

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

**WRIT PETITION NO. 477 OF 2021**

**IN THE MATTER OF:**

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

And

**IN THE MATTER OF:**

***K.M. Golam Maula***

.... Petitioner

-Vs-

***The Government of People's Republic of  
Bangladesh and others***

.... Respondents

Ms. Asma Akhter, Advocate

..... For the Petitioner

Mr. Ruhul Ameen, Advocate

..... For the respondents No. 4

**Heard on: 07.02.2024**

**Judgment on: 12.02.2024.**

**Present:**

Mr. Justice Md. Iqbal Kabir

and

Mr. Justice S.M. Maniruzzaman

**S.M. Maniruzzaman, J:**

In this *Rule Nisi*, issued under Article 102 of the Constitution of the People's Republic of Bangladesh, the respondents have been called upon to show cause as to why order No. 61 dated 28.10.2020 passed by the Artha Rin Adalat No. 2, Dhaka in Miscellaneous Case No. 48 of 2014 (Arising out of Artha Jari Case No. 219 of 2013) rejecting the

petitioner's application filed under Order VI Rule 17 of the Code of Civil Procedure (the Code) for correction of the application of miscellaneous case 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.

At the time of issuance of the Rule, further proceedings of Artha Jari Case No. 219 of 2013 and Miscellaneous Case No. 48 of 2014 now pending before the Artha Rin Adalat No. 2, Dhaka (Annexure-G to the writ petition) was stayed by this Court for a prescribed period.

Facts, in brief, for disposal of the Rule, are that the present petitioner as third party claimant filed Miscellaneous Case No. 48 of 2013 before the Artha Rin Adalat No. 2, Dhaka under Order XXI Rule 58 of the Code read with Section 32 of the Artha Rin Adalat Ain, 2003 (in short, the Ain) for deleting his property in the schedule of the execution case. The petitioner claimed that he has become owner of the schedule land by way of inheritance as well as purchase by registered deed. The respondent loanee obtained loan from the decree-holder bank mortgaging the petitioner's property by illegal way, hence the petitioner filed the miscellaneous case before the Artha Rin Adalat. During pendency of the miscellaneous case the present petitioner as applicant filed an application for amendment of the application of miscellaneous case which was rejected by the Adalat by the impugned order dated 28.10.2020.

Being aggrieved thereby the petitioner moved this application before this Court and obtained the present Rule and the order of stay.

Ms. Asma Akhter, learned Advocate appearing for the petitioner mainly submits that the Judge of the Executing Court without applying his judicial mind as well as considering the actual fact rejected the application of amendment holding that if the application is allowed nature and character of the miscellaneous case will be changed which is absolutely illegal.

On the other hand, Mr. Ruhul Ameen, learned Advocate appearing for the respondent No. 4, bank submits that the petitioner has already made deposition before the Executing Court in support of his miscellaneous case and the miscellaneous case is pending for final disposal. At this stage the petitioner filed application for amendment of the application of miscellaneous case. Moreover by the proposed amendment of application, the natural and character of the case will be changed. In view of the above the Executing Court rightly rejected the application for amendment of the application.

We have considered the submissions of the learned Advocates of both the sides and gone through the application and impugned order.

It, however, appears from record that the present petitioner as applicant-claimant filed the miscellaneous case under Order XXI Rule 58 of the Code read with Section 32 of the Ain, 2003 before the Executing Court and during course of hearing of the miscellaneous case, the present petitioner filed an application for amendment of the plaint/application in the following terms;

“.....

