

Present:**Mr. Justice Md. Kamrul Hossain Mollah****Civil Revision No. 1756 of 2013****IN THE MATTER OF:**

An application under Section 115(1) of the Code of Civil Procedure

- AND -

IN THE MATTER OF:

Beer Kumar Chakma and another

..... Plaintiff-Petitioners

-Versus -

Meteorologist and Project Director and others

..... Defendant-Opposite Parties

Mr. Rashedul Haque, Advocate

..... For the Petitioners

Mr. Cumar Debul Dey, Advocate

..... For the opposite party No. 6

**Heard on 01.08.2023, 09.08.2023, 27.08.2023
and Judgment on 30.08.2023****Md. Kamrul Hossain Mollah, J:**

On an application by the petitioner, under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 02.05.2013 passed by the learned District Judge, Khagrachari Hill District in Civil Appeal No. 09 of 2012 reversing the judgment and order dated 29.11.2011 passed by the learned Joint District Judge, Khagrachari Hill District in Civil Suit No. 230

of 2010 should not be set-aside and/or pass 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 this Court stayed the operation of the judgment and order dated 02.05.2013 passed by the learned District Judge, Khagrachari Hill District in Civil Appeal No. 09 of 2012 for a period of 01 (one) year from date.

Facts necessary for disposal of the Rule, in short, are that the suit land is belonging to the plaintiff. They have been possessing from long time. The defendant has no right, title and interest over the suit land. The defendant No.2 the Deputy Commissioner, Khagrachari decided to established the office of Meteorological observation centre on the suit land and issued notice on 12.08.2010 to the plaintiff for requisition the suit land, but the defendant did not specified the land, that from which holding and how many land will be acquire, so the defendant is not entitled to acquired the schedule land and hence the Case.

On the other hand, the defendants No.1-5 contested the suit by filing a written statement denying the material allegation of the plaint and contended inter-alia that the plaintiff has no cause of action to file this suit. The schedule land measuring 2.50 acres is under the Meteorological department of Bangladesh government. The land measuring 2.50acres acquired by the Government under the L.A. Case No.02/(D)/2010 and the defendant have been possessing the land. The defendant has not taken any proceeding to entered into the land measuring 6.00 acres. The defendant acquired 2.50 acres of land and they assessed the compensation, so the

plaintiff has no cause of action to file the suit for permanent injunction against the defendants. The defendant before acquired the land issued notice in favour of plaintiff No.2 and Pro-forma defendant No.1 and they have no objection for acquiring the land. So, the defendant acquired the land by assessing compensation. The tenants are entitled to get compensation. So, the plaintiff is not entitled to file this suit and that the suit is beyond the jurisdiction of the Court. The suit is liable to be dismissed.

The learned Joint District Judge, Khagrachari Hill District before enlisted the suit in preemptory hearing decreed the suit infavour of the plaintiff vide his judgment and order dated 29.11.2011.

Being aggrieved by and dissatisfied with the judgment and order dated 29.11.2011 passed by the learned Joint District Judge, Khagrachari Hill District in Civil Suit No. 230 of 2010 the defendant-opposite parties preferred the Civil Appeal No.09 of 2012 before the learned District Judge, Khagrachari Hill District. After hearing both the parties and considering the materials on record the learned District Judge, Khagrachari Hill District allowed the Civil appeal No.09 of 2012 and reversed the judgment and order dated 29.11.2011 passed by the learned Joint District Judge, Khagrachari Hill District in Civil Suit No. 230 of 2010 allowing the suit by his judgment and order dated 02.05.2013.

Being aggrieved by and dissatisfied with the judgment and order dated 02.05.2013 passed by learned District Judge, Khagrachari Hill District in Civil Appeal No. 09 of 2012 allowing the Civil Appeal and

reversing the judgment and order dated 29.11.2011 passed by the learned Joint District Judge, Khagrachari Hill District in Civil Suit No. 230 of 2010 allowing the suit, the petitioners filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and stay.

