

14 SCOB [2020] HCD

HIGH COURT DIVISION

(Civil Revisional Jurisdiction)

Civil Revision No. 1511 of 2017

Pruesiau Aug Marma and another
.....petitioners

-Versus-

Aungmra Shang Marma and another
----- Opposite parties.

Mr. Mohammad Idrisur Rahman with
Mr. Md. Harun-Al-Kaioum with
Mr. Mosammat Morsheda Pervin,
Advocates
----- For the petitioners

Mr. Abdus Salam Mamun with
Mr. Mohammad Abdul Mannan with
Mr. Md. Asraf Uddin Chowdhury,
Advocates

----- For the Opposite Parties.

Heard on: 20.06.2019, 26.06.2019,
02.07.2019, 03.07.2019, 07.07.2019,
09.07.2019 and
Judgment on: 14.07. 2019.

Present

Madam Justice Kashefa Hussain

Temporary injunction, Mutation Case, Special statutory rules and regulations, Chittagong Hill Tracts Refgulation 1900, Customary laws of the Chittagong Hill Tracts, Article 152 of the Constitution of Bangladesh, Existing laws; Private parties regarding declaration of a deed, Registration of the deed, Competence any of party;

Mandatory issuance of notice upon the statutory authorities before filing of any suit in accordance with the relevant laws and also taking into consideration the existing customary laws of the Chittagong Hill Tracts which contemplate mandatory service of notice to the concerned authorities prior to filing any suit. ... (Para-17)

Customary laws and usages of the Chittagong Hill Tracts are all within the ambits of law and as such they can not be violated. ... (Para 18)

JUDGMENT

Kashefa Hussain, J.

1. Rule was issued in the instant Civil Revisional application calling upon the opposite parties to show cause as to why the judgment and order dated 30.03.2017 passed by the learned Additional District Judge, Bandarban Hill District, in Miscellaneous Appeal No. 5 of 2016 dismissing the appeal and affirming the judgment and order dated 24.03.2016 passed by the learned Joint District Judge, Bandarban Hill District, in Other Class Suit No. 263 of 2012 rejecting an application filed under Order 7 Rule 11 of the Code Civil Procedure should not be set aside and or pass such other order or further order or orders as to this court may seem fit and proper.

2. The opposite party as plaintiff instituted Other Class Suit No. 263 of 2012 in the court of Joint District Judge, Bandarban Hill District, praying for declaration of Registered Bainapatra (contract for sale) being No. 632 of 2010 registered dated 02.08.2010 as illegal, void and inoperative, not binding upon the plaintiff impleading the instant petitioners as defendant in the suit. During pendency of the suit the plaintiff filed an application for temporary injunction under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure praying for stay of all further proceedings of the Mutation Case No. 252(DO-/2012 by an order of temporary injunction. The defendants filed written objection and simultaneously the defendants in the suit also filed an application under Order 7 Rule 11 of the Code of Civil Procedure praying for rejection of plaint. After hearing the parties the court of Joint District Judge, Bandarban Hill District allowed the plaintiff's application under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure and thereby stayed all further proceedings of the Mutation Case No. 252 (DO-/2012 by an order of temporary injunction. On the other hand the defendants filed an application for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure and thereby the court of Joint District Judge rejected the plaint by Order No. 21 dated 24.03.2016. Being aggrieved by the Judgment and Order of the court of Joint District Judge, Bandarban Hill District dated 24.03.2016 allowing the plaintiff's application for temporary injunction and simultaneously rejecting the defendant's application for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure, the defendant in the suit filed Miscellaneous Appeal No. 5 of 2016 before the court of District Judge. However upon hearing both sides the Court of District Judge dismissed the Miscellaneous Appeal with some modification by its judgment and order dated 30.03.2017. Being aggrieved by the judgment and order of the District Judge court dated 23.03.2017 dismissing the Miscellaneous Appeal, the defendants in the Other Class Suit No. 263 of 2012 being appellants in the Miscellaneous Appeal No. 5 of 2016 filed a civil revisional application which is instantly before this court for disposal.

