

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

**Present:**

Ms. Justice Naima Haider  
And  
Ms. Justice Kazi Zinat Hoque

**Writ Petition No. 5098 of 2019**

**In the matter of :**

An application under Article 102 (a)(I)(II) of the  
Constitution of the People's Republic of Bangladesh.

-And-

**In the matter of :**

Murad Andaleeb Mannan

..... Petitioner

**-VERSUS-**

The Chairman, Land Appeal Full Board, 2<sup>nd</sup> 12<sup>th</sup>  
Storied Government Building (8<sup>th</sup> Floor),  
Segunbagicha, Ramna, Dhaka and others

..... Respondents

Mr. Chowdhury Mokimuddin KJ Ali with  
Mr. Syfuzzaman, Advocates

..... For the Petitioner

Mr. Amit Das Gupta, Deputy Attorney General

.... For the respondents

**Date of Hearing : 19.03.2024 and 21.04.2024.**

**Date of Judgment: 24.04.2024**

**Kazi Zinat Hoque, J :**

In this application under Article 102(a)(I)(II) of the  
Constitution, a Rule Nisi has been issued calling upon the  
respondents to show cause as to why the order dated  
17.06.2013 passed by the Land Appeal Full Board in Case  
No.3-74/2013 (Full Board) Gazipur, rejecting the review

application in limine affirming the judgment and order passed by the Member-1 of Land Appeal Board in Case No.3-8/2013 (Mutation) Appeal, Gazipur dismissing the appeal affirming the order dated 07.10.2011 passed by the Additional Divisional Commissioner (Revenue), Dhaka Division in Miscellaneous Appeal No.98 of 2010 allowing the appeal of the respondent Nos. 6-11 by reversing the judgment and order dated 03.05.2010 passed by the Additional Deputy Commissioner (Revenue), Gazipur in Miscellaneous Appeal No.22 of 2009 setting aside the judgment and order dated 12.11.2007 passed by the Assistant Commissioner (Land), Gazipur in Miscellaneous Case No.124 of 2007 cancelling his previous order of Mutation dated 11.04.1993 given in Mutation Case No.4701/92-93 in favour of the petitioner should not be declared to have been passed without 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.

The relevant facts of the Rule are that the land under District-Gazipur, P.S.-Joydebpur, Mouza-Araisoproshad, C.S. Khatian No. 254, C.S. Plot No. 276, measuring 56 decimals, along with three other plots totaling 3.70 acres, was owned by Nosor Karikor alias Nosor Mollik. In the subsequent S.A. record, the land was recorded in S.A. Khatian No. 454 for an

area of 56 decimals from Plot No. 276 and 44 decimals from Plot No. 236, totaling 100 decimals. In the R.S. record, the 56 decimals from C.S. and S.A. Plot No. 276 were recorded as R.S. Plot No. 618, and the 44 decimals from C.S. and S.A. Plot No. 236 were recorded as R.S. Plot No. 495 in filed jorip Khatian No. 357, in the name of Nosor Mollik for a 9 Annas share. Nosor Karikor alias Nosor Mollik, being the owner, possessed 56 decimals from C.S. and S.A. Plot No. 276 and R.S. Plot No. 618. He died leaving behind two sons, Abdul Hamid and Joinuddin. Subsequently, Abdul Hamid and Joinuddin transferred the land via sale deed No. 8695, executed on 19.10.1968 and registered on 24.10.1968, in favor of Momir Uddin. Momir Uddin mutated his name via Mutation Case No. 46/69-70 dated 23.07.1969 and paid rent in his name. The Khatian was then finally published as R.S. Khatian No. 102 for an area of 56.25 decimals in the name of Nosor Karikor alias Nosor Mollik.

While Momir Uddin was possessing the land, he transferred it to the petitioner vide sale deed No. 6171, executed on 18.07.1983 and registered on 25.07.1983, for an area of 19 decimals, vide sale deed No. 6232, executed on 25.07.1983 and registered on 26.07.1983, for another 19 decimals, and further transferred 18 decimals via sale deed No.

6500, executed and registered on 02.08.1983 in the Sub-Registry Office, Joydebpur, Gazipur. The petitioner, owning and possessing the land, fenced it with barbed wire, planted trees, and cultivated seasonal crops, with the knowledge of all local residents. The petitioner mutated his name via Mutation Case No. 4701/92-93 dated 11.04.1993 and paid rent under Jote No. 838. The petitioner tried to collect a certified copy of Mutation Case No. 46/69-70 dated 23.07.1969, but the Assistant Commissioner (Land) certified that due to office relocations, the record could not be traced.

The petitioner, being the owner, took a loan from Agrani Bank for his garments business, M/s. Udayan Garments Industries, using the property as collateral via Mortgage Deed No. 3067 dated 18.04.1993, followed by Power of Attorney No. 3068 dated 18.04.1993. The loan was later adjusted, and Agrani Bank redeemed the mortgage via Deed of Reconveyance No. 23560 dated 22.11.2004, followed by Deed of Cancellation of Power of Attorney No. 23559 dated 22.11.2004. Respondent Nos. 6-11 filed an application before the Additional Deputy Commissioner, Revenue, Gazipur, to cancel the petitioner's mutation under Mutation Case No. 4701/92-93, claiming 19 decimals out of the 56 decimals. The Additional Deputy Commissioner, Revenue, Gazipur,

forwarded the case to the Assistant Commissioner (Land), Gazipur Sadar, who started Miscellaneous Case No. 124 of 2007. The respondents claimed ownership of 19 decimals out of 56 decimals from S.A. Plot No. 618, arguing that the original owner was Nosor Fakir, son of Jigir Mollik, and that Momir Uddin's name was not recorded in the R.S. Khatian.

Without serving notice to the petitioner, the Assistant Commissioner (Land), Gazipur, allowed the Miscellaneous Case and canceled the petitioner's mutation on 12.11.2007. The petitioner, upon learning of this, filed Miscellaneous Appeal No. 22 of 2009 before the Additional Deputy Commissioner (Revenue), Gazipur, who allowed the appeal on 03.05.2010, setting aside the order of the Assistant Commissioner (Land). The respondents then filed Miscellaneous Appeal No. 98 of 2010 before the Additional Divisional Commissioner (Revenue), Dhaka Division, who allowed the appeal on 17.10.2011, setting aside the Additional Deputy Commissioner's order.

The petitioner, a businessman with ventures in Bangladesh and Thailand, was not informed about the judgment by his representative or Advocate. The petitioner's parents had also died, preventing him from monitoring the progress of the case. Upon returning to Bangladesh, the

petitioner filed Misc. Appeal No. 3-08 of 2013 before the Land Appeal Board, Dhaka, on 09.01.2013. The appeal was summarily rejected on 30.04.2013 by Member-1, Land Appeal Board, Dhaka, on grounds of limitation without considering the merits of the appeal or the application under Section 5 of the Limitation Act. The petitioner then filed Full Board Case No. 3-74/2013 (Mutation) Full Board, Gazipur, which was also rejected on 17.06.2013 by the Land Appeal Board (Full Board) on the grounds of limitation.

Being aggrieved by the judgment and order of the Land Appeal Board, the petitioner filed this writ petition.

Mr. Chowdhury Mokimuddin KJ Ali with Mr. Syfuzzaman, learned Advocates representing the petitioner, argued that the petitioner purchased the case property, mutated his name and has been possessing the suit land with the knowledge of the respondents and all other people of the locality. Respondent Nos. 6-11 after lapse of 15 years filed application for cancellation of the petitioner's mutation. Without taking these into consideration the Member of the Land Appeal Board and Full Board of the Land Appeal Board rejected the petitioner's appeal on the ground of limitation in violation of section 151 of the State Acquisition and Tenancy Act, 1950.

Mr. Amit Das Gupta, learned Deputy Attorney General, representing the respondents opposed the Rule.

Section 151 of the State Acquisition and Tenancy Act 1950 deals with computation of the period of limitation for appeals, applications for revision and review under the Act. The aforesaid section is reproduced below :

**“151. Computation of the period of limitation for appeals, applications for revision and review under this Act-**(1) Sections 6, 7, 8 and 9 and sub-section (2) of section 29 of the Limitation Act, 1908; shall not and, subject to the provisions of Part V of this Act, the remaining provisions of the former Act shall, so far as applicable, apply to all suits, appeals and applications arising under the said Part.

(2) All suits, appeals and applications referred to in Part V shall be instituted and made within the time prescribed therefore; and every such suit instituted, appeal preferred, and application made, after the prescribed period of limitation shall be dismissed, although limitation has not been pleaded.”

As per Section 151 of the State Acquisition and Tenancy Act, 1950 section 5 of the Limitation Act is applicable in all the proceedings under the State Acquisition and Tenancy Act,

1950 and as such the Member-1, Land Appeal Board ought to have considered the application for condonation of delay filed by the petitioner and on condoning delay hear the appeal on merit.

A thorough examination of the order passed by Member-1 of the Land Appeal Board reveals that the appeal was rejected solely on the grounds of limitation. This decision did not take into account the merits of the case or the petitioner's application for condonation of delay. Order of dismissal passed by the Member of the Land Appeal Board on the ground of limitation alone suggests a rigid and narrow interpretation of the law, neglecting the discretionary power provided under Section 5 of the Limitation Act to condone delays where justified.

Furthermore, the Full Board of the Land Appeal Board, when affirming the judgment of Member-1, also failed to consider the legal nuances involved. They based their affirmation on a misconception of the law, particularly the applicability of Section 5 of the Limitation Act as integrated by Section 151 of the State Acquisition and Tenancy Act. The Full Board did not appropriately evaluate whether the delay could have been condoned, thus potentially denying the



petitioner the opportunity for a fair hearing on the substantive issues of the appeal.

In the facts and circumstances stated above we find merit in the Rule.

In the result, the Rule is made absolute. Order dated 17.06.2013 of the Land Appeal Full Board in Case No.3-74/2013 (Full Board) Gazipur, rejecting the review application in limine affirming the judgment and order passed by the Member-1 of Land Appeal Board in Case No.3-8/2013 (Mutation) Appeal, Gazipur dismissing the appeal affirming the order dated 07.10.2011 passed by the Additional Divisional Commissioner (Revenue), Dhaka Division in Miscellaneous Appeal No.98 of 2010 allowing the appeal of the respondent Nos. 6-11 by reversing the judgment and order dated 03.05.2010 passed by the Additional Deputy Commissioner (Revenue), Gazipur in Miscellaneous Appeal No.22 of 2009 setting aside the judgment and order dated 12.11.2007 passed by the Assistant Commissioner (Land), Gazipur in Miscellaneous Case No.124 of 2007 cancelling his previous order of Mutation dated 11.04.1993 given in Mutation Case No.4701/92-93 in favour of the petitioner is declared to have been passed without lawful authority and is of no legal effect.

The interim order of status-quo is hereby recalled and vacated.

There is no order as to cost.

Communicate a copy of this judgment to the concerned respondents at once.

(Kazi Zinat Hoque, J):

I agree

(Naima Haider, J):