

9 SCOB [2017] HCD 132**HIGH COURT DIVISION
(Special Original Jurisdiction)**

Writ Petition No. 4912 of 2003

Hossain Ali alias Hassan Ali Matbar and others**Vs.****Bangladesh and others**

Mr. Md. Khairul Alam, Advocate

....For the Petitioner

Mr. Sashanka Shekhar Sarker, DAG with

Mr. Arobinda Kumar Roy, A.A.G and

Mr. Shafiqul Islam Siddique, A.A.G

....For the Respondent No.2

Heard on: The 5th & 13th April, 2015Judgment on: The 30th April, 2015**Present:****Mr. Justice Shamim Hasnain****And****Mr. Justice Mohammad Ullah****State Acquisition and Tenancy Rules, 1955****Rule 31, 42, 42A:****Effect of misquotation or non-mentioning of a particular provision:**

In the instant case, after disposal of the appeal under rule 31 of the Rules, 1955 an application was filed before the Settlement Officer at Dhaka mentioning rule 42A of the Rules, 1955 at the instance of the respondent no. 5 praying for hearing of the four appeal cases or taking a decision afresh as mentioned above. Rule 42A of the Rules, 1955 grants power to the Revenue Officer with the additional designation of the Settlement Officer to hear and dispose of any application filed alleging fraud. In the instant case the application as has been filed by the respondent no. 5 mentioning rule 42A is a misconceived one. The Revenue Officer after disposal of the appeal under rule 31 may at any time before final publication of the record-of-rights initiate a proceeding afresh at the stage he may direct. That power of the Revenue Officer has been given under rule 42 of the Rules, 1955. In the instant case, we hold that the application as has been filed by the respondent no. 5 should not be treated as an application under rule 42A of the Rules, 1955 rather it should be considered as an application under rule 42 thereof. It is to be noted here that misquoting of rule or non-mentioning of a particular section in the concerned application does not preclude the Settlement Officer to act under the applicable provision of the S.A.T. Act and Rules thereof for the purpose of arriving at a correct decision with regard to the final publication of the record-of-rights.

... (Para 17)

Record of Rights:

The record-of-rights neither creates nor destroys title. It is merely a record of physical possession at the time when it is prepared.

... (Para 19)

Jurisdiction of Settlement Officer:

The Settlement Officer appointed with the additional designation of Assistant Settlement Officer may at any time before final publication of the record-of-rights exercise his jurisdiction under rule, 42 of the Rules, 1955.

... (Para 20)

Judgment

Mohammad Ullah, J:

1. This *Rule Nisi* was issued calling upon the respondents to show cause as to why the notices dated 10.04.2003 issued under the signature of the respondent no. 4, Charge Officer and Assistant Settlement Officer (Appeal Officer-in-Charge) for re-hearing of Appeal Case Nos. 62948 to 62951 all of 2002 (as contained in Annexure-I, I-1, I-2, and I-3) in respect of D.P.Khatian No. 1645 should not be declared to have been issued without lawful authority and of no legal effect.

2. The Rule was directed to be heard along with Writ Petition No. 4027 of 2003. Since the record of the aforesaid Rule could not be placed before this Bench at the time of hearing, the Rule issued in the said writ petition will be heard and disposed of subsequently by a separate judgment, if the same has not been disposed of in the meantime.