3. Learned Advocates Mr. Mohammad Idrisur Rahman with Mr. Md. Harun-Al-Kaioum along with Mr. Mosammat Morsheda Pervin appeared for the petitioners while learned Advocates Mr. Abdus Salam Mamun with Mr. Mohammad Abdul Mannan along with Mr. Md. Asraf Uddin Chowdhury appeared for the opposite parties.

4. Learned Advocate for the petitioner submits that the orders of the courts below were incorrectly given without applying their judicious mind and upon non-consideration of the relevant special statutory rules and regulations enacted specially for the Chittagong Hill Tracts and therefore the order of the courts below are not sustainable and those ought to be set aside respectively. Upon elaborating his contention the Learned Advocate for the petitioner submits that the Chittagong Hill Tracts Regulation 1900 hereinafter called Regulation 1900 was amended as late as in the year 2003 and by which amendment two courts were constituted in each districts of CHT being the Districts of Bandarban, Khagrachory and Rangamaty. He continues that these two courts in each district constituted one court with the Joint District Judge and another court was constituted with the District Judge. In this context he takes me to the Regulation 8 of the Chittagong Hill Tracts Regulation, 1900 which regulation provides for 3(three) separate districts with a Civil Court with a concerned joint district judge and a concerned District Judge. He further continues that according to the provisions of Rule 8 (4) of the Chittagong Hill Tracts Regulation, 1900 the court of Joint District Judge shall be a court of original jurisdiction which shall try all civil cases in accordance with the existing laws, customs and usages of the districts concerned except the cases arising out of the family laws and other customary laws of the tribes of the respective districts and the exception arising out of the family laws cases shall be triable by

the Mauza Headman and Circle Chiefs or Tribal Chiefs whatsoever. He further submits that the District Judges Court shall be the appellate court where appeal may be preferred against any order, judgment and decree of the court of Joint District Judge in accordance with Regulation 8(5) of the CHT Regulation, 1900. He submits that prior to amendment in 2003 which only came to effect as late as 2008 the administration of justice in the Chittagong Hill Tracts District was administered and conducted by the district administration being the Deputy commissioner and the Divisional Commissioner respectively in those districts. He next submits that by the amendment of the CHT Regulation 1900 in the year 2003 although the administration of justice was transferred from the executive authorities to the judiciary by way of constituting a civil court but nevertheless the Code of Civil Procedure did not come to be wholly applicable regarding cases arising out of any disputes in those districts. He submits that the applicability of the Code of Civil Procedure however was confined and limited up to a certain point given that the amendment of CHT regulation in the year 2003 however did not interfere into the existing laws and customary laws of the Chittagong Hill Tracts. In this context he takes me to Rule 20 of the “Rules for Administration of the Chittagong Hill Tracts” in the CHT Regulation 1900. He points out that according to the provisions of Rule 20 for the purpose of any registration in the CHT region registration of a document by way of a deed or similar legal instruments is significantly different from the laws of registration in other parts of the country. He submits that Rule 20 of the Rules for Administration of CHT in the Regulation of 1900 provides that the functions of the registering officer shall be performed by the Deputy Commissioner or Sub-Divisional officer or by such other officer as the local government may appoint for the purpose. He distinguishes this particular Rule from the rules of the rest of the country and contends that significantly enough contrary to the provisions for the rest of the country however in the Chittagong Hill Tracts District there are no provisions for any sub-registrar’s office for registering any instrument or document. He next submits that Article 152 of the Constitution of Bangladesh provides the definition of existing laws. He submits that ‘existing law’ has been defined by our constitution as being any law in force in or in any part of the territory of Bangladesh immediately before the commencement of the constitution whether or not it has been brought into operation. He continues that Article 152 has also defined the meaning of ‘law’ and submits that the term ‘law’ has been defined by the Article as any Act, Ordinance, Rule, Regulation, bye-law, notification or any other custom or usages etc having the force of law in Bangladesh. The learned Advocate for the petitioner submits that these definitions of the term ‘law’ and ‘existing law’ definitely assist in arriving at a proper appreciation as to the limits to the authority of the civil courts in applying the concerned laws to conduct a case and are express guidelines as to the manner in which cases in the Hill Tracts are to be conducted. It is asserted by the learned advocate for the petitioner that “existing law” for the purpose of this case therefore means and includes all the existing laws that was in force in the Chittagong Hill Tracts Regulations, 1900 and in the absence of amendment or repeal of any such laws by any statutory enactment all law that were in force before immediately the constitution was promulgated shall continue to be in force. He also contends that the definition of law as contemplated in the constitution of the land also categorically includes any customs and usages having the force of law in the country at the time. He asserts that therefore for the purpose of deciding the issue in this case it is imperative to be reminded that the customs and usages in the Chittagong Hill Tracts district includes the indigenous tribal customs and usages which shall have the same force as any other law in Bangladesh. He now comes to the facts of in the instant case and submits that in the instant case the courts below committed a grave error of law in not comprehending that the existing laws and Rules and Regulation of the Chittagong Hill Tracts are distinguishable from the laws and regulations in the rest of the country and therefore applicability of the Code of Civil Procedure is also limited and

