

Present:

Mr. Justice M. Enayetur Rahim

And

Mr. Justice Md. Mostafizur Rahman

Writ Petition No.1539 of 2021

Belayet Hosen

----- Petitioner

-Versus-

Anti-Corruption Commission and
others.

----- Respondents

Mr. Rakibul Hasan, Advocate

---- For the Petitioner

Mr. Md. Mahfuzur Rahman, Advocate

----- For the Respondent No.5

Mr. Shaheen Ahmed, Advocate

...For Respondent No.1

(Anti-Corruption Commission)

Heard on 23.06.2021 &

Judgment on 27.06.2021

M. Enayetur Rahim, J:

This Rule was issued calling upon the respondents to show cause as to why the impugned memo No.05 dated 06.01.2021 issued by the Respondent No.3 (as evidenced by the Annexure-D) directing the Bank Manager to freeze petitioner's bank accounts maintained with the Social Islami Bank Ltd. (SIBL), should not be declared to have been made without lawful authority and of no legal effect and/or pass such order or further order or orders as to this Court may seem fit and proper.

Short facts for disposal of the Rule are as follows;

The petitioner was the owner of 9.41 decimals of land acquired in L.A. Case No.04 of 2018-19 pursuant to the 'স্বাভাৱ সম্পত্তি অধিগ্ৰহন ও হুকুমদখল আইন,২০১৭', and accordingly following the due process he obtained compensation amounting Tk.1,08,50,514.08 (taka one crore eight lac fifty thousand five hundred fourteen taka and eight paisa) by two cheques; thereafter the petitioner purchased land by spending substantial portion of the said money and made fixed deposit amounting to taka 50 (fifty) lac in the Social Islami Bank Ltd. Cox's Bazar vide account Nos.0395310017181 and 0395310016461 respectively. Eventually, the petitioner somehow came to learn that something went wrong with his above bank accounts, and he visited the Branch Office of the Social Islami Bank Ltd., Cox's Bazar. The Bank Manager, Respondent No.4 readily refused to share any information with him. Then the petitioner made a written request on 13.01.2021 to close his bank account in order to withdraw his said fixed deposits from the Bank. In reply, the Bank officials states as follows:

“দূর্নীতি দমন কমিশন সমন্বিত জেলা কার্যালয়, চট্টগ্রাম-০২ এর উপ সহকারী পরিচালক ও তদন্তকারী কর্মকর্তা জনাব মোঃ শরীফ উদ্দিন স্বাক্ষরিত পত্র স্মারক নং-০৫, তারিখঃ ০৬/০১/২০২১ ইং এর মাধ্যমে উক্ত হিসাব” “No Debit” “করার জন্য নির্দেশনা দেয়া হয়েছে।”

Having being informed about the fact the petitioner inquired about the reasons for doing so, and on 17.01.2021 also demanded a copy of the said letter in writing to the Respondent No.4. But of no avail. Under such circumstances on 19.01.2021 a legal notice was served upon the Bank Manager seeking disclosure of the impugned letter issued by the Anti-Corruption Commission (ACC). Further, the petitioner spontaneously made a written complaint before the Chairman of the ACC outlining the background facts that led to freeze his bank accounts by the Respondent No.3. He also made a written request on 26.01.2021 to the Deputy Director, Integrated District Office, Chattogram-2, to provide him a copy of the impugned letter. However, he didn't get any response from any corner. At no point of time he notified about the reasons for such decision.

The above facts and circumstances compelled the petitioner to file this writ petition.

At the time of issuance of the Rule the Respondent No.3 was directed to explain in writing under what authority he requested the Respondent No.4, the Bank Manager by writing the impugned letter for 'no debit' in respect of the bank accounts of the petitioner. Accordingly, the Respondent No.3 had appeared before this Court and furnished an written explanation stating that in course of inquiry of a case he found that the petitioner had obtained the said money by illegal means and he requested the Bank for 'no debit' so that the petitioner could not transfer the money. However, the said Respondent has failed to explain before the Court as to his authority to issue such a letter to the Bank on behalf of the ACC.

An affidavit-in-opposition has been filed by the Respondent No.1, ACC stating the facts of the case; however, in the affidavit-in-opposition the Respondent No.1 did not state weather it had given any instruction to the Respondent No.3 for taking the impugned action.

Heard the learned Advocates for the respective parties, perused the impugned order and the annexures to the writ petition couple with the

relevant provision of Anti-Corruption Commission Act, 2004 and Anti-Corruption Commission Rules, 2007. In the Rules, 2007 a specific provision has been laid down to attach and freeze of the 'crime acquired property' by the Commission.

Rule 18 of the above Rules speaks as follow;

“১৮। অপরাধলব্দ সম্পত্তি অবরুদ্ধকরণ বা ফ্রোকাদেশা-(১) কমিশন কর্তৃক গৃহীত কোন কার্যক্রমের যে কোন পর্যায়ে, যদি কমিশনের নিকট যুক্তিসঙ্গতভাবে প্রতীয়মান হয় যে, কোন ব্যক্তি আইনের তফসিলভুক্ত কোন অপরাধ সংঘটন করিয়াছেন, তাহা হইলে কমিশন উহার দায়িত্বপ্রাপ্ত কর্মকর্তাকে উক্ত ব্যক্তির অপরাধলব্দ বা, ক্ষেত্রমত, জ্ঞাত আয়ের উৎসের সহিত অসঙ্গতিপূর্ণ সম্পত্তি, যাহা উক্ত ব্যক্তির নিজ নামে বা তাহার পক্ষে অন্য কোন ব্যক্তির নামে বা দখলে থাকুক না কেন, অবরুদ্ধকরণ (freezing) বা, ক্ষেত্রমত, ফ্রোকের (attachment) আদেশ চাহিয়া এখতিয়ারসম্পন্ন সিনিয়র স্পেশাল জজ আদালতে বা, ক্ষেত্রমত, বিচারিক স্পেশাল জজ আদালতে আবেদন করার ক্ষমতা প্রদান করিতে পারিবেঃ

