

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

WRIT PETITION NO. 318 of 2024

IN THE MATTER OF:

An application under Article 102 read with Article 44 of the Constitution of the People's Republic of Bangladesh.

And

IN THE MATTER OF:

Shahnaz Begum Chowdhury and others.
..... Petitioners

versus

Government of Bangladesh represented by the Secretary, Ministry of Land and others

.....Respondents.

Mr. Mahiuddin, Advocate

..... for the Petitioners.

Mr. Murad Reza, Senior Advocate with

Mr. Milton Das, Advocate

..... For the Respondent No. 10

Heard on: 04.06.2024.

Judgment on 15.07.2024

Present:

Mr. Justice Mustafa Zaman Islam

and

Mr. Justice S.M. Masud Hossain Dolon

S.M. Masud Hossain Dolon, J:

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, Rule Nisi has been issued calling upon the respondents to show cause as to why the judgment and order dated 28.07.1994 and 22.08.1995 passed by the Deputy Commissioner, Bandarban (Respondent NO. 4) in Mutation Case No. 39(d)/Sa/1993 and 2(d)/Sa/1994 in order to transfer the land and correction of

Jamabondi record of holding No. $\frac{129}{308}$ of Bandarban mouza in violation of section 64 of বান্দরবান পার্বত্য জেলা পরিষদ আইন ১৯৮৯ (Annexure C and C-1) should not be declared to be void, illegal, ultra vires the law and the constitution and without lawful authority and is of no legal effect and /or pass such other or further order or orders as to this court may seem fit and proper.

Facts relevant for disposal of the Rule are that a parcel encompassing 2.00 acres of land situated in 313 number Bandarban Mouza, Plot No. 2826, 2827 Upazila Bandarban Sadar, within the Bandarban Hill District was allocated to Moulovi Shafiq Uddin Chowdhury, the predecessor of the petitioners, through Miscellaneous Case No. 30 of 1976/77, duly documented in the jamabandi of holding No. 129/308. Moulovi Shafiq Uddin Chowdhury retained possession until his demise. Following Moulovi Shafiq Uddin Chowdhury's passing, his sole son, K M Abbas Uddin Chowdhury inherited the land. Subsequently transferring it to the current petitioners, who are the daughters and wife of the late Shafiq Uddin Chowdhury. Thereafter, the petitioners have continued to hold the land, diligently fulfilling land rents or land development tax payments to the Mouza headman up to the present date. Notably, a portion of 0.095 acres was illegally transferred through mutation cases No. 39(d)/Sa/1993 and 2(d)/Sa/1994, while another 0.05 acres was recorded in the name of

Respondent No. 10, Toufatun Nessa Khanam, without prior approval from the Bandarban Hill District Council. The Deputy Commissioner of Bandarban issued a Succession Certificate No. 67/2001-86 dated 27.04.2001, where K M Abbas Uddin Chowdhury, son of the deceased becomes only heirs. The said KM Abbas Uddin Chowdhury was spouse of petitioner No. 1 and the father of the remaining petitioners. Subsequently, another Succession Certificate No.94 dated 09.10.2011 as bestowed by the Deputy Commissioner of Bandarban, delineated the successors of the aforementioned KM Abbas Uddin Chowdhury, wherein the designated petitioners are distinctly acknowledged as the lawful inheritors. Other inheritors handed over their parts to the petitioners as per family arrangement. The aforementioned illegal transfer and unauthorized inclusion of Toufatun Nessa Khanam, in holding No. 129/308 of 313 No. Bandarban Mouza, the petitioners, upon securing a certified copy of the concerned records became cognizant of this unlawful transfer. Certified copies of Mutation Cases No. 39(d)/Sa/1993 and 2(d)/Sa/1994 were obtained and revealed the absence of prior approval from the Bandarban Hill District Council the schedule land was illegally mutated in the name of the respondent No. 10. Moreover, Respondent No. 10, Toufatun Nessa Khanam, made no claim to the land during the lifetimes of the original owner, Moulouvi Shafiq Uddin Chowdhury, or his son, KM Abbas Uddin Chowdhury. Subsequently, Respondent No. 10 filed CR Case No. 210 of 2023 in the

Court of Chief Judicial Magistrate, Bandarban asserting her claim. In response, petitioner K M Ahasan Uddin Chowdhury filed C.R Case No. 211 of 2023 before the same court and the court is directed the officer-in-charge of Bandarban Sadar, Police Station for investigation. It is evident from Mutation Case No. 2(d)/Sa/1994 that the matter is unrelated to the land, and the parties involved are not the same, suggesting an erroneous correction of the aforementioned Jamalandi through an improper mutation case the petitioners submitted an application challenging the impugned mutation cases to the Divisional Commissioner, Chattagram, yet no discernible action has transpired. Subsequently, dissenting against the inertia of the Divisional Commissioner, Chattagram, the petitioners lodged another application with the Secretary, Ministry of Land, Bangladesh Secretariat, Dhaka, on 31.12.2023.