confined thereto. He submits that the courts below allowed the application for temporary injunction of the plaintiff by staying the proceedings of the mutation case and also rejected the application of the defendant under Order 7 Rule 11 for rejection of plaint on the issue of maintainability as being barred by law upon total misapplication of mind and nonconsideration of the statutory Rules and regulations concerning cases and matters arising out of any dispute in the Chittagong Hill Tracts. He submits that the courts below totally bypassed the statutory enactments of the Chittagong Hill Tracts Regulation, 1900 and also failed to consider the customary laws that must be adhered to in accordance with the intention of the constitution of the land. He agitates that in this case the courts below totally overlooked the fact that before filing of the suit the plaintiff did not issue any notice neither to the concerned Zila Parishad of the Bandarban Hill Tracts district nor was any notice served upon the office of the Deputy Commissioner. Upon a query from the bench as to whether a notice is necessary to the concerned Zila Parishad since the matter arises out of a dispute between two private parties regarding declaration of a deed as void etc, the learned Advocate for the petitioner replies that the Rules and Regulation of Chittagong Hill Tracts are distinguishable from the Rules and Regulation in the other parts of the country by special enactment under the Chittagong Hill Tracts Regulation, 1900. Regarding the issue of failure of issue of notice by the plaintiff to the Zila Parishad, he takes me to section 64 of the “বান্দরবন পার্বত্য জেলা পরিষদ আইন, ১৯৮৯”. He draws attention of this court to section 64 and submits that section 64 begins with a non-obstante laws in its preamble providing:

“আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছু থাকুক না কেন-

He continues that this non –obstante clause section 64 (ক) (খ) expressly means notwithstanding any other law which may be in force in the time being in the country.

5. He now takes me to the provision and reads from section 64 (1) (ক) (খ) of the Ain of 1989 which is provides:

(ক) বান্দরবন পার্বত্য জেলার এলাকাধীন বন্দোবস্তযোগ্য খাস জমিসহ যে কোন জায়গা জমি, পরিষদের পূর্বানুমোদন ব্যতিরেকে, ইজারা প্রদান, বন্দোবস্ত, ক্রয়-বিক্রয় বা অন্যবিধভাবে হস্তান্তর করা যাইবে না।

তবে শর্ত থাকে যে, সংরক্ষিত (Reserved) বনাঞ্চল, কাগুই জলবিদ্যুৎ প্রকল্প এলাকা, বেতবুনিয়া ভূ-উপগ্রহ এলাকা, রাষ্ট্রীয় মালিকানাধীন শিল্পকারখানা ও সরকার বা স্থানীয় কর্তৃপক্ষের নামে রেকর্ডকৃত জমির ক্ষেত্রে এই বিধান প্রযোজ্য হইবে না।

(খ) পরিষদের নিয়ন্ত্রণ ও আওতাধীন কোন প্রকারের জমি, পাহাড় ও বনাঞ্চল পরিষদের সহিত আলোচনা ও উহার সম্মতি ব্যতিরেকে সরকার কর্তৃক অধিগ্রহণ ও হস্তান্তর করা যাইবে না।

