

IN THE SUPREME COURT OF BANGLADESH
Appellate Division

PRESENT

Mr. Justice Hasan Foez Siddique, C.J.

Mr. Justice M. Enayetur Rahim

Mr. Justice Jahangir Hossain

CIVIL APPEAL NOS. 234-239 OF 2015

(From the judgment and order dated 09.08.2011, passed by the High Court Division in Writ Petition Nos. 4758 of 2008, 4757 of 2008, 2687 of 2010, 2692 of 2010, 10535 of 2007 and 9426 of 2010 respectively.)

Secretary, Bangladesh Textile Mills Corporation and
others:

=Versus=

Nasrin Sultana and others
Md. Nazim and others

Md. Syedur Rahman and others

Mohammad Abul Bashar and others

Manjur Karim and others

Ahmed Areyfeen and others:

.....Appellants.
(In all the cases)

.....Respondents.
(In C.A.NO.234 of 2015)

.....Respondents
(In C.A.No.235 of 2015)

.....Respondents.
(In C.A.No.236 of 2015)

.....Respondents.
(In C.A.No.237 of 2015)

.....Respondents.
(In C.A.No.238 of 2015)

.....Respondents.
(In C.A.NO.239 of 2015)

For the Appellants
(In all the appeals)

: Mr. A.M. Amin Uddin, Senior Advocate, with
Mr. Bodruddoza, Senior Advocate and Mr Md.
Jahangir Alam, Advocate, instructed by Syed
Mahbubar Rahman, Advocate-on-Record.

For the Respondents
(In C.A.No.234-235 of 2015)

: Mr. M. Qumrul Haque Siddique, Advocate,
instructed by Mr. Md. Zahirul Islam,
Advocate-on-Record

For the Respondents
(In C.A.No.238 of 2015)

: Mr. Md. Mainul Islam, Advocate, instructed by
Mr. Md. Zahirul Islam, Advocate-on-Record

For Respondent Nos. 1-3
(In C.A.No.239 of 2015)

: Mr. Nurul Amin, Senior Advocate, instructed by
Mr. Md. Zahirul Islam, Advocate-on-Record

For Respondent Nos. 1
(In C.A.No.237 of 2015)

: Mr. Ramjan Ali Sikder, Advocate, instructed by
Md. Zahirul Islam, Advocate-on-record.

Respondent Nos 2-6
(In C.A. No.237 of 2015)

: Not represented

For the Respondents
(In C.A.No.236 of 2015)

: Not represented

For respondent No.4-8
(In C.A.No.239 of 2015)

: Not represented

Date of hearing

: **The 4th and 5th day of April,
2nd, 17th and 23rd day of May, 2023**

Date of judgment

: **The 6th day of June, 2023**

JUDGMENT

M. Enayetur Rahim, J: These civil appeals, by leave, are directed against the judgment and order dated 09.08.2011

passed by the High Court Division in Writ Petition Nos.4758 of 2008, 4757 of 2008, 2687 of 2010, 2692 of 2010, 10535 of 2007 and 9426 of 2010 respectively making the Rule absolute. In these appeals facts are similar and common question of laws are involved and as such all the appeals have been heard together and they are being disposed of by this common judgment.

Short facts of Civil Appeal No.234 of 2015 arising out of Writ Petition No.4758 of 2008 are that:

The land measuring an area of .40 acre appertaining to C.S. Khatian No.6359 and Plot No.16 originally belonged to Sheikh Kitabdi, who acquired title in the same by executing a kabuliyat on 24.04.1906 in favour of the landlords Girish Chandra Poddar and others. Sheikh Kitabdi died leaving two daughters Arjuda Begum and Meher Nigar. In S.A. operation, the said land was recorded in the name of Dhakeshwary Textile Mills Limited. The Government listed .27½ acre of land as enemy property in Enemy Property Case No.52/66-67. Arjuda Begum and Meher Nigar filed Writ Petition No.474 of 1969 and the High Court Division by a judgment and order dated 04.04.1977 declared that such enlistment as enemy property was unlawful. They sold 5 kathas of land to one Jakir Hossain by a deed dated 27.12.1969 who transferred 2½ kathas to Abdul Musabbir Hossain, father of the writ petitioners by another deed dated 20.04.1970. Arjuda Begum and Meher Nigar also sold 2 kathas of land to Abdul Musabbir Hossain by another deed dated 08.09.1979. Abdul Musabbir Hossain constructed residential building therein and transferred the same by a deed of gift to the petitioners on 20.02.2007. R.S. khatian was prepared in the name of father of the petitioners and

