

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique, C.J.

Mr. Justice M. Enayetur Rahim

Mr. Justice Md. Ashfaquul Islam

CIVIL PETITION FOR LEAVE TO APPEAL NO.2460 OF 2012

(From the judgment and order dated 22nd day of January, 2012 passed by a Single Bench of the High Court Division in Civil Revision No.4687 of 2000)

Bangladesh Textile Mills : . . . Petitioner
Corporation (BTMC), represented
by its Chairman

-Versus-

Mst. Delwary Begum being dead : . . . Respondents
her heirs: (1) Mokhlesur Rahman
and others

For the Petitioner : Mr. Md. Bodruddoza, Advocate instructed
by Syed Mahbubar Rahman, Advocate-
on-Record

For Respondent Nos.1-2 & 5-6 : Mr. Sharifuddin Chaklader, Advocate
instructed by Mrs. Modhumaloti
Chowdhury Barua, Advocate-on-Record

For Respondent Nos.3-4 & 7-8 : Not represented

Date of Hearing and Judgment : **The 11th day of June, 2023**

JUDGMENT

M. Enayetur Rahim, J: This civil petition for leave to appeal is directed against the judgment and order dated 22.01.2012 passed by a Single Bench of the High Court Division in Civil Revision No.4687 of 2000 discharging the Rule.

The relevant facts leading to the filing of the leave petition, in brief, are as follows:

The predecessor of the present respondents instituted Title Suit No.259 of 1995 in the Court of Sub-ordinate Judge, First Court, Dhaka for declaration of

title over the suit land, and that the purchase deed of the defendant No.1(present petitioner) dated 21.06.1988 is not binding upon her. Eventually, the said suit was transferred to the Court of Sub-ordinate Judge and Artha Rin Adalat No.3, Dhaka and *renumbered* as Title Suit No.101 of 1997 (*General*).

In the plaint averments have been made, *inter alia*, that the suit land measuring 4 decimal with tin-shed structure appertaining to C.S. Plot No.6, S.A. Plot No.2511, C.S. Khatian No.6362, S.A. Khatian No.1509 of Mouza Shahar, Dhaka, thereafter Wari, Police Station Sutrapur, Dhaka, originally belonged to Hariprasad Bandhapadhaya, Bhuban Mukhapadhaya, Omrita Lal Mukhapadhaya and Shashibala Devi and their names were correctly recorded in C.S. Khatian No.6362. After the death of Hariprashad Bandhapadhaya, Surendra Nath Bandhapahaya became the owner and possessor of the land by amicable partition among the heirs of Haribrashad Bandhapadhaya. The father of the plaintiff was a servant under Hariprashad Bandhapadhaya. In that connection, she was residing along with her family members in a portion of the suit plot. Surendranath Bandhapadhaya settled the suit property by Amalnama on 15.09.1350 B.S. and made over the possession of the land to the plaintiff. Plaintiff had possessed the land peacefully by paying rent to the Zaminder and constructed a tin-shed building thereon, thereafter connected gas, water and electric service. The plaintiff was an illiterate woman and her

sons were minor during the operation of S.A. record. She had no knowledge about survey. The S.A. record was prepared in the name of Dhakeshawari Cotton Mills Limited. But, they had never been in the possession of the suit land. The plaintiff has been trying to institute a suit for rectification of S.A. Khatian. In the meantime, revisional Survey started in Dhaka City. The plaintiff applied for mutation of the suit land in the office of Assistant Commissioner (Land) on 25.07.1995. The Assistant Commissioner (Land) instructed orally her for taking appropriate step in the Court. A few officers of defendant No.1 disclosed on 19.10.1995 that they have purchased the land from liquidator on behalf of Dhakeshawari Cotton Mills Limited on 21.06.1988 vide deed No.1618 and they threatened her to handover the vacant possession. The plaintiff collected the certified copy of the said deed. The said deed clouded the right, title and interest of the plaintiff. Hence the plaintiff filed the suit.