3. It is stated in the writ petition that 84.09 acres of land under C.S. Plot No. 565 appertaining to C.S. Khatian No. 107 of Mouza Keranigonj at present Tejgaon Industrial Area originally belonged to the respondent no. 5, Bhawal Raj Court of Wards Estate in 16 annas permanent Zamindari rights and accordingly C.S. Khatian was prepared in the name of Bhawal Raj Court of Wards Estate. The petitioners became the owners of 59.36 acres of land out of 84.90 acres by way of settlement from Bhawal Raj Court of Wards Estate in the year 1941 to 1943 corresponding to 1348 B.S. to 1351 B.S. with the permission of the Board of Revenue vide office Memo Nos. 21 of 1347 B.S. and 15 of 1349 B.S. through 6(six) separate Settlement Cases being No. 48(M) of 1349 B.S., S. Case No. 49/T of 1350 B.S., L.S. Case No. 270(M) of 1350 B.S., L.S. Case No. 117/50(M) of 1349 B.S., S. Case No. 215(5)M of 1349 B.S. and L.S. Case No. 37(M) of 1350, Annexure-B, B-1, B-2, B-3, B-4 and B-5.

4. After taking the aforesaid settlement the petitioners had been paying rent to the Bhawal Raj Court of Wards Estate and got rent receipt from the Estate accordingly, Annexure-C series. Since the petitioners sold some portion of the land out of 59.36 acres, the S.A. record was correctly prepared in the names of the petitioners in respect of the land under S.A. Khatian Nos. 508, 511, 512, 554, 648, 655, 663, 666, 675, 695, 703, 680, Annexure-D series. Thereafter, after the acquisition of the land of the Zaminders on cessation of the Zamindari system the rent receiving interest of the Mouza was acquired by the Government under section 3 of the State Acquisition and Tenancy Act, 1950 (hereinafter referred to as "the S.A.T. Act") Accordingly, the petitioners paid rent to the Government up to 1997, Annexure-E series. It has also been stated that the petitioners have been possessing and enjoying 41.24 acres of land through different tenants. During the recent Mahanagar Survey Operation the draft record-of-rights (Tasdik Stage) was prepared in the name of the petitioners in accordance with rule 29 of the State Acquisition and Tenancy Rules, 1955 (hereinafter referred to as "the Rules, 1955"), Annexure- F series. The respondent no. 5, Bhawal Raj Court of Wards Estate filed 4 objection cases being nos. 263 to 266 all of 2000 under rule 30 of the Rules, 1955 for removing the name of the petitioners as appeared against the respective possession in their respective case lands in the draft record-of-rights challenging their tenancy; the Revenue Officer after hearing the parties rejected the objection cases of the respondent no. 5, vide order dated 17.1.2002 Annexure-G.

5. Being aggrieved by the aforesaid rejection order, the respondent no. 5 preferred four appeals being nos. 62948 to 62951 all of 2002 under rule 31 of the Rules, 1955 before the

appellate authority who after hearing the parties rejected the appeals vide judgment and order dated 10.02.2002, Annexure-H. According to the petitioners after delivery of the judgment of the appellate authority, the draft record-of-rights was finally published in the name of the petitioners under section 144(7) of the S.A.T Act read with rules 32 and 33 of the Rules, 1955, Annexure-K to the supplementary affidavit dated 8.4.2015. The respondent no.5, Bhawal Raj Court of Wards Estate made an application mentioning rule 42A of the Rules, 1955 before the Settlement Officer at Dhaka against the aforesaid appellate order for cancellation of the same and for hearing of the appeals as contained in Annexure-1 to the affidavit-in-opposition filed by the respondent no.5. Accordingly, the revenue authority on 10.4.2003 issued four notices under the signature of the respondent no. 4, Charge Officer and Assistant Settlement Officer(Appellate Officer-in-Charge) upon the petitioners for hearing of the aforesaid appeals afresh, fixing the date for hearing on 24.4.2003.

6. This Writ Petition is directed challenging the legality and propriety of the notices of hearing of the appeal cases as issued by the respondent no. 4. At the time of issuance of the Rule this Court vide order dated 20.07.2003 stayed further proceedings of the appeal cases no. 62948 to 62951 all of 2002 then pending before the respondent no. 4 till disposal of the Rule.

7. This Rule is contested by the respondent no. 2, Director Land Records and Survey and respondent no. 5, Bhawal Raj Court of Wards Estate, represented by its Manager through Mr. Sashanka Shekhar Sarker, learned Deputy Attorney General and Mr. Manzill Murshid, learned Advocate respectively who also filed two separate affidavits-in-opposition.