others in khatian No.468. In City Survey operation, the same was recorded in the name of the father of the writ petitioners. The Bangladesh Textile Mills Corporation (BTMC) filed Dispute Case No.667 which was dismissed by the Objection officer on 11.09.2000. The BTMC preferred Appeal Case No. 27938 of 2000, which was also dismissed. The BTMC, then, filed an application for re-hearing of the appeal before the Settlement Officer which was again dismissed on 20.03.2007 along with 26 appeals. Lastly, the Settlement Officer, Tejgaon, Dhaka by an order communicated under Memo No.13/42/4th/697 (4)-04 dated 06.08.2007 appointed one Saiful Azad, Charge Officer to re-hear the appeal who allowed the appeal along with 49 other appeals and directed to delete the names of the writ petitioners from the khatian and to insert the name of the BTMC by an order dated 22.08.2007. Then, the writ petitioners filed Writ Petition No.10535 of 2007 and obtained Rule which was made absolute by the impugned judgment and order.

Short facts of Civil Appeal No.235 of 2015 arising out of Writ Petition No.4757 of 2010 are that:

The C.S. recorded tenant Sheikh Kitabdi died leaving his two daughters Arjuda Begum and Meher Nigar. Meher Nigar died leaving sister Arjuda Begum and, thereafter, Arjuda Begum died leaving only son Abdul Mannaf, father of the writ petitioner Nos.1-5 and wife, the writ petitioner No.6. They filed writ petition No.474 of 1969 and got declaration that the enlistment of .27½ acre of land out of .40 acre as enemy property was unlawful. In City Survey operation, the same was recorded in the names of the petitioners. The BTMC filed Dispute Case No.660 before the Objection Officer against the

petitioners for correction of the khatian which was dismissed on 20.09.2000. Then, the BTMC preferred Appeal Case No.27938 of 2000 before the Appellate Officer which was also dismissed on 09.05.2001. The Settlement Officer re-opened Appeal No.27938 of 2000 which was again dismissed on 20.03.2007. Then, the Settlement Officer, Tejgaon, Dhaka by an order dated 06.08.2007 *Suo moto* cancelled the order dated 20.03.2007 passed in Appeal No.27938 of 2000 along with other appeal and appointed Charge Officer to re-hear the appeal who by an order dated 22.08.2007 allowed the appeal along with other appeals. Against the judgment and order dated 22.08.2007 passed by the writ respondent No.7 in Appeal Case No.27938 of 2000, the writ petitioners filed Writ Petition No.4757 of 2008 and obtained Rule which was ultimately made absolute.

Short facts of Civil Appeal No.236 of 2015 arising out of Writ Petition No.2687 of 2010 are that :

One Kalachand Sheikh was the owner and possessor of the land measuring .31 acre by virtue of a kabuliyat dated 20.04.1906 which was duly recorded in C.S. khatian No.6196 and plot No.15. Kalachand died leaving two daughters Ramjan Bewa and Marium Bewa. Thereafter, Mariam died leaving Falu Mia as her only heir. Ramjan Bewa and Falu Mia sold five kathas of land from plot No.15 to Md. Ali Hossain by a sale deed dated 30.03.1961. In S.A. and R.S. operation, the said land was rightly recorded in S.A. khatian No.1039 and R.S. khatian No.4388 in the names of said Md. Ali Hossain and others. Ali Hossain died leaving four sons, two daughters and widow who effected partition by deed dated 30.07.1980. Md. Anowar Hossain, Most. Mariam, Most. Huron Bibi, Most.

Sharifon Bibi, who are the heirs of Md.Ali Hossain, transferred .0315 acre of land to the writ petitioners by deed dated 9.01.1992 who constructed dwelling homestead in the said land and have been residing therein. The BTMC filed Dispute Case No.680 before the Objection Officer, which was dismissed. Then, they preferred Appeal Case No.27957 of 2000 before the Appellate authority, which was dismissed on 09.05.2001. Thereafter, the said appeal was re-opened and again dismissed on 20.03.2007. By an order dated 06.08.2007, Settlement Officer, Tejgaon, Dhaka cancelled the order of dismissal dated 20.03.2007 and appointed Charge Officer to re-hear the same who by an order dated 22.08.2007 allowed the appeal. The writ petitioners, then, filed Writ Petition No.2687 of 2010 against the order dated 22.08.2007 passed by the Charge Officer in Appeal Case No.27957 of 2000 and obtained Rule. The said Rule was made absolute by the impugned judgment and order.

