhawal Raj Estate and proforma defendant Nos.2 and 3, Deputy Commissioner, Dhaka and Assistant

Commissioner (Land), Dhaka respectively seeking a decree for declaration of title in respect of 8.25 decimals of land and for further declaration that non-volumizing Dhaka City Jarip plot No.7021 under City Jarip Khatian No.5174 and recording City Jarip plot No.7021 in City Jarip Khatian No.15134 in the name of the defendant No.1, is being illegal, the defendant No.2 be directed to voluminize the City Jarip plot No.7021 in City Jarip Khatian No.5174 in the name of the plaintiff.

The specific case of the plaintiff is that the land measuring 7.13 acres, including the suit land (measuring 8.25 decimals), belonged to Kumar Rabindra Narayan Roy Chowdhury and others represented by the Court of Wards. Accordingly, C.S. Khatian No.118 (Exhibit-1), containing C.S. plot No.1192, was published in the name of Kumar Rabindra Narayan Roy Chowdhury and others. Subsequently, the said land has been settled to different projas (tenants) by raiyoti settlement. Accordingly, the government on 23.04.1952, published a projabili property

gazette (Exhibit-12). The C.S. Khatian No.118 was cited on page No.510 of the projabili property gazette.

After payment of compensation for acquiring the rent receiving interest of the said Zamindar Kumar Rabindra Narayan Roy Chowdhury in their projabili property remained in C.S. Khatian No.118 and also in other Khatians, the government published compensation payment gazette notification dated 29.02.1956 (Exhibit-13). In this way, the government, after acquiring the rent-receiving interest of the said jamindar, when prepared and published S.A. Khatian against 1.05 acres of land including 0.0825-acre suit land the name of proja, Budhai Mondal, was duly recorded in S.A.Khatian No. 231 (Exhibit-2) as owner in possession by citing section 24(1) of the State Acquisition and Tenancy Act, 1950 (hereinafter referred to as the SAT Act). Acquisition of ownership by rayoti right is the basis of preparing and publishing the S.A Khatian No.231. Subsequently, S.A. recorded tenant Budhai

Mondal transferred 1.05 acres of land to Javed Ali by Registered Sale Deed No. 14752 dated 08.10.1969. During the R.S. survey, R.S. Khatian No. 711 (Exhibit-3) was duly prepared and published in the name of Javed Ali as owner in possession. Javed Ali transferred 0.58 acres of land to his three sons, namely Wazuddin, Jamal Uddin, and Aman Uddin, and Alal and Dulal, son of Reaz Uddin and Zianat Bibi wife of Shahjahan Miah by a Registered Heba Bill Ewaj deed bearing No.2602 dated 23.08.1980 (Exhibit-4). Then, Jamal Uddin and Aman Uddin sold 0.14 acres of land to Kazi Moniruzzaman by Registered Deed No.7448 dated 15.10.1989 (Exhibit 11). Thereafter, Kazi Moniruzzaman sold 8.25 decimals of land to Md. Dabirul Islam by Registered Deed No.7453 dated 15.10.1990 (Exhibit-5). Md. Dabirul Islam sold the same (8.25 decimals of land) to plaintiff Md. Jahirul Islam by Registered Sale Deed No.12393 dated 28.10.1993 (Exhibit-6). S.A. and R.S. recorded owner and the subsequent transferee, including the plaintiff, got

their name mutated and obtained DCR and paid rent to the government exchequer [Exhibit Nos.7(ka)-7(kha)]. To protect his property, the plaintiff constructed a pucca boundary wall surrounding the suit land and has been possessing the same without any objection from any quarters, including defendant No.1.

During the Dhaka City Survey operation, City Jorip Khatian No.5174 was rightly prepared and published in the plaintiff's name. Defendant No.1 against the City Jorip Khatian No.5174 filed objection Case and Appeal Case No. 85792 of 2004 unsuccessfully (Exhibit-8).

After that, on 28.09.2004, the government published the final printed Khatian No.5174 in the name of the plaintiff under section 144(7) of the SAT Act, read with rules 32 and 33 of the SAT Rules 1955 regarding the suit land.

