

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)**

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 3473 of 2023

Md. Monirul Islam

.....Appellant

-Vs-

The State and another

Mr. Md. Al Amin, Advocate

.....For the appellant

Mr. A.S.M. Kamal Amroohi Chowdhury,
Advocate

... For the respondent No.2 ACC

Mr. Md. Akhtaruzzaman, DAG with

Mr. Sultan Mahmood Banna, AAG with

Mr. Mir Moniruzzaman, AAG with

Mr. Md. Kaium, AAG

....For the State

Heard on 16.02.2025 and 17.02.2025

Judgment delivered on 19.02.2025

This criminal appeal under section 10 of the Criminal Law Amendment Act, 1958 is directed against the judgment and order of conviction and sentence dated 28.03.2023 passed by the Special Judge, Court No. 9, Dhaka in Special Case No. 01 of 2013 (Metropolitan Special Case No. 108 of 2012) arising out of

Tajgaon P.S. Case No. 05 dated 08.09.2011 corresponding ACC G.R. No. 93 of 2011 convicting the appellant under section 5(2) of the Prevention of Corruption Act, 1947 and sentencing him thereunder to suffer imprisonment for 02 (two) years and fine of Tk. 30,000(thirty thousand), in default, to suffer imprisonment for 01(one) month.

The prosecution's case, in short, is that the accused Md. Abdul Hakim was the Assistant Settlement Officer/Appeal Officer(former), Office of the Settlement, Tajgaon, Dhaka, the accused Md. Asraf Ali Hawlader was the Settlement Officer (former), Office of the Settlement, Tajgaon, Dhaka, and the accused Md. Monirul Islam was the Surveyor, Settlement Office, Dhaka. P.W. 2 Shahabuddin was the owner of 3.5 decimals of land of Uttar Khan Mouza and he transferred the said land by registered deed No. 4128 dated 05.07.1986 to his daughter Sharna Khan and her name was mutated. She also paid the rent. She used to reside at Kathal Bagan and could not personally look after the land. Taking that advantage, Nur Nabi Firoz took possession of the said land of Sharna Khan by dispossessing from her land based on a deed of Awaj No. 1273 dated 04.02.1992. Thereafter, on the prayer of Sharna Khan, her name was again recorded in the Khatian. Subsequently, Nur Nabi Firoz filed an appeal, and the appeal officer Asraf Ali Hawldar, after scrutiny of the records by order dated 27.11.2002, recorded the said land in the name of Nur Nabi Firoz. After that Sharna Khan applied for re-hearing of the appeal and Md. Abdul Hakim, without scrutiny of the records by order dated 05.07.2007, affirmed the record of the Nur Nabi relying on the report submitted by Md. Monirul Islam, Surveyor, Office of the Settlement, Tajgaon, Dhaka. Again, Sharna Khan applied for rehearing of the appeal and the Assistant Settlement Officer

Shapon Kumar Baiddha after scrutiny of the documents, recommended for recording the said land in the name of Sharna Khan, and finally, the land was recorded in the name of Sharna Khan under Rule 44 of the East Bengal Tenancy Rule. Although Sharna Khan is the legal owner of the land in question, the Assistant Settlement Officer, Asraf Ali Hawlader and Md. Abdul Hakim based on the report submitted by Md. Monirul Islam recorded the said land in the name of Nur Nabi Firoz and thereby committed an offense under section 5(2) of the Prevention of Corruption Act, 1974, and section 109 of the Penal Code, 1860.

After lodgment of the FIR, P.W. 1 Nur Hossain Khan was appointed as the Investigating Officer. After completing the investigation, he submitted a memo of evidence against the accused Asraf Ali Hawlader, Md. Abdul Hakim, Md. Monirul Islam and Nur Nabi Firoz. Before submitting charge sheet, the accused Abdul Hakim died for which he was not sent up in the charge sheet. After that, co-accused Nur Nabi Firoz filed Criminal Revision No. 2083 of 2014 and accused Md. Abdul Hakim filed Criminal Revision No.2048 of 2014 before the High Court Division. After hearing, the High Court Division by judgment and order dated 27.01.2016 sent the case for further investigation holding that for securing the ends of justice, further investigation is necessary to identify the exact role played by the three public servants and directed to prosecute them if their actions manifestly show abuse of their power and fall in the category of criminal misconduct as defined in section 5(1) of the Act, 1947.

