

Present:-

***Mr. Justice Mahmudul Hoque***

**Civil Revision No. 1894 of 2007**

Government of Bangladesh represented by the  
Executive Engineer, Segun Bagicha, Railway  
Division-4, Dhaka

..... Petitioner

-Versus-

Abdul Jalil and others

..... Opposite-Parties

Mrs. Rashida Alim Oeshi, D.A.G. with

Mr. Abdur Rahim, A.A.G.

Mr. Mostafizur Rahman (Tutul), A.A.G. and

Mr. Md. Nurul Karim, A.A.G.

... For the Government-Petitioners

Mrs. Shamima Binte Habib, Advocate

... For the Opposite Party No. 1

Mr. Sirajul Islam, Senior Advocate

Mr. Kawser Mahmud, Advocate with

Mr. Raju Mollah, Advocate

... For the Opposite Party No. 2

**Judgment on 07.12.2025**

In this revision Rule was issued calling upon the opposite party  
Nos. 1-5 to show cause as to why the impugned judgment and decree  
dated 18.10.2006 (decree signed on 23.10.2006) passed by the learned  
Additional District Judge, 2<sup>nd</sup> Court, Dhaka in Title Appeal No. 517 of  
2005 allowing the appeal and reversing the judgment and decree dated  
25.10.2005 (decree signed on 30.10.2005) passed by the learned Joint  
District Judge, 5<sup>th</sup> Court, Dhaka in Title Suit No. 178 of 1995 dismissing

the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the plaintiff, as opposite party instituted the suit for declaration and in the alternative specific performance of contract in the court of the learned Joint District Judge, 5<sup>th</sup> Court, Dhaka being Title Suit No. 178 of 1995, stating that an area of 1 katha 14 Chataks land mentioned in the schedule to the plaint under Mouza Shahar Khilgaon within Police Station-Ramna, then Motijheel, now Shabujbagh, District-Dhaka, belonged to Dukhu Bhuiya and others, subsequently the then Government of East Pakistan acquired the suit land for the purpose of Kamalapur Railway Station, Dhaka. As an affected person Plot No. A/179 at Khilgaon Rehabilitation Area was allotted by the Government in favour of Dukhu Bhuiya on 05.02.1968 vide allotment letter No. 3385(3) R.D.O. subject to payment of Tk. 1527.87 only.

It is also stated that the plaintiff on behalf of Dukhu Bhuiya deposited the said amount by a Treasury Chalan in the Bangladesh Bank on 27.11.1973 favouring Executive Engineer, Railway Division (Building). Dukhu Miah entered into an agreement for sale of suit Plot

No. A/179 with one Abdul Mannaf on 14.11.1969 and delivered him possession of the suit land and he also executed and registered a General Power of Attorney on the same date in favour of one Abdul Karim. Thereafter, Abdul Mannaf became ill and in need of money he also executed and registered an agreement on 03.02.1971 infavour of plaintiff and delivered possession upon receipt of money and also executed and registered a Power of Attorney empowering one Habibur Rahman to transfer the suit property. The plaintiff constructed two storied building on the suit plot and has been living therein with family. Thereafter, Dukhu Bhuiya died leaving his two sons along with others as heirs and they received Tk. 70,000/- from plaintiff but subsequently defendant Nos. 1-4 being heirs of Dukhu Bhuiya was trying to transfer the suit property to another person after having a deed of lease from defendant Nos. 10-11 and defendant No. 6. The plaintiff received notice from the defendants dated 23.09.1993 and 12.10.1993 alleging that all construction works done by the plaintiff is illegal and asked to surrender possession, hence, the present suit.

The defendant-respondent-petitioners contested the suit by filing separate written statements. The defendant Nos. 10 to 12 stated that the

suit plot was allotted by the government in favour of Dukhu Bhuiya as affected person caused by acquisition but he neither paid any installment nor obtained the lease deed executed and registered from the Government in pursuance of allotment letter, rather in violation of clause 5 of the allotment letter he entered into an agreement for sale with one Abdul Monnaf without any right, title and possession. The plaintiff is not an allottee of the Government and not heir of the original allottee Dukhu Bhuiyan. The plaintiff illegally trespassed the suit land in the early part of 1993, consequently, the Government served notice upon him on 23.09.1993 for surrendering possession of the suit land. The plaintiff without complying request of the defendants filed this suit on the basis of some forged and fabricated documents for illegal gain and to prolong illegal possession, thus the suit is liable to be dismissed.

The trial court framed 4 (four) issues for determination of the dispute between the parties. In course of hearing the plaintiff examined 5 (five) witnesses as P.Ws. and the defendant examined 3 (three) witnesses as D.Ws. The plaintiff filed some documents in support of his respective claim which were duly marked as exhibits. The trial court after hearing by the judgment and decree dated 25.10.2005 dismissed the suit.

