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

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

First Misc Appeal No. 135 of 2019.

With

Civil Rule No. 337 (F.M) of 2019

Fauji Chatkal Limited, represented by its Managing Director, Adamjee Court (2nd Floor), 115-120 Motijheel C/A, Dhaka.

...Appellant.

-Versus-

Bangladesh, represented by the Secretary Ministry of Education, Bangladesh Secretariat, Ramna, Dhaka and others.

....Respondents.

Mr. Asaduzzaman, Advocate

… For the appellant

Mr. Sheikh Habib-Ul-Alam, Advocate

… For respondent Nos. 6 & 7

Heard on: 08.01.2024, 22.01.2024 and 29.04.2024.
Judgment on: 06.05.2024.

Md. Badruzzaman, J:

The appeal is directed against an order dated 24.09.2019 passed by learned Joint District Judge, 1st Court, Narsingdi in Title Suit No. 18 of 2019 rejecting an application for temporary injunction filed under Order 39 rules 1 and 2 of the Code of Civil Procedure.

Upon an application for injunction, this Court vide order dated 12.05.2019 issued Rule calling upon the defendant-opposite parties to show cause as to why they should not be restrained from making any construction of academic building or attempt to make the construction of academic building of proforma-respondent No. 7, Fauji Adarsha

Uchcha Bidyalaya on the schedule property till disposal of the appeal and at the same time directed the parties to maintain *status-quo* for a period of 06 (six) months which was subsequently, extended time to time. The Rule has been registered as Civil Rule No. 337 (F.M) of 2019.

Since the miscellaneous appeal and the Rule are connected to each other, those have been heard together and now are being disposed of by this common judgment.

Facts, relevant for the purpose of disposal of the appeal and civil Rule, are that the appellant, Fauji Chatkal Limited, as plaintiff instituted Title Suit No. 18 of 2019 before the learned Joint District Judge, 1st Court, Narsingdi for a decree of declaration that the principal defendants are not entitled to make any construction of academic building of defendant No. 7 in the schedule property of the plaintiff and their attempt in the name of construction of academic building of the school is illegal, collusive, *mala fide*, arbitrary and not binding upon the plaintiff and another decree of cancellation of the tender procedure of e-Tender Notice dated 25.09.2018 so far it relates to the construction of four-storied academic building in the schedule property.

The case of the plaintiff, in brief, is that the plaintiff is a limited company who established Fauji Adarsha Primary School in 1978 which was then renamed as Fauji Adarsha Junior Secondary School in 1980. In 1983, the Government gave approval to continue with the academic activities of the school and thereafter, it was upgraded as High School in the name of Fauji Adarsha Uchcha Bidyalaya and permitted its students to sit for S.S.C Examination for next seven years with effect from 01.01.1995. Lastly on 03.09.2014, the Dhaka Education Board approved the Managing Committee of the School. The plaintiff had erected an one-storied building for the school from its own fund where the

academic activities are being carried out till date. Total student of the school is around 400-500 and it is an M.P.O listed school.

The Government represented by the principal defendants included the school for development work of the school categorizing it as “A” category for the purpose of constructing academic building but the school had no land of its own and the school is being running as permissive possessor under the plaintiff. For the purpose of construction of the academic building the Government approved TK. 90,10,000/- and invited tenders for construction of the said building by e-Tender Notice dated 16.01.2019. Defendant No. 6 participated in the tender process and became the highest bidder and got work order and then initiated to start the construction work of the academic building. The plaintiff by letter dated 16.01.2019 intimated defendant No. 3 (the Chief Engineer, Education Engineering Department) that the school had no land of its own and the plaintiff is trying to purchase some land for the school outside the boundary of the factory compound of the plaintiff and requested to withhold/ suspend the construction work of the building but the defendants did not pay any heed to the request of the plaintiff rather; they disclosed that they would not stop construction work of the academic building of the school. On 27.01.2019 defendant No. 6 brought some construction materials in front of the plaintiff’s ‘Factory Compound’. The plaintiff is the owner and possessor of the schedule property in which the school has been established and the school is running as a permissive possessor under the plaintiff.