8. Mr. Md. Khairul Alam, learned Advocate appearing on behalf of the petitioners upon placing the relevant provisions of the rules incorporated under Chapter VII of the Rules, 1955 submits that the Appellate Officer has not been given any power whatsoever to re-hear the appeal cases under rule 31 of the Rules, 1955 which had earlier been disposed of on final adjudication pursuant to which City Survey Khatian had been prepared and finally published under section 144(7) of the S.A.T. Act read with rules 32 and 33 of the Rules, 1955, in the names of the petitioners, and as such the impugned notices as issued by the respondent no. 4 Appellate Authority without setting aside the earlier order dated 10.02.2002 was absolutely without jurisdiction. He further argues that pertinency of rule 42 of the Rules, 1955 is limited to a period prior to publication of the final record-of-rights under section 144(7) of the Act. He submits that on the face of the final publication of the record-of-rights in the name of the petitioners, the respondent no. 4 had no jurisdiction to hear the appeal cases except for a challenge of the said decision under section 145A of the Act before the Land Survey Tribunal constituted under S.A.T. Act and as such the respondent no. 5 could not invoke jurisdiction even under rule 42A of the Rules, 1955 for rehearing the decision of the Appellate Authority, afresh. In support of his submissions Mr. Alam, cited the decision in the case of *Bhawal Raj Court of Wards Estate represented by its Manager vs. Rashida Begum and others* reported in 14 MLR(AD) 2009 and *Md. Aftab Ali Sheikh vs. Director of Land Records and Survey and others* reported in 58 DLR 397.

9. On the other hand, Mr. Sashanka Shekhar Sarker, learned Deputy Attorney General appearing on behalf of the respondent no. 2, drawing our attention to Annexure-2, a letter issued under Memo No. 31.03.2692 022.44.001 14-217 dated 27.5.2015 by the Zonal Settlement Officer, Dhaka, submits that the record-of-rights has not yet been finally published and notified in the official Gazette in the names of the petitioners in respect of Khatian No. 1645 in view of the provisions of rules, 32, 33 and 34 of the Rules, 1955 and as

such the Revenue Officer with the additional designation of Settlement Officer can invoke the jurisdiction to initiate a proceeding afresh from such stage as he may direct under rule 42 of the Rules, 1955.

10. Mr. Manzill Murshid, learned Advocate appearing on behalf of the respondent no. 5, Bhawal Raj Court of Wards Estate adopted the submissions of the learned Deputy Attorney General appearing on behalf of the respondent no.2.

11. We have perused the petition and the annexures thereto, the impugned notices and the relevant provisions of law and considered the submissions of the learned Advocates for the respective parties.

