

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 1680 of 2021

Government of People's Republic of
Bangladesh, represented by the Deputy
Commissioner, Narsingdi and others

... Petitioners

-Versus-

Hazi Sirajuddin Ahammed being dead his
heirs; 1(a) Most. Asia Begum and others

...Opposite-parties

Mr. Apurba Kumar Bhattacharjee, D.A.G with
Mr. Md. Kamal Haider, A.A.G and Mr.
Md. Md. Faruk Hossain, A.A.G

...For the petitioners

Mr. Md. Imam Hossain with

Mr. Sheikh Habib-Ul-Alam, Advocates

...For the opposite-party Nos. 1(a)-1(e),
1(g)-1(h), 2(a)-2(f), 3-12.

Heard on 27.05.2024, 28.05.24, 29.05.2024 and

Judgment on 30th May, 2024.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioners calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 18.01.2018 passed by the learned District Judge, Narsingdi in Title Appeal No. 117 of 2017 dismissing the appeal and thereby affirming the judgment and decree dated 12.08.2010 passed by the learned Assistant Judge, Raipura, Narsingdi in Title Suit No. 05 of 2010 decreeing the suit should not

be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in abridge, are that the opposite-party Nos. 1-12, as plaintiff, filed Title Suit No. 212 of 2006 in the Court of Senior Assistant Judge, Sadar, Narsingdi. Subsequently, renumbered as Title Suit No. 05 of 2010 on transfer to the Court of Assistant Judge, Raipura, Narsingdi against the present petitioners, as defendant, for declaration of title and a declaration to the effect that R.S. Khatian No. 1 in respect of schedule "kha" land recorded wrongly in the name of defendant-government, stating that the suit property originally belonged to the then Jamindar Kamini Kishore Mallik. Accordingly, C.S. Khatian Nos. 35 and 45 stands recorded in his name. Kamini Kishore Mallik died leaving 2 sons Jitendra Kishore Mallik and Shailendra Kishore Mallik. They inherited the property under C.S. Khatian No. 45, Plot No. 64 along with other non-suited property. They while in possession and enjoyment settled 16 sataks of land out of 64 sataks under C.S. Khatian No. 45 in favour of Hiralal Podder son of Haricharan Podder and 16 sataks in favour Mohilal Podder, 1 sataks in favour of Motilal

Podder and 1 sataks in favour of Nepal Chandra Podder in the year 1358 B.S and they got hukumnama in respect of the property under C.S. Khatian No. 45. While they were in possession State Acquisition and Tenancy Act (SAT Act) came into force and after abolition of Jamindary they became direct tenants under the government and the government recognizing them prepared S.A. Khatian No. 43 in the name of Hiralal Podder. S.A. Khatian No. 44 in the name of Mohilal, S.A. Khatian No. 84 in the name of Motilal and S.A. Khatian No. 85 in the name of Nepal Chandra Podder. Out of 64 sataks of land under C.S. Khatian No. 45, sons of Kamani transferred 15 sataks land in favour of Moulavi Abul Hashem and 15 sataks in favour of his brother Abdul Halim by way of settlement. Accordingly, S.A. Khatian No. 41 in the name of Moulavi Abul Hashem and S.A. Khatian No. 42 in the name of his brother Abdul Halim correctly prepared. Aforesaid Motilal Podder died leaving only son Shantilal Podder. Hiralal Podder and others while in possession of 34 sataks of land by a registered Deed No. 6436 dated 12.10.1963 transferred the same in favour of predecessor of the plaintiff Dr. Md. Sabdar Ali. Recital of the said deed discloses acquisition of the property by the vendor. Dr. Md. Sabdar Ali after

