

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

Writ Petition No.13337 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. Nazmul Haque ... Petitioner.

- Vs.-

Govt. of Bangladesh and others ... Respondents.

Mr. Md. Mesbahul Islam Asif, Advocate
 ... For the petitioner.

Mr. Mahfuz Bin Yousuf, DAG with
 Mr. Mohammed Shafiqur Rahman, DAG with
 Mr. Md. Esa, AAG with
 Mr. Eakramul Kabir, AAG with
 Mr. Mohiuddin Md. Hanif, AAG
 ... For the Respondents.

Heard on: 07.11.2024

Judgment on the 21st November, 2024

Present:

Justice Fahmida Quader
And
Justice Mubina Asaf

Mubina Asaf, J:

On an application filed by the petitioner under Article 102 of the Constitution, on 14.12.2022 the Rule Nisi under adjudication was issued in the following terms:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned judgment and order dated 19.07.2022 passed by the Member-1, Land Appeal Board in Appeal

Case No.55-66/2019 (Nam:), Mymensingh disallowing the appeal and thereby affirming the judgment and order dated 03.09.2019 passed by the Additional Divisional Commissioner (Rev.), Mymensingh, in Appeal Case No.11 of 2018 affirming the judgment and order dated 22.01.2018 passed by the Additional Deputy Commissioner (Rev.) Mymensingh in Misc. Appeal No.56(XIII)/2015 rejecting the same and thereby affirming the judgment and order dated 20.10.2015 passed by the Assistant Commissioner (Land) Dhobaura, Mymensingh in Misc. Case No.489 (IX-1) 2014-2015 rejecting the prayer for mutation in the name of the petitioner should not be declared to have been done without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this court may seem fit and proper."

The facts of the case as stated in the writ petition are that the petitioner is a bonafide purchaser of the schedule property. The schedule land originally belonged to R.S. recorded tenant Hem Chandra Chakrabarti. Subsequently, the same was correctly prepared in the name of Monnoth Nath in ROR Khatian and BRS record was correctly prepared in his name. Thereafter, he died leaving behind his son Moloy Kumar Charkrabarty as his heir, who transferred the same to the petitioner vide a registered deed No.2360 dated 10.09.2006 and has been owning and possessing the same. That while the petitioner has been owning and possessing the schedule land the respondent published a tender notice of hat-bazar on 03.02.2008 showing the petitioner's property as periphery of hat-bazar and for such inclusion the petitioner as plaintiff filed Other Class Suit being No.9 of 2008 against the Government before the learned Senior Assistant Judge, Dhobuara, Mymensingh, in which the Government as defendant appeared by filing written statements contesting the same. After concluding the trial the learned Assistant

Judge decreed the suit on contest vide judgment and decree dated 30.06.2009. Against which the Government as appellant preferred an appeal being Other Class Appeal No.143 of 2009 before the learned District Judge, Mymensingh and on transfer the same was heard by the learned Additional District Judge, Mymensingh who after hearing the parties dismissed the appeal vide judgment and decree dated 24.06.2010. Against which the respondent Government preferred a Civil Revision along with an application for condonation of delay before this Court in which Rule was issued on delay and after hearing the same was discharged on 09.02.2014 by this Court.

Mr. Md. Mesbahul Islam Asif, the learned Counsel for the petitioner submits that in the meantime the petitioner was dispossessed from some portion of the schedule property by the local miscreants and thus he was compelled to file another suit being Other Class Suit No.45 of 2010 before the learned Senior Assistant Judge Court, Dhobaura, Mymensingh for recovery of possession and after hearing the suit was decreed on 26.01.2012 and thereafter in course of execution, the possession was restored through court on 24.11.2014. He also submits that after exhausting the civil litigation the petitioner filed an application for mutation of the schedule property in his name before the Assistant Commissioner (Land), Dhobaura, Mymensingh on 07.09.2014. Pursuant to the application of the petitioner a Misc. Case being No.489 (IX-I) 14-15 was started and the said case for mutation was rejected on 20.10.2015 by the Assistant Commissioner (Land), Dhobaura, Mymensingh against which the petitioner preferred an appeal being Misc. Appeal No.56(XIII) 2015 before the Additional Deputy Commissioner (Rev.), Mymensingh who after hearing the parties dismissed the appeal on 22.0.2018.

Thereafter, the petitioner preferred an appeal before the Additional Divisional Commissioner, Mymensingh being Appeal No.11 of 2018 who after hearing also dismissed the same by his judgment and order dated 03.09.2019. Against that order the petitioner moved before the Land Appeal Board, Dhaka, being Appeal No.5-66 of 2019 and after hearing, the same was dismissed on 19.07.2022. The learned Counsel for the petitioner further submits that the right, title and possession of the petitioner over the schedule property was declared by the competent Civil Court and thus the impugned judgment and order passed by the respondents are illegal, without lawful authority and is of no legal effect and the schedule property is a private purchased property of the petitioner. Therefore, the same cannot be treated as hat-bazar or its periphery by the respondents in any manner whatsoever. The learned Counsel further submits that while the Civil Court declared title and restored possession in favour of the petitioner, hence the respondents do not have any substantive right to treat the schedule property as hat-bazar and refuse his mutation. In this regard, the contention of the petitioner is that the respondents have acted most illegally, irresponsibly and with a malafide intention and causing harassment to the petitioner by taking away the right to property of the petitioner as guaranteed under Article 42 of the Constitution of the People's Republic of Bangladesh.

