Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 6877 of 2023

Molina Begum being died her legal heirs:
Shafiqul Islam and others
.....petitioners

-Versus-

Government of Bangladesh, represented by the Deputy Commissioner, Manikgonj and others
.....opposite parties

Dr. Md. Mojammel Haque with
Mr. Md. Enamul Hoque Mollah, Advocates
.....for the petitioner

Mr. Md. Towhidul Islam with
Mr. Rezbaul Kabir, Assistant Attorneys General
.....for the opposite parties

Heard on: 30.08.2026, 01.09.2026 and 03.09.2026

Judgment on: 08.09.2026

In the instant revision Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 26.09.2023 passed by the Joint District Judge, 2nd Court, Manikgonj in Title Appeal Number 22 of 2020 dismissing the appeal thereby affirming the judgment and decree dated 27.10.2019 passed by the Senior Assistant Judge, Ghior, Manikgonj in Title Suit Number 47 of 1994 dismissing the suit should not be set aside and/or such other or further

order or orders be passed as to this Court may seem fit and proper.

The predecessor of the petitioners as plaintiff filed Title Suit Number 47 of 1994 on 01.10.1994 in the Court of the Assistant Judge, Gheor, Manikganj. He sought a declaration that the plaintiff has title to the land described in the schedule. He also sought a declaration that the order dated 31.08.1994 passed by the Deputy Commissioner, Manikganj cancelling the settlement is illegal. He further sought a decree of perpetual injunction.

The plaintiffs' case is that the suit land was Government khas land. They obtained a thirty-year lease of the land through a registered Kabuliat in Settlement Case Number 16 of 1985-86. They filled the land with earth and erected a house. They used the house as a warehouse or godown for poultry feed and other goods.

On 20.09.1994 defendant 3 issued a notice directing the plaintiff to remove the house from the suit land within three days. The plaintiff claimed that the land was not within or adjacent to Gheor Hat. They also claimed that it was not required for the development or expansion of the hat.

The plaintiff further claimed that the settlement was cancelled without any prior notice to them. They alleged that the cancellation was contrary to natural justice. They therefore filed the suit.

Defendants 1-5 contested the suit by filing a written statement. Their case is that the settlement was subject to a condition which allowed the Government to cancel it at any time if the land was required for Government purposes. They claimed that the suit land and other land were required for the development of Gheor Hat. They therefore cancelled the settlements. They alleged that the plaintiff filed the suit by making false statements. They prayed for dismissal of the suit.

The trial Court framed five issues. The plaintiff examined as many as six witnesses and produced documents in support of their case. The documents were marked as exhibits. The defendants examined one witness as D.W. 1. They did not produce any document.

The suit was dismissed by the trial Court by judgment and decree dated 27.07.1998. Against which plaintiff preferred appeal which was dismissed by judgment and decree dated 13.08.2021.

The plaintiffs thereafter filed Civil Revision Number 6847 of 2001 before the High Court Division.

During the pendency of the revision they sought amendment of the prayer portion of the plaint. They wanted a declaration that the order dated 31.08.1994 cancelling the settlement granted in their favour in Settlement Case Number 16 of 1985-86 is illegal, inoperative, not binding upon them and not legally sustainable.

The High Court Division allowed the Civil Revision and set aside the judgments and decrees of both the Courts below and also allowed the plaintiffs to amend the plaint. The case was sent back to the trial Court for a fresh trial. The parties were directed to maintain status quo until disposal of the suit.

After remand the plaintiffs filed an application for amendment of the plaint. The trial Court allowed the application by Order Number 44 dated 28.01.2019.

The plaintiffs thereafter examined P.W. 4, P.W. 5 and P.W. 6 on 29.04.2019. The trial Court dismissed the suit by judgment and decree dated 27.10.2019.

The plaintiffs then preferred Title Appeal Number 22 of 2020 before the District Judge, Manikganj. The appeal was transferred to the Court of the Joint District Judge, 2nd Court,

Manikganj. The appellate Court dismissed the appeal by judgment and decree dated 26.09.2023.

Being aggrieved by that judgment and decree the plaintiffs have filed the present Civil Revision. The Rule was issued on 11.12.2023.

Learned advocate Dr. Md. Mojammel Haque along with Mr. Md. Enamul Hoque Mollah appearing on behalf of the petitioners submits that both the Courts below committed error of law occasioning failure of justice in dismissing the suit upon misreading and non-consideration of material evidence and upon misconception of law.

