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

Present
Madam Justice Kashefa Hussain

Civil Revision No. 4304 of 2006

Chairman Rajdhani Unnayan
Kartipakkha (RAJUK)
.....petitioner
-Versus-
Amena Khatun and others
------- Opposite parties.

Mr. A M Amin Uddin, Senior Advocate with
Mr. Md. Rahmat Ali, Advocate with
Mr. A.K.M Nurul Alam, Advocate with
Mr. Md. Abdul Alim Miah (Jewel), Advocate
with Mr. MMG Sarwar (Payel), Advocate
------ For the petitioner

Mr. Md. Abdul Aziz Miah, D.A.G with
Ms. Sayeda Sabina Ahmed Molly, A.A.G with
Ms. Farida Pervin Flora, A.A.G
..... for the opposite party No.3.

Mr. A. J Mohammad Ali, Senior Advocate
with Mr. Md. Ekramul Kabir, Advocate with
Mr. Niaz Murshed, Advocate
.... for the opposite party Nos. 2, 8 and 9

Mr. Probir Neogi, Senior Advocate with
Mr. Tapos Bandhu Das, Advocate with
Mr. Md. Sumon Ali, Advocate with
Mr. Sreehadri Chakrabarty, Advocate
..... For the added opposite party No. 10.

Heard on: 13.06.2023, 09.07.2023 and
Judgment on: **10.07.2023**.

Rule was issued in the instant Civil Revisional application calling upon the opposite parties No. 1 and 2 to show cause as to why the judgment and decree dated 27.06.2006 passed by

Additional District Judge, 6th Court, Dhaka in Title Appeal No. 334 of 1993 setting aside the judgment and decree dated 11.09.1993 passed by Assistant Judge, 1st Court, Dhaka in Title Suit No. 123 of 1992 should not be set aside and or pass such other order or further order or orders as to this court may seem fit and proper.

The instant opposite parties as plaintiffs filed Title Suit No. 123 of 1992 inter alia for declaration arising out of emergency acquisition and requisition of property before the court of learned Assistant Judge, 1st court, Dhaka. The trial court upon hearing the parties upon adducing evidences dismissed the suit by its judgment and decree dated 11.09.1993. Being aggrieved by the judgment and decree of the trial court the plaintiff in the suit as appellant filed Title Appeal No. 334 of 1993 which was heard by the court of learned Additional District Judge, 6th Court, Dhaka. The appellate court upon hearing the appeal by its judgment and decreed dated 27.06.2006 setting aside the judgment and decree of the trial court sent the case back on remand to the trial court particularly for purpose of disposal of the application under order 6 Rule 17 of the Code of Civil Procedure, 1908 filed by the plaintiff earlier in the trial court.

Being aggrieved and dissatisfied by the judgment and decree of the appellate court below the present petitioners filed

the instant Civil Revisional application which is presently before this court for disposal.

The plaint's case inter alia is that District Dhaka, P.S previously Mirpur at present Uttara under Mouza No. 201 Bailzuri, C.S Khatian No. 47, total plot Nos. 11 an area of 9.74 decimals of land belong to Sk. Keramat Ali and Dirgaz Ali. That they died leaving behind their legal heirs. That the total lands of the said khatian was acquired under L.A case No. 2/87-88. That Dirgaz Ali was owning and possessing the said lands since long and he made waqf of the said lands by executing two waqf deeds. That the land of the graveyards are not acquirable by the provisions of Land Acquisition and Requisition Act. But the defendants did not obey the same. That the contractor and other persons of the defendants demolished the house of the graveyard on 14.04.1992 and also cut earth by threatening the plaintiffs. Hence the suit.