Upon a dispute between the plaintiff and Government, the plaintiff filed Writ Petition No. 9973 of 2017 before the High Court Division in which the High Court Division by order dated 06.07.2017

passed an *ad-interim* order against the Government staying operation of an order dated 13.07.2017. The Government challenged said order in Civil Petition For Leave to Appeal No. 1126 of 2017 before the Appellate Division who vide order dated 20.07.2017 directed to maintain *status-quo* in respect of position and possession of the suit property till disposal of the Rule pending before the High Court Division. Accordingly, the defendants are violating the order of *status-quo* passed by the Appellate Division in carrying-out the construction work of the academic building. In the above premises, the plaintiff constrained to file the suit.

During pendency of the suit the plaintiff filed an application under Order 39 rule 1 read with section 151 of the Code of Civil Procedure praying for temporary injunction restraining the defendants from making any construction of academic building till disposal of the suit upon which the trial Court vide order dated 30.01.2019 directed defendant Nos. 1-7 to show cause within 15 days but the defendants without showing any cause started storing of constriction materials in the suit property and threatened the plaintiff that they would start construction work forcibly for which the plaintiff filed another application for *ad interim* injunction under section 151 of the Code of Civil Procedure on 28.02.2019 but the trial Court without passing necessary order adjourned the matter for which the plaintiff filed Civil Revision No. 724 of 2019 before the High Court Division whereupon Rule was issued on 14.03.2019 and the High Court Division directed the trial Court to hear and dispose of the application for temporary injunction on merit within 30 days with further direction upon the parties to maintain *status-quo* in respect of the suit property till disposal of the application for temporary injunction.

Defendant Nos. 6 and 7 contested the application for temporary injunction by filing written objection contending, inter alia, that the suit itself is not maintainable and there is no cause of action of the suit. The contention of defendant No. 7, the School is that the suit property was owned and possessed by Bangladesh Jute Mills Corporation (BJMC). While Fauji Chatkal was under the control of BJMC, the then Board of Directors of Fauji Chatkal established Fauji Adarsha Bidyalaya in early seventies after donating 1.50 acre land within the premises of Fauji Chatkal and the Board of Fauji Chatkal through its Manager wrote a letter on 19.11.1978 to the Deputy Director of Public Instructions stating that the land possessed by the Fauji Adarsha Uchcha Bidyalaya would not be disturbed. Thereafter, the school got academic approval from the Government. The Government then transferred the ownership of the Chatkal to Senakalyan Sangstha by agreement dated 25.09.1985. The school was upgraded to High school in the name of Fauji Adarsha Uchcha Bidyalaya with opening of Class IX from 1984 and Class X from 1985. Thereafter, the Management Committee of Senakalyan Sangstha decided to allot 1.50 acre land in favour of the school which was approved by it in it's meeting dated 15.05.1985 which was informed to the Chairman of the Managing Committee of the school vide letter dated 08.05.1985 and 24.06.1985. After getting allotment, the Managing Committee of the school constructed boundary wall comprising of 1.50 acre land and also constructed two semi-pacca buildings therein for accommodation of class rooms and academic purpose. The Government through the concerned authorities gave academic approval of the school in 1978 and listed the teaching staffs of the school in the M.P.O list of the Government in 1994 and all teachers and staffs of the school are enjoying the benefit of the M.P.O

from the Government and the school is running smoothly through its Managing Committee for about 50 years since its establishment. The school have 400 students. The Government then initiated to develop the school by construction of four-storied academic building through its concerned Education Engineering Directorate and allocated Tk. 90,10,000/- for construction of four-storied academic building and invited tenders from the intending bidders through e-Tender Notice and after fulfilling all formalities approved the highest bid on 05.01.2019 submitted by defendant No. 6. On 21.01.2019 defendant No. 6 furnished bank guarantee amounting to Tk. 13,69,532.59 and the parties executed the contract on 21.01.2019 and thereafter, defendant No. 6 started construction work of the academic building. The plaintiff, with a view to destroy the future of the school and to grave the property of the school has filed the suit with false statements and as such, the plaintiff is not entitled to injunction as prayed for.

