IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)

First Appeal No. 257 of 2020

In the matter of:

The government of Bangladesh and others
… Appellants
-Versus-

Sayed Rahmatur Bor Ertija Ahsan and others
…Respondents
Mr. Kamrunnahar Tamanna, AAG
…For the appellants
Mr. Faysal Hasan Arif with
Mr. Md. Kaisaruzzaman, Advocates
....For the respondent nos. 1-21
Mr. Joya Bhattacharjee, Advocate
…For the respondent no. 3

Heard on 12.12.2024, 15.01.2025, 29.01.2025, 30.01.2025, 06.02.2025, 12.02.2025 and Judgment on 12.02.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

At the instance of the defendant nos. 1-4 in Title Suit No. 364 of 2012, this appeal is directed against the judgment and decree dated 20.08.2017 passed by the learned Joint District Judge, 3rd court, Dhaka in the aforesaid suit decreeing the same.

The precise facts of the case of the parties to the appeal described in the impugned judgment are:

That an area of 9947 *ojutangsho* of land appertaining to CS khatian No. 11147, 12170, 12172, 13458, 10877, 11579, 12168, 10862, 10850,

10862, 10850 corresponding to CS plot no. 28,15,14,13,22,27,25,26,5,7,12 originally belonged to one, Sir Salimullah Bahadur, Lal Kha, Mokter Ali, Chanu Mestry, Mirza Gohor Ali, Mirza Jaker Ali, Noor Jahan Khanam, Khdezanta Khanam, Golam Mohammad, Golok Chandra Pal and Ram Chandra Pal. When Sir Salimullah and others had been enjoying title and possession over the said property, he sold out the same to one, Abu Mohammad. Subsequently, Abu Mohammad transferred the same by way of deed of gift in favour of his wife, Hasina Khatun and handed over possession of the land in her favour. When Hasina Khatun had been in possession of the suit property, she then by way of permanent deed of lease dated 18.09.1941 transferred the same in favour of her 6 sons, namely, Syed Najmul Ahsan, Syed Kamrul Ahsan, Syed Fakhrul Ahsan, Syed Abu Naser Ziaul Ahsan, Syed Manjurul Ahsan and Syed Mainul Ahsan. While Syed Najmul Ahsan and others were enjoying title and possession over the suit property, Syed Mynul Ahsan died leaving behind wife, Shamima Foyzi Ahsan and son, Syed Shamimul Ahsan and one daughter, Moina Begum and the property so inherited by Syed Najmul Ahsan and others from her mother, then devolved upon Samima Faizy Ahsan and her husband, Syed Mainul Ahsan as well as other heirs namely, Syed Samimul Ahsan and Moina Begum whose name was subsequently prepared in SA khatian No. 716, 717,,718,719 and 711 in respect of 764 decimals of land. When Syed Nazmul Ahsan and others were in possession of the suit property, they mutated their name in the *khatian* and kept on paying land development tax (খাজনা) to the respective office. Subsequently, Syed Abu Nasar Ziaul Ahsan died leaving behind wife, Syeda Showkatara Ahsan and three sons, Syed Mahmudul Ahsan,

Syed Shah Nezjul Ahsan , Syed Nasrul Ahsan and 2 daughters, Syed Najtara Ahsan and Syed Tahmina Ahsan when Syeda Showkatara Ahsan and others had been enjoying title and possession over the suit property, RS record came into operation and RS khatian No. 2832,2833,2834 corresponding to RS plot No. 2031,2032,2033 2044 2045,2046,2047, 2048 was prepared in respect of 6251 *ojutangsho* of land in their name. However, an area of 1328 *ojutangsho* land of RS plot no. 2030 was wrongly prepared in the name of the government in *khas* khatian no. 1 which had no basis though by virtue of that wrong recording the defendant, government did never get possession of the property. Subsequently, Syed Najmul Ahsan while had been enjoying title and possession in respect of 866 *ojutangsho* of land died on 05.09.1971 leaving behind 4 sons, Syed Rahmatur Rob Ertija Ahsan, Syed Rashid Reza Ahsan, Syed Sarower Ahsan Syed Manjurur Rob Murtoja Ahsan and 2 daughters, Syeda Shahada Ahsan and Syeda Sultana Ahsan and wife, Faizunessa. After having that, 866 *ojutangsho* of land, they also mutated their name in the *khatian* and on 26.06.1980 by registered sale deed no. 1819 transferred that portion of land in favour of the plaintiff no. 1 and he then mutated his name in the khatian in respect of 866 *ojutangsho* of land by virtue of Misc Case No. 126(9) P-1/80 -81. Then,while Syed Mainul Ahsan had been enjoying title and possession over 916 *ojutangsho* of land, died leaving behind 1 son, Syed Shamim Ahsan and daughter, Moina Begum and wife, Shamima Foizy. Subsequently, Syed Shamim Ahsan and others upon acquiring 916 *ojutangsho* of land transferred the same by registered sale deed dated 07.03.1985 in favour of the plaintiff no. 1, while plaintiff no. 1 got 916