purchase developed the property, constructed homestead thereon, obtained connection of the utilities and creating holding in his name had been in possession. Subsequently, Dr. Md. Sabdar Ali by a registered Heba-bil-Ewaz No. 4864 dated 12.04.1980 transferred 15 sataks of land in favour of the plaintiffs predecessor Md. Nurul Islam alias Kanchan. Thereafter, said Nurul Islam while in possession got his name mutated in the khatian paid rents to the government. Aforesaid Hiralal Podder and others transferred rest 15 sataks of land to one Tota Miah. Tota Miah while in possession and enjoyment by a registered Deed No. 3443 dated 02.04.1973 transferred 9 sataks land and by a Registered Deed No. 4751 dated 03.05.1973 transferred 6 sataks of land totalling 15 sataks to plaintiff No. 1, Siraj Uddin. Plaintiff No. 1, after purchase and having a portion of land by inheritance got his name mutated in khatian. In the manner aforesaid, plaintiff No. 1 acquired 15 sataks of land from schedule 1 and plaintiff Nos. 2-6 and predecessor of plaintiff No. 7-12 named Md. Nurul Islam alias Kanchan acquired 15 sataks of land in "Ka" schedule. When the plaintiff Nos. 1 and 2 went to the land office on 05.11.2006 for payment of rents, the defendant No. 4 refused to accept the same and told the defendant Nos. 1 and 2 that the property

under schedule 'Ka' stands recorded in the name of the government under Khatian No. 1. Thereafter, the plaintiff on 12.11.2006 went to record room for obtaining certified copy of the khatian wherein, it was informed that certified copy of the khatian cannot be issued for the reason best known to them, consequently, the plaintiffs filed the instant suit for declaration of title and other relief. The plaintiffs have been possessing the suit land for more than 43 years from the period of their predecessor. The property never acquired by the government or taken over by any process of law and could not show any basis of recording R.S. khatian in the name of the government. Because of casting cloud in the title of the plaintiff in the suit land, by wrong record of right in the name of government, the plaintiffs filed the present suit.

The defendant Nos. 1-4 contested the suit by filing written statement denying the allegations of the plaintiff made in the plaint, contending inter alia, that the property measuring 64 sataks under C.S. Khatian No. 45 along with other non-suited property totalling 6.32 acres belonged to Rejeshwar Bhattacharja and others as superior land lord. Under them Kamini Kishore Mallik was a tenure-

holder. Similarly, C.S. Khatian No. 35 correctly recorded and published in his name. Since, Kamini Kishore Mallik was a tenant under the Jamindar his heirs cannot create pattan or give settlement of the property to anybody. Alleged settlement of the plaintiffs of the year 1358 B.S. is illegal and without jurisdiction. During S.A. operation, S.A. Khatian Nos. 41, 42, 43, 44, 84 and 85 wrongly recorded in the name of some titleless persons who never possessed the suit land, but subsequent R.S. record correctly stand recorded in the name of the government. C.S. tenant failed to pay rents to the Jamindar, resultantly, surrendered possession of the property in favour of Jamindar. While Jamindary became abolish and SAT Act came into force the property automatically vests in the government and there was no heirs of Jamindar. The plaintiffs have had no right, title and possession in the suit property and they never possessed the same on the basis of settlement from the time of their predecessor, but they fraudulently got their name mutated in some khatians which are illegal and not acted upon and the property is in possession of the government. The plaintiffs has filed this suit with a malafide intention to grab the government property valuing the same at Tk.

2,00,000/- instead of Tk. 6,00,000/- and as such, the suit is liable to be dismissed.

The trial court framed 5(five) issues for adjudication of the matters. In course of hearing the plaintiffs examined 3(three) witnesses as P.Ws and the defendant government examined only witness as D.W.1. The plaintiffs filed series of documents in support of their claim which were duly marked as Exhibits. The trial court after hearing by its judgment and decree dated 12.08.2010 decreed the suit.

