Bench:
Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 4196 of 2012

Mayor, Dhaka City Corporation
...... petitioner
-Versus-
Abdul Mannan and others
..... opposite parties

Mr. Md. Shah Jahan with
Ms. Nilu Shamsunnahar Siddika, Advocates
...... for the petitioner

Mr. Md. Kamrul Alam, Advocate
...... for opposite party 1

Mr. Hasnat Quaiyum with
Ms. Abeda Gulrukh, Advocate
...... for opposite party 6

Judgment on 24.04.2024

At the instance of defendant 1 this Rule was issued calling upon the plaintiff-opposite party to show cause as to why the judgment and decree of the Additional District Judge, Court No.1, Dhaka passed on 15.07.2012 in Title Appeal No.88 of 2011 allowing the appeal and thereby reversing the judgment and decree of the Senior Assistant Judge, Court No.3, Dhaka passed on 31.01.2011 in Title Suit No.123 of 2003 dismissing the suit should not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

The plaint case, in brief, are that the plaintiff is a businessman and has been carrying on business in the New Market Complex since 1967. Previously he was allotted shop

No.583 in Hawkers Plaza Market of Dhaka City Corporation. The authority took decision to build a modern complex in that place. The Corporation promised that they would allot a shop to the plaintiff in the newly constructed shopping Complex. He then handed over possession of his previously allotted shop to the authority. But after construction of the Complex, the Corporation did not allot any shop to him and some others who were allottees of the previous Complex. The petitioner and others then invoked writ jurisdiction of this Court in Writ Petition No.20 of 1985. The Rule issued the aforesaid writ petition was heard analogously with other writ petitions wherein the defendant-Corporation submitted an undertaking to allot a shop to the plaintiff. He, thereafter, deposited Taka 20,000/- in the account of the defendant-Corporation on 14.04.1985 but it did not allot any shop to him. The plaintiff and others hawkers again filed Writ Petition No.32 of 1987 in this Court. There both the parties filed a *solenama* and the Corporation undertook to allot shops to the plaintiff and others but instead of doing so it was trying to allot those to third parties. Thereafter, the plaintiff along with others filed another writ petition bearing No.372 of 1989. In the aforesaid writ petition, the defendant also committed to give allotment of shop to the plaintiff. After disposal of the aforesaid writ petitions the plaintiff and others filed an application to the defendant-Corporation for

getting allotment. A meeting was held and decision taken therein to give allotment of shop No.G-11 to the plaintiff. The defendant verbally permitted the plaintiff to continue his business in the aforesaid shop. Since then the plaintiff has been continuing his business in the aforesaid shop. As the plaintiff was not finally allotted shop No.G-11 which he has been possessing, he sent a legal notice to the defendant but the defendant did not respond to it. The plaintiff has been in possession of the suit shop. He paid entire *salami* for it. He paid taxes, electricity bills and all other bills in his name showing his possession in shop No.G-11. Since the defendant is not allotting the aforesaid shop to him, he instituted the instant suit for declaration that he is entitled to get allotment of it.

Defendants 1-4 contested the suit by filing written statement denying the facts of the plaint. They further contended that the Hawkers Market Samity filed Writ Petition No.32 of 2007 against these defendants which was disposed of in terms of *solenama*. According to the terms of the *solenama* defendant was bound to allot 424 shops to the members of the Samity. But they could not allot 8 shops for shortage of constructed shop in the Complex and the plaintiff is one of them. Subsequently, another writ petition bearing Writ Petition No.372 of 1989 was filed where the Corporation again undertook to allot 25 shops among the

members of the Samity. Since there was no unallotted shop in the ground floor of the Complex they allotted to the plaintiff shop No.35 at the first floor of Block-B in New Super Market North but the plaintiff did not accept the allotment. Consequently, his allotment was cancelled and he was asked to take his money paid as salami. Title Suit No.66 of 1996 is still pending in the Court of Subordinate Judge, Court No.3, Dhaka in respect of shop No.G-11 where an order of *status quo* has been passed. The plaintiff declined to accept the allotment of shop No.35 and filed the instant suit for illegal gain and as such the suit would be dismissed.

Defendant 5 filed written statement and stated that he was never in possession of suit shop No.G-11 and that he did not file any suit against defendants 1-4 in any Court.

On pleadings, the trial Court framed 3 issues. In the trial, plaintiff examined 2 witnesses while the defendants examined 1. The documents of the plaintiff were exhibits-1-20(9) and the documents of defendants were exhibits-Ka and Kha. However, the Assistant Judge by its judgment and decree passed on 31.01.2011 dismissed the suit against which the plaintiff preferred appeal before the District Judge, Dhaka. The transferee Court heard the appeal and by its judgment and decree under challenge allowed the appeal decreed the suit.

Ms. Nilu Shamsunnahar Siddika, learned Advocate for the petitioner takes me through the judgments of both the Courts below and submits that the trial Court on correct assessment of fact and law dismissed the suit but the Court of appeal below without adverting the findings of the trial Court allowed the appeal and set aside that judgment which is required to be interfered with by this Court in revision. She submits that the plaintiff was allotted shop No.35 of B block of the Complex which he did not accept and consequently his allotment was cancelled. Since there was no direction or undertaking in the writ petition for giving him allotment of shop No.G-11, he is not entitled to get it allotted. The judgment passed by the appellate Court is perverse one and result of non reading and misreading of evidence and wrong interpretation of documentary evidence and as such the judgment and decree passed by the appellate Court should be set aside and those of the trial Court be restored.

