

In the Supreme Court of Bangladesh
High Court Division

Civil Miscellaneous No. 11 of 2022 (Reference)

In the matter of:

A reference under Section 113 read with
Order XLVI rule 1 of the Code of Civil
Procedure, 1908.

Mr. A.M. Amin Uddin, Attorney General with
Mr. A.F. Hassan Ariff, Senior Advocate with
Mr. Probir Neogi, Senior Advocate with
Mr. Devasish Roy (Raja Devasish Roy),
Advocate

.....As Amici Curiae.

Mr. Pratikar Chakma, D.A.G with
Mr. Zahid Ahammad (Hero), A.A.G with
Mr. Mohammad Shafayet Zamil, A.A.G with
Mr. Md. Sultan Uddin, Advocate with
Mr. Md. Jamal Uddin, Advocate

.....As Intervenors.

Present:

**Mr. Justice Sheikh Hassan Arif
And
Mr. Justice S M Kuddus Zaman**

**Heard on 31.10.2022, 07.11.2022
and 14.11.2022.**
Judgment on 21.11.2022.

SHEIKH HASSAN ARIF, J:

1. This reference has been sent to us by the Court of Additional District Judge, Bandarban Hill District in view of the provisions under Section 113 read with Order XLVI, rule 1 of the Code of Civil Procedure, 1908 seeking opinion of the High Court Division of the Supreme Court of Bangladesh on two legal questions.

2. **Background facts:**

2.1. Short background facts, as stated by the said Court, leading to such reference are that before amendment of some provisions in the Chittagong Hill Tracts Regulation, 1900 (Regulation No. I of 1900) (“the said Regulation”) vide “The Chittagong Hill-Tracts Regulation (Amendment) Act, 2003 (Act No. 38 of 2003)”, the disputes in civil nature in Chittagong Hill Tracts area were adjudicated by the Deputy Commissioners of Hill District concerned and the appeals therefrom were being disposed of by the Divisional Commissioner or Additional Divisional Commissioner, Chattogram Division as per the relevant provisions of the said Regulation and Rules made pursuant to the same. Accordingly, one eviction case, namely Eviction Case No. 56 (D) of 2003, was disposed of by the then Deputy Commissioner of Bandarban Hill District and, thereby, the defendants therein were directed to vacate the disputed land. The defendants, being aggrieved, then preferred appeal against the said order of eviction before the Divisional Commissioner, Chattogram vide Eviction Appeal No.

68 of 2008 in view of Rule 10 of the 'Rules for the Administration of Chittagong Hill Tracts' ("the said Rules") made under Section 18 of the said Regulation. While the said appeal was pending before the Divisional Commissioner for disposal, the aforesaid amending Act of 2003, namely Act No. 38 of 2003, came into force vide gazette dated 04th June, 2008. Pursuant to the said amending Act of 2003 ("the said amending Act"), the Deputy Commissioner of Bandarban Hill District and Divisional Commissioner of Chattogram Division sent all the civil and criminal cases pending before them to the respective Joint District Judge (or Assistant Sessions Judge) and District Judge concerned purportedly in view of the 'special provisions' as provided by Section 6 of the said amending Act. In sending those cases, the Divisional Commissioner, Chattogram also sent the civil appeal cases to the District Judges of the respective Hill District including the aforesaid Eviction Appeal No. 68 of 2008 to the District Judge, Bandarban. The District Judge, Bandarban then sent

the said appeal to the Court of Additional District Judge, Bandarban for disposal.

2.2. Thereupon, the Court of Additional District Judge, Bandarban heard the parties in the said appeal and fixed the same for delivery of judgment. However, two legal questions then came up before the said Court as regards interpretation of Section 6 of the said amending Act, in particular whether the civil appeal cases pending before the Divisional Commissioner, prior to the said amending Act coming into force, should be transferred to the Court of District Judge of the respective Hill Districts, and, if the same are so transferred, whether the District Judge or the Additional District Judge of the respective districts, as the case may be, should dispose of the same. The Court of Additional District Judge, Bandarban then heard one of the learned advocates of Bandarban Court as Amicus Curiae, who opined that after the establishment of civil Courts in Bandarban, the Divisional Commissioner was not in a position to dispose of such civil appeals or other proceedings of civil nature. However, the said Court prima-facie

opined that such pending civil appeals and proceedings of civil nature should be disposed of by the Divisional Commissioner, Chattogram. The said Court then referred the matter to the Supreme Court of Bangladesh seeking opinion of the High Court Division in view of the aforesaid provisions of the Code of Civil Procedure. The Hon'ble Chief Justice of Bangladesh then constituted this Special Division Bench of the High Court Division and sent the said reference to this bench for disposal of the same.