After that, P.W. 8 Md. Sirajul Islam, Assistant Director, Anti-Corruption Commission, Dhaka, took up further investigation of the case. During further investigation, P.W. 8 seized documents and, after completing the investigation submitted the memo of

evidence against the accused persons, namely, 1. Md. Asraf Ali Hawlader, 2. Nur Nabi Firoz and 3. Md. Monirul Islam and obtained approval on 26.02.2012 for submitting the charge sheet and accordingly submitted the charge sheet on 29.02.2012 against them. After that, the case record was sent to the Senior Special Judge, Dhaka who by order dated 27.08.2017 took cognizance of the offence against the accused persons under section 5(2) of the Prevention of Corruption Act, 1947 and section 109 of the Penal Code, 1860 and sent the case to the Special Judge, Court No. 9, Dhaka for trial.

The case was again sent back to the Senior Special Judge, Dhaka, who by order dated 26.11.2017, took cognizance of the offence under section 406 of the Penal Code, 1860 against the accused Md. Nur Nabi Firoz and sent the case to the Special Judge, Court No. 9, Dhaka, who by order dated 07.07.2019 framed charge against the accused Md. Asraf Ali Hawlader and Md. Monirul Islam under section 5(2) of the Prevention of Corruption Act, 1947, and section 109 of the Penal Code, 1860 and framed charge against the accused Nur Nabi Firoz under section 406 of the Penal Code, 1860. At the time of framing charge, the accused persons were absconding, and the charge so framed could not be read over and explained to them.

During the trial, the prosecution examined 8 witnesses to prove the charge against the accused persons, and accused Nur Nabi Firoz and Md. Monirul Islam cross-examined the prosecution witnesses. After examination of the prosecution witnesses, the accused Nur Nabi Firoz and Md. Monirul Islam was examined under section 342 of the Code of Criminal Procedure, 1898, and they examined 2 DWs. During the trial, the accused Nur Nabi Firoz died on 20.09.2022, and the trial court, by order dated 27.10.2022,

discharged him. After concluding the trial, the Special Judge, Court No. 9, Dhaka, by judgment and order dated 28.03.2023, convicted the accused Md. Monirul Islam under section 5(2) of the Prevention of Corruption Act, 1947, and sentenced him thereunder to suffer rigorous imprisonment for 2 years and a fine of Tk. 30,000, in default, to suffer imprisonment for 01 month against which he filed the instant appeal.

P.W. 1 Nur Hossain Khan is the Assistant Director (retired), Anti-Corruption Commission, Dhaka. He stated that from July 2009 to March 2012, he discharged his duty as Assistant Director, Anti-Corruption Commission, Dhaka. He was appointed as an inquiry officer to inquire about the accused persons. One Sharna Khan purchased 3.5 decimals of the land of Bata Dag No. 3635/1182 of Mouza-Uttar Khan, Zilla-Dhaka by Register Deed No. 4128 dated 05.07.1986 from her father Md. Shahabuddin Khan. After purchasing the land, she mutated the said land in her name and paid the tax. Since she used to reside at Kathal Bagan, she could not personally look after the property situated at Uttar Khan, Dhaka. Taking advantage of her physical absence, one local Nur Nabi Firoz, based on the Deed of Awaj of 1991-1992, took possession of the land of Sharna Khan and started residing there. Against the said dispossession, she filed an appeal, and the land was again recorded in her name. The said Nur Nabi Firoz filed an appeal against the record of Sharna Khan and the appeal authority, by order dated 27.11.2002, recorded the said land in the name of Nur Nabi Firoz. Again, Sharna Khan applied rehearing of the appeal, and the appeal officer Abdul Hakim, without examining the records, kept the matter pending and, by order dated 05.07.2007, affirmed the record of Nur Nabi Firoz. Again, Sharna Khan filed an appeal against the record of the land in the name of Nur Nabi Firoz