Being aggrieved by and dissatisfied with the judgment and decree of the trial court, the plaintiff preferred Title Appeal No. 517 of 2005 before the District Judge, Dhaka. Eventually, the appeal was transferred to the court of Additional District Judge, 2<sup>nd</sup> Court, Dhaka for hearing and disposal, who after hearing by the impugned judgment and decree dated 18.10.2006 allowed the appeal in modified form and decreed the suit in part setting aside the judgment and decree passed by the trial court. At this juncture, the petitioner moved this Court by filing this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mrs. Rashida Alim Oeshi, learned Deputy Attorney with Mr. Abdur Rahim, and Mr. Mostafizur Rahman Tutul learned Assistant Attorney Generals appearing for the petitioner-government submit that the government by a letter dated 02.12.1969 allotted Plot No. A/179 Khilgaon Rehabilitation Area, to one Dukhu Bhuiya as affected person at a consideration of Tk. 1526/- to be paid by installment or consolidated payment of Tk. 1312.50/- as onetime payment.

It is argued that the allotment letter (exhibit-4) contain 9 terms and conditions, among them Clause-5 provides that this allotment order per-se

does not confer any title and is not transferable. Said Dukhu Bhuiya during his life time did not come forward to have a lease deed executed and duly registered by both the parties. Rather in violation of Clause-5 of the allotment letter without having lease deed and delivery of possession died leaving heirs defendant Nos. 1-4. Among the heirs of Dukhu Bhuiya, Abdur Razzaque entered into an agreement for sale with one Abdul Jalil on 10.11.1978 and Md. Abdul Ohid on 21.12.1987 when they did not acquire title and possession in the suit property.

Referring Sections 24 and 25 of the Specific Relief Act, it is argued that right from Dukhu Bhuiya and the defendant Nos. 1-4 as heirs acquired no title in the property as lease deed in favour of them was not executed and registered by the government. As such, neither Abdul Mannaf nor Abdul Jalil acquired any right on the basis of agreement for sale executed by Dukhu Bhuiya in favour of Abdul Mannaf and then Abdul Mannaf in favour of Abdul Jalil. It is submitted that unless the vendor Dukhu Bhuiya or his heirs acquired title in the property first, they cannot transfer the property or execute any agreement for sale in violation of allotment letter issued by the government. It is argued that, with Abdul Mannaf or Abdul Jalil the government has no jural relationship to enforce

an agreement for sale against the government. The agreement sought to be enforced by the plaintiff is not with original allottee Dukhu Bhuiya and not with the government itself. Unless the agreement for sale is executed by Dukhu Bhuiya or the government it cannot be enforced against them which has been appreciated by the trial court while dismissing the suit, but the appellate court most unfortunately decreed the suit directing defendant Nos. 10 and 11, Government to execute lease deed in favour of the plaintiff who had no relationship or obligation to execute such deed in favour of the plaintiff. The trial court rightly held that without prior permission of the government, the allottee Dukhu Bhuiya or his attorney Abdul Karim or his heirs cannot enter into any agreement for sale with any person. Consequently, found that the agreement is not enforceable in law and thus dismissed the suit.

The appellate court considered exhibit-6, exhibit-10 and other documents and wrongly held that after execution of agreement by Abdul Mannaf in favour of Abdul Jalil, he has been continuing possession in the suit property for more than 35 years, on the basis of invalid document, as such, he is entitled to protect his possession until evicted by due process of law, but failed to appreciate that Abdul Jalil is not legally entitled to

have any decree either for title or Specific Performance of Contract. Abdul Mannaf had no independent right or title in the property to enter into an agreement for sale with Abdul Jalil. Abdul Karim could have represented Dukhu Bhuiya as attorney, however, before execution of agreement for sale in the year 1971, Dukhu Bhuiya died, meaning hereby, power so have been given to Abdul Karim has come to an end. Where Dukhu Bhuiya or his heirs at the time of execution of agreement by Abdul Mannaf or execution of any agreement by two sons of Dukhu Bhuiya in favour of Abdul Jalil had no title and possession in the suit property, the agreement is not enforceable in law, but the appellate court did not even touched those facts and circumstances of the case and wrongly decreed the suit directing the government to execute lease deed in favour of Abdul Jalil to whom no obligation of the government exist.

Mr. Sirajul Islam, learned senior Advocate with Mr. Kawser Mahmud and Mr. Raju Mollah, learned Advocate appearing for the opposite party No. 2 submits that admittedly the property in question was allotted to predecessor of opposite party No. 2, Dukhu Bhuiya by allotment letter No. 3383/(3) RDO dated 05.02.1968. Before allotment of letter Dukhu Bhuiya died in the year 1968. The registered agreement and



registered Power of Attorney alleged to have been executed and registered by Dukhu Bhuiya in favour of Abdul Mannaf and Abdul Karim on 14.11.1969 respectively are beyond probability.

He argued that Abdul Mannaf had no right, title and possession in the suit property and he did not obtain any sale deed from Dukhu Bhuiya pursuant to agreement for sale and through Power of Attorney, but he again on 03.02.1971 entered into an agreement for sale with the plaintiff Abdul Jalil without having any title in the suit property.