ojutangsho of land in the year 1988, he transferred the same by way of oral gift to plaintiff no. 2 and in support of the oral gift, he sworn an affidavit before a notary public in the year 1988 and thereby the plaintiff no. 2 started enjoying title and possession over 916 *ojutangsho* of land. In the aforesaid manner the plaintiff nos. 3 and 4 got the property left by his father, Syed Kamrul Ahsan and that of plaintiff nos. 2,5,7,12 as the heirs of Syed Fakhrul Ahsan and those of 6, 13-19 plaintiffs as heirs of Syed Monjurul Ahsan have been enjoying title and possession over the same. However, RS record in respect of RS plot No. 2030 measuring an area of 1328 *ojutangsho* of land and 520 *ojutangsho* of land of RS plot No. 2032 and that of 1848 decimals of land of city *jorip* plot no. 1554 and 1556 was wrongly prepared in the name of the government in khas khatian no. 1 with collusion of some corrupt officials of the respective survey department. It has further been stated that, since the plaintiff has been enjoying title and possession for an area of 1328 *ojutangsho* and 520 *ojutangsho* in total 1848 *ojutangsho* of land of RS khatian Nos. 2030 and 2032 so there has been no basis to prepare record of the said land in the name of the government in respect of city *jorip* in *khas* khatian no. 1 however, by virtue of that wrong city recording, the defendant had never gone to possession rather the plaintiffs have been enjoying title and possession over the said property for the last 100 years. It has further been stated that, in view of initial recording, of the suit property in city survey, in the name of the plaintiff, the government filed an appeal under rule 31 of State Acquisition and Tenancy Rules, 1951 and that appeal of the government was dismissed. But since ultimately the city survey in respect of plot no. 1554 and 1556 measuring an area of 1848 *ojutangsho* of land

has subsequently been prepared in the name of the government wrongly so it cast cloud on the title of the plaintiffs. On 22.08.2012, when the plaintiffs went to pay land development tax (খাজনা), then the A C (land) disclosed for the first time that, in the city survey plot no. 1554 and 1556 was prepared in the name of the government in *khas* khatian no. 1 and then upon obtaining printed khatian of that city *jorip,* the suit was filed seeking prayers so have been made in the plaint.

On the contrary, the present appellants who were defendant nos. 1-4 contested the suit by filing a joint written statement denying all the material averment so made in the plaint contending inter alia that, the suit cannot be maintained in its present form and the suit is bad for defect for parties, barred by limitation and also principle of estopple and waiver and acquiescence vis-a-vis the suit cannot be proceeded under section 42 of the Specific Relief Act. It has further been stated that, the statement so have been made by the plaintiff in the plaint in respect of wrong RS record is also not correct so as to city survey rather both the records being city survey, as well as the RS record in respect of the suit land has rightly been prepared in the name of the defendant, government it has got title and possession over the suit property and the suit is thus liable to be dismissed.

In order to dispose of the suit, the learned judge of the trial court framed as many as 5 different issues and the plaintiffs and the defendants adduced 1 witness each while the plaintiffs produced several documents which were marked as exhibit nos. 1-15. On the contrary, the defendants produced two document that is, RS and city record which were also marked as exhibit 'kha' series. The learned Joint District Judge, 3rd court,

Dhaka after considering the materials and evidence on record, vide impugned judgment and decree, decreed the suit on contest against the defendant nos. 1-4 declaring 16 *ana* title of the plaintiffs in the suit property declaring further that the RS record as well as city record in respect of 1848 *ojutangsho* and 1328 *ojutahgsho* of land prepared in city and Rs record respectively is illegal and not binding upon the plaintiffs.

It is at that stage, the defendant nos. 1-4 as appellants preferred this appeal.

Ms. Kamnunnahar Tamanna, the learned Assistant Attorney General appearing for the appellants on reading out the paper book in particular, the deposition so have been made by the plaintiff's and defendant's witnesses and the particular documents mainly, exhibited documents produced by the plaintiffs and the defendants at the very outset submits that, the suit itself is not maintainable so far as it relates to challenging the city *survey* under the provision of section 145A of the State Acquisition and Tenancy Act.