12. The question which requires to be determined is whether the respondent no. 4, Charge Officer, Dhaka Settlement is empowered under the provisions of Rules, 1955 to adjudicate the appeal cases which had earlier been heard and disposed of under the provisions of rule 31. It appears that the petitioners got settlement of the land in question from the C.S. recorded tenant i.e. Bhawal Raj Court of Wards Estate under six Settlement cases. Initially they paid rent to the Estate and after enactment of the S.A.T. Act when Zamindery system was abolished and the rent receiving interest vested in the Government under section 3 of the S.A.T. Act vide publication of notification no. 2773 L.R. dated 26.2.1952 and the said notification being published in the Dhaka Gazette on 24.3.1952 whereby it was declared that all rent receiving interest vested in the Government with effect from 14.4.1952, the petitioners paid the rent to the Government Estate up to 1997. During S.A. Survey Operation the name of the petitioners were correctly recorded in the S.A. Khatian, as produced by the petitioner, without any objection from any quarter. But when R.S. record-of-rights had not been prepared and published in the name of the petitioners, they filed Title Suit No. 191 of 2005 for correction of the said record-of-rights and some other ancillary reliefs in the Court of Joint District Judge and Arbitration Court, Dhaka wherein they got decree as prayed for vide judgment and decree dated 12.09.2013. Against the said judgment and decree dated 12.09.2013, defendant of the suit as appellant preferred First Appeal before this Court which is now pending for disposal. The petitioners have been owning and possessing their respective case land as tenants on payment of rates and rent initially to the Bhawal Raj Court of Wards Estate and subsequently to the Government after cessation of the the Zamindery system. During recent Mahanagar Survey Operation, Revenue Authority prepared the draft record-of-rights in respect of the land in question in the names of the petitioners under the provisions of rule 29 of the Rules, 1955. The respondent no. 5 Bhawal Raj Court of Wards Estate thereafter filed the aforesaid objection cases under rule 30 of the Rules, 1955 for removing the names of the petitioners from the draft record-of-rights; the revenue authority after hearing the parties rejected the objection cases of the respondent no. 5. The respondent no. 5 moved the appellate authority under rule 31 of the Rules, 1955 unsuccessfully. The respondent no. 5, Bhawal Raj Court of Wards Estate represented by its Manager filed an application on 10.04.2013 mentioning rule 42A of the Rules, 1955 for hearing the appeal cases afresh. Accordingly, the impugned notices have been issued and served upon the petitioners mentioning section 19(2) of the Act, 1950 read with rule 31 of the Rules, 1955 for taking a decision afresh about the record-of-rights in question.

13. Section 144 of the S.A.T. Act states that the Government may, in any case if it thinks fit, make an order directing that 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 such rules as may be made by the Government in this behalf.

14. Chapter VII of the Rules, 1955 deals with the procedure to be adopted by the Revenue Officer for revision of record-of-rights under section 144 of the S.A.T. Act. According to rule 27, ten stages are involved in preparation of the revision of record-of-rights. Among these stages six to ten concern attestation, publication of draft record, disposal of objections, filing of appeals and disposal thereof and preparation and publication of final record-of-rights. After completion of attestation in accordance with the Rules, 1955 and instructions of the settlement department under rule 28, the Revenue Officer, is required to provide opportunity for raising objections, if any regarding the ownership or possession of land or of any interest in the land; while disposing of the objection, the Revenue Officer shall record the brief decision. Rule 28 sets out the procedure of the work, up to attestation. Rule 29 states that after completion of attestation the Revenue Officer shall publish the draft record-of-rights by placing it for public inspection during a period of not less than one month at such convenient place as he may determine informing the persons concerned about the last date of filing objections under rule 30. Rule 30 prescribes procedure for making or giving objection in respect of draft publication of record-of-rights; whereas rule 31 provides the forum for preferring appeal against the order passed under rule 30. Before passing the final order on such an appeal the contending parties shall be afforded the opportunity to present their part of the case. After disposal of appeal under rule 31, the Revenue Officer shall have to take initiative for final publication of the record-of-rights on obtaining necessary permission from the Government to be issued by general or special order for the purpose of printing of the same in manuscript according to rule 32. Under rule 33 the Revenue Officer shall publish the final record-of-rights within 30(thirty) days from the date of receipt of the general or special order of the Government. Rule 34 provides procedure for issuing certificate stating the facts of such final publication. The Government is empowered by sub-rule (2) of Rule 34 to declare notification in the official Gazette that the record-of- rights has been finally published with regard to an specific area for every village and such notification shall be conclusive proof of such publication. Rule 35 speaks about presumption as to the correctness of the record-of-rights. When a record-of-rights is finally published under rule 33, the publication shall be conclusive evidence that the record has been duly revised under section 144 of the S.A.T. Act. Every entry in a record-of-rights finally published shall be presumed to be correct until it is rebutted on taking evidence before the appropriate civil court.