He argued that heirs of Dukhu Bhuiya also had no right, title to transfer or enter into an agreement for sale with Abdul Jalil as they got no lease deed from the government in the year 1978 and 1987. The trial court while dismissing the suit rightly held that the defendant Nos. 1-4 did not get lease deed from government and before having a lease deed they cannot enter into an agreement for sale with Abdul Jalil. Moreover, without permission of the government, the property allotted to Dukhu Bhuiya cannot be transferred even before construction of building thereon, but the appellate court in decreeing the suit wrongly held that the plaintiff by long possession acquired right to protect his possession and since heirs of original allottee admitted the plaintiff by an agreement

receiving further amount on their behalf and two other heirs, the government is legally bound to execute lease deed in favour of plaintiff, accordingly, directed the defendant Nos. 10 and 11 to execute and register lease deed in favour of the plaintiff without any basis, as such, the appellate court has committed an error of law in the decision occasioning failure of justice.

Mrs. Shamima Binte Habib, learned Advocate appearing for the opposite party No. 1 submits that admittedly one Dukhu Bhuiya as affected person was allotted the suit plot by the Government when Dukhu Bhuiya was alive. In need of money Dukhu Bhuiya executed and registered an agreement for sale in favour of one Abdul Mannaf on 14.11.1969 and a registered Power of Attorney in favour of one Abdul Karim. Abdul Mannaf could have got the lease deed executed and registered representing Dukhu Bhuiya with the government, but at that time government did not come forward to execute the lease deed and register the same in favour of Dukhu Bhuiya. It is submitted that Abdul Mannaf subsequently, executed an agreement for sale in favour of plaintiff Abdul Jaili on 03.02.1971 and a registered Power of Attorney in favour of one Habibur Rahman and delivered possession of the suit

property as admitted by all the defendants. While the plaintiff was in possession, sons of Dukhu Bhuiya namely Addur Razzaque and Abdul Ohid by executing two separate agreements in favour of the plaintiff received Tk. 70,000/- (Seventy thousand) each totalling Tk. 1,40,000/- (One lac seventy thousand) from the plaintiff and also admitted that Abdul Jalil paid lease money to the government by Treasury Challan dated 27.11.1973. It is argued that allotment letter in its Clause-5 put a restriction on transfer of the letter to anybody. Dukhu Bhuiyan during his life time did not transfer the property in favour of Abdul Mannaf or Abdul Mannaf in favour of Abdul Jalil. Those agreements merely a promise to sell the property to them. Unless Dukhu Bhuiya or his heirs obtained a registered lease deed from the government and after having lease deed transferred the said property without prior permission of the government, the question would have been arisen as to violation of terms of the lease deed, but in the instant case there was no transfer of property and it was not required for Dukhu Bhuiya or his heirs to obtain prior permission at that time.

It is submitted that the suit has been filed by the plaintiff to enforce agreement for sale executed by Abdur Razzaque and Md. Abdul Ohid son

of Dukhu Bhuiya, and prayed for a decree against them, in this case the government is only entitled to get transfer fees in accordance with law. It is also argued that while the suit was filed, a legal instrument of title in the form of lease deed was not executed by the government in favour of heirs of Dukhu Bhuiya. Heirs of Dukhu Bhuiya appeared in suit, filed written statement, but they could not substantiate their claim by any evidence when Dukhu Bhuiya died and did not say that Abdur Razzaque and Abdul Ohid received no money from Abdul Jalil and executed no agreement in his favour. The trial court while dismissing the suit though discussed all the evidence adduced by the plaintiff both oral and documentary, but wrongly found and held that in executing an agreement for sale in favour of Abdul Jalil permission from the government was not taken and failed to appreciate that an agreement for sale is not a deed of transfer, as such, for that reason permission from the government was not at all necessary. The appellate court while allowing the appeal and decreeing the suit in modified form rightly discussed all the evidence both oral and documentary and rightly observed that the property was originally allotted to Dukhu Bhuiya during his life time who entered into an agreement for

sale with Abdul Mannaf and executed a Power of Attorney in favour of Abdul Karim.

Thereafter, Abdul Mannaf executed an agreement for sale in favour of plaintiff and a Power of Attorney in favour of one Habibur Rahman empowering him to sell the plot. Though he was not entitled to execute the agreement of his own instead of representing Dukhu Bhuiya, but subsequently heirs of Dukhu Bhuiya entered into two separate agreements for themselves and representing other heirs of Dukhu Bhuiya with Abdul Jalil and received consideration of Tk. 1,40,000/- (One lac forty thousand) only, those agreements (exhibit-6 and 6Ka) has not been challenged by defendant Nos. 1-4. When the suit was dismissed by the trial court and decreed by the appellate court in modified form, there was no existence of lease deed executed by government in favour of heirs of Dukhu Bhuiya and the fact of obtaining lease deed by defendant Nos. 1-4 from government on 10.05.2006 was not disclosed before the appellate court, consequently, it was not in the knowledge of plaintiff as well as the appellate court. In the absence of registered lease deed in favour of heirs of Dukhu Bhuiya, the court had no other alternative, but to direct the

defendant Nos. 10 and 11 to execute the lease deed in favour of the plaintiff instead of the defendant Nos. 1-4.

