

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISI inconvenience ON
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashafa Hussain

Civil Revision No. 5822 of 2022

Mohammad Akteruzzaman

.....petitioner

-Versus-

Mohammad Amzad Hossian and others

..... Opposite parties

Mr. Mohammad Ziaul Hoque, Advocate

..... For the petitioner

Mr. Shishir Kanti Mazumder, Advocate

..... For the Opposite Parties

Heard on: 21.05.2023, 22.05.2023,
23.5.2023 and

Judgment on 04.06.2023

Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned Judgment and order dated 17.11.2022 passed by the learned Additional District Judge, 8th Court, Chattogram in Miscellaneous Appeal No. 366 of 2022 disallowing the appeal and thereby affirming the judgment and order No. 11 dated 06.07.2022 passed by the learned Joint District Judge, 1st Court, Chattogram in Other Suit No. 80 of 2022 allowing the application for temporary injunction filed by the opposite party No. 1 should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

The instant opposite party as plaintiff filed Other Class Suit No. 80 of 2022 in the court of Joint District Judge, 1st Court,

Chattogram impleading the instant petitioner as defendant No. 5 along with opposite party Nos. 2-24 for declaration of title as well as for declaration that sale deed Nos. 2984 dated 13.07.2003 and 5604 dated 31.12.2003 are illegal, forged and not acted upon. During pendency of the suit the opposite party as plaintiff filed an application for temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 praying for temporary injunction. The prayer of application for temporary injunction is to the effect that a proceeding of mutation case No. 3246/21-22 be stayed till disposal of the suit. Upon hearing the parties the trial court allowed the application for temporary injunction by its judgment and order dated 06.07.2022. Being aggrieved by the judgment and order of the trial court the defendant in the suit (petitioner here) filed Miscellaneous Appeal No. 366 of 2022 which was heard by the Additional District Judge, 8th Court, Chottogram. The appellate court after hearing the appeal however dismissed the appeal by its judgment and order dated 17.11.2022 and thereby affirmed the judgment and order of the trial court passed earlier. Being aggrieved by the judgment of the court below the defendant in the suit, appellant in the Appeal filed civil revisional application which is presently before this court for disposal.

Learned Advocate Mr. Mohammad Ziaul Hoque along with Ms. Nusrat Jahan appeared for the petitioner while Mr.

Mohammad Ziaul Hoque represented the plaintiff as opposite parties.

Learned Advocate Ms. Nusrat Jahan for the petitioner submits that the courts below upon non consideration of the relevant laws and without taking prima facie balance of convenience and inconvenience into consideration in the application for temporary injunction unjustly passed the order under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure causing injustice to the defendants and therefore the judgment of the courts below are not sustainable and liable to be set aside. She submits that Section 56 (d) of the Specific Relief Act states that injunction cannot be granted to stay proceeding in a court not subordinate to that from which injunction is sought. She submits that therefore the revenue authority not being subordinate to the court, court have no power to stay proceeding of revenue authority. She submits that Section 56(d) of the relevant Act provide that an injunction cannot be granted to interfere with the public duties of any department of the government. She submits that in the mutation proceeding the duty of the concerned authority is a public duty which is administrative and that cannot be interfered with. She makes some other factual submissions regarding the suit land and concludes her submissions praying that the order of the courts

below ought to be set aside and the Rule bears merit and ought to be made absolute for ends of justice.

On the other hand learned Advocate Mr. Shishir Kanti Mazumder for the opposite parties opposes the Rule and submits that the courts below upon correct evaluation of the circumstances and the law gave concurrent judgment and order of temporary injunction and those need not be interfered with. Upon a query from this bench regarding the petitioner's contention of Section 56 (d) of the Specific Relief Act providing for non interference with public duties to the effect of mutation proceeding, he controverts such contention of the learned advocate for the petitioner. He submits that the civil court has inherent power to issue proper order for ends of justice inter alia under Order 39 Rule 1 and 2 of the Code of Civil Procedure. He takes me to the materials and contends that the original suit is for declaration of title and that sale deed is void. He submits that therefore it is clear that the title of the suit land is the primary subject matter in the suit. He points out that it is also evident that the mutation case filed by the defendant No. 5 also corresponds to the suit land. He further points out that it is also evident that the suit land has been acquired by way of L.A. case by the government. He continues that therefore the compensation amount should go to the person who has legal title in the suit land. He further contends that however such legal title is yet to

be decided in the suit which is still pending before the lower court. He argues that if the mutation case is allowed to proceed pending the suit there is every chance that the party in whose name the suit land will be mutated in the record pursuant to mutation case shall receive the compensation amount out of the L.A. case as part of regular administrative procedure. He submits that entitlement to receive compensation shall depend on the decision on the title which issue is pending in the suit. He submits that the fate of the parties depend on the outcome of the suit. He argues that if compensation is received by either party prior to disposal of the suit, it shall frustrate the whole purpose of filing the suit. He submits that therefore the courts below did not commit any mistake in passing the order and the Rule bears no merits and ought to be discharged for ends of justice.

I have heard the learned Advocates from both sides, also perused the application and materials on records including both the judgments of the courts below. It is evident that the matter arises out of concurrent judgments granting temporary injunction passed in an application under Order 39 Rule 1 and 2 read with Section 56 of the Code of Civil Procedure. The matter primarily relates to title in the suit land. Apparently the suit land is also the subject matter of a mutation case which was filed by the defendant No. 5. Moreover apparently the suit land has been acquired under an L.A. Case by the government.

However the fate of the title of the suit land is yet to be decided depending on the fate of the suit. The learned advocate for the defendant petitioner cited Section 56 (d) of the Specific Relief Act which is a general provision of law. However in the instant case circumstances are distinguishable from the general principle contemplated in section 56 (d). In this case since the land has already been acquired by way of an L.A. case by the government, therefore pursuant to the mutation of the land, the party in whose name record of rights may be prepared, may approach the authority to claim the compensation relying on the record of rights. Needless to state that record of rights conferred by an order of an executive authority can only be evidence of possession and cannot be evidence nor confer title. Therefore since the title of the land is still undecided it will be quite unfair to grant the compensation finally. If compensation is paid the whole purpose of the suit will be frustrated.

Learned advocate for the petitioner raised a contention that Section 56 (d) of the Specific Relief Act does not allow any court to interfere in the official duty of the government department. In my considered view although the revenue authority might not be technically an inferior authority, but however it goes without saying that the civil court has inherent power to issue appropriate orders for ends of justice under the provisions of the Code of

Civil Procedure, 1908 inter alia Order 39 Rule 1 and 2 of the code.

In an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure it is first and foremost necessary to examine prima facie balance of convenience and inconvenience of the parties. In this matter the convenience and inconvenience principle can be attributed to both parties since the title suit is yet to be decided. It may also be reminded that the authority conducting the mutation case cannot issue any orders upon by passing the order of the civil court. Therefore since the prima facie balance of convenience and inconvenience, attributes to both parties, therefore the order of temporary injunction was correctly given. Such being may considered view I do not find any merits in the Rule.

In the result, the Rule is discharged. The trial court is hereby directed to dispose of the matter as expeditiously as possible preferably within six months of receiving the copy of the judgment and order.

The order of stay granted earlier by this court is hereby recalled and vacated.

Communicate the order at once.

Shokat (B.O)