

**10 SCOB [2018] HCD**

**HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)**

Writ Petition No. 3450 of 2004

**Md. Nurul Islam and others**  
..... Petitioners.

**Vs.**  
**Charge Officer and Appeal officer and others.**

..... Respondents.

With  
Writ Petition No. 3451 of 2004.

**Md. Delwar Hossain and another.**  
..... Petitioners.

**Vs.**  
**Charge Officer and Appeal Officer and others.**

..... Respondents.

Mr. A.F. Hassan Ariff, Senior Advocate  
with  
Mr. Kamal Ul Alam, Senior Advocate  
with  
Dr. Md. Iqbal Karim, Advocate  
... For the petitioner in both writ petitions.  
Mr. Manzill Murshid, Advocate  
..For the respondent no.4 in both writ  
petitions.

Heard on 13.08.2017, 23.10.2017,  
24.10.2017, 29.10.2017, 05.11.2017,  
03.12.2017 and 03.01.2018.  
Judgment on: 14.01.2018.

**Present:**

**Mr. Justice Sheikh Hassan Arif**  
**And**  
**Mr. Justice Md. Badruzzaman**

**Nullity of Record of Rights:**

**We are in fact taken aback with surprise when we see that a government official has been empowered by this Rule 42 to nullify the course of parent law and send it back to an earlier stage for hearing afresh. The reason for such surprise is, when an Act of parliament has provided some specified forums for disposal of particular issues and has provided sequential steps to be taken one after another before different forums up to the Appellate Division of the Supreme Court of Bangladesh, an official like a revenue officer, appointed with the additional designation of Settlement Officer, can nullify everything before final publication of record of rights.**

**When the government even does not have any power to nullify or reverse the course of parent law, since such power has not been delegated to government by the parent law, we are of the view that, even with the existence of Rule 42 empowering such revenue officer to nullify such course of parent law, any such exercise of power by such revenue officer shall be nothing but a nullity in the eye of law.** ... (Para 22)

**It has to be borne in mind that, since S.A. and R.S. Khatians were prepared long ago, such presumption will lose its weight with the passage of time. On the other hand, though the respondent No. 4 did not raise objections as regards alleged mistake in preparation of Mouza Maps of Lala Sharai Mouza and Kafrul Mouza during the said two surveys, it is not debarred from raising such objections in the subsequent survey.** ... (Para 24)

**It appears from the very record that, apparently, the said Settlement Officer, vide order dated 10.07.2003, reversed the course of parent law from its concluded stage to a lower stage. Not only that, the said Settlement Officer also gave an additional leverage in favour of the respondent no.4 to present its case again before another Appellate Officer of same rank. This order has made several interferences into the normal course to be taken or followed under SAT Act, 1950, namely:**

- (a) It did not allow final publication of City Khatian in the normal course after disposal of appeals by the Appellate Officer**
- (b) It allowed the respondent No.4 to avoid the Land Survey Tribunals constituted under Section 145A of the SAT Act, 1950. Rather, it allowed respondent no.4 to avail of another forum under Rule 42 contrary to the relevant provisions of parent law.**
- (c) It deprived the petitioners of their legal and legitimate expectation and rights to have the concerned City Khatians finally published in their names as owners in respect of the said lands.**
- (d) For all practical purposes, by this order, the Settlement Officer has already expressed his view regarding merit of the case and as such left nothing for the 2<sup>nd</sup> Appellate Officer to hear and decide the dispute.**
- (e) Pursuant to this order of the concerned Settlement Officer under Rule 42, the subsequent Appellate Officer has virtually set aside the order passed by the First Appellate Officer, who is of equal rank like him.**

**While this Court has repeatedly held that, the delegatee of power cannot go beyond the power of delegation, it appears that, there cannot be any better example than this case that how a power, not permitted by parent law, may be delegated and as to how a delegatee can exceed its limit of power given by the parent law. Here, the delegatee, namely the concerned Settlement Officer, has reversed the normal course of parent law and thereby sat over the first appellate order like a higher authority, in particular when the higher authority as provided by law against such order is the Land Survey Tribunal, which is empowered by parent law to determine those issues as raised by respondent no.4 after final publication of City Khatian. ... (Para 25, 26)**

### **Judgment**

**SHEIKH HASSAN ARIF, J**

1. Since the questions of law and facts involved in the aforesaid two writ petitions are almost same, they have been taken up together for hearing, and are now being disposed of by this common judgment.

2. Rules in the aforesaid writ petitions were issued in similar terms, namely calling in question the order dated 14.03.2004 passed by the Charge Officer and Appeal Officer, Dhaka Settlement, Dhaka Appeal Court, Settlement Office, Tejgaon, Dhaka (respondent no.1) in allowing Appeal No. 65105 of 2002 and Appeal No. 65096 of 2002 (Annexure-G) as preferred by the Military Estate Officer, Dhaka Cantonment, Dhaka (respondent no.4) upon

rehearing the appeals pursuant to the order of the Settlement Officer in exercise of power under Rule 42 of the Tenancy Rules, 1955.