The trial Court, after hearing the parties and perusing the record of the suit, vide impugned order dated 24.04.2019 rejected the application for temporary injunction against which this appeal has been preferred by the plaintiff.

By filing supplementary-affidavit the plaintiff-appellant stated that Senakalyan Sangstha failed to run the Mill and then transferred the properties of the Mill in favour of the plaintiff by executing sale deed No. 1608 dated 24.06.1996. When the Government decided to take back the Mill and issued letter dated 13.07.2017 the plaintiff filed Writ Petition No. 9973 of 2017 in which Rule was issued by the High Court Division and thereafter, by judgment dated 18.11.2021 the High Court Division made the Rule absolute against which the BJMC filed Civil Petition for Leave to Appeal No. 619 of 2023 before the Appellate

Division. In the meantime, the appellant and BJMC executed compromise agreement on 25.10.2023 and the Leave Petition was disposed of on 14.11.2023 in terms of the compromise application making the agreement as part of the order. Thereafter, the Government vide its letter dated 10.01.2024 cancelled its earlier order dated 13.07.2017 and directed the BJMC to take necessary steps as per law and in view of the judgment passed by the Appellate Division dated 14.11.2023. The appellant, as part of its corporate social responsibilities, has decided to transfer 50 decimals land by way of gift in favour of the School upon executing and registering a gift deed out of which 12 decimals of land can be used for the school building and 38 decimals land as play ground.

Defendant-respondent Nos. 6 and 7 filed counter-affidavit to oppose the appeal.

Mr. Asaduzzaman, learned Advocate appearing for the plaintiff appellant submits that the trial Court committed illegality in refusing to grant temporary injunction restraining the defendants from constructing the academic building of the school because of the fact that the plaintiff is the owner of the property occupied by the school and if injunction is not granted against the defendants the purpose of filing of the suit will be frustrated. Learned Advocate further submits that since, as per requirement of the Government Rules, the School has no ownership of at least .50 acre land the Government cannot construct any building in the land owned by the plaintiff and as such, the trial Court committed illegality in refusing to grant temporary injunction. Learned Advocate further submits that the property of Fauji Chatkal has been transferred by Senakalyan Sangstha in favour of the plaintiff, Fauji Chatkal Limited, owned by Hamim Group and the plaintiff is only

authorized to run the school and the plaintiff is ready to donate .50 acre land in favour of the school for construction of academic building for the school and as such, before such transfer *status-quo* should be maintained so that the present management of the plaintiff can transfer the required land in favour of the school. Learned Advocate finally submits that the trial Court failed to consider that the plaintiff had *prima-facie* title to and possession in the suit property and balance of convenience and inconvenience were in favour of the plaintiff and if injunction was not granted as prayed for, the plaintiff would suffer irreparable loss and injuries and as such, the impugned order is liable to be set aside.

As against the above contention of the learned Advocate for the appellant, Mr. Sheikh Habib-Ul-Alam, learned Advocate appearing for respondent Nos. 6 and 7 submits that admittedly the then management of the Fauji Chatkal established the school in 1978 after donating 1.50 acre land and after transfer of all properties of Fauji Chatkal to Senakalyan Sangstha, the Management Committee of the Sangstha recognized the donation and thereafter, allotted said 1.50 acre land in favour of the school and after the allotment the Government upgraded the school from Junior stage to High School stage in 1985 and after approval of the Government, the school is running smoothly since 1978. Learned Advocate further submits that considering the continuous success of the academic activities of the school, the Government enlisted all its teachers and staffs in the M.P.O list in 1994 and they are enjoying the benefit of M.P.O since 1994. Learned Advocate further submits that the plaintiff, in the name of purchase of the property of Fauji Chatkal, is disturbing the development work of the school initiated by the Government and with a view to grave the property of the school

filed the suit and as such, the trial Court committed no illegality in refusing to grant temporary injunction in favour of the plaintiff and as such, interference is not called for by this Court.

