

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

Present:

Mr. Justice Zafar Ahmed

And

Mr. Justice Md. Bashir Ullah

WRIT PETITION NO. 16011 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:

Md. Badruddoza

... Petitioner

-VS-

The Govt. of Bangladesh and others

... Respondents

Mr. N.M. Ahasanul Haque, Advocate

... For the petitioner

Mr. Md. Faizullah, Advocate

... For the respondent No.5

Judgment on: 30.07.2023.

Md. Bashir Ullah, J.

In the instant writ petition, the petitioner challenged the notice dated 17.05.2022 (Annexure-E) issued by the Zonal Settlement Officer, Rangpur (respondent No. 4) in Miscellaneous Case No. 454 of 2022.

This Court, on 22.01.2023, issued a Rule Nisi and passed an interim order of stay.

The respondent No.5 filed an application for discharging the Rule which is treated as affidavit-in-opposition.

The case of the petitioner is that the mother of the petitioner Juhura Begum purchased land property by a registered deed No. 5810 dated 22.03.1966 from Jalia Sheikh under S.A. khatian No. 138 (previous plot Nos. 1572 and 1659), Banurkoti Mouza, Bhurungamari, Kurigram measuring 124 decimals. The petitioner purchased 60 decimals of land out of 124 decimals and duly mutated the property in his name, paid tax and filed Miscellaneous Case No. 05/2020-2021 before the Assistant Commissioner (Land) against the Mutation Case No. 106/2019-2020 and after hearing the Assistant Commissioner cancelled the said mutation case. Being aggrieved, he filed an application before the Deputy Commissioner, Kurigram. Upon receipt of the application, the Deputy Commissioner's Office sent the case to the Assistant Commissioner (Land) by memo No.295 (4) dated 04.08.2021 to take necessary action. Upon hearing the parties the Assistant Settlement Officer, Bhurungamari, Kurigram fully agreed with the Assistant Commissioner (Land), Bhurungamari. Meanwhile, the R.S. Survey Math Porcha has been prepared in the name of respondents Nos. 5 and 6 in D.P. Khatian No. 585 with previous plots

Nos.1659, 1640, 1619 and 1572 and present plots Nos. 2044, 2172, 2173, 2201, 2202, 2200 and 2047 and in another D.P. Khatian No. 592 with previous plots Nos.1993, 1994, 1640, 1659 and 1572 and present plots Nos. 2628, 2620, 2172, 20444, 2045. The petitioner became a party in the objection case Nos. 786 and 908 under Rule 30 of the Tenancy Rules, 1955 and the Revenue Officer, Bhurungamari, District Kurigram upon hearing the parties allowed the objection case of the others rejecting the case of the petitioner.

As against the same, the petitioner preferred Appeal Nos. 7856 of 2021 and 7857 of 2021 before the Appeal Officer and Assistant Settlement Officer, Bhurungamari, Kurigram under Rule 31 of the Tenancy Rules, 1955 and upon hearing the parties the appeal was allowed in part.

The respondent Nos. 5 and 6 filed an application before the Zonal Settlement Officer, Rangpur on 28.09.2021 and subsequently the said Zonal Officer directed the Assistant Settlement Officer to submit a report through proper form on 30.09.2021. Upon receipt of the said direction the Assistant Settlement Officer, Hathibandha, Lalmonirhat by holding an investigation submitted an inquiry report on 04.10.2021 to respondent No. 4. The inquiry officer found that there is a case of fraud and there are ingredients to be dealt with under Rule 42 A of the Tenancy Rules, 1955.

Upon receipt of the report, the respondent No.4 sent notice on 17.05.2022 to the petitioner in Miscellaneous Case No. 454 of 2022 to appear before him with all relevant papers connected to the case on 24.05.2022 at 10.00 a.m.

Challenging the above-mentioned notice, the petitioner preferred this instant writ petition and obtained Rule.

Mr. N.M. Ahsanul Haque, learned Advocate appearing on behalf of the petitioner submits that the death certificate of Jalia Sheikh is not proper.

He further submits that the petitioner as appellant filed Appeal being Nos. 7856 of 2021 and 7857 of 2021 before the Appeal Officer, Assistant Settlement Officer, Bhurungamari, Kurigram under Rule 31 of the Tenancy Rules, 1955 for correction of the relevant record. The appeal was heard and disposed of *ex parte* by the Assistant Settlement Officer, Bhurungamari, Kurigram, who allowed the appeal in part on 27.06.2021. Thereafter, the respondents 5-6 filed Miscellaneous Case 454 of 2022 before the Zonal Settlement Officer, Rangpur against the present petitioner under Rule 42A of the Rules, 1955 alleging fraud. The concerned Zonal Settlement Officer directed the present petitioner to appear before him with all relevant papers connected to the case on 24.05.2022 at 10.00 a.m. sending a notice dated 17.05.2022 (Annexure-E) which is not legal.