Md. Kamrul Alam Kamal, learned Advocate for opposite party 1 opposes the Rule and submits that the plaintiff from long ago has been enjoying shop No.G-11 with the terms of the defendant-Corporation. He paid entire *salami* to defendant 1 for the suit shop. He paid taxes, electricity and other utility bills in his name in respect of the suit shop. In the premises above he accrued a legal right to get allotment of the aforesaid shop. The trial Court

without assessing the evidence both oral and documentary dismissed the suit but the appellate Court correctly assessed the oral evidence of plaintiff's witnesses and documents produced by him and allowed the appeal decreeing the suit. In allowing the appeal, the appellate Court did not commit any error of law which has resulted in an error in such decision occasioning failure of justice. The finding of facts arrived at by the appellate Court should not be interfered with unless there is gross misreading and non consideration of the evidence and other materials on record. The petitioner failed to show any misreading and non consideration of the evidence on record for which the judgment and decree passed by the appellate Court may be interfered with. The Rule, therefore, having no merit would be discharged.

Ms. Abeda Gulrukh, learned Advocate for added opposite party 6 on the other hand submits that as per the judgment passed in Writ Petition No.12240 of 2006, defendant 1 allotted shop No.G-11 to this opposite party on a meeting of Shop Allotment Committee dated 20.01.2011. This opposite party was not made party to the suit and as such he failed to contest it disclosing all the aforesaid facts. Since the shop in dispute has been allotted to this opposite party, he has acquired a legal right over it and as such the plaintiff is not entitled to get a decree as prayed for. The Court of appeal below misdirected and misconstrued in its

approach of the matter and allowed the appeal decreeing the suit which is to be set aside by this Court in revision.

I have considered the submissions of both the sides, gone through the rule petition, the grounds taken therein, the judgments passed by the Courts below and other materials on record. It is not denied by the defendant City Corporation that the petitioner was not an allottee of shop No.583 of the original Complex. It is also admitted fact that previous Complex was demolished and the defendant constructed a new Complex therein. Since the present plaintiff was an allottee of the previous complex he is entitled to get a shop allotted in the newly constructed Complex. It is not denied by defendant that the plaintiff was entitled to get allotment a shop therein immediately after its reconstruction. The case of the plaintiff is pure and simple that after reconstruction of the new building he took oral permission from defendant City Corporation and has been enjoying shop No.G-11 by carrying on business therein. The documents submitted by the plaintiff exhibits-1-20(9) series prove that he is in possession of shop No.G-11 from 1995. I find from the plaintiff's exhibited documents that he paid the remaining amount of *salami* by pay order dated 08.08.2005. Exhibit-12 and exhibit-12(1) both dated 09.08.2005 prove that the amount was deposited to defendant 1 for shop No.G-11. Exhibit-15 proves that the plaintiff paid electricity bills in 2008 in respect

of the aforesaid suit shop. Exhibit 15(1) is a letter issued by defendant 1 Corporation for payment of electricity bills for the aforesaid shop and exhibit-16 was addressed to the plaintiff for payment of electricity bills for the said shop. The exhibited documents further prove that the metre of shop No.G-11 is in plaintiff's name. The plaintiff through exhibit-19 series paid tax to the concerned authority from 1992-2001 for doing business in the shop which proves plaintiff's possession in the suit shop. The defendant-Corporation did not disagree the aforesaid facts and documents submitted by the plaintiff. The City Corporation agrees that the plaintiff is entitled to get a shop allotted from them.

The moot question is to be decided here whether the plaintiff is entitled to get allotment of shop No.G-11 in his name. The exhibited documents and evidence of two plaintiff's witnesses prove that the defendant-City Corporation allowed the plaintiff to enjoy the shop in question and he is in absolute possession over it by paying all utility bills and taxes, and as such he has accrued a legal right to get the shop allotted in his name.

The case of opposite party 6 to this Rule is that he has been allotted shop No.G-11 on a decision held by the Allotment Committee on 20.01.2011. Undoubtedly, opposite party 6 is also entitled to get allotment of a shop in the Complex. There is no proof before me that shop No.G-11 was allotted to opposite party

6. He did not state the date in the application in which the shop was allegedly allotted to him. Defendants 1-4 did not state anywhere that the aforesaid shop No.G-11 has been allotted to opposite party 6 or anyone else. It appears that even the statement made in the application for addition of party is taken into account that the Committee took decision on 21.01.2011 for its allotment to opposite party 6 but it was during pending of the aforesaid appeal and just before passing of the appellant judgment. Opposite party 6 is entitled to get a shop allotted in the Complex but since the plaintiff has been able to make out a case that he is entitled to get allotment of shop No.G-11 from defendant-Corporation there could be no reason to allot the said shop to opposite party 6. Defendant 1 the City Corporation will take appropriate steps for allotment of a shop (not shop No.G-11) to the added opposite party 6 as per law.

In view of the discussion made hereinabove, I find no error in the impugned judgment and decree passed by the appellate Court. There is no misreading and non consideration of the evidence on record for which the appellate judgment and decree may be interfered with by this Court.

Therefore, I find no merit in this Rule and accordingly, the Rule is discharged. However, there will be no order as to costs.

The judgment and decree passed by the appellate Court is hereby affirmed.

Communicate this judgment and send down the lower Courts' record.