When the plaintiff on 05.10.2014 went to pay the land development tax as per said final publication of the City Jorip Khatian No.5174, the concerned revenue staff

disclosed the fact that the plaintiff's finally published City Jorip Khatian No.5174 was not noted in the volume maintain in the record room of the defendant No.2, Deputy Commissioner, Dhaka. Instead, City Jorip plot No.7021 has been recorded in City Jorip Khaitan No.15134 (Exhibit-9) in the name of defendant No.1 without any basis.

In such facts and circumstances, the plaintiff was constrained to file the Suit. Subsequently, on 23.10.2018, the plaintiff submitted a fresh plaint with minor corrections.

The defendant No.1 Court of Wards contested the suit by filing a written statement denying the material averments made in the plaint, contending *inter alia* that many of the properties of C.S. recorded tenants/owners, the previous Zamindar Kumar Rabindra Narayan Roy Chowdhury and others represented by Court of Wards were illegally recorded in the names of private persons, at the time of preparing S.A. and R.S. record of right due to non-taking steps by Court of

Wards. As such, the government, under the signature of the Secretary, Ministry of Land, Government of the Peoples Republic, issued a circular No. 45/2002/817 dated 10.11.2002 directing the officers of survey and settlement authorities to record the name of Court of Wards following the C.S. Khaitan ignoring the subsequent S.A. and R.S. record prepared in the name of the private persons. As such, the Dhaka City Jorip khatian No.15134 was correctly prepared in the name of the Court of Wards based on the government's circular. The Court of Wards has been possessing the suit property through different lessees, giving yearly leases. S.A. and R.S. records were prepared in Bodai Mondal's name and his successive heirs or subsequent purchaser wrongly without any basis. So, according to such wrong entries in S.A and R.S. records, mutation Khatian no title was created for the suit land in the name of the plaintiff. The S.A., R.S. mutation khatian, DCR, rent receipt, and subsequent transfer deed are nothing but



paper transactions. By those deed documents, the plaintiff did not acquire any title.

Having seen the written statement as filed by defendant No.1, the plaintiff on 17.08.2017 amended his plaint, stating, amongst others, that the property being cited in the proja bili Gazette, the defendant No.1 has lost its right, title, interest, and possession therein as per provision of section 8A of the Court of Wards Act, 1879 and SAT Act as well as P.O. 90 of 1972. Defendant No.1, having no right, title, interest, and possession in the suit land, has no authority to challenge the plaintiff's right, title, and possession. The government issued several memorandums disclaiming the ownership of the properties recorded in the proja bili property gazette following directions given by the Appex Court of the country in different cases reported in 33 DLR(A.D.)13 and 53, 14 MLR(A.D.)401, 19 MLR 1, 4 CLR, 54 and 38 BLD, 480 and as such claim of the ownership over the suit property

by the defendant No.1 is not only illegal but also contemptuous.

Defendant No.1 received a copy of the amended petition dated 27.09.2016 but did not file any additional written statement denying or controverting the plaintiff's affirmative statements of acquiring title by riayoti right.

The Trial Court framed five issues to determine the suit. The plaintiff examined three witnesses to prove his case, while defendant No.1 examined one witness as D.W.1. Besides, both the parties produced documentary pieces of evidence that were duly exhibited.

By the judgment and decree dated 29.10.2018, the Trial Court dismissed the suit on contest against defendant No.1 and ex-parte against the rest.

Against which the plaintiff preferred Title Appeal No.13 of 2019 before the District Judge, Dhaka. The record of said title appeal was eventually transmitted to the 8<sup>th</sup> Court of Additional District Judge,

Dhaka, for disposal, who, by the impugned judgment and decree dated 12.02.2020, disallowed the appeal and thereby maintained the judgment and decree of the Trial Court.

Against which being aggrieved, the plaintiff moved this Court and obtained the Rule and the order of status quo concerning possession of the suit land as stated above.