তবে শর্ত থাকে যে, যদি সুনির্দিষ্টভাবে চিহ্নিত বা সনাক্তকরণ যোগ্য না হওয়ার কারণে বা অন্য কোন কারণে উপরে বর্ণিত সম্পত্তি অবরুদ্ধ (freezing) বা ফ্রোক (attachment) করা সম্ভব না হয়, তাহা হইলে উপরে বর্ণিত ব্যক্তির, যতদূর সম্ভব, সমমূল্যের অন্য সম্পত্তি অবরুদ্ধকরণ (freezing) বা, ক্ষেত্রমত, ফ্রোকের (attachment) জন্য উপরে বর্ণিত আবেদন করার ক্ষমতা প্রদান করা যাইবে।”

(২) উপ-বিধি (১) এর অধীন ক্ষমতাপ্রাপ্ত কর্মকর্তা সংশ্লিষ্ট আদালতে লিখিত আবেদনে অন্যান্য বিবরণের সহিত নিম্নবর্ণিত তথ্যাদি উল্লেখ করিবেন, যথাঃ-

(ক) অবরুদ্ধকরণ বা ফ্রোক আদেশের নিমিত্ত সম্পত্তির অবস্থান, পরিমাণ ও আনুমানিক মূল্যসহ পূর্ণ বিবরণ;

(খ) সংশ্লিষ্ট ব্যক্তির নাম-পরিচয়সহ আইনের তফসিলভুক্ত অপরাধ সংঘটনে তাহার সংশ্লিষ্টতা ও তাহার মাধ্যমে উক্ত সম্পত্তি অর্জিত হওয়ার বা, ক্ষেত্রমত,

উক্ত সম্পত্তি তাহাৰ জ্ঞাত আয়েৰ উৎসেৰ সহিত অসজ্জতিপূৰ্ণ হওয়াৰ দাবিৰ সপক্ষে যুক্তি ও প্ৰাথমিক প্ৰমাণাদি;

(গ) অপৰাধলব্ধ বা জ্ঞাত আয়েৰ উৎসেৰ সহিত অসজ্জতিপূৰ্ণ সম্পত্তিৰ পৰিবৰ্তে অন্য সম্পত্তি অৱলম্বন বা ক্ৰোকৰ জন্ম আবেদন কৰা হইলে পূৰ্বোক্ত সম্পত্তি অৱলম্বন বা ক্ৰোক কৰা সম্ভৱ না হওয়াৰ যুক্তিসংগত কাৰণ;

(ঘ) প্ৰাৰ্থিত আবেদন মোতাবেক আদালত কৰ্তৃক আদেশ প্ৰদান কৰা না হইলে অভিযোগ, বিধিমালার অধীন গৃহীত কোন কাৰ্যক্ৰম বা, ক্ষেত্ৰমত, মামলা চূড়ান্ত নিষ্পত্তিৰ পূৰ্বেই সম্পত্তিটি অন্যত্ৰ হস্তান্তৰ বা বেহাত হইবাৰ আশংকা ৰহিয়াছে মৰ্মে একটি বিবৃতি।”

From the above provisions it is crystal clear that without the permission of the court concerned no one, even the Commission has got any power to pass any order of freezing or attachment or to impose any restrictions with regard to a property of a citizen of the country allegedly to have been acquired by illegal means i.e. 'crime acquired property'.

Rule 18 of the Rules, 2007 has clearly laid down a procedure for freezing or attachment of a property allegedly illegally acquired by a suspected person. Before freezing or attachment of any property the Commission prima-facie has to be satisfied first that the alleged property has been acquired by illegal means and then, the Commission should have authorized its officer to apply before the Senior Special Judge or the trial Judge, as the case may be

for freezing or attachment of such property. And thereafter, the authorized officer, should have filed an application before the Court concerned stating the reasons for attachment or freezing the property, as the case may be with sufficient materials. Finally, the Court concerned may pass an order of attachment or freezing the property after being prima-facie satisfied that said property has been acquired by the concerned parson by illegal means.

Rules, 2007 does not give any power to an inquiry or investigating officer or any other officer of the ACC for freezing or attachment of a 'crime acquired property' or otherwise imposing any restriction to enjoy the same at his whim.

Mr. Shaheen Ahmed, the learned Advocate for the ACC has failed to satisfy us by citing any law in regard to the action of Respondent No.3 directing the bank for 'no debit' of the accounts of the petitioner.

Having considered the facts and circumstances of the present case couple with the relevant law and Rules we have no hesitation to hold that the Respondent No.3, having no authority issued the

impugned letter to the Bank, which is illegal, arbitrary, without jurisdiction and colourable exercise of power.

Thus, we find merit in the Rule.

Accordingly, the Rule is made absolute.

The impugned memo No.05 dated 06.01.2021 issued by the Respondent No.3, Annexure-D directing the Bank Manager to freeze petitioner's bank accounts maintained with the Social Islami Bank Ltd. (SIBL), is hereby declared to have been issued without lawful authority and is of no legal effect.

However, this judgment will not debar the ACC to take any action with regard the two property in question in accordance with law, if prima facie it has been found that same is the 'crime acquired property'.

There is no order as to cost.

Md. Mostafizur Rahman, J:

I agree.