

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

REVIEW PETITION NO. 97 OF 2017

(arising out of Writ Petition No. 9496 of 2014)

IN THE MATTER OF:

An application for review of the judgment and order dated 10.09.2015 passed by this Hon'ble Court in Writ Petition No. 9496 of 2014.

-AND-

IN THE MATTER OF:

S.M. Kuddus Zaman and others.

... **Petitioners**

(Writ-Respondents No. 6-24)

-Versus-

Md. Nurul Islam and others.

... **Respondents**

(Writ Petitioner & other Writ Respondents)

Mr. Probir Neogi, Senior Advocate, with

Mr. Suvra Chakravorty,

Mr. Manzur-al-Matin,

Mr. Tapos Bandhu Das,

Mr. Md. Sumon Ali, Advocates

... for the Petitioners

Mr. Amit Talukdar, D.A.G

... for Respondents No. 2-6

Heard on: 31.10.2019

Judgment on: 11.11.2019

Present:

Ms. Justice Naima Haider

And

Mr. Justice Khizir Ahmed Choudhury

Naima Haider, J:

This Review Petition filed by the writ-respondents No. 6-24 arises out of the judgment and order dated 10.09.2015 passed by this Court in Writ Petition No. 9496 of 2014. On the said application, a Rule Nisi was issued calling upon the respondents to show cause as to why the judgment and order dated 10.09.2015 passed in Writ Petition No. 9496 of 2014 should not be reviewed, and/or pass such other and further order or orders as to this Court may seem fit and proper.

The facts of the writ petition leading to this application for review have been set out at length in the judgement and order dated 10.09.2015 passed in Writ Petition No. 9496 of 2014 and need not be repeated here. However, in order to appreciate, the prelude of the said judgment may be usefully quoted:

"The petitioner in this writ petition has impugned the judgment and decree dated 30.04.2013 (Decree signed on 06.05.2013) passed by the respondent No. 2, learned Judge of the Arpito Sompotti Prottarpon Tribunal, Rajbari, in Arpito Sompotti Prottarpon Case No. 501 of 2013, releasing the scheduled land from the list of Vested Property in favor of the Respondent Nos. 6 to 24. The petitioner has further sought for a direction upon the respondents not to take any steps for leasing out the same to others.

Admittedly, the scheduled lands measuring an area of 2.24 acres originally belonged to one Shudharani Das who left the country on 06.09.1965 during the India-Pakistan war and accordingly, the land vested to the Government in VP case Nos. 11/83, 14/83, 19/83, 20/83, 30/83, 32/83, 35/83, 36/83, 37/83, 25/83, 08/86, 249/72-73."

Ultimately, the Rule was discharged and the earlier order of stay and injunction granted at the time of issuance of the Rule was vacated.

Mr. Probir Neogi, learned Senior Advocate appearing on behalf of the review petitioners (writ respondents No. 6-24) submits that after obtaining a certified copy of the said judgment dated 10.09.2015, it was noticed by the learned Advocate for the present petitioners that it has been stated in the judgment: "*Mr. Probir Neogi for the respondent Nos. 2-26*

submits that the property in question belongs to the Government and the petitioner is a lessee. The lands in question were vested to the Government and Khatians were prepared in the name of the Government. Mr. Neogi lastly submits that the Government leased out the properties in question to the petitioner."

He next submits that the above quoted portion of the judgment in Writ Petition No. 9496 of 2014 is an error apparent on the face of record and as such the impugned judgment needs to be reviewed by expunging the above mentioned portion quoted herein before.

He further submits that the writ petition in question was in the nature of certiorari challenging the judgment and decree passed by an inferior tribunal and Rule issued in the said writ petition having been discharged, the natural and lawful consequence would be that the judgment and decree challenged in the writ petition are upheld by this Hon'ble Court, which has not been expressly mentioned in the impugned judgment, and as such, Mr. Neogi submits, that the impugned judgment dated 10.09.2015 needs to be reviewed by this Court by expunging the portion:

"Admittedly, the scheduled lands measuring an area of 2.24 acres originally belonged to one Shudharani Das who left the country on 06.09.1965 during the India-Pakistan war and accordingly, the land vested to the Government in VP case Nos. 11/83, 14/83, 19/83, 20/83, 30/83, 32/83, 35/83, 36/83, 37/83, 25/83, 08/86, 249/72-73.

It is vital to put on record that the Government leased out the property in question to different persons including the petitioners."

No affidavit-in-opposition has been filed by the respondents controverting the statements and submissions made in the review petition.

We have heard the learned Advocates for the respective parties and perused the review petition along with the judgment sought to be reviewed and the writ petition in question with all its annexures.

It is settled that a proceeding which deals with a right of a civil nature does not cease to be so merely because the right is sought to be enforced by having recourse to the writ jurisdiction (*Hussain Baksh v. Settlement Commissioner*, 21 DLR (SC) 456, 459). Review of a judgment in a writ proceeding which deals with rights of civil nature may be made on grounds mentioned in Order 47, Rule 1 of the Code of Civil Procedure which contemplates review under specific conditions:

- (i) on discovery of new and important matter of evidence which was not known to or could not be produced before,
- (ii) on account of some mistake or error apparent on the face of the record, or
- (iii) any other sufficient reason.

This court sitting in writ jurisdiction is under a duty to examine the entire relevant evidence on record and if it refuses to consider important evidence having direct bearing on the disputed issue and the error which arises is of a magnitude that it gives birth to a substantial question of law and facts, the High Court Division is fully authorized to set aside the finding, and on this score alone, we are of the view that this review petition is maintainable.

The Supreme Court of Pakistan in the case of *Mohd. Amin Khan v. Controller of Estate Duty* reported in **PLD 1962 SC 335** had considered the scope and extent of the power of review under Article 161 of the Constitution of 1956 and Kaikus, J made some observations therein: "....
.... *the principles on which this court would act in the exercise of such jurisdiction. It is not because a conclusion is wrong but because something obvious has been overlooked, some important aspect of the matter has not been considered, that a review petition will lie. It is a remedy to be used only in exceptional circumstances.*"

The Appellate Division in the case of *Serajuddin Ahmed v. Saiful Alam*, **56 DLR (AD) 41, 48** held, in writ jurisdiction the High Court Division is very much competent to entertain an application for review and revise its judgment if a case for review is made out.

A recapitulation of sequence of events is necessary before we dispose of the review petition.

It was brought to the notice of this Court that the submissions of Mr. Probir Neogi as noted in the body of the judgment is error apparent on the face of record. It has been stated in judgment that:

"Mr. Probir Neogi for the respondent Nos. 2-26 submits that the property in question belongs to the Government and the petitioner is a lessee. The lands in question were vested to the Government and Khatians were prepared in the name of the Government. Mr. Neogi lastly submits that the Government leased out the properties in question to the petitioner."

The above quoted portion of the judgment is an error apparent on the face of record inasmuch as the Respondents No. 2, 3, 4 and 5 are Arpito Sampatti Pratyarpan Tribunal, Rajbari, Deputy Commissioner, Rajbari, Additional Deputy Commissioner (Revenue), Rajbari and Assistant Commissioner (Land), Rajbari respectively, whom obviously Mr. Probir Neogi could not and did not represent. On the other hand, it is on record that Power was filed on behalf of writ respondents No. 6-24 for whom Mr. Probir Neogi appeared along with other learned Advocates. We have also observed that according to the statements made in the writ petition and Annexures-B, E, E1 and H, case of writ respondents No. 6-24 is in Annexure-B i.e. application before Arpito Sampatti Pratyarpan Tribunal, Rajbari, which has been allowed by the Arpito Sampatti Pratyarpan Tribunal, Rajbari by the judgment and decree dated 30.04.2013 (Annexure-E and E1) and in that view of the matter the submissions of Mr. Probir Neogi as noted in the body of the judgment are error apparent on the face of record and as such the impugned judgment needs to be reviewed by expunging the abovementioned portion quoted in paragraph No. 12 of the review petition.

Similarly, for the same reason, the portion of the judgment as quoted in paragraph 14 of the review petition is an error apparent on the face of the record and required to be expunged inasmuch as the property in question is not *admittedly* vested property, since writ respondents No. 6-24 succeeded in Arpito Sampatti Pratyarpan Tribunal, Rajbari against which the Government did not prefer any appeal. Moreover, in the writ petition we held that writ petitioner's lease was extended up to 1421 B.S. and as a mere

erstwhile lessee, the writ petitioner cannot claim right, title and interest in the property in question.

Taking the facts in its entirety, we are of the view that the review petition merits to be allowed.

In the result, the Rule issued on the review petition is made absolute and the review petition is allowed.

The judgment and decree dated 30.04.2013 passed by the respondent No.2, the learned Judge of the Arpito Sampatti Pratyarpan Tribunal, Rajbari in Arpito Sampatti Pratyarpan Case No. 501 of 2013 is upheld. The judgment and order dated 10.09.2015 passed by this Court in Writ Petition No. 9496 of 2014 is hereby reviewed and modified by expunging the aforesaid portion of the judgment quoted in paragraphs No. 12 and 14 of this review petition.

The Office is directed to expunge the aforesaid portion of the judgment dated 10.09.2015 passed in Writ Petition No. 9496 of 2014 as quoted in paragraph Nos. 12 and 14 of this review petition from the said judgment dated 10.09.2015 passed in Writ Petition No. 9496 of 2014 at once.

Communicate the fresh judgment and order.

No order as to cost.

Khizir Ahmed Choudhury, J:

I agree.