

Bench:

Mr. Justice Bhishmadev Chakraborty

And

Mr. Justice Md. Akhtaruzzaman

First Appeal No.142 of 2014

Government of Bangladesh and others

.....appellants

-Versus-

Rupam Kumar Bhattachariya and others

..... respondents

Ms. Rahima Khatun, Deputy Attorney General  
with Mr. Md. Ruhul Amin and Ms. Farida  
Pervin Flora, Assistant Attorney Generals.

..... for the appellants

Mr. AKM Faiz, Senior Advocate with Mr.  
Sadanada Rana and Mr. Ajoy Shankar  
Bhowmick, Advocates

..... for the respondents

Judgment on 14.12.2023

Bhishmadev Chakraborty, J.

This appeal, at the instance of defendant-Government, is directed against the judgment and decree of the Joint District Judge, Court No.1, Chattogram passed on 16.09.2010 in Other Class Suit No.320 of 2009 decreeing the suit.

The plaint case, in brief, is that Surendralal Khastagir and Narendralal Khastagir were the recorded owners in equal shares of the property appertaining to RS *Khatian* 440 plot 641 measuring 2.99 acres. Narendralal died leaving behind his 2(two) sons Abanindralal and Atul Kumar who inherited the share of their father. During possession and enjoyment they sold their total share to Natun Chandra Bhattachariya by a registered *kabala* bearing No.1244 dated 19.04.1939 and handed over possession thereof. On the death of

Natun Chandra his son Manindra Mohan inherited the said property. Manindra Mohan died leaving behind his 2(two) sons Murad Mohan and Shasanka Mohan. Murad Mohan died during liberation war and thus Shasanka became the absolute owner of the property. Subsequently, Shasanka died on 30.10.2005 leaving behind his son Rupam Kumar Bhattachariya (plaintiff) and mother Rupali Rani Bhattachariya. Thus the plaintiff became owner in possession of the schedule property. He has been possessing the property through tenants. The nature of property is dwelling house and shops. The plaintiff went to the *tahasil* office on 05.08.2009 for payment of rent but the concerned officer told him that BS *khatian* in respect of the property has been prepared in the name of Department of Construction and Building. The *khatian* as prepared in the name of defendants 1 and 2 was wrong, incorrect and baseless. It was further stated that Shasanka sold .0594 acres from BS plots 2094 and 2039 by a registered *kabala* dated 04.01.1973 to a third party and accordingly mutation was done in the name of the purchaser. The plaintiff, claimed .0094 acres of BS plot 2092 and .2304 acres out of 1.3750 acres of plot 2097, *i.e.*, in total he claimed .2396 acres from the aforesaid two plots. Subsequently, the plaintiff amended the plaint to show his claimed land with buildings in the aforesaid two plots by a sketch map in which he inserted the boundary of the suit property. The plaintiff finally prayed for declaration of title over .2396 acres as specified in the schedule of the plaint and further prayed for

declaration that BS *khatian* 5 in the name of defendants 1 and 2 in respect of the suit property is erroneous and not binding upon him.

Defendants 1-3, the Government contested the suit by filing written statement denying the statements made in the plaint. In the written statement they mainly contended that the suit is barred by principle of waiver, acquiescence and estoppel. The plaintiff did not take any steps against the alleged wrong record of rights under sections 30, 31 and 42(Ka) of the State Acquisition and Tenancy Act, 1950 and as such the instant suit is not maintainable. They further stated that BS *khatian* 5 in respect of .0094 and 1.3750 acres of plots 2092 and 2097 respectively has been prepared in the name of Department of Construction and Building, Chattogram and they are in possession over the property. Since BS record is usually prepared as per possession, it has presumptive value. The plaintiff is not in possession of the suit property and as such the suit is not maintainable in the present form. The suit, therefore, would be dismissed.

On pleadings the trial Court framed the following issues-

- i) Whether the suit is maintainable in the present form?
- ii) Whether the plaintiff has right, title and possession in the suit land?
- iii) Whether BS *khatian* has been prepared correctly and
- iv) Whether the plaintiff is entitled to get decree as prayed for?

In the trial, the plaintiff examined 2 witnesses while the defendants examined 1. The documents of the plaintiff were made as

exhibits 1-6 (Uma) and the defendats' was Ka. The Joint District Judge considering evidence both oral and documentary decreed the suit, giving rise to this appeal by the defendants.

Ms. Rahima Khatun, learned Deputy Attorney General takes us through exhibit-5, *i.e.*, a sale deed executed and registered by Shasanka Mohan to a 3<sup>rd</sup> party and submits that in the aforesaid document it is found that major part of the land of the suit *khatian* has been acquired by the Government in LA Case No.04/58-59. Since the land has been acquired, the instant suit is not maintainable under section 14 of the Emergency Requisition of Property Act, 1948. At the fag end of hearing of the appeal learned Deputy Attorney General has filed an application under Order 41 rule 27 of the Code of Civil Procedure (the Code) for acceptance of the additional evidence. She annexed gazette notification of LA Case No.35/50-51 with the application to show that the disputed property has been acquisitioned by the Government. She then submits that the land was acquired for construction of Chattogram Medical College Hospital and it is within the boundary of the medical college. She adds that as the land has been acquired by the Government whatever may be its purpose, its ownership has already been vested in the Government. Nobody can claim title and possession over the property which has already been acquired. The government failed to make out the above case in the written statement inadvertently. The additional evidence as submitted with the application is to be admitted into evidence for effective

disposal of this appeal. Therefore, the appeal should be allowed and the suit be dismissed on the ground of maintainability.

