

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K.M. Zahirul Huq

First Appeal No. 488 of 2019

Deputy Commissioner, Gazipur appellant

-Versus –

Divisional Forest Officer and others

.....respondents

Mr. Redwan Ahmed, Deputy Attorney General with
Mr. Saiful Islam Miajee, Mr. Md. Abul Khair Khan
and Mrs. Anjuman Ara Lima, Assistant Attorney
Generalsfor the appellant

Mr. Tapan Kumar Bepary with

Mr. Bulbul Das, Advocates

.....for respondent nos. 4-56

Judgment on: 03.08.2025.

Bhishmadev Chakrabortty, J:

This appeal at the instance of the plaintiff is directed against the judgment and decree of the Joint District Judge, Court 1, Gazipur passed on 27.01.2016 in Title Suit No. 205 of 2007 dismissing the suit for declaration of title in the suit land and that RS record prepared in the name of defendant Forest Division is erroneous.

The plaint case, in brief, is that the original owner of the suit land measuring 204.4 acres as described in the schedule to the plaint was the Vawal Court of Wards Estate and CS khatian 4 was prepared in its name. After the State Acquisition and Tenancy Act, 1950 (the SAT Act, 1950) came into force the suit land with other lands of the zaminders was vested in the Government and it took over its possession. During its possession and enjoyment through its officers

SA khatian 1 has been prepared in its name. Some landless people filed application for taking lease of the suit land. The Government through the local Kanungo and the Assistant Commissioner (AC Land) made an inquiry. In the inquiry it came out that the land is *khas* land of the government and then it leased out some lands to landless farmers and handed over possession to them. Since then the leaseholders have been enjoying the land by erecting houses, implanting trees and growing crops. They separated their *jamats*, mutated their names and have been paying rent to the Government. Except the leasehold lands, other lands are under the supervision and control of the plaintiff. The lessees established a primary school and there is a helipad and a graveyard in the leasehold lands. The plaintiff also excavated a pond in the schedule land which is being used by the public. The AC Land, Shreepur filed an application to the plaintiff on 23.02.2007 stating that RS record in respect of the suit land has been prepared in the name of Divisional Forest Officer in khatian 2 and for that reason the concerned authority refused to accept rent for the suit land. There is no forest in the suit land. The erroneous record of rights prepared in the name of the Forest Department has clouded the plaintiff's title in the suit land. Hence, the suit for declaration of title in the suit land with further declaration that RS record prepared in the name of the Forest Division is erroneous.

Defendants 1, 2 and 3, the forest division contested the suit by filing a written statement denying the contention made in the plaint. They further stated that the land of CS and SA plot 1923 of 43 Shreepur mouza within the district of Gazipur originally belonged to the then Vawal Court of Wards Estate. In gazette notification number 38 published on 12.01.1934 the Government declared the land as 'vested' forest. As per the provisions of the SAT Act, the properties of Gazipur district belonging to the zaminders were acquired through gazette notifications 4836 LR and 4849 LR published on 02.04.1956 and all the 'acquired' and 'vested' forests went under the control of the Government. Thereafter the Government as per gazette notification dated 13.04.1955 took steps through gazette notifications dated 31 October and 15 November 1984 and under section 4 of the Forest Act, 1927 (the Act, 1927) to establish a reserved forest. Accordingly, the Forest Settlement Officer and the Deputy Commissioner, Gazipur published a gazette notification on 06.06.1985 under section 6 of the Act, 1927. After publication of gazette notifications 4836 LR and 4849 LR on 02.04.1956 and on 06.06.1985 no one could claim the suit land which had already been vested as forest in the Forest Department. The property of plot 1923 is the property of the forest department and they are maintaining and protecting it without any interruption from any quarter. The plaintiff with fraudulent intention of grabbing the defendant's property created some forged documents showing that the property was leased out to

third parties. In view of the above position, the suit would be liable to be dismissed.

Defendants 4 to 6, 9 to 26, 29 to 37 and 42 to 47 filed a set of written statement admitting the plaintiff's case. They stated that SA khatian in respect of the suit land was prepared in the name of the government in khatian 1. The Government decided to settle the land among landless people and these defendants in different categories took settlement from the government after complying with the rules for obtaining lease. Defendant 37 took settlement 1 acre of land in the suit schedule. There are Social Welfare Samity, Banarupa Jame Mosque, Baitur Nur Hafizia Madrasha, Banarupa Government Primary School and houses of landless people situated in the suit land. Some other persons have been possessing and enjoying parts of the suit land by implanting fruit trees thereon and, therefore, the suit would be dismissed.

On the pleadings the trial Court framed four issues. In the trial, the plaintiff and defendants 1-3 examined one witness each. The documents produced by the plaintiff were exhibit-"1 series" while the documents of defendants 1-3 were exhibits-"Ka"- "Umo". However, the Joint District Judge dismissed the suit deciding all the material issues against the plaintiff giving rise to this appeal.