2.3. The legal questions under reference, as sent by the said Court of Additional District Judge, Bandarban seeking opinion of this Court, are reproduced herein below for our ready reference:

প্রশ্ন সমূহ

প্রশ্নঃ ১

The Chittagong Hill Tracts Regulation (Amendment) Act, 2003 [Act XXXVIII of 2003] এর ৬ নং ধারার বিধান মতে চট্টগ্রাম বিভাগের ডিভিশনাল কমিশনার এবং এডিশনাল ডিভিশনাল কমিশনারের নিকট নিষ্পত্তাধীন সকল ফৌজদারী আপীলসহ অন্যান্য ফৌজদারী প্রকৃতির মামলাসমূহ সংশ্লিষ্ট জেলার দায়রা আদালতে স্থানান্তরিত হওয়ার বিধান থাকলেও উক্ত ডিভিশনাল কমিশনার এবং এডিশনাল ডিভিশনাল কমিশনারের নিকট নিষ্পত্তাধীন (pending) দেওয়ানী প্রকৃতির আপীল, রিভিশন ও অন্যান্য আইনগত কার্যধারা জেলা জজ আদালতে স্থানান্তরিত হওয়ার কোন বিধান না থাকায় অত্র জেলায় সরকারী গেজেট বিজ্ঞপ্তির মাধ্যমে বিগত ০১/০৭/২০০৮ খ্রিঃ তারিখে জেলা জজ আদালত প্রতিষ্ঠার পূর্বে তৎকালীন জেলা প্রশাসকের দেওয়ানী এখতিয়ার বলে প্রদত্ত দেওয়ানী প্রকৃতির মামলার রায় বা আদেশের বিরুদ্ধে চট্টগ্রাম বিভাগের

ডিভিশনাল কমিশনার অথবা ক্ষেত্র বিশেষে এডিশনাল ডিভিশনাল কমিশনারের নিকট দায়েরকৃত নিষ্পত্তাধীন (pending) আপীল কিংবা রিভিশন বা অন্যকোন আইনগত কার্যধারা অত্র আদালতে তথা অত্র জেলার জেলা জজ আদালতে আইনগতভাবে স্থানান্তরিত হতে পারে কিনা?

প্রশ্নঃ ২

অত্র জেলায় জেলা জজ আদালত স্থাপনের পূর্বে জেলা প্রশাসকের দেওয়ানী এখতিয়ারে প্রদত্ত কোন রায় বা আদেশের বিরুদ্ধে দায়েরকৃত এবং নিষ্পত্তাধীন দেওয়ানী প্রকৃতির কোন আপীল বা রিভিশন চট্টগ্রাম বিভাগের বিভাগীয় কমিশনার কিংবা অতিরিক্ত বিভাগীয় কমিশনার অত্র আদালত তথা জেলা জজ আদালতে বিচার ও নিষ্পত্তির জন্য প্রেরণ করলে তা অত্র আদালতে (শুনানী ও নিষ্পত্তির জন্য) আইনগতভাবে রক্ষণীয় হবে কিনা?

2.4. This Special Bench of the High Court Division then heard the matter primarily on 31.10.2022, wherein Mr. Pratikar Chakma, learned Deputy Attorney General, Mr. Zahid Ahammad (Hero), learned Assistant Attorney General, Mr. Mohammad Shafayet Zamil, learned Assistant Attorney General along with Mr. Md. Sultan Uddin and Mr. Md. Jamal Uddin, learned Advocates, present in Court, made submissions covering relevant issues, particularly by making reference to different decisions of this Court on different issues arose from disputes in Chittagong Hill Tract area. Considering the delicacy of the matter as well as the questions of interpretation of law and Constitution being involved therein, we have

requested Mr. A.M. Amin Uddin, learned Attorney General for Bangladesh, Mr. A.F. Hassan Ariff, senior advocate, Mr. Rokanuddin Mahmud, senior advocate, Mr. Probir Neogi, senior advocate and Mr. Devasish Roy (Raja Devasish Roy), learned advocate, to assist this Court as Amici Curiae. Accordingly, Mr. A.M. Amin Uddin, Mr. A.F. Hassan Ariff, Mr. Probir Neogi and Mr. Raja Debashis Roy have made extensive submissions on the issues involved therein. We have also heard the aforementioned learned advocates, namely Mr. Pratikar Chakma, Mr. Zahid Ahammad (Hero), Mr. Mohammad Shafayet Zamil, Mr. Md. Sultan Uddin and Mr. Md. Jamal Uddin, who have assisted this Court as interveners.