Short facts of Civil Appeal No.237 of 2015 arising out of Writ Petition No.2692 of 2010 are that:

The land measuring an area of .31 acre appertaining in C.S. khatian No.6196 and plot No.15 originally belonged to Kalachand Sheikh who got the same by executing kabuliyat deed dated 24.4.1906. He, died leaving two daughters Ramjan Bewa and Marium Bewa. Thereafter, Mariam died leaving Falu Mia as her only heir. Ramjan Bewa and Falu Mia sold .10 acre of land from the said plot to Mirza Golam Hafiz by a deed dated 30.03.1961. In S.A. and R.S. operation of the said land was rightly recorded in name of said Mirza Golam Hafiz who transferred entire .10 acre of land to the writ petitioners by deed dated 01.03.1988 and delivered possession. The writ

petitioners, taking over possession of the said lands, constructed two-storied building therein after obtaining necessary plan approved from the RAJUK. The writ petitioners filed Title Suit No.858 1997 against the writ respondent Nos.3-4 for declaration of their title and got decree on contest on 30.4.1998. The writ respondent No. 4 filed First Appeal No.354 of 1999 in the High Court Division, which was dismissed for default. They sold .045 acre out of .10 acre to Labu Ahmed, Md. Kader and Md. Masud Ahmed. The BTMC filed Dispute Case No. 677 before the Objection Officer which was dismissed. Then the BTMC preferred Appeal Case No.27954 of 2000 before the Appellate authority which was also dismissed on 09.05.2001. Thereafter, the said appeal was re-opened and again dismissed by an order dated 20.03.2007. Thereafter, by an order dated 06.08.2007, Settlement Officer, Tejgaon, Dhaka suo moto cancelled the said order dated 20.03.2007 and re-opened the Appeal again with some other appeals and by the impugned order dated 22.08.2007 allowed the said appeal along with other appeals. Then, the writ petitioners filed Writ Petition No.2692 of 2010 against the order dated 22.08.2007 and obtained Rule. By the impugned judgment and order, the High Court Division made the Rule absolute.

Short facts of Civil Appeal No.238 of 2015 arising out of Writ Petition No.10535 of 2010 are that :

Hari Prashad Bandhapadday was the C.S. recorded tenant of the land recorded in C.S. khatian No.6362 and C.S. plot No.16. Hari Prashad Bandhapaddya died leaving four sons namely Sree Surendra Nath Benarji, Sree Narandra Nath Banarji, Sree Dherandra Nath Benarji and Sree Birendra Nath Benarji who settled .0530 acre of land to Jahura Khatun,

mother of the petitioners from the said plot on 16.06.1944. In S.A. operation the same was recorded in S.A. khatian No.876 and plot No.2511 in the name of Dhakeshwary Cottons Mills Limited. Jahura Khatun filed Miscellaneous Case No.284 of 1986-87 for correction of record-of-rights which was allowed. Her name was recorded in Mutation khatian No.876/1. The BTMC then filed Review Petition, which was allowed by the Assistant Commissioner, Land by an order dated 12.01.1993. Jahura Khatun filed Miscellaneous Appeal No.14 of 1993 before the Additional Deputy Commissioner, Revenue, Dhaka which was disallowed on 20.07.1999. Then, Jahura Khatun prepared Appeal Case No.86 of 1999 before the Divisional Commissioner, Dhaka which was allowed by the Additional Divisional Commissioner, Revenue, Dhaka by an order dated 20.07.1999. In R.S. operation, draft khatian No.2540 was prepared in the name of Jahura Khatun but finally the same was prepared in the name of the BTMC. Jahura Khatun mortgaged the said land and took loan from Sonali Bank Limited. She also got plan, approved from the RAJUK and constructed 4(four) storied building therein. The BTMC as plaintiffs filed S.C.C. Suit No.13 of 1992 in the 6th Assistant Subordinate Judge, against the Jahura Khatun for eviction claiming that she was their monthly tenant. The plaint of the said case was rejected. S.C.C. Judge held that complicated question of title was involved in the subject matter. The BTMC, then, filed Title Suit No.169 of 1993 in the 6th Court of Assistant Judge, Dhaka for declaration of title and khas possession. On transfer, the said suit was renumbered as Title Suit No.130 of 1994 in the Second Court of Assistant Judge, Dhaka. The BTMC also filed Dispute Case which was dismissed. The BTMC,