The present petitioner as defendant No. 2 contested the said suit by filing written statements denying the plaint's case on all material points stating inter alia, that to face the residential problem of Dhaka City the Government of Bangladesh acquired the total area of the suit plots with other lands of 209 No. Bailjuri Mouza by L.A Case No. 2/87-88 under the provisions of "The Acquisition and Requisition of Immovable Property Ordinance 1982". That after the acquisition the Deputy Commissioner,

Dhaka prepared the award in the name of the plaintiff and their predecessor and the other original land owners and paid the compensation to them. That the Deputy Commissioner, Dhaka handed over the possession of the acquisitioned land including all structures to the Rajdhani Unnayan Kartipakkhya on 23.01.1990. That the plaintiffs and their predecessor and other 35 persons got their compensation money of Tk. 28,35,381/- in various award No. 177-193 in respect of the suit property and further got the compensation money of Tk. 22,00,000/- in respect of house in award Nos. 48-85. That RAJUK after getting possession of the acquired lands developed the same under the provisions of RAJUK Rules. That there is no graveyard in the plot Nos. 221, 222 and 223 as claimed by the plaintiffs and the suit land was not used for graveyard at any time. That the plaintiffs could not file any documents in support of the waqf land or graveyard. That plaintiffs have no right, title, interest and possession over the suit property. That they manufactured the false story claiming suit property as graveyard for illegal grabbing of the suit property. That hence the suit is liable to be dismissed with costs.

The trial court framed 3(three) issues, witnesses were examined from both sides and documents also produced as exhibits.

Learned Senior Advocate Mr. A M Amin Uddin along with Mr. Md. Rahmat Ali, Advocate with Mr. A.K.M Nurul Alam, Advocate with Mr. Md. Abdul Alim Miah (Jewel), Advocate with Mr. MMG Sarwar (Payel), Advocate appeared for the petitioner while learned Senior Advocate Mr. A.J Mohammad Ali along with Mr. Ekramul Kabir, Advocate with Mr. Niaz Murshed, Advocate appeared for the opposite party Nos. 2, 8 and 9 and learned Senior Advocate Mr. Probir Neogi along with Mr. Tapos Bandhu Das, Advocate with Mr. Md. Sumon Ali, Advocate with Mr. Sreehadni Chakravarty, Advocate appeared for the opposite party No. 10 and learned Deputy Attorney General Mr. Md. Abdul Aziz Miah, with Ms. Sayeda Sabina Ahmed Molly, A.A.G with Ms. Farida Pervin Flora, A.A.G appeared for the opposite party No.3.

Learned Advocate Mr. A.K.M Nurul Alam for the petitioner submits that the trial court dismissed the suit upon correct consideration of the evidences and materials on record but the appellate court upon total misinterpretation came upon wrong finding and wrongly set aside the judgment and decree of the trial court and even more erroneously sent the matter back on remand to the trial court. Upon elaborating his submissions he embarked upon the factual merits of the case. He submits that it is evident from the materials and documents produced before the trial court as exhibits that the suit land was acquired by way of L.A case No. 2/87-88 and after exhausting all the procedural

requirements compensation was also accepted and received by the plaintiffs. He submits that therefore it is clear as day light that the matter of acquisition of the suit land is a past and closed transaction particularly since the plaintiffs within full knowledge of all the facts received and consciously accepted the compensation. There was a query from this bench regarding the plaintiffs' claim that 20 decimals of land acquired comprises of the graveyard and which is mandatorily prohibited in the proviso of section 3 of The Acquisition and Requisition of Immovable Property Ordinance 1982. To this query the learned Advocate for the petitioner points out to the records and contends that nowhere in the documentary evidences could it be proved to satisfaction that any portion of the total land comprises of graveyard. He points out to exhibit-X series produced by the plaintiffs opposite parties. From exhibit-X series he shows that nowhere in the C.S khatian, S.A khatian and R.S khatian is it indicated that the suit land ever comprised of a graveyard. He submits that in the absence of any reliable documents it is clear that there was never any graveyard in the suit land. He next draws attention to the supplementary affidavit filed by the petitioner. From the supplementary affidavit he asserts that it is clear that even in the R.S record there is nothing to indicate that the suit land ever comprised of graveyard nor any portion of the suit land. He submits that in the absence of reliable documentary evidences and given that from the khatians which are documentary

evidences portraying the nature of the land nowhere is it found that the land was ever used as graveyard.