Though no affidavit-n-opposition was filed by the writ respondent Nos.1-8 controverting the statements made in the Writ Petition but Mr. Mahfuz Bin Yousuf, the learned Deputy Attorney General on behalf of the respondent Nos.1-8 entered appearance and candidly submitted that there is no plausible reason for non-

compliance with the order given by competent Civil Courts as evidenced from Annexures-C, C1, D and D1.

We have heard the learned Counsel for the petitioner and the learned Deputy Attorney General for the respondents and pursed the record.

In view of the above stated legal and factual position it is important to mention Article-27 and Article-31 along with Article-42 of the Constitution.

Article 42 of the Constitution of the People's Republic of Bangladesh says as follows –

“42(1) “Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property and no property shall be compulsorily acquired, nationalised or requisitioned save by authority of law”.

Article 27 of the Constitution says as follows-

“All citizens are equal before law and are entitled to equal protection of law”.

Article 31 of the Constitution says as follows:

“To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law”.

It is observed in 66 DLR (AD) 255, “The protection of legitimate expectation is at the root of the constitutional principle of the rule of law, which requires regularity, predictability and certainty in Government's dealings with the public.

In the case of *Council of Civil Service Unions-Vs.-Minister for the Civil Service* (1984) 3 ALL ER 935 House of Lords observed that, for a legitimate expectation to arise, the decision of the administrative authority must affect such person either- (a) by altering rights or obligations of that person which are enforceable by or against him in private law or (b) by depriving him of some benefit or advantage which he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon or he has received assurance from the decision-maker that they will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should not be withdrawn."

By rejecting the prayer for mutation of the petitioner even after the competent Civil Courts have declared the right, title and possession of the petitioner over the schedule property the respondents disregarding the findings of the competent Civil Court and thereby restarting a Misc. Case being No.489 (IX-I) 14-15 afresh and rejecting the application of the petitioner in Misc. Case No.489(IX-I) 14-15 on 20.10.2015, caused the petitioner again to file an appeal being Misc. Appeal No.56 (XIII) 2015 before the Additional Deputy Commissioner (Rev.), Mymensingh who again rejected the same on 22.01.2018. Hence, after exhausting all forums and still not able to mutate the petitioner come before this Court for redress.

Natural justice is a fundamental concept ensuring that decisions affecting individuals are made fairly and transparently. Failure of the respondents to comply

with the determination made by the competent Courts tantamount to denial of due process violating constitutional principles when the Government official delays or denies a citizen of his rights without valid grounds. It also constitutes abuse of authority and such conduct may also breach administrative fairness. The Government officials are bound to perform their duties in accordance with statutory laws. Failure to adhere to competent Courts' decision can be considered abuse of power.

This kind of failure after a citizen has knocked all doors and still not able to get redress makes a citizen loose confidence and faith in the process. In this case after the petitioner finally got the orders from the competent Courts regarding his right and title for his property thereafter denying mutation amounts to harassing a citizen unnecessarily and violation the principles of natural justice. Thus, the failure of the respondents to facilitate the mutation constitutes violation of natural justice because it undermines the principles of fairness, reasonableness and accountability and non-application of mind in administrative actions.

We would also like to refer a judgment of Civil Petition for Leave to Appeal No.231 of 2010 in the matter of Government of Bangladesh and others-Vs.-Bimal Shah and others, where in a similar case of failure to mutate it was held that,

"the respondent Nos.1-5 and in particular Nos.4 and 5 i.e. Assistant Commissioner and Assistant Land Officer, Bangladesh respectively have certainly misdirected themselves in not complying with the positive direction given their highest authority which includes the judgment of the Land Appeal Board. We disapprove this inertia of the respondents."

Thus, it is the duty of the respondents to act fairly and reasonably and in accordance with law. This is flagrant disregard to the process which has caused this citizen hardship from the date of his filing Other Class Suit No.9 of 2008 till date to act fairly and reasonably while discharging one's duty in accordance with law is what is expected of the Government machineries. The petitioner has not only been running from Court to Court and moved from pillar to post to get his property mutated but also has exhausted all alternative remedy forums. We have noticed with ulter dismay the disregard of the findings of the competent Civil Courts. This kind of attitude of the Government officials disregarding findings of competent Courts of law is unacceptable and highly discouraged in the future.

In view of the above facts and circumstances, observations and findings, we find substance in the Rule.

Resultantly, the Rule is made Absolute without any order as to cost.

The respondents are hereby strictly directed to mutate the schedule land in the name of the petitioner within 60 (sixty) days from the date of receipt of this order without fail.

Fahmida Quader, J:

I agree.