and Assistant Settlement Officer Shapon Kumar Baiddha, after hearing recorded the said land in the name of Sharna Khan under Rule 44 of the East Bengal Tenancy Rule. Although Sharna Khan is the real owner of the said land but the Assistant Settlement Officer, Md. Asraf Ali Hawlader and Abdul Hakim, in connivance with each other, recorded the said land in the name of Nur Nabi Firoz. P.W. 1 proved the FIR as exhibit-1 and his signature on the FIR as exhibit-1/1. During cross-examination, he stated that the complaint petition was filed against Md. Asraf Ali Hawlader, Nur Nabi Firoz, Abdul Hakim, and Md. Monirul Islam. He denied the suggestion that the name of Md. Monirul Islam was not included in the first charge sheet. He affirmed that he visited the land twice. The accused Md. Monirul Islam submitted the report after a physical investigation. He denied the suggestion that Sharna Khan did not possess the land. He stated in the FIR that the accused Nur Nabi Firoz, resided on the land on the basis of a deed of exchange. He could not say whether the Shapon Kumar Baiddha had passed any order for inquiry. He stated that he could not say whether the land of Sharna Khan and Nur Nabi Firoz were identical or not.

P.W. 2 Shabuddin Khan stated that on 08.07.2018 at 10 am, he went to the office of the Anti-Corruption Commission, Dhaka, along with Deed No. 602 dated 13.01.1985 and Deed No. 2396 dated 13.03.1991. His daughter Sharna Khan is the owner of the disputed land. He purchased the land in the name of his daughter Sharna Khan. The investigating officer seized those documents/deeds and prepared the seizure list. He proved the seizure list as exhibit-2 and his signature on the seizure list as exhibit-2/1. He proved deed No. 602 dated 13.01.1986 as exhibit-3 and Deed No. 396 dated 13.03.1991 as exhibit-4. On 11.12.2011 at 12.30, the deeds were seized. He proved the seizure list as exhibit-5

and his signature on the seizure list as exhibit-5/1. The seized documents were handed over to his custody. He proved the Zimmanama as exhibit-6 and his signature on the Zimmanama as exhibit-6/1. The documents taken in his custody were submitted in Title Suit No. 48 of 2013 filed in the Court of Assistant Judge, Court No. 4, Dhaka. He submitted the certified copies of the seized documents as material exhibits- I series. He purchased 3.05 decimals of land in 1986 in the name of Sharna Khan and mutated the land in the name of her daughter and paid the rent. He constructed the boundary wall. The land is part of CS Dag No. 289 and present Dag No. 1182/3635. He used to reside in Hatirpul. His daughter could not look after the land, for which in 1991-1992, his daughter was dispossessed from the land based on a deed of exchange. He made several attempts to correct the record in the name of his daughter. Assistant Settlement Officer Asraf Ali Hawlder and Md. Abdul Hakim illegally mutated land in the name of Nur Nabi Firoz. He affirmed that the deed number of Nur Nabi Feroz is 1273 dated 05.02.1992, the Dag number is 1182/3635, and there is a boundary of his land. He affirmed that the boundary of the land of Sharna Khan and Nur Nabi Firoz is not identical. He affirmed that Nur Nabi is now in possession of the land, but he is illegally possessing the land. A civil suit is pending in the district court. He affirmed that he purchased the land from Asraf Ali Hawlader and Farook Uddin, and there was a pillar in his land.