He submits that the trial Court upon misconstruction of Exhibit-1 the registered kabuliyat wrongly held that it contains no provision to the effect that ownership of the land would devolve upon the heirs of the lessee after his death and the findings of the Courts below are wholly contrary to the terms and conditions of Exhibit-1 and are the result of a complete misreading of that document.

He further submits that it is an admitted position that no notice was served before cancellation of the lease. It is also admitted that no allegation was made that the lessee had violated any term or condition of the lease. The judgments

passed by the Courts below are therefore wholly erroneous and have occasioned failure of justice.

Referring to the written statement and the relevant pleadings he submits that the defendants have admitted that the plaintiff is in possession of the suit land. In spite of such admission both the Courts below have found that the plaintiff failed to prove possession. Such finding is entirely without legal basis. Consequently the finding of the trial Court that the plaintiff failed to prove his title and possession in respect of the suit land which was affirmed by the appellate Court is also erroneous in law and has occasioned failure of justice.

Referring to Sections 76 and 81B of the State Acquisition and Tenancy Act he submits that the plaintiff has every right to hold the leasehold property. He further submits that Exhibit-1 the registered kabuliyat carries presumptive value. The Courts below however upon misconception of law wrongly dismissed the suit and such judgments cannot be sustained in accordance with law and the errors committed therein have occasioned failure of justice.

He further submits that although the trial Court at one stage held that cancellation of the lease without serving notice upon the plaintiff was not legally proper but it nevertheless

dismissed the suit on the ground that the plaintiff failed to prove his title and possession in respect of the suit land and the suit was therefore not maintainable. The appellate Court affirmed that decision. Such contradictory findings are legally unsustainable. The Courts below have thus committed errors of law which have occasioned failure of justice. He finally submits that the rule having merit may be made absolute.

On the other hand Mr. Md. Towhidul Islam along with Mr. Rezbaul Kabir, learned Assistant Attorneys General appearing on behalf of the opposite parties submits that the finding of the appellate Court regarding the ninth term of Exhibit-1 namely that the plaintiff violated the terms and conditions of the covenant is absolutely correct. He further submits that the evidence of P.W. 1 was not corroborated by the other witnesses for the plaintiff. Both the Courts below upon proper appreciation of the evidence and the applicable law correctly dismissed the suit. The findings do not call for interference by this Court in revision.

He further submits that the suit land is situated close to a haat and bazar and the defendants require the land for the extension of the haat and bazar. Since the plaintiff failed to develop the suit property in accordance with the terms and

conditions of the lease the purpose of the lease was seriously frustrated. The Courts below therefore rightly dismissed the suit. In the absence of any error of law the question of occasioning failure of justice does not arise.

He also submits that no misreading or non-consideration of evidence or misapplication of law is apparent from the judgments. The findings are therefore not liable to be interfered with in revision. He further submits that under Section 81 of the State Acquisition and Tenancy Act the Government may cancel the lease at any time if the terms and conditions thereof are violated.

He submits that Sections 83, 84 and 85 of the State Acquisition and Tenancy Act relate to agricultural land. Those provisions are therefore not applicable to the instant case. The submissions made by the learned advocate for the petitioners on the basis of those provisions are without legal basis. Both the Courts below have correctly dismissed the suit. He finally submits that the rule may be discharged.

I have heard the learned advocates for both sides and perused the materials on record as well as the judgments passed by the courts below.

It appears that the Courts below proceeded on the view that a declaration of title cannot be granted in favour of the plaintiff. Such finding however does not dispose of the real controversy between the parties. The question is not merely whether the plaintiff has acquired absolute proprietary title to the Government land. It is whether the settlement made by the Government through the registered kabuliyat deed created a subsisting legal interest in favour of the plaintiff and whether that interest was lawfully brought to an end by the impugned action of the Government.

Section 42 of the Specific Relief Act, 1877 provides a remedy to a person entitled to a legal character or to any right as to property against a person who denies or is interested to deny such right. The provision is therefore not confined to a declaration of absolute ownership. Where a plaintiff establishes a subsisting legal right or interest in property the Court may grant appropriate declaratory relief subject to the statutory requirements. The plaintiff is accordingly not required to establish absolute proprietary title to Government land merely for the purpose of obtaining a declaration in respect of the right acquired under the settlement.

The legal effect of the registered kabuliyat must be examined in the light of Section 81B of the State Acquisition and Tenancy Act, 1950. The said provision provides that no agricultural or non-agricultural tenancy shall in law be created or deemed to have been created even after acceptance of salami and/or rent until a deed of lease has been executed in favour of the lessee by an authority competent to grant lease of Government khas land or by a gazetted officer duly authorised in that behalf and the lease has been duly registered. Thus where the competent Government authority has executed and registered the deed in favour of the settlee the legal effect of that instrument cannot be disregarded merely by describing the settlee as an unauthorised occupant. The nature and extent of the right created must be determined from the instrument and the applicable law.