then, preferred Appeal No.27985 of 2000, which was also dismissed by the Appellate authority. The Appellate authority re-opened the said appeal and by the impugned judgment and order dated 22.8.2007 said appeal was allowed along with some other appeals. Challenging the said order dated 22.8.2007 passed in Appeal Case No.27985/2000, the writ petitioners filed Writ petition No.10535 of 2007 and obtained Rule. The High Court Division by the impugned judgment and order made the Rule absolute.

Short facts of Civil Appeal No.239 of 2015 arising out of Writ Petition No.9426 of 2010 are that:

The land measuring .40 acre recorded in C.S. khatian No.6355 and plot No.16 belonged to Sheikh Kitabdi by virtue of a Kabuliyat dated 24.4.1906. Kitabdi died leaving two daughters Arjuda Begum and Meher Nigar. .27½ acre of land out of .40 acre was enlisted as enemy property in E.P. Case No.52 of 1966-67. Arjuda Begum and Meher Nigar filed Writ Petition No.474 of 1969 and got an order from the High Court Division on 04.04.1977 that such enlistment as enemy property was unlawful. Arjuda Begum and Meher Nigar sold five kathas of land to Jakir Hossain by sale deed dated 27.10.1979 who transferred 2½ kathas of land out of 5 kathas to A.Q. Ahmed Hossain, predecessor in interest of this writ petitioners No.1-3 by sale deed dated 02.4.1970 . In S.A. operation the land was recorded in the name of Dhakeshwary Cotton Mills Limited. The petitioners filed Miscellaneous Case before the Assistant Commissioner, land for mutating their names which was rejected. They preferred Miscellaneous Appeal No.119 of 1998 before the Additional Deputy Commissioner, Revenue, Dhaka which was allowed on 24.08.2002. In R.S. operation, the

said land was duly recorded in the name of the predecessor in interest of the writ petitioners in R.S. Khatian No.468. The BTMC filed Dispute case which was dismissed by the Objection Officer. Then, the BTMC preferred Appeal Case No.27937 of 2000 before the Appellate Officer which was also dismissed on 09.05.2001. The said appeal was re-opened and allowed by the Appellate authority on 22.08.2007. Challenging the said order dated 22.08.2007 the writ petitioners filed Writ Petition No.2687 of 2010 and obtained Rule. The High Court Division by the impugned judgment and order made the Rule absolute.

Being aggrieved by the aforesaid judgments and orders of the High Court Division, the writ respondents, Bangladesh Textile Corporation, (BTMC) and another filed Civil Petition Nos.326, 372-376 of 2013 and C.P. No.859 of 2015 before this Division. Accordingly, leave was granted on 26.04.2015. Hence, the appeals.

Mr. A.M. Amin Uddin, learned Senior Advocate, with Mr. Bodruddoza, learned Senior Advocate have appeared on behalf of the appellants in all the appeals.

It has been submitted by them that in view of the provisions of Rule 42 and 42A of the Tenancy Rules, 1955 the Revenue Officer designated as Settlement Officer is authorized to correct the record-of-rights if fraud is detected in preparation of the same and in the instant cases respondent Nos. 6 and 7 exercising their power vested under those provisions of law had corrected the khatian and thus the High Court Division erred in law in passing the impugned judgments and orders.

It has also been submitted that the writ petitioners ought to have preferred appeals under Section 145A of the

State Acquisition and Tenancy Act before the Land Survey Tribunal against the impugned judgment and orders of the Settlement Officer, the High Court Division failed to consider this legal aspect and thereby committed illegality in law in interfering with the matters decided by the Settlement authority.

It has been further submitted that in view of the provisions of Article 102 of the Constitution, the writ petitioners cannot be held to be aggrieved persons but the High Court Division failed to hold that the writ petition was not maintainable. Finally, it has been submitted that the High Court Division while making the Rules absolute travelled beyond its jurisdiction and exceeded its authority in holding that in the Civil Petition for Leave to Appeal No. 390 of 2012 neither the petitioners nor their predecessors were the parties and further, the finding of the this Division is based on statement of facts, hence, creates no binding precedent over the instant writ petitioners when admittedly this Division hold, *inter alia*, that petitioners in writ No. 1416 of 1997 had no right, title and interest in the case property and they as licensee and/or lessees, had no legal title to the case properties to resist the sale made by the Official liquidator of Dhakeshwari Cotton Mills Limited in favour of BTMC, and therefore, the impugned judgment of the High Court Division is liable to be set aside.

