

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)**

**Present:**

**Mr. Justice Zafar Ahmed**

**Civil Revision No. 50 of 1997**

**In the matter of:**

Sree Prashanta Kumar Bhattacharya and others

Plaintiff-appellant-petitioners

-Versus-

Sree Sree Radha Muhan Jew Deity and others

Defendant-respondent-opposite parties

None

...For the petitioners

Mr. Tabarak Hossain, Senior Advocate with

Ms. Urmee Rahman, Advocate

... For the opposite party No. 1

Heard on: 29.10.2024 and 12.11.2024

Judgment on: 21.11.2024

The present petitioners as plaintiff filed Title Suit No. 30 of 1992 in the Court of Senior Assistant Judge, Golapganj, Sylhet impleading (a) Additional Deputy Commissioner (Revenue), Sylhet, (b) the then Thana Nirbahi Officer, Golapganj, Sylhet, and (c) Assistant Commissioner (Land), Golapganj, Sylhet as principal defendants. Sree Madhusudhan Kabyatirta, Principal, Sreehatta Sangskrit College, Sylhet was the pro-forma defendant. Present

opposite party No. 1 Sree Sree Radha Muhan Jew Deity was added as defendant No. 5, who filed an application before the Court below under Order VII rule 11 of the Code of Civil Procedure (CPC) for rejection of the plaint on the grounds stated therein. The application was opposed by the plaintiffs by filing written objection. The learned Assistant Judge, vide judgment and order dated 09.02.1993 allowed the application and rejected the plaint. The plaintiffs preferred Title Appeal No. 70 of 1993. The learned District Judge, Sylhet, vide judgment and order dated 30.04.1995 dismissed the appeal. Thereafter, the plaintiffs preferred the instant civil revision and obtained Rule.

None appeared for the plaintiff-petitioners when the Rule was taken up for hearing. The added defendant No. 5 (opposite party No. 1 herein) has entered appearance in the Rule.

The plaintiffs filed the title suit praying for a declaration that they are entitled to perform sheba puja to the deity established at Sree Sree Radha Muhan Jew Akhra situated in the scheduled land measuring 2.28 acres. The plaintiffs further prayed for a declaration that the notice issued under memo No. SA/3316(6) dated 03.10.1992 by the defendant No. 1 Additional Deputy Commissioner (Revenue), Sylhet is illegal, void, inoperative and not binding upon the plaintiffs. The plaintiffs also prayed for a permanent injunction to restrain

defendants from evicting them from the suit land and to prevent them from interfering with the performance of the puja.

It is stated in the plaint that the plaintiffs' predecessor late pujari Profulla Kumar Bhattacharya was appointed as shebait of the Akhra on 30.08.1957 and since then he had performed the puja in the Akhra till his death in 1990. After his death, the plaintiffs being the legal heirs of late shebait have been performing the puja. It is further stated that the land in which the Akhra situates is also used as place of residence of the plaintiffs. The pro-forma defendant No. 4 Principal, Sreehatta Sangskrit College, Sylhet granted written permission to the plaintiff No. 1 to perform the puja in the said Akhra on 25.10.1990. It is further stated that the defendant Nos. 1-3 appointed a managing committee to run the Akhra and on 03.10.1992 the defendant No. 1 issued the eviction notice directing the plaintiffs to vacate the land, failing which they would be evicted.

The trial Court rejected the plaint on the ground that the eviction notice dated 03.10.1992 was issued under Seciton 5(1) of the Government and Local Authority Lands and Buildings (Recovery of Possession), Ordinance, 1970 and no illegality was committed in issuance of the said notice. The appellate Court below affirmed the judgment and order of the learned Assistant Judge holding that the plaintiffs have no legal character to file the suit in that they claimed to perform the puja as legal heirs of the late shebait, but right of

shebaitship relating to any deity cannot be acquired by inheritance and mere living in the lands belonging to deity does give rise to any legal character.

I have gone through the materials on record and considered the submissions of the learned Senior Advocate Mr. Tabarak Hossain appearing for the opposite party No. 1.

It appears from the eviction notice dated 03.10.1992, which is submitted by the plaintiffs by way of firisty in the Court below and lying with the records, that by the said notice the plaintiffs were directed to vacate the property within 07 days, failing which they would be evicted in accordance with law on the ground that they are unauthorised occupants of the land in which the Akhra situates. It is further stated in the notice that the T.N.O., Golapganj (defendant No. 2) had conducted an enquiry and submitted a report dated 08.09.1992 in Eviction Case No. 2/92 stating that the plaintiffs are unauthorised occupants of the property. The T.N.O. made recommendation to evict the plaintiffs.

The eviction notice does not refer to Section 5 of the Ordinance, 1970. However, the language used in the notice clearly denotes that the same was issued under Section 5. The learned Assistant Judge rightly held that the notice was issued in exercise of power vested

upon the Deputy Commissioner by Section 5 of the Ordinance, 1970.

Section 5 is quoted below:

“5. (1) If the Deputy Commissioner, on his own motion or on the complaint of or upon information received from anybody or a Local Authority, is satisfied after making such inquiry as he thinks fit, that a person is an unauthorised occupant, he may issue, in the prescribed manner, a notice directing such person to vacate the land, building or part thereof in his occupation within a period of thirty days from the date of service of the notice.

Provided that the Deputy Commissioner may, where he is satisfied that thirty days' notice will not be in public interest, reduce the period of such notice to not less than seven days.

(2) If the person, against whom an order under sub-section (1) has been made, refuses or fails to vacate the land, building or part thereof in his occupation within the time fixed, then, notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the Deputy Commissioner to enter upon such land, building or part thereof and recover khas possession of the same by evicting such person and by demolishing and removing structures, if any, erected or built by that person.”

Mr. Tabarak Hossain refers to Sections 10 and 11 of the Ordinance, 1970 and submits that the notice dated 03.10.1992 is appealable to the Divisional Commissioner under Section 10 and that under Section 11 there is a clear bar on civil Court to grant a

temporary or ad-interim injunction. Sections 10 and 11 are quoted below:

“10. Any person aggrieved by an order made under section 3 or section 4 or section 5 or section 9 may prefer an appeal to the Commissioner of the Division within thirty days of the service of notice and the decision of the Commissioner on such an appeal shall be final.

11. No civil Court shall pass an order in any suit or proceeding granting a temporary or ad interim injunction restraining the Deputy Commissioner from taking possession of any land, building or part thereof under this Ordinance nor shall call in question any assessment of compensation made under this Ordinance.”

In view of the provisions contained in Section 10 that the order made under Section 5 to vacate the property is appealable to the Divisional Commissioner, the instant suit is barred by law. It is categorically stated in the plaint that a new managing committee has been appointed for the Akhra but no relief has been sought against the said newly appointed managing committee. Therefore, the suit is not maintainable in its present form and manner. Therefore, the Rule fails.

In the result, the Rule is discharged.

Send down the L.C.R.