

Present:
Mr. Justice Mohammad Bazlur Rahman
and
Mr. Justice Md. Ruhul Quddus

Writ Petition No.8854 of 2011

Maleka Khatun

...Petitioner

-Versus-

Bangladesh and others

...Respondents

Mr.Md. Zakir Hossain, Advocate

... for the petitioner

Mr. S M Quamrul Hasan, A. A. G. (with leave of
the Court)

... for the respondents

Judgment on 18.11.2012

Md. Ruhul Quddus,J:

This Rule was issued challenging the legality of a notice under section 5 (1) of the Government and Local Authority Lands and Buildings (Recovery of Possession) Ordinance, 1970 (Ordinance 24 of 1970) issued by the Senior Assistant Commissioner, Vested Property Cell, Office of the Deputy Commissioner, Dhaka asking the petitioner and two others to handover a piece of land after removing the structures standing thereon within seven days from receipt of the notice (Annex-F).

It is contended in the writ petition that the land as described in the schedule of the impugned notice originally

belonged to Sreemoti Hemlata Sarkar and others, who proposed to sell it in 1963. Petitioner's husband Sheikh Ali Ahmed agreed to purchase the land for total consideration of Taka 59,000/-, out of which the said Hemlata and others received Taka 45,000/- only as earnest money and delivered possession of a part of the land by executing an agreement on 2.4.1963 in favour of Sheikh Ali Ahmed. Said Hemlata and her co-sharers failed to execute and register a proper deed of conveyance, for which Sheikh Ali Ahmed instituted Title Suit No.63 of 1990 for specific performance of contract against them. The Government of Bangladesh was also made a defendant therein. Ultimately the suit was decreed *ex parte* on 29.10.1991. In an execution case, the executing Court refused to execute the sale deed on setting aside the *ex parte* decree by order dated 22.4.1992 passed *suo motu* under section 151 of the Code of Civil Procedure. Sheikh Ali Ahmed filed Civil Revision No.1808 of 1992 before the High Court Division challenging the said order and obtained a Rule, which was ultimately made absolute with a direction to execute the *ex parte* decree. Accordingly the Court below executed the decree by registering a sale deed in favour of the decree-holder Sheikh Ali Ahmed in Execution Case No.2 of 1995, wherein he also prayed for police force in order to take possession of the building standing on the suit land. Meanwhile he constructed a few

semi pucca rooms on the portion of land under his possession.

The Additional Deputy Commissioner (Revenue), Dhaka and an organization named Gendaria Kishaloya Kochi Kacher Mela as plaintiffs instituted Title Suit No.73 of 1995 before the Assistant Judge, 6th Court, Dhaka challenging the exparte decree and obtained an order staying all further proceedings in Execution Case No.2 of 1995.

During pendency of the suit, the plaintiffs tried to dispossess the petitioner's husband from the land in question, for which he being a defendant filed an application for temporary injunction to restrain them from taking possession of the land and from disturbing his possession therein.

The plaintiff-government contested the said application for injunction by filling a written objection. The trial Court, upon hearing the parties, allowed the application and passed an order of temporary injunction restraining the plaintiffs from dispossessing the defendant Sheikh Ali Ahmed from the land or from disturbing his peaceful possession therein by order dated 18.11.1995 (Annex-D).

Challenging the said order of temporary injunction dated 18.11.1995 plaintiff 2 Gendaria Kishaloya Kochi Kacher Mela preferred Miscellaneous Appeal No. 301 of

1995 before the District Judge, Dhaka which was transferred to the Additional District Judge, 3rd Court, Dhaka for disposal. The learned Additional District Judge after hearing the parties dismissed the appeal by judgment and order dated 23.5.2002 and thereby affirmed the order of injunction passed by the Assistant Judge (Annex-E).

Because of the injunction order and dismissal of the miscellaneous appeal, the respondents did not disturb the peaceful possession of the petitioner. All on a sudden, the Senior Assistant Commissioner, Vested Property Cell of the Office of Deputy Commissioner, Dhaka (respondent 4) issued and served the impugned notice upon the petitioner, challenging which she moved in this Court with the instant writ petition, obtained the Rule and an interim order of restraint.

Mr. Md. Zakir Hossain, learned Advocate appearing for the writ petitioner submits that the petitioner's possession in the land is backed by a decree of a competent civil court, which her husband Sheikh Ali Ahmed, since deceased obtained in a suit for specific performance of contract and also backed by an order of injunction passed in Title Suit No. 73 of 1995. Mr. Hossain finally submits that section 5 (1) of the Government and Local Authority Lands and Buildings (Recovery of Possession) Ordinance, 1970 confers authority on the Deputy Commissioner to evict unauthorized occupant after service of a notice of thirty

days. But in the present case the Senior Assistant Commissioner of Vested Property Cell issued the notice giving seven days time, although the petitioner is not an unauthorized occupant in the land. The Senior Assistant Commissioner of Vested Property Cell has no lawful authority under the law to serve any such notice, therefore, the impugned notice is wholly without jurisdiction. In response to a query made by the Court, Mr. Hossain apprises that the land has already been enlisted as vested property under *Orpita Shompatti Protayarpon Ain, 2001*.

Mr. S M Quamrul Hasan, learned Assistant Attorney General without filing any affidavit-in-opposition verbally submits that the Senior Assistant Commissioner is an officer assigned to look after the vested property and there is nothing wrong if he issues a notice on behalf of the office of Deputy Commissioner. Even if there is any minor irregularity in service of the impugned notice, it will not vitiate the notice. Mr. Quamrul further submits that the exparte decree passed in a suit for specific performance of contract will not affect the vested character of the property. Since disputed question of title is involved, the writ petition is not maintainable. Mr. Quamrul does not, however, claim that the Senior Assistant Commissioner was appointed by the Government to perform all or any of the functions of the Deputy Commissioner as described in section 2 (b) of the Ordinance in defining %Deputy Commissioner+.

It appears that the petitioner's husband Sheikh Ali Ahmed, since deceased obtained an ex parte decree in a suit for specific performance of contract and got a registered deed of conveyance in his favour in Decree Execution Case No.2 of 1995. Thereafter, the Additional Deputy Commissioner (Rev), Dhaka and an alleged lessee under the Government namely, Gendaria Kishaloya Kochi Kacher Mela as plaintiffs instituted Title Suit No.73 of 1995 before the Assistant Judge, 6th Court, Dhaka for declaration of title with a prayer for setting aside the ex parte decree and cancellation of the sale deed. The petitioner's husband Sheikh Ali Ahmed was made defendant 1 in that suit, who in spite of being a defendant obtained an order of temporary injunction restraining the plaintiffs from dispossessing him from the land in question. The order of temporary injunction was affirmed in a miscellaneous appeal and is still remaining in force.

It is correct that the ex parte decree passed in the suit for specific performance of contract will not affect the vested character of the property. A Tribunal or Committee constituted under the Orpita Shompatti Protayarpon Ain is the proper forum to address the issue. But here we have to look into the legality of the impugned notice and determination of vested character of the property in question is not an issue before us.

Since a suit is pending between the parties, wherein an order of temporary injunction restraining the Government and its allottee is still in force and the petitioner's claim of title is backed by a registered deed of conveyance, her possession cannot be termed unauthorized within the scope of Ordinance 24 of 1970. Moreover, the law does not confer any authority upon the Senior Assistant Commissioner of Vested Property Cell to issue and serve any such notice.

In view of the above, we find substance in the Rule and accordingly the Rule is made absolute. The impugned notice purportedly issued under section 5(1) of the Government and Local Authority Lands and Buildings (Recovery of Possession) Ordinance, 1970 by the Senior Assistant Commissioner of Vested Property Cell, Office of the Deputy Commissioner, Dhaka so far as it relates to the writ petitioner is declared to have been issued without lawful authority and is of no legal effect.

Mohammad Bazlur Rahman, J:

I agree.