Mr. M. Qumrul Haque Siddique, learned Advocate appearing on behalf of the respondent No. 1 in Civil Appeal No. 234 of 2015, respondent Nos. 1-6 in Civil Appeal No. 235 of 2015, respondent Nos. 1-3 in Civil Appeal No. 237 of 2015 has made submissions in support of the impugned judgement and order

passed by the High Court Division. He also submits that the appellants have claimed that they had purchased the land in question from the liquidation cell through 5 registered deeds being Deed No.1936 dated 14.07.1988, Deed No.1618 dated 21.06.1988, Deed No.1619 dated 21.06.1988, Deed No.1620 dated 21.06.1988 and Deed No.1621 dated 21.06.1988 respectively and thus, BTMC became the owners, but in Deed No.1936 the disputed land C.S. plot No.16, S.A dag No. 2534, R.S dag No.4015 and Mohanagor dag No.4087, of the writ petitioner-respondent No.1 (in C.A. No. 234 of 2015), has not been mentioned, but the appellants by virtue of official position and force most illegally deleted the name of the writ petitioners and substituted the name of BTMC under the garb of a correction application without support of any rules after final publication of record-of-rights by an official notification dated 10.01.2000 and as such the judgment and order of the High Court Division declaring the order 22.08.2007 passed by Charge Officer, Settlement Office, Dhaka to have been passed without any lawful authority and is of no legal effect, is just and proper.

Mr. Siddique further submits that the appellants had or have no *locus standi* to file any application before Settlement Officer nor to file a leave petition before this Court since they have no right and title over the land in question in any manner nor the respondents were a party in writ petition 1416 of 1997 or CP 390 of 2002. The learned Advocate also submits that admittedly City Survey Khatian was prepared and published in the name of respondent(s) under section 144(7) of the State Acquisition and Tenancy Act read with Rule 32 and 33 of the Tenancy Rules 1955 and,

thereafter, writ respondent No. 6 on 14.02.2007 issued a notice under section 31 of the Tenancy Rules 1955 for re-hearing of the appeal No. 27935 of 2000 asking to appear on 26.02.2007 and ultimately the appeal was dismissed on 20.03.2007; thereafter writ respondent No. 7 on 12.08.2007 as per section 19(2) of the East Bangle State Acquisition and Tenancy Act directed present respondent No. 1 to appear before the authority concern on 22.08.2007 for re-hearing of the appeal and as such issuance of notice under section 19(2) of the East Bangle State Acquisition and Tenancy Act as well as the order dated 22.08.2007 is illegal and against the provision of law and the same is void *ab initio* and as such the writ petition is very much maintainable and the appeal is liable to be dismissed.

The learned Advocate further submits that admittedly no question of fraud was ever been agitated and as such in the absence of any allegation of fraud writ respondent No.7 cannot correct the record-of-rights in exercising power under section 42 and 42A of the state Acquisition and Tenancy Rules 1955 and as such the order dated 22.08.2007 passed by the writ respondent No. 7 deleting the record-of-rights of the respondent(s) is illegal. The learned Advocate lastly submitted that writ respondent No.7 in his judgment and order dated 22.08.2007 allowed the Settlement Appeal No. 27935 of 2000 along with 32 appeals deleting the record of right of present respondent(s) and substituting the name of the appellant in the said record-of-rights on the ground that ownership of the land has been settled in favour of the BTMC by a judgment passed by the this Division in an appeal, though in the aforesaid Civil Petition for Leave to Appeal

No. 390 of 2002 (arising out of writ petition No. 1416 of 1997) the property of respondent No. 1 was not included or the subject matter of the writ petition nor any way relates to the land of present respondent(s) even they or their predecessors were not party in the said writ petition and the findings of the this Division is based on statements of fact hence the said judgments passed by this Division is not binding upon the respondent No.1 and as has been rightly found by the High Court Division in Writ Petition No. 4758 of 2008 and as such the judgment of the High Court Division is just, right and proper and as such the appeal is liable to be dismissed.