Mr. Md. Khalilur Rahman, the learned Advocate for the petitioner at the outset, submits that the suit land being cited on page No.510 of the projabili property gazette published under section 3(1) of the SAT Act, the rent receiving interest of the properties cited in the projabili property Gazette, 1952 (Exhibit-12) having been acquired and affirmed by publishing compensation payment gazette, 1956 (Exhibit-13), the Court of Wards have got no ownership over the suit land as per amended section 8A of the Court of Wards Act. The Court of Wards has been directed to manage and administer only its retainable khas land as cited in the choice list submitted to the government. The Court

of Wards, being titleless in the projabali properties, cannot question the right, title, and interest of other persons possessing the projabali property. The learned Advocate submits further that since both the courts below concurrently found that the plaintiff has remained in possession of the suit property from the time of their original predecessor, Bodai Mondal, and as such, the Court of Wards, being title less is debarred from claiming title over the suit land, even before the statutory period of claiming adverse possession of 12 years. The learned Advocate next submits that a person in possession is to be presumed as the owner of his possessed property as per section 110 of the Evidence Act. He can only be evicted by other persons with better titles than him. As such, the Court of Wards has no title to the suit property; it has no locus standi to question the title and possession of the plaintiff. To substantiate his submission in this regard, the learned Advocate cited two decisions reported in 28 DLR (SC) 61 and 62

DLR (A.D.) 436. The learned Advocate again submits that though the plaintiff failed to produce any document of raiyoti settlement, he has submitted S.A. Khatian No. 231 (Exhibit-2) and other exhibited documents by which it is clear that Bodai Mandal was a raiyot under the previous Zamindar Kumar Rabindra Narayan Roy Chowdhury and others represented by Court of Wards. The learned Advocate submits further that from the S.A. Khatian, it is found that section 24(1) of the SAT Act has been cited as the basis of such record, meaning the recorded owner was a raiyot under the previous Zamindar. The learned Advocate again submits that in all the title deeds starting from 1969-1993, marked Exhibits-4-6, 10, and 11 is found that the acquisition of title by the vendors of those deeds have been narrated as the basis of the ownership of the suit property as of raiyoti right. Though the plaintiff could not submit direct documentary evidence of raiyoti settlement from the previous Zamindar, he has successively proved the raiyoti settlement by

other Exhibited documents and oral evidence. So, in such facts and circumstances, the raiyoti settlement of Bodai Mandal from the Court of Wards has been deemed as proven. The learned Advocate submits that any positive statements made in the transfer deed would be considered a correct statement. In this regard, the learned Advocate placed reliance reported in 54 DLR(A.D.)106 and 19 DLR 176. The learned Advocate submits further that the petitioner has been in possession of the suit property for the last 54 years, and the Court of Wards has neither taken any steps to evict the plaintiff nor filed any suit for recovery of Khas possession. So, the plaintiff acquired title by way of adverse possession against the Court of Wards under the provision of section 28 of the Limitation Act.

In such facts and circumstances, the learned Advocate concludes that the Court of Wards had no locus standi to claim the suit land. In this regard, the learned Advocate referred to the decisions reported in 3 BLD

(A.D.) 315, 16 DLR (SC) 287, and 7 MLR (A.D.) 249.

Md. Tassadder Raihan Khan, the learned Advocate for the defendant-opposite party No.1, on the other hand, submits that both the courts below found that the plaintiff failed to prove the alleged projabili right under Zamindar Kumar Rabindra Narayan Roy Chowdhury and others by producing any document of the settlement, and as such the concurrent finding of facts need not be interfered with by this revisional Court. The learned Advocate seeks to rely on the decision to an unreported judgment passed by the Appellate Division in Civil Appeal No. 79 of 2018. The learned Advocate, having placed the said unreported decision, submits further that the said alleged raiyoti-owners therein submitted several documents of raiyoti settlement, which the appellate division found as spurious and forged, and as such the appellate division refused to decree the suit in favour of plaintiff therein. So, following the said judgment of the appellate division,

the learned Advocate of the Court of Wards prayed to discharge the Rule.

In reply to the submissions of the learned Advocate of the Court of Wards, the learned Advocate of the plaintiff-petitioner submitted that the facts involved in the present civil revision and those of the Civil Appeal No.79 of 2018 are quite distinguishable and, as such, the decision cited by the learned Advocate for the Court of Wards has no manner of application in the case in hand.

