

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

**Civil Rule No. 520 (FM) of 2022**

In the matter of:  
An application for injunction.

AND

In the matter of:  
Bipul Ray Chowdnury and others

.... Petitioners

-Versus-

Being died substituted by 1. (Ka). Lieutnant Colonel  
Mirza Mohammad Mahhabur Anam (Retired) and others

....Opposite-parties

Mr. Sayed Ahmed, senior Advocate with  
Mr. Kabir Miah Sarkar, Advocate

... For the petitioners

Mr. Shah Manjurul Haque, senior Advocate with  
Mr. Dipankar Debnath, Advocate

....For the opposite party nos.06-11

**Heard on 20.05.2024 23.05.2024**  
**and Judgment on 23.05.2024.**

**Present:**

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

**Md. Mozibur Rahman Miah, J:**

This matter has been referred by the Appellate Division by its order  
dated 05.05.2024.

On an application for injunction so filed by the plaintiffs in Other Class Suit 22 of 2020, this rule was issued calling upon the opposite parties to show cause as to why an order of injunction restraining the disbursement of the award of the scheduled acquired land as described to the schedule to the plaint in the said suit now pending in the court of Joint District Judge, 1<sup>st</sup> court, Netrokona should not be granted and/or such other or further order or orders passed as to this court may seem fit and proper.

At the time of issuance of the rule, the opposite party no. 5 was restrained by an order of injunction from disbursing the award of the scheduled acquired land to defendant nos. 1(ka)-1(cha), 6-11, 19(ka)-19(ja) and 20-28 for a period of 06(six) months.

Mentionable, that very interim order was challenged by some of the defendants by preferring a Civil Petition for Leave to Appeal No. 2679 of 2022 before the Appellate Division and the said order of injunction was stayed and this court was directed to dispose of the rule within a period of 03(three) months by judgment and order dated 05.05.2024.

The short facts leading to issuance of the rule are:

The present petitioners as plaintiffs originally filed the aforesaid Other Class Suit seeking following reliefs:

(ক) নিম্ন তপছিল বৰ্ণিত ভূমি বাদীপক্ষৰ স্বত্ব ঘোষণায়

বাদীপক্ষ অনুকূলে বিবাদীগণ প্রতিকূলে ডিক্রি দিতে;

(খ) বাদীগণ বিবাদীপক্ষ হই-ত আদালত ব্যয়সহ যাবতীয়

ক্ষতিপূরণ পাইবার ম-র্ম;

(গ) আইনতঃ ও ন্যায়তঃ বাদীপক্ষ অন্য যে- প্রকার প্রতিকার

ই-ত পা-র তাহার ডিক্রি বাদীপক্ষ অনুকূলে বিবাদীগণ প্রতিকূলে দিতে

আজ্ঞা হয়।

The said suit was filed in respect of suit land measuring an area of 7.69 acres. On 05.01.2022 the self-same plaintiffs filed an application for injunction under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure restraining the defendant no. 5 from disbursing the compensation money in favour of defendant nos. 1(ka)-1(cha), 6-11, 19(ka)-19(ja) and 20-28. Against that application those defendants also filed written objection denying all the material averment so made in the application for injunction claiming that, the suit property and other properties were put on auction sale for arrear of rent in a certificate proceedings being certificate case no. 500-1960/1961 and the predecessor of the defendant nos. 1(ka)-1(cha), Samsul Islam purchased the suit property on 11.03.1961 and sale certificate was issued in his favour on 03.03.1962 and handed over possession thereof. Subsequently, the predecessor of the defendants, Shamsul Islam, got his name mutated in the khatian in mutation case no. 113(9-1) 77-78 and accordingly subsequent BRS khatian being no. 228 was prepared in his name and then he sold out certain portion of land out of the purchase land. When the defendant had been in possession of the suit land, the government took step acquiring the same and LA case being LA case No. 03/2018-2019 was initiated for setting up “Sheikh Hasina University” and accordingly award was rightly prepared in the name of the defendants. It has further been asserted that, the plaintiffs have got no title and possession over the suit properties for the last 60 years rather within the very knowledge of the plaintiffs, BRS record was

prepared in the name of the predecessor of the defendants and since the plaintiff have got no prima facie title over the suit property so they are not entitled to get any order of injunction. However, the said application for injunction was taken up for hearing by the learned judge of the trial court and vide order dated 14.06.2022 the application was rejected holding that, since BRS record was prepared in the name of the predecessor of the defendants, Shamsul Islam and sale certificate and writ of possession was issued in their favour so the defendants have been in possession long before the acquisition of the suit property so the plaintiffs have got no prima facie case and are not entitled to any temporary injunction. Against that very order, the plaintiffs preferred an appeal being First Miscellaneous Appeal No. 72 of 2023. After preferring the appeal, the plaintiffs also filed an application for injunction on the self-same averment so made in the application for injunction before the trial court and this court on 05.09.2022 issued rule as well as an interim order of injunction as stated hereinabove.

Mr. Sayed Ahmed, the learned senior counsel along with Mr. Kabir Miah Sarkar by placing the application for injunction and the documents appended therewith, at the very outset submits that, since the plaintiffs filed a suit for declaration claiming title over the suit property so if the compensation money is disbursed in favour of the defendants in that case it is the plaintiffs who would suffer irreparable loss and injury but that very point has not been taken into consideration by the learned judge of the trial court while rejecting the application for injunction.

