IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO 12043 OF 2015

IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh

AND

IN THE MATTER OF:
Rawshan Ali and others
… Petitioners
-VERSUS-
Judge, Survey Tribunal, Dhaka Metropolitan City, Dhaka and others
… Respondents
Mr. Tajul Islam Miajee, Advocate
… for the Petitioners
Mr. Md. Ahia, Advocate
… for the Respondents
Heard on: 02.02.2017, 01.03.2017, 22.03.2017 & 11.10.2017
Judgment on:18.10.2017

Present:

Ms. Justice Naima Haider
&
Mr. Justice Abu Taher Md. Saifur Rahman

Naima Haider, J:

In this Application under Article 102 of the Constitution, Rule Nisi was issued in the following terms:

> *Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned judgment and decree dated 26.10.2015 (decree signed on 01.11.2015) passed by the learned Judge of the Land Survey Tribunal, Dhaka Metropolitan City in Land Survey Tribunal Case No. 2012 of 2010 (Annexure-B & B-1) should not be declared to have been passed without any lawful authority and is of no legal effect*

and/ or pass such other or further order or orders as to this Court may seem fit and proper.

This writ petition invites us to primarily deal with question of law. The facts, leading to filing of the instant writ petition are summarized very briefly since these are not strictly relevant for disposal of the instant writ.

The relevant facts, in brief, are as follows: the dispute arose in relation to land measuring 0.1744 acres pertaining to C.S. Khatian No. 15307, Plot No. 370 ("the Land"). The petitioners contend that the Land belongs to them. The petitioners provide elaborate details regarding the devolution of the Land in their favour. The record of right of the Land has been prepared in favour of the petitioners. The respondent Nos. 2-8 initiated a proceeding before the Land Survey Tribunal, Dhaka Metropolitan City for correction of the record of right. The Land Survey Tribunal, Dhaka Metropolitan City- respondent No.1 passed judgment and decree in favour of the writ respondent Nos. 2-8. The respondent Nos.2-8 tried to dispossess the petitioners from the Land after obtaining the judgment and decree from the respondent No.1. Being aggrieved, the petitioners moved this Division and obtained the instant Rule.

The petitioners filed a Supplementary Affidavit annexing certain documents, which were not annexed to the writ petition.

Affidavit in Opposition was not filed. However, the respondent Nos. 2-8 filed an application for vacating the interim order passed at the time of issuance of the Rule. The said application is comprehensive and controverts the contentions made in the writ petition. We are thus inclined to treat the said application as an Affidavit in Opposition.

The learned Counsel for the petitioners, taking us through the writ petition, the Supplementary Affidavit and the documents annexed, submits that the respondent No.1, without examining the documents filed by the writ petitioners passed the impugned decree and therefore, the same is liable to be set aside. The learned Counsel further submits that the respondent No.1 did not find that the title of the Land belongs to the respondent Nos. 2-8 and without such findings, passed the impugned judgment and decree. The learned Counsel further submits that the respondent Nos. 2-8 filed a Suit being Other Class Suit No. 126 of 2011 for declaration of the title of the Land; the respondent No.1 ought not to have proceeded with the matter till disposal of the said proceeding and therefore, the impugned judgment and decree is without lawful authority and of no legal effect. The learned Counsel also submits that it was not proper for the respondent No.1 to comment on whether the title deeds were fraudulent and pass the judgment on that basis; the respondent No.1 in doing so committed illegality for which the instant Rule should be made absolute. On these counts, among others, the learned Counsel submits that the Rule should be made absolute.

The learned Counsel for the respondent Nos. 2-8 opposes the Rule. He submits that the Other Class Suit No. 126 of 2011 was not filed seeking declaration of title of the Land. The learned Counsel submits that the judgment and decree, impugned by the petitioners, was passed by a competent Court, after examining the evidence and therefore, this Division should not interfere. On these, among other counts, the learned Counsel submits that the Rule should be discharged.

We have perused the pleadings and the documents annexed therein. We have also heard the submissions of the learned Counsels at length.