It is submitted that the plaintiff Abdul Jalil collected a true copy of registered lease deed No. 3172 dated 10.05.2006 from concerned Registry Office and filed the same before this Court to consider the document as additional evidence by filing an application. Execution of lease deed in favour of opposite party Nos. 2-5 has not been denied either by the opposite party Nos. 2-5, heirs of Dukhu Bhuiya or the petitioner-government, therefore, where it is not denied there is no legal embargo or impediment to consider the deed of lease executed by the government. Where the government transferred the plot in favour of heirs of Dukhu Bhuiya, the agreement entered in between them, has become enforceable in law against them. As such, it is candidly submitted that the judgment and decree passed by the appellate court in modified form directing the government to execute lease deed in favour of the plaintiff may be varied and modified to that extend directing the defendant Nos. 1-4 to execute the lease deed in favour of the plaintiff, in place of the government, as such, the appellate court committed no error of law in the decision occasioning failure of justice.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint in suit, written statement, evidence both oral and documentary and impugned judgment and order of both the courts below.

Parties to the suit admitted that the suit plot was originally allotted to one Dukhu Bhuiya as affected person by an allotment letter dated 05.02.1968  
02.12.1969. Though the defendant Nos. 1-4 claimed that Dukhu Bhuiya died in the year 1968 before getting the allotment in his name, but no evidence available in record to substantiate such claim before the trial court. However, Dukhu Bhuiya during his life time as stated in the plaint executed and registered an agreement for sale in favour of one Abdul Mannaf and a Power of Attorney in favour of Abdul Karim, Said Abdul Mannaf executed an agreement for sale in favour of Abdul Jalil and a registered Power of Attorney in favour of one Habibur Rahman. Abdul Mannaf not being owner of the property by purchase from Dukhu Bhuiya as an intended purchaser he was at best entitled to get sale deed from Dukhu Bhuiya through his Attorney Abdul Karim, but he cannot execute and register another agreement for sale in favour of Abdul Jalil and execute a Power of Attorney in favour of Hahibur Rahman. On the death

of Dukhu Bhuiya his heirs legally entitled to get the lease deed registered from the government as the government did not take any step for cancellation of allotment letter dated  $\frac{05.02.1968}{02.12.1969}$ . The government had another opportunity or step to be taken for cancellation of the allotment letter in favour of Dukhu Bhuiya for alleged violation of terms and condition of the same, but the government did not take any step either by cancelling the allotment letter or recovery of the possession from his heirs or the plaintiff. Since the allotment letter was in force before having lease deed, son of Dukhu Bhuiya by executing separate agreement in favour of plaintiff received Tk. 1,40,000/- (One lac forty thousand), wherein they declared that Abdul Mannaf entered into an agreement for sale with their father Dukhu Bhuiya, subsequently, Abdul Mannaf entered into an agreement for sale with the plaintiff on 03.02.1971 with the promise that after getting the lease deed executed and registered by the government, they will execute and register a sale deed in favour of the plaintiff within 01 (one) month.

They got the lease deed executed and registered from government on 10.05.2006, during pendency of the appeal, but they did not disclose the fact to the plaintiff or to the appellate court. Consequently, the



appellate court considered all those Exhibits '1-10', Exhibit-'1' is a Treasury Challan by which Abdul Jalil deposited Tk. 1,527.87/- (One thousand five hundred twenty seven and eighty seven paisa) on behalf of Dukhu Bhuiya in favour of the government. Exhibit-'4' is allotment letter, Clause-5 of which provides that this allotment order per se does not confer any title and it is not transferable. Exhibits-'6' and '6-Ka' two separate agreements executed by two sons of Dukhu Bhuiya themselves and representing their sisters in favour of plaintiff Abdul Jalil. Receipt of consideration for the suit property with promise that they will execute and register deed in favour of the plaintiff within 01 (one) month from the date of execution and registration of the lease deed by the government. So, the cause of action arose for the suit on the date of execution and registration of the lease deed. Since the fact was not brought on record by the defendants, the plaintiff could not produce the said lease deed before the appellate court, but when the matter is taken up for hearing, on query, the opposite party No. 1 could produce the lease deed by an application praying for taking the same as additional evidence. Since none of the defendants challenged existence of a lease deed, I think that the deed is required to be considered for proper adjudication of the matter in dispute,

accordingly, the lease deed No. 3172 dated 10.05.2006 is hereby marked as 'X' for identification.

By Exhibits-'6' and '6-Ka' heirs of Dukhu Bhuiya received consideration money from the plaintiff and promised to execute and register a sale deed in his favour. From the date of registration of lease deed in their favour by the government, under the terms and condition of Exhibits-'6' and '6-Ka' they are legally obliged to perform their part by executing a sale deed in favour of the plaintiff. Now the question has come, whether the defendant Nos. 1-4 without prior permission of the government as provided in registered lease deed can transfer the suit property in favour of the plaintiff. Intention of incorporation of a term and condition in the lease deed by the government, in every lease document is only to get transfer fees, no other purpose attached to the said term of the lease. Recently, the Ministry of Works by a notification dated 09.11.2025 declared that in transferring any plot owned by the government, any statutory authority like, RAJUK, CDA, KDA, prior permission from the authority is not required. The transferor allottee is to pay transfer fees in the account of the government along with registration fees at the time of registration of the deed. Since the transfer of property by a legal

instrument yet to be done, said circular of the government is applicable in the present case.