P.W. 3 AKM Ruhul Amin is the Additional Director General, BMET, Dhaka. He stated that from November 2008 to 2011, he was the Charge Officer of the Office of the Settlement, Dhaka. He inquired about the Appeal Case No. 25804 of 2000. During the inquiry, he examined the record in the presence of both parties. After inquiry, he submitted the report on 05.07.2010,

recommending for taking action against the Assistant Settlement Officer Abdul Hakim. He proved the report as exhibit-7 and his signature on the report as exhibit-7/1. In the report, he also made recommendations to take action against Md. Monirul Islam. The defence did not cross-examine P.W. 3.

P.W. 4 Amir Hussain is the Assistant Settlement Officer. He stated that on 30.10.2011, he was discharging his duty in the Office of the Settlement, Tajgaon. On that day at 1.00 pm, Assistant Director Nur Hossain of the ACC visited his office. He seized the alamats mentioned in serial No. 4 of the seizure list. He proved the seizure list as exhibit-8 and his signature on the seizure list as exhibit-8/1. The seized documents were handed over to his custody. He proved the Zimmanama as exhibit-9 and his signature on the Zimmanama as exhibit-9/1. He proved the documents which were handed over to his custody as Exhibit exhibit-2 series.

P.W. 5 Suhel Rana is the UNO, Manoharganj, Cumilla. He stated that on 31.10.2011, he was discharging his duty as Assistant Director, Anti-Corruption Commission, Dhaka. On that day at 8.01 pm, the investigating officer Nur Hossain Khan seized documents presented by Md. Amir Hossain, Officer-in-Charge, Office of the Settlement, Tajgaon. The documents mentioned in serial No. Ka and Kha of the seizure list were seized. He signed the seizure list. He proved his signature on the seizure list as exhibit-8/2.

P.W. 6 Nur Hossain was the Deputy Director of the Anti-Corruption Commission, Dhaka. He was appointed as an investigating officer on 12.10.2011. During the investigation, he seized the documents and recorded the statements of the witnesses under section 161 of the Code of Criminal Procedure, 1898. He seized documents mentioned in serial Nos. 4Ka to 4Kha in the

seizure list dated 31.10.2011. He proved the seizure list as exhibit-8 and his signature on the seizure list as exhibit-8/3. On 11.12.2011 at 12.30 pm, he seized documents mentioned in serial No. Ka to Gha of the seizure list. He proved the seizure list as exhibit 5 and his signature as exhibit 5/2. Sharna Khan purchased 3.5 decimals of land of Dag No. 1182/3635 of Mouza-Uttarkhan, Dhaka by registered Deed No. 4128 dated 06.07.1981, and the land was mutated in her name. She used to reside in Kathal Bagan. She could not personally look after the land, and taking that advantage Nur Nabi Firoz, a local, based on a Deed of Exchange of 1991-1992, dispossessed Sharna Khan and started residing therein. She filed the appeal, and the land was recorded in her name. Nur Nabi Firoz filed Appeal No. 24804 of 01. After hearing, without examining the records, Appeal Officer Asraf Ali Hawlader, by order dated 27.11.2002, recorded the land in the name of Nur Nabi Firoz. Sharna Khan applied for a rehearing of the appeal. The appeal officer, Abdul Hakim, without examining the records based on the report of the Surveyor Md. Manirul Islam affirmed the record in the name of Nur Nabi Firoz. Surveyor Md. Manirul Islam submitted the report on 05.02.2007. In the report, it has been mentioned that Nur Nabi Firoz possesses the land. Sharna Khan never possessed the land. Md. Abdul Hakim, without examining the record, delayed the matter and by order dated 05.07.2007, recorded the said land in the name of Nur Nabi Firoz. Subsequently, Sharna Khan filed an appeal against the order of Abdul Hakim, and Assistant Settlement Officer Shapon Kumar Baidhha, after examining the records, recommended to record the said land in the name of Sharna Khan. Considering the said recommendation, the Assistant Director of the Land Record and Survey Directorate recorded the land in the name of Sharna Khan under Rule 44 of the East Pakistan Tenancy Rule. Sharna Khan