The learned Assistant Attorney General further contends that though the plaintiffs claimed to have been possessing the suit property for the last 100 years by erecting homestead but none other than PW 1, supported the said claim leaving the said testimony on possession unbelievable.

The learned Assistant Attorney General further submits that, though the plaintiffs have also challenged the propirety of preparation of RS record, but no reason has been assigned in the entire plaint, as regards to the cause of not recording the same in the name of the plaintiffs and the

learned judge of the trial court has thus erred in law in not taking into account of very vital fact and thus erroneously decreed the suit.

Ms. Tamanna further submits that though the latest city record up to the stage of appeal under Rule 31 of the State Acquisition and Tenancy Rules 1951 was shown to have been dismissed so filed by the government yet several steps therefore remained to complete to prepare printed record which had been taken by the government which is why final publication was made in favour of the government and therefore city *jorip* has rightly been prepared in respect of the suit land in the name of the government. With the submissions, the learned Assistant Attorney General finally prays for allowing the appeal by setting aside the impugned judgment and decree.

Conversely Mr. Faysal Hasan Arif, the learned counsel appearing for the respondent nos. 1-21 (some of the plaintiffs) by taking us to the exhibit no. 11 at the very outset submits that since the appeal preferred by the defendants-government under rule 31 of State Acquisition and Tenancy rules, 1951 against the initial recording of suit land in city survey prepared in the name of the plaintiffs was dismissed so preparation of city survey in the name of the government in *khas* khatian is illegal which rather proves that, the plaintiffs-respondents were in possession when the record was prepared and final publication was wrongly made in the name of the government without having any basis.

The learned counsel further submits that since majority portion of the properties recorded in the name of the predecessor of the plaintiffs in SA khatian has subsequently been prepared in the name of their heirs in RS record, so it proves that the preparation of RS plot no. 2030 measuring

an area of 1328 decimals of land has wrongly been recorded in the name of the government in *khas* khatian No. 1,

The learned counsel by reading the provision of section 92 of the State Acquisition and Tenancy Act also contends that, the legal ingredients so postulated in that section has not been complied with while preparing the latest city *jorip* in the name of the government in *khas* khatian though it is the case of the defendant-government that having found no body to claim the suit property while *city jorip* was in operation, the same has been prepared in the name of the government in *khas* khatian yet the defendants have utterly failed to prove so by sufficient evidences in absence of which, the city *jorip* prepared in the name of the government cannot sustain. In support of his such submission the learned counsel then placed his reliance in the decision reported in 36 DLR (AD) 225.

The learned counsel further contends that, the suit has not only been filed for correcting two consecutive records that is, RS and city record, rather also for declaration of title in the entire suit property, so the plaintiffs have rightly invoked the provision of section 42 of the Specific Relief Act having no reason of application of section 145A of the State Acquisition and Tenancy Act here. In this regard, the learned counsel refers section 145A(4) of the said Act and submits that since the land survey tribunal has got no authority to declare title in the suit land so there has been no other option left to the plaintiffs but to file a suit in declatory form and thus rightly filed the suit in the original civil court and therefore no illegality has been committed in filing the suit. In this regard, the learned counsel then placed his reliance in the decision reported in 10

MLR (AD) 205. In regard to non applicability of the provision of section 145A of the State Acquisition and Tenancy Act the learned counsel also placed his reliance in the decision reported in 56 DLR (AD)53. By reading out the testimony of PW-1 and DW-1, the learned counsel then contends that the PW-1 in his evidence has clearly asserted the case of the plaintiff so far as regards to holding possession in the suit property for the last 100 years by erecting a building thereon and on cross examining no deviation can be made by the defendants contrary to the said assertion of holding of possession and therefore the learned judge of the trial court has rightly decreed the suit.

The learned counsel further submits that, since as many as 12 sets of documents with regard to acquiring title and holding possession producing electricity bill, municipality tax and other utility bills for the plaintiff have been marked exhibits without any objection by the defendants, so from those documents it clearly construe, the plaintiffs have acquired title and possession over the suit property.

The learned counsel with reference to the evidence of defendant witnesses no. 1 (DW-1) also contends that, though the said DW is a *toushilder* but he could not say in his examination-in-chief, how the suit property has been prepared in the name of the government in *khas khatian* both in RS and City record in absence of which, the preparation of RS record and city record in the name of the government cannot be sustained in law. With those submission, the learned counsel finally prays for dismissing the appeal by affirming the judgment and decree of the trial court.

