IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

CIVIL REVISION NO. 1889 OF 2023

In the matter of:
An application under Section 115(1) of the Code of Civil Procedure, 1908.

AND

In the matter of:

Md. Azizul Islam and another.

.... Petitioners

-Versus-

Md. Borhan and others.

....Opposite-parties

Mr. Md. Amimul Ehsan with
Mr. Mohammad Ali Hasan, Advocates
... For the petitioners

Mr. Uzzal Bhowmick with
Mr. Md. Mamun Mia, Advocates
....For the opposite-party nos. 1, 2, 7, 15 and 35

Heard on 21.05.2024 and 27.05.2024.

Judgment on 27.05.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the defendant nos. 8 and 9 in Title Suit No. 659 of 2022, this rule was issued calling upon the opposite-party nos. 1-38 to

show cause as to why the order no. 8 dated 01.03.2023 passed by the learned Joint District Judge, 2nd Court, Dhaka in the said suit rejecting the application filed under order VII, rule 11 of the Code of Civil Procedure filed for rejection of plaint should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, all further proceedings of Title Suit No. 659 of 2022 was stayed for a period of 3(three) months which was lastly extended on 06.02.2024 for another 6(six) months.

The short facts leading to issuance of the instant rule are:

The present opposite-party nos. 1-38 as plaintiffs filed the aforesaid suit seeking following reliefs:

> *‘‘(ক) নিম্ন তফসিল বর্ণিত নালিশী সম্পত্তিতে বাদীগণ ১ ষোল আনা মালি মর্মে এক ঘোষণা মূলক ডিক্রী দিতে,*
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> *(খ) নিম্ন তফসিল বর্ণিত নালিশী সম্পত্তিতে বাদীগণ শান্তিপূর্ণ ভোগ দখলীয় ভূমি বি.আর.এস ২২৮৯ ও ২২৬৬ নং খতিয়ানে বি.আর.এস ৮৫৩৯ ও ৮৫৪০ নং দাগে ভূল ও ভ্রমাত্মক, বে-আইনী, অকার্যকর এবং বাদীগণের উপর বাধ্যকর নয় মর্মে এক ঘোষণা মূলক ডিক্রী দিতে,*
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> *(গ) এল,এ কেস নং ০৩.১৫.১৭/২০২০-২০২১, তারিখ- ১৯/০৪/২০২২ ইং মূলে অধিগ্র হণের বিপরীতে মোকদ্দমার তায়দাদ মূল্য মং- ১৬,০০,০০,০০০/-(ষোল কোটি) টাকা মাত্র বাদীগণ পাইবার হকদার মর্মে ডিক্রী দিতে,*
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> *(ঘ) মোকদ্দমাযর যাবতীয় খরচের ডিক্রী বাদীগণের অনুকূলে এবং বিবাদীগণের প্র তিকূলে প্র দানের ডিক্রী দিতে,*

(ঙ) আইন এবং ইকুইটি মতে বাদী আর যে সকল প্র তিকার পাইবার অধিকারী হয় তদমর্মে বাদীগণের অনুকূলে এবং বিবাদীগণের প্র তিকূলে ডিক্রী দিতে হুজুর আদালতের একান্ত মর্জি হয়।''

The suit land comprises an area of 1.8732 acres equivalent to 18.732 decimals of land. After filing of the said suit by the plaintiff-opposite-parties dated 23.10.2022, the defendant nos. 8 and 9 (petitioners) appeared in the suit and filed an application under order VII, rule 11 read with section 151 of the Code of Civil Procedure for rejection of the plaint contending *inter alia* that, the said suit is not maintainable under the provision of section 145A and 145F of the State Acquisition and Tenancy Act, 1950 as the suit has to be filed before the land survey tribunal as per the provision of section 145A of the said Act. Against the application for rejection of the plaint, the plaintiffs filed written objection denying all the material averments so made in the application mainly asserting that, they have been in possession in the suit property and therefore, the allegation made in the application of the rejection of the plaint will be determined at the trial upon taking evidence from the parties. The learned Judge of the trial court ultimately took up the said application for hearing and vide order dated 01.03.2023 rejected the plaint holding that, the suit property is an acquired land and whether the plaintiffs have got title and possession over the suit property and entitled to get the compensation from the acquiring authority will be determined by taking evidence from the parties to the suit on framing respective issues and ultimately, rejected the application. It is at that stage, the defendant nos. 8 and 9 came before this

court by filing this revisional application and obtained instant rule and order of stay.

