

District: Dhaka

In the Supreme Court of Bangladesh

High Court Division
(Civil Appellate Jurisdiction)

Present:

Mr. Justice Md. Zakir Hossain

F.M.A No. 56 of 2024

Civil Rule No. 89 (FM) of 2023

Md. Abdul Moid and others

..... Plaintiff-Appellants

-Versus-

Government of Bangladesh represented by the
Secretary, Ministry of Railway and others

..... Defendant-Respondents

Mr. Ariful Alam, Advocate

..... For the Appellants

Mr. Zafar Sadeque, Advocate

..... For the Respondents

Heard on: 29.05.2024

Judgment on: 12.06.2024

Md. Zakir Hossain, J:

The instant First Miscellaneous Appeal is directed against the judgment and order dated 31.08.2023 passed by the learned Joint District Judge, First Court, Dhaka in Title Suit No. 626 of 2022 rejecting the plaintiff-appellants' application filed under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure.

The case of the appellants, in short, is that the appellants being plaintiffs instituted Title Suit No. 626 of 2022 before the Court of the learned Joint District Judge, First Court, Dhaka for declaration of title

and further declaration that the lands as mentioned in the schedule 'Kha', 'Ga' and 'Gha' recorded in the name of the Government is baseless and not binding upon the plaintiff-appellants. The plaintiffs also filed an application for temporary injunction. The defendants entered appearance in the suit and by filing written statement denied the material allegations set out in the plaint. Upon hearing, the learned Joint District Judge was pleased to reject the petition for temporary injunction. Impugning the judgment and order of the learned Joint District Judge, the appellants were constrained to file the aforesaid appeal.

Heard the submissions advanced by the learned Advocate for the appellants and the respondents and perused the materials on record with due care and attention and seriousness as they deserve and the convoluted question of law embroiled in this case has meticulously been waded through.

It transpires from the record that the defendant No. 4 *i.e.* the Deputy Commissioner, Dhaka acquired 30.061 acres of land vide L.A. Case No. 3.15.1/2021-2022 as per Acquisition and Requisition Property Act, 2017 for the purpose of the Dhaka Elevated Express Way Project (DEEP). The further contention of the defendant-Government is that the suit land was acquired for Bangladesh Railway vides L.A. Case No. 15/59-60. Since then Bangladesh Railway has possessed the suit land

and accordingly, the City Jarif was duly recorded in the name of Bangladesh Railway. The learned Joint District Judge after delving into the facts and legal rightly held to the effect:

“বাদীপক্ষ ০.২২১৬ একর ভূমিতে স্বত্ব ঘোষণা এবং সিটি জরীপ ভ্রমাত্মক ঘোষণার প্রতিকারার্থে অত্র মোকদ্দমা আনয়ন করিয়াছে। বাদী যেসব ভূমিতে স্বত্ব ঘোষণা এবং সিটি খতিয়ান ভ্রমাত্মক ঘোষণা চেয়েছেন সেগুলো বাংলাদেশ সরকারের পক্ষে বাংলাদেশ রেলওয়ের নামে বর্তমানে রেকর্ডভুক্ত জমি বটে। ১/২ নং বিবাদীপক্ষ শুনানীকালে মৌখিকভাবে নিবেদন করেন যে, বাংলাদেশ রেলওয়ে এল.এ. কেইস ১৫/৫৯-৬০ মূলে উক্ত ভূমিসমূহ একোয়ার মূলে ভোগ দখলে থাকাবস্থায় লিখিত জবাব দাখিল করেছেন এবং কাগজপত্র দাখিল করেছেন। বাদীপক্ষ অস্থায়ী নিষেধাজ্ঞার তফসিলের বাংলাদেশ রেলওয়ের নামে রেকর্ডকৃত ৩নং সিটি খতিয়ানের সিটি ১০১৭৬ দাগের .০৫৯ একর এর কাতে .০৪ একর এবং ১০১৭৭ দাগের .৩৮৮০ একরের কাতে .০৬৮৮ একর এবং ১০১৪১, ১০১৪২ দুটি দাগের .১১২৮ একর ভূমিতে বাদীপক্ষের দখলকৃত নালিশা ভূমি মর্মে দাবি করিলেও এতদবিষয়ে আদালত নিযুক্ত কোন সার্ভে কমিশনার দ্বারা পরিমাপ করান নাই। বাদীপক্ষ আরজিতে বর্ণিত দলিলমূলে তাদের নামে যেসব ভূমির সিটি খতিয়ান রেকর্ডভুক্ত হয়েছে সেগুলো অত্র মোকদ্দমা আনয়ন করেন নাই। উল্লেখ্য যে, রেলওয়ের নামে একোয়ার মূলে রেকর্ডকৃত সিটি খতিয়ান সাক্ষ্য প্রমাণ গ্রহণান্তে ভ্রমাত্মক মর্মে প্রতীয়মান হওয়ার পূর্ব পর্যন্ত একটি *Strong Legal Presumption* রয়েছে। এমতাবস্থায় বাদীপক্ষের অস্থায়ী নিষেধাজ্ঞার দরখাস্তটি না-মঞ্জুর করা হলো।”

The learned Advocate for appellants has contended that if the order of status quo is not vacated, it will cause serious prejudice to the respondent-Government in implementing the Mega Project like DEEP. The submissions of the learned Advocate of the appellants is that the suit land is not acquired land of the Government and the record of right in respect of ‘Kha’, ‘Ga’ and ‘Gha’ schedule is absolutely illegal,

unfounded and baseless. The further contention of the learned Advocate of the appellants is that the plaintiffs have got *prima facie* arguable case as they are the lawful owners of the suit land wherein they have got homestead and if they are dispossessed in the name of acquisition of land for the Mega Project like DEEP, it will cause serious prejudice to the plaintiff-appellants. Whether the suit land attracts or covers the suit land that cannot be determined without holding local investigation. Unfortunately, the plaintiffs did not take any step to get the same investigated by a competent Advocate Commissioner.

On perusal of the materials on record, I am of the view that the plaintiffs have got no *prima facie* arguable case and the balance of convenience and inconvenience is not in favour of the plaintiffs, therefore, there is no reason to interfere with the judgment and order of the learned Joint District Judge, Dhaka which is based on sound reasoning. However, the defendant No. 4 *i.e.* the Deputy Commissioner, Dhaka and the Bangladesh Railway may hold joint investigation to determine as to whether the alleged homestead of the plaintiff falls within the acquired land of the Government. If it is so, the Government shall dismantle the same observing due process of law.

With the above observation and direction, the First Miscellaneous Appeal is dismissed, however, without passing any order as to costs. The

earlier order of *status quo* granted by this Court thus stands recalled and vacated and accordingly, the connected Civil Rule No. 890(FM) of 2023 is disposed of.

The office is directed to communicate a copy of this judgment to the Court below at once.

(Md. Zakir Hossain, J)