3. **Submissions:**

- 3.1. All the learned amici curiae, (except Mr. A.F. Hassan Ariff, learned senior counsel), have made submissions almost in same line in that the said civil appeal cases and the proceedings of civil nature should be disposed of by the Divisional Commissioner or the Additional Divisional Commissioner, Chattogram, as they may be, on the ground that the said special provision under

Section 6 of the said amending Act did not mandate or contemplate the transfer of those appeals and proceedings to the Court of District Judge of the respective hill districts.

3.2. A.M. Amin Uddin, learned Attorney General, has specifically pointed out the absence of the specific words in Section 6 of the said amending Act as regards transfer of such civil appeals and proceedings of civil nature. According to him, when the Legislature has deliberately remained silent in the amending Act as regards a particular matter, the Court cannot become vocal on that matter as the Court does not act as legislating body. Rather, according to him, the duty of the Court is limited to interpreting the words used by the Legislature. In this regard, he has referred to a decision of Privy Council in **Magor and St. Mellons Rural District Council and Newport Corporation, 1952 A.C.-189.**

3.3. Mr. Probir Neogi, learned senior counsel, has, at the outset, referred to Section 4 of the Code of Civil Procedure. According to him, the Code itself has

provided that nothing of the Code shall be deemed to limit or otherwise affect any special law in force or any special jurisdiction, unless such provision is specifically provided in the Code itself. He submits that since the CHT Regulation of 1900 is a special law, thereby, providing special procedure for adjudication of civil disputes as well as civil appeals by special forum, namely Deputy Commissioner of the hill district concerned and Divisional Commissioner of Chattogram in view of the Rules made under Section 18 of the said Regulation, such special procedure and forum should be allowed to continue unless it is specifically amended by the Legislature by any amending Act. By referring to the special provisions as provided by Section 6 of the said amending Act, Mr. Neogi submits that since Section 6 has made provision for transfer of criminal appeals only and the said provision is completely silent about transfer of pending civil appeals and the proceedings of civil nature, the said pending appeals and/or proceedings of civil nature cannot be transferred to the Court of District Judge of the respective hill districts, as that

would be beyond the scope of the amending Act itself. By referring to different Chapters of the book authored by late lamented Mr. Mahmudul Islam, namely the book titled “Interpretation of Statutes and Documents,” Mullick Brothers, Mr. Neogi argues that the established Rule of interpretation of statutes is that the Legislature does not intend alteration in the existing law except what is expressly provided, as, according to him, Legislature is presumed to have been aware of the existing law.

3.4. By referring to the same Chapter-3 of the said book, Mr. Neogi submits that the other cardinal principle of interpretation of statute is that the Legislature does not make any mistake and that it cannot be presumed by the Court that the Legislature has committed mistake in amending a particular law by not mentioning some matters therein. In support of his such submissions, he has referred to various decisions of the superior Courts of this subcontinent and some English cases, namely the decisions in **Shafiqur Rahman vs. Isris Ali, 37 DLR (AD)-71 [Para 26], Ramphal vs. Kamal Sharma, AIR, 2004 SC 1647, Shamsuddin Ahmed**

vs. Registrar, 19 DLR (SC) 483, Dinesh Chandra vs. Assam, AIR 1978, SC-17, Md. Abdus Sattar vs. Sub-Registrar, 29 DLR-320, Riverwear Commissioner vs. Adamson, (1877) 1QBD 546, Leach vs. R (1912) AC 305, National Assistants Board vs. Wilkinson, [1952] 2 QB 648, Rabnewaz Vs. Jahana, PLD 1947 SC 210, Bristol Guardians vs. Bristol Waterworks, [1914] AC 379 and Commissioner of Income Tax vs. Pemsel, [1891] AC 531. Accordingly, he submits that the answers to the legal questions sent by the Court of Additional District Judge, Bandarban should be “IN THE NEGATIVE”.