6. He points out that this section categorically provides that for transfer of any property in the Chittagong Hill Tracts area by way of sale, lease whatsoever no such sale or transfer can be done without the prior approval of the concerned Zila Parishad of any of the 3 Chittagong Hill Tracts District. He next takes me to section 71 of the Ain of 1989 and submits that it is expressly provided in section 71 of the Ain that any case involving the Zila Parishad or involving its employees in any matter, such case cannot be filed by an party without issuing prior notice to the concerned Zilla Parishad. He further points out that sub-section 2 of section 71 provides that before 30 days of sending the notice no suit can be filed against the Parishad by any person whatsoever in the CHT district. He contends that these 2 sections section 64(1) and section 71(1) are inter related and ought to be read together particularly in addressing an issue in this case presently being dealt with here. To vindicate his assertion he takes me to the exhibit- 5 series of the supplementary affidavit filed by the petitioner. In this context he takes me to the “আদেশ প্রত্র নতুন নামজারি মোকদ্দমা নং ২৩/সদর/২০১১” and points out that this is an order of the concerned ADC Revenue and further points out that from this order it is revealed that before transfer of the land by way of sale the concerned Zila Parishad represented by its chairman had given prior approval to transfer the same and which is on record. He next submits that from this document it is clear that prior to registration of the

deed by way of sale, prior approval of the Zila Parishad was taken as per provisions of section 64 (1) of the Bandarban Zila Parishad Ain, 1989. He next submits that although the impugned deed of sale in this case challenging which the suit was filed was executed between 2 private parties nevertheless the said property which is the subject matter of the deed was transferred by way of sale whatsoever without the prior approval of the Zila Parishad. He agitated that in accordance with section 64(1) of the Ain of 1989 read along with section 71 of the Ain it is obvious that in any dispute arising out of a deed of the type in this case, the Zila Parishad is a proper and necessary party and therefore a notice is to be mandatorily served in accordance with the provisions sub-section 1 of section 71 of the Ain. He argued that in this case however the parties prior to filing of the suit did not comply with the statutory provisions of section 71 sub-section 1 read along section 71 of sub section 2 of the Ain and therefore such a suit is not maintainable since the proper parties were not notified priorly in accordance with the provisions of the Ain. On the contention on failure of the plaintiff in issuing prior notice to the Deputy Commissioner, the learned Advocate for the petitioner urges that the plaintiff also failed to issue notice to the Deputy commissioner given that it is evident from the records and from the customary existing laws of Chittagong Hill Tracts that the Deputy Commissioner is a necessary party upon whom notice must be served before filing of any suit in the Chittagong Hill Tracts. He elaborates this contention upon taking me to Annexure-5 series of the ‘আদেশ পত্র’ by which he shows that it is evident from the documents marked as Annexure- 5 series that the Deputy Commissioner is a necessary party and without issuance of notice to the Deputy Commissioner, the suit is also not maintainable from defect of parties as being barred by law. He next submits that under Rule 20 of the CHT Regulation 1900 the functions of the registering officer shall be performed by the Deputy Commissioner or sub-divisional officer or by such other officer as the local government may appoint for the purpose. Relying upon Rule 20 he urges that it is evident that the function of registration in the CHT region is not conferred upon any sub registrar’s office, rather the office of the Deputy Commissioner is the direct authority to do the same. He stresses that in the Chittagong Hill Tracts region such function being designated to the office of the Deputy Commissioner is distinguishable from the rules in the rest of the country and significantly shows that the Deputy Commissioner is a necessary party in matters of property upon whom a notice must be served before filing of any civil Suit. He takes me to Annexure-D series to an application filed by the plaintiff in this suit and contends that the application arose out of the Mutation Case N. ২৩/সদর/২০১১. He next contends that it is clear from this application that the plaintiff himself filed this application before the Deputy Commissioner through the Assistant Commissioner Land of the Bandarban Shadar Upazila for mutation of the said land. He next takes me to an enquiry report under the signature of the Mouza Headman in the নামজারি মোকদ্দমা নং ২৩/সদর/২০১১. He continues that this report is also addressed to the Deputy Commissioner of the District. He next takes me to the কানুনগো/ সার্ভেয়ারস enquiry report which is addressed to the Assistant Commissioner of Land. Upon drawing attention to these documents produced as Annexures in the supplementary affidavit, he contends that from these documents it is clear that the Deputy Commissioner’s office is directly involved in the transfer of any land in the CHT as per existing laws and customs of the CHT read along with Rule 20 of the CHT Regulations 1900. He assails that therefore it is clear that the suit is not maintainable in the absence of any notice to the concerned authority that is the Deputy Commissioner’s office and the Zila Parishad and therefore the suit suffers from maintainability. In support of his submission that the existing laws and customs of the Chittagong Hill Tracts were not repealed after the amendment of 2003 and also that the existing laws and customs has constitutional support he cites a few decisions of this court and our Apex Court inter alia in the case of Wagachara Tea Estate Vs. Md. Abu Taher reported in 69 DLR (AD) (2017) page-381 and another in the case of Bangladesh Vs Rangamati Food