Thereafter, having found no other equally efficacious remedy the petitioner had filed the instant writ petition and obtained the Rule and direction.

Mr. Mahiuddin, the learned Advocate appearing for the petitioner submits that Tohfatun Nessa Khanam, acquired the impugned order through fraudulent practices from the Deputy Commissioner, Bandarban, who has no jurisdiction to accord previous sanction under the then section 7 of the Chittagong Hill Tracts Regulation 1900 and Rule 34(5) of Rules made thereunder and as such,

impugned order is void, illegal, without jurisdiction. He further submits that Toufatun Nessa Khanam is not a resident of Bandarban Hill District pursuant section 8(গ), ১৮(১) of জন্ম মৃত্যু নিবন্ধন আইন, ২০০৪.

She committed fraud in violation of section 64 of বান্দরবান পার্বত্য জেলা পরিষদ আইন ১৯৮৯. Her name is recorded in the Jamabandi

Touzi by virtue of fraud practices, and she made forged registered sale deeds without affidavit of the executants in violation of Article 3, 4 and 5 of the Bangladesh Transfer of Immovable Property (Temporary Provisions) Order, 1972. He further submits that promissory estoppel cannot be invoked for enforcement of a promise or declaration which is contrary to law or outside the authority or power of the government or person making that promise. In the light of above settled principle of law, in the instant writ petition, the promissory estoppel shall not lie.

Learned Advocate lastly submits that pursuant to Section 7 of the Chittagong Hill Tracts Regulation 1900, the Chittagong Hill Tracts was a District under the Deputy Commissioner who possessed criminal, civil and revenue jurisdiction. Accordingly, these powers of the Deputy Commissioner of Chittagong Hill Tracts exist until the effect of Chittagong Hill Tracts Regulation (Amendment) Act 2003 (01 July, 2008). The Deputy Commissioners, Bandarban and Khagrachory got only criminal jurisdiction after its creation vide the Districts (Extension to the Chittagong Hill-tracts) Ordinance, 1984. Subsequently which is

repealed and validated by **পার্বত্য চট্টগ্রাম জেলাসমূহে বলবৎকরণ**

আইন, ২০২৩. Since 1900, the Deputy Commissioner of Chittagong Hill Tracts has been according previous sanctions before transfer of any land under Rule 34(5) of rules made under the Chittagong Hill Tracts Regulation 1900. These power was not conferred to the Deputy Commissioner, Bandarban by the statute or any Act of parliament, and as such, the impugned order passed by the Deputy Commissioner, Bandarban is void, illegal and without jurisdiction. The forged sale deeds in question in the instant writ petition are not executed by the predecessors of the writ petitioners. The so called sale deeds are not accompanied with affidavits, as per mandatory provision of Article 3, 4 and 5 of the Bangladesh Transfer of Immovable Property (Temporary Provisions) Order, 1972. As per Muslim Law and Sharia, the petitioners are the legal heirs of the original owner late Shafiq Uddin Chowdhury. Moreso, succession certificate issued by the Deputy Commissioner, Bandarban pursuant to executive order of the ministry treated the petitioner as the legal heirs of the original owner Shafiq Uddin Chowdhury. The petitioners have been paying land development tax of the land in question till today on behalf of the late Shafiq Uddin Chowdhury. According to Section 53(c) of the Transfer of Property Act 1882, the petitioners have the right to transfer the land of their predecessor Mr. Shafiq Uddin Chowdhury. Right to transfer the land is a

fundamental right as encapsulated in Article 42 of the Constitution. Accordingly, he submits that the rule is made absolute for the ends of justice.

