

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

PRESENT:

**Mr. Justice Obaidul Hassan**  
**Mr. Justice Borhanuddin**  
**Mr. Justice M. Enayetur Rahim**  
**Mr. Justice Md. Ashfaquul Islam**  
**Mr. Justice Md. Abu Zafor Siddique**  
**Mr. Justice Jahangir Hossain**

**CIVIL APPEAL NO.293 OF 2019.**

(From the judgment and order dated 13.03.2017 passed by this Division in Civil Petition for Leave to Appeal No.2767 of 2015).

Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Land, Bangladesh Secretariat, Dhaka and others. : **....Appellants.**

**-Versus-**

Md. Abdul Malek and others. : **....Respondents.**

For the Appellants. : Mr. A. M. Amin Uddin, Attorney General (with Mr. Mohammad Saiful Alam, Assistant Attorney General), instructed by Mr. Haridus Paul, Advocate-on-Record.

For the Respondents. : Mr. Bivash Chandra Biswas, Advocate-on-Record.

Date of Hearing. : **The 11<sup>th</sup> May, 2023.**

Date of Judgment. : **The 11<sup>th</sup> May, 2023.**

**J U D G M E N T**

**Borhanuddin, J:** This civil appeal by leave granting order dated 10.01.2019 in Civil Review Petition No.691 of 2017 is directed against the judgment and order dated 13.03.2017 passed by this Division in Civil Petition for

Leave to Appeal No.2767 of 2015 disposing of the civil petition.

Background of the case is that the suit land comprising an area of 114.50 acres in C.S. Plot No.4 under C.S. Khatian No.360 and S.A. Khatian No.494/1 of Mouza-Jagohati within the Police Station-Kotwali, District-Jashore was known as 'Jagohati Baor' belonged to Raja Krishna Das Laha. After abolition of Zamindari system said Baor became khas land of the Government and the people of the area have been using the suit land i.e. the 'Baor' for various purposes including fishing. One Abadi Paroi and others instituted Title Suit No.110 of 1969 for declaration of title and confirmation of possession in the suit land and also for declaration that the soleh decree in Rent Suit No.217 of 1956 passed by the 3<sup>rd</sup> Munsif Court, Jashore, is forged and not binding upon the plaintiffs and the suit was dismissed on contest by the learned Subordinate Judge, Jashore vide judgment and decree dated 25.08.1970. Being aggrieved, the plaintiffs of the suit preferred First Appeal No.160 of 1981 before the High Court Division which was also

dismissed vide judgment and decree dated 28.06.2000.

Since then, Government remained owner of the suit land.

Thereafter, one Serajul Islam and 49 others filed an application being numbered as Miscellaneous Case No.12/XIII of 2004-2005 to the respondent no.6 Additional Deputy Commissioner (Revenue), Jashore praying to record the suit schedule 'Baor' as khas khatian in light of the judgment and decree passed in Title Suit No.110 of 1969 and First Appeal No.160 of 1981 and settle the same in their favour to rear fish and doing business. The opposite parties contested the miscellaneous case by filing a written objection, stating interalia, that S.A. Khatian not prepared in the name of the Government rather prepared in the name of their predecessor and they inherited the same and also possessing the land on payment of rents.

After contested hearing the Additional Deputy Commissioner (Revenue), Jashore allowed the said miscellaneous case vide order dated 19.03.2008 and declared the suit land as khas land of the Government and directed to record it in Khatian No.1. Against the order

opposite parties of the miscellaneous case as appellants filed Miscellaneous Appeal No.227 of 2008 before the respondent no.4 Additional Divisional Commissioner, Khulna Division, Khulna, who by order dated 10.11.2008 dismissed the miscellaneous appeal. Then the appellants filed Appeal Case No.5-139 of 2008 (Jashore) before the respondent no.2 Land Appeal Board, Dhaka, which was also dismissed vide order dated 07.01.2009 with the following observation:

“প্রতীয়মান হয় যে, মহামান্য হাইকোর্টে বিজ্ঞ সাবজজ আদালতের Title Suit No.110 of 1969 তে বিজ্ঞ আদালতের findings সহ judgment and decree বহাল রাখা হয়েছে। মহামান্য হাইকোর্টের উক্ত আদেশ উর্ধ্বতন আদালত কর্তৃক বাতিল/রদ রহিত না হওয়া পর্যন্ত চূড়ান্ত হিসাবে গণ্য। কাজেই নালিশী সম্পত্তিতে বাদী বা বিবাদী কোন পক্ষেরই স্বত্ত্ব প্রতিষ্ঠিত না হওয়ায় জেলা প্রশাসন কর্তৃক রাষ্ট্রীয় অধিগ্রহণ ও প্রজাস্বত্ত্ব আইন এর ৯২ ধারার বিধান মতে নালিশী সম্পত্তিকে সরকারি খাস সম্পত্তি হিসাবে ঘোষণাসহ প্রদত্ত আদেশ যথাযথ।”

The appellants as writ-petitioners invoked jurisdiction under Article 102 of the Constitution challenging the order dated 07.01.2009 passed by the Land Appeal Board in Appeal Case No.05-139 of 2008 (Jashore).

Upon hearing the writ-petitioners, a Division Bench of the High Court Division issued a Rule Nisi upon the respondents to show cause.

After contested hearing, a Division Bench of the High Court Division made the Rule absolute and declared the order dated 07.01.2009 passed by the Land Appeal Board in Appeal Case No.5-139 of 2008 (Jashore) to have been passed without lawful authority and is of no legal effect vide judgment and order dated 22.01.2014.

Being aggrieved, the writ-respondents as petitioners preferred Civil Petition for Leave to Appeal No.2767 of 2015 before this Division invoking Article 103 of the Constitution.

Upon hearing the learned Advocate for the respective parties, this Division disposed of the Civil Petition for Leave to Appeal No.2767 of 2015 vide judgment and order dated 13.03.2017 holding that:

*"We have considered the orders passed by the Member ভূমি আপীল বোর্ড, the Additional Divisional Commissioner, Khulna, the Additional Deputy Commissioner (Revenue), Jashore and the materials filed with the leave petition. We maintain the judgment and order passed by the High Court Division so far as it relates to the nature of the land in question and we further hold that the nature of the land in question shall have nothing to do with the title of the parties therein.*

*With the above observation this petition is disposed of."*

Feeling aggrieved, writ-respondent-petitioner as petitioners preferred Civil Review Petition No.691 of 2017 before this Division invoking under Article 105 of the Constitution.

After hearing learned Advocates for the parties, this Division granted leave vide order dated 10.01.2019.

Consequently, instant civil appeal arose.

Mr. A. M. Amin Uddin, learned Attorney General appearing for the appellants submits that the orders passed by the respondent no.6, the respondent no.4 and finally by respondent no.2 Land Appeal Board pursuant to judgment and decree of Title Suit No.110 of 1969 and First Appeal No.160 of 1981 dismissing the suit as well as the appeal, both in civil jurisdiction, and as such there is no scope to decide the nature of the case land and title thereof in writ jurisdiction but the High Court Division has not considered the same and therefore the appeal may be allowed. He next submits that the Additional Deputy Commissioner (Revenue) found the suit

land as 'Baor' and said order have been affirmed by the Additional Deputy Commissioner and Land Appeal Board respectively but the High Court Division in writ jurisdiction illegally decided classification of the case land as agricultural land relying upon the decision in Miscellaneous Case No.18 of 1964-1965 filed by Sudhir Kumar Roy for mutation of 4.79 acres of land, which was not a proceeding to decide classification of the said land and therefore this Division committed an error apparent on the face of the record in Civil Petition for Leave to Appeal No.2767 of 2015 upholding the judgment and order of the High Court Division and as such the judgment and order passed by this Division required to be reviewed and the appeal may kindly be allowed.