He agitates that the proviso of section 3 as a mandatory bar is not at all applicable in the instant case. He continues that however the appellate court being totally misdirected relied upon only an Advocate commissioner's report wherein there is a mere presumptuous hint of graveyard in the suit land. He submits that the absurdity of the findings of the advocate commissioner's report is revealed particularly from the fact that the advocate commissioner in one part of his report stated that bones were found in a portion of the land "হাড়গোড় পাওয়া গেছে". He submits that the absurdity of the statement in the advocate commissioner's report and the fact that such statement is untrue is proved upon comparison with the other factors and evidences and documents placed before the court. In support of his contention he draws attention to the waqf deed produced by the plaintiff which is exhibit 11. He points out that strangely enough although the property was acquired admittedly in the year 1988 and compensation was duly received by the plaintiff opposite party here, but however the plaintiffs produced waqf deed which was admittedly executed in the year 1991 against the suit land and which is evidently after lawful acquisition and requisition of the suit land. He submits that the trial court correctly found that the creation of the waqf deed after acquisition and requisition of the

property is itself clear enough to indicate that such waqf deed is a created deed only to misappropriate the suit land which was lawfully acquired by the defendant No. 2 (RAJUK) and compensation was also paid and received and accepted duly. He agitated that upon comparison of the C.S, S.A and R.S khatians and also upon examining the waqf deed which was created only after due acquisition and requisition of the property clearly indicate that the Advocate commissioner's report is not acceptable and cannot be relied upon and has no evidentiary value in this particular case. He reiterates that therefore the trial court's observation on the advocate commissioner's report is also correct. He argues that it is evident from inter alia the documentary evidence that the whole process was admittedly exhausted duly under the provisions of The Acquisition and Requisition of Immovable Property Ordinance 1982. He continues that in the L.C.R it is also found one of the plaintiffs even made an application to be granted a compensation plot in lieu of the property that has been acquired. He submits that therefore the plaintiffs here do not have any legal competence to open a past and closed transaction.

Learned Advocate Mr. A.K.M Nurul Alam for the petitioner next submits on the issue of maintainability of the suit. He argues that the main ground taken by the trial court was on the issue of maintainability. He contends that the trial court made

an observation relying on the provisions of section 44 of the Acquisition and Requisition of Immovable Property Ordinance 1982 which states "No suit or application against any order passed or any action taken under the provision of the Ordinance of 1982 no such suit shall be entertained by any civil court."

He submits that therefore in the presence of express bar under section 44 the civil suit is not maintainable in limine. He points out that the trial court also correctly dismissed the suit primarily on the issue of maintainability.

He continues that no notice before filing the suit was issued upon the defendants and which notice is mandatory under the provisions of section 169 of the Town Improvement Act, 1953 and therefore the suit also suffers from some inherent defects.

On the issue of the oral evidences supporting the existence of a graveyard in the oral evidence of some of the p.ws, he asserts that the oral evidences of the p.ws are not at all reliable in the instant case nor are those impartial. In support of his substantive overall submissions and particularly on the issue of maintainability he cites a few decisions inter alia in the case of RAJUK Vs. Abdul Jakir reported in 58DLR(AD)(2006)130. In this decision our Apex court held:

> *"The embargo embodied under section 44 of the Acquisition and Requisition of Immovable Property Ordinance 1982 has closed the door of the plaintiff in the present case to file and maintain the suit."*

The learned Advocate for the petitioner also asserts that this court has the jurisdiction and power under section 151 of the Code of Civil Procedure to dispose of the matter finally even if the civil revision arose against an order of remand passed by the appellate court. In support of his submissions he takes me to a decision in the case of Abdul Jalil Vs. Islamic Bank reported in 53 DLR(AD)92001)12. He points out to this decision wherein it was held:

> *"As the ultimate result of the suit is as clear as day lights such a suit should be burried at its inception so that no further time is consumed in a fruitless litigation."*

There was another query from this bench regarding the plaintiff's contention and the appellate court's finding that an application under order 6 Rule 17 of the Code of Civil Procedure has not been disposed of by the trial court. In reply he takes me to the LCR particularly to Order No. 20 dated 12.10.1992 and submits that the appellate court's observation is incorrect since the trial court by its order No. 20 dated 12.10.1992 disposed of the application under order 6 Rule 17 of the Code of Civil

Procedure for boundary specification. He submits that therefore it is clear that the order of remand to the trial court passed by the appellate court to dispose of an application under order 6 Rule 17 is misplaced. Relying on such submissions and decisions cited he concludes that therefore the trial court correctly passed its judgment and decree but the appellate court wrongly and erroneously sent the case back on remand to the trial court and the Rule bears merits ought to be made absolute for ends of justice.