Mr. AKM Faiz, learned Senior Advocate for the respondent, on the other hand, submits that it is not the case of the defendants that the suit property was acquired by the Government. The appellants cannot be allowed to make out a 3<sup>rd</sup> case by submitting some papers in this Court to admit those as additional evidence. He submits that according to the deed of sale exhibit-5, a part of land of disputed RS plot is seen to have been acquired. The plaintiff claimed a small part of plot 2097 measuring .2302 acres and .0094 acres of plot 2092. The plaintiff successfully proved the genealogy of claim through evidence of PWs 1 and 2 and further proved that he is in absolute possession in the suit property. Although, the above 2(two) witnesses were cross-examined by the defendants at length but nothing came out to the contrary. The defendants failed to produce any evidence to show the basis of recording of BS *Khatian* 5 in their names. Mr. Faiz refers to the case of Mohammad Ali Akhand Vs. Bahatan Nessa Bewa and others, 18 BLD (AD) 50 and raising serious objection about taking of additional evidence submits that in the present case, the appellants cannot be allowed to adduce additional evidence to make out a new case and fill up the lacuna. Under the facts and circumstances, the application for additional evidence should be rejected and the judgment and decree passed by the trial Court having been based on evidence be affirmed.

We have considered the submissions of both the sides and gone through the evidence and other materials on record. We have further gone through the statements made in the application for acceptance of additional evidence filed by the appellants, the gazette notification appended thereto and counter-affidavit filed against it.

It is admitted position of fact that RS *Khatian* 440 plot 641 measuring 2.99 acres was prepared in the names of Surendarlal and Narendralal in equal shares and exhibit-2 RS *Khatian* supports it. The plaintiff claims the property as heirs of his great grandfather Natun Chandra Bhattachariya who purchased it by a registered *kabala* dated 19.04.1939 exhibit-3 from its original owners Abanindra and Atul, the sons of Narendra. By the heirs certificate exhibit-6 series, the plaintiff proved that he is the great grandson of Natun Chandra. In the plaint the plaintiff stated the fact that he went to the concerned *tahasil* office on 05.08.2009 for payment of rent and came to learn that BS *Khatian* 5 has been prepared in the name of Department of Construction and Building, *i.e.*, defendant 2 and, therefore, he instituted the suit for declaration of title in respect of .0094 acres of BS plot 2092 and .2302 acres out of 1.3750 acres of BS plot 2097. We find that by the amendment of plaint, the plaintiff's claimed property has been specified in the sketch map. He proved that BS plots 2092 and 2097 appertains to RS plot 641 and his claimed property of .2302 acres is a part of plot 2097 which has made a compact plot with .0094 acres of plot 2092. He demarcated the land by boundary by amendment of

plaint and led corroborative oral evidence of PWs 1 and 2, his tenants to substantiate his claim.

The moot point is to be decided here, whether the property in question was acquired by the Government as claimed by the learned Deputy Attorney General here. If the land is acquired, the suit is not maintainable as per the provisions of Act, 1948. The defendant-Government in the written statement nowhere stated that the land of RS *khatian* 440 plot 641 corresponding to BS *khatian* 5 plots 2092 and 2097 was ever acquired by the Government. If we accept the submission of the learned Deputy Attorney General that exhibit-5 proves the land was acquired by the Government, but it shows that a part of land of disputed RS plot 641 was acquired by the Government. Moreover, the gazette notification annexed with the application for taking additional evidence proves the same fact. In making claim of acquisition a part of a plot or *khatian*, the Government is to show the specific part or quantum of land of that plot was acquired.

We have given our anxious consideration on the application filed by the appellants under Order 41 rule 27 of the Code. The application is beyond the pleadings and it do not come within the purview of the aforesaid Order and rule of the Code. The application is vague, unspecific and the evidence prayed to be taken is not required by this Court for pronouncement of the judgment of this appeal. The submission of the learned Deputy Attorney General about requiring body, i.e., whether it was acquired for medical college or for

Department of Construction and Building is also confusing. If the case of medical college is taken into account, it proves that only .199 acres of land of RS plot 641 was acquired which is a small part of 2.99 acres of the plot but it was not also specified. We cannot allow the appellant to make out a new third case here or to fill up the lacuna in the name of taking additional evidence. The application filed under Order 41 rule 27 of the Code, therefore, bears no merit and as such it is rejected. The *ratio* of the case cited by Mr. Faiz reported in 18 BLD (AD) 50 is befitting here.

On going through the record of LA case called for by this Court at the instance of defendant-respondent, we find that although a part of the suit property was acquired by the Government through an LA case but it is a small part of the aforesaid disputed 2(two) suit plots. Therefore, the submission of the learned Deputy Attorney General has no leg to stand without specifying quantum and demarcation of land acquired, if any. The claim of the plaintiff do not clash with the acquisition. We, therefore, do not accept the submission of Ms. Khatun that the instant suit is barred under section 14 of the Emergency Requisition of Property Act, 1948.

On appraisal of evidence of PWs 1 and 2, we find that the plaintiff has been enjoying the suit shop and building though tenants. PW1 led evidence supporting the claim of the plaintiff which was corroborated by PW2 another tenant. Both of them stated that they are paying rent to the plaintiff. The plaintiff proved his title over the



aforesaid demarcated property measuring .2396 acres with a building and shop standing thereon as per the sketch map. We find no basis of recording the suit property in BS *Khatian* in the name of the Government. The trial Court on correct appreciation of fact and law held that the plaintiff proved his title and possession over the suit land and as such BS record of rights prepared in the name of defendant 2 is erroneous and baseless and finally decreed the suit.

We find nothing to interfere with the impugned judgment and decree. Therefore, this appeal fails and consequently it is dismissed. However, there will be no order as to costs. The judgment and decree passed by the trial Court is hereby upheld. The order of *status quo* stands vacated

Communicate the judgment and send down the lower Court records and other records called for.

Md. Akhtaruzzaman, J.

I agree.