Products reported in 69 DLR (AD) (2017) page- 432. He persuaded that these Apex Court decisions which are binding upon us categorically holds that in deciding civil suits the customary and existing laws and usages of the Hill Tracts region must be retained. He next submits that the provision of prior notice to statutory authority is also provided for in other existing laws in this country wherefrom analogy may be drawn in the instant case. He submits that section 91 of the Local Government Ordinance (XC of 1976) provide for non maintainability of suit in case of non service of notice to the concerned authority. He continues that section 91 of the Local Government Ordinance (XC of 1976) received interpretation from our Apex Court in the case of District Council Vs Feni Alia Madrasha reported in 69 DLR (AD) (2017) page- 46 wherein our Apex Court held that service of notice as required by section 91 of the Local Government Ordinance (XC of 1976) is mandatory and in the absence of notice the suit could not be instituted and in other words the suit is not maintainable. The learned Advocate for the petitioner draws analogy from this judgment with the case before this court at present and submits that upon comparison therefore it is evident that the other laws of the land also generally contemplate issuance of prior notice to the concerned statutory authorities prior to filing of any suit where the authorities are involved or otherwise concerned. He concludes his submission upon assertion that in this case since no notice under the statutory provisions was served upon the plaintiff and the customs and usages laws of the CHT regin not being complied with therefore the suit is not maintainable in limine and the orders of the courts below are not sustainable whatsoever and is liable to be set aside and the Rule be made absolute for ends of justice.

7. Learned Advocate for the opposite party upon filing a counter affidavit submits that the courts below correctly gave the orders and those need not be interfered with in Revision. Upon elaborating his submissions he however concedes that the existing customary laws and usages of the Chittagong Hill Tracts region were not repealed and or otherwise amended and therefore those must be followed in a suit in an appropriate case arising therein. However regarding the instant case he contends that in the instant case the dispute arises between two private parties wherein one party challenged the validity of the deed being a Bainapatra and therefore the dispute arising out of execution of a deed between two private parties therefore, the statutory authorities whatsoever are not concerned in this matter. He refers to section 64 of the Ordinance of Bandarban Zila Parishad Ain, 1989 and agitates that section 64 of the Ain contemplates the involvement of the Zila Parishad as to the competence of a party in respect of transfer of any property by way of lease, sale deed etc whatsoever to another person in the Chittagong Hill Tracts region. He assails that the Zila Parishad's function is confined only in determining the competence of a person or a party to transfer the property and the competence of the other party to receive such property following such transfer. He also submits that in this case the Zila Parishad is not authorized or involved in the execution of the registered deed whatsoever and therefore no notice need to be served upon the Zila Parishad prior to filing the suit and therefore section 71 of the Ain of 1989 is not applicable in the instant case. He submits that this case is not a case against the Zila Parishad nor does it involve any of the Zila Parishad Officer or employees in any manner and therefore notice need not to be served under section 71 of the Ain. He next submits that the Deputy Commissioner of the Bandarban District is also on board in the suit since he is a defendant in the suit and therefore there are no defect of parties in the suit and the suit is maintainable being in proper form. From the supplementary affidavit filed by the petitioner he shows that the Mutation Case No. ২৩/ক/২০১১ was not acted upon and as such the defendant filed Miscellaneous Case No. 252 (D0-/2012. He submits that the defendant filed the Miscellaneous Case NO. 252 (D0-/2012 and against this miscellaneous case injunction was sought by the plaintiff and the courts below correctly passed the order allowing the