The government though contested the suit only on the ground of acquiring no title in the property by the allottee before execution of lease deed and on the ground of violation of Clause-5 of the allotment letter, but till today they did not take any step either by cancelling the allotment letter or refusing to execute lease deed in favour of the heirs of Dukhu Bhuiya. When the government in usual course of business or practice pursuant to allotment letter dated 02.12.1969 executed and registered lease deed in favour of heirs of Dukhu Bhuiya in the year 2006, the government has no legal right to challenge any act and dealing with the property by the heirs of Dukhu Bhuiya in any matter. Because of not taking permission from the government before execution and registration of agreement for sale by the heirs of Dukhu Bhuiya does not *ipso facto* make the transaction invalid. In the case of *Md. Abul Basar (basu) vs. Mohammad Abu Taher and another* reported in *XI ADC 896*, it has been held that plea of not taking permission from lessor authority is no reason for dismissing the suit for Specific Performance of Contract.

In the instant case now permission is not required, however, the defendant Nos. 1-4 can pay transfer fees at the time of execution of sale deed along with registration fees. It is true that giving a decree of Specific Performance is discretion of the court and it is an equitable relief. In granting such relief, the court is to see whether there is a valid agreement duly executed by the vendor, passing of consideration and proof of such document by evidence. In the instant case all those ingredients are present, except lacking of ownership in the property, when the defendants entered into agreement for sale with the plaintiff. It is established principle of law that if a person transfer any property or enter into an agreement for sale having no title on the date of execution of such document, but subsequently said vendor or the executants acquired the property by a legal instrument, then the act whatever done by him will get validity in law and that agreement can be enforced against the vendor and in the event of obtaining registered deed of sale at that time it will take effect on and from the date of acquisition of title by his vendor in the property. Since ultimately, the government admitting the heirs of Dukhu Bhuiya executed and registered a lease deed in their favour, whatever defect have had at the time of execution of agreement by them in favour

of the plaintiff has become valid by operation of law, as such, they cannot deny execution of sale deed in favour of the plaintiff. The appellate court while decreeing the suit in part directed the government-defendant Nos. 10 and 11 to execute lease deed in favour of the plaintiff. Because of changed situation and execution of a lease deed in favour of defendant Nos. 1-4, the direction and decree is liable to be varied and modified, accordingly, the judgment and decree of the appellate court is required to be maintained with some modifications.

Taking into consideration the above, I find no merit in the rule as well as in the submissions of the leaned Advocate for the petitioners and opposite party No. 2 who did not prefer any revision against the judgment and decree of the appellate court.

In the result, the Rule is discharged, however, without any order as to costs.

Judgment and decree of the appellate court is hereby varied and modified as follows:

“The defendant Nos. 1- 4 are directed to execute a sale deed in favour of the plaintiff within 30 (thirty) days from the date of receipt of the judgment, subject to payment of all dues on account of transfer fees as

required by law failing which the plaintiff shall be entitled to have the sale deed executed and registered through court.”

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned and send down the lower court records at once.

Md. Akteruzzaman Khan (B.O)

Present:-

***Mr. Justice Mahmudul Hoque***

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does not confer any title and is not transferable. Said Dukhu Bhuiya during his life time did not come forward to have a lease deed executed and duly registered by both the parties. Rather in violation of Clause-5 of the allotment letter without having lease deed and delivery of possession died leaving heirs defendant Nos. 1-4. Among the heirs of Dukhu Bhuiya, Abdur Razzaque entered into an agreement for sale with one Abdul Jalil on 10.11.1978 and Md. Abdul Ohid on 21.12.1987 when they did not acquire title and possession in the suit property.

Referring Sections 24 and 25 of the Specific Relief Act, it is argued that right from Dukhu Bhuiya and the defendant Nos. 1-4 as heirs acquired no title in the property as lease deed in favour of them was not executed and registered by the government. As such, neither Abdul Mannaf nor Abdul Jalil acquired any right on the basis of agreement for sale executed by Dukhu Bhuiya in favour of Abdul Mannaf and then Abdul Mannaf in favour of Abdul Jalil. It is submitted that unless the vendor Dukhu Bhuiya or his heirs acquired title in the property first, they cannot transfer the property or execute any agreement for sale in violation of allotment letter issued by the government. It is argued that, with Abdul Mannaf or Abdul Jalil the government has no jural relationship to enforce

an agreement for sale against the government. The agreement sought to be enforced by the plaintiff is not with original allottee Dukhu Bhuiya and not with the government itself. Unless the agreement for sale is executed by Dukhu Bhuiya or the government it cannot be enforced against them which has been appreciated by the trial court while dismissing the suit, but the appellate court most unfortunately decreed the suit directing defendant Nos. 10 and 11, Government to execute lease deed in favour of the plaintiff who had no relationship or obligation to execute such deed in favour of the plaintiff. The trial court rightly held that without prior permission of the government, the allottee Dukhu Bhuiya or his attorney Abdul Karim or his heirs cannot enter into any agreement for sale with any person. Consequently, found that the agreement is not enforceable in law and thus dismissed the suit.