15. Chapter VIII of the Rules, 1955 deals with the power of the Settlement Officer in revising record-of-rights under section 144 of the S.A.T. Act. In accordance with rule 36, a Revenue Officer appointed with or without additional designation of the Settlement Officer or Assistant Settlement Officer for Revision of a record-of-rights under Chapter XVII of the Act within any district, part of a district or local area, shall have the power to revise the same upon following the procedure as laid down in the Code of Civil Procedure, 1908 for the trial of suit; and to enter upon any land included within the area in respect of which an order under section 144 of the Act has been made to survey, demarcate and prepare a map of the same. Rule 40 empowers the Settlement Officer to initiate proceedings relating to objections under rule 30 and appeals under rule 31 for disposal by any Assistant Settlement Officer subordinate to him. Rule 41 empowers the Settlement Officer to withdraw cases from the file of any Assistant Settlement Officer or Revenue Officer subordinate to him relating to any of the proceedings under Chapter VII and to dispose of the same by himself or by transfer them to any other Assistant Settlement Officer or Revenue Officer subordinate to him for disposal. However, rule 42 provides special power to the Revenue Officer appointed with the additional designation of the Settlement Officer who may at any time before publication of the final record-of-rights direct that any portion of proceedings referred to in rules 28 to 32 in

respect of any district, part of a district or local area shall be cancelled and to take up the proceeding afresh from such stage as he may direct. Pursuant to a complaint or on receipt of an official report the Revenue Officer with the additional designation of Settlement Officer has jurisdiction to correct a fraudulent entry in the record-of-rights upon consulting the relevant records and making other inquiries as he may deem necessary and direct excision of the fraudulent entry as per the provision of rule 42A. However, before such excision the contending parties shall be notified giving opportunities of personal hearing. Under rule 42B the Revenue Officer shall make correction of obvious errors i.e. arithmetical or clerical before final publication of the record-of-rights. Rule 44 empowers the Director of Land Records and Surveys to discharge all the aforesaid functions of a Revenue Officer as empowered under the aforesaid Rules including rules 40 to 42.

16. The provisions of rules 42 and 42A are reproduced below 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.”*

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

17. On a perusal of both the provisions it appears that rule 42 grants special power to the Revenue Officer to cancel any portion of the proceedings referred to in rules 28 to 32 in respect of any district, any part of a district or local area, and direct the proceedings to be taken up afresh from such stage as he may direct. The word “proceedings” as appearing in rule 42 is to be understood considering the context of each case. In the instant case, after disposal of the appeal under rule 31 of the Rules, 1955 an application was filed before the Settlement Officer at Dhaka mentioning rule 42A of the Rules, 1955 at the instance of the respondent no. 5 praying for hearing of the four appeal cases or taking a decision afresh as mentioned above. Rule 42A of the Rules, 1955 grants power to the Revenue Officer with the additional designation of the Settlement Officer to hear and dispose of any application filed alleging fraud. In the instant case the application as has been filed by the respondent no. 5 mentioning rule 42A is a misconceived one. The Revenue Officer after disposal of the appeal under rule 31 may at any time before final publication of the record-of-rights initiate a proceeding afresh at the stage he may direct. That power of the Revenue Officer has been given under rule 42 of the Rules, 1955. In the instant case, we hold that the application as has been filed by the respondent no. 5 should not be treated as an application under rule 42A of the Rules, 1955 rather it should be considered as an application under rule 42 thereof. It is to be noted here that misquoting of rule or non-mentioning of a particular section in the concerned application does not preclude the Settlement Officer to act under the applicable provision of the S.A.T. Act and Rules thereof for the purpose of arriving at a correct decision with regard to the final publication of the record-of-rights.