৫) দরখাস্তকারী পক্ষের প্রস্তাবিত সংশোধনী সমূহঃ

ক) দরখাস্তকারীর আরজি/দরখাস্তের ৫নং পাতার ৭নং অনুচ্ছেদের পরে নিম্ন লিখিত বক্তব্য সংযোজিত হইবে।

উল্লেখ্য যে, কে. এম রেজাউল ফেরদৌস ৪২৩৩ নং সাফ কবলা দলিল সৃজনকালে উদ্দেশ্য প্রনোদিত ও যোগসাজসে ভাবে দলিলের দাতার ঘরে কে.এম গোলাম মাওলার নাম এর পরিবর্তে কে.এম গোলাম মোস্তফার নাম লিখিয়াছেন। প্রকৃত পক্ষে কে. এম গোলাম মোস্তফা নামীয় কোন সন্তান মৃত মোজাহার হোসেন খন্দকার এর ছিল না বা নাই।

খ) দরখাস্তকারীর আরজি/দরখাস্তের ১২নং অনুচ্ছেদের ২য় লাইনে “দরখাস্তকারীর” শব্দ কর্তন হইয়া তৎস্থলে “দরখাস্তকারী বা তাহার” শব্দ সমূহ প্রতিস্থাপিত হইবে।

গ) দরখাস্তকারীর আরজি/দরখাস্তের ৯নং পাতার তপসিল সমুদয় বর্ণনা কর্তন হইয়া তৎস্থলে নিম্ন বর্ণিত তপসিল প্রতিস্থাপিত হইবে।

জিলা বগুড়া, থানা-দুপচাচিয়া, মৌজা-ছোট বেড়াগাঁও স্থিত এম আর আর ৬০, ৫৫, ৮৯ ও ৬ এবং বুজারাত ২৩৩, ১৩৭ ও ১৪৫ এবং ডি পি ১০৫ ও ১২২ খতিয়ানের এম আর আর ২১২, ২১৩, ১৭০, ২০৮ ও ২০৯ বুজারাত দাগ নং- ৩৬৮, ৩৬৯, ৩৩৯, ৩৭৪ এবং ৩৭০ ভুক্ত জমির পরিমাণ- ৩৫ + ২৪ + ৩৩ + ৩৩ + ১৬ = ১.৪১ একর তপসিল সম্পত্তি বটে। যাহার উত্তরে- মোঃ জহুরুল ইসলাম, মোঃ আব্দুল হামিদ এবং আল মোজাফিস এন্ড ফিডস লিঃ এবং দক্ষিণে- মোঃ আসদ, মোঃ মাহাবুবুর রহমান এবং আল মোজাফিস এন্ড ফিডস লিঃ .....।”

On a plain reading of the aforesaid proposed amendment it, however, appears that the present petitioner filed application for amendment of application (plaint) of miscellaneous case. By the said application the petitioner in his application of the miscellaneous case prayed for inserting a statement after the paragraph No. 7 at page 5 of the application and also to be inserted new schedule after deleting the existing schedule.

In view of the proposed amendment, we have no manner of doubt to find that the nature and character of the application has not to be changed, but the Judge of the Artha Rin Adalat (executing court) without applying his judicial mind and without considering the facts of the

application rejected the application for amendment of the plaint holding that the proposed amendment will be changed nature and character of the application.

In view of the above, we find substance in the submissions so made by the learned Advocate for the petitioner and thus merit in the Rule.

In the result, the Rule is made absolute, however, without any order as to costs.

The order No. 61 dated 28.10.2020 passed by the Judge, Artha Rin Adalat Court No. 2, Dhaka in Miscellaneous Case No. 48 of 2014 (Arising out of Artha Jari Case No. 219 of 2014) rejecting petitioner's application for correction of plaint/application under order VI Rule 17 of the Code (Annexure-G) is hereby declared to have been passed without lawful authority and is of no legal effect.

The amendment application dated 18.02.2020 filed in Miscellaneous Case No. 48 of 2014 is allowed.

The Artha Rin Adalat No. 2, Dhaka is directed to take step for correction the application as prayed for.

The respondent No. 2 is further directed to dispose of the miscellaneous case expeditiously preferable within 4 (four) months.

Communicate a copy of the judgment and order to the concerned respondent forthwith.

**Md. Iqbal Kabir, J:**

I agree.

**M.A. Hossain-B.O.**