We have heard the learned Advocates, perused the impugned order, the plaint, application for temporary injunction, written objection filed by the defendants, the judgment passed by the Hon'ble Appellate Division in Civil Petition for Leave to Appeal No. 619 of 2023 and other materials available on record.

It is not denial of the fact that Fauji Chatkal was established by Fauji Foundation before liberation war of Bangladesh and was engaged in producing jute goods. After the Liberation of Bangladesh, Fauji Chatkal was nationalized in 1972 under P.O 24 of 1972. After nationalization, the Fauji Chatkal became a unit of Bangladesh Jute Mills Corporation (BJMC). It is also not denial of the fact that when the Chatkal was under the control of BJMC the then management decided to establish Fauji Adarsha Secondary School in 1978 in the name and style, "Fauji Adarsha Secondary School". It appears from Annexure-1 to the counter-affidavit filed by respondent Nos. 6 and 7 that by a letter dated 19.11.1978 the then Manager of Fauji Chatkal informed the Deputy Director of Public Instruction, Dhaka Division that the land then possessed by Fauji Adrasha Uchcha Bidyalaya would not be disturbed in future and if the land of the school was needed by the Mill for extension or any other purpose an alternative arrangement would be made from the authorities side. At one stage BJMC felt that the Mill was not a profitable organization rather losing concern and decided to transfer the ownership of Fauji Chatkal to Senakalyan Sangstha in 1983 through de-nationalization process of the Government by executing two separate deed of agreements, one between the Government of

Bangladesh and Senakalyan Sangstha and another with the Government of Bangladesh, Senakalyan Sangstha and BJMC dated 25.09.1983. In that way Senakalyan Sangstha became the sole owner of Fauji Chatkal along with its assets and liabilities in terms of tripartite agreement dated 25.09.1983. When the assets and liabilities of the Mill was vested upon Senakalyan Sangstha, the then Management Committee of the Sena Kallan Sangstha in its meeting dated 15.05.1985 decided to allot said 1.50 acre land in favour of Fauji Adarsha Uchcha Bidyalaya and informed the decision of the committee to the concerned authorities including the Chairman of the Managing Committee of the school by its letters dated 08.05.1985 and 24.06.1985. It is also not denial of the fact that the school was upgraded and renamed to Fauji Chatkal Adarsha Uchcha Bidyalaya with opening of Class IX from 1984 and Class X from 1985 and the Government gave academic approval to run the school and allowed the students of the school to sit in the S.S.C Examination after 1985. It is not also denial of the fact that the Government enlisted the school in the M.P.O list and included the teachers and staffs of the school in the M.P.O list in 1994 and the Government is disbursing the M.P.O benefits in favour of the teachers and staffs of the school.

It appears that Senakalyan Sangstha, as per agreement with Government, could not run the Chatkal and decided to transfer the ownership of the properties belonged to the Chatkal to third party and accordingly, by a vendors agreement dated 23.06.1996 followed by sale deed dated 24.06.1996 were executed for transferring the assets and liabilities of Fauji Chatkal in favour of the plaintiff, Fauji Chatkal Limited (a limited company). After execution of those deeds, the plaintiff did not start operation of the Mill and the Government decided to take-back the Mill by issuing Notification dated 13.07.2017 which was

challenged by the plaintiff and others in Writ Petition No. 9973 of 2017 before the High Court Division and a Division Bench of this Court, after hearing, vide judgment dated 18.11.2021 made the Rule, issued earlier, absolute declaring Notification dated 13.07.2017 as without any lawful authority and of no legal effect. The judgment of the High Court Division was challenged by BJMC in Civil Petition for Leave to Appeal No. 619 of 2023. During pendency of the Civil Petition for Leave to Appeal, the parties including the plaintiff reached to an amicable settlement and compromised the dispute by a compromise agreement dated 25.10.2023 and submitted an application before the Appellate Division to dispose of the Leave Petition in terms of the compromise agreement. The Hon'ble Appellate Division after hearing the parties by judgment dated 14.11.2023 disposed of the Leave Petition by making the compromise application as part of the order.

Amongst others, there is a condition in the compromise petition which reads as follows:-

> "বিশেষভাবে উল্লেখ্য যে ফৌজি চটকল জুট মিলস্ লিমিটেড (ফৌজি চটকল লিমিটেড) সংক্রান্ত চলমান মামলাসমুহ অত্র আপোষনামা মূলে প্রত্যাহার এবং উক্ত মিলের নিকট হালনাগাদ সকল পাওনা পরিশোধের পর দ্বিতীয় পক্ষের নিকট মিলটি ফেরত দেওয়ার নিমিত্ত সরকার কর্তৃক জারিকৃত উক্ত মিলটি পুন:গ্রহণ (Take back) সংক্রান্ত ১৩/০৭/২০১৭ ইং তারিখের প্রজ্ঞাপনটি প্রত্যাহারের বিষয়ে বস্ত্র ও পাট মন্ত্রণালয় পরবর্তী ব্যবস্থা গ্রহণ করিবেন, **উক্ত প্রজ্ঞাপনটি প্রত্যাহার সাপেক্ষে মিলটির বাস্তব দখল (Physical Possession) দ্বিতীয় পক্ষের নিকট বিজেএমসি কর্তৃক হস্তান্তর করা হইবে।** " (emphasis supplied by us)

On perusal of the above terms of the compromise agreement as well as the letter dated 10.01.2024 (Annexure-F3 to the supplementary affidavit No. 2 filed by the appellant) it appears that possession of the suit land was not handed over to the plaintiff as yet and that in view of the judgment dated 14.11.2023 passed in Civil Petition for Leave to Appeal No. 619 of 2023 by the Appellate Division, the Ministry of Textile

and Jute issued the letter dated 10.1.2024 cancelling its Notification dated 13.07.2017 and directing the Chairman of BJMC to hand over physical possession of the property of the Mill in favour of the present authority of the Mill. Thus, it is apparent that the plaintiff could not get physical possession of the suit land transferred by the deed of sale dated 24.06.1996 as yet which means that the Government through BJMC is still managing the property of Fouji Chatkal and the plaintiff could not get the authority to manage the property transferred to it. As such, the plea that the school is enjoying 1.50 acre land as permissive possessor under the plaintiff has no leg to stand.

On the other hand, defendant No. 7, the school, through its Managing Committee is continuing its academic functions in 1.50 acre land (which was handed over by then management of the Fouji Chatkal by letters and resolutions) since its inception in 1978 till today without any interruption or obstacle from any quarter and by such enjoyment the school has acquired vested right to enjoy said 1.50 acre land.

The learned Advocate for the appellant made another submission that since there is no registered deed of gift in favour of the school in respect of 1.50 acre land, the school could not acquire title to said land.

The consistent view of apex courts of this sub-continent is that not only a gift under Muhammadan Law but also under Transfer of property Act, a gift must be coupled with acceptance and delivery of possession. Where a donee of property is in *bona fide* possession of it, though the gift had not been perfected by a registered instrument in accordance with law, the donor or its representative cannot oust the donee who had been in undisturbed possession of the property for a long period though such period falls short of 12 years.

It is admitted that when the Fouji Chatkal was under the control of BJMC the then management of the Mill established Fauji Adarsha Secondary School in 1978 in the name and style, “Fauji Adarsha Secondary School” by handing over possession of 1.5 acre land in favour of the school. Thereafter, when the Mill was under the control of Senakalyan Shangstha, the authority of the Shangstha allotted said 1.5 acre land in favour of the school but without any registered deed of sale or gift. Accordingly, it is to be presumed that 1.50 acre land was offered as donation to establish the school for educational purpose i.e for the benefit of public in general and by accepting the offer the authority of the school got delivery of possession thereof. Not only that, the then representative of Fouji Chatkal by handing over possession of 1.50 acre land established the Secondary School in 1978; informed the transfer to the concerned Education Authority for its affiliation as educational institution; as per said information the Government gave academic approval and then upgraded the School into High School level and then enlisted the staffs and teachers in the M.P.O list, took a decision to construct 4 storied academic building for defendant No.7 by spending Tk. 90,10,000/- and finally gave work order to defendant No. 6 through e-Tender process. The School is in *bona fide* possession in said 1.50 acre land for more than 45 years within the active knowledge of the representatives of Fauji Chatkal. As such, they or through them, the plaintiff is estopped from impeaching the gift and it has no right to interrupt the possession or obstruct the development work of defendant No. 7 in said 1.50 acre land by any means.

From the materials on record it further appears that the school is running its academic activities within the Perry-ferry of 1.5 acre land separated by boundary wall from the Mill compound and the Chatkal is

a loosing concern. The plaintiff or its predecessor could not go into operation of the factory for about 50 years after their so called purchase after denationalization. In the deed of transfer of the property of Fouji Chatkal dated 24.6.1996, the transferor or the transferee (the plaintiff) did not mention about the existence of the school (defendant No. 7) or its property which means that said 1.50 acre land of the school was not transferred by said deed of transfer. Moreover, the plaintiff filed the suit in respect of total 51.42 acre land consisting of total 97 C.S plots without referring to S.A, R.S, B.S plot numbers or specifying its boundary or specifying 1.50 acre land of the school. It is settled principle of law that order of injunction cannot be passed in an unspecified and vague land.

Section 110 of the Evidence Act provides a presumption of ownership in favour of the person who is in possession of the property and possession follows title. Since the plaintiff could not establish that it has possession in 1.50 acre land which is admittedly under possession of defendant No. 7, the plaintiff could not prove *prima-facie* title to and possession in said property. It is also settled principle of law that in order to obtain an order of temporary injunction the plaintiff must establish that he has a *prima-face* title to and possession in the suit property and the balance of convenience and inconvenience is in his favour and in the event of refusal to grant temporary injunction the plaintiff will suffer irreparable loss and injury. Since, in the instant case, the plaintiff failed to establish its *prima-facie* title to and possession in 1.50 acre land out of the suit property, it is not entitled to an order of temporary injunction as prayed for or even an order of *status-quo* which is in substance an order of injunction.

On perusal of the impugned order it appears that the trial Court upon examining the materials on record took the right view that the plaintiff has no *prima-facie* title to and possession in the suit land and is not entitled to injunction as prayed for.

It appears that the plaintiff has no possession in the land and it could not acquire title to 1.50 acre land in which defendant No. 7 is running its academic functions through the Managing Committee. The plaintiff could not produce any paper or document to show that it has invested any amount to run the school and it has any interest or control over the management of the school. It appears that before getting physical possession in the suit property the plaintiff filed the present suit by suppressions of facts and without bringing real picture before the Court of law with a view to obstruct the development work of the School and for unnecessary harassment. Accordingly, the appeal devoid of any merit and liable to be dismissed with monetary compensation to be paid to defendant No. 7.

In the result, the appeal is dismissed. The plaintiff is directed to pay Tk. 1,00,000/- as compensation in the fund of defendant No.7.

The order of *status-quo* granted earlier is hereby vacated.

Consequently, Civil Rule No. 337 (F.M) of 2019 is discharged.

The trial Court is directed to proceed with the suit in accordance with law.

Communicate a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)