**Background Facts:**

3. Short back ground facts, relevant for the disposals of the aforesaid Rules, are as follows:

**In Writ Petition No. 3450 of 2004**, the case of the petitioners is that, the landed property being .1650 acres of land on C.S. Plot No. 321 of C.S. Khatian No. 162 and S.A. Plot No. 321 under S.A. Khatian No. No.172 under Kafrul Mouza, J.L. No. 268, P.S. Cantonment (now Kafrul) (in short, “the said orperty”) originally belonged to one Rahim Box. After his death, the said property was transferred to his son Wahed Box Bepari, and after the death of Wahed Box Bepari, the ownership of the said property fell on his only son Khaleque Box Bepari. That, subsequently, on 30.01.1929, the said Khaleque Box Bepari sold the said property to Lal Mohon Maisal, Ananta Lal Maisal and Mohesh Lal Maisal, all sons of Malike Lal Maisal, through registered sale deed No. 862 dated 30.01.1929. Thereafter, the said property was transferred by the said Maisal brothers in favour of one Jolekha Bibi, wife of Haji Ahmed Ali, vide registered deed Nos. 1958 and 1959, both dated 11.05.1945. Accordingly, the R.S. Khatian, namely R.S. Khatian No. 390 with corresponding Plot No.5160, was recorded in the name of said Jolekha Bibi. That, during the life time of Joleka Bibi, she made a Heba in favour of her son Chand Miah by registered deed No. 20566 dated 13.07.1977 transferring land measuring 77 decimals from the same plot. Thereafter, the said Chand Miah made another Heba in favour of his wife Joysa Khatun in respect of land therefrom measuring 10 decimals by another registered deed No. 2014 dated 27.06.1985. Thereafter, the said Chand Miah and his wife Joysa Khatun together transferred the said land measuring .1650 acres in favour of their five sons, namely the petitioners, by Heba Deed No.3757 dated 19.04.1994. Subsequently, when the City Survey in Dhaka area started in 1995, the said land was recorded in the name of the petitioners in the Draft City Khatian No. 1839 with corresponding Plot No. 4587. It is stated that, after such transfer and record of their rights, the petitioners have been possessing the said land, and, with the approval of RAJUK and Cantonment Board, they have constructed building thereon and have been paying gas, electricity, WASA bills etc. regularly.

4. **In Writ Petition No. 3451 of 2004**, the case of the petitioner’s is that, the landed property measuring .0660 acres under C.S. Khatian No. 168, C.S. Plot No. 321 and S.A. Khatian No. 172, S.A. Plot No. 321, J.L. No. 268, P.S. Cantonment (now Kafrul) (“the said property”) originally belonged to one Rahim Box and, subsequently, after his death, the ownership of the said property fell on his son Wohed Box Bepari. That, after the death of the said Wohed Box Bepari, the ownership of the said property fell on his son Khaleque Box Bepari. Subsequently, the said Khaleque Box Bepari sold the said property to Lal Mohon Maisal, Ananta Lal Maisal and Mohesh Lal Maisal, all sons of Malike Lal Maisal, through registered sale deed No. 862 dated 30.01.1929. That, thereafter, the said Maisal brothers sold the said property in favour of Jolekha Bibi, wife of Haji Ahmed Ali, by two registered deeds being Nos. 1958 and 1959, both dated 11.05.1945. During life time of the said Joleka Bibi, she made Heba in respect of the land measuring .0660 acres in favour of her son Sona Miah son of Haji Ahmed Ali. That the said Sona Miah had one wife and seven sons, two daughters, and, after his death, the said property of Sona Miah fell on his said wife, sons and daughters. The said sons and daughters of Sona Miah, represented by their mother Rahima Khatun, being appointed as guardians of the minor children in Case No. 27 of 1985 of the 2<sup>nd</sup> Court of

Munshif, Dhaka, transferred the said land measuring .0660 acres in favour of the petitioner No.1 by three registered Sale Deeds being Nos. 9201, 9202 and 9203 all dated 27.06.1987. On the other hand, Chand Miah, son of Haji Ahmed Ali, being owner of .0355 acre land on the said plot also transferred his portion of land in favour of the wife of petitioner No.1, Mrs. Nargis Hossain, vide registered Sale Deed No. 9202 dated 27.06.1987. Accordingly, the petitioner No.1 in total purchased .0660 acres land from the said plot vide three registered sale deeds and the petitioner No. 2 purchased .0355 acres vide one sale. Thus, it is stated, the petitioners became owners of total land of an area of .0995 acres. The petitioner No.1, accordingly, got his name mutated in S.A. Khatian No. 172/1/1 for his portion of land and petitioner No.2 got her name mutated in S.A. Khatian No. 172/2/5 for her portion of land. Thus, they have been possessing the said land and, with the approval of the RAJUK and Cantonment Board, they have constructed buildings thereon and have been paying utility bills to different utility suppliers like City Corporation, WASA etc. That, when the City Survey in Dhaka area started in 1995, the petitioners name were also published in respect of the said land in the Draft City Khatian No. 1644 with corresponding Plot No. 4559 under Kafrul Mouza.

5. Further common case of the petitioners in the instant writ petitions is that, in respect of their said land, Tasdik Khatians (Field Survey Khatians) were prepared by the concerned Revenue Officer being Tasdik Khatian No. 4568 corresponding Plot No. 4587 and Tasdik Khatian No. 4539, corresponding Plot No. 4559, and, subsequently, the said records were followed by draft khatian published in the said City Jorip, being City Jorip D.P. Khatian No.1839 with corresponding Plot No. 4587 under Kafrul Mouza in respect of the land in Writ Petition No. 3450 of 2004 and Draft City Jorip Khatian No.1644 with corresponding Plot No. 4559 under Kafrul Mouza in respect of land in Writ Petition No. 3451 of 2004. Being aggrieved by such draft publications, the Military Estate Officer of Dhaka Cantonment (respondent No.4) filed objection before the concerned Revenue Officer in view of the provisions under Section 144 of the State Acquisition and Tenancy Act, 1950 (in short, "SAT Act, 1950") read with Rule 30 of the Tenancy Rules, 1955 (in short, "the said Rules"). The concerned Revenue Officer (Objection Officer) then disposed of the said objections along with other objections in respect of the nearby lands and affirmed the said draft publication in favour of the petitioners. Being aggrieved by such order of the Objection Officer, respondent no.4 preferred appeals, being Appeal Case Nos. 65105 and 65096 of 2002, before the concerned Revenue Officer appointed with the Additional Designation of Settlement Officer in view of the provisions under Section 144 of the SAT Act, 1950 read with Rule 31 of the SAT Rules, 1955. Thereupon, the concerned Revenue Officer dismissed the said appeals along with other similar appeals preferred by the same respondent vide a common order dated 30.04.2002 (in short, "Appeal Order"). Being aggrieved by this order of dismissal of appeals, respondent No.4 lodged an objection before the Director General, Directorate of Land Records and Surveys (respondent no.3) with a prayer for rehearing of all appeals including the appeals in question. The said Director General then referred the matter to the concerned Settlement Officer, who, vide order dated 10.07.2003, brought all the appeals including the appeals in question to the stage of re-hearing upon setting aside the said Appeal Order in purported exercise of power under Rule 42 of the Tenancy Rules, 1955 and, accordingly, assigned one Md. Shamsul Arefin, Charge Officer, Dhaka Settlement, to re-hear the said appeals with the assistance of some other Assistant Settlement Officers and concerned officers. Thereafter, the said appeals were reheard by the said Settlement Officer Mr. Md. Shamsul Arefin, who, vide impugned order dated 14.03.2004, allowed both the appeals in question along with other appeals in favour of respondent no.4 and thereby directed for final publication of Khatian under City Jorip in the name of respondent no.4 in respect of the said