However, Ms. Joya Bhattacharjee, the learned counsel appearing for the respondent no. 3 adopted the submission so placed by the learned counsel for the plaintiffs-respondents and prayed for dismissing the appeal.

Be that as it may, we have considered the submission so advanced by the learned Assistant Attorney General for the appellants and that of the learned counsels for the plaintiffs-respondents. We have also very meticulously gone through the documents appeared in the paper book especially, the order passed in regard to appeal by the government under rule 31 of the State Acquisition and Tenancy Act, 1951 (exhibit-11) and those of the 2 records that is, RS record as well as city record, published in the name of the government marked as exhibit 'kha' series. Together, we have also perused the evidence of the PW 1 and DW 1 along with the plaint, prayer made thereof and other relevant documents lying with the lower court records. It is admitted position that, till SA record there have been no dispute with regard to acquiring ownership by the plaintiffs over the suit property and it is also not disputed that some of the properties earlier prepared in the name of the predecessor of the plaintiffs in SA record has subsequently been prepared in the name of some of their heirs in RS khatian. Only dispute arose, with regard to preparation of RS plot no. 2030 measuring an area of 1328 decimals of land and those of city plot no. 1554 and 1556 measuring 1848 decimals of land. It is the contention of the learned counsel for the respondents that, since apart from the suit land in respect of RS plot no. 2030 was prepared in the name of the predecessor of the plaintiffs, so it construe that, RS plot no. 2030 was wrongly prepared in the name of the government. So RS record ought

to have prepared in the name of the plaintiffs. But what prevented the plaintiffs from recording 1328 decimals of land of RS plot 2030 in the name of the plaintiff has not been there in the entire plaint. It is true, challenging wrong recording of RS plot no. 2030 the plaintiffs have the right to file a suit in the form of declaration under section 42 of the Specific Relief Act but the plaintiffs must show the reason why the same has not been prepared in their name in absence of which we find basis in preparing RS plot no. 2030 in the name of the government in *khas* khatian no. 1. Furthermore, if we examine the prayer of the plaint, we find that, in prayer 'kha' the plaintiff prayed for 1328 *ojutangsho* of land out of 1848 *ojutangsho* RS plot no. 2030 to be illegal. But from exhibit 'kha' so produced and exhibited by the defendant government, we find total area of RS plot No. 2030 is 1328 decimals of land. So the claim of the plaintiffs that RS plot no. 2030 consists of 1848 is totally untrue. Furthermore, how RS plot no. 2030 correspons to subsequent city plot no. 1554 and 1556 has not been explained in the entire plaint. So how the trial court can come to a finding, that RS plot no. 2030 corresponds to city plot no. 1554 and 1556 in absence of any description in the entire plaint let alone by any convincing evidence is totally incomprehensible to us which is rather appears to be whimsical. The learned counsel put much emphasis on the point that appeal so preferred by the government under rule 31 of State Acquisition and Tenancy Rule 1951 has been dismissed, so it construe that city *jorip* in respect of the suit land ought to have prepared in the name of the plaintiffs-respondents and in that regard the learned counsel submits that, since the defendants-appellants could not make out any case about the basis of preparing city record in their name, so in

absence of any explanation, the same recorded in the name of the government cannot stand. But we don't find any substance in such submission, because it is the plaintiffs who were duty bound to explain the cause of not recording their name finally in city record without looking into any explanation from the defendant side. Because, after completion of the procedure, provided in rule 31 their remains other option opened to the aggrieved party to challenge the order passed in the appeal that is in rule no. 38 where the judgment passed under rule 31 can be set aside. So, invariably, the government took resort to the said forum else, final publication of city record could not have prepared in the name of the government. It is the contention of the learned Assistant Attorney General that since the survey authority did not find anybody to claim the property in question both during RS and city record so it has rightly been prepared in the name of the government whatever the procedure might follow there. We find substance in it, because since the plaintiffs have claimed wrong recording of two consecutive records, then they should have proved their inability by sufficient evidences when the defendant has no obligation to prove the genunity of preparation of those two consecutive records in their name, as it has been settled proposition that thousand of defects of the defendant's case will not cure the shortcomings of the plaintiff's case. As stated above, Mr. Arif submitted that, under the provision of subsection 4 of section 145A of the State Acquisition and Tenancy Act, there has been no bar for any party to file a suit in the form of declaration and the plaintiff's have done so in the instant case having no illegality in it. But fact remains, since we find no plausible clarification as to how two consecutive records were not prepared in the