3.5. Mr. Debashis Roy (Raja Debashis Roy) learned advocate, has also made elaborate submissions particularly covering the legislative and administrative history of the Chittagong Hill Tracts area. According to him, even before the Regulation of 1900, the Chittagong Hill Tracts area did always have a separate status in respect of its administration and judicial matters and that the Regulations of 1900 maintained that separate and distinctive administrative

and judicial nature in clear way. By referring to different provisions of the said Regulations of 1900 and the Rules made thereunder, he submits that in adjudicating the civil disputes, the application of the Code of Civil Procedure has been ousted and that some provisions of Code may only be applicable by the Deputy Commissioners of the respective hill districts while executing the process of the Court and decrees in that area. He then referred to some provisions of the Public Gambling Act, 1867, Public Demands Recovery Act, 1913 and some other laws in order to establish his point. In this regard, he has also referred to Section 4 of the Code of Civil Procedure and submits that this provision itself has provided non-application of the Code in case of existence of special procedure by any special law or special jurisdiction conferred by law, unless such provision is specifically provided by the said law.

3.6. Opposing the above contention, Mr. A.F. Hassan Ariff, learned senior counsel, submits that after the separation of judiciary from the executive organ and after the changing scenario in 2003 with the amending

Act of 2003, which came into effect in 2008, there cannot be any parallel forum run by the executives in Chittagong Hill districts in order to exercise parallel power of District Judge for adjudicating civil appeals or any proceedings of civil nature. According to him, such existence of parallel forum run by the executives, namely the Divisional Commissioner or Additional Divisional Commissioner is unconstitutional and the same directly hit the constitutional provision providing for separation of judiciary.

4. **Deliberations of the Court:**

Historic perspective:

4.1. It appears from the above submissions of the learned amici curiae and learned advocates that the main issue involved in this matter is basically with regard to the interpretation of the special provision as provided by Section 6 of the amending Act of 2003 (Act No. XXXVIII of 2003), as came into force in 2008. However, before giving such interpretation, we need to keep in mind the historic perspective of the area concerned as against the applicable laws therein. The

admitted position is that historically Chittagong hill tract area was governed by separate legislative instruments and Rules made thereunder. According to the 'introduction' to a book written by the then Deputy Commissioner of Khagrachori Hill District,¹ three hill districts in Chittagong hill tracts area, namely Rangamati, Bandarban and Khagrachori, were administrative part of Chittagong District and they directly became under British administration on 20th June, 1860. Thereafter, the said area was distinctively governed by the British by virtue of Act No. XXII of 1860, Act No. IV of 1863, Rule 3 of 1873 and Rule 3 of 1881. Subsequently, the said area was governed by British by virtue of the Chittagong Hill Tracts Regulation, 1900 (Regulation No. 01 of 1900). A book published by the Association for Land Reform and Development (ALRD) under the title "The Chittagong Hill Tracts Regulation, 1900" (Second Edition), as edited by Raja Debasish Roy and Pratikar Chakma (both advocates of the Bangladesh Supreme Court), also mentions that before 1860 neither Mughols nor the British are known to have had any direct influence

or rule over CHT and that the status of the CHT peoples as tributaries was retained at least as late as 1829. The said book has referred to different authorities supporting such history. The book also mentions that as a small number of Chittagonean-speaking Bengali wet-rice farmers are known to have immigrated into CHT sometime during the 19th century and that, subsequently, the number of settlers increased to such extent that the same has made huge demographical change and the percentage of Bengali population in the region rose from about 2% in 1872 to about 47% in 2011 (according Bangladesh Government official census).

4.2. However, it appears, Regulation 1 of 1900 remained one of the colonial Special Regulations which provided restricted operation of other laws of the main land in the area and the Rules made thereunder have provided procedures and forum to be used for administration of such area by the government officials, traditional Chiefs and Headmen, particularly on matters related to land disputes as well as disputes regarding the customary law of the hilly people. Some

provisions of the said Regulation No. 1 of 1900 and Rules made thereunder regarding administration of civil and criminal justice system will make the scenario much clearer. In this regard, we may examine some of the provisions of the said Regulation as existed immediately before its amendment in 2003.

4.3. Apart from providing in the preamble to the said Regulation that the said Regulation was made to declare the law applicable and provide for the administration of Chittagong Hill Tracts in Bangladesh, Section 3 of the same provides that subject to the provisions of the Regulation, the administration of Chittagong Hill Tracts shall be carried on in accordance with the Rules for the time being in force under Section 18. Section 4, on the other hand, specifically provides that the enactments specified in the Schedule, to the extent that they are not inconsistent with the Regulation, are declared to be in force in Chittagong Hill Tracts and that no other enactment shall be deemed to be applied in Chittagong Hill Tracts. However, the said Section 4 has conferred power on the government to declare, by

gazette, as to the application of any other enactments. Section 7 has provided, amongst others, that the Chittagong Hill Tracts shall constitute a district for the purpose of criminal and civil jurisdiction, and the Deputy Commissioner shall be District Magistrate and that the general administration of the said Tracts in criminal, civil and revenue and all other matters shall be vested in the Deputy Commissioner.