The respondent No.1 passed the judgment and decree primarily on the ground that the documents were forged. The relevant part of the impugned judgment is set out below for ease of reference:

> বাদী মূলত বিবাদীদের মৌরশ দিল হাওয়া বিবির নোটারী দলিল মূলে জমি প্রাপ্তির বিষয়টি সন্দেহ চোখে দেখেন। তাদের বক্তব্য মতে, জবাবে উল্লেখিত ১৩/০২/৭৩ ইং তারিখের ১৮ নং নোটারী দলিলটি সম্পূর্ণভাবে জ্বাল ভাবে সৃজন করা হয়েছে। উক্ত দলিলটির মুল কপি (প্রদর্শনী-ঘ) আদালতে দাখিল করা হয়েছে। দলিলটি পর্যালোচনায় দেখা যায়, তাহা ১৯/০৩/৯২ ইং তারিখের নোটারীকৃত হলেও সম্পাদনের তারিখ ১৩/০২/৭৩ ইং তারিখে লেখা রয়েছে। উক্ত দলিলটি লক্ষ্য করলে দেখা যায়, দলিলের ২য় পৃষ্ঠায় ১৩/০২/৭৩ ইং তারিখটি অন্য কালিতে লেখা। দলিলের সমস্ত বর্ণনা একই রকম লেখা হলেও তারিখটি অন্য কালিতে সন্নিবেশ করা হয়েছে। ফলে প্রকৃত পক্ষেই ১৩/০২/৭৩ ইং তারিখে উক্ত দলিলটি সম্পাদন করা হয়েছে কিনা সেই বিষয়ে সন্দেহের অবকাশ রয়েছে। তদুপরি উক্ত দলিলটির প্রথম পাতায় ২য় পৃষ্ঠায় দিল হওয়ার বিবির নামে ক্রয় করার কথা লেখা আছে। কিন্তু ক্রয়ের তারিখ ১৩/০২/৭৩ ইং তারিখ লেখা থাকলেও ৭৩ অংকটি ঘষামাজা দেখা যায়। লক্ষ্য করলে দেখা যায়, ৭ সংখ্যাটি প্রকৃত পক্ষে পূর্বে লিখিত কোন সংখ্যাকে কেটে লেখা হয়েছে। উক্ত বিষয়টি শুধুমাত্র জুলেখা বিবির ১৯৭৩ সালের দান পত্রকে জায়েজ করার জন্য করা হয়। আবার একই দলিলের ৩য় পাতায় সংযোজিত ষ্ট্যাম্পটি ১৯/০৩/৯২ ইং তারিখে কেনা। আরও উল্লেখ্য যে, ১৯৭৩ সালে এদেশে বলপেন আবিষ্কৃত হয়নি অথচ উক্ত দানপত্র দলিলের সমস্ত বর্ণনা ১৯৭৩ সালে উল্লেখ পূর্বক বলপেন লেখা হয়েছে। প্রকৃত পক্ষে ১৯৭৩ সালের বহু পরে উক্ত দলিলটি জ্বাল ভাবে সৃজিত হওয়ার জন্য এমন ঘষামাজা করা হয়েছে। দিল হাওয়া বিবি বরাবর চাঁন মিয়া কর্তৃক ১৩/০২/৮৩ ইং তারিখের দানপত্র দলিলটিও একই ভাবে সৃজিত মর্মে দেখা যায়। কেননা দলিলের প্রথম পাতায় ২য় পৃষ্ঠায় সালের সংখ্যাটি ঘষামাজা করা। মজার ব্যাপার হল একটি দলিল ১৯৮৩ সালে এবং অন্য দলিলটি ১৯৭৩ সালে সম্পাদিত মর্মে দেখা যায়। অথচ কাকতালীয়ভাবে দুই দলিলের প্রথম দুই ষ্ট্যাম্পে Serial নম্বর যথাক্রমে ১২৭১ ও ১২৭২ । ১০ বছর পূর্বের ষ্ট্যাম্পে Serial নম্বর মিল থাকা কাকতালীয় নয় এবং ইচ্ছাকৃত এবং পরিকল্পিত ভাবে করা হয়। আদালতের পর্যবেক্ষণ মতে দুইটি ষ্ট্যাম্পে একই তারিখে কেনা এবং পরবর্তীতে ঘষামাজা করে নতুন তারিখ বসানো হয়েছে। বিবাদীদের নামে সিটি জরিপ খতিয়ানটি মূলত দিল হাওয়া বিবির নালিশী সম্পত্তিতে কোন স্বত্ব বা স্বার্থ অর্জিত না হওয়ায় তার ওয়ারিশদের নামে তথা বিবাদীদের নামে সিটি জরিপ খতিয়ান হওয়া বাঞ্ছনীয় নয়।

The respondent No.1 did not merely state that there was forgery. The respondent No.1 gave elaborate explanation for the conclusion. It was very well reasoned. The issue raised by the learned Counsel for the petitioners is that the respondent No.1 is not empowered to review the deeds. The question is whether the learned Counsel is correct.