was the actual owner. The accused Ashraf Ali, Abdul Hakim, and Surveyor Md. Monirul Islam, in connivance with each other, abusing their power illegally recorded the land of Sharna Khan in the name of Nur Nabi Firoz. He submitted the charge sheet on 29.02.2012 against Md. Asraf Ali Hawlader, Nur Nabi Firoz, and Md. Monirul Islam, with prior approval of the Anti-Corruption Commission. During cross-examination, he stated that the accused Md. Monirul Islam was the Surveyor. He was instructed to settle the ownership after inspection of the land. He did not submit the correct report. Rather, he submitted the wrong report. He affirmed that while he visited the land, the accused Nur Nabi Firoz was illegally possessing the land. He has possessed the land for about 10 years. In the report, the accused did not mention the Dag number of the land. He did not find a similar allegation against the accused Md. Monirul Islam. He found a biti hut on the land. Sharna Khan owned the land before taking possession by Nur Nabi Firoz. He denied the suggestion that the accused was instructed only to ascertain the possession and did not submit any wrong report. He could not say whether Nur Nabi Firoz was in possession based on the Deed of Exchange No. 1273 dated 04.02.1992. A civil suit was pending between Nur Nabi Firoz and Sharna Khan.

P.W. 7 Abdul Latif was the Constable of the Anti-Corruption Commission (retired). He stated that on 31.10.2011, he along with Assistant Director Nur Hossain Khan went to the record room of the Office of the Settlement, Tajgaon, Dhaka, and Nur Hossain Khan seized documents mentioned in serial No. 4 of the seizure list. He signed the seizure list. On 11.12.2011 at 12.30 pm, Investigating Officer Nur Hossain Khan seized documents mentioned in serial No. 4 of the seizure list presented by Shahabuddin. He proved the signature of the seizure list as exhibit-

5/3. He denied the suggestion that at the time of seizing those documents, he was not present. He could not mention the name of the documents seized.

P.W. 8 Md. Serajul Islam is the Deputy Director, Anti-Corruption Commission, Dhaka. He stated that in 2017, he was discharging his duty as Assistant Director of the Anti-Corruption Commission, Dhaka. He was appointed as an investigating officer by memo No. 33369 dated 06.11.2017. During further investigation on 09.07.2018 at 10.00 am, he seized a certified copy of two deeds. He proved the seizure list as exhibit-2 and his signature on the seizure list as exhibit-2/1. He proved the certified copy of the deeds as exhibits 3 and 4. He collected the Memo No. 12046 dated 04.10.2018. He proved the memo sent by the District Registrar as Exhibit 10. He proved the certified copy of 3 deeds as Exhibit 11 series. He submitted the report for correction of the clerical mistake of the previous investigating officer with prior approval. During cross-examination, he stated that he did not visit the land. The previous investigating officer wrongly wrote deed No. 1038 dated 06.11.1991. It will be deed No. 10385 dated 06.11.1991. There was another mistake. The deed No. 1280 dated 4.02.1992 is wrong. It is deed No. 1273 dated 04.02.1994. The land mentioned in the deeds of the complainant and the deed of exchange are not identical.

D.W. 1 Md. Monirul Islam is the appellant. He stated that initially, he was not accused. Subsequently, he was implicated as the accused. He is now discharging his duty as Surveyor of the Office of the Land Record and Survey Department. He stated that in the presence of Sharna Khan, he prepared the report. After a physical inspection, he submitted the report. The complainant threatened him to submit a report in her name. On 01.03.2007 at 9.30 am father of the complainant took him to the land and

admitted that he had no possession. He found the physical possession of Nur Nabi Firoz and accordingly submitted a report. He affirmed that he submitted the correct report and he is the Surveyor of the Land Survey Department. Nur Nabi Firoz purchased the land in 1992. He admitted that in the report, it has been mentioned that Nur Nabi Firoz has been possessing the land since 1989, which he heard from the locals. Nothing has been mentioned in the report from whom he heard that Nur Nabi Firoz had possession in the land.