4.4. Section 8 has further provided that Chittagong Hill Tracts shall constitute a Sessions Division and the Divisional Commissioner and the Additional Commissioner of Chattogram shall be the Sessions Judge and Additional Sessions Judge respectively. Section 8 has also conferred power on the Divisional Commissioner as Sessions Judge to take cognizance of any offence as a Court of original jurisdiction and, while taking cognizance, he shall follow the procedure prescribed by the Code of Criminal Procedure, 1898 as applicable for the trial of warrant cases by the Magistrates. Finally, Section 9 has provided that the High Court Division of Bangladesh shall exercise the powers of the High Court Division for all purposes of

the Code of Criminal Procedure, 1898. In addition to above provisions, on examination of Section 18 of the said Regulation, it appears that it has empowered the government to frame Rules for carrying into effect the objects and purposes of the said Regulation including the power to make Rules for providing for the administration of civil justice in Chittagong Hill Tracts. Sub-rule (3) of Section 18 has provided that all Rules made by the government under the said Section shall have effect as if enacted by the said Regulation.

4.5. Therefore, it appears from the above provisions of the said Regulation that although the said provisions have provided specific forum and procedure for criminal justice system in Chittagong Hill Tracts, it has not made specific provision for civil justice system except the provisions under Section 7 to the extent that the Chittagong Hill Tracts shall constitute a district for the purpose of civil jurisdiction and that the general administration of civil matters shall be vested in the Deputy Commissioner. However, the admitted position is that the then government framed various “Rules under Section 18 of the said Regulation including the

“Rules for the Administration of the Chittagong Hill Tracts”, as published by notification No. 123 P-D dt. the 1st May, 1900 at page 429 Part 1 of the Calcutta Gazette Dt. the 2nd May, 1900 (“the said Rules”).

4.6. Rule 1 of the said Rules provides that the administration of civil justice shall be conducted in the most simple and expeditious manner compatible with the equal disposal of the matters or suits. Rule 2 even provides that the officer dealing with the matter or suit will first endeavour to resolve such matter or suit through viva voce examination of the parties, and the witnesses should not be called except when the officer is unable without them to come to a decision upon facts of the case. The said Rules have, amongst others, given some benefits to the tribal people, or hill men, in respect of Court fees etc. Rule 10 has made specific provisions creating appeal forum. According to this provision, all orders passed in civil suits shall be appealable to the Divisional Commissioner, who may decide by whom the costs in any such appeal shall be paid. Rule 11 even debarred the presence of legal practitioners except in certain cases. Thus, it appears

from the above provisions that in respect of civil matters, the provisions under the Code of Civil Procedure have a very minimum application only in respect of service of process and execution of decrees as provided by Rule 6 of the said Rules.

4.7. Therefore, it cannot be denied that the governments from the British era, time to time, recognized this simplest procedure for disposal of civil disputes in the CHT area and such disputes were adjudicated by the Deputy Commissioner, at the first instance, and the Divisional Commissioner, on appeal, again without application of the provisions of the Code of Civil Procedure. Such separate special provision for disposal of civil disputes has also been recognized by the Code of Civil Procedure itself under Section 4 of the same. This being so, it cannot be said that after separation of judiciary in 2007, the Chittagong Hill Tracts had parallel judicial authority run by executives, particularly when such special procedure and forum created by special law has always been recognized by the Code of Civil Procedure itself. Our Constitution has also recognized special law for the backward Section

of people of this country. From that point of view as well, this separate judicial system cannot be termed as contrary to the provisions of the Constitution. We find recognition of such distinctive status of the Chittagong hill tract area and the hill men residing therein indifferent judicial pronouncements of our superior Court. As for example, see the decisions in **Bangladesh vs. Rangamati Food Products, 69 DLR (AD)-432, Wagachara Tea Estate vs. Md. Abu Taher, 69 DLR (AD)-381, Bikram Kishore Chakma vs. Land Appeal Board, 6BLC-436 (to some extent), Abu Taher vs. Land Appeal Board, 8 BLC-453 and Shefalika Khisa vs. Land Appeal Board, 25 BLC-428.**