In the said civil appeal, the plaintiff had submitted several forged documents of raiyoti settlement, but in the present case, no such direct documents connecting with raiyoti settlement could have been filed by the plaintiff, but the plaintiff had proved the raiyoti settlement by producing alternative documents like S.A. Khatians (Exhibit-2) and also documents of title marking them as Exhibits 4, 5, 6, 10 and 11 from where it can easily be concluded that the plaintiff-petitioner's predecessor Budhai



Mondal was a raiyot under the Zamindar Kumar Rabindra Narayan Roy Chowdhury represented by Bhawal Raj Court of Wards.

I have heard the learned Advocate from both the parties, and perused the materials on record, including the plaint, amendment of the plaint, written statement, oral and documentary evidence, and the impugned judgment and decree of the courts below.

It appears that both the courts below held that the plaintiff-petitioner, though able to prove his possession in the suit property from the time of S.A. recorded tenant Bodai Mandal, totally failed to prove the alleged projabili right under the Zamindar Kumar Rabindra Narayan Roy Chowdhury by producing any document of projabili settlement or dakhilas. So, let us address the position of the property of Zamindar Kumar Rabindra Narayan Roy Chowdhury represented by the Court of Wards before and after the Zamindari Evolution Ain, namely State Acquisition and Tenancy Act, 1950. For giving a background of acquiring title by the

previous proja/raiyyot in the suit land by operation of Zamindari Evolution System, i.e., State Acquisition and Tenancy Act, it is to be noted here that there are two types of properties; one khas property and another projabili property. After the enactment of the SAT Act, the khas property of the previous Zamindar was divided into retainable khas land, which was cited in the choice list, and non-retainable khas land, which was cited in the non-retainable khas property gazette published under section 3(2) of the SAT Act. The projabili property, which was cited in the projabili property Gazette in 1952 under section 3(1) of the SAT Act, vested each projas as the possessor and owner of that property and non-retainable khas property, which was cited in the non-retainable khas property gazette vested to the government as owner and retainable khas land were vested to the previous Zamindar as owner therein, like this case Kumar Rabindra Narayan Roy Chowdhury represented by Court of Wards. For effecting the SAT Act, the

properties of the previous Zamindar remain in the management of the Court of Wards. The Court of Wards Act, 1879 was amended, and a new section 8(A) was inserted therein by Act No.10 of 1952, stating that the Court of Wards can only manage and administer the retainable khas land of the previous Zamindars as of his statutory attorney. So, the suit property having been listed in the Proja Bili Property Gazette on page No.510 and having not been found in the non-retainable property gazette and also in the retainable choice list, the Court of Wards in no way can claim the suit property as their own.

It is to be noted here that the Court of Wards, based on a circular dated 10.11.2002 issued by the ministry of land when projas/raiyot claiming the projabili properties as of their property several affected raiyoti-owners filed several writ petitions which were allowed on contest against the Court of Wards declaring that very circular dated 10.11.2002 issued by the

ministry of land illegally with further findings that the Court of Wards as representative of the previous Zamindar can manage and administer only the retainable khas land of previous Zamindars and not of his previous projabili and non-retainable properties.

Accordingly, the retainable khas property was recorded in the name of previous rent receivers/Zamindars as owners in the S.A. Khatian, citing section 23(1) of the SAT Act. On the other hand, the properties cited in the projabili Gazette were recorded in S.A. Khaitan in the name of each proja/raiyyot as owner, citing section 24(1) of the SAT Act. In contrast, the properties cited in the non-retainable property gazette were recorded in the name of the government as owner, citing section 20 of the SAT Act. When persons claim their right, title, interest, and possession in respect of their certain lands through raiyyot, the Court of Wards tries to record its name in the recent survey, defying the previous S.A. and R.S. records. Among those,

some persons having filed a writ petition before this Court against the Court of Wards obtained a judgment in their favour. This Court, as well as the appellate division, decided that the Court of Wards can only manage and administer the retainable khas properties of previous Zamindar and in no circumstances can manage and administer the projabili properties of the previous Zamindars as their rent receiving interest therein were taken away by publishing projabili property gazette in 1952 and compensation payment gazette in 1956. In this regard, the Appellate Division in 15 MLR(A.D.)2009 observed that:

"Court of Wards seized to have any right, title, interest, and possession in the case land therein because of acquisition and vesting of rent receiving interest of said lands in the government."

According to the provision of section 3 of the SAT Act, the rent-receiving interest has been devolved upon the government after the evolution of the Zamindari system.