lands and other lands concerned. The said Settlement Officer, by the same order, also directed publication of City Jorip Final Khatian showing the names of the petitioners and other appeal-respondents in Column No. 9 of the said Khatian as 'possessors'. Being aggrieved by such order of the Settlement Officer, the petitioners moved the instant writ petitions and obtained the aforesaid Rules. At the time of issuance of the Rules, this Court, vide ad-interim orders dated 06.07.2004, stayed operation of the said impugned order (Annexure-G) for a period of 06 (six) months, which was subsequently extended time to time.

6. The Rules have been opposed by respondent no.4 by filing affidavits-in-opposition. The case of respondent No.4 is that, the lands in question as well as other disputed nearby lands fall within Mouza-Lala Sharai comprising C.S. Plot No. 621 and the said lands were acquired during World War II by the then government in L.A. Case No.32/49-50 in exercise of power under Rule 75A(2) of the Defense of India Rules, 1937 for the purpose of establishing Tejgaon, Kormitola Air field and, accordingly, the same was published in the gazette notification on 20.08.1946. That, subsequently, while S.A. records and R.S. records were prepared, some portion of the said C.S. plot No. 621 of Lala Sharai Mouza was mistakenly included in the Kafrul Mouza at the time of preparation of map and that the said mistake continued with the resultant anomalies in recording the names of the vendors of the petitioners in the corresponding S.A. and R.S. Khatians showing them as owners of the said lands, though the said lands always belonged to the Cantonment. That, since some lands of Lala Sharai Mouza, owned by cantonment Board, including the lands in question, have been shown as lands of Kafrul Mouza and wrongly recorded in the names of the predecessors of the petitioners who did not have any title to transfer the said properties in favour of the petitioners, it raised objection at the objection stage during City Survey and, since the said objection was wrongly rejected by the concerned objection officer, it preferred the said appeals before the Appeal Officer concerned and that the said Appeal Officer dismissed those appeals in collusion with the petitioners. Therefore, it is stated, this respondent made representations to the Director General of Land Survey, who, upon verification of all concerned maps as well as concerned documents, referred the matters to the concerned Settlement Officer, who then passed the said order under Rule 42 of the Tenancy Rules, 1955 cancelling the Appeal Order and thereby directing rehearing of the said appeals. Therefore, according to this respondent, since the 2<sup>nd</sup> Appellate Officer corrected the said mistakes in mouza demarcation in connection with the publication of record of rights through Draft City Jorip Khatian by the impugned order, this Court does not have anything to do in respect of the same. Referring to an earlier judgment of a Division Bench of this Court in Writ Petition No. 859 of 2004 along with other writ petitions, it is stated by this respondent that, similar issues were already heard by a Division Bench of this Court and Rules issued therein were discharged.

#### **7. Previous Hearing:**

The Rules issued in the instant writ petitions were heard by a Division Bench of this Court presided over by her Lordship Justice Salma Masud Chowdhury. The said Bench, vide judgment dated 09.09.2014, made the Rules therein absolute mainly on the ground that, Rule 42 or 42A of the SAT Rules, 1955 does not empower the Settlement Officer to sit or act as an appellate authority over an appellate order passed under Rule 31 of the SAT Rules, 1955 and then set aside the said appellate order or direct the appellate officer to hear appeal afresh in respect of a particular holding. It was also held that, the appellate officer is also not empowered to re-hear an appeal which was finally disposed of by an earlier Appellate Officer of same rank. In reaching such conclusion, the said division bench referred to similar views adopted by other Division Benches of this Court in Writ

Petition Nos. 2672 of 2005, 3797 of 2003, 6971 of 2004, 6262 of 2005, 1512 of 2006 and 1513 of 2006. Being aggrieved by such judgment of the said Division Bench, respondent no.4 preferred Civil Petition for Leave to Appeal, being CPLA No.186-187 of 2016, before the Appellate Division of this Court, whereupon a Bench of our Appellate Division, presided over by his Lordship (as he then was) Mr. Justice Md. Abdul Wahhab Miah, set aside the said judgment of the High Court Division with the following observation:

*“From the impugned judgments and orders, it appears that the High Court Division after noting down the case of the writ-petitioner without noticing the case of the writ-respondent as stated by him in the affidavit-in-opposition, particularly, the fact that the land in question was acquired in L.A Case No.32/49-50 under rule 75A (2) of the Defense of India Rules,1937 for Tejgaon-Kurmitola Air field during World War II which was published in Calcutta Gazette on 10<sup>th</sup> July,1946 and that the land in question “fall within Mouza Lala Sharai comprising C.S Plot No.621” made the Rule Nisi absolute .*

*It further appears that the High Court Division did not at all decide the factual aspect of the case and it went only by the legal point, namely, respondent Nos.1 and 2 had no jurisdiction to reopen the matter under “Rule 42 or 42A of the Rules 1955”. We are of the view that the factual aspect of the case ought to have been looked into by the High Court Division as well whatever might be its worth, in deciding the propriety of the decision of writ respondent No.1 and approved by writ-respondent No.2.*

*In view of the above, we find no other alternative but to send the writ petitions back to the High Court Division for hearing afresh and for disposal considering both the factual and the legal aspects of the case. Accordingly, these petitions are disposed of in the following terms:*

*The impugned judgments and orders of the High Court Division passed in the respective writ petition are set aside. The writ petitions are sent back to the High Court Division for hearing afresh and for disposal in accordance with the law considering both the factual and the legal aspects of the case”.*

8. Accordingly, with the above observation and order of the Appellate Division, the instant two writ petitions have been sent to this Bench for hearing and disposal.