Under State Acquisition and Tenancy Act 1950 ("the SAT Act"), the Land Survey Tribunals have been empowered to deal with very specific issues/cases. Section 145A (4) of the SAT Act provides:

> *No suit other than the suits arising out of the final publication of the last revised record of rights prepared under section 144 shall lie in the Land Survey Tribunal.*

Land Survey Tribunals have curtailed the powers of civil Courts. This is because of Section 145A(5) of the SAT Act which provides: *"If any suit arising out of the final publication of the last revised record-of-rights prepared under section 144 is instituted in any civil court before the establishment of the Land Survey Tribunal under this section, such suit shall stand transferred to the Tribunal as soon as it is established."*

Therefore, from the reading of Sections 145A(4) and 145A(5) of the SAT Act, it is clear that Land Survey Tribunals are special Courts entrusted to deal with very specific issues/cases.

Section 145D of the SAT Act sets out the powers that can be exercised by Land Survey Tribunal. Under Section 145D of the SAT Act, the Land Survey Tribunal shall exercise the powers and procedure under the Code of Civil Procedure, 1908. A Land Survey Tribunal, therefore, can exercise extensive powers in determining the issue(s) before it.

After adjudication, the Land Survey Tribunal can, under Section 145A(8) of the SAT Act *"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 other order as may be necessary"* (emphasis added by us)

Now, for the Land Survey Tribunal to declare any particular record of right to be incorrect, it must be satisfied that the person initiating the proceeding for correction of the record-of-right has a right to the land in question. If the person initiating the proceeding has a right to the land, then the person in whose favour the land was recorded, does not have a right to the land. If Land Survey Tribunal does not have the power to review the title deeds, just the way a competent Civil Court does in a suit for declaration of title, then Land Survey Tribunal cannot hold that a particular record of right is incorrect and direct the concerned authorities to correct the record of rights. To hold otherwise would be to negative the powers conferred by the SAT Act. Therefore, we are unable to agree with the submission of the learned Counsel for the petitioner that the respondent No.1 lacks jurisdiction to comment/conclude that deeds were fraudulent.

We have perused the impugned judgment passed by the respondent No.1 in Land Survey Tribunal Case No. 2012 of 2010. We have noted that the respondent No.1 in passing the judgment took account of the depositions, the documents exhibited and the pleadings filed by the parties. Therefore, do not agree with the submission of the learned Counsel for the petitioners that the respondent No.1 passed the judgment without considering the documents filed.

The learned Counsel for the petitioners points out that the respondent No.1 passed the impugned judgment without *"properly examining the S.A and R.S. Khatian and the Kabala Deeds"*. The allegation is completely vague. The learned Counsel for the petitioners could not clarify what is actually meant by "properly examining".

The learned Counsel for the petitioners submits that the petitioners filed the instant writ petition because there is no forum to file appeal against the impugned judgment. That being the position, this Division should, in dealing with writ petitions arising from the judgments passed by Land Survey Tribunal, act as appellate Court. According to the learned Counsel, this Division should examine all the documents/records afresh. We beg to disagree with the learned Counsel.

This Division is adjudicating over the instant matter in exercise of powers under Article 102 of the Constitution. This Division is not adjudicating the matter under any statutory power. While exercising the powers under Article 102 of the Constitution, High Court Division has certain restrictions/limitations. For instance, High Court Division cannot adjudicate factual disputes. However, when this Division exercises appellate power conferred by a statute, this Division presides as an appellate Court and in such cases, this Division is required to review all factual issues, disputed or otherwise. For instance, when this Division hears Customs Appeals under the Customs Act 1969, this Division can call for the records to review the authenticity of documents. However, when this Division hears writ petitions arising out of Customs Act 1969, this Division cannot exercise such powers. If the High Court Division is to act as an appellate Court, the statue must expressly provide; this is because appeals are statutory rights. In the instant case, the matter before this Division is not in the form of appeal. The SAT Act does not contain any provision which empowers the High Court Division to act as an appellate Court. The matter before this Division is in the form of writ petition. That being the position, we are of the view that in exercising the powers under Article 102

of the Constitution, this Division cannot automatically become an appellate Court and exercise all powers that can be exercised by an appellate Court. This Division must adjudicate the matter under Article 102 of the Constitution and the adjudication process is subject to certain limitations. This Division, in writ petitions arising from the judgments passed by the Land Survey Tribunal, cannot deal with disputed questions of facts; this Division will adjudicate the matter to understand whether there has been any violation of law or whether there is an error on the face of the record.

Having gone through the pleadings, documents annexed and after hearing the submissions of the learned Counsels at length, this Division is of the view that there are disputed questions of facts in the instant writ petition. Furthermore, there was finding of forgery by a competent Court. Such finding was certainly adverse to the petitioners' position. This Division also takes the view that the judgment passed, impugned by the petitioners, was not legally erroneous. Accordingly, this Division takes the view that there is no merit in the Rule.

The Rule is thus discharged, without any order as to costs.

Communicate the Judgment and Order at once for immediate compliance.

Abu Taher Md. Saifur Rahman, J:

I agree.