In 14 MLR (A.D.) 401, it has been held that without correcting the S.A and R.S Khatian as prepared in accordance with the law earlier, the Court of Wards cannot get its name entered in the recent record of rights prepared during the city survey allegedly only based on C.S khatian. So, the appellate division in the said case found that the Court of Wards had no locus standi to challenge the draft city survey Khatian as prepared in the name of the respective writ petitioners therein at least after the publication of the gazette notification dated 24.03.1952 and 29.02.1956.

It appears from Memo No. 81/2003/324 dated 10.07.2014 issued by Court of Wards and Memo No. 31.00.0000.042.67.032.15-987 dated 27.10.2015 and Memo No. 31. 00. 0000. 046. 58.019.12-70 dated 02.02.2016 issued by ministry of land respectively, the Court of Wards and the ministry of land following the decision of the case reported in 19 MLR 1 and 14 MLR (A.D.) 401 directed the government officers served in the Court of Wards not to

claim any right, title and interest in the projabili properties cited in the said projabili property gazette 1952 and thereby not to harass any person possessing the projabili property.

Nowhere in the record has it been found that the Court of Wards placed any documents that the suit land is retainable khas property in accordance with section 23(1) of the SAT Act.

On the other hand, the properties cited in the projabili property gazette recorded in S.A Khatian in the name of Bodai Mandal as proja/raiyot or owner under section 24(1) of the SAT Act.

Both the courts below concurrently found possession of the plaintiff over the suit land. The plaintiff produced his title deeds, mutation, DCR, and rent receipts, showing that he possessed the suit property.

The Court of Wards claimed that they had possessed the suit property through some leases, but nowhere in the record does it show that defendant No.1, having produced any

documents, could prove that they ever had possessed the suit land.

I have found that the Court of Wards had no locus tandi to claim the projabili property or lease out such property to anybody else, defying the provision of law and the decision passed by this Court and the appellate division.

I have already found that defendant No.1, the opposite party, was defeated in the objection case and subsequent settlement appeal under the provisions of rules 30 and 31 of the SAT Rule, 1955. It is the provision of law that anyone aggrieved by objection and appeal cases may file suit to the Land Survey Tribunal within the period specified in the SAT Act. Even in failing to remedy in the Land Survey Tribunal, the civil Court door is not shut down to seek redress, if any. But in the instant case, though the plaintiff's name was finally published in the City Survey Khatian No.5174, the land of the petitioner of plot No.7021 was abruptly volumized in City Jarip Khatian No.15134 in the name of



defendant No.1. It means the defendants have snatched away the fruit of the litigation acquired by the plaintiff.

Regarding the decision referred to by the learned Advocate for the defendant No.1 petitioner, I find the same not applicable in the context of the present facts and circumstances of the case. Accordingly, the same is not discussed elaborately.

During disposal of the original suit as well as the subsequent appeal, both the courts below committed gross illegality and thereby has been apparent misreading and non-reading of evidence and non-consideration of the material facts and the provision of law resulting in an error in the decision occasioning failure of justice. Besides, the proposition of law incorporated in the SAT Act and Court of Wards Act has been ignored in its total approach and accurate perspective. Therefore, the impugned judgment and decree of affirmance are liable set aside.

As a result, the Rule is made absolute without any order as to cost.

Accordingly, the impugned judgment and decree dated 12.02.2020 passed by the learned Additional District Judge, 8<sup>th</sup> Court, Dhaka, in Title Appeal No.13 of 2019, disallowing the appeal and affirming the judgment and decree dated 29.10.2018 passed by the learned Senior Assistant Judge, 1<sup>st</sup> Court, Dhaka in Title Suit No.532 of 2014 dismissing the suit is hereby set aside.

The suit is decreed on contest against defendant No.1 and ex-parte against the rest without any order as to cost.

Defendant Nos. 2 and 3 are directed to correct the volume and record the plaintiff's name in City Jorip Khatian No.5174 containing plot No.7021 in respect of 8.25 decimals of land as published finally at his name during the city survey process.

Let a copy of this judgment and the lower Court records be transmitted to the Court concerned. A copy of this judgment and decree be sent to the defendant Nos.2 and 3 for compliance.