On the other hand learned Advocate Mr. Niaz Murshed appearing for the opposite parties No. 2, 8 and 9 vehemently opposes the Rule. He submits that the trial court totally overlooked the fact that there is a graveyard in the suit land but the appellate court correctly found the existence of a graveyard and also correctly relied upon the advocate commissioner's report stating the existence of a graveyard in the suit land. He submits that the defendants could not prove that the advocate commissioner's report is not a reliable piece of evidence. He points out that the advocate commissioner after submitting the report was also properly examined by the trial court and there was no inconsistency revealed from his examination.

Against the defendant No. 2 RAJUK petitioner's contention that the documentary evidences by way of C.S, S.A and R.S khatians do not reveal the existence of any graveyard the

learned Advocate for the opposite parties controverts that although in the C.S, S.A and R.S khatian there was no graveyard in the suit land, but neverthess subsequently a graveyard was built and which is evident from the city jorip which is marked as annexure-1 in the counter affidavit. He submits although priorly there was no graveyard in the suit land when the C.S, R.S and S.A khatian was prepared but however subsequently a graveyard was built in the suit land which is evident from the city jorip Annexure 1. Upon a query from this bench he however concedes and admits that the city jorip was prepared only after filing of the suit and concedes that city jorip was not produced anywhere in trial and therefore is not a part of the Lower Court Records.

He next counters the petitioner's contention on the issue of compensation been received. He controverts that the plaintiffs opposite parties did not receive or accept the compensation. In support of his submissions he draws this Bench to annexure-2 of the counter affidavit filed by the opposite parties. Relying upon annexure-2 he argues that the plaintiffs did not receive any compensation from the concerned authority. He submits that therefore it is clear that the plaintiffs never received any compensation. Relying on the fact that he did not receive any compensation he submits that therefore the matter is not a past and closed transaction at all. Upon a query from this bench on the issue of maintainability, he relies on his statement of the

counter affidavit. From the counter affidavit he argues that in the instant suit section 44 is not attracted and is not applicable to the plaintiff's case particularly since compensation has not been received. He submits that therefore the suit is maintainable.

He next counters the contention of the learned Advocate for the petitioner's argument on the issue of order of remand to dispose of an application under order 6 rule 17 of the Code of Civil Procedure, 1908. He draws this court's attention to Order No. 20 dated 12.10.1992. He points out to Order No. 20 dated 12.10.1992 passed by the trial court and asserts that upon perusal and examination of this particular order it is clear that the substance of the application under order 6 Rule 17 of the Code of Civil Procedure was not disposed of by this order. Regarding the principle of mandatory disposal of an application under order 6 rule 17 of the Code of Civil Procedure he cited an unreported judgment passed by our Appellate Division in Civil Petition for Leave to Appeal No. 4608 of 2018 order dated 27.08.2019. He submits that in this decision our apex court clearly held:

> *"It is incumbent upon every court to dispose of any application placed before it for consideration. An application filed by any party placed before it for consideration. An application filed by any party may be allowed, rejected or disposed of, but cannot be simply ignored.*

Moreover, it appears that after substitution of parties there is no noting in the record as to whether notice was duly served and the case was ready for hearing. Without such endorsement it was not proper for the Court to dispose of the matter."

He assails that in any application including an application under order 6 Rule 17 of the Code of Civil Procedure, 1908, it was the trial court's duty to dispose of the application under order 6 rule 17 but however the trial court did not comply with its duty. He contends that therefore the appellate court correctly sent the case back on remand to the trial court particularly to dispose of the application under order 6 rule 17 of the Code of Civil Procedure, 1908.

Relying on his contentions he concludes his submission upon assertion that the appellate court correctly set aside the judgment and decree of the trial court and correctly send the case back on remand to the trial court and the Rule bears no merit ought to be discharged for ends of justice.

Learned Senior Advocate Mr. Probir Neogi for the added opposite party No. 10 lessee from RAJUK submits that he is a bonafide transferee and therefore is a stake holder in this matter. He substantively supports the contention of the learned Advocate for the petitioner (defendant No. 2) and prays that the judgment of the appellate court ought to be set aside and the judgment of

the trial court ought to be upheld and the Rule bears merits ought to be made absolute for ends of justice.

