

Present :
Mr. Justice Ashish Ranjan Das.
Civil Revision No. 2082 of 1998

In the matter of:

Chairman Khulna Development Authority, k.D.A.
Building, Khulna.

..... Petitioner

-Versus-

Abdul Aziz Sheikh and others

..... Opposite parties.

Mr. Sheikh Tahsin Ali, Advocate

.....For the petitioner.

Mr. Md.Tariqul Islam Khan, Advocate

... For the opposite parties

Heard on : 18.12.2019

Judgment on: 12.01.2020

Ashish Ranjan Das, J:

The plaintiff opposite parties brought a declaratory suit being title suit no. 17 of 1991 in the court of Assistant Judge, Daulatpur, Khulna that was dismissed on contest on 23.10.1995. Being aggrieved the plaintiff opposite parties preferred title appeal no. 25 of 1996 and on transfer the learned Subordinate Judge, 3rd Court, Khulna allowed the appeal in part. Being aggrieved the defendant respondents brought this civil revisional application under section 115(1) of the Code of Civil Procedure.

I have heard the learned advocates for the contesting parties in details and perused the materials annexed including the Lower Court Records.

Short facts relevant for the purpose of disposal of the Rule may be summarized as under:-

2.40 acres of land of Mouza-Pabla, Police Station-Daulatpur, District-Khulna admittedly belonged to the plaintiff opposite parties

of which 1.93 acres of land was acquired by the Government through L.A. Case No. 2b/65-66 and the plaintiff received compensation. Now the case is that the land was acquired for the purpose of constructing a main road in Khulna Municipal Town. But over the years 36 decimals of land has been lying unused. Hence Khulna Development Authority (for short KDA) should be directed to derequisition that portion and for a further declaration that such a acquisition was illegal. The suit was contested as the learned Assistant Judge found that the P.W.1 admitted that initially entire 1.93 acres of land was duly acquired and compensation was paid but the Municipal authority did not utilize 36 decimals of land out of 1.93 acres acquired for the purpose. The case of the petitioner defendant was that 1.93 acres of land was duly acquired and compensation money was paid. The plaintiff over the years raised not question. While the project of construction of a road is still in progress and that 36 decimals of land would be required from construction of a drain along side the road and for commercial plots. The learned Assistant Judge found the plea of the plaintiff not tenable in law and hence he dismissed the suit.

While the lower appellate court upheld the plea of the plaintiff party and observed that since out of 1.93 acres of land 36 decimals of land remained unused the plaintiff is entitled to get the portion of land back through derequisition. Hence he decreed the suit in part.

Now simply the case is that admittedly that 1.93 acres of land belonged to the plaintiff opposite party that was lawfully acquired by the government and compensation money was paid. The land was

requisitioned for the purpose of construction of a road of the KDA and the project has been still in progress. Firstly the plaintiff could not show that the portion of 36 decimals of land has been lying vacant and it was not nor it would be used by the authority. Secondly as before the plaintiff did not raise any objection against the requisition process rather he withdrew all the compensation money. Hence under law the plaintiff opposite parties retained no right to get any portion of acquired property back. The learned lower appellate court seems to have misdirected himself

As a result in find convincing merit in the submission of the learned Advocate for the defendant petitioner and the rule is made absolute.

The judgment of partial decree passed by the learned Subordinate Court, 3rd Court, Khulna dated 23.02.1998 passed in Title Appeal No. 25 of 1996 is hereby set aside and the suit stands dismissed.

The order of stay granted earlier by this court is hereby recalled and vacated

Send down the L.C.Records at once.

However, there is no order as to costs.

The office is directed to communicate the judgment and order to the court below at once.

Justice Ashish Ranjan Das.