application restraining the respondent No. 32 proceeding with the miscellaneous case and the appellate court correctly modified the order granting status-quo. He also submits that the case of Nur Mohammad Vs Asen Ali and others, reported in 24 BLT (HCD) Page- 371 is applicable in the instant case, since in the 24BLT(HCD) case it was held that the civil court can restrain the parties from proceeding with any case pending before a revenue authority. He submits that in the instant case the Deputy Commissioner and the other officers are acting as revenue officer and therefore the civil courts can restrain the parties from proceeding from any case pending before such revenue authority. He continues that no direct involvement of the Zila Parishad being found in this case relating to the original dispute arising out of execution of the impugned Deed and for the Deputy Commissioner being made a defendant in the suit there has been no violation of any laws under the existing laws of the CHT Regulation and the Ain of 1989 and no customary laws were violated in the instant suit and therefore the orders were correctly given and the Rule bears no merits and may be discharged for ends of justice.

8. Learned Deputy Attorney General Mr. Protiker Chakma assisted the court and made his submission in this case. He submits that Section 64 and Section 71 of the Ain of 1989 contemplates a mandatory notice to the Zila Parishad before filing any suit arising out of any dispute in which the parishad or any of its employee may be involved. He also submits that according to existing customary laws in the Chittagong Hill Tracts region and supported by decisions of this court and of our Apex Court the Deputy Commissioner is the concerned authority and should be notified prior to filing any case in the Chittagong Hill Tracts. In support of his submissions he cited a decision in the case of Satvabarata Chakma Vs Trinovan Chakma reported in 24 BLT (HCD) 2016 page-281.

9. Heard the learned Advocate from both sides and also heard the learned Deputy Attorney General, perused the application, materials on records including the judgment and order of the courts below and also perused the provisions of the CHT Regulation, 1900 and the “বান্দরবন পার্বত্য জেলা পরিষদ আইন, ১৯৮৯”. I have examined Section 64 of the “বান্দরবন পার্বত্য জেলা পরিষদ আইন, ১৯৮৯” read along with section 71 of the Ain which are reproduced here under:

Section 64 (1) (ক) (খ) of the Ain reads:

(1) “আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছু থাকুক না কেন-

(ক) বান্দরবন পার্বত্য জেলার এলাকাধীন বন্দোবস্তযোগ্য খাস জমিসহ যে কোন জায়গা জমি, পরিষদের পূর্বানুমোদন ব্যতিরেকে, ইজারা প্রদান, বন্দোবস্ত, ক্রয়-বিক্রয় বা অন্যবিধভাবে হস্তান্তর করা যাইবে না।

তবে শর্ত থাকে যে, সংরক্ষিত (Reserved) বনাঞ্চল, কাণ্ডাই জলবিদ্যুৎ প্রকল্প এলাকা, বেতবুনিয়া ভূ-উপগ্রহ এলাকা, রাষ্ট্রীয় মালিকানাধীন শিল্পকারখানা ও সরকার বা স্থানীয় কর্তৃপক্ষের নামে রেকর্ডকৃত জমির ক্ষেত্রে এই বিধান প্রযোজ্য হইবে না।

(খ) পরিষদের নিয়ন্ত্রণ ও আওতাধীন কোন প্রকারের জমি, পাহাড় ও বনাঞ্চল পরিষদের সহিত আলোচনা ও উহার সম্মতি ব্যতিরেকে সরকার কর্তৃক অধিগ্রহণ ও হস্তান্তর করা যাইবে না।