Learned D.A.G for the state adopts the submissions of the learned Advocate for the petitioner and submits that the Rule bears merit ought to be made absolute for ends of justice.

Heard the learned counsels from both sides, perused the application and materials on record and I have also perused the judgment of the courts below. Although the civil revision arose against an order of remand passed by the appellate court but however for ends of justice and proper adjudication of the matter I am inclined to concentrate initially on the factual merit and issues in the case.

Admittedly the land was acquired by way of L.A case No. 2/87-88. The plaintiffs (opposite party here) claim that such acquisition is inherently an unlawful acquisition since a portion of the land comprises of graveyard and acquisition of graveyard is mandatorily prohibited under section 3 of the Acquisition and Requisition of Immovable Property Ordinance 1982. The defendant No. 2 RAJUK vehemently denies the plaintiffs' claim of existence of graveyard in the suit land.

For proper ascertainment as to whether at all there was a graveyard in the suit land it is necessary to examine the relevant documents produced by the court. I have particularly examined

exhibit-x series and Annexure of the supplement affidavit which are the C.S, S.A and R.S khatian respectively produced by the plaintiff. Upon examination of the C.S, S.A and R.S khatian, however I do not find the indication of any graveyard in the suit land. In Annexure-1 R.S khatian produced by the petitioner, in the R.S khatian also there is no mention of any graveyard in the suit land. The C.S, S.A produced in the suit and R.S khatian too are all public documents. Therefore I am inclined to rely on the C.S, S.A and R.S khatian which are admitted documents by both parties and not denied. Evidently in the R.S, S.A and C.S khatian there is no mention of any graveyard in the suit land in the respective khatians.

The learned Advocate for the plaintiffs opposite parties attempt to rely on Annexure-1 of their counter affidavit which shows a city jorip published only after the suit was filed. The learned Advocate for the opposite parties contended that in the city jorip it is mentioned that a graveyard also comprises a portion of the suit land. He also contended that the graveyard was built at a subsequent stage and therefore it cannot be acquired by the government under the mandatory provisions of section 3 of the Acquisition and Requisition of Immovable Property Ordinance 1982. However upon examination it is evident that this city jorip was not produced anywhere neither during trial nor in the appeal by the plaintiff opposite parties. It is

only at a subsequent stage after the civil revision was been filed that the plaintiff opposite parties somehow from somewhere produced the city jorip. It is also revealed from the city jorip that no date of its issuance is stated therein. I am of the considered view inter alia in the absence of the date it cannot be accepted as a reliable piece of document and casts serious doubt as to the veracity of such document.

I have also examined a waqf deed executed in 1991 creating a waqf against the suit land. However strangely enough such waqf deed was executed admittedly after the acquisition and requisition of the property by way of LA case No. 2/87-88. Therefore the creation of such waqf deed after acquisition and requisition raises serious doubt as to the intention of the plaintiff.

Next I have examined the Advocate commissioner's report which the plaintiffs opposite parties evidently relies upon. At one stage in the Advocate commissioner's report it is found that the advocate commissioner stated that there are some bones (হাড়গোড় পাওয়া গেছে) in the suit land. Such vague statement mentioning some bones is clearly not acceptable and casts a serious doubt as to the reliability of such report. Only হাড়গোড় পাওয়া গেছে cannot indicate as to what is the actual nature of the bones. It would be absurd to hold that even if some bones were found in some portion of the land those are indications of graveyard. Such an assumption is an absurdity in itself.

Moreover it may be reiterated that the city jorip was produced only after the instant civil revision was filed with no date there upon and hence cannot be held as credible document.

Upon comparison of exhibit X series and upon comparison of the waqf deed which was executed after 1991 the chain of documents show that the existence of any graveyard could not be proved by satisfactory evidences by any stage in the suit. I am of the considered view that the plaintiffs' claim that there was a graveyard on the 20 decimals of land whatsoever is not correct.

I have also examined the deposition of the p.ws. Although some of p.ws support the plaintiffs case that there was graveyard in the suit land but however nothing specific could be found from their deposition. Moreover under the provisions of section 92 of the Evidence Act, 1872 documentary evidences shall prevail over oral evidences. In this case exhibit-x series are the credible documentary evidences by way of C.S, S.A and R.S khatian.