name of the plaintiffs from the entire plaint, so mere seeking declaration of title in the suit land will never establish title of the plaintiffs in the suit land despite the fact that the land survey tribunal has no authority to declare title other than adjudicate correctness of latest record, herein the city record. Next, on going through the deposition made by the PW 1, who stated in his deposition that since there has been time limit to file a suit in the land survey tribunal as provided in section 145A of the State Acquisition and Tenancy Act, and the plaintiffs could not file the suit within that period so they have compelled to file the suit in ordinary civil court praying for declaration under section 42 of Specific Relief Act. That very assertion by the PW 1 alternatively proves that the plaintiffs had knowledge about the establishment of land survey tribunal and they should have sought remedy before that forum. Insofar as regards to the decision placed by the learned counsel for the respondent reported in 56 DLR (AD) 53 and that of 10 MLR (AD) 313 and upon due examination of the same we find that, the *ratio* and facts so have been described and settled in those decisions, is totally distinguishable with the facts and circumstances and law involved in the instant case. Because, as has been discussed herein above, the plaintiffs sought 3 counts of reliefs in the suit and since RS plot no. 2030 does not correspond to city survey plot nos. 1554 and 1556 so the remedy sought,does not have any basis rather it alternatively proves that, in order to cover 1848 decimals of land in city record, the plaintiffs have made a prayer showing 1848 decimals of land in two RS plot no. 2030 and RS plot no. 2032 but RS plot no. 2030 consists of only 1328 decimals of land recording of which has only been challenged in the suit. In regard to application of the provision of section

92 of the State Acquisition and Tenancy Act and the decision cited thereof by the plaintiff-respondent, we don't find any substance here since PW 1 in his deposition has clearly asserted their inability to invoke the jurisdiction of land survey tribunal. So, whether the ingredients provided in section 92 of the Act has been complied with or not in making the suit land as khas land has thus become redundant one. However, we find substance in the submission so place by the learned Assistant Attorney General who has rightly submitted that to complete any land survey to reach its finality it generally takes 2 to 3 years time and so the plaintiffs did not have any knowledge about the process of two consecutive survey, cannot be believable. Further, it is the plaintiff's who have to prove not only acquiring their title in the suit land but also possession. But what we find from the deposition of PW-1 that, all the plaintiffs have been represented by their constituted attornies and what hapended to all the plaintiffs in representing their case by examining themselves in the court below, has also not been clarified by their respective constituted attornies which cast serious doubt about the genuineness of the claim of the plaintiffs in the suit property even though PW 1 has just given ditto to what has been described in the plaint about holding possession but such assertion has not been substantiated by any independent witnesses leaving the said assertion with regard to holding possession doubtful as mere giving rent, and utility bills does not bear the testimony of acquiring title and possession in the suit property when two consecutive records stands in the name of the government.

Last but not least, at the very outset we pose a question to the learned counsel for the plaintiffs-respondents about challenging the city

record (সিটি জরিপ) in the form of declaration in view of inserting section 145A, 145F and 145H of the State Acquisition and Tenancy Act and settled the issue by this court in the judgment passed in First Appeal No. 15 of 2017 dated 13.11.2024, the learned counsel for the respondents then retorted that, since the plaintiffs cannot take resort to the writ jurisdiction as writ court cannot examine the veracity of title documents, so they (plaintiffs) had no other option but to file the suit in declaratory form. But we are not at one with that submission but since the law itself specially section 145F and145H of the Act mandates the court t o adjudicate the suit arising out of correctness of latest record so it has no other option but to uphold the law and therefore challenging the latest record, there has been no option opened to the aggrieved party but to file a suit before the land survey tribunal. Then again, it is the submission of the learned counsel of the respondents, that since a separate prayer for declaration of title is there in the plaint, so the plaintiffs reserve the right to file the suit in ordinary civil court and they have rightly done. But keeping two consecutive records in the name of the government if such declaration even be given will become fruitless and that very point has also been settled in the judgment passed by this court in First Appeal No. 15 of 2017.

Against the above backdrops and given the submission, discussion and observation made hereinabove, we are of the view that, the learned judge of the trial court in a very slipshod and casual manner decreed the suit without taking into account of the legal aspect involved in the case which cannot be sustained in law.

All in all, we don't find any shred of substance in the impugned judgment and decree which is liable to be set aside.

Accordingly, the appeal is allowed however without any order as to costs.

The judgment and decree passed in Tile Suit No. 364 of 2012 dated 20.08.2017 is thus set aside.

Let a copy of this judgment and decree along with the lower court records be communicated to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.