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

Present
Mr. Justice Sikder Mahmudur Razi
And
Ms. Justice Fatema Anwar

Writ Petition No. 4430 of 2004

IN THE MATTER OF:
An Application under Article 102 of the Constitution of People's Republic of Bangladesh.
AND
IN THE MATTER OF:
Cherag Uddin Ahmed and others being died their leaving heirs;
1(a) Md. Kamran Kabir and others
.....Petitioners.
-Versus-
The Deputy Commissioner, Sylhet and others.
.....Respondents.
Mr. Fida M. Kamal, Senior Advocate with
Mr. Chanchal Kumar Biswas, Advocate
For the Petitioners.
Mr. Nur Mohammad Azami, DAG
Mr. Zasidul Islam Jony, DAG
Mr. Md. Asif Imran, AAG
Mr. Md. Mostofa Kamal Bachchu, AAG
Mr. Minhazur Rahman, AAG
Mr. Md. Mosaddek Billah, AAG
Mr. S.M. Emamul Musfiqur, AAG
For the respondents.

Heard and Judgment on: The 11th November, 2026

Sikder Mahmudur Razi, J:

1. This Rule concerns the authority of a revenue officer to direct cancelling a correction of the record of rights made pursuant to a contested civil court decree and to direct taking possession of the decreed land while that decree remains operative.

2. The Rule was issued in the following terms:

> *Let a Rule be issued calling upon the respondents to show cause as to why the order dated 28.06.2004 passed in Miscellaneous Case No. 18/1967-68 (correction of record) by respondent no. 2, the Additional*

Deputy Commissioner (Revenue), Sylhet directing the Assistant Commissioner (Land), Sadar, Sylhet, to cancel the order of correction of the record of rights and to take possession (Annexure-H) 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.

3. The material facts, in brief are that, the petitioners are the inhabitants of village Kuchai, Police Station and District- Sylhet, who asserted their right, title and possession in approximately 65 acres of land known as Lohajuri Beel. A dispute concerning the land arose between the villagers and the then Government and was adjudicated in Title Suit No. 119 of 1963. The learned Munsif, First Court, Sylhet, by judgment and decree dated 18.05.1965, decreed the suit in favour of the plaintiffs. The judgment and decree have been annexed in the writ petition as Annexures-A and A-1.

3.1 Following the decree, the plaintiffs instituted Miscellaneous Case No. 18 of 1967–68 before the Revenue Deputy Collector, Sylhet, seeking correction of the record of rights under section 54 of the State Acquisition and Tenancy Act, 1950. Upon consideration of the judgment and decree, the Revenue Deputy Collector, by order dated 04.08.1978, allowed correction of the record in favour of the plaintiffs in place of the Government. That order has been annexed as Annexure-B to the writ petition.

3.2 The petitioners further state that, by a registered instrument dated 22.03.1987, the land was divided among 74 families. Thereafter, pursuant to Mutation Case No. 1678 of 1986–87, separate entries were made in the names of the respective family heads. The mutated record of rights and rent receipts have been annexed as Annexure-C and D–D(1).

3.3 A subsequent dispute arose over the demand for land development tax in Certificate Case No. 86 of 1997–98. The petitioners challenged that demand in Writ Petition No. 2065 of 1998, in which a Rule was issued and an interim order was passed. The legality of that demand is the subject matter of a separate proceeding.

3.4 At this juncture, respondent No. 2 reopened Miscellaneous Case No. 18 of 1967–68 and passed the impugned order dated 28.06.2004. According to the petitioners, the order directed taking possession of the land covered by Title Suit No. 119 of 1963, restoring the Government's name in the record of rights and preferring an appeal against the judgment and decree passed in that suit.

3.5 The petitioners' principal contention is that the Government, having suffered a contested decree and having failed to obtain its reversal or suspension, could not achieve through an administrative order what it had failed to obtain through judicial proceedings.

4. Respondent No. 1's contention in its affidavit-in-opposition are that Lohajuri Beel is a Government jalmahal; that the relevant survey records stand in the name of the Government; and that the Revenue Deputy Collector acted without jurisdiction in correcting the record because the decree contained no express direction requiring such correction. They also dispute the petitioners' possession and individual shares and rely upon subsequent inquiry reports and survey records which have been referred to as Annexures-2, 3 and 4 to the affidavit-in-opposition.

4.1 The respondent further contends that an appeal lay against the impugned order under section 147 of the State Acquisition and Tenancy Act, 1950, and that the writ petition is therefore not maintainable. Significantly, however, the

affidavit-in-opposition states that steps are being taken to prefer an appeal against the judgment and decree in Title Suit No. 119 of 1963.

5. We have considered the writ petition, affidavit-in-opposition, the documents annexed therewith and the submissions of the respective parties.

6. The decisive question is whether respondent No. 2 could, in exercise of revenue jurisdiction, disregard the subsisting civil court decree and direct restoration of the Government's name in the record and taking possession of the land upon grounds inconsistent with that decree.

7. At the outset, the objection concerning an alternative remedy requires consideration. The existence of a statutory appeal is ordinarily a material consideration in exercising jurisdiction under Article 102 of the Constitution. Nevertheless, the present challenge raises a question concerning the limits of administrative authority in the face of an operative judicial decree. The petitioners have not complained of an erroneous assessment of evidence by a revenue officer. Rather, their complaint is that the officer assumed authority to defeat a judicial determination binding upon the Government.