The defendant No.1, present petitioner contested the suit by a filing written statement denying all the material statements made in the plaint contending, *inter alia* that, the suit is barred by defence of Pakistan Ordinance, East Pakistan Government and Local Authority (Land and Building), 1970 and Article 10 of President Order No.27 of 1972. All the affairs of Dhakeshawari Cotton Mills Limited had been declared 'Enemy' in 1965 and made over all activities of the firm to the erstwhile

East Pakistan Industrial Development Corporation by Gazette notification on 06.09.1965. Gopinath Poddar was not the Zamindar of the suit holding along with holding No.37, Hatkhola Road, Dhaka. The successor of Gopinath Poddar namely, who is subsequent purchasers Shree Narendranath Bandha Padhaya, Shree Dhiurendnath Bandhapadhaya, Shree Birendranath Bandhapadhaya, all sons of late Hariprasad Bandapadhaya and Amarendra Nath Bandhapadhaya, Shree Sattandra Nath Bandhapadhaya transferred the entire suit plot to Dhakeshawari Cotton Mills Limited by registered deed on 06.10.1953 (19.06.1350 B.S.) The name of Dhakeshwari Cotton Mills Limited had been correctly recorded in the S.A. Khatian. The husband of the plaintiff who subsequently substituted as plaintiff No.7 was an employee of East Pakistan Industrial Development Corporation and in that connection, a flat of the suit property allotted to him for residential purpose. The plaintiff No.7 and his wife and other plaintiffs have been possession the flat since 1966. The plaintiff No.7 had been paying rent of the flat from his salary to the defendant No.1 and he was retired from service in the year 1993. The plaintiff No.7 filed various suits including Title Suit No.25 of 1995 only to harass the defendant No.1 in view of defeat the eviction proceeding of the petitioner. He filed suit for a declaration that he was the legal and bonafide possessor of the suit property. The petition under Order 39 Rules 1 and 2 of the Code of Civil Procedure, had been rejected

by the concerned court on 13.08.1995, thereafter, plaintiff, the wife of plaintiff No.7, inserting her father's name, fraudulently concocted a story of dissolution between her husband and on the basis of fabricated Amalnama dated 15th Poush, 1350 B.S. filed the instant case. The Amalnama had never been executed by Surendranath Bandhpadhaya. The Government of the Peoples' Republic of Bangladesh nationalized the entire assets of Dhakeshwari Cotton Mills Limited under President's Order No.27 of 1972. The Management and control over the property had been entrusted upon the Bangladesh Textile Mills Corporation. The appointed Liquidator on behalf of the Government of the Peoples' Republic of Bangladesh made a contract in respect of the entire property of suit plot and other property with Bangladesh Textile Mills Corporation and made over the possession of the property. The Government of the Peoples' Republic of Bangladesh wound up all the affairs of Dhakeshwari Cotton Mills Limited vide Memo No. MT/A/5-A/83/82-42 dated 25.01.1982. The liquidator on behalf of the Government of the Peoples' Republic of Bangladesh executed and registered deeds of sale in consideration of 7,00,00,000/- in 1988. The Defendant No.1 has been in possession of the property. The plaintiff and her husband (i.e. plaintiff No.7) are illegal trespasser. They have no *locus standi* to file the instant suit and have been trying to delay the legal and

lawful process of law. The plaintiff is not entitled to get the relief as prayed for.

At the trial both the parties adduced both oral and documentary evidence. The learned Sub-ordinate Judge of Artha Rin Adalat, 3rd Court, Dhaka dismissed the suit on 30.08.1998.

Being aggrieved by and dissatisfied with the judgment and decree dated 30.08.1998, the plaintiff filed Title Appeal No.351 of 1998 in the court of District Judge, Dhaka, which was heard by the learned Additional District Judge, 5th Court, Dhaka who after hearing the appeal, allowed the same on 02.05.2000 reversing the judgment and decree 30.08.1998 passed by the trial court.

Against the said judgment and decree dated 02.05.2000 the defendant-petitioner filed civil revision No.4687 of 2000 before the High Court Division.

A single Bench of the High Court Division after hearing the Rule by the impugned judgment and order dated 22.01.2012 discharged the same.

Feeling aggrieved by the said judgment and order, the defendant-petitioner has filed this civil petition for leave to appeal.

Mr. Md. Bodruddoza, learned Advocate, appearing for the petitioner submits that the trial court dismissed the suit on the ground that the plaintiff could not prove the 'Amalnama' by virtue of which she claims title over the suit property and in 1953 Narendra Nath and 5(five) others sold the land in question in favour of Dakeshwari

Cotton Mills Ltd. by registered deed, Exhibit-F; but neither the lower Appellate Court nor the High Court Division reversed the findings of the trial Court with reference to the evidence as read, as such the impugned judgment and order of the High Court Division is liable to be set aside.

The learned Advocate further submits that though the trial Court accepting the gazette notification (Exhibit-A) found that the suit land was enlisted as vested property in 1965 and it was vested in the custody of EPIDC and, thereafter, on 02.10.1965 a gazette notification was published and, subsequently, after independence the suit property was vested in favour of BTMC by a gazette notification dated 26.03.1972 (Exhibit-B) and in 1982 when Dakeshwari Cotton Mills Ltd., an enterprise of BTMC was put on liquidation by a gazette notification (Exhibit-C), the said property was sold by the liquidation sale in favour of BTMC by a registered sale deed dated 21.06.1988 and since then the property is in exclusive control and possession of BTMC, but neither the lower Appellate Court nor the High Court Division considered the title and exclusive possession of BTMC. Hence, the judgment and order of the High Court Division is liable to be set aside. The learned Advocate lastly submits that in respect of the suit land of Dakeshwari Cotton Mills other persons filed title suit as well as writ petitions and ultimately in Civil Petition for Leave to Appeal No.390 of 2002 this Division has decided that the sale made by the official liquidator of Dakeshwari Cotton Mills Ltd. on 26.06.1988 in favour of BTMC was lawful and though the copy of

the judgment of this Division was filed before the High Court Division by way of Supplementary Affidavit as Annexure-"B", the High Court Division overlooked the said judgment and did not mention anything about the judgment of this Division passed in Civil Petition for Leave to Appeal No.390 of 2002 hence, the judgment and order of the High Court Division is liable to be set aside.

Per contra Mr. Sharifuddin Chaklader, learned Advocate appearing for the respondents' made submissions in support of the impugned judgment as well as the judgment and decree passed by the court of appeal below.

We have considered the submissions of the learned Advocates for the respective parties, perused the impugned judgment and order of the High Court Division and other connected papers available on record.

In the instant case the plaintiff claims title over the disputed property by virtue of unregistered *Amalnama* dated 15th of Pous, 1350 B.S. The trial Court on proper consideration of the evidence on record categorically held that the plaintiff failed to prove the said *Amalnama*, Exhibit-2 and the alleged rent receipts, Exhibits-5 and 5 (Ka) by examining any competent witnesses. However, the court of appeal below believed the said *amalnama* and decreed the suit holding that the said *amalnama* and the *dakhilas* are genuine documents. The Appellate Court in arriving at the above finding did not at all consider the evidence on record and also did not make reference to that effect. An unregistered *amalnama*

without any legal proof *ipso facto* does not create any right, title, and interest on the suit property in favour of the plaintiff. Further, burden lies heavily upon the plaintiff to prove the unregistered *Amalnama* when she claims title on the basis of the same, against a registered instrument. In the instant case it reveals from the evidence that the defendant-petitioner has purchased the suit property from liquidator on behalf of the Government by a registered deed being No.1618 dated 21.06.1988, exhibit-F. Previously, the suit property was transferred on 06.10.1953 in favour of the Dhakeshwari Cotton Mills by the heirs of its original C.S. record owner Gopinath Poddar. Eventually, the property was declared as an enemy property by gazette notification dated 06.09.1965, exhibit-A; the management of the property was handed over to erstwhile East Pakistan Industrial Corporation **(EPIC)** and after independence of Bangladesh pursuant to President's order No.27 of 1972 the said cotton mill along with other properties were nationalized and its management has been entrusted with the Bangladesh Textile Mills Corporation (BTMC), Exhibit-B and since then BTMC has been possessing and managing the suit property. Eventually, the Liquidation cell made a contract on 11.01.1986 with the present appellant to sell the suit property along with other property, Exhibit-E and thereafter, on 21.06.1988 liquidation cell executed and registered the sale deed in favour of the BTMC, Exhibit-F. S.A Khatian was prepared in the name of BTMC.

The above facts and documentary evidence have not been considered in its proper and legal perspective by the High Court Division as well as the Court of appeal below and thus, the impugned judgment and order suffers from legal infirmity.

It also further emerges from the evidence that the husband of the original plaintiff i.e. present petitioner No.7 was an employee of BTMC, Exhibits-I and G and he was allotted the suit property for residential purpose on payment of rent by BTMC. After his retirement, BTMC on 16.01.1994, 25.04.1994 and 30.04.1994 asked him to vacate the property in question by issuing notice.

It is also undeniable fact that, when the BTMC asked the petitioner No.7 to vacate the suit property he filed Writ Petition No.390 of 2002 before the High Court Division and eventually, the Rule Nisi was discharged for default. The petitioner No.7 filed an application before the High Court Division to restore the said writ petition. However, the said application was also rejected on merit; against which petitioner No.7 preferred Civil Petition for Leave to Appeal No.390 of 2002 before this Division. This Division after hearing the leave petition dismissed the same holding to the effect that:

“It appears that the petitioners have no right, title and interest in the case properties concerned. It may be that they are licensees and/or leases but they have no legal title to the case properties to resist the sale made by the official liquidator of Dhakeswari Cotton Mills Ltd. in favour of BTMC. The petitioners have no *locus-standi* to challenge the action of the respondents. Therefore, submissions made by the learned Advocate for the petitioner merit no consideration.”

Prior to filing the writ petition, the petitioner No.7 as plaintiff filed Title Suit No.25 of 1995 in connection with the suit property in the court of Sub-ordinate Judge, 1st Court, Dhaka for a declaration that he is a legal possessor in the suit property and having failed to get ad-interim order of injunction he along with others filed Title Suit No.146 of 1995 in the same Court for a declaration that they are entitled to get allotment of the suit property from the Government. The petitioner No.7 also filed Rent Suit No.57 of 1973 before the Sub-ordinate Judge, 5th Court, Dhaka impleading the BTMC.

When the petitioner No.7 failed to establish his title in the suit property by filing civil suits and writ petition, then his wife as plaintiff came forward to establish her title on the basis of an unregistered amalnama and also with a plea that her husband divorced her. Exhibit-K, proves that petitioner No.7 appointed her as his 'Nominee' in order to get pension benefit. Further, the plaintiff at no point of time has challenged Exhibit-A, gazette notification enlisting the suit property as enemy property and, Exhibit-B, the order of nationalization of the suit property pursuant to President's Order No.27 of 1972.

Article 10 and 10(1A) of the President's Order No.27 of 1972 [The Bangladesh Industrial Enterprises (Nationalisation) Order, 1972] runs as follows:

10.(1) On the commencement of this Order, there shall be established the following corporations:

“(a)

(b) [Bangladesh Textile Mills Corporation], which shall have and exercise all the powers of a corporation in respect of all the industrial enterprises engaged in cotton manufacturing enumerated in the Second Schedule;

(c)

(d)”

“(1A) Notwithstanding anything contained in any other law, an industrial enterprise, placed under any Corporation by an order notified in the official Gazette under sub-clause (d) of clause (1) of Article 10, and all shares or other proprietary interest in such industrial enterprise shall be deemed to have always vested in the Government and no such order shall be challenged on the ground that the industrial enterprise or the shares or interest therein had not vested in the Government, or that the industrial enterprise, or any share or interest therein, was not liable to be vested in the Government.”[Underlines supplied]

In view of the above provisions of law, there is no scope to challenge the order of nationalization, notified in the gazette by the Government and thus, suit is not maintainable.

Having considered and discussed as above, we find merit in the leave petition; however we are not inclined to grant leave, since we have heard the parties at length.

Accordingly, the leave petition is disposed of.

Judgment and order dated 22.01.2012 passed by the High Court Division in Civil Revision No.4687 of 2000 affirming the judgment and decree dated 02.05.2000 passed by the Additional District Judge, 5th Court, Dhaka in Title Appeal No.351 of 1998 is hereby set aside. Judgment and decree passed by the Trial Court in Title Suit No.101 of 1997 passed by the Artha Rin Adalat, 3rd Court and Sub-ordinate Judge, Dhaka is restored.

C. J.

J.

J.