Mr. Md. Mainul Islam, learned Advocate appearing on behalf of the respondents in Civil Appeal No. 238 of 2015, Mr. Md. Nurul Amin, learned Advocate appearing for respondent Nos. 1-3 in Civil Appeal No. 239 of 2015 and Mr. Ramjan Ali Sikder appearing on behalf of respondent No.1 in Civil Appeal No. 237 of 2015 made submissions in support of the impugned judgment and order of the High Court Division.

We have considered the submissions of the learned Advocates for the parties concerned, perused the impugned judgments and order of the High Court Division and other connected papers on record.

In the instant cases it is undeniable fact that the respective R.S. Khatians and Mohanagar jorip have been prepared in the name of the respective writ petitioners-respondents and that the appellant BTMC filed several Dispute Cases under Rule 30 of the Tenancy Rules, 1955 and all the Dispute Cases were rejected, against which BTMC preferred respective appeals under Rule 31 of the Tenancy Rules, 1955.

The said appeals were heard along with other connected appeals and those were dismissed on 01.05.2001. At the instance of the appellant BTMC, the said appeals were again heard by the concerned Settlement Officer and those were also dismissed on 10.07.2007 and again at the instance of the appellant BTMC those appeals were heard and the concerned Settlement Officer allowed the said appeals. Against which the writ petitions had been filed by the respective respondents before the High Court Division.

Rule 42A of the Tenancy Rules, 1955 runs as follows:

“42A. Correction of fraudulent entry before final publication of record-of-rights- The Revenue-officer, with the additional designation of ‘Settlement Officer’ shall, on receipt of an application or on receipt of an official report for the correction of an entry that has been procured by fraud in record-of-rights before final publication thereof, after consulting relevant records and making such other enquiries as he deems necessary, direct excision of the fraudulent entry and his act in doing so shall not be open to appeal. At the same time the Revenue-officer shall make the correct entry after giving the parties concerned a hearing and recording his finding in a formal proceeding for the purpose of future reference.” (Underline supplies).

It is now well settled by this Division that if fraud has been done or found in recording-of-rights before final publication thereof the Revenue Officer can hear the matter a fresh after consulting the relevant records, making such inquiry necessary, if he deems and can give an opportunity of being heard of the parties. In this connection we can rely on the case of **Bhawal Raj of Wards Vs Rashida Begum** reported in **15 BLC(AD) 115, C.A. No. 02 of 2004 Government of Bangladesh and others Vs. Shamsul Hoque and another** and **C.A. No. 204 of**

**2004 Imam Shirajul Hoque and another vs. Director General,
Land, Record and survey and others.**

The appellants have failed to show us that the Settlement Authority had made any inquiry that the respondents fraudulently managed to entry their respective names in the record-of-rights as per provision of rule 42A of the Tenancy Rules, 1955.

In the instant case it has been strenuously argued by the learned Advocates for the writ petitioners-respondents that there is no scope under the Rules 1955 to hear an appeal under rule 31 of Tenancy Rules, 1955 repeatedly (in three occasions) as has been done in the instant cases, and as such repeated hearing of the appeal under rule 31 is *mala-fide* and beyond the scope of law, thus the settlement authority has acted illegally in hearing the matter repeatedly.

It has been also argued that the appellant BTMC has failed to prove that in recording the record-of-rights the respondents had committed fraud in preparing the same.

If we considered these submissions of the learned Advocates for the writ-petitioners-respondents coupled with the above propositions of law, we find substance in the submissions of the learned Advocates for the respondents that repeated rehearing of the appeal under rule 31 of the Tenancy Rules, 1955 is not permissible in law. Moreover, it is our considered view that before rehear an appeal under rule 31, the settlement authority had not made any inquiry whether fraud had been committed in recording of rights in the name of respondents.

Mr. M. Qumrul Haque Siddique, learned Advocate appearing for the respondents in C.A. Nos. 234, 235 and 239 of 2015

submits that rule 42A provides correction of fraudulent entry before final publication of record-of-rights and in the instant cases the Charge Officer of Settlement office rehear the appeals repeatedly under rule 31 after the final publication of the record-of-rights, which was published in Bangladesh Gazette on January 24,2008.