4.8. It may also be noted that with the passage of time, the Government of Bangladesh has repeatedly recognized such distinctive administrative and judicial system in Chittagong Hill Tracts Area and that the laws of the main land may only be applicable if they are not inconsistent with the provisions of the Regulation No.1 of 1900. Such recognition of the Government has become more entrenched after the Peace Accord

signed between CHT National Committee constituted by the Government of Bangladesh and Janosonghoti Samity. Terms of such agreement are reflected in various subsequent legislations enacted by our Parliament, namely CHT Regional Council Act, 1998 (Act No. XII of 1998), CHT Land Dispute Resolution Commission Act, 2001 (Act No. 53 of 2001), Small Ethnic Groups Cultural Organization Act, 2010 and so on.

4.9. Therefore, after so many such developments having taken place subsequent to the signing of aforesaid Peace Accord, thereby, repeatedly recognizing the customary law of the hill men in Chittagong Hill Tracts as well as the distinctive legislative status of Regulation No. 1 of 1900, the separate procedure in the CHT area with regard to the resolution of their civil disputes is nothing new or foreign in our jurisprudence. This being so, any subsequent legislative change by way of amendment through the Acts of Parliament has to be examined from that point in view.

Amending Act of 2003:

4.10. Let us now examine the amending Act of 2003 (Act No. 38 of 2003) (came into effect on 04th June, 2008). It appears from the said amending Act that by amending Section 2 of the said Regulation, the terms “District Judge” and “Joint District Judge” have been defined to the effect that the said Judges are appointed by the Government in consultation with the Supreme Court of Bangladesh. By amending Section 7 of the said Regulation, the Legislature created three separate districts in place of one district for the purpose of criminal jurisdiction. By amending Section 8 of the Regulation, the Legislature has created three separate Sessions Divisions for the Chittagong Hill Tract Area, namely Rangamati, Khagrachori and Bandarban Sessions Divisions, and also provided that the District Judges concerned shall be the Sessions Judges of the respective Sessions Division and that the Joint District Judges of the respective districts shall be the Assistant Sessions Judges in the respective Sessions Division. By the same amendment, three

sub-sections, namely sub-sections (3), (4) and (5), have been added to Section 8 of the said Regulation. By such sub-sections, civil jurisdictions as well as appellate forum have been created in the following terms:

“(3) The Rangamati, Khagrachory and Bandarban districts of the Chittagong Hill-Tracts shall constitute three separate civil jurisdictions under three District Judges.

(4) The Joint District Judge, as a court of original jurisdiction, shall try all civil cases in accordance with the existing laws, customs and usages of the districts concerned, except the cases arising out of the family laws and other customary laws of the tribes of the districts of Rangamati, Khagrachory and Bandarban respectively which shall be triable by the Mauza Headmen and Circle Chiefs.

(5) An appeal against the order, judgment and decree of the joint District Judge shall lie to the District Judge.”

4.11. It appears from the above added sub-sections that by such provisions, three separate civil jurisdictions for three hill districts, namely Rangamati, Khagrachori and Bandarban, have been created. The Joint District Judge of each district shall be the Court of original jurisdiction. However, such Joint District Judges shall try all civil cases in accordance with the existing laws, customs and usages of the

district concerned and that the said Joint District Judges shall not dispose of cases arising out of family laws and other customary laws of the tribes of the said districts and that such matters shall be triable by the Mouza Headmen and Circle Chiefs concerned. By adding sub-section (5), appellate jurisdiction has been created and the District Judges of the respective districts have been given the appellate power as against orders, judgment and decrees of the respective Joint District Judges. Therefore, it is evident from this very added provisions under sub-sections (3), (4) and (5) that although three separate civil jurisdictions have been created and Joint District Judges of the said districts have been given the jurisdiction to try civil cases, such civil cases shall have to be tried or disposed of in accordance with the existing laws, customs and usages of the district concerned and not in accordance with the Code of Civil Procedure. On the other hand, the said Joint District Judges, exercising original jurisdiction, shall not have jurisdiction in trying or disposing of cases arising out of family laws

or other customary laws of the tribes of the district concerned and such matters shall be triable by the respective Mouza Headmen and Circle Chiefs. Finally, the District Judges have been given appellate jurisdiction only against the orders, judgments and decrees of the Joint District Judges of the respective districts and not against any order of the Deputy Commissioner of the district concerned or any other officer. It has long been settled by long line of decisions of this Court that the jurisdiction as well as the appellate jurisdiction of a Court is the creature of Legislation and such jurisdiction can be exercised by such appellate forum only to the extent of such power given by the Legislature by the said legislation conferring such jurisdictions. This being so, in the instant matter, it appears that the District Judges of the respective districts shall only have jurisdiction to entertain appeals from the orders, judgments and decrees of the respective Joint District Judges of the said districts.