Mr. Md. Amimul Ehsan, the learned counsel appearing for the petitioners upon taking us to the revisional application at the very outset submits that, in the impugned order, the learned Judge has not touched upon the legal provision on which the application for rejection of the plaint has been filed rather sidetracking the legal provision, the learned Judge observed some extraneous facts which cannot come within the purview of order VII, rule 11 of the Code of Civil Procedure.

To supplement the said submission, the learned counsel then contends that, though there has been no clause ever mentioned in the application for rejection of the plaint but clause (d) of order VII, rule 11 of the Code of Civil Procedure will come into play in rejecting the plaint since the suit is barred by law in other words, under section 145A of the State Acquisition and Tenancy Act.

When we pose a question to the learned counsel for the petitioner in regard to prayer so have made in the plaint which appears to be in a declaratory form within the meaning of section 42 of the Specific Relief Act and whether that prayer can be barred under section 145A of the State Acquisition and Tenancy Act, the learned counsel then readily contends that, in prayer ‘kha’, the plaintiffs prayed that the BRS record prepared in the name of the defendants is wrong and incorrect which can only be determined by a land survey tribunal not by any ordinary civil court and therefore, section 145A of the State Acquisition and Tenancy Act is bar in filing the suit.

The learned counsel by supplying the gazette notification dated 07.01.2021 in regard to the suit property also contends that, in respect of the suit properties gazette notification was published so the plaintiffs-opposite-parties had time to file the suit before the land survey tribunal as per section 145A (6) and (7) of the State Acquisition and Tenancy Act but they failed to do so.

The learned counsel then by referring to the cause title of the plaint also contends that, in the cause title, the plaintiffs themselves admitted that the land survey tribunal was established in Dhaka on 04.11.2020 and they came to learn about the wrong recording of the suit land on 05.07.2022 so they could have taken step to file the suit before the land survey tribunal either from the date of publication in the gazette notification dated 07.01.2021 or from the date of establishment of the said land survey tribunal dated 04.11.2020 and since they have admitted that they have got knowledge about setting up the tribunal so they can never file any suit before the ordinary civil court in a declaratory form other than to the land survey tribunal which is the proper form.

The learned counsel by referring to the provision of section 145D(2) of the State Acquisition and Tenancy Act also contends that, the proceedings to be initiated before a land survey tribunal will be treated as "judicial proceeding" within the meaning of section 193 of the Penal Code having no reason to say that the said tribunal cannot pass any decree for correcting any mistake in the latest record-of-right.

The learned counsel then by referring to section 145F of the State Acquisition and Tenancy Act further contends that, since in the said

provision, there has been clear bar of the jurisdiction of the civil court to file any suit challenging the final publication of the last revised record so on that score as well, the suit so filed by the present plaintiffs-opposite-parties cannot lie.

The learned counsel by referring to the provision of section 145H of the State Acquisition and Tenancy Act also contends that, since that provision carries an overriding clause then the plaintiffs-opposite-parties assume no authority to file a suit in any ordinary civil court challenging the latest record.

To circumvent the submission based on the decision so reported in 31 DLR 421 placed by the learned counsel for the opposite-parties with regard to section 143A of the State Acquisition and Tenancy Act though repealed by ordinance no. LXIV of 1975 and by referring to clause (a) and (b) of sub-section (4) thereof also contends that, the procedure followed in correcting the S.A. record and that of the provision so have been provided in section 145A of the State Acquisition and Tenancy Act for correcting last revised record is absolutely different having no nexus with those provisions in the instant case and thus the said decision is not applicable in the facts and circumstances here.