Mr. Murad Reza, the learned Senior Advocate for the respondent No. 10 submits that the Tohfatum Nesa Khanam is the "বাসিন্দা" of Bandarban Hill District which is evident from her National ID Card, Certificate issued by the Bandarban Municipality as well as from the sale deeds and the order sheets of the said Mutation Cases. He further submits that the predecessor of the writ petitioners was the transferor of the land. The writ petitioners cannot be aggrieved by the act of their predecessor. Their predecessor, Moulovi Shafiq Uddin Chowdhury who admittedly took the permission of sale and executed the said sale deeds in favour of Toufatum Nesa Khanam. No right had been accrued to the petitioners at the time of sale of the said land. Hence the writ petitioners have no locus standi to file the writ petition in the grab of violation of the provisions of section 64 of the "বান্দরবান পার্বত্য জেলা পরিষদ আইন, ১৯৮৯". He further submits that the writ petitioners have challenged the orders passed by the Deputy Commissioner, Bandarban under Rule 34(5) of the Rules for the Administration of Chittagong Hills Tracts made under section 18 of the Chittagong Hills Tracts Regulation, 1900 but the said orders can be revised by the Divisional Commissioner, Chattogram as per provisions of Section 17 (2) of the Chittagong Hills Tracts Regulation, 1900 and as such the alternative remedy against the

said orders is available before the Divisional Commissioner. It is an established principle of law that if the alternative remedy is adequate and equally efficacies, in that case such an alternative remedy is a positive bar to the exercise of the writ jurisdiction and such the writ petition is not maintainable. Mr. Reza further submits that in the instant case disputed question of facts is involved regarding the transfer proceedings including validity of the deeds of sale as well as title and possession of the land in question etc. which cannot be decided under writ jurisdiction as in M. Habib Oil Mills (BD) Limited -vs- Titas Gas Transmission and Distribution Company Limited and others, reported in 20 BLD 501 and as such the writ petition is not maintainable. Learned Advocate lastly submits that the petitioner filed the Writ Petition by suppressing the facts that the predecessor of the writ petitioners sold most of his land in the said Holdings to different persons including the present respondent which is evident from the said Jamabandi and as such the writ petitioners cannot pay ground rent for the land measuring 02(two) acres and the petitioners filed the Writ Petitioner to get undue benefit which is not permissible under the Law and as such, the writ petition is not maintainable and the Rule is liable to be discharged.

We have perused the writ petition and all other relevant papers submitted by the parties in connection with the contents of this writ petition along with supplementary affidavit, affidavit in opposition appended thereto. It appears that the petitioners filed the instant writ

petition that the District Commissioner of Bandarban by violation of Section 64 of the Bandarban Hill Zilla Parishad Act, 1989 gave permission to transfer the land in the Bandarban District and the petitioners also claim the respondent No. 10, Taufatunnesa Khanam who is purchaser of the schedule land has no resident in Bandarban district. Therefore we have carefully considered section 64 of the বান্দরবান পার্বত্য জেলা পরিষদ আইন, ১৯৮৯ whether the District Commissioner of Bandarban has power to approve transfer the land in Bandarban District.

Section 64 of the বান্দরবান পার্বত্য জেলা পরিষদ আইন, ১৯৮৯ which runs as follow:

৬৪। (১) আপাততঃ বলবত্ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন-

(ক) বান্দরবান পার্বত্য জেলার এলাকাধীন বন্দোবস্তযোগ্য খাস জমিসহ যে কোন জায়গা জমি, পরিষদের পূর্বানুমোদন ব্যতিরেকে, ইজারা প্রদান, বন্দোবস্ত, ক্রয়, বিক্রয় বা অন্যবিধভাবে হস্তান্তর করা যাইবে না:

তবে শর্ত থাকে যে, সংরক্ষিত (Reserved) বনাঞ্চল, কাপ্তাই জলবিদ্যুত্ প্রকল্প এলাকা, বেতবুনিয়া ভূ-উপগ্রহ এলাকা, রাষ্ট্রীয় মালিকানাধীন শিল্পকারখানা ও সরকার বা স্থানীয় কর্তৃপক্ষের নামে রেকর্ডকৃত জমির ক্ষেত্রে এই বিধান প্রযোজ্য হইবে না।

(খ) পরিষদের নিয়ন্ত্রণ ও আওতাধীন কোন প্রকারের জমি, পাহাড় ও বনাঞ্চল পরিষদের সহিত আলোচনা ও উহার সম্মতি ব্যতিরেকে সরকার কর্তৃক অধিগ্রহণ ও হস্তান্তর করা যাইবে না।

(২) হেডম্যান, চেইনম্যান, আমিন, সার্ভেয়ার, কানুনগো ও সহকারী কমিশনার (ভূমি) এর কার্যাদি পরিষদ তত্ত্বাবধান ও নিয়ন্ত্রণ করিতে পারিবে।