D.W. 2 Nur Nabi Firoz is the accused No. 2. He stated that by registering the deed of exchange No. 1273 dated 04.02.1993, he obtained the land, and Title Suit No. 01 of 2015 is now pending in the Court of Assistant Judge, Court No. 4, Dhaka. He proved the photocopies of the said deed as Exhibit Ka. His name was recorded in the preliminary record. He filed appeal No. 2580 of 2000. Asraf Ali Hawlader was the appeal officer. He made inquiries several times, and the report was submitted in his favour. Thereafter, he got the mutation in his name on 27.11.2006. Against the said order, Sharna Khan prayed for a rehearing. Abdul Hakim was appointed as an appeal officer. He again passed an order for inquiry, and an inquiry report was submitted in his favour. He affirmed the record in his name. Sharna Khan filed a review. Shapon Kumar Baidhha was appointed as the review appeal officer. He partly amended the record. Sharna Khan filed Civil Suit No. 48 of 2013 claiming 3.5 decimals of land. He affirmed that the boundaries of Sharna Khan and his land are not identical. The appeal officer correctly recorded his name. He owned the land on the basis of the oral bainanama since 1989. He obtained the deed in 1992. He obtained the land by deed No. 1273 dated 04.02.1992 from Ayub Hossain, who purchased the land from Fatema by deed No. 2396 dated

23.03.1991. Fatema Begum purchased the land by deed No. 11199 dated 02.10.1990. He obtained the land in 1989 from Aiyub. The record was prepared in his name. The name of Sharna Khan was included in the record, replacing his name. He submitted the documents to the appeal officers, Abdul Hakim and Asraf Ali Hawlader. He submitted deed No. 12918 dated 03.12.1990.

The learned Advocate Mr. Md. Al Amin, appearing on behalf of the appellant Md. Monirul Islam submits that admittedly, co-accused Nur Nabi owned the disputed land and before submitting the report dated 05.03.2007 by the accused Md. Monirul Islam, 2 other Surveyors also submitted reports stating that the accused Nur Nabi Firoz was in possession of the land, and the accused Monirul Islam, bona fide, submitted the report regarding the possession of the land belonging to the accused Nur Nabi Firoz. He also submits that during the trial, the prosecution did not prove the report dated 05.03.2007 submitted by the accused, and the trial court, without proper assessment and evaluation of the evidence of the parties, illegally passed the impugned judgment and order convicting the accused. He prayed for setting aside the impugned judgment and order passed by the trial court.

The learned Advocate Mr. A.S.M. Kamal Amroohi Chowdhury, appearing on behalf of respondent No. 2, Anti-Corruption Commission, submits that before taking possession of the disputed land by Nur Nabi Firoz, Sharna Khan was possessing the land, purchasing and mutating her name, and the accused Md. Monirul Islam, abusing his office malafide submitted a false report to the effect that Sharna Khan was never in possession of the land. Therefore, he committed misconduct as defined in section 5(2) of the Prevention of Corruption Act, 1947. He prayed for the dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Md. Al Amin, who appeared on behalf of the appellant and the learned Advocate Mr. A.S.M. Kamal Amroohi Chowdhury, who appeared on behalf of respondent No. 2, Anti-Corruption Commission, perused the evidence, impugned judgment and order passed by the trial court and the records.

On perusal of the evidence, it appears that Sharna Khan, daughter of P.W.2 Shahbuddin, purchased 3.5 decimals of land of Dag No. 1182/3635 of Mouza Uttar Khan, Dhaka by register Deed No. 4128 dated 05.07.1986 and after purchasing the said land, she took possession of the land by constructing boundary wall and mutated the land in her name. After that, co-accused Nur Nabi Firoz, by registered Deed of Exchange No. 1273 dated 04.02.1992, entered into the possession of the said land, and the land was mutated in the name of accused Nur Nabi Firoz. P.W. 8 Investigating Officer stated that the land purchased by Sharna Khan and co-accused Nur Nabi Firoz is not identical. The above evidence of P.W. 8 was not disputed by the defence. By cross-examining P.W.2, the defence affirmed that the land of Sharna Khan and the accused Nur Nabi Firoz are not identical. The accused Nur Nabi entered into the possession of the said land by dispossessing Sharna Khan.