Being aggrieved by and dissatisfied with the impugned judgment and decree of the trial court, the defendant-government preferred Title Appeal No. 117 of 2017 at a delay of 2571 days with an application for condonation of such delay. The appellate court fixed the matter for hearing and after hearing by the impugned judgment and order dated 18.01.2018 rejected the application for condonation of delay and rejected the appeal being barred by limitation. At this juncture, the petitioner-government, moved this Court by filing this application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Apurba Kumar Bhattacharjee, learned Deputy Attorney General with Mr. Md. Kamal Haider, learned Assistant Attorney General appearing for the petitioners submit that in the instant case, the judgment and decree was passed on 12.08.2010 it was not duly communicated in time. However, after coming to know, Deputy Commissioner Office by its letter dated 10.02.2015 requested the government-pleader to file appeal against the judgment and decree of the trial court. Thereafter, learned government-pleader filed application for certified copy of the judgment and decree on 15.03.2015, but that was rejected as the record was missing. Subsequently, again filed an application for obtaining certified copy on 02.08.2016 and got delivery of the judgment on 28.02.2017 and filed the appeal at a delay of 2571 days with an application for condonation of delay. The appellate court considering interest of the appellant-government ought to have condoned such delay and got the appeal heard on merit for ends of justice, but at the very entrance with the appeal, by rejecting application for condonation of delay the appellate court made the government non-suited, as such, the appellate court has committed an error in law in the decision occasioning failure of justice.

He submits that had the appellate court admitted the appeal for hearing the government could have placed its case before the appellate court, but in not doing so has committed an error in the decision occasioning failure of justice. He finally argued that in this case, a legal point is involved whether the tenant under Jamindar can create pattan in favour of others. As such, by making the Rule absolute, the appellate court may be directed to dispose of the appeal on merit by condoning delay.

Mr. Md. Imam Hossain with Mr. Sheikh Habib-Ul-Alam, learned Advocates appearing for the opposite-parties at the very outset submit that the plaintiffs in support of their acquisition of title in the property submitted series of documents showing settlement of the property in favour of Hiralal and others, deed of sale executed by them in favour of predecessor of the plaintiffs named Md. Sabdor Ali and subsequent Heba-bil-Ewaz executed by Md. Sabdor Ali in favour of his son named Md. Nurul Islam who also purchased a portion of the land from other owners and submitted relevant S.A. khatian showing the same recorded in the name of the plaintiff's predecessors vendor, those have been duly marked as Exhibits 1-15. The government though claim the property as khas land, but could

not show any papers how the government acquired the same and in what process. In the absence of showing any paper on the part of the defendant, the trial court rightly decreed the suit in favour of the plaintiffs and the appellate court when rejecting the application for condonation of delay rightly observed that the appellant-government could not satisfy the court by giving explanation of such delay as well as the basis of their claim of recording R.S. khatian in the name of the government, as such, both the courts below committed no illegality or error in the decision occasioning failure of justice.

Heard the learned Advocates of both the parties, have gone through the revisional application, plaint, written statement, evidences both oral and documentary available in lower court records and the impugned judgment and decree passed by both the courts below.

Admittedly, the property originally belonged to one Kamini Kishore Mallik, as tenure-holder who died leaving 2 sons Jitendra Kishore Mallik and Shailendra Kishore Mallik who settled the property in favour of Hiralal, Mohilal, Motilal and Nepal Chandra in the year 1358 B.S. After SAT Act came into force the government

recognized them as tenants by recording their names in S.A. khatians (Exhibits-2 series). S. A. recorded owner transferred 15 sataks of land to one Abul Hashem and Abdul Halim. Heirs of Motilal and Hiralal and others transferred 15 sataks of land in favour of one Tota Miah by registered Deed No. 6437 dated 12.10.1963. Tota Miah transferred the same by registered Deed Nos. 3443 dated 02.04.1973 and 4751 dated 03.05.1973 to the plaintiff No.1, Siraj Uddin who after purchase got his name mutated in the khatian, paid rents to the government, created holding in his name. All the exhibits chronologically maintained a chain of title without any break. The government though contested the suit by filing written statement could not satisfy the court, how the government claim the property to be khas land and the basis of recording R.S. Khatian No. 1 in its name. The government can acquire property by process of law, either for arrear rents by initiating a certificate case or after whole sale acquisition of Jamindary can take over excess land from Jamindar or under Section 20 of the SAT Act, considering nature of the land, but in the instant case, no such claim could be advanced on the part of the government to substantiate that the property in question vests in the government as khas land or it has taken over the same by any

process of law. Only argument advanced by the government that a tenant under superior land lord cannot create pattan in favour of any person which has no basis at all. In the instant case, as per C.S. record Kamini Kishore Mallik was a tenure-holder “মধ্যস্থত্ব ভোগী”. He died leaving 2 sons who settled the suit land in favour of Harilal Podder and 3 others. There was no impediment to settle the land by a tenure-holder in favour of Hiralal Podder and others. Rather, the government by recording the name of Hiralal Podder and others in S.A. khatians unconditionally recognized them as tenants under the government by accepting rents from them, as such, the claim of the defendant has no leg to stand.