The word '**before final publication of record-of-rights,**' as mentioned in rule 42A of the Rule 1955 is very important and to deal with the above issue the scheme of law so far as relates to preparation of record-of-rights, as provided in rules 30-35 and 42 of the Tenancy Rules, 1955 are required to be looked, which are as follows:

30. Objection—*Blank forms of objection shall be supplied free-of-charge, and all objections shall, as far as practicable, be made in such forms, Along with the original objection, the objector shall file a copy or copies of the same for service on all other persons who, in the opinion of the Revenue-officer are materially interested in the case. The Revenue-officer shall issue notices informing the objector and all other persons so interested of the date and place fixed for the hearing of the objection and, with each notice to a person, other than the objector, he shall forward a copy of the objection. Objection regarding the ownership or possession of land or of any interest in land shall be decided summarily by the Revenue-officer. The record shall contain a brief summary of the evidence taken and an abstract of the reasons for the decision. Objections shall not be disposed of in the absence of any of the parties materially interested or their representatives, unless the Revenue-officer be satisfied, for reasons to be recorded, in writing, that the notice was duly served on the person concerned.*

“31. Appeal:—*(1) Any person aggrieved by an order passed by the Revenue-officer on any objection made under rule 30 may appeal to the Revenue-officer appointed with the additional designation of Settlement Officer or to such Revenue-officer appointed with the additional designation of Assistant Settlement Officer as may be empowered by him in this behalf, within 30 days from the date of the order appealed against. Every such appeal shall be in writing and shall state the grounds on which the appeal is based and shall be accompanied by a certified copy of the order appealed against and a process fee in court fee stamps as specified below.*

(a) For each notice whether directed to one or more persons where such persons reside in the same village—Rupee one and twenty-five paise; and

(b) Where the notice is to be served in different villages, a separate fee shall be charged for service in each village at rates as in clause (a) above.

(2) Before passing the final order on any such appeal, the Appellate Officer shall give the parties an opportunity of being heard and shall record in the proceedings an abstract of the reasons for his decision.”

32. Preparation of Final Records :—When all objections under rule 30 and all appeals under rule 31 have been disposed of and when the draft record of rights has been corrected in accordance with the original and appellate orders on all objections, the Revenue-officer shall proceed to frame the final record-of-rights.

In cases, however, where operations under Chapter XIV of the Act have been undertaken and fair and equitable rents have been settled and the settlement rent-roll has been finally framed under sub-section (3) of section 109, the Revenue-officer shall, after the draft record-of-rights has been corrected in accordance with the original and appellate orders on all objections, incorporate in the draft record-of-rights the rent determined in respect of each holding or tenancy on the basis of such finally framed settlement rent-roll and then proceed to frame the final record-of-rights.

Provided that in a case where the fair and equitable rent have not been so settled and the settlement rent-roll has been finally framed by the time the record-of-rights is ready for final publication, the Revenue-officer instead of withholding final publication of the record-of-rights, may finally frame and finally publish the same noting the existing rents therein without incorporating the fair and equitable rent settled under Chapter XIV of the Act.

The final records shall be prepared in conformity with the draft records corrected as above and shall consist of a series of khatians prepared in forms which are generally similar to the forms used for the khatians of the draft record-of-rights. The Khasra shall not form part of the final record-of-rights. The final record shall be printed or prepared in manuscript according to the direction as may be given by the Provincial Government, by general or special order.”

33. Publication of Final Records :—*The Revenue-officer shall publish the final record-of-rights by placing it for public inspection, free of charge, during a period of not less than 30 days, at such convenient place as he may determine. A proclamation shall previously be published in each village informing the Maliks and tenants and the Deputy Commissioner of the place at which the final record-of-rights of that village will be open to public inspection and the period during which it will be open to such inspection.*

34. Certificate of final publication :—(1) *When a record-of-rights has been finally published under rule 33, the Revenue-officer shall, within sixty days from the date of final publication, make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same with his name and official title.*

(2) The Provincial Government may, by notification, in the official Gazette, declare, with regard to any specified area, that record-of-rights has been finally published for every village included in such area; and such notification shall be conclusive proof of such publication.

35. Presumption as to the correctness of record-of-rights:—(1) *When a record-of-rights is finally published under rule 33, the publication shall be conclusive evidence that the record has been duly revised under section 144 of the Act.*

(2) Every entry in a record-of-rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

42. Special Power of Revenue-officer appointed with the additional designation of Settlement Officer :—*A Revenue-officer appointed with the additional designation of Settlement Officer' may, at any time before the publication of final record-of-rights, direct that any portion of the proceedings referred to in rules 28 to 32 in respect of any district, part of a district, or local area, shall be cancelled and that the proceedings shall be taken up fresh from such stage as he may direct.*

Upon perusal of the above rules, it transpires that rule 30 permits filing of 'Objection' against any error or mistake appearing in the DP Khatian and requires the Revenue Officer to dispose of the objections after taking evidence. Rule 31 provides for appeal against the decision of the Revenue Officer given under rule 30. A Revenue Officer with

additional designation of Settlement Officer is the forum for such appeal. Rule 32 provided that the Revenue Officer is to proceed to frame the 'Final Record-of-Rights,' which is to be 'printed' or 'prepared in manuscript'.