Section 71(1) (ক) (খ) of the Ain reads:

৭১। (১) পরিষদের বিরুদ্ধে বা পরিষদ সংক্রান্ত কোন কাজের জন্য উহার কোন সদস্য বা কর্মকর্তা বা কর্মচারীর বিরুদ্ধে কোন মামলা দায়ের করিতে হইলে মামলা দায়ের করিতে ইচ্ছুক ব্যক্তিকে মামলার কারণ এবং বাদীর নাম ও ঠিকানা উল্লেখ করিয়া একটি নোটিশ-

(ক) পরিষদের ক্ষেত্রে, পরিষদের কার্যালয়ে প্রদান করিতে হইবে বা পৌছাইয়া দিতে হইবে;

(খ) অন্যান্য ক্ষেত্রে, সংশ্লিষ্ট সদস্য, কর্মকর্তা বা কর্মচারীর নিকট ব্যক্তিগতভাবে বা তাঁহার অফিস বা বাসস্থানে প্রদান করিতে হইবে বা পৌছাইয়া দিতে হইবে।

10. Upon perusal of the provisions of Section 64 it is clear that prior approval of the concerned Zila Parishad for transfer of property by way of sale or lease is mandatory and no such transfer can be a valid transfer in any property in the Chittagong Hill Tracts region without prior notice under Section 64 of the Ain.

11. The learned advocate for the opposite party contended that the Zila Parishad need not be notified in this case since section 64 of the Ain of the 1989 contemplates that the approval of the Zila Parishad is confined only up to determining and ascertaining the competence of parties to transfer by way of sale or lease whatsoever. Upon perusal of the relevant provisions section 64, I am however inclined to hold that the learned advocate for the opposite party failed to comprehend and appreciate the provisions of section 64 (1). Upon scrutiny I do not find anything in this section which may contemplate or intend that prior approval of the Zila Parishad is necessary 'only' to determine the competence any of party or person to transfer or receive any property by way of sell or lease whatsoever and not in any other matter related to such property.

12. The language of section 64 broadly contemplates that prior approval of the Zilla Parishad is necessary for any transfer of any property by way of lease, settlement purchase, sale whatsoever. For the purpose of addressing the issue before us presently Section 64(1) (ka) must be read together with section 71 of the Ain. Therefore I have simultaneously examined section 71(1) of the Ain which provide that in any suit against the Zila Prashid or in any suit involving the Zila Prashid “পরিষদ সংক্রান্ত” prior notice before filing a suit must be given to the Parishad.

13. To further appreciate the relevant laws e.g the provisions of Section 64 and Section 71 of the Ain of 1989 including Rule 20 of the CHT inter alia the provisions of CHT Regulation of 1900 and to draw an analogy with the facts of the instant case, it is necessary to discuss the documents marked as Annexure 5 series of the supplementary Affidavit filed by the petitioner.

14. From the supplementary affidavit in Annexure-D series filed by the petitioner from the “আদেশ পত্র” dated 14.02.2012 it transpires that prior approval of the Zila Parishad in the instant case for purpose of execution of the deed between the parties was taken in accordance with the Ain and also in accordance with the existing customary laws of the Chittagong Hill Tracts region. Summing up Section 64 read along with Section 71 and from the “আদেশ পত্র” dated 14.02.2012 and from Annexure-5 series in the supplementary filed by the petitioner, I am of the considered view that in accordance with the Ain of 1989 and from the documents on record it is clear that the Zila Parishad is directly involved in this case and therefore notice under Section 71 is to be mandatorily served upon the Parishad.

15. Countering the contention of the petitioner that the Deputy Commissioner was also a necessary party but yet he was not served any notice before filing the suit, the opposite party contends that notice is not mandatory upon the Deputy Commissioner since he is already a party to the suit by way of being a defendant in the suit representing the government. In this context, the learned advocate for the petitioner however contends that it is clear from the records that the Deputy Commissioner was all through involved in the process of transfer of this land in the alleged deed. While addressing this issue he draws this court's attention to Annexure-D series of the supplementary affidavit wherefrom he draws this court's attention to the several documents annexed herein. Upon examination into these documents it is revealed that through out the whole process, from the process of permission to transfer of the said property in the alleged deed the office of the Deputy Commissioner was directly involved from the inception and the approval was accorded by them. He also points out to the কানুনগো surveyor's enquiry report which was submitted to the Deputy Commissioner's office. I have perused all these documents including the আদেশ in the নামজারি মিস কেস নং ২৩/স/২০১১ and I

have also perused the document in the Mutation Case No. 252/(D0)-/2012. Upon perusal of the Mutation Case it transpires that the miscellaneous case was filed before the Deputy Commissioner's office. The laws and regulations of the Chittagong Hill Tracts are different from other regulation or laws. It is evident from the procedures before transfer as in the officials documents placed before me that the customary and existing laws of the Chittagong Hill tracts contemplate direct involvement of the Deputy Commissioner's office at all stages prior to transfer of any land. Furthermore Rule 20 of the Regulation 1900 also provides that the function of a registering officer to register any deed shall be performed by the Deputy Commissioner or sub-divisional office of that district. It is therefore reasonable to hold that the function of registration of the deed also being vested upon the Deputy Commissioner's office therefore any dispute arising out of any property by challenging whatsoever between any person prior to filing such suit a notice to the Deputy Commissioner is absolute mandatory in conformity with the customs, usages and existing laws of the CHT region.

16. The learned Advocate for the petitioner cited a case in the case of District Council Vs Feni Alia Madrasha reported in 69 DLR (AD) (2017) page- 46 including some decisions of this Division where in the same principle is expounded. I have perused the 69 DLR(AD)2017 page 46 judgment which concerned a case under section 91 of the Local Government Ordinance (XC of 1976) and the principle set out in that Apex Court Judgment is reproduced here under:

“Maintainability of suit for non-service of notice –where there are mandatory provision of law to be complied with before filing a suit, such provision must be complied with before institution of the suit. Since the provision of section 91 of the Ordinance was not complied with the suit was not maintainable.”

“Service of notice as required by section 91 of the ordinance was mandatory and i the absence of such notice, the suit could not be instituted, in other words the suit could not be maintained.”

17. I am also of the considered opinion that the principle of *pari materia* may be applied in the instant case before me and an analogy may be drawn to be effect that section 91 of the Local Government Ordinance (XC of 1976) also contemplates mandatory issuance of notice upon the statutory authorities before filing of any suit in accordance with the relevant laws and also taking into consideration the existing customary laws of the Chittagong Hill Tracts which contemplate mandatory service of notice to the concerned authorities prior to filing any suit.

18. It is also necessary to be reminded that laws, regulations relating to the Chittagong Hill Tracts are special statutory enactments and they must be read along with the existing laws and customs of the CHT region and which have not been repealed by any enactment or otherwise by any constitutional amendment. Article 152 of the constitution clearly provides the definition of ‘law’ and ‘existing law’ wherefrom it may be understood that the customary laws and usages of the Chittagong Hill Tracts are all within the ambits of law and violation of any such law, custom, usage etc is also a violation of the provisions of the constitution of Bangladesh. The continuance of the applicability of the customary laws and usages received support in some of our Apex Court Decisions which have been cited by the petitioner *inter alia* in the cases of Wagachara Tea Estate Vs. Md. Abu Taher reported in 69 DLR (AD) (2017) page-381 and another in the case of Bangladesh Vs Rangamati Food Products reported in 69 DLR (AD) (2017) page- 432 Under the facts and circumstances of the cases and from the foregoing discussions made above and from the relevant laws and in the light of

the submissions made by the learned Advocates from both sides and relying upon the decisions cited by the learned Advocates from both sides. I find merits in the Rule.

19. Hence, I find merit in the Rule.

20. In the result, the Rule is made absolute and the judgment and order dated 30.03.2017 passed by the learned Additional District Judge, Bandarban Hill District in Miscellaneous Appeal No. 05 of 2016 is hereby set aside.

21. The order of stay granted earlier by this court is hereby recalled and vacated.

22. Communicate the judgment and order at once.