Insofar as regards to the prayer ‘ga’ to the plaint made by the plaintiffs-opposite-parties also contends that, in that prayer, the plaintiffs sought a declaration that they are entitled to the compensation at taka 16 crores but that very prayer is also not maintainable in view of the clear provision provided in section 47 of the Acquisition and Requisition of Immovable Property Act, 2017 (the Act No. 21 of 2017) contending that,

since the plaintiffs claimed the suit property so does the compensation thereof so invariably they had knowledge with regard to the notices issued by the acquiring authority under sections 4, 5 and 7 of the said Act No. 21 of 2017 and in view of the said notices, they had the opportunity to raise objection to the acquiring authority before the compensation is fixed but without taking any step they simply cannot file a suit in the declaratory form even in regard to prayer 'ga' of the plaint as section 47 clearly provides to take step under the Act (এই আইনের অধীনে কোন ব্যবস্থা গ্র হন ব্যতীত) and if any step is not taken then they will be debarred from filing any suit challenging any step taken by the acquiring authority. On that very score, the prayer 'ga' so made in the plaint also cannot be sustained.

Insofar as regards to prayer 'ka' to the plaint, the learned counsel further contends that, since ultimate relief, the plaintiffs sought in the suit for correction of BRS record so no positive result will be yielded by the plaintiffs even if that very prayer is retained if other two prayer is not sustained even then the said prayer is also barred under section 42 of the Specific Relief Act since the plaintiffs admittedly have not been in possession in the suit land so no suit under section 42 of the Specific Relief Act can be maintained.

In addition to that, the learned counsel also by referring to section 145F next contends that, since under the guise of correcting the BRS record that very prayer has been made so as per that provision of law, the prayer no. 'ka' also cannot sustain.

The learned counsel by referring to the impugned order finally contends that, the impugned order does not reflect any discussion of the

legal provision though it has vividly been asserted in the application filed under order VII, rule 11 of the Code of Civil Procedure and on that score, the learned Judge of the trial court in an abrupt manner rejected the application which is devoid of any legal basis and finally prays for making the rule absolute by setting aside the impugned order rejecting the plaint.

On the flipside, Mr. Uzzal Bhowmick, the learned counsel appearing for the opposite-party nos. 1, 2, 7, 15 and 35 very robustly opposes the said contention taken by the learned counsel for the petitioners and at the very outset submits that, the suit itself is well maintainable since the title of the plaintiffs has been clouded by publishing the name of the defendants in the BRS record and since they have not prayed for correction of the BRS record rather suit was filed prying for declaration of title as we as the declaration that they are entitled to compensation money, the suit is maintainable in its present form.

The learned counsel by referring to a decision reported in 31 DLR (HCD) 421 also contends that, in that very decision, it has been established that if any suit is filed other than correction of the latest record that very prayer cannot be entertained in the suit so in view of that, there has been no legal bar if any aggrieved party filed a suit in the declaratory form challenging the latest record claiming declaration of their title in the suit property and that very decision is equally applicable in the facts and circumstances of the instant case.

The learned counsel further contends that, in respect of prayer ‘ka’ to the plaint, the suit was simply filed under section 42 of the Specific

Relief Act for declaration of title in the suit property and since it came to the notice of the plaintiffs that latest BRS record was not prepared in their name so a supplementary prayer was also made that the said record was also illegal, ineffective and also not binding upon the plaintiffs which in no way can debar the plaintiffs to file the suit before a ordinary civil court other than to the land survey tribunal.

The learned counsel by referring to prayer 'ga' also contends that, since there has been a provision in section 11 of the Act of 2017 to retain the compensation money in the custody of the acquiring authority until and unless, the dispute is resolved with regard to title of the acquired property, so the said prayer is also quite maintainable.

The learned counsel while confronted with the provision of section 47 of the Act of 2017 next contends that, since in the said Act, there has been no scope to take any step to be taken by the plaintiffs (এই আইনের অধীনে কোন ব্যবস্থা গ্র হন ব্যতীত) so for that obvious reason, the plaintiffs finding no other avenue filed the instant suit, where section 47 will not put any bar and therefore, the said prayer is well maintainable. With that submission and relying on the decision, the learned counsel finally prays for discharging the rule.

We have considered the submission so advanced by the learned counsel for the petitioners and that of the opposite-party nos. 1, 2, 7, 15 and 35 and very meticulously gone through the provision so have been provided in section 145A, D, F and H of the State Acquisition and Tenancy Act, 1950 and that of the sections 4, 5, 7, 11 and 47 of the Act of 2017. Aside from that, we have also perused the gazette notification dated

07.01.2021, the plaint, the application for rejection of plaint and the written objection filed thereagainst.