Rule 33 makes it mandatory for the Revenue Officer to publish final record-of-rights by placing it for public inspection, free of charge, during a period of not less than 30 days, as such convenient place as he may determine. And a proclamation shall previously be published in each village informing the Maliks and tenants and the Deputy Commissioner of the place at which the final record-of-rights of that village will be open to public inspection and the period during which it will be open for such inspection. Rule 34(1) requires that the Revenue Officer, within 60 days of such final publication, to make a certificate stating the fact of 'final publication' and thereof he shall subscribe with date, name and official designation. Sub-rule 2 of rule 34 says that Government may, by notification, in the official Gazettes, declare with regard to any specific area that the record-of-rights has been finally published and such notification shall be conclusive proof of such publication. Rule 35(1) speaks that when a record-of-rights is finally published under rule 33, the publication shall be conclusive evidence that the record has been duly revised under section 144 of the Act.

In the instant cases from the records, it transpires that final publication of the record-of-rights, as required under Rule 33 was completed and the certificate of final publication as required under Rule 34 (1) was also completed vide notification (প্রজ্ঞাপন) vide নং ভূঃ মঃ/শাঃ-২ (গঃ বিঃ)-১১/২০০৫-১৬ dated 10.01.2000, though the said notification was published in the

Official Gazette on 24.01.2008, which is optional and a mere formality to confer the status of "Conclusive proof" to the final publication.

In view of the above, we have no hesitation to hold that in the instant cases the settlement authority has proceeded beyond its jurisdiction to rehear the appeals repeatedly in the grab of rule 31 despite the notification (প্রজ্ঞাপন) vide নং ভূঃ মঃ/শাঃ-২ (গঃ বিঃ)-১১/২০০৫-১৬ dated 10.01.2000 which was published on 24.01.2008 in official gazette, and it remains unquestionable to testify the fact that, FINAL PUBLICATION under Rule 34 (1) by the 'Revenue Officer' was completed before 10.01.2000. In view of rule 35(1) when a record-of-rights is finally published under rule 33, such publication shall be conclusive evidence that the record has been duly revised under section 144 of the State Acquisition and Tenancy Act, and rule 35 (2) speaks that every entry in a record-of-rights finally published, shall be the evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect. Thus, the repeated hearing of appeals under Rule 31 or even under Rule 42 or 42A, by the Revenue Officers after final publication of a record-of-rights is without lawful authority, illegal and is of no legal effect.

Rule 42A does not give any authority to rehear an appeal under rule 31 of the Tenancy Rules, 1955 by the concerned Settlement Officer after publication of the final record-of-rights, as the such publication is conclusive evidence (rule 35) and thus, in the instant cases the Settlement Officer has acted illegally and without jurisdiction in re-hearing the appeals repeatedly.

It also reveals from some of the relevant deeds, by which BTMC purchased 42.08 acres of land, that C.S. plot No. 16 has not been mentioned in the deeds. Moreover, in the schedule of deed of lease No. 4248 dated 09.09.1950 executed in favour of Dhakeshwary Cotton Mills Ltd. by Lalit Mohan Saha it has been mentioned that Dhakeshwary Cotton Mills Ltd. purchased 31.00 and 42.08 decimals land from 03 different plots, i.e. C.S. Plot Nos. 14, 15 and 16 but there is no mention from which plot it had purchased what quantum of land.

In this particular cases it is admitted by the appellants that they have filed a title suit being No.58 of 1997 which is pending in the concerned Court of the Subordinate Judge, (now Joint District Judge), Dhaka, for declaration of title and injunction against the present respondents.

In view of the above, we find no merit in these appeals. Accordingly, the appeals are dismissed without any order as to costs.

However, the parties may settle their title and possession in the disputed land by bringing or in pending regular suit in the Court of competent jurisdiction.

Hence, complication of title is involved in some of the cases.

C. J.

J.

J.