In this connection the decision in East Pakistan (Bangladesh) Vs. S. Ahmed reported in 4 BCR(AD) 201 is particularly significant. The statement on the case of the plaintiff is given in paragraph 2 of the decision. In that case the plaintiff had acquired five acres of Government land under Settlement Case Number 3 of 1958-59 through a registered kabuliyat. The settlement was subsequently cancelled by the

Board of Revenue on the ground that the plaintiff was not a cultivator. The Trial Court dismissed the suit on that ground. The High Court Division upon consideration of the earlier decisions and the evidence on record held the cancellation to be illegal and decreed the suit. The Government thereafter preferred appeal to the Appellate Division. The Appellate Division dismissed the Government's appeal. The decision is significant because it recognised that where a kabuliyat has been duly executed and the salami and rent have been duly paid the kabuliyat becomes effective and creates a jural relationship between the parties. The principle is that the legal effect of a duly executed and registered settlement instrument cannot be disregarded merely by describing the settlee as a person who has no title to Government land. The nature and extent of the right created by the settlement must be determined from the instrument and the applicable law.

In the present case the registered kabuliyat dated 24.05.1986 marked as Exhibit-1 has not been shown to have been obtained by fraud or misrepresentation. There is also no material on record to show that the settlement was void ab initio or the authority granting the settlement lacked jurisdiction. It is admitted that the settlement was made

pursuant to Settlement Case Number 16 of 1985-1986 by the competent Government authority and the kabuliyat was executed and registered by the Government.

The defendants in paragraph 6 of the written statement have stated that the settlement was made subject to a condition that the Deputy Commissioner could cancel the settlement at any time if the Government required the land. However upon examination of the registered kabuliyat dated 24.05.1986 Exhibit-1 no such condition is found to have been incorporated in the instrument. The mere assertion in the written statement that the Government could cancel the settlement at any time cannot by itself establish the existence of such a contractual term.

On the contrary Clause 11 of Exhibit-1 indicates that if any breach of the terms and conditions is committed or appears to have been committed the lessor is to give written notice to the lessee. The clause further provides for compensation in respect of a house, trees or other improvements made by the lessee with the written consent of the Collector or Deputy Commissioner. Thus the deed itself contains provisions governing the consequences of breach and the rights of the lessee in respect of improvements.

The defendants have not adduced any evidence to show that the plaintiff committed any breach of the terms and conditions of Exhibit-1. Nor have they clearly pleaded any particular breach as the basis for cancellation of the settlement. The defendants have not produced the alleged notice dated 31.08.1994 by which the settlement was cancelled and the plaintiff was directed to be evicted. The land in question is not shown to be part of Ghior Hat or market. The cancellation of the settlement on the ground of development or expansion of the market has therefore not been established by any reliable evidence.

The Local Investigation Report dated 01.05.1998 which is on record indicates that the suit land is not adjacent to Ghior hat or market. No objection was filed by the defendants against the said report. The report therefore supports the plaintiff's case that the land was not required for the alleged purpose for which the settlement was cancelled.

Exhibit-2 series show that the plaintiff has been paying rent and has remained in possession of the land. Exhibit-3 shows that the plaintiff deposited the Government dues payable as salami in accordance with the settlement and produced the duplicate carbon receipt. Exhibit-4 further shows

that in accordance with Clause 9 of Exhibit-1 the plaintiff opened separate Jote Number 3228/3 for the six decimals of land on 23.05.1987 for the purpose of a shop in accordance with law. These documents support the plaintiff's case that the settlement was acted upon and the plaintiff acquired and continued to enjoy a legal interest in the land under the registered kabuliyat deed.

The oral evidence is also consistent with the documentary evidence. P.W. 1 stated in his deposition on 13.07.1998 that the suit land was not part of the market. In cross-examination he stated that his house was destroyed in the flood of 1988 and there was no house on the land at the time of his deposition although a signboard remained there. P.W. 2 stated that the suit land is not market land and is not required for the market. He further stated that the land is residential land and the plaintiff is in possession. No cross-examination was directed to these material assertions except by way of suggestion. P.W. 3, P.W. 4, P.W. 5, P.W. 6 deposed after about 21 years of the depositions of P.W. 1 and P.W. 2. P.W. 3 stated on 29.04.2019 that there is a shed on the suit land which was used as a store for poultry feed and the plaintiff is in possession. He also stated that the land is not

part of the market. These material assertions were not effectively challenged in cross-examination.