Mr. Md. Faizullah, learned Advocate appearing on behalf of respondent No. 5 submits that the petitioner's deed is forged which has been found in the investigation report and in the volume there is no existence of such deed. Moreover, the petitioner forged the application for addition of party in the Apotti Case and the petitioner filed the instant Writ Petition against a dead person, i.e., Mohammad Ali respondent No. 6 who is not party to the Miscellaneous Case. Document No. 5410 was prepared on 22.03.1966 but the owner who sold the land died on 02.03.1957 and the Assistant Settlement Officer despite having evidence of a forged document and without any justification whether the document was forged or genuine, passed the impugned judgment against the respondents. He further submits that the respondents purchased the land on 17.01.1957 and have peaceful possession of the land to date. On the contrary, the claim of purchasing the said land from the Jaleya Sheikh on 22.03.1966 is false because the document was prepared 9(nine) years after the death of the original vendor which was proved by the investigation of the Assistant Settlement Officer. He next submits that the instant Writ Petition is premature as the respondent No. 2 did not pass any judgment or order till date and the Miscellaneous Case under Rule 42A is well maintainable as per the decision of the Appellate Division reported in 26 BLC(AD) 12.

Heard the learned Advocates of both sides, perused the materials on record.

The record shows that respondents Nos. 5 and 6 filed the application under Rule 42A before the Zonal Officer who directed the Assistant Settlement Officer to submit a report. As per the direction, the Assistant Settlement Officer, Hathibandha, Lalmonirhat after holding an investigation submitted an inquiry report on 04.10.2021 to respondent No. 4 and the inquiry officer in a separate correspondence dated 06.10.2021, vide memo No. ৩১.০৩.৮৫৩৩.০২৮.৩৩.০০৪-২১/২১ opined as follows:

“আবেদনকারীর কাগজপত্র দেখলাম ও বক্তব্য শুনলাম। পর্যালোচনায় দেখা যায় যে, আবেদনকারী সাবেক ১৫৭২ ও ১৬৫৯ দাগের জমি গত ১৭/০১/১৯৫৭ ইং তারিখে ৫৫১ নং দলিল ও ৩০/১২/১৯৭৭ ইং তারিখে ৮৯৭৯ নং দলিল মূলে ক্রয় করে ভোগ দখল আছেন। বাদী খারিজ করেন ও খাজনাদি পরিশোধ করেন। বাদীর নামে দলিল ও দখল মোতাবেক ডিপি ৫৮৫ ও ৫৯২ নং খতিয়ান রেকর্ড প্রস্তুত করা হয়। বিবাদী গত ২২/০৩/১৯৬৬ ইং তারিখের ৫৪১০ নং দলিল মূলে নালিশী সাবেক ১৫৭২ ও ১৬৫৯ দাগের ৬২ শতক জমি এস,এ, মালিক জলেয়া শেখ এর নিকট হইতে খরিদ করেন। বিবাদীর দলিলের দাতা জলেয়া শেখ গত ০২/০৩/১৯৫৭ ইং সনে মৃত্যুবরণ করেছেন মর্মে স্থানীয় ইউনিয়ন পরিষদ চেয়ারম্যান সার্টিফিকেট প্রদান করেন। নালিশী জমি বাদীগণের ভোগ দখলে আছে। কাগজপত্র ও দখল মোতাবেক পূর্বের স্তরে সঠিক বিচার না হওয়ায় অনিয়ম/তথ্যহীনতা হয়েছে বলে প্রতীয়মান মনে হয়। ... সার্বিক পর্যালোচনায় দেখা যায়, ৪২(ক) বিধির উপাদান আছে।”

The above-mentioned inquiry report suggests that the vendor passed away on 02.03.1957 but the forged deed was shown to have been executed on 22.03.1966 which appears to be a case of fraud. Since fraud is *prima facie* detected, the case falls under Rule 42 A of the Tenancy Rules, 1955. The application filed by the respondent Nos. 5 and 6 under Rule 42A alleging fraud pursuant to the inquiry report has to be disposed of in accordance with law.

Upon receipt of the inquiry report, the Zonal Settlement Officer, Rangpur (respondent No. 4) issued the impugned notice dated 17.05.2022 (Annexure-E) to appear before him with relevant documents. We find no illegality in the issuance of the impugned notice.

It is our considered view that the application filed under Rule 42A *prima facie* discloses an act of fraud that can only be resolved upon hearing the Miscellaneous Case. Therefore, the application filed under Rule 42A is entertainable.

It is now settled principle of law that after disposal of an appeal under Rule 31 of the Tenancy Rules, 1955, there is hardly any scope to reopen the matter except challenging the same under Rule 42A on the ground of entry in record-of-rights procured by fraud. It is further settled principle that the application filed under Rule 42A in respect of fraudulent entry must not be vague and it must contain a specific

allegation of any act of fraud [*Bhawal Raj Court of Wards Estate vs. Rasheda Begum*, 15 BLC (AD) 115].

We also get support from *Rawson Ara Vs. Wais Hossain*, reported in 26 BLC(AD)12 wherein the apex Court held:

“Since fraud was detected subsequently, Settlement Officer has jurisdiction for issuing notice and making for hearing of the parties to decide the matter under Rule 42A of the Tenancy Rules, 1955.”

Considering the facts, circumstances and decisions above, we do not find merit in the Rule. Hence, the Rule fails.

In the result, the Rule is discharged. There is no order as to costs. The interim order of stay stands vacated.

Zafar Ahmed, J.

I agree.