On the other hand Mr. Bivash Chandra Biswas, learned Advocated-on-record appearing on behalf of the respondents supports the impugned judgment and order.

Heard the learned Advocate for the appellants and the respondents. Perused the papers/documents contained in the paper book.

It appears from record that one Abadi Paroi and others instituted Title Suit No.110 of 1969 against Sudhir Kumar and others before the learned Subordinate Judge, Jashore for declaration of title and confirmation of possession over the suit land and also for declaration that the soleh decree in Rent Suit No.217 of 1956 passed by the 3<sup>rd</sup> Munsif Court, Jashore is forged and not binding upon the plaintiffs. The suit was dismissed on merit vide judgment and decree dated 25.08.1970 by the learned Subordinate Judge, Jashore. Against the said judgment and decree, plaintiffs as appellants preferred First Appeal No.160 of 1981 before the High Court Division which was also dismissed on contest vide judgment and decree dated 28.06.2000. None of the parties of said suit moved before the Appellate Division against the judgment and decree passed by the High Court Division in First Appeal No.160 of 1981. Thereafter, one Serajul Islam and others praying before the respondent no.6 Additional Deputy Commissioner (Revenue), Jashore to record the suit schedule 'Baor' as khas khatian in light of the judgment and decree passed in Title Suit No.110 of 1969 and First Appeal No.160 of



1981 and settle the same in their favour to rear fish and doing business, which was registered as Miscellaneous Case No.12/XIII of 2004-05. Some of the writ petitioners as opposite parties contested the said miscellaneous case. The Additional Deputy Commissioner (Revenue), Jashore allowed the said miscellaneous case and declared the suit land as khas land of the Government and thereby directed to record it in khatian no.1 vide order dated 19.03.2008. Against the said order, the writ petitioner-opposite parties as appellants filed an appeal being Appeal No.227 of 2008 under Section 147 of the State Acquisition and Tenancy Act, 1950 before the respondent no.4, Additional Divisional Commissioner, Khulna Division, Khulna. After contested hearing, Additional Divisional Commissioner, Khulna Division, Khulna dismissed the appeal vide order dated 10.11.2008. Thereafter, the writ-petitioners as appellants preferred an appeal being Appeal No.5-139 of 2008 before respondent no.2 Land Appeal Board, Dhaka, who dismissed the said appeal vide order dated 07.01.2009.

It also transpires from the record that Abdul Malek and others as petitioners invoked writ jurisdiction under Article 102 of the Constitution challenging the order dated 07.01.2009 passed by the Land Appeal Board in Appeal Case No.5-139 of 2008(Jashore) and after contested hearing a Division Bench of the High Court Division made the Rule absolute vide judgment and order dated 22.01.2014, which is impugned herein. It is pertinent here to mention that the suit schedule land of Title Suit No.110 of 1969 and subject matter of the writ petition from which instant civil appeal arose is same and identical.

On perusal of the memo of writ petition it is evident that the basis of the claim of writ petitioners is that they had purchased the suit land from Sudhir Kumar and others. Said Sudhir Kumar was the defendant no.1 of the Title Suit No.110 of 1969 filed before the learned Subordinate Judge, Jashore which was decided on merit by the trial court as well as by the High Court Division in First Appeal. Thus it appears that the writ petitioners are litigating in this case under the title of said

Sudhir Kumar and others relating to a portion of land for which a previous suit was instituted and same was decided on merit between the parties both by the trial court and the High Court Division in civil jurisdiction. The trial court dismissed Title Suit No.110 of 1969 with a finding that the dhakilas produced by the defendants are created and forged and the defendants failed to establish their title and possession over the suit land holding that:

*"From the discussions made above I find both the parties have no interest and legal possession in the suit land."*

*(Sic)*

The High Court Division while affirming the judgment and decree of Title suit No.110 of 1969 in First Appeal No.160 of 1981 vide judgment and decree dated 28.06.2000 observed that:

*"The impugned judgment is an elaborate and speaking judgment. The trial court has discussed the evidence on record in great details and we are not inclined to repeat the same all over again."*

*All that we find that the basis of claim of title and possession of the plaintiff-appellants is that they had taken settlement of the suit property from the landlord but they have failed to prove the same."*

*Therefore, the findings of the trial court that the plaintiffs have failed to prove their case is factually and legally correct and we are not inclined to interfere with the findings of the court below. The findings are based on evidence on record and legally sound. The suit has correctly been decided. The plaintiff-appellants are not entitled to get a decree, as prayed for and the trial court has correctly dismissed the suit."*

*(Sic)*

By now it is settled that the parties litigating over the self-same land are bound by the decision of a previously instituted suit/case in civil jurisdiction and application under Article 102 of the Constitution is not maintainable relating to title of the parties which was decided in civil jurisdiction.

Again, it is also settled that there should be finality of litigation and if a decided matter is brought before the court again and again that will create multiplicity of proceedings as well as chance to arrive at a conflicting decision which is neither desirable nor permissible in law.

The Supreme Court of India in the case of *K. Jayaram and Ors. vs. Bangalore Development Authority and Ors.*, reported in (2021) 9 SCR 359, held:

*"The finding of the High Court has attained finality and the writ court cannot sit in an appeal over the judgment passed by the High Court in the appeal. The conclusions reached by the court in the appeal are binding on the Appellants."*

Again, The Supreme Court of India in the case of *Udyami Evam Khadi Gramodyog Welfare Sanstha and Ors. vs. State of Uttar Pradesh and Ors.*, reported in (2008) 1 SCC 560, held:

*"This court has reiterated that the writ remedy is an equitable one and a person approaching a superior court must come with a pair of clean hands. Such person should not suppress any material fact but also should not take recourse to legal proceedings over and over again which amounts to abuse of the process of law."*

Further to avoid the conflicting decision of the court, the Apex Court of India in the case of *India Household and Healthcare Ltd. vs. LG Household and Healthcare Ltd.*, reported in (2007) 5 SCC 510, observed:

*"The doctrine of comity or amity required a court not to pass an order which would be in*

*conflict with another order passed by a competent court of law."*

From the above discussions and the principle enunciated in the cited cases, we are of the view that the decision of competent court of civil jurisdiction shall be final in the case of declaration of title and confirmation of possession as well as classification of the land and the High Court Division under writ jurisdiction cannot sit as an appellate forum against the judgment and decree passed by the High Court Division in civil jurisdiction and if does so that will amount to abuse of the process of law which will create multiplicity of proceedings as well as chance to arrive at a conflicting decision.

Thus it appears that as the writ petitioners litigating under the title of Sudhir Kumar who was defendant no.01 in previously instituted Title Suit No.110 of 1969 and in that title suit the very claim of Sudhir Kumar was not established both in trial court as well as in the High Court Division in first appeal and none of the parties of that title suit moved before the

Appellate Division as such the decision passed by the trial court in Title Suit No.110 of 1969 which was affirmed by the High Court Division in First Appeal No.160 of 1981 has attained finality and the petitioners of the writ petition is bound by that decision inasmuch as they are litigating over the self-same matter. But the High Court Division as well as this Division without considering this legal and factual aspect made the Rule absolute in Writ Petition No.2405 of 2019 and disposed of the Civil Petition for Leave to Appeal No.2767 of 2015 respectively, which calls interference by this Division.

Under the facts and circumstances of the case and the discussions made hereinabove, we are inclined to allow the appeal.

Accordingly, this appeal is allowed.

The impugned judgment and order dated 22.01.2014 and 13.03.2017 passed by the High Court Division in Writ Petition No.2405 of 2010 and by this Division in Civil Petition for Leave to Appeal No.2767 of 2015 respectively are hereby set-aside.

No order as to costs.

J.

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The 11<sup>th</sup> May, 2023.  
Jamal/B.R./Words-\*2729\*