

IN THE SUPREME COURT OF BANGLADESH
Appellate Division

PRESENT

Mr. Justice Borhanuddin
Mr. Justice M. Enayetur Rahim
Mr. Justice Md. Ashfaqul Islam
Mr. Justice Md. Abu Zafor Siddique
Mr. Justice Jahangir Hossain

CIVIL APPEAL NO. 173 OF 2016

(From the judgment and order dated 5th of March, 2012 passed by this Division in Civil Petition for Leave to Appeal No. 15 of 2011).

Government of Bangladesh, represented by the
Secretary, Ministry of Communication, (at
present Ministry of Railway), Bangladesh
Secretariat, Ramna, Dhaka

Appellant

-Versus-

Sher-E-Bangla Market Dokander Bohumukhi
Samabay Samity Limited, represented by its
Secretary, Abdur Rashid Howlader and others

Respondents

For the Appellant : Mr. A.M. Amin Uddin, Attorney General with Mr. Sk. Md. Morshed, Additional Attorney General and Mr. Mohammad Saiful Alam, Assistant Attorney General, instructed by Mr. Haridas Paul, Advocate-on-Record

For Respondent No.1 : Mr. Probir Neogi, Senior Advocate, instructed by Mr. Zainul Abedin and Mr. Syed Mahbubar Rahman, Advocates-on-Record

For Respondent No.2-7 : Not represented

Date of hearing: The 28th day of November, 2023

Date of judgment : The 7th day of December, 2023

JUDGMENT

M. Enayetur Rahim, J: This civil appeal, by leave, is directed against the judgement and order dated 05.03.2012 passed by this Division in Civil Petition for Leave to Appeal No.15 of 2011 dismissing the petition.

Facts relevant for disposal of this appeal are that the respondent No.1 Sher-e-Bangla Dokander Bohumukhi Samobay Samity Limited (herein after referred to as writ petitioner

Samity) filed Writ Petition No.1728 of 2010 before the High Court Division seeking a direction upon the present appellant and writ respondent Nos. 2-7 to execute and register a sale deed in respect of 2.575 acres of land of Mouza Brahman Chiran of C.S. Plot Nos. 130 and 131 Police Station-Sabujbag, District-Dhaka and to hand over physical possession of the same in its favour.

It's claim is that it approached the government for allotting the said plots for establishing a market for the purpose of rehabilitation of eight members of the Hawker Samity. Pursuant to its application, the government initiated proceeding and ultimately the Land Allotment Committee of the Bangladesh Railway took decision to transfer of the land in question fixing its price at Tk.8,28,03,704.25 (taka eight crore twenty eight lacs three thousand seven hundred four and twenty five paisa) and, thereafter, the concerned authority raised the value at Tk. 18,24,00,141.56 in (taka eighteen crore twenty four lacs one hundred forty one and fifty six paisa). There was dispute regarding the ownership of land between the different Ministries. Subsequently, the Railway department received part payment on different occasions and ultimately the writ petitioner Samity executed an *Angikarnama* on 03.02.2009 with commitment to deposit the remaining amount within certain period. Thereafter, the Writ Respondent No.6 by letter dated 11th of February, 2009, directed the writ petitioner to deposit the remaining amount within certain period. Accordingly, the writ petitioner Samity deposited the entire amount within the stipulated time which amount has duly been accepted. Thereafter, on 07.10.2009 the writ petitioner

approached the writ-respondent No.5 to take necessary steps for execution/registration of the sale deed. Since, the writ respondent No. 5-the Railway authority failed to do so, it compelled to file the writ petition.

Writ respondent Nos. 2-7 contested the Rule by filing an affidavit-in-opposition contending, *inter alia*, that the value of the land in question was arbitrarily fixed by some officers of the Railway department without following the rules, although on behalf of the writ petitioner an affidavit was affirmed to pay the market value of the land, it collusively secured an order of allotment at a very low price.

The High Court Division upon hearing the parties by the judgment and order dated 19.08.2010 made the Rule absolute and directed the writ respondents to execute/registered the deed in question as per the decision taken by the writ respondent No.6 within 60 days from date or receipt of this judgment.

Against the said judgment of the High Court Division, the writ respondent No.1, present appellant moved this Division by filing Civil Petition for Leave to Appeal No.15 of 2011. After hearing the parties this Division by the impugned judgment dated 05.03.2012 dismissed the leave petition.

Being aggrieved by the said judgment the writ respondent No.1-present appellant filed Civil Review Petition No. 73 of 2012 before this Division and, accordingly leave was granted on 09.12.2014. Hence, the present appeal.

Mr. A.M. Amin Uddin, learned Attorney General, appearing on behalf of the appellant has made submissions in lines with the grounds upon which leave was granted. In addition he submits that in 26th meeting of Bangladesh Railway authority, no decision was taken to transfer the case land to the writ petitioner. But the writ petitioner in the writ petition stated that in the 26th meeting the Bangladesh Railway took decision to sell out the land in question and on finding of the minutes of the said meeting it appears that no such decision was taken in the said meeting and the writ petitioner had obtained judgment in Writ Petition No. 1728 of 2010 by suppressing fact and practicing fraud upon the Court, affirmation of the said judgment in the Civil Petition No. 15 of 2011 is an error of law on the face of the record. Learned Attorney General further submits that on the 18th meeting dated 28.08.2001 a decision had been taken prohibiting granting of lease or sale of Railway land, the withdrawal of the said decision on 26th meeting dated 07.04.2004 is absolutely mala fide and illegal as same was done by the then Communication Minister and the Bangladesh Railway Authority for personal gains for obtaining order of allotment of one Bigha of land for an N.G.O.

Learned Attorney General also submits that decision to sell of Railway's land by any individual officer and placing the matter to the higher authority referring order passed in a writ petition without disclosing that Railway Board has not approved permission for sale, the same is *mala fide* and due to illegal action or decision of any officer of Railway, the Railway cannot suffer. Learned Attorney General finally submits that the transferring of

the property of the Republic illegally by any office of Railway or any authority in violation of Law, Rules and Regulations is of public importance and the leave petition has been dismissed without considering the aforesaid aspect.

Per contra, Mr. Probir Neogi, learned Senior Advocate appearing on behalf of respondent No.1, writ petitioner submits that the then secretary of the respondent samity approached the Hon'ble President of the People's Republic of Bangladesh for leasing out the case land for rehabilitation of the 1495 evicted shop owner of the samity to which the Hon'ble President responded positively; accordingly the Government initiated proceeding and that on 05.11.2002, the meeting of Dhaka Divisional Land Allotment Committee was held and in that meeting it was unanimously decided to place the matter to appropriate authority for its consideration to permanently lease out the said land in favour of the samity; in that meeting a prohibition was imposed regarding sale/transfer/granting lease/license of the case land but since the case land is an acquired land and it remained unused, therefore to prevent the illegal occupiers from taking possession of the case land the Railway authority in its 26th meeting passed a resolution through which earlier decision for postponing lease/license/sale of the Railway Property was revoked; thereafter the Railway authority vide letter bearing memo No.মোম/রেউ/জমি(২)-২৯/২০০৩(অংশ-২)১৪৬ dated 24.03.2005 issued by Assistant Secretary (Rail Development), Ministry of Communication decided to sell out the case land in favour of the respondent samity; from the said letter it is evident that a decision for selling out case land in favour

of the respondent samity was taken in the 26th meeting; thereafter Railway authority assessed the value of the case land at Tk. 8,28,03,704.25/- which was increased to the tune of Tk. 18,24,00,141.56 by a re-assessment of the case land; the Railway authority received the said amount of taka vide 178 pay orders and receiving the said amount, Bangladesh Railway did not execute and register sale deed in respect of the case land in favour of the respondent samity and, therefore, the respondent samity as petitioner filed writ petition No.1728 of 2010 before the High Court Division praying for direction upon the respondents i.e. Railway authority to execute and register sale deed in respect of the case land in favour of the respondent samity; the High Court Division after perusal of the record and hearing the parties concerned rightly made the Rule absolute in the said writ petition which was rightly affirmed by the this Division in Civil Petition for Leave to Appeal No. 15 of 2011.

Mr. Neogi also submits that the Railway authority, after a due process of law passed a resolution and made an offer to sell out the case land in favour of the respondent samity and the respondent samity relying upon the said offer suffered detriment and deposited asking amount of money and now it will be inequitable for the Railway authority to go back from its commitment. He further submits that the reasons as stated by the Railway Authority in the civil appeal are totally illegal and untenable; the respondent samity as petitioner filed writ petition No. 1728 of 2010 before the High Court Division praying for direction upon the respondents (Railway authority) to execute and register the sale deed in respect of the case land and to handover

possession of the same in favour of the present respondent samity; in the said writ petition Railway Authority as respondent No.6 contested the Rule by filing affidavit-in-opposition; nowhere in the said affidavit-in-opposition the Railway authority raised objection regarding the resolution of 26th meeting held on 07.04.2004 nor they stated in the said affidavit that the case land was the non-alienable property; even those issues were not raised in the leave petition but, the Railway authority out of *mala fide* intention and for illegal gain for the first time raised those issues in the review petition being No.73 of 2012 and subsequently, in this appeal which are barred by principle of estoppel. Mr. Neogi further submits that the respondent samity is an affected samity and the Railway authority decided to allot the case land in favour of the respondent, assessed the value of the case land which the respondent samity agreed to pay; subsequently the Railway authority increased the value of the case land which the samity also agreed to pay and subsequently paid the increased value of the case land and that the Railway authority received the said increased amount vide 178 pay orders; it is a legitimate expectation of the respondent samity that it would get the possession of the case property by dint of the said allotment, but the refusal of the appellant to transfer the case property in favour of the respondent samity is totally illegal, arbitrary and *mala fide*.

Mr. Neogi further submits that the Railway Authority never at any point of time disclosed that the case property is a non-alienable property rather they passed a resolution in the 26th meeting held on 07.04.2004 showing the case property as alienable property and, therefore, the

respondent samity as affected samity showed interest to purchase the case land; if the respondent samity being aware of that the case land is a non-alienable property it would not have purchased the case land and would not have deposited huge amount of money in favour of Bangladesh Railway but the corrupted Railway officials for being enriched illegally are denying the papers issued by them and with a view to deprive the respondent samity from its lawful right has filed the present appeal on some illegal and untenable reasons.

Mr. Neogi finally submits that at the time of granting leave of the review petition being No.73 of 2012, this Court did not consider that the basis of depositing money in favour of the Bangladesh Railway was the order dated 06.05.2008 passed by the High Court Division in writ petition No. 1042 of 2008 in which the Bangladesh Railway was impleaded as respondent but in the said writ petition it did not raise objection regarding memo dated 24.03.2005 (Annexure-B to the writ petition) nor it stated at that time by filing affidavit-in-opposition that the case land was non-alienable property but now they have claimed that the said memo had been procured by deceitful means and thus the Railway authority creating a got up story has filed the present appeal and as such the appeal is liable to be dismissed.

We have considered the rival submissions of the learned Advocates appearing for the parties concerned, perused the judgement and order of the High Court Division as well as the impugned judgment of civil petition for leave to appeal and other connected papers on record as placed before us.

In the instant case the writ petitioners' claim is that the Railway Board in its 26th meeting dated 17.04.2004 took decision to sell out 2.575 acres land, i. e. the land in question to the writ petitioner Samity, which was communicated to them by a Memo dated 24.03.2005 issued under the signature of the Assistant Secretary, Railway Department, Ministry of Communication. And thereafter, pursuant to an order passed by the High Court Division in Writ Petition No. 1728 of 2010 they deposited entire money, i.e. Tk. 18,24,00,141.56/-to the authority concerned and, as such, the writ petitioner Samity has got the legitimate expectation to get the land in question registration in its favour.

We have perused the minutes of the 26th meeting held on 17.04.2004 and upon perusal of the same it transpires that in the said meeting no such decision was taken by the Railway Authority to sell out the land in question to the writ petitioner Samity. However, from the memo dated. 24.03.2005 issued by the Assistant Secretary, Railway Department it transpired that 2.57 acres land has been allotted in favour of the writ petitioner Samity. Since no decision had been taken in the 26th Board Meeting of the Railway Authority, the Memo dated 24.03.2005 allegedly communicated the decision of the Railway authority to sell the property in favour of the writ petitioner Samity, is nothing but a fraudulent and created document and on the basis of such document no right has been created in favour of the writ petitioner Samity and this fraud has vitiated everything.

The writ petitioner Samity having relied on the said document, by filing Writ Petition No. 1728 of 2010 obtained an ad-interim order from the High Court Division to deposit taka One Crore and, thereafter, the Railway Authority asked them to deposit entire amount and the writ petitioner Samity deposited entire Tk.18,24,00,141.56 (taka eighteen crore twenty four lack one hundred forty one and fifty six paisa). This act of the officials of the Railway Authority is highly suspicious, unwarranted and misconduct on their part.

In view of the above facts and circumstances, the writ petitioner Samity is not entitled to get any relief, and the High Court Division committed serious error in making the Rule absolute and earlier this Division also failed to consider this fact that a valuable public property is going to be sold in favour of a private party, by resorting to forgery in collusion with the officials of the concerned Ministry. It is pertinent to mention here that earlier the resolution of 26th Board meeting of the railway authority was not brought to the notice of this Division and if the same was produced before this Court then result would have been otherwise.

Moreover, the learned Attorney General has informed the Court that in the meantime the land in question has been used for the Mega Project-'Dhaka Alleviated Expressway' and duly construction has been made thereon and an office of the project under the name and style 'Intelligent Transport System (ITS)' is going to be established thereon and, as such, there is no scope to sell the property to the writ petitioners' Samity.

Having considered the above facts and circumstances, we find merit in the appeal. Accordingly, the appeal is allowed.

The judgment and order passed by the High Court Division is set aside.

However, it transpires that the Railway Authority received Tk. 18,24,00,141.56/- from the writ petitioners' Samity and no point of time they asked the writ petitioner to take back the said money. In view of the above, Railway Authority-writ respondent Nos.2-7 are Directed to return the entire money i.e. Tk. 18,24,00,141.56/- to the writ petitioner Samity with 5% simple interest rate within a period of 6 (six) months from the date of receipt of a copy of this judgment and order.

There is no order as to costs.

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