

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

WRIT PETITION NO. 6567 OF 2022

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Jashimuddin Son of Abdul Mannan
Hawlater of village: Rakudia, P.O:
Rakudia, P.S: Babugonj, District:
Barisal and another.

-----Petitioners

-Versus-

Land Survey Tribunal, Barisal and
others.

-----Respondents

Mr. Md. Ziaul Haque, Adv.

.....For the Petitioners.

Mr. Md. Towhidul Islam, Adv.

----- For the Respondents.

Judgment on: 07.06.2023.

Present:

Mr. Justice K.M. Kamrul Kader.

And

Mr. Justice Mohammad Showkat Ali Chowdhury.

Mohammad Showkat Ali Chowdhury J: This Rule was issued calling upon the respondents to show cause as to why the impugned ex-parte judgment and decree dated 14.10.2021 9 (decree signed on 18.10.2021) (Annexure-B & B-1) passed by the learned Judge of the Land Survey Tribunal, Barishal in Land Survey Tribunal Suit No.583 of 2020 (Annexure-B) decreeing the

suit should not be declared without any lawful authority and is of no legal effect and/or such other or further order orders passed as to this court may seem fit and proper.

This writ petition arises out of judgment and decree passed by the learned Judge of the Land Survey Tribunal, Barishal. When the matter was taken up for hearing our attention was drawn to some judgments passed by other Benches of this Division involving similar matters and issues arising out of judgment and decrees or judgment and orders passed by the Land Survey Tribunal. For our convenience, we have particularly perused the judgment and order dated 25.07.2019 in Sua Muto Rule No.03 of 2015, judgment and order dated 29.08.19 in Writ Petition No. 515 of 2017 and other Writ petitions and judgment and order dated 30.06.2022 in Writ petition No. 3223 of 2020 and other Writ Petitions passed by this Court. In Sua Muto Rule No. 3 of 2015 their Lordships were pleased to make the Rule absolute and directed the respondents to establish Land Survey Appellate Tribunals by their judgment and order dated 25.07.2019. In Writ Petition No. 515 of 2017 and other Writ petitions Rule were made absolute in part and directed the respondents to establish Land Survey Appellate Tribunals by their judgment and order dated

29.08.19, in writ petition No. 3223 of 2020 and other Writ Petitions was disposed of. These Rules were disposed of primarily on the ground that these are not maintainable pursuant to enactment of Section 145B of the S.A.T Act. Section 145B of the S.A.T Act provides for setting up Land Survey Appellate Tribunal. The objective of enacting section 145B of the above Act is that any person aggrieved by any judgment and decree or order passed by any Land Survey Tribunal may file an appeal before the Land Survey Appellate Tribunal. The overall view taken in these judgments that while disposing of these writ petitions are that judgment and decrees and orders passed by the Tribunal involving question of law and fact needs reassessment of evidence and other factors because the Appellate Court is the final court last with regard to giving decision on facts which is not possible or permissible under writ Jurisdiction and therefore, these writ petition is not maintainable.

Upon perusal of the instant writ petition, it also appears that the judgment and decree passed by the Tribunal inherently and primarily involve disputed question of facts which need reassessment evidence. We find support of the contention in **Suo Muto Rule No. 03 of 2015, Writ Petition No. 515 of 2017 and Writ petition No. 3223 of 2020** including some other judgments

of this Division, which we are in respectful agreement with, we are of the considered view upon examination and scrutiny of the instant writ petition before us that this judgment involve similar question of law and fact which call for reassessment of evidence including exhausting other procedures which is not possible in writ jurisdiction.

It is in our knowledge that nevertheless, even after publication of the said gazette, this Court issued the *Suo Muto Rule* on 3.3.2015, being *Suo Muto Rule No. 03 of 2015*, and the said Rule was made absolute on 25.07.2019 with the direction upon the government to establish Land Survey Appellate Tribunals as may be required to hear appeals arising out of judgments, decrees or orders of the Land Survey Tribunals in Bangladesh. There are thousands of judgments, decrees or orders passed by the Land Survey Tribunals in Bangladesh. There is nothing on record as well as in the submissions of the learned Deputy Attorney General that the government has taken any initiative or steps as till today for reestablishing such Appellate Tribunals, which may function properly for litigant people. Therefore, huge number of the litigants, who are aggrieved by different orders, judgments and decrees passed by the Land Survey Tribunals are moving from one Bench to another Bench of

the High Court Division of the Supreme Court of Bangladesh with writ petitions to redress grievances.

We also noticed that time and again this Court directed the respondents to establish Land Survey Appellate Tribunal to hear appeals arising out of judgment and decree and/or order of the Land Survey Tribunal. But the respondents did not take any initiative to establish Land Survey Appellate Tribunal as per direction of this Court, which not only contemptuous, but also disregard to the Constitutional provision of Article 112. In view of the above, we have no option, but to express our frustration, because of the failure of the Government in establishing required number of Land Survey Appellate Tribunals and appointing judges therein. In view of this matter, we find partial merit in this Rule, in so far as seeking direction on the government for establishment of such Appellate Tribunal is concerned and accordingly, the Rule deserves to be made absolute with direction.

In the result, the Rule is made absolute with direction. The respondents, in particular the concerned Ministries, are directed to establish Land Survey Appellate Tribunals, appoint judges in those Tribunals and determine the seats of such Tribunals through such appointment by publishing gazette under section 145B of the said Act within a period of 90 (ninety) days from the date of

receipt of this judgment and order, without fail. The Petitioners are at liberty to prefer appeal, if any, before the Land Survey Appellate Tribunal as and when the Land Survey Appellate Tribunal is constituted. In preferring such appeal delay occurred in the meantime shall be condoned.

In the meantime, parties are directed to maintain Status-quo in respect of possession and position of the suit property and/or order of stay whatsoever was issued at the time of issuance of the Rules shall continue till filling of the appeal before the Land Survey Appellate Tribunal or 3 (three) months after constitution of Land Survey Appellate Tribunal whichever is earlier.

Communicate the judgment and order at once.

K. M. Kamrul Kader, J.

I agree