The petitioner also relied upon section 44 of the Acquisition and Requisition of Immovable Property Ordinance 1982 read with a decision of our Apex court in the case of RAJUK Vs. Abdul Jakir reported in 58 DLR(AD)(2006) 139. The relevant portion is reproduced below:

> *"The embargo under section 44 of the Acquisition and Requisition of Immovable Property Ordinance 1982 has closed the door of the plaintiff in the present case to file and maintain the suit."*

I am in respectful agreement with the decision of our Apex court which is binding on all. I am also of the further considered view that Section 44 of the Acquisition and Requisition of Immovable Property Ordinance 1982 is also applicable to the instant suit. I am inclined to hold that the trial court correctly rejected the suit on ground of non maintainability of the suit.

Regarding the petitioner's contention on the legal issue of no notice being served upon them, under section 169 of the Town Improvement Act, 1953, I am inclined to opine that section 44 of the Acquisition and Requisition of Immovable Property Ordinance 1982 creates an embargo against filing of any suit arising out of an order etc under the provisions of the Act of 1982. Therefore section 169 of the Act, 1953 is not applicable or necessary here.

The learned Advocate for the opposite parties relying on their counter affidavit, Annexure-2 contended that they did not receive any compensation from the authorities. The defendants evidently denied such contention. I have examined annexure-2

which all date back to the year 2012. These documents were also not produced in the LC.R neither in trial nor in appeal. Therefore I am not inclined to entertain such documents at this stage.

On the other hand learned Advocate for the petitioner produced exhibit-ka series to shows that compensation was duly received by the plaintiffs. I do not find anywhere in the judgment of the trial court nor the appellate court where the plaintiffs could specifically deny or challenge exhibit-ka series. Therefore I am of the considered view relying upon exhibit ka series that compensation was duly received by the respective parties. In my considered view it is a past and closed transaction and the suit is not maintainable under the provisions of section 44 of the Acquisition and Requisition of Immovable Property Ordinance 1982.

Lastly I have examined the plaintiff opposite contention that an application under Order 6 Rule 17 of the Code of Civil Procedure 1908 was not disposed of by the trial court and which contention the judgment of the appellate court also echoes. I have examined the Trial Courts Order No. 20 dated 12.10.1992. Upon examination it appears that truly enough there is no direct disposal of the application under order 6 rule 17 of the Code of Civil Procedure, 1908 by the trial court. To address this issue, I find it necessary to rely upon the unreported judgment passed by our Apex court in Civil Petition for Leave to Appeal No. 4608 of

2018. The relevant portion of Civil Petition for Leave to Appeal No. 4608 of 2018 passed by our Apex court is reproduced below:

> *"It is incumbent upon every court to dispose of any application placed before it for consideration. An application filed by any party placed before it for consideration. An application filed by any party may be allowed, rejected or disposed of, but cannot be simply ignored. Moreover, it appears that after substitution of parties there is no noting in the record as to whether notice was duly served and the case was ready for hearing. Without such endorsement it was not proper for the Court to dispose of the matter."*

Although I do not find any factual and/or legal merit in the original suit, but however relying on the principle of our Appellate Division. I am of the considered view that it was the trial courts legal duty to dispose of such application.

Regarding the submissions of the learned Advocate for the added opposite party No. 10, I am of the considered view that the fate of the defendant No. 2 bears a nexus to the fate of the added opposite party No. 10 who are the lessees.

Under the facts and circumstances and relying on the above observations, I am inclined to send the case back on

remand to the appellate court being the last court of fact to only dispose of the application under order 6 Rule 17 of the Code of Civil Procedure, 1908 relying on the findings and observation made above.

In the result, the Rule is disposed of. Relying on all the findings and observations made in this judgment, above the appellate court is hereby directed to dispose of the application under order 6 Rule 17 of the Code of Civil Procedure, 1908 as expeditiously as possible within 6(six) months of receiving of this judgment.

Order of stay and status-quo granted earlier by this court is hereby vacated.

Send down the L.C.R at once.

Communicate the judgment at once.

Arif(B.O)