The learned counsel next contends that, since the CS and SA and ROR record was admittedly prepared in the name of the predecessor of the

plaintiffs so they had indefeasible title in the suit land before preparing the alleged BRS record and since they have challenged the propriety of the BRS record, in that event, if the compensation money is disbursed in favour of the defendants in that case the suit itself would become infructuous. When we pose another question to the learned counsel, that if the suit is ultimately decreed and before that the compensation money is given in favour of the defendants then they would have the scope to file a separate suit for compensation.

The learned counsel then contends that, for that obvious reason section 11 and section 23 of the Acquisition and Requisition Immovable Property Act. 2017 made an arrangement to retain the compensation money in the office of the Deputy Commissioner till dispute comes to an end. When we pose a question with regard to the provision of section 47 of the Act of 2017, having clear bar to pass any injunction with regard to any arrangement taken by the acquiring authority, the learned counsel then contends that, since the suit has not been filed challenging any arrangement or order of the acquiring authority rather a suit for declaration of title so that very provision will not put any bar to get an order of injunction. In that regard, the learned counsel placed his reliance in two unreported decisions dated 06.03.2023 in the case of Mojibur Rahman and others -Vs- Fazlu Mia and others passed in FMA No. 279 of 2021 and another unreported decision dated 19.02.2023 passed in Civil Rule No. 587(FM) of 2021 in the case of Dhaka Fisheries Limited represented by its acting Managing Director Golam Ahad-Vs-Marina Park & Resort Limited represented by its Managing Director Sayed A.K. Anowaruzzaman and others and finally prays for making the rule absolute.

On the contrary, Mr. Shah Manjurul Haque, the learned senior counsel along with Dipankar Debnath appearing for the opposite party nos. 6-11 by filing a two sets of affidavit-in-opposition at the very outset submits that, the learned judge of the trial court has rightly passed the order rejecting the application for injunction finding that the plaintiffs have failed to prove their prima facie title and possession over the suit property and since the predecessor of the defendants got the property in a certificate proceedings back in the year 1960 and afterwards BRS record was prepared in the name of the defendants having no occasion to hold possession by the plaintiffs in the suit land and therefore they are not entitled to any order of injunction let alone debarring the defendant no. 5 from disbursing the compensation in their (defendants) favour.

The learned counsel by referring to the provision of section 8 and 47 of the Act of 2017 also contends that, if those two provision writ conjointly, it will then exemplify that, no suit or any injunction can be entertained challenging any action nor arrangement or order passed by the acquiring authority though that very point has not been taken into consideration in the impugned judgment and order but since it is a legal point this Hon'ble court is competent enough to take cognizance of that aspect and therefore there has been no occasion to pass any order of injunction from disbursement of the compensation money in favour of the defendants by the defendant no. 5.

The learned counsel further contends that, since the petitioners had the opportunity to file a suit before the land survey tribunal but without doing so the suit was filed before an ordinary civil court so that very suit is also barred under the provision of section 145 (A) of the State Acquisition and Tenancy

Act and since the suit is barred so no interim application can be entertained by any court of law.

The learned counsel by pointing out the decisions referred to by the learned senior counsel for the petitioners also contends that, the facts so have been described in those two decisions and the fact so have been made out therein in the judgment is quite distinguishable with the facts and circumstances of the case in hand having no scope to apply the said decisions in the instant case and 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 parties at length. We have also gone through the application for injunction and the counter-affidavits so filed by the opposite parties. Together, we have also very meticulously perused the provision so provided in ভূমি সম্পত্তি অধিগ্রহণ হুকুম দখল আইন-২০১৭ (Act of 2017) in particular, section 8,11,23, and section 47 thereof. It is pertinent to mention here that, the learned counsels for the contending parties has laid their entire emphasis on the provision of section 47 of the said Act of 2017. The learned counsel for the opposite parties submits that since there has been statutory bar to entertain any suit or any application for injunction therein, so this Hon'ble court cannot pass any order of injunction about the arrangement taken by the acquiring authority. For that obvious reason we have very meticulously perused section 47 of the Act. On going through section 47 we find that no suit or any legal proceeding can be initiated against any order or any arrangement taken by the acquiring authority herein the defendant opposite party no. 5. But on going through the plaint so field by the plaintiffs-petitioners so annexed within the application for injunction we simply find

that, the suit was filed for declaration simpliciter in respect of the suit land on the back of recording it in the name of the defendants in BRS operation. So, we are of the considered view that, section 47 has not put any bar to file the suit in the form of declaration essentially under section 42 of the Specific Reliefs Act. Furthermore, if we go through the provision of section 11(2) of the said Act of 2017 we also find that, if any dispute arises with regard to compensation money in that case it is incumbent upon the Deputy Commissioner to retain the compensation money in government exchequer to be distributed after resolving the dispute among the parties. Since a suit in the form of declaration of title over the suit land is pending so justice would be best served if the compensation money is retained with the office of the Deputy Commissioner, Netrokona and if the suit is ultimately disposed of in favour of the defendants opposite parties then they will be at liberty to withdraw the compensation money but at the point of time, if the compensation money is allowed to disburse by the defendant-opposite party no. 5 in favour of the opposite parties it will be the plaintiffs who will suffer irreparable loss and injury when prima facie case still persists in their favour but that very pertinent points have not been taken into consideration by the learned judge of the trial court while rejecting the application for temporary injunction though fact remains, before preparing the alleged BRS record (which is now under challenge) two consecutive records were prepared in the name of the predecessor of the plaintiffs.

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

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



The order of injunction granted at the time of issuance of the rule will continue till disposal of the Other Class Suit No. 22 of 2022.

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

**Md. Bashir Ullah, J:**

I agree.

Kawsar /A.B.O