After entering into possession of the land Md. Nur Nabi filed an appeal against the mutation of Sharna Khan, and in that appeal, 2 reports were submitted in favour of Nur Nabi Firoz stating that Nur Nabi was possessing the land and the appeal authority mutated the land in the name of Nur Nabi Firoz. Subsequently, Sharna Khan applied rehearing of the appeal, and the appeal authority affirmed the mutation of Nur Nabi. After that, Sharna Khan again filed a review application. In the appeal, the

accused Md. Monirul Islam was instructed to give report about the possession of the land and the accused Md. Monirul Islam, Surveyor, Sadar Appeal Court, Tajgaon, submitted the report on 05.03.2007 stating that Nur Nabi Firoz is possessing the land since 1989 and Sharna Khan was never in possession of the land. The said report was not proved in the case.

During the pendency of the appeal No. 25804 of 2000, Md. Shahabuddin Khan, father of Sharna Khan filed an application for re-hearing of the appeal. Pending re-hearing of the appeal, P.W. 3 AKM Ruhul Amin, Charge Officer and Inquiry Officer, Settlement Office, Dhaka, after inquiry submitted a report on 05.07.2010, which is quoted below:

“২৫৮০৪/২০০০ নং আপীল মামলার পুনঃ শুনানীতে সার্ভেয়ার মনিরুল ইসলাম কর্তৃক ০৫/০৩/২০০৭ খ্রিঃ তারিখে দাখিলকৃত তদন্ত প্রতিবেদন পর্যালোচনায় দেখা যায় তিনি লিখেছেন ১৯৮৯ সাল থেকে নুরনবী ফিরোজ শান্তি পূর্ণভাবে ভোগ দখলে আছেন। স্বর্ণা খান নালিশী ভূমিতে কখনও ভোগ দখল করেন নাই। কিন্তু সার্ভেয়ার কিসের ভিত্তিতে দখল বিষয়ক এই রূপ মতামত/প্রতিবেদন প্রদান করলেন তা উল্লেখ নাই। তাছাড়া তিনি কোন স্বাক্ষীর বক্তব্য নেন নাই। এমনকি একই বিষয়ে ইতোপূর্বে সার্ভেয়ার আনিছুর রহমান ও আব্দুল মান্নান কর্তৃক দাখিলকৃত তদন্ত প্রতিবেদন পর্যালোচনায় দেখা যায় নালিশী ভূমি ১০ বৎসর যাবৎ নুরনবী ফিরোজ ভোগ দখল করেন কিন্তু তার আগে স্বর্ণা খান এর দখলে ছিল। উভয় সার্ভেয়ারই স্বাক্ষীদের বক্তব্য নিয়েছেন এবং সরেজমিন বাস্তব অবস্থা বর্ণনা করে প্রতিবেদন দিয়েছেন। কোন সার্ভেয়ারই লেখেন নাই যে স্বর্ণা খান নালিশী ভূমিতে কখনও ভোগদখল করেন নাই। পুনঃ শুনানীতে এ,এস,ও আব্দুল হাকিম এর নির্দেশে মতে সরেজমিন দখল তদন্তকারী সার্ভেয়ার মনিরুল ইসলামকে স্বাক্ষীদের বক্তব্য গ্রহণ ও সরেজমিন অবস্থা যাচাই ব্যতীত কিভাবে দখল প্রতিবেদন দাখিল করলেন সেই বিষয়ে জিজ্ঞাসা করা হইলে সার্ভেয়ার সন্তোষজনক জবাব দিতে পারেননি।