In view of the above, from perusal of judgment and decree passed by the trial court as well as the order passed by the appellate court, this Court finds no illegality or error of law.

Apart from this, the government as appellants came with an appeal before the appellate court at a delay of 2571 days with an application for condonation of such delay under Section 5 of the Limitation Act.

In have gone through the application for condonation of delay.

To appreciate the fact, application for condonation of delay is reproduced below:

“দরখাস্তে আপীলকারী সরকার পক্ষের বিনীত নিবেদন এই
বে,

অত্র মোকদ্দমাটি বিগত ১২/০৮/২০১০ইং তারিখে রায় এবং
বিগত ১৯/০৮/২০১০ইং তারিখে সরকার পক্ষের বিরুদ্ধে ডিক্রী হয়
বটে। ডিক্রী অস্তে অত্র মোকদ্দমার বিষয়ে রেকর্ড সংশোধনের দরখাস্ত
দিলে ডি,সি, অফিস থেকে বিগত ১০/০২/২০১৫ইং তারিখে আপীল
দায়ের এর জন্য পত্র পেরণ করিলে বিজ্ঞ সাবেক জি,পি সাহেব বিগত
১৫/০৩/২০১৬ইং তারিখ সই মোহরের নকলের দরখাস্ত দিলে নথি
খুঁজিয়া পাওয়া যাইতেছিল না বলে দরখাস্ত খারিজ করিয়া দেয়।
পরবর্তীতে বিগত ০২/০৮/২০১৬ইং তারিখে পুনরায় নকলের দরখাস্ত
দিয়া ২৮/০৮/২০১৭ইং তারিখে নকল প্রাপ্ত হইয়া আপীলের মেমো
তৈয়ার করিয়া বিজ্ঞ আদালতে ৩০ দিনের মধ্যে দাখিল করা হয়।
ইহাতে ২৫৭১ দিনের তামাদী ঘটে।

অতএব প্রার্থনা, হুজুর আদালত দয়া প্রকাশে উপরোক্ত
অবস্থার আলোকে ২৫৭১ দিনের তামাদি মওকুফের আদেশ দিয়া
আপীলের মেমো গ্রহণ করার আদেশ দানে সদয় মর্জি হয়।”

From perusal of application under Section 5 of the Limitation Act as quoted above, I find that no explanation has been given in the application why the government awaited till 2015 for 5 years after passing the judgment and decree by the trial court and no explanation has been given by learned government-pleader why after receiving a letter dated 10.02.2015 from the Deputy Commissioner

Office he waited more than 1 year till 15.03.2016 for filing an application for obtaining certified copy of the judgment and decree and failed to state that when the said application for certified copy was rejected. Again stated that they filed application for obtaining certified copy of the judgment and decree on 02.08.2016 and obtained delivery of the same on 28.08.2017 after more than 1 year. The petitioners-government utterly failed to give explanation as to why they filed appeal before the appellate court after 2571 days.

Moreover, from the facts and circumstances of the case, this Court finds no reason for the government to prefer any appeal against the judgment and decree of the trial court, where the government failed to produce even a single paper before the trial court in respect of foundation and basis of recording R.S. Khatian No. 1 in its name. Because of this situation, filing of appeal affording opportunity to the government to get the appeal heard on merit would be a futile exercise of power, unnecessarily killing valuable time of the court and incurring expenses of both the parties for a fruitless litigation.

Therefore, I find no reason to interfere with the judgment and decree passed by the trial court as well as the judgment and order passed by the appellate court rejecting the appeal on the ground of barred by limitation, as the appeal was filed at a delay of 2571 days without giving any reasonable explanation for condonation of such delay.

In the result, the Rule is discharged, however, without any order as to costs.

Communicate a copy of the judgment to the Court concerned and send down the lower court records at once.