Mr. Rashedul Haque, the learned Advocate appearing for the petitioners submits that the learned Joint District Judge, Khagrachari Hill District rightly decreed the suit considering the facts and documents with proper findings and the learned Court below elaborately discussed and considering the record and the learned Court below duly considered all the materials aspect of the case and as such the impugned judgment is sustainable in the eye of law.

He further submits that the suit land is belonged to the plaintiff and they have been possessing and planted different trees. But the defendant No.2 acquired .50 acre of land for construction of Meteorological observation centre. The defendants might have cut down all the trees, so they have filed the suit for declaration of their title and for permanent injunction.

He next submits that the Appellate Court below committed an error of law resulting error occasioning failure of justice without perusing the evidences on record that the defendant wrongly mentioned the name of Monorama Tripura was mentioned in regarding 2.00 acres of land under holding No.48 and as such, the Appellate Court below committed error of law resulting in the decision occasioning failure of justice.

The learned Advocate lastly submits that the Appellate Court below without considering the report of “Kanango” in regarding ownership and possession of the suit land and failed to notice that the defendant acquired the new schedule of land for which the defendant earlier has not served any notice. Accordingly, he prays for making the Rule absolute.

On the other hands, Mr.Cumar Debul Dey, the learned Advocate appearing on behalf of the opposite parties submits that when the property is required for a public purpose or in public interest the Deputy Commissioner may acquired the said property by starting a L. A case under Requisition of Immovable property Act-1988 and accordingly Deputy Commissioner rightly started L A case No. 2 (D)/2010 and issued the notice upon the plaintiffs properly. After serving notice the plaintiff is not entitled to file this case against the opposite parties.

He further submits that from the certified copy of final compensation assessment role prepared by the office of the Deputy Commissioner, Khagachari, shows that total 2.50 acres of land under Mouza No.31 was acquired from holding No.48 measuring an area of 2.00 acres of land, from holding Nos. 62 and 137 measuring an area on 0.50 acres of land and accordingly, plaintiff and pro-forma defendant No.1 being the owner of 0.50 acres of land of Holding No.62 and 137 got compensation about Tk.17,25,000/- and also got Tk.1,63,932.50/- and the authority also assessed compensation in respect of 2.00 acres of land from Holding No.48 in the name of Monorama Tripura. From the order No.10 dated 12.06.2013 in L.A. Case No.02(D)/2010, it appears that after disposl of the appeal the

plaintiff already withdrawn their compensation money in respect of their 0.50 acres of land.

He further submits that from the records of L.A. Case No.2(D)/2010, it transpires that after passing the judgment of Civil Appeal No.09 of 2012 and before filing the instant civil revision the plaintiff-petitioner on accepting the compensation assessment role withdrawn the compensation money measuring an area of 0.50 acres of land. But, the petitioners of the instant Rule on suppressing this facts filed the instant civil revisional application with a prayer for stay operation of Judgment and order dated 02.05.2013 passed by the learned District Judge, Khagrachari Hill District passed in Civil Appeal No.09 of 2013 and the Hon'ble Court stayed the judgment and order of the Court below and due to the order of stay the opposite party No.6 could not able to withdraw the compensation money in respect of 2.00 acres of land, which was acquired from Holding No.48.

The learned Advocate lastly submits that, the trial Court while passing the judgment failed to consider that the petitioners filed the suit for declaration of title and permanent injunction in respect of Holding Nos.62 and 137. But the present opposite party No.6 is the owner of land of Holding No.48 which is adjacent to the Holding Nos.62 and 137. Since the suit is regarding the Holding Nos.62 and 137, it is not necessary to contest the suit by the opposite party No.6, but the trial Court below most arbitrarily beyond the schedule of the plaint passed the judgment and order and the learned Appellate Court below rightly allowed the appeal and reversed the judgment and order of the trial Court and as such the instant

Rule is liable to be discharged. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and order of the Courts' below, the submissions of the learned Advocates for the parties, the papers and documents as available on the record.