Ms. Anjuman Ara Lima, learned Assistant Attorney General taking us through the materials on record submits that the land in

question is *khas* land of the government. SA khatian 1 has been prepared in its name. Recording of the property in SA Khatian 1 proves possession of the plaintiff in it. The government complying with the Rules and procedure settled the land in the names of defendants 4 to 56. The lease holders are in possession in some parts of the suit land. There is a mosque, a madrasa, a school and houses in the suit land belonging to the settlement holders. No gazette as per the provisions of section 20 of the Act, 1927 has been published. Therefore, the preparation of the RS khatian in the name of the forest department is erroneous. The trial Court without entering into the facts and evidence on record dismissed the suit holding that the RS record in respect of the suit land has been correctly prepared in khatian 2 in the name of the Forest Department. In view of the above position, the judgment and decree passed by the Court below would be set aside.

No one appears for respondents 1, 2 and 3. On the other hand Mr. Tapan Kumar Bepary, learned Advocate for respondents 4 to 39, 41 to 48, 50 to 53 and 55 to 56 adopts the submissions of the learned Assistant Attorney General. He further submits that these respondents took lease from the Government through settlement cases and deeds were registered in their names. They took settlement of the land and have been possessing and enjoying the same for so many years. Since, as per the SA record the land belongs to the government, and as such,

settlements to these respondents are legal. Therefore, the appeal may be allowed.

We have considered the submissions of both sides and gone through the materials on record. It is admitted that the suit land originally belonged to the then Vawal Court of Wards Estate and CS khatian 4 and SA khatian exhibit 1 series prove it. In the aforesaid khatain the land is found as '*gazari garh*'. The government claims that after the SAT Act came into force the government acquired the suit land with other lands being excess land of the then zaminders and accordingly the SA khatian 1 was prepared in its name. The government being its owner settled some lands among the landless people. The defendant Forest Division claims that the government published a gazette notification on 12.01.1934 exhibit-“Ga” declaring the land as 'vested forest'. The defendants further claims that another gazette notification exhibit 'Kha' was published on 13.04.1955 and finally the government published notifications on 31.10.1984 and 15.11.1984 exhibit-'Ka' under section 6 of the Act, 1927. Plaintiff government did not deny the said gazette notifications. It is found that the government declared the suit land as 'vested forest' in compliance with the provisions of sections 4 and 6 of the Act, 1927. The plaintiff government attempted to make out a case that since the provisions of the Act, 1927 were not complied with, it is still the owner of the land. No gazette notification under section 20 of the Act, 1927 was

published and, therefore, it is entitled to settle the land to anyone. It is also found that the SA khatian in respect of the suit land was prepared in the name of the government in khatian 1 but subsequently, RS khatian has been prepared in the name of the Forest Division. Therefore, it is evident that the notifications published by the government under sections 4 and 6 of the Act of 1927 exhibit 'Ka', 'Kha' and 'Ga' took their full effect. After the publication of the notice under section 6 of the said Act, 1927 no one came forward with any objection claiming the suit land. Therefore, the government cannot settle it to anyone without publishing another gazette notification of deforestation.

We do not find in the record that the government took any step under section 27 of the Act, 1927 to lease out the land under notifications. To lease out such land of forest which has been declared as vested forest by gazette notifications, the government must first declare that the land is no longer vested forest. In the case of Bangladesh represented by the Ministry of Land, Secretariat and others vs. Mohammad Nurun Nobi Bhuiyan and others passed in Civil Petition for Leave to Appeal Nos. 1457 and 1458 of 2009 a piece of forest land was leased by the Deputy Commissioner, Chattogram to a private party who after cutting trees started construction work but our Appellate Division interfered with the lease and restrained the lessee from making any construction work and directed to remove the

construction which was complied with. In view of the said decision the revenue department or the Ministry of Land or the Deputy Commissioner has no authority to lease out any land of the forest department for any purpose other than protecting the forest. The Deputy Commissioner, Gazipur, therefore, cannot lease out the notified area of vested forest to any person or organization for any purpose other than protection of forest. Similarly, in the case of Bangladesh Environmental Lawyers Association (BELA) vs. Forest and Climate Change, Bangladesh Secretariat Dhaka and others passed in Writ Petition No. 4901 of 2019 a bench of this Division took the similar view following the judgment and order passed in the above civil petition for leave to appeal. In both cases it has been held that since the land in question was notified under section 4 of the Act, 1927 it must be treated as notified forest and leasing out any part thereof for any other purpose is prohibited. In the present case, we find that the Deputy Commissioner claimed to have leased out the notified 'vested forest' land which was notified in gazette notification in 1934, 1955 and finalized in 1984 exhibits-'Ka' 'Kha' and 'Ga'. Moreover, nothing was brought before the trial Court to show that the Deputy Commissioner leased out some properties to other defendants. No lease agreement was produced to substantiate the claim of the plaintiff or of other defendants who alleged to have taken lease from the plaintiff. Leasing out forest land also goes against the government's afforestation policy aimed at saving the environment

and protecting the ecosystem of the country. If any approval was taken by the Deputy Commissioner, Gazipur for leasing out the land of the notified forest, it is deemed to have been taken by misrepresenting the higher authority. In view of the above discussion, we find that the plaintiff government has failed to prove its title in the suit land. The trial Court assessed the oral evidence of the witnesses and the documents submitted before it and dismissed the suit. We find nothing to interfere with the judgment passed by the trial Court. This appeal, therefore, bears no merit.

Consequently, the Appeal is dismissed without any order as to costs. The judgment and decree passed by the trial Court is hereby affirmed.

Communicate this judgment and send down the lower Court records.

A.K.M. Zahirul Huq, J:

I agree.