### **Submissions:**

9. During hearing before this Bench, Mr. A.F. Hassan Ariff, Mr. Kamal Ul Alam and Dr. Md. Iqbal Karim, learned advocates appearing for two sets of petitioners in the instant two writ petitions, have made the following submissions:

- 1) That since the C.S., S.A. and R.S. Khatians have already been published finally in respect of the said lands in the names of the predecessors of the petitioners and since the petitioners have constructed building on the said lands with the prior approval of RAJUK and Cantonment Board and, accordingly, have been possessing the same for long time upon payment of concerned utility bills, the Appellate Officer, after re-hearing of the said appeals, committed gross illegality in directing final publication of City Jorip Khatian showing respondent no.4 and the petitioners as owner and possessor respectively;

- 2) Since the Objection Officer as well as the first Appellate Officer concerned exercised their jurisdiction conferred on them by the statute, namely Section 144 of the SAT Act, 1950 read with Rules 30 and 31 of the Tenancy Rules, 1955, the Settlement Officer concerned did not have any authority or jurisdiction to sit over the said first Appellate Order or to direct rehearing the said appeals upon cancelling the said appellate order, the same being clearly contrary to the relevant provisions under Chapter XVII and XVIIIA of the SAT Act, 1950.
- 3) Since the parent law, namely SAT Act, 1950, has provided specific forum to raise objections before the Land Survey Tribunals constituted under Section 145 A of the said SAT Act as against appellate order passed under Rule 31 of the SAT Rules, 1955, the Order of the Settlement Officer for rehearing of the said appeals sitting on the first Appellate Order as well as rehearing of the said appeals by the subsequent Appellate Officer and allowing the same by the impugned order are ex-facie without jurisdiction inasmuch as that the same have directly contravened the very basis of SAT Act, 1950, in particular the provisions under Chapter XVI, XVII and XVIIIA of SAT Act in that the same have deprived the petitioners of their legitimate and legal rights to have their names being recorded as owners in the City Jorip Khatian to be published finally and as such the same have prevented the normal course of law, namely the legal obligation of respondent no.4 to raise objections before the Land Survey Tribunals against the said final publication of City Jorip Khatian in petitioners' name;
- 4) By referring to the Land Ministry notification dated 12.04.2009, as published in Bangladesh Gazette on 16.04.2009, as annexed to the Supplementary-affidavit of the petitioners as Annexure-H series, learned advocates submit that, it is apparent from the said gazette that the final publication of City Jorip Khatians in respect of the lands in question are yet to be done. Therefore, according to them, the respondent no. 4 still has the option to go to the Tribunal to lodge their complaints against the Order of the first Appellate Officer after final publication of City Jorip Khatians in view of the provisions under sub-section (7) of Section 144 of the SAT Act, 1950. Therefore, they submit, this Court should set aside the subsequent appellate order passed by the concerned Appellate Officer and restore the case to its original stage, namely the stage of the order of the First Appellate Officer and then to allow the concerned revenue officer to make final publication of City Jorip Khatians in petitioners' name in respect of the said land so that the law of the land can take its own usual course;
- 5) As regards acquisition of the land in question and other lands by the government during World War II, learned advocate submits that, the petitioners, by making specific statement in the supplementary-affidavit, have denied the said acquisition. Learned advocates submit that, the acquired lands by the then government during World War II are separate lands from the petitioners' one.

10. As against above submissions, Mr. Manzill Murshid, learned advocate appearing for the respondent no.4, has drawn this Court's attention to various field- maps as prepared during preparation of S.A. Records, R.S. Records and City Jorip Records in respect of the said lands. Showing those maps, learned advocate submits that, some portion of lands from Lala Sharai Mouza have apparently been included in the Kafrul Mouza wrongly during preparation of S.A. Khatians and R.S. Khatians, and this mistake having been continued for long time, it was incumbent upon the respondent no.4 to raise objection during objection

stage at the time of preparation of City Jorip Record of Rights bringing those facts and mistakes to the concerned Objection Officers as well as the first Appellate Officer. However, he submits that, the said facts of acquisition of the said lands as well as the mistakes committed at the time of preparation of S.A. and R.S. Khatians could not be appreciated properly by the said Objection Officer and first Appellate Officer which compelled the respondent no.4 to bring the said issues to the attention of the Director General of Land Survey resulting in an order passed by the Settlement Officer under Rule 42 of the Tenancy Rules, 1955 for rehearing of the said Appeals after setting aside the First Appellate order so that the said mistakes could be corrected. Therefore, he submits, no illegality has been committed either by the said Land Director, Settlement Office or by the subsequent Appellate Officer and as such this Court does not have anything to do with the impugned order passed by the Second Appellate Officer by which the name of the respondent no.4 was directed to be published in the Final City Jorip Khatian in respect of the said lands as owner. Further referring to a Pentagram as annexed to the supplementary-affidavit of respondent no.4 dated 11.12.2017 (Annexure 6 series), Mr. Murshid submits that, the encroachment of lands of Lala Sharai Mouza by demarcating the boundary of Kafrul Mouza is apparent from such Pantograph Map. Therefore, this Court should not interfere into the impugned order passed by the subsequent Appellate Officer.

**Deliberations of the Court:**

11. Since our Appellate Division in CPLA No. 186-187 of 2016, vide order dated 02.04.2017, has specifically directed this Bench to consider the factual aspects of the case along with the legal aspects, let us first start with the factual aspect.

12. It appears from materials on record that, admittedly, during preparation of S.A. Khatian and R.S. Khatian, the record of rights in respect of lands in question were published in the names of the predecessors of the petitioners. The specific averments in respect of such fact, as made by the petitioners in the writ petitions and supplementary-affidavits to the writ petitions, have not been denied by the contesting respondent No. 4. Therefore, in so far as the facts of publication of S.A. and R.S Khatians in respect of the lands in question are concerned, there is no other factual aspect except the allegation by respondent No. 4 that the said Khatians were published wrongly by ignoring the fact that the lands in question and some other adjacent lands were acquired by the government during World War II for establishment of Tejgaon-Kurmitola Airfield. In this regard, the respondent no.4 has made specific reference to a gazette notification dated 10.07.1946 as published in Calcutta Gazette dated 20.08.1946. It appears from the said gazette, as annexed to the affidavit-in-opposition of the respondent no.4 as Annexure-1, that certain Plot Numbers of C.S. Khatian have been mentioned therein as acquired lands. As against above averment of the respondent no.4, the petitioners have specifically stated that, the lands acquired by the then government are separate lands than the lands of the petitioners and that the petitioners' lands were never acquired.

13. As against this contrary statement of facts as regards acquisition of lands in question, this Court is of the view that, this particular factual aspect of the case cannot be determined under writ jurisdiction inasmuch as that, the same can only be determined in a trial by examining concerned and relevant evidences to be adduced by the parties. This factual aspect also cannot be determined finally by the concerned Revenue Officers empowered for preparation of record of rights, in particular for preparation of City Jorip Khatians etc., in exercise of their power under Chapter XVII of the SAT Act, 1950 as the same is a title

dispute and as such needs final adjudication by a competent Civil Court. It has long been settled by this Court that, preparation of record of rights or revision of record of rights mainly concerns the possession of the land for the purpose of collection of revenue by the government from the individual or person in possession of the said land and in such process title may be determined summarily. Therefore, though the Appellate Division has opined for consideration of factual aspects of the instant writ petitions (though not specified by the Appellate Division), this Court is of the view that, this factual aspect of the case cannot be determined by the High Court Division under writ jurisdiction. The petitioners and the respondents have not also, or cannot, come before this Court for determination of this factual aspect. Rather, the petitioners have come before this Court challenging the order passed by the subsequent Appellate Officer pursuant to an order given by the Settlement Officer under Rule 42 of the Tenancy Rules, 1955. Therefore, except the above mentioned factual issue, this Court is of the view that, we can only dispose of the Rules in the instant writ petitions considering other factual aspects as well as the concerned/relevant provisions of laws. For this reason, we need to examine the relevant provisions of law.

14. It appears from the provisions under State Acquisition and Tenancy Act, 1950 (“SAT Act, 1950”) that, after whole-sale acquisition of land-receiving-interest of the Jaminders by operation of Section 3 of the said Act, the government has initiated preparation of record of rights during Pakistan era, in particular for preparation of Compensation Assessment Rolls in view of the provisions under Part-IV of the SAT Act, 1950. This record of rights, as prepared during Pakistan Ara, is commonly known as S.A. Khatians. Under Chapter-IV of Part IV of SAT Act, 1950, detailed provisions have been made as regards all steps in such process, namely draft publication of record of rights, disposal of objections thereto and appeals therefrom and then for final publication of record of rights. Section 78 of the SAT Act, 1950, under Chapter XI, has empowered the government to make Rules for carrying out the purpose of Parts II, III and IV of the said Act. However, maintenance and revision of records of rights, subsequent to such publication of S.A. Khatians, is covered by another chapter, namely Chapter XVII under Part-V of the SAT Act, 1950. Similar provisions have been made under this Chapter as well for revisions and preparation of record of rights, namely from disposal of objections to the publication of draft Khatians as well as publication of final Khatian, after disposal of appeals against the same. Section 152 of the SAT Act, 1950 has empowered the government to make Rules for carrying out the purposes of this Part, namely Part V, and, accordingly, the government has made and published Tenancy Rules, 1955 (“SAT Rules, 1955”), in particular the provisions under Chapter-VI and VII of the said Rules, for the purpose of carrying out the works to be done for maintenance and revision of record of rights. Since we are concerned with the revision of record of rights in the cases in hand, we will concentrate on the said issue and law applicable thereto as provided by SAT Act, 1950 and Tenancy Rules, 1955.

15. Section 144 of the SAT Act, 1950 is the relevant parent law in this regard. It provides that, the government may, in any case if thinks fit, make order directing the record of rights, in respect of any district, part of a district or local area, be prepared or revised by a Revenue Officer in accordance with the Rules as may be made by the government. Once such order of the government is passed through Official Gazette under sub-section (4) of Section 144, the Revenue Officer concerned shall start related works for preparation and revision of record of rights. The stages for such preparation or revision of record of rights are mentioned in Rule 27 of the Tenancy Rules, 1955, which have their source of authority in the parent law under Section 144. In such revision as well as preparation of record of rights, the Revenue Officer shall record particulars of the lands as provided by sub-section (4) and (4A) of Section 144 of

the said Act and Rule 26 of said Rules, and accordingly, publish a draft record of rights so prepared or revised and consider objections to such draft publication in respect of any entry made therein or omissions therefrom. This position is provided by sub-section (5) of Section 144. Once such objection is disposed of, any person aggrieved by such disposal of objection by the Revenue Officer, may prefer an appeal to the prescribed revenue authority not below the rank of Assistant Settlement Officer.

16. Therefore, it appears that, the stages of publication of draft record of rights and disposal of objections thereto followed by appeal against such disposal are provided by statutory provisions. Therefore, this authority of preparation of publication of draft record of rights and disposal of objections thereto followed by appeals are conferred on the concerned revenue officer by statute. Sub-section (7) of Section 144 further provides that, once such appeal is disposed of, the Revenue Officer shall finally frame the record and shall cause such record to be finally published in the prescribed manner and that such publication shall be conclusive evidence that the record has been duly prepared or revised under this Section. Under sub-section (8) of the Section 144, the Revenue Officer shall also make a certificate stating the fact of such publication and the date thereof and shall date and subscribe the same with his name and official title. Again, Section 144A, which has been inserted in the SAT Act, 1950 by East Pakistan Ordinance No. 8 of 1967, has given a presumptive value to such record of rights which has been published finally under sub-sections (7) and (8) of Section 144. It provides that, every entry in the record of rights, prepared or revised under Section 144, 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. These stages of preparation of record of rights and their legal impact have been covered by the statute in such a sanctified way that, even the jurisdiction of Civil Court has been excluded from interfering therein (See Section 144B).

17. Now, what is the remedy for any person who is aggrieved even by disposal of appeal by the concerned Revenue Officer? This has been provided by the provisions under Chapter XVIII of the SAT Act, 1950. Under this Chapter, the government shall constitute Land Survey Tribunals comprising of judges of the rank of Joint District Judges. Sub-section (6) of Section 145A has made it clear that, any person aggrieved by such final publication of last revised record of rights as prepared under Section 144, may, within one year from the date of such publication or from the date of the establishment of the Land Survey Tribunal, whichever is later, file a suit in such Tribunal. Such suit may also be admitted even with a delay of one more year, as provided by sub-section (7) of Section 145A. According to sub-section (8) of Section 145A, the Tribunal is empowered and competent to declare the impugned record of rights to be incorrect and further direct the concerned office to correct the record of rights in accordance with its decision and may also pass such order as may be necessary. The matter does not end there, the statute even provided further forums like the Land Survey Appellate Tribunal (see Section 145B) and even the Appellate Division of the Supreme Court of Bangladesh (see Section 145C), for addressing the grievances of the parties against the judgments of the Tribunal. Besides, under the said Chapter, the Tribunal has been given the power of the Civil Courts in accordance with the Code of Civil Procedure, 1908 for disposal of disputes between the parties as regards publication of record of rights, along with the ouster of jurisdiction of Civil Courts in respect of last revised record of rights, within the territorial limits of such Tribunals (see Sections 145 D and 145K).

18. As stated above, the forums for disposal of objections/appeals/suits by the concerned revenue officers and Land Survey Tribunals are created by the statute. The Rules framed

under Section 152 of the SAT Act, 1950, in respect of matters falling under Part-V of the said Act, have been framed only for the practical working of those provisions. By such Rule making delegated power, the government has not been conferred with any authority to create any forum which can nullify the result of those disposals by the Objection Officers, Appeal Officers, Land Survey Tribunals etc. as the same will be direct contrary to, and violation of, the parent provisions of law. Even if such provision is made under any Rules framed under the parent law authorizing a particular Revenue Officer to nullify such result of objections and appeals, this Court is of the view that, such Rules or delegated legislature will also become nullity as the same will be hit by the principle of “delegatus non potest delegare”, meaning the delegatee cannot go beyond the power of delegation. Not only that, if not permitted by the parent law, delegator also cannot delegate his such power in favour of the delegatee.

19. Now, let us examine what Rules have been framed by the government for the working of the said parent provisions as mentioned above. It appears from Chapter-VII of the Tenancy Rules, 1955 that, this Chapter covers the area of revision of record of rights under Section 144 of the SAT Act, 1950. Under this Chapter, some particulars are to be recorded in the record of rights as provided in Rule 26. Amongst such particulars, it is the responsibility of the Revenue Officer to determine the boundaries of the lands held by each tenant or occupant [See Rule 26(1) (c)]. Under Rule 27, various stages are provided as a guideline for the revenue officer to be followed in the revision of such record of rights and such stages include the erection of boundary marks, a preliminary record-writing (Khanapuri), local explanation (Bujharat), attestation, publication of draft record, disposal of objections, filing of appeals and disposal thereof, preparation and publication of final records in accordance with the procedures as prepared by the concerned settlement department under the title ‘Technical Rules and Instruments of the Settlement Department’ as modified time to time (See Rule 28). Once such attestation is done, the concerned Revenue Officer shall publish a draft record of rights under Rule 29 of the Tenancy Rules, 1955 and invite objections to the entries in such draft publication. The Revenue Officer then hear the objections under Rule 30 and, in hearing such objections, he may summarily decide regarding ownership or possession of the land or of any interest in the land. After disposal of objection, anyone aggrieved by such disposal order, will be entitled to prefer appeal before the Revenue Officer appointed with the additional designation of Settlement Officer, who is commonly known as Appeal Officer, as provided by Rule 31 of the said Tenancy Rules. After disposal of such appeals, the revenue officer shall proceed to frame the final record of rights and publish the same followed by certificate issued by him certifying the fact of such publication and a gazette notification by the government declaring that such publication has been done (See Rules 33 and 34).

20. Again, Chapter-VIII of the Tenancy Rules, 1955 has purportedly conferred or clarified some powers of the Revenue Officer concerned, Rule 36, under the said chapter, has provided that the revenue officer shall have the power to take down evidence in accordance with the provisions under the Code of Civil Procedure and has the power to enter upon the land and demarcate and prepare a map of the same. In doing so, the Revenue Officer is vested with the power of Assistant Superintendent of Survey and a Deputy Collector (Deputy Commissioner) as conferred on them under the Bengal Survey Act, 1875 (See Rule 37) and such Revenue Officer, appointed with the Additional Designation of Settlement Officer or Assistant Settlement Officer, shall also have all powers exercisable by a Civil Court in the trial of suits under Code of Civil Procedure (See Rule 39). While Rules 40 and 41 have provided some administrative powers of the concerned Revenue Officers for making over some matters to the Assistant Settlement Officer for disposal of the same as well as transfer

of case from one Assistant Settlement Officer to another Assistant Settlement Officer, Rules 42 and 42A have conferred some special powers on such Revenue Officer appointed with the Additional designation of the Settlement Officer. While Rule 42A has empowered such revenue officer to direct excision of any entry in the record of rights before its final publication if it is found that such entry has been procured by fraud, Rule 42 has empowered him to 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, be cancelled and that the proceedings be taken up fresh from such stage as he may direct.

21. Since this special power of the Revenue Officer concerned is the crux of disputes between the parties in the instant writ petitions, let us quote the same for ready reference:

**“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.”*

22. It appears from this provision that, though the statutes, in particular Section 144 of the SAT Act, 1950 as well as the provisions under Chapter XVII A of the said Act, have provided different forums for disposal of objections, appeals as well as grievances against appellate orders, this Rule 42 has empowered the Revenue Officer concerned, appointed with the additional designation of the Settlement Officer, to cancel or reverse such course of law and direct that such proceedings shall be taken afresh from a particular lower stage and that such power may be exercised before final publication of record of rights in respect of any district, part of a district or local area. We are in fact taken aback with surprise when we see that a government official has been empowered by this Rule 42 to nullify the course of parent law and send it back to an earlier stage for hearing afresh. The reason for such surprise is, when an Act of parliament has provided some specified forums for disposal of particular issues and has provided sequential steps to be taken one after another before different forums up to the Appellate Division of the Supreme Court of Bangladesh, an official like a revenue officer, appointed with the additional designation of Settlement Officer, can nullify everything before final publication of record of rights. Though this Rule 42 has not been challenged in the instant two writ petitions, we have been compelled to make our above observation as regards the power of the revenue officer under said Rule in particular when the special facts and circumstances of the present cases have been brought to our notice. When the government even does not have any power to nullify or reverse the course of parent law, since such power has not been delegated to government by the parent law, we are of the view that, even with the existence of Rule 42 empowering such revenue officer to nullify such course of parent law, any such exercise of power by such revenue officer shall be nothing but a nullity in the eye of law. This position has been indirectly addressed by the High Court Division in various cases and, in those cases, the High Court Division has set aside the order of the subsequent Appellate Officer as passed pursuant to an order under Rule 42 empowering him to re-hear the appeal. References may be made to **Romisa Khanam vs. Bangladesh, 61 DLR-18 and unreported Writ Petition No. 6224 of 2003 along with two others (Shamsuddin Ahmed and others vs. Bangladesh and others)**. In the above mentioned two cases, the said Division Benches have also referred to various other cases and decisions of this Court and the Courts of this subcontinent and finally held that, the revenue officer concerned, appointed with the additional designation of Settlement Officer, does not

have any power to sit over an appellate order passed by the Appellate Officer under Section 144 of the SAT Act, 1950 read with Rule 31 of the Tenancy Rules, 1955.

23. Let us now embark ourselves on the instant cases before us. It appears from records that, admittedly, the S.A. Khatian and R.S. Khatian in respect of the lands in question were published and recorded in the names of the predecessors of the petitioners. While the said S.A. Khatian was prepared after enactment of SAT Act, 1950, under Chapter IV, Part-IV of the said Act, the Cantonment authority (respondent No. 4) did have the option to raise objections against draft publication as well as to file appeals against disposal of such objection. But, admittedly, no such objections were made by the respondent No. 4. It is the case of respondent No. 4 that the mistake was first committed at the time of preparation of S.A. Khatian followed by same mistake at the time of preparation of R.S. Khatian, in particular in demarcating the boundary of Lala Sharai Mouza and Kafrul Mouza. According to it, while such demarcation was made during preparation of S.A. Khatian, some lands of Lala Sharai Mouza were shown within the boundary of Kafrul Mouza and thereby the respondent No. 4 lost some lands in favour of the petitioners or their predecessors and other parties. After liberation of Bangladesh, when R.S. Khatian was prepared, respondent no.4 again got another opportunity to raise objection and file appeals against disposal of such objections. But it did not raise any such objection for reasons best known to it. Now with the publications of two Khatians, namely S.A. Khatian and R.S. Khatian, this Court is of the view that, such khatians have acquired legal presumption as to its correctness as well as correctness of entries made therein until such legal presumption, in view of the provisions under Section 144A of the SAT Act, is proved to be wrong or incorrect by contrary evidence.

24. However, it has to be borne in mind that, since S.A. and R.S. Khatians were prepared long ago, such presumption will lose its weight with the passage of time. On the other hand, though the respondent No. 4 did not raise objections as regards alleged mistake in preparation of Mouza Maps of Lala Sharai Mouza and Kafrul Mouza during the said two surveys, it is not debarred from raising such objections in the subsequent survey. Therefore, when they raised such objection for the first time during City Survey of Dhaka City as started in 1995, such objections as well as procedures for disposal of such objections had to be done mainly in accordance with the provisions of parent law as well as the Rules framed for proper working of such parent law. Accordingly, when it raised objections against publication of Draft City Khatian No. 1839 (in Writ Petition No. 3450 of 2004) and Draft City Khatian No. 1644 (in Writ Petition No. 3451 of 2004) showing the petitioners as owners of the lands in question under corresponding plot No. 4587 and 4559 respectively of Kafrul Mouza, the said objections along with other objections by the respondent no.4 were disposed of by the concerned Revenue Officer in view of the provisions under Section 144 of the SAT Act read with Rule 30 of the Tenancy Rules, 1955. When such objections were disposed of against the claim of the respondent no.4, they also preferred appeals before the Appellate Officer, again under the said provisions of Section 144 of SAT Act read with Rule 31 of SAT Rule, 1955. However, when the said appeals were dismissed, under the usual course of law, they were required to wait for the final publication of the City Khatians in respect of the said lands and then to file objections by way of suits before the Land Survey Tribunal constituted under Section 145A of the SAT Act. But, for the reasons best known to them again, they opted for a very peculiar option which is unknown to the parent law. Instead of going to the Tribunal with a suit after final publication of the City Khatians in respect of the said lands, they filed a representation to the Director General of Land Survey (respondent no.3) raising the same objections as they have made before the Objection Officer as well as Appeal Officer. On the basis of such objection, the Director General of Land Survey has transferred the file to the

concerned Settlement Officer. It appears from the order of the said Settlement Officer dated 10.07.2003 (Annexure-5 to the supplementary-affidavit of respondent no.4 dated 02.11.2017) that, the Settlement Officer has set aside the first appellate order of the Appeal Officer in thirty appeal cases including the concerned Appeal Case No. 65105 of 2002 and Appeal Case No.65096 of 2002 in exercise of its purported power under Rule 42 of the Tenancy Rules, 1955 (written as EBT Rules, 1950) and ordered the said appeals to be taken up afresh from the appeal stage and, accordingly, directed one Mr. Md. Shamsul Abedin, the Charge Officer of Dhaka Settlement office, to re-hear the said appeals with the assistance of some other officials. Pursuant to such order, the said appeals were re-heard by another Appeal Officer of the same rank and the said appeal officer, vide impugned order dated 14.03.2004, allowed the said appeals and, accordingly, directed for publication of the City Khatian in respect of the said lands showing the respondent no. 4 as owner and the petitioners as possessors of the said lands.

25. Therefore, it appears from the very record that, apparently, the said Settlement Officer, vide order dated 10.07.2003, reversed the course of parent law from its concluded stage to a lower stage. Not only that, the said Settlement Officer also gave an additional leverage in favour of the respondent no.4 to present its case again before another Appellate Officer of same rank. This order has made several interferences into the normal course to be taken or followed under SAT Act, 1950, namely:

- (f) It did not allow final publication of City Khatian in the normal course after disposal of appeals by the Appellate Officer
- (g) It allowed the respondent No.4 to avoid the Land Survey Tribunals constituted under Section 145A of the SAT Act, 1950. Rather, it allowed respondent no.4 to avail of another forum under Rule 42 contrary to the relevant provisions of parent law.
- (h) It deprived the petitioners of their legal and legitimate expectation and rights to have the concerned City Khatians finally published in their names as owners in respect of the said lands.
- (i) For all practical purposes, by this order, the Settlement Officer has already expressed his view regarding merit of the case and as such left nothing for the 2<sup>nd</sup> Appellate Officer to hear and decide the dispute.
- (j) Pursuant to this order of the concerned Settlement Officer under Rule 42, the subsequent Appellate Officer has virtually set aside the order passed by the First Appellate Officer, who is of equal rank like him.

26. While this Court has repeatedly held that, the delegatee of power cannot go beyond the power of delegation, it appears that, there cannot be any better example than this case that how a power, not permitted by parent law, may be delegated and as to how a delegatee can exceed its limit of power given by the parent law. Here, the delegatee, namely the concerned Settlement Officer, has reversed the normal course of parent law and thereby sat over the first appellate order like a higher authority, in particular when the higher authority as provided by law against such order is the Land Survey Tribunal, which is empowered by parent law to determine those issues as raised by respondent no.4 after final publication of City Khatian.

27. Admittedly, the City Khatians concerned have not yet published finally. Therefore, this Court is of the view that, the respondent no.4 still has an option to raise appropriate objections before the Land Survey Tribunal constituted under the law once the concerned City Khatians are published finally. Now, the respondent no.4 has tried to impress upon this Court to follow the course adopted by a Division Bench of this Court in **Writ Petition No. 859 of 2004 along with some other writ Petitions (Ahmuda Akhter Khanam and others vs. Government of Bangladesh and others)** [Annexure-4 to the affidavit-in-opposition]. It appears that, in those writ petitions, Rules were issued in respect of similar nearby lands and the same were discharged on the ground that the City Khatians in respect of the lands in question in those writ petitions had already been finally published. This Court is of the view that, the ratio adopted by that Bench is not applicable in the facts and circumstances of the instant writ petitions, in particular when the admitted position in the present cases is that the final publication of City Khatian is yet to be done and this factual position is apparent from Notification dated 12.04.2009 as published in Bangladesh Gazette on 16.04.2009 (Annexure-A series to the supplementary-affidavit of the petitioner). Therefore, in line with the ratio declared by this Court in above referred **Romisa Khanam case** and other cases, this Court is of the view that, the concerned Settlement Officer did not have any authority to sit over the appellate order passed by the first Appellate Officer in respect of the lands in question in the instant writ petitions and, accordingly, since the impugned order dated 14.03.2004 has been passed after rehearing of the appeals concerned pursuant to such order of the Settlement Officer, the said impugned order cannot stand in the eye of law. Accordingly, we find merit in the Rules in so far as the petitioners are concerned and, thus, the same should be made absolute.

28. In the result, the Rules are made absolute. The impugned order dated 14.03.2004 (Annexure-G) are hereby declared to be without lawful authority and is of no legal effect in so far as the petitioners are concerned. Parties, in particular respondent no.4, is at liberty to file suits before the Land Survey Tribunal constituted under Section 145A of the SAT Act, 1950 and ventilate their grievances only after final publication of the City Khatians concerned showing the petitioners as owners in possession of the respective lands. Concerned Revenue Officials are directed to make final publication of the concerned City Khatians within a period of 30(thirty) days from receipt of the copy of this judgment.

29. Communicate this.