On perusal of the documents filed by the defendants it appears that the Deputy Commissioner on 12.08.2010 issued notice to the plaintiff for the requisition of .50 acre of land. The Deputy Commissioner served notice to the land holder under section 3(2) of the Chattogram Hill Tracts (land acquisition regulation 1958).

According to the Section-3 of the requisition of Immovable Property Act, 1988 provides that-“অস্থাবর সম্পত্তির হুকুম দখল (১) কোন অস্থাবর সম্পত্তি সরকারী কাজে বা জনস্বার্থে স্বল্পকালীন সময়ের জন্য আবশ্যিক হইলে ডেপুটি কমিশনার লিখিত আদেশ দ্বারা উক্ত সম্পত্তি হুকুম দখল করিতে পারিবেন।”

উক্ত আইনের ৯ ধারায় বলা আছে, আদালতের এখতিয়ারহীনতা এই আইন বা বিধির অধীন প্রদত্ত কোন আদেশ বা গৃহীত কোন ব্যবস্থার বিরুদ্ধে কোন আদালতে কোন প্রকার মোকদ্দমা দায়ের বা আরজী পেশ করা যাইবেনা এবং কোন আদালত উক্তরূপ কোন আদেশ বা ব্যবস্থা সম্পর্কে কোন প্রকার নিষেধাজ্ঞা জারী করিতে পারিবেনা।

So according to section 3 and 9 of the Immovable Property Act-1988 present suit of the petitioners is not maintainable.

Considering the case of petitioners and opposite parties and on the perusal of the documents I am of opinion that the Deputy Commissioner rightly acquired the land by starting L.A. case and did not violating the rules of the requisition of immovable property.

On perusal of the record, it appears that the opposite parties have filed written statement on 05.09.2011. Thereafter, the suit fixed for primary hearing on 11.10.2011. Thereafter, the date was shifted on 29.11.2011 for primary hearing. On that date the learned trial Court decreed the suit in favour of the petitioners. After filing the written statement by the opposite parties the learned trial Court directly disposed the suit with contest. The learned trial Court did not enlisted the suit for pre-emptory hearing. The learned trial Court decreed the suit before enlisted pre-emptory hearing. But, according to law, the suit was not under jurisdiction of the Court. But the learned trial Court illegally decreed the suit in favour of the petitioners. The learned Joint District Judge, Khagrachari Hill District without applying his judicial mind and whimsically passed his judgment and order dated 29.11.2011.

On perusal of record, I am of opinion that the plaintiff-petitioners have totally failed to prove their case and the suit is barred by law. So Tthe suit is not maintainable in the eye of law. In the facts and circumstances of the case I am constrained to hold that the learned trial Court seriously erred in law by decreeing the suit. On the other hand, the learned District Judge, Khagrachari Hill District passed the judgment and order dated 02.05.2013 in Civil Appeal No.09 of 2012 allowing the appeal and reversing the judgment and order dated 29.11.2011 passed by the learned Joint District Judge, Khagrachari Hill District in Civil Suit No.230 of 2010 is rightly, and which is maintainable in the eye of law and there is no scope to interference there.

Accordingly, I find substance in the submission of the learned Advocate for the opposite parties and I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The judgment and order dated 02.05.2013 passed by the learned District Judge, Khagrachari Hill District in Civil Appeal No.09 of 2012 allowing the appeal and reversing the judgment and order dated 29.11.2011 passed by the learned Joint District Judge, Khagrachari Hill District in Civil Suit No.230 of 2010 is hereby upheld and confirmed.

The order of stay granted at the time of issuance of the Rule by this Court is hereby recalled and vacated.

Let a copy of this judgment and order with L.C.R be sent to the concerned Court below at once.