On going through the plaint in particular, paragraph no. 7, we find that, the cause of action to file the suit arose on 05.07.2022 when the plaintiff came to know about the wrong preparation of BRS record in the name of the defendants. Surprisingly, in the second line of the said paragraph no. 7, the plaintiffs asserted that, they went to pay *khazna* as per BRS record and then they came to learn that said BRS record was prepared in the name of the defendants and they also admitted that, the land survey tribunal was established in Dhaka on 04.11.2020 but why they did not invoke the provision of section 145A of the Act of 1950 by filing suit in the land survey tribunal has not been mentioned in any paragraphs of the entire plaint rather out of the blue, they filed the suit making three prayers which have been stated hereinabove. So it can safely be construed that, knowing everything about the formation and jurisdiction of the land survey tribunal and keeping themselves within time to challenge the preparation of the BRS record in the land survey tribunal, they intentionally filed the instant suit essentially under the provision of section 42 of the Specific Relief Act.

Furthermore, on going through the impugned judgment and order, we find that, the learned Judge of the trial court made some extraneous observation and discussion going beyond the relevant provision of law in spite of the fact that, the defendants in their application for rejection of the plaint has very clearly asserted under which provision of law, the suit is barred which exemplify lack of legal acumen of the learned Judge of the

trial court though the learned Judge has clearly found that the property has been acquired by the government so if the property is acquired by the government then it is obvious that the property has not been in possession of the plaintiffs or the defendants but in the next breath, the learned Judge made an observation that without taking evidence to the parties to the suit, the claim made by the plaintiffs cannot be determined which is totally absurd. Be that as it may, since the suit is found to be barred by law as the suit has been filed in the guise of declaratory form, by challenging the propriety of BRS record that stands in the name of the defendants which has subsequently been acquired by the government so the suit simply cannot continue.

Insofar as regards to the citation referred by the learned counsel for the opposite-parties in the light of repealed section 143A, we find that, the scope and objective of that section 143A and that of the objective of section 145A of the State Acquisition and Tenancy Act is entirely different having no scope to challenge the propriety of last revised record of right in a declaratory form where section 145F of the State Acquisition and Tenancy Act put a clear bar. So we find ample substance to the submission placed by the learned counsel for the petitioner that, until and unless, the provision of section 145A and 145F of the State Acquisition and Tenancy Act is declared inoperative, there has been no scope to challenge the latest record in ordinary civil court other than to the land survey tribunal in any manner. However, from prayer ‘ka’ and ‘kha’ to the plaint, it becomes crystal clear that, in the guise of declaratory form, the plaintiffs have ultimately challenged the propriety of the latest BRS

record. Then again, the prayer ‘ka’ to the plaint clearly runs opposite to the provision of section 145F of the State Acquisition and Tenancy Act.

Furthermore, in regard to prayer ‘ga’ to the plaint since there has been clear bar in section 47 of the Act No. 21 of 2017 to file any suit challenging any arrangement taken by the acquiring authority (গৃহীত কোন ব্যবস্থার বিরুদ্ধে) and fixing compensation and disbursement of the same since certainly comes within the ambit of “গৃহীত কোন ব্যবস্থার বিরুদ্ধে” so invariably prayer ‘ga’ cannot stand as well.

Last but definitely not the least, Chapter XVIIA has been incorporated in the State Acquisition and Tenancy Act by Act No. IX of 2004 only to lesser the burden of the civil court of myriad of civil disputes surrounding the preparation of latest record by setting up separate forum for redressal by providing a non-obstante clause therein having no scope to unsettle the said good intention of the legislature.

Given the above facts and circumstances, we find ample merit in the rule.

Accordingly, the rule is made absolute however without any order as to cost.

Resultantly, the plaint of Title Suit No. 659 of 2022 is rejected.

The impugned order no. 8 dated 01.03.2023 passed by the learned Joint District Judge, 2nd Court, Dhaka in Title Suit No. 659 of 2022 is thus set aside.

The order of stay granted at the time of issuance of the rule stands recalled and vacted.

Let a copy of the judgment be communicated to the court concerned forthwith.

Md. Bashir Ullah, J:

I agree.

Abdul Kuddus/B.O