4.12. Besides, unlike the civil courts in rest of the country, the civil courts in CHT area have not been

established under the Civil Courts Act, 1887 (Act No. XII of 1887). Rather, they have been established under the amended provision of the said Regulation. Therefore, they are the special types of civil courts established under the said special law.

4.13. Given the above position, let us now examine the 'special provision' as provided by Section 6 of the said amending Act of 2003. The said 'special provision' under Section 6 is quoted below:

৬। বিশেষ বিধান।- এই আইন কার্যকর হইবার অব্যবহিত পূর্বে-

(ক) রাজশামাটি, খাগড়াছড়ি ও বান্দরবান জেলায় Deputy Commissioner এর নিকট নিষ্পত্তাধীন (pending) সকল দেওয়ানী মামলা এবং দেওয়ানী প্রকৃতির অন্যান্য আইনগত কার্যধারা তাৎক্ষণিকভাবে সংশ্লিষ্ট জেলার যুগ্ম-জেলাজজের (Joint District Judge) নিকট স্থানান্তরিত হইয়াছে বলিয়া গণ্য হইবে;

(খ) চট্টগ্রাম বিভাগের Divisional Commissioner এবং Additional Divisional Commissioner এর নিকট নিষ্পত্তাধীন (pending) সকল ফৌজদারী মামলা, আপীল এবং ফৌজদারী প্রকৃতির অন্যান্য আইনগত কার্যধারা তাৎক্ষণিকভাবে সংশ্লিষ্ট জেলার দায়রা আদালতে (Sessions Court) স্থানান্তরিত হইয়াছে বলিয়া গণ্য হইবে।

(Underlines supplied)

4.14. It appears from the above 'special provision', particularly from Clause-'Ka' of the same that with the amending Act coming into force, all the civil cases or the proceedings of civil nature pending

before the Deputy Commissioner of the said three districts shall be deemed to have been transferred to the Joint District Judges of the respective districts. According to Clause-‘Kha’ of the said ‘special provision’, all pending criminal cases, appeals and proceedings of criminal nature, pending before the Divisional Commissioner and the Additional Divisional Commissioner of Chattogram, shall be deemed to have been transferred to the Sessions Court concerned of the respective districts. However, this ‘special provision’ under Section 6 is completely silent about pending civil appeals or proceedings of civil nature, as was pending before the Divisional Commissioner or Additional Divisional Commissioner of Chattogram, before the said amending Act came into force.

4.15. In this regard, a submission has been put-forward by Mr. A.F. Hassan Ariff that there cannot be any parallel civil appellate jurisdiction run by the Divisional Commissioner, Chattogram after separation of judiciary. Similar submission has been made before the Additional District Judge,

Bandarban. We have already observed hereinbefore that historically Chittagong Hill Tracts area was governed by distinctive law and administrative procedure. Particularly, in matters of civil disputes, the customary law of the land in Chittagong Hill Tracts area has always been made applicable. Such historic recognition of customary law and non-application of Code of Civil Procedure has again been recognized by the Legislature by inserting sub-section (4) in Section 8 of the said Regulation providing, thereby, that the Joint District Judge, as Court of original jurisdiction, shall try all civil cases in accordance with the existing laws, customs and usages of the district concerned. Not only that, the Legislature, by this amending Act, has also kept the cases arising out of family laws and other customary laws of the tribes out of the jurisdiction of the Joint District Judges and, in respect of those matters, the jurisdiction of the Mouza Headmen and Chief Circles concerned of the tribal people have been recognized.

4.16. Therefore, we fully endorse the submission of Mr. A.M. Amin Uddin, learned Attorney General, and Mr. Probir Neogi, learned senior counsel, to the effect that this Court can only interpret a law and cannot fill up the gap, if any, in the law as because such act of the Court will amount to legislation by the Court. In this regard, the Rule of interpretation as described by late lamented Mr. Mahmudul Islam in his famous book “Interpretation of Statutes and Documents” Mullick Brothers, page-51 may be reproduced below:

“The legislature is presumed to have been aware of the existing law and there is a presumption that the legislature does not intend to make a change in the existing law beyond what is expressly provided or which follows by necessary implication from the language of the statute in question. A statute is prima facie to be construed as changing the law to no greater extent that its words or necessary intendment requires.”