P.W. 4 a neighbour stated that the plaintiff is in possession of the six decimals of land. P.W. 5 also stated that the plaintiff is in possession and there is a shed on the land. In cross-examination he stated that the land is outside the market and the shed is in the possession of the plaintiff. P.W. 6 stated that the plaintiff has a shed on the land and further stated in cross-examination that there is a shop-house on the eastern side of the suit land.

On the other hand D.W. 1 in cross-examination admitted that the plaintiff executed the kabuliyat in favour of the Government and the plaintiff had not violated the conditions of the settlement. He further admitted that the lease was cancelled on the ground of Government requirement and the money paid by the plaintiff had not been refunded. He also admitted that there were documents relating to cancellation of the lease and taking over possession by the Government but those documents had not been produced.

The above oral and documentary evidence establishes that the plaintiff is in possession of the suit land and the settlement had been acted upon. The letter dated 31.08.1994

referred to in the plaint and forming part of the record also shows that the defendants called upon the plaintiff to surrender possession.

The Transfer of Property Act, 1882 recognises forfeiture as one of the modes of determination of a lease. Section 111(g) applies where the lessee breaks an express condition which provides that the lessor may re-enter and requires notice in writing of the lessor's intention to determine the lease. Section 114A further requires a written notice specifying the particular breach and where the breach is capable of remedy requiring the lessee to remedy it before a suit for ejectment is brought. These provisions are material where the lessor seeks to determine a lease by reason of an alleged breach of an express condition.

In the present case no breach of any express condition of Exhibit-1 has been established. Nor has any notice specifying a particular breach and requiring its remedy been proved. The impugned action was therefore not shown to have been taken on the basis of a proved breach of the settlement conditions. The question of notice under the governing law is accordingly material in determining whether the plaintiff's subsisting interest was lawfully brought to an end. This view finds

support from the cases of Bangladesh Vs. Khashru Miah reported in 58 DLR(AD) 46 and A. Motaleb Vs. Mannan Halder reported in 8 BLC(AD) 137.

The defendants have also failed to establish that the suit land was required for the development or expansion of Ghior Hat or the settlement was cancelled for a lawful purpose in accordance with the terms of the deed and the applicable law. The Local Investigation Report and the evidence of the plaintiff's witnesses support the plaintiff's case that the land is outside the market and is not required for the alleged purpose.

The plaintiff's possession therefore traces its origin to a lawful registered settlement made by the competent Government authority. The settlement was acted upon by the execution and registration of the kabuliyat and the payment of salami and rent and the opening of a separate jote. The plaintiff's interest cannot be treated as having been extinguished merely by the subsequent assertion of the Government that the land was required for market development or expansion. The mere assertion that the Government required the land for market development or expansion is not sufficient to establish that the settlement could be cancelled in the manner adopted.

The registered kabuliyat deed Exhibit-1 created a legal relationship between the Government and the plaintiff. The plaintiff's right under that deed was not a mere informal permission to occupy the land. It was a legally recognisable interest created through a settlement proceeding by the competent Government authority. The Government cannot lawfully terminate that interest without establishing a valid ground for cancellation and complying with the applicable law and the terms of the deed.

In the circumstances the finding of the Courts below that the plaintiff cannot obtain a declaration of title merely because the land is Government land does not answer the real controversy between the parties. The plaintiff's case is not that he acquired absolute proprietary title to the Government land. His case is that he acquired a subsisting legal interest under the registered kabuliyat deed and the impugned cancellation of the settlement is unlawful. That question requires determination on the basis of the deed and the settlement proceeding and the evidence on record.

It is therefore held that the plaintiff has a subsisting legal interest in the suit land under the registered kabuliyat dated 24.05.1986 Exhibit-1. It is further held that the purported

cancellation of the settlement and the consequential notice seeking to evict the plaintiff have not been shown to have been made in accordance with the terms of the settlement and the applicable law. The plaintiff is accordingly entitled to an appropriate declaration that the impugned cancellation and the consequential notice are illegal and inoperative against his subsisting interest. The defendants are also permanently restrained from evicting the plaintiff from the suit land otherwise than in due course of law.

For the reasons stated above the rule is made absolute. The judgments and decrees passed by the Courts below are hereby set aside.

The order of status quo passed by this Court stands vacated.

Let a copy of this judgment be communicated to the Courts below forthwith and the Lower Courts' Records be sent down at once.

Md. Ali Reza, J: