

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

WRIT PETITION NO. 5693 OF 2019

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Md. Delwar Hossain Hawlader and
others

.....Petitioners

-Versus-

Land Survey Tribunal, Barishal and
others

..... Respondents

Mr. Hasinur Rahman, Advocate

....for the petitioners

None appears

....for the respondents

Heard on: 12.01.2023

Judgment on: 27.08.2023

Present

Mr. Justice Abu Taher Md. Saifur Rahman

And

Mr. Justice A. K. M Rabiul Hassan

A. K. M. Rabiul Hassan, J:

This Rule was issued on an application filed by the petitioners under Article 102 of the constitution, calling upon the respondents to show cause as to why the order dated 11.03.2019 passed by the Land Survey Tribunal, in Barishal in Land Survey Tribunal Case No.780 of 2018 rejecting the application filed by the petitioners under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure praying for an injunction

(Annexure – C to the writ petition) should not be declared illegal and without any lawful authority and/or such other or further order or orders as to this court may seem fit and proper.

At the time of issuance of the Rule, this court was pleased to stay the operation of the aforesaid impugned order dated 11.03.2019 for 3 (three) months from the date along with direction upon the parties to maintain status-quo in respect of possession and position of the suit land in question for 3 (three) months from date, which has lastly extended on 07.11.2021 for a period of 6 (six) months.

For disposal of this Rule, the relevant facts may briefly be stated as follows:

In this writ petition, it has been stated that the petitioners as plaintiffs filed a Land Survey Tribunal Case No.780 of 2010 for correction of the B.R.S records which were wrongly recorded in the name of the defendant-respondent Nos. 7 to 34. During the pending of the aforesaid suit, the petitioners filed an application under Order 39 rule 1 and 2 of the Code of Civil Procedure for granting a temporary injunction against the said defendants-respondents for not to dispossess the petitioners or change the nature and character of the suit land, which was rejected by the impugned order dated 11.03.2019. Being aggrieved the petitioners have preferred this application before this Court and obtained the Rule, stay, and the order of status quo over the suit land.

Mr. Hasinur Rahman, the learned Advocate for the petitioners submits that the petitioners are the owners of the suit land by way of inheritance as well as purchase, which was wrongly recorded in the names of the defendants – respondents under the BRS Khatian. Due to the aforesaid record, the defendants - respondents are trying to dispossess the plaintiffs-

petitioners from the suit land. But the learned tribunal has failed to appreciate the aforesaid material facts and thereby committed an error of law which is liable to be set aside.

None appears on behalf of the respondents to oppose the Rule.

Heard the submissions of the learned Advocate for the petitioners and perused the instant writ petition along with the impugned order thoroughly.

On perusal of the instant writ petition, it transpires that the impugned order is an appealable order before the Land Survey Appellate Tribunal. We have further noticed that by this time, the Government has already formed the Land Survey Appellate Tribunal in the respective districts vide Gazette Notification dated 11.07.2023 and, as such, the instant Rule has become infructuous.

However, under the given facts and circumstances of the case, the petitioners are at liberty to file an appeal against the impugned order before the concerned Land Survey Appellate Tribunal.

Accordingly, the petitioners are at liberty to file an appeal against the impugned order before the concerned Land Survey Appellate Tribunal if any within the period of 03 (three) months from the date of receiving a copy of this order. In preferring such appeal if any delay has occurred that may be condoned for the ends of justice. The order of status quo granted earlier by this court shall be continued till to filing of the appeal.

With the aforesaid observation and direction, the Rule is discharged.

Communicate the judgment and order at once.

Abu Taher Md. Saifur Rahman, J:

I agree.