

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique, C.J.

Mr. Justice Md. Nuruzzaman

Mr. Justice Borhanuddin

Mr. Justice M. Enayetur Rahim

CIVIL APPEAL NO.216 OF 2007

(From the judgment and order dated the 8th May, 2005 passed by a Division Bench of the High Court Division in Writ Petition No.3961 of 2001)

Azizul Haque Sarker alias Azizul : . . . Appellants
being dead his heirs, I(a) Koduanu
Khatun and others

-Versus-

Md. Wazed Ali @ Wazed Ali and : . . . Respondents
others

For the Appellants : Mr. Khled Ahmed, Advocate instructed
by Mrs. Shahanara Begum, Advocate-
on-Record

For the Respondent No.46 : Mr. Sk. Md. Morshed, Additional
Attorney General (with the leave of the
Court)

For the Respondent Nos.1-45 : Mr. Nurul Amin, Senior Advocate
instructed by Mr. Haridas Paul,
Advocate-on-Record

For the Respondent Nos.47-49 : Not represented

Date of Judgment : **The 18th day of October, 2022**

J U D G M E N T

M. Enayetur Rahim, J: This appeal, by leave, is directed against the judgment and order dated 08.05.2005 passed by the High Court Division in Writ Petition No.3961 of 2001 making the Rule absolute.

The relevant facts for disposal of the appeal are as follows:

The present respondents No.1-45 filed a writ petition under Article 102 of the Constitution of the People's Republic of Bangladesh challenging the judgment and order dated 31.10.2000 passed by the learned Member-2, Land Appeal Board, Dhaka in Appeal No.2-69/99 allowing the appeal filed by Azizul Haque Sarker, predecessor of the present appellants reversing the judgment and order dated 26.05.99 passed by Additional Commissioner, Rajshahi Division, Rajshahi in Appeal No.24 of 1998 allowing the appeal reversing the judgment and order dated 18.12.97 passed by the Additional Deputy Commissioner (Revenue) Sirajgonj in Miscellaneous Case No.46 of 1996 cancelling the permanent settlement of the writ petitioners.

In writ petition it is contended that the writ-petitioners are landless and shelter less poor cultivators of village-Paralongzani under P.S. Ullapara, District-Sirajganj 0.85 acres of land under plot No.519 and 4.06 acers of land under plot No.520 of the Peralongjami mouza under P.S. Ullapara is the Government Khas Land. The same land was 'Mora Nadi'; subsequent, the said 'Mora Nadi' has been silted up and the lower portion of the said silted up land became cultivable land. The writ-petitioners being local landless and shelter less poor cultivators had applied before the local Authority for taking permanent settlement of the aforesaid khas land. Accordingly, permanent settlement case being Nos.391/88-89 and 415/88-89 were started and the matter was locally inquired by the Assistant Commissioner (Land) who after completion of land scrutiny placed the matter along with the applications

filed by the writ-petitioners before the Upazila land Settlement Committee on 14.05.1989 who unanimously recommended for giving permanent settlement of the aforesaid khas land in favour of the writ-petitioners and placed the proposal before the Deputy Commissioner, Sirajgonj through local U.N.O. Accordingly, the Deputy Commissioner, Sirajgonj approved the settlement proposal on 19.01.1994. Thereafter, the Deputy Commissioner, Sirajgonj made permanent settlement of the aforesaid land in favour of the writ-petitioners by executing registered deeds and simultaneously the writ-petitioners also executed kabuliyats in favour of the Government and all such executions were made on different dates in the year, 1994. Thereafter, new khatians have been opened in the names of the writ-petitioners and land development taxes were realized from them. After execution of the permanent settlement deeds and the kabuliyats in respect of the aforesaid land and getting delivery of possession thereof the writ-petitioners became the recognized owners/tenants of the holding under the Government under Section 81(B) of the State Acquisition and Tenancy Act, 1950 and since then the writ-petitioners have been possessing and enjoying the land in question by paying rent to the Government. Subsequently, after a long lapse of time one Azizul Haque Sarker, the predecessor of the present appellants, filed a petition on 03.06.1996 to A.D.C. (Revenue), Sirajgonj of cancellation of the permanent settlement of the writ-petitioners in respect of the aforesaid land. Upon that petition the Additional Deputy Commissioner, (Revenue),

Sirajgonj started Miscellaneous Case No.46 of 1996 and cancelled the permanent settlement of the writ-petitioners vide his order dated 18.12.1997 relying upon a report of Assistant Commissioner (Land), Ullapara and the R.D.C. Sirajgonj. The writ-petitioners filed Appeal No.24 of 1998 before the Divisional Commissioner, Rajshahi Division on 05.05.1998; which was eventually heard by the Additional Divisional Commissioner, Rajshahi who after giving due hearing to the parties allowed the appeal on 26.05.1999 setting aside the order of the Additional Deputy Commissioner (Revenue), Sirajgonj dated 18.12.1997. Against the said judgment and order passed by the Additional Commissioner (Revenue), Rajshahi Division Azizul Haque Sarker preferred appeal before the land appeal Board being No.2-69/99 and the Member-2, Land Appeal Board allowed the appeal on 31.10.2000. The writ-petitioners filed petition for review against the said judgment and order but the same was rejected on 08.07.2001. But the said judgment of the learned Member-2, Land Appeal Board the writ-petitioners have been seriously prejudiced and they compelled to file writ petition before the High Court Division.

The present respondent No.46 as respondent No.1 also contested the Rule by filing an affidavit-in-opposition contending, inter alia, that the petitioners obtained lease of the case land from the District Administration, Sirajgonj by misrepresentation of facts and that the said land is not permissible for settlement as the same is river and this fact having been discovered afterwards, the

Additional Deputy Commissioner, (Revenue) on behalf of the Deputy Commissioner, Sirajgonj cancelled the lease deeds of the petitioners in respect of the case land. The matter was ultimately decided by the Land Appeal Board and review petition filed by the petitioners against the judgment and order passed by the land Appeal Board was also rejected on 08.07.2001.

The predecessor of the present appellants as Respondent No.6 has also contested the Rule by filing a separate affidavit-in-opposition contending, inter alias, that the case land is recorded as river in C.S. S.A. and R.S. Settlement Records. So, the land in question can never be given in settlement to any person considering public interest. The land Appeal Board considering all the legal and factual aspects of the matter passed the impugned judgment and order which is quite just. It is further contended that the instant writ petition is not maintainable as the appeal has not been preferred before the Government as provided under section 6 of the Act No.24 of 1989 and that in these circumstances the writ petitioners are not entitled to get any relief as sought for.

A Division Bench of the High Court Division after hearing the Rule Nisi made the same absolute declaring the judgment and order dated 31.10.2000 passed by the Member-2 Land Appeal Board, Dhaka in Appeal Case No.II-69/99, Sirajgonj (Annexure-F) allowing the appeal and reversing the judgment and order dated 26.05.1999 passed by the Additional Commissioner, Rajshahi Division in Appeal Case

No.24 of 1998 (Annexure-E) to have been passed without lawful authority and is of no legal effect.

Feeling aggrieved by the said judgment and order the predecessor of the present appellants preferred civil petition for leave to appeal No.1525 of 2005, which gave rise this appeal.

Mr. M. Khaled Ahmed, learned Advocate appearing for the appellants submits that the High Court Division set aside the judgment and order of the Land Appeal Board on the ground that the original order of cancellation was passed by the Additional Deputy Commissioner (Revenue) and not by the Deputy Commissioner which is in violation of paragraph No.105 of the Land Management Manual, 1990, whereas as per Section 2(3) of the State Acquisition and Tenancy Act, 1950 the same could be exercised by the Collector or Deputy Commissioner of the District.

The learned Advocate further submits that by the Act No.30 of 1990 appeal provision against the order of Land Appeal Board was amended, which was substituted by Section 6 by way of review and the Statute made the provision of review. Though the writ-petitioners exhausted the forum of review but they did not challenge the order of the review dated 08.07.2001 passed in Review Case No.2-108/2000 (Sirajgonj) which is still in existence.

However, Mr. Md. Nurul Amin, learned Senior Advocate, appearing for the present respondent Nos.1-45 submits that the High Court Division upon consideration of the materials on record rightly made the Rule Nisi absolute declaring the order dated 31.10.2000 passed by the Member

land Appeal Board allowing the appeal and reversing the judgment and order dated 18.12.1997 passed by the Additional Divisional Commissioner, Rajshahi in Appeal Case No.24 of 1998.

He further submits that the judgment and order passed by the Additional Divisional Commissioner is well reasoned and there is no illegality and infirmity in the same.

Mr. Sk. Md. Morshed, learned Additional Attorney General, appearing for the respondent No.46 submits that the writ petitioners after disposal of the appeal by the Member of Land Appeal Board challenged the same before the full board by way of review and review was also rejected but they did not challenge the same in the writ petition and as such the High Court Division has committed error of law in not holding that the writ petition was not maintainable.

We have considered the submissions of the learned Advocates for the respective parties, perused the impugned judgment and order passed by the High Court Division as well as the judgment and orders passed by the different authorities.

In the instant case, it is admitted fact that the land in question was khas land and the present respondent Nos.1-45 has got the settlement for a period of 99 years by registered deeds for their respective land. The Deputy Commissioner, Sirajgonj after observing all the legal formalities executed the different deeds on different dates in favour of the respective respondents. The

respondents also executed kabuliats in favour of the Government.

After getting settlement the khatian was opened in the names of the writ petitioners-respondents and they have been possessing and enjoying the land in question by paying land development taxes to the Government regularly. When the respondents are in peaceful possession and enjoying their respective land the present appellant filed an application before the Additional Deputy Commissioner, (Revenue) Sirajgonj for cancelation of the said settlement and the Additional Deputy Commissioner cancelled the said lease deeds. Against the said order, the writ petitioner-respondents preferred appeal before the Divisional Commissioner, Rajshahi which was eventually heard by the Additional Divisional Commissioner, Rajshahi. The Divisional Commissioner, Rajshahi upon hearing the parties by his judgment and order dated 26.05.1999 allowed the said appeal and set aside the order passed by the Additional Deputy Commissioner, (Revenue) Sirajgonj holding that:

- i) the Additional Deputy Commissioner (Revenue), Sirajgonj cancelled the settlement in one case and all the persons who got settlement were not impleaded as parties;
- ii) the Additional Deputy Commissioner has no authority to cancel a lease of permanent settlement which was given by the Deputy Commissioner;

iii) the persons who got settlement never violated any terms and conditions of the settlement; and
iv) the predecessor of the present appellants in order to harass the landless peoples for illegal gain filed malafide application before the Additional Deputy Commissioner (Revenue) Sirajgonj.

The High Court Division in deciding the merit of the Rule Nisi referring to the case of Government of **Bangladesh Vs. M/S. Eastern Industries (BD) Ltd., reported in 14 BLD(AD), page-245** and **Sonaly Fisheries Vs. Co-operative Society Ltd. Bangladesh and others reported in 46 DLR, page-406** categorically and consistently held that the Member, land Appeal Board in deciding merit of the appeal did not advert to the legal findings of the Additional Divisional Commissioner, Rajshahi and legal proposition as settled in the above cases.

In the case of **Government of Bangladesh, represented by the Secretary, Ministry of Works and others Vs. M/s. Eastern Industries (B.D.) Ltd., reported in 14 BLD(AD) page-254** this Division has held that after a deed of lease has been executed and registered between the parties for 99 years in respect of the case land and delivery of possession has been given to the petitioner, the leasehold right being admittedly heritable and transferable, the Government cannot cancel the allotment order without cancelling the lease deed as the petitioner's right in the land finally accrued on the lease deed.

In the case of **A Motaleb Vs. A Mannan Halder and others, reported in 8 BLC(AD) page-137** this Division has held that:

“It appears that the plaintiffs got settlement of the suit property from the government for a period of 15 years and on the basis of such settlement the plaintiffs got their names mutated in different mutation cases. Admittedly, the plaintiffs have not violated the terms and condition of the settlement. In such view of the matter the settlement of the plaintiffs cannot be cancelled without show cause notice and assigning reasons and even after the expiry of lease period the plaintiffs cannot also be evicted without due process of law.”

In the case of **Government of the People's Republic of Bangladesh & others Vs. Khasru Miah, reported in 58 DLR(AD) page-46** this Division has also held that:

“The writ-petitioner-respondents were granted settlement by the writ petition respondent No.1 by registered instrument and, as such, the writ petitioners were legally entitled to be heard before any cancellation of the settlement for the alleged violation of terms and conditions of the lease deed.”

In the instant case the respondents were not heard by the Additional Deputy Commissioner (Revenue) Sirajgonj before cancellation of registered settlement deeds and there was no prove that by practicing fraud the respondents managed to get the lease deed and they have violated the terms and conditions of the lease deed. Further, the ADC (Revenue) had no authority to cancel the registered settlement deed duly executed by the Deputy Commissioner.

The learned Advocate for the present appellants tried to convince us that the writ petition was not maintainable as the writ petitioners did not challenge the order passed in review, filed against the judgment and order of the Member, Land Appeal Board. The High Court Division on proper appreciation of the materials on record held that the writ was maintainable.

Further, when the writ petitioners challenged the original order of appeal passed by the Member, Land Appeal Board and the writ-petition was maintainable against the said order, the order of review is not at all necessary to be challenged. Because, if the main order is to be declared illegal and without lawful authority, then order passed on review is Non-est in the eye of law.

Having considered and discussed above, we find no merit in the appeal.

Accordingly, the appeal is dismissed without any order as to cost.

C.J.

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