18. The contention of the learned Advocate for the petitioners to the effect that final publication of the record-of-rights was made in the name of the petitioners under Khatian No. 1645 under section 144(7) of the Act read with rules 31 and 32 of the Rules, 1955 has been controverted by the learned Deputy Attorney General (D.A.G.) Mr. Sashanka Shekhar Sarker. He produced a letter dated 27.4.2015 under the signature of the Zonal Settlement Officer, Dhaka, on behalf of the respondent no. 2 by way of an affidavit-in-reply dated 09.04.2015, which is reproduced below.

“The Government of the People’s Republic of Bangladesh”
Zonal Settlement Office, Dhaka
28, Shahid Tejuddin Ahmed Sarani
Tejgaon, Dhaka-1208.

Memo no-31.8.2692022.44.001.14-217

dt. 27.4.15

Sub: An official report in respect of City Jarip Khatian no-1645 belong to Mouza Tejgaon Industrial Area, J.L.No. 06, Police Station-Tejgaon, District-Dhaka.

Ref: 1. A letter from the office of the Attorney General for Bangladesh under the signature of assistant attorney General Mr. Arobinda Kumar Roy.
2. Instruction of Director General, Department of Land Records and Surveys.

Following the above mentioned letter it is stated that Khatian no-1645 belong to Mouza Tejgaon Industrial Area, J.L. No. 06, Police Station-Tejgaon, district-Dhaka has not yet been finally published and notified by Gazette under section 32, 33 and 34 of the East Bengal Tenancy Rules, 1955 due to pending Civil Suit No. 211/2001 and Writ Petition No. 4912 of 2003.

signed illegible
27.04.15
Zonal Settlement Officer
Dhaka
Phone: 9131573

Mr. Arobinda Kumar Roy
Assistant Attorney General
Office of the Attorney General for Bangladesh

19. On a perusal of the aforesaid letter as produced by the learned D.A.G. before this Court, it appears that in fact no final record-of-rights has been prepared under Khatian No. 1645 in the name of the petitioners having regard to the provisions of rules 32, 33 and 34 of the Rules, 1955. It cannot, therefore, be said that the record-of-rights had been finally published in the name of the petitioners as contended by the learned Advocate for the petitioners. Moreover, from Annexure-2, Gazette Notification dated 12th April, 2009, it appears that final publication of the record-of-rights had been made except D.P. Khatian No. 1645 along with some other Khatians in respect of Mouza Tejgaon Industrial Area. This being so, for the purpose of arriving at a correct decision about the final publication of the record-of-rights we can easily infer that the final publication of the record-of-rights has not been published in the name of the petitioners with regard to the draft Khatian No. 1645

incompliance with rules 32 and 33 of the Rules, 1955. The draft record-of-right shall accordingly not be conclusive evidence of its publication under section 144 of the Act, 1950. We should however refrain from making any observations in respect of title of the property in question inasmuch as the First Appeal is awaiting disposal before this Court on a similar point. Moreover, the record-of-rights neither creates nor destroys title. It is merely a record of physical possession at the time when it is prepared. With regard to the decisions as referred to by the learned Advocate for the petitioners we find the same not applicable in the context of the present facts and circumstances of the case and accordingly the same are not discussed.

20. In view of what has been stated above and considering the relevant provisions of law we are of the view that the Settlement Officer appointed with the additional designation of Assistant Settlement Officer may at any time before final publication of the record-of-rights exercise his jurisdiction under rule, 42 of the Rules, 1955. Having regard to the aforesaid observations and decisions, we find no merit in this Rule.

21. Accordingly, the Rule is discharged, however, there will be no order as to costs.

22. The order of stay granted at the time of issuance of the Rule stands vacated.

23. The Revenue Officer appointed with the additional designation of Settlement Officer may take a decision afresh about the disputed publication of the concerned record-of-rights in view of the provisions of rule 42 of the Rules, 1955.

24. In doing so, the respondent no. 4 is directed to dispose of the matter pending before him in accordance with the relevant provisions of laws within the shortest possible of time preferably within 3 (three) months from the date of receipt of the judgment of this court.