The appellate court considered exhibit-6, exhibit-10 and other documents and wrongly held that after execution of agreement by Abdul Mannaf in favour of Abdul Jalil, he has been continuing possession in the suit property for more than 35 years, on the basis of invalid document, as such, he is entitled to protect his possession until evicted by due process of law, but failed to appreciate that Abdul Jalil is not legally entitled to

have any decree either for title or Specific Performance of Contract. Abdul Mannaf had no independent right or title in the property to enter into an agreement for sale with Abdul Jalil. Abdul Karim could have represented Dukhu Bhuiya as attorney, however, before execution of agreement for sale in the year 1971, Dukhu Bhuiya died, meaning hereby, power so have been given to Abdul Karim has come to an end. Where Dukhu Bhuiya or his heirs at the time of execution of agreement by Abdul Mannaf or execution of any agreement by two sons of Dukhu Bhuiya in favour of Abdul Jalil had no title and possession in the suit property, the agreement is not enforceable in law, but the appellate court did not even touched those facts and circumstances of the case and wrongly decreed the suit directing the government to execute lease deed in favour of Abdul Jalil to whom no obligation of the government exist.

Mr. Sirajul Islam, learned senior Advocate with Mr. Kawser Mahmud and Mr. Raju Mollah, learned Advocate appearing for the opposite party No. 2 submits that admittedly the property in question was allotted to predecessor of opposite party No. 2, Dukhu Bhuiya by allotment letter No. 3383/(3) RDO dated 05.02.1968. Before allotment of letter Dukhu Bhuiya died in the year 1968. The registered agreement and

registered Power of Attorney alleged to have been executed and registered by Dukhu Bhuiya in favour of Abdul Mannaf and Abdul Karim on 14.11.1969 respectively are beyond probability.

He argued that Abdul Mannaf had no right, title and possession in the suit property and he did not obtain any sale deed from Dukhu Bhuiya pursuant to agreement for sale and through Power of Attorney, but he again on 03.02.1971 entered into an agreement for sale with the plaintiff Abdul Jalil without having any title in the suit property.

He argued that heirs of Dukhu Bhuiya also had no right, title to transfer or enter into an agreement for sale with Abdul Jalil as they got no lease deed from the government in the year 1978 and 1987. The trial court while dismissing the suit rightly held that the defendant Nos. 1-4 did not get lease deed from government and before having a lease deed they cannot enter into an agreement for sale with Abdul Jalil. Moreover, without permission of the government, the property allotted to Dukhu Bhuiya cannot be transferred even before construction of building thereon, but the appellate court in decreeing the suit wrongly held that the plaintiff by long possession acquired right to protect his possession and since heirs of original allottee admitted the plaintiff by an agreement

receiving further amount on their behalf and two other heirs, the government is legally bound to execute lease deed in favour of plaintiff, accordingly, directed the defendant Nos. 10 and 11 to execute and register lease deed in favour of the plaintiff without any basis, as such, the appellate court has committed an error of law in the decision occasioning failure of justice.

Mrs. Shamima Binte Habib, learned Advocate appearing for the opposite party No. 1 submits that admittedly one Dukhu Bhuiya as affected person was allotted the suit plot by the Government when Dukhu Bhuiya was alive. In need of money Dukhu Bhuiya executed and registered an agreement for sale in favour of one Abdul Mannaf on 14.11.1969 and a registered Power of Attorney in favour of one Abdul Karim. Abdul Mannaf could have got the lease deed executed and registered representing Dukhu Bhuiya with the government, but at that time government did not come forward to execute the lease deed and register the same in favour of Dukhu Bhuiya. It is submitted that Abdul Mannaf subsequently, executed an agreement for sale in favour of plaintiff Abdul Jaili on 03.02.1971 and a registered Power of Attorney in favour of one Habibur Rahman and delivered possession of the suit



property as admitted by all the defendants. While the plaintiff was in possession, sons of Dukhu Bhuiya namely Addur Razzaque and Abdul Ohid by executing two separate agreements in favour of the plaintiff received Tk. 70,000/- (Seventy thousand) each totalling Tk. 1,40,000/- (One lac seventy thousand) from the plaintiff and also admitted that Abdul Jalil paid lease money to the government by Treasury Challan dated 27.11.1973. It is argued that allotment letter in its Clause-5 put a restriction on transfer of the letter to anybody. Dukhu Bhuiyan during his life time did not transfer the property in favour of Abdul Mannaf or Abdul Mannaf in favour of Abdul Jalil. Those agreements merely a promise to sell the property to them. Unless Dukhu Bhuiya or his heirs obtained a registered lease deed from the government and after having lease deed transferred the said property without prior permission of the government, the question would have been arisen as to violation of terms of the lease deed, but in the instant case there was no transfer of property and it was not required for Dukhu Bhuiya or his heirs to obtain prior permission at that time.

