

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

Present:

**Mr. Justice Md. Moinul Islam Chowdhury**

**Civil Revision No.3071of 2012**

Azimun Nessa (Shaheed family)

-----Petitioner

=Versus=

Secretary, Ministry of Housing and  
Public Works, Bangladesh Secretariate,  
Ramna, Dhaka and others

-----Opposite parties

Mr. M.A. Quddus Sheikh, Advocate

----- For the Petitioner

Mr. Md. Insan Uddin Sheikh, AAG

---- For the Opposite Parties

**Heard and Judgment on 19.03.2018**

At the instance of the present-applicant-petitioner, Azimun Nessa, Leave has been granted and this Rule has been issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 25.06.2012 passed by the learned Additional District Judge and Sessions Judge, 2<sup>nd</sup> court, Dhaka in Civil Revision No.184 of 2011 affirming the judgment and order dated 11.07.2011 passed by the learned Assistant Judge, Ist court, Dhaka in Title Suit No.306 of 2011 should not be set aside.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present-petitioner as the plaintiff filed the Title Suit No.306 of 2011 for permanent injunction regarding the suit land being House No.H/28, Block-E, Jakir Hossain Road, Police Station-Mohammadpur, District-

Dhaka. The said suit is pending for disposal. During pendency of the suit the present-petitioner as the applicant filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure for restraining the present-opposite parties (government) from disturbing the physical possession of the present-petitioner.

After hearing the parties the learned trial court rejected the application for temporary injunction by judgment and order dated 14.07.2011. Being aggrieved the present-petitioner filed the Civil Revision No.184 of 2011 in the court of the learned District Judge, Dhaka which was heard by the learned Additional District Judge, court No.2, Dhaka on transfer who by his judgment and order dated 25.06.2012 discharged the revisional application. This revisional application has been filed under Section 115(4) of the Code of Civil Procedure, the Leave has been granted and the Rule was issued thereupon.

Mr. M.A. Quddus Sheikh, the learned Advocate appearing for the petitioner submits that the petitioner is a member of Shahid family and he is entitled to get allotment of the above mentioned property but the present-opposite parties (government) have been trying to evict him from the property and unknown persons came to threat him to dispossess from the suit land, thus, an ad-interim order of injunction should be granted but the learned trial court and the revisional court below failed to

consider threat upon the petitioner, therefore, committed an error of law by rejecting the application, thus, the Rule should be made absolute.

The Rule has been opposed by the present-opposite parties.

Mr. Md. Insanuddin Sheikh, the learned Assistant Attorney General appearing for the opposite parties (government), submits that the present-petitioner failed to prove herself as a member of Shahid family but she entered into the property illegally adopting all unlawful manner to grab the property, therefore, an equitable remedy of temporary injunction should not be granted in favour of the present-petitioner who did not come with clear hand, as such, the revisional court came to a lawful conclusion by concurrently finding that the petitioner was not entitled to any ad interim order of temporary injunction and the courts below committed no error of law, thus, the Rule should be discharged.

Considering the above submissions made by the learned Advocates appearing for the respective parties and also considering the revisional application filed under Section 115(4) of the Code of Civil Procedure along with Annexures therein, in particular, the impugned judgment and order passed by the learned revisional court, it appears to me that the present-petitioner filed a title suit seeking for permanent injunction for restraining the opposite parties (government) to evict her from the property known as Plot No. H/28, Block-E, Jakir Hossain Road,

Mohammadpur, Dhaka. While the suit is pending the applicant-petitioner filed an application for temporary injunction which the courts below concurrently denied to allow the application for temporary injunction on the ground that the present-petitioner has been an illegal occupant in the suit land and also on the ground that there was no threat from any side of the present-opposite parties (government) to dispossess her, thus, a temporary injunction is not an absolutely a remedy for the petitioner.

In view of the above circumstances, this Court has to take a decision whether an ad-interim order of temporary injunction is necessary or not. In this regard, I have carefully examined the impugned judgment and order passed by the courts below and I have also considered that Order 39 Rules 1 and 2 of the Code of Civil Procedure. I find that the present-petitioner could not show any specific allegation of her either by the present-opposite parties who are the government officials namely, Joint Secretary, Monitoring Cell, Abandoned Property and others but the present-petitioner failed to provide any evidence as to any threat from any party or any person from the opposite parties (government). Moreover, the petitioner herself also submitted before this Court that the present-petitioner was a tenant in the property now she is claiming entitlement upon the property as a member of Shahid family which the learned Assistant Attorney General appearing for the opposite

parties strongly opposed. In this regard, I consider that a claim of Shahid family after 46 years of the Liberation War is not believable but an attempt to get a government facility unduly.

The settled principle of law is that an ad interim order of temporary injunction can only be granted if there is any immediate threat from any specific person in order to dispossess from the suit land. In the instant case, none of the requirements for temporary injunction is present, therefore, the learned revisional court committed no error of law by concurrently finding and affirming the order of the learned trial court.

I am, therefore, not inclined to interfere into the impugned judgment and order passed by the learned revisional court.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is discharged.

The ad-interim order of direction upon the parties to maintain status-quo in respect of possession of the suit land is hereby recalled and vacated.

The learned Senior Assistant Judge, Ist court, Dhaka is hereby directed to dispose of the Title Suit No.306 of 2011 after hearing both the parties within 6(six) months from the date of receipt of this judgment without allowing any unnecessary adjournment from either of the parties.

The office is directed to communicate this judgment and order to the concerned court immediately.