8. The existence of a revenue appellate forum cannot confer upon the original authority a power to override the decree of a competent civil court. In the circumstances of this case, the objection of want of jurisdiction can be determined without undertaking a fresh trial of the parties' competing claims to title. We are, therefore, not persuaded to decline interference merely because the respondent has referred to an appellate forum under section 147.

9. Here, the judgment and decree dated 18.05.1965 constitute the foundation of the petitioners' claim. The Government was a contesting party to the suit.

Admittedly, it has not preferred any appeal against that judgment and decree till date. Nor has any order been shown by which the decree has ceased to operate.

10. A party dissatisfied with a judgment must seek its correction through the remedies recognised by law. The Government stands under the same obligation. Its executive authority does not place it above a judicial determination rendered against it. An assertion that the trial court reached an erroneous conclusion cannot, by itself, release the Government or its officers from the legal consequences of the decree.

11. The distinction between an erroneous decree and a decree passed without jurisdiction is material. An alleged error in evaluating evidence or applying the law is ordinarily a ground for challenge before the competent judicial forum. It does not authorise an executive officer to treat the decree as non-existent. Here, the respondent has criticised the trial court's conclusion concerning the character of the land, but have not established any jurisdictional defect permitting the decree to be disregarded.

12. The direction in the impugned order to prefer an appeal against the decree itself recognises that the decree presented a legal obstacle to the Government's claim. Respondent No. 2 could not simultaneously acknowledge the necessity of obtaining judicial reversal and proceed administratively as though reversal had already occurred. An intention to appeal has no effect upon the continued operation of a decree.

13. This conclusion rests upon principles fundamental to constitutional government. Article 31 protects every person against action detrimental to property except in accordance with law. Administrative action affecting property must therefore have to have lawful authority and must respect judicial

determinations governing the rights of the parties. The existence of an official order does not, by itself, satisfy that constitutional requirement as well as an executive officer cannot assume the function of an appellate court over a judicial decision.

14. The contention that the decree contained no specific direction to correct the record of rights does not answer the petitioners' principal grievance. The absence of an express consequential direction does not authorise a revenue officer to record a position inconsistent with the title adjudicated by the competent civil court. A declaratory decree determines the legal relationship within its scope; the revenue authority must exercise its statutory functions consistently with that determination.

15. In *Government of Bangladesh vs. Md. Abu Hasan Raju*, reported in 19 BLC (AD) 236**,** the Appellate Division held that, so long as the decree declaring the plaintiff's title to the land subsists, the writ respondents are bound to mutate the land in the writ petitioner's name and accept rent from him. The principle is applicable to the present controversy. A subsisting decree cannot be denied its effect merely because the revenue authority disagrees with the adjudicated title.

16. The respondents' reliance upon the description of the land as a beel and its recording in the Government's name is similarly insufficient to sustain the impugned order. The Government's contention that the land vested in it as a fishery is, on its own pleading, connected with a question considered by the trial court. If the Government maintains that the court decided that question incorrectly, the remedy lies before the competent judicial forum. Repetition of the same claim in a revenue proceeding cannot substitute for reversal of the decree.

17. Nor can an entry in a subsequent survey, standing alone, supply the authority to defeat the rights determined by that decree. Revenue records may have evidentiary significance, but they do not empower the recording authority to sit in appeal over a competent civil court.

18. The respondent has also disputed the alleged partition, the individual shares of the petitioners and the present possession of the land. Those matters must be kept within their proper scope. This Court is not, in the present proceeding, determining afresh the respective shares of every claimant or adjudicating competing claims of physical possession. The question before us is the legality of the order dated 28.06.2004. Disputes over individual shares cannot justify an administrative order that disregards a decree which is still in force.

19. The subsequent reports relied upon by the respondent concerning Government possession likewise do not establish that respondent No. 2 possessed lawful authority when passing the impugned order.

20. We also find no substance in the contention that the petitioners are not persons aggrieved. They assert rights derived from the successful plaintiffs and from the correction and mutation proceedings undertaken following the decree. The impugned order directly affects those asserted rights by directing cancellation of the corrected record and taking possession of the land. Their interest is sufficient to challenge the legality of that action, without requiring this Court to determine every question of individual apportionment.

21. For the foregoing reasons, we hold that respondent No. 2 exceeded the lawful limits of revenue jurisdiction in directing cancellation of the correction of the record of rights and taking possession of the decreed land upon a claim

inconsistent with the subsisting judgment and decree dated 18.05.1965. So long as that decree remains operative, the respondents are bound to respect its legal effect.

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

The impugned order dated 28.06.2004, passed by the Additional Deputy Commissioner (Revenue), Sylhet, in Miscellaneous Case No. 18 of 1967–68, as contained in Annexure-H to the writ petition, is hereby declared to have been passed without lawful authority and to be of no legal effect**.**

23. This judgment does not prevent the Government from pursuing any remedy otherwise available under law against the civil court decree, subject to limitation and maintainability. Unless and until the said judgment and decree is varied or set aside by a competent court, the decree shall continue to govern the parties' rights within its scope.

Communicate a copy of this judgment and order to the respondents forthwith.

(Sikder Mahmudur Razi, J:)

I agree.

(Fatema Anwar, J:)