It is submitted that the suit has been filed by the plaintiff to enforce agreement for sale executed by Abdur Razzaque and Md. Abdul Ohid son

of Dukhu Bhuiya, and prayed for a decree against them, in this case the government is only entitled to get transfer fees in accordance with law. It is also argued that while the suit was filed, a legal instrument of title in the form of lease deed was not executed by the government in favour of heirs of Dukhu Bhuiya. Heirs of Dukhu Bhuiya appeared in suit, filed written statement, but they could not substantiate their claim by any evidence when Dukhu Bhuiya died and did not say that Abdur Razzaque and Abdul Ohid received no money from Abdul Jalil and executed no agreement in his favour. The trial court while dismissing the suit though discussed all the evidence adduced by the plaintiff both oral and documentary, but wrongly found and held that in executing an agreement for sale in favour of Abdul Jalil permission from the government was not taken and failed to appreciate that an agreement for sale is not a deed of transfer, as such, for that reason permission from the government was not at all necessary. The appellate court while allowing the appeal and decreeing the suit in modified form rightly discussed all the evidence both oral and documentary and rightly observed that the property was originally allotted to Dukhu Bhuiya during his life time who entered into an agreement for

sale with Abdul Mannaf and executed a Power of Attorney in favour of Abdul Karim.

Thereafter, Abdul Mannaf executed an agreement for sale in favour of plaintiff and a Power of Attorney in favour of one Habibur Rahman empowering him to sell the plot. Though he was not entitled to execute the agreement of his own instead of representing Dukhu Bhuiya, but subsequently heirs of Dukhu Bhuiya entered into two separate agreements for themselves and representing other heirs of Dukhu Bhuiya with Abdul Jalil and received consideration of Tk. 1,40,000/- (One lac forty thousand) only, those agreements (exhibit-6 and 6Ka) has not been challenged by defendant Nos. 1-4. When the suit was dismissed by the trial court and decreed by the appellate court in modified form, there was no existence of lease deed executed by government in favour of heirs of Dukhu Bhuiya and the fact of obtaining lease deed by defendant Nos. 1-4 from government on 10.05.2006 was not disclosed before the appellate court, consequently, it was not in the knowledge of plaintiff as well as the appellate court. In the absence of registered lease deed in favour of heirs of Dukhu Bhuiya, the court had no other alternative, but to direct the

defendant Nos. 10 and 11 to execute the lease deed in favour of the plaintiff instead of the defendant Nos. 1-4.

It is submitted that the plaintiff Abdul Jalil collected a true copy of registered lease deed No. 3172 dated 10.05.2006 from concerned Registry Office and filed the same before this Court to consider the document as additional evidence by filing an application. Execution of lease deed in favour of opposite party Nos. 2-5 has not been denied either by the opposite party Nos. 2-5, heirs of Dukhu Bhuiya or the petitioner-government, therefore, where it is not denied there is no legal embargo or impediment to consider the deed of lease executed by the government. Where the government transferred the plot in favour of heirs of Dukhu Bhuiya, the agreement entered in between them, has become enforceable in law against them. As such, it is candidly submitted that the judgment and decree passed by the appellate court in modified form directing the government to execute lease deed in favour of the plaintiff may be varied and modified to that extend directing the defendant Nos. 1-4 to execute the lease deed in favour of the plaintiff, in place of the government, as such, the appellate court committed no error of law in the decision occasioning failure of justice.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint in suit, written statement, evidence both oral and documentary and impugned judgment and order of both the courts below.

Parties to the suit admitted that the suit plot was originally allotted to one Dukhu Bhuiya as affected person by an allotment letter dated 05.02.1968  
02.12.1969. Though the defendant Nos. 1-4 claimed that Dukhu Bhuiya died in the year 1968 before getting the allotment in his name, but no evidence available in record to substantiate such claim before the trial court. However, Dukhu Bhuiya during his life time as stated in the plaint executed and registered an agreement for sale in favour of one Abdul Mannaf and a Power of Attorney in favour of Abdul Karim, Said Abdul Mannaf executed an agreement for sale in favour of Abdul Jalil and a registered Power of Attorney in favour of one Habibur Rahman. Abdul Mannaf not being owner of the property by purchase from Dukhu Bhuiya as an intended purchaser he was at best entitled to get sale deed from Dukhu Bhuiya through his Attorney Abdul Karim, but he cannot execute and register another agreement for sale in favour of Abdul Jalil and execute a Power of Attorney in favour of Hahibur Rahman. On the death

of Dukhu Bhuiya his heirs legally entitled to get the lease deed registered from the government as the government did not take any step for cancellation of allotment letter dated  $\frac{05.02.1968}{02.12.1969}$ . The government had another opportunity or step to be taken for cancellation of the allotment letter in favour of Dukhu Bhuiya for alleged violation of terms and condition of the same, but the government did not take any step either by cancelling the allotment letter or recovery of the possession from his heirs or the plaintiff. Since the allotment letter was in force before having lease deed, son of Dukhu Bhuiya by executing separate agreement in favour of plaintiff received Tk. 1,40,000/- (One lac forty thousand), wherein they declared that Abdul Mannaf entered into an agreement for sale with their father Dukhu Bhuiya, subsequently, Abdul Mannaf entered into an agreement for sale with the plaintiff on 03.02.1971 with the promise that after getting the lease deed executed and registered by the government, they will execute and register a sale deed in favour of the plaintiff within 01 (one) month.