4.17. It may be noted that the said author has described such Rule by referring to several authorities including Maxwell’s-Interpretation of Statutes, 12th Edition, page-214. Again, while interpreting an amending law

enacted by parliament, it cannot be presumed that the Legislature was unaware of the existing law or that the Legislature has committed any mistake by not mentioning a particular matter in the amending law. In this regard, Mr. Mahmudul Islam observed in his book at page-53 in the following terms:

“It is not competent for any court to proceed upon the assumption that the legislature has made a mistake; whatever the real fact may be, a court of law is bound to proceed on the assumption that the legislature is an ideal person that does not make mistakes.”

4.18. The cases cited by Mr. A.M. Amin Uddin, learned Attorney General and Mr. Probir Neogi, learned senior counsel, have also elaborately established the said Rules of interpretation.

4.19. Be that as it may, it is clear from the said ‘special provision’ under Section 6 of the amending Act of 2003 that the Legislature in fact has not committed any mistake. It is apparent that the Legislature deliberately did not mention anything about the pending civil appeals and the proceedings of civil nature as was pending before the Divisional

Commissioner of Chattogram before the said amending Act came into force. There may be various reasons within the wisdom of the Legislature for not mentioning the same. One of such reasons, as suggested by learned advocates, may be that the civil disputes from which the said appeals arose were originally disposed of by an executive, namely the Deputy Commissioner of the respective district. Therefore, it was thought within the wisdom of the Legislature that those should be disposed of by the Divisional Commissioner of Chattogram, another executive in the same hierarchy, as before. On the other hand, since added sub-section (5) of Section 8 of the Regulation does not confer any appellate jurisdiction on the District Judge of the hill districts to hear appeals arising out of an order or judgment of the Deputy Commissioners, no question arises as to the transfer of the said pending civil appeals and proceedings. Therefore, if we read this added sub-section (5) of Section 8 along with the said special provision under Section 6 of the amending Act, we have no option but to hold that it is the Legislature,

which does not want those pending civil appeals and proceedings of civil nature to be transferred to the District Judge of the respective districts and, because of that, the Legislature has remained silent in respect of the said pending civil appeals and proceedings.

4.20. Opinion and Orders of the Court:

- (1) In view of above discussions of law and facts, the answers to both the aforesaid legal questions are **“IN THE NEGATIVE”**, meaning, thereby, that the civil appeals and the proceedings of civil nature, as was pending before the Divisional Commissioner and Additional Commissioner of Chattogram before coming into force of the amending Act of 2003, shall not be transferred to the District Judges of the respective hill districts and, if the same have in the mean time been transferred to the District Judges concerned, the same shall be returned back immediately if the same have not been disposed of yet. However, if any such appeals or

proceedings have already been disposed of by the District Judges and Additional District Judges of the respective districts, the same shall not be disturbed on the ground that the said District Judges, or the Additional District Judges, did not have jurisdiction to hear and dispose of the same. Accordingly, the same shall be treated as “past and closed matters”. However, the said judgments of the District Judges and Additional District Judges may be called in question, in accordance with law, on other grounds.

- (2) Accordingly, the learned District Judges in all three hill districts, namely Rangamati, Khagrachori and Bandarban hill districts, are directed to return immediately all the civil appeals and/or other proceedings of civil nature, as received by them from the office of the Divisional Commissioner, Chattogram, back to the said Commissioner if they are not disposed of yet. The said Divisional Commissioner shall then take steps for disposal of the said appeals

and proceedings, as before, within the shortest possible time.

- (3) The Registrar General of the Supreme Court of Bangladesh is directed to send copies of this judgment, containing above opinion and directions of this Court, to all the learned District Judges of the said three hill districts, namely Rangamati, Khagrachori and Bandarban, the Court of Additional District Judge of Bandarban Hill District and the Divisional Commissioner of Chattogram for compliance.

4.21. Let an advance order be issued containing the above opinion and directions of this Court.

4.22. We express our gratitudes to the learned Amici Curiae and the learned advocates who spent their valuable time to assist this Court.

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(Sheikh Hassan Arif, J)

I agree

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(S M Kuddus Zaman, J)