প্রতিয়মান হয় যে, সার্ভেয়ার মনিরুল ইসলাম যথাযথভাবে সরেজমিন অবস্থা যাচাই ও স্বাক্ষীদের বক্তব্য গ্রহণ না করে প্রতিবেদন দাখিল করেছেন। যা উদ্দেশ্য প্রণোদিত, অনৈতিক ও পক্ষপাতমূলক।”

Although the report dated 5.3.2007 was not proved by the prosecution but the report dated 05.07.2010 submitted by P.W. 3 was proved as exhibit-7. In the report dated 05.07.2010, it has been mentioned that the accused Md. Monirul Islam submitted the report stating that Sharna Khan was never in possession of the land. The defense did not cross-examine P.W. 3 regarding the report dated 05.07.2010 (Exhibit 7). Therefore, I am of the view that the content of the report dated 05.07.2010 (exhibit-7) is admitted by the defence and P.W. 3 correctly quoted the content of the report dated 05.03.2007 submitted by the accused Md. Monirul Islam in the report dated 05.07.2010 (Exhibit 7).

The learned Advocate Mr. Md. Al Amin, engaged on behalf of the appellant, cited a decision made in the case of Ayubur Rahman vs. the State reported in 56 DLR(2004) 281 in which it has been held that;

“It does not appear from the contents of the first information report and the charge sheet as discussed by us above that the same could substantiate the allegations of such criminal misconduct and criminal breach of trust, punishable under the Prevention of Corruption Act and the Penal Code. We have also perused the statements of 17 witnesses recorded under section 161 of the Code of Criminal Procedure but do not find prima facie ingredients of the offence against the accused-petitioner of

criminal breach of trust punishable under section 409 of the Penal Code and of criminal misconduct punishable under section 5(2) of the Prevention of Corruption Act, 1947. Criminal misconduct cannot be impugned to any action of a public servant when he performs his function in accordance with the prescribed set of rules and procedures without manifestly showing any instance of abuse of his official position within the meaning of section 5(1) of the Prevention of Corruption Act, 1947.”

A Public Servant discharges his duty following the law. From the evidence discussed hereinabove, it is crystal clear that Sharna Khan owned the disputed land, and the land was recorded in her name before taking possession by Nur Nabi Firoz, and he entered into possession of the land by dispossessing Sharna Khan. Therefore, the report submitted by the accused Md. Monirul Islam to the effect that Sharna Khan was never in possession of the land is found to be baseless and untrue. The accused Md. Monirul Islam malafide submitted an untrue report without considering the documents of title, two other previous reports submitted by the surveyors, and previous possession of Sharna Khan. Therefore, he committed misconduct as defined in section 5(2) of the Prevention of Corruption Act, 1947.

In view of the above facts and circumstances of the case, I am of the view that the prosecution proved the charge against the accused beyond all reasonable doubt, and the trial court, on correct assessment and evaluation of the evidence adduced by the parties, legally passed the impugned judgment and order of conviction.

P.W. 8 investigating officer Md. Serajul Islam stated that during the investigation, he did find similar allegation against the accused Md. Monirul Islam. Therefore, considering the facts and circumstances of the case and the gravity of the offense, I am of the view that ends of justice would be best served if the sentence passed by the trial court is modified as under;

The accused Md. Monirul Islam is found guilty of the offence under section 5(2) of the Prevention of Corruption Act, 1947, and he is sentenced thereunder to suffer imprisonment for 03 (three) months and to pay a fine of Tk. 5000, in default, to suffer imprisonment for 15 (fifteen) days.

In the result, the appeal is disposed of with modification of the sentence.

The appellant is directed to surrender before the trial court within one month from the date of receipt of a copy of the judgment. He is entitled to get the benefit of section 35A of the Code of Criminal Procedure, 1898.

However, there will be no order as to costs.

Send down the lower Court's record at once.

5207