They got the lease deed executed and registered from government on 10.05.2006, during pendency of the appeal, but they did not disclose the fact to the plaintiff or to the appellate court. Consequently, the

appellate court considered all those Exhibits '1-10', Exhibit-'1' is a Treasury Challan by which Abdul Jalil deposited Tk. 1,527.87/- (One thousand five hundred twenty seven and eighty seven paisa) on behalf of Dukhu Bhuiya in favour of the government. Exhibit-'4' is allotment letter, Clause-5 of which provides that this allotment order per se does not confer any title and it is not transferable. Exhibits-'6' and '6-Ka' two separate agreements executed by two sons of Dukhu Bhuiya themselves and representing their sisters in favour of plaintiff Abdul Jalil. Receipt of consideration for the suit property with promise that they will execute and register deed in favour of the plaintiff within 01 (one) month from the date of execution and registration of the lease deed by the government. So, the cause of action arose for the suit on the date of execution and registration of the lease deed. Since the fact was not brought on record by the defendants, the plaintiff could not produce the said lease deed before the appellate court, but when the matter is taken up for hearing, on query, the opposite party No. 1 could produce the lease deed by an application praying for taking the same as additional evidence. Since none of the defendants challenged existence of a lease deed, I think that the deed is required to be considered for proper adjudication of the matter in dispute,

accordingly, the lease deed No. 3172 dated 10.05.2006 is hereby marked as 'X' for identification.

By Exhibits-'6' and '6-Ka' heirs of Dukhu Bhuiya received consideration money from the plaintiff and promised to execute and register a sale deed in his favour. From the date of registration of lease deed in their favour by the government, under the terms and condition of Exhibits-'6' and '6-Ka' they are legally obliged to perform their part by executing a sale deed in favour of the plaintiff. Now the question has come, whether the defendant Nos. 1-4 without prior permission of the government as provided in registered lease deed can transfer the suit property in favour of the plaintiff. Intention of incorporation of a term and condition in the lease deed by the government, in every lease document is only to get transfer fees, no other purpose attached to the said term of the lease. Recently, the Ministry of Works by a notification dated 09.11.2025 declared that in transferring any plot owned by the government, any statutory authority like, RAJUK, CDA, KDA, prior permission from the authority is not required. The transferor allottee is to pay transfer fees in the account of the government along with registration fees at the time of registration of the deed. Since the transfer of property by a legal



instrument yet to be done, said circular of the government is applicable in the present case.

The government though contested the suit only on the ground of acquiring no title in the property by the allottee before execution of lease deed and on the ground of violation of Clause-5 of the allotment letter, but till today they did not take any step either by cancelling the allotment letter or refusing to execute lease deed in favour of the heirs of Dukhu Bhuiya. When the government in usual course of business or practice pursuant to allotment letter dated 02.12.1969 executed and registered lease deed in favour of heirs of Dukhu Bhuiya in the year 2006, the government has no legal right to challenge any act and dealing with the property by the heirs of Dukhu Bhuiya in any matter. Because of not taking permission from the government before execution and registration of agreement for sale by the heirs of Dukhu Bhuiya does not *ipso facto* make the transaction invalid. In the case of *Md. Abul Basar (basu) vs. Mohammad Abu Taher and another* reported in *XI ADC 896*, it has been held that plea of not taking permission from lessor authority is no reason for dismissing the suit for Specific Performance of Contract.

In the instant case now permission is not required, however, the defendant Nos. 1-4 can pay transfer fees at the time of execution of sale deed along with registration fees. It is true that giving a decree of Specific Performance is discretion of the court and it is an equitable relief. In granting such relief, the court is to see whether there is a valid agreement duly executed by the vendor, passing of consideration and proof of such document by evidence. In the instant case all those ingredients are present, except lacking of ownership in the property, when the defendants entered into agreement for sale with the plaintiff. It is established principle of law that if a person transfer any property or enter into an agreement for sale having no title on the date of execution of such document, but subsequently said vendor or the executants acquired the property by a legal instrument, then the act whatever done by him will get validity in law and that agreement can be enforced against the vendor and in the event of obtaining registered deed of sale at that time it will take effect on and from the date of acquisition of title by his vendor in the property. Since ultimately, the government admitting the heirs of Dukhu Bhuiya executed and registered a lease deed in their favour, whatever defect have had at the time of execution of agreement by them in favour

of the plaintiff has become valid by operation of law, as such, they cannot deny execution of sale deed in favour of the plaintiff. The appellate court while decreeing the suit in part directed the government-defendant Nos. 10 and 11 to execute lease deed in favour of the plaintiff. Because of changed situation and execution of a lease deed in favour of defendant Nos. 1-4, the direction and decree is liable to be varied and modified, accordingly, the judgment and decree of the appellate court is required to be maintained with some modifications.

Taking into consideration the above, I find no merit in the rule as well as in the submissions of the learned Advocate for the petitioners and opposite party No. 2 who did not prefer any revision against the judgment and decree of the appellate court.

In the result, the Rule is discharged, however, without any order as to costs.

Judgment and decree of the appellate court is hereby varied and modified as follows:

“The defendant Nos. 1- 4 are directed to execute a sale deed in favour of the plaintiff within 30 (thirty) days from the date of receipt of the judgment, subject to payment of all dues on account of transfer fees as

required by law failing which the plaintiff shall be entitled to have the sale deed executed and registered through court.”

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned and send down the lower court records at once.

Md. Akteruzzaman Khan (B.O)