(৩) কাপ্তাই হ্রদের জলে ভাসা জমি (Fringe land) অগ্রাধিকার ভিত্তিতে জমির মূল মালিকদেরকে বন্দোবস্ত দেওয়া হইবে।] **Under ling for emphasizes.**

On plain reading of the section it appears that notwithstanding anything contained in any other law in force (a) Any land, including settleable special land under the Bandarban Hill District, shall not, without the prior approval of the Council, be leased, settled, bought, sold or otherwise transferred: Provided that this provision shall not be applicable in the case of reserved forest area, Kaptai hydroelectric project area, Betbunia geo-satellite area, state owned industries and land recorded in the name of government or local authority. (b) No land, hill and forest area under the control and jurisdiction of the Parishad shall be acquired or transferred by the Government without consultation with and consent of the Parishad. (2) The Council may supervise and control the functions of Headman, Chainman, Amin, Surveyor, Kanungo and Assistant Commissioner (Lands). (3) Fringe land of Kaptai lake will be settled to the original owners of the land on priority basis.

Section 64 of the "বান্দরবান পার্বত্য জেলা পরিষদ আইন, ১৯৮৯" was substituted for the former Section by the Act No. XI of 1998. The followings were in the former Section:-" ৬৪। ভূমি হস্তান্তরে বাধানিষেধ। - আপাততঃ বলবৎ

অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, বান্দরবান পার্বত্য জেলার এলাকাধীন কোন জায়গা-জমি পরিষদের পূর্বানুমোদন ব্যতিরেকে বন্দোবস্ত দেওয়া যাইবে না, এবং অনুরূপ অনুমোদন ব্যতিরেকে উক্তরূপ কোন জায়গা-জমি উক্ত জেলার বাসিন্দা নহেন এইরূপ কোন ব্যক্তির নিকট হস্তান্তর করা যাইবে না:

তবে শর্ত থাকে যে, সংরক্ষিত (Protected) ও রক্ষিত (Reserved) বনাঞ্চল, রাষ্ট্রীয় জায়গা-জমি এবং রাষ্ট্রীয় স্বার্থে প্রয়োজন হইতে পারে এইরূপ কোন জায়গা-জমি বা বনের শিল্পকারখানা এলাকা, সরকার বা জনস্বার্থে প্রয়োজনে হস্তান্তরিত বা বন্দোবস্তকৃত ক্ষেত্রে এই বিধান প্রযোজ্য হইবে না। "

It appears from the record that the petitioners have filed the instant writ petition for violation of the Section 64 of the বান্দরবান পার্বত্য জেলা পরিষদ আইন, ১৯৮৯ which is totally misconceived as well as misleading as because the present respondent No. 10 has the domicile of Bandarban District which is evident from the said sale deeds, the National ID Card, Certificate issued by the Bandarban and the order sheets of the said Mutation Cases. Section 64 of the "বান্দরবান পার্বত্য জেলা পরিষদ আইন, ১৯৮৯" was substituted for the former Section by the Act No. XI of 1998 and according to the provision of the former section, notwithstanding anything contained in any law for the time being in force, no land within the boundaries of Bandarban Hill District shall be given in settlement without the prior approval of the Council and such land cannot be transferred to a person who is not a domicile of the said

District without such approval. The present respondent No. 10 purchased the scheduled land in the year of 1992-1997 vide Mutation Case Nos. 39(d)Sa/93 and 268(d) Sa/94 and as a result before the amendment of the said Act therefore no such permission was required to transfer the land in question in favour of the present respondent No. 10. There was no scope for the present respondent No. 11 to obtain any permission from any authority, rather if any such permission was required, it was primary obligation of the predecessor of the petitioners to obtain the same. It is admitted that the present respondent No. 10 purchased the land in question from the predecessor of the writ petitioners upon paying proper consideration against the said land in question. The predecessors of the petitioners transferred the land in question infavour of the present respondent No. 10 and as such there is scope for the petitioners to acquire the said land by way of inheritance and cannot be the aggrieved parties on the plea that the provisions of section 64 of the “ বান্দরবান পার্বত্য জেলা পরিষদ আইন, ১৯৮৯” have been violated. The respondent No. 10 upon purchase of the land took connection of water and electricity and has been paying water and electricity bill and municipality holding taxes regularly. It appears that in the instant writ petitioners intended to challenge only Mutation Case No. 39(d)/S/93 and 268(d)/Sa/94. However, the writ petitioners wrongly mentioned Mutation Case No. 2(d)/Sa/94 instead of

268(d)/Sa/94 for the land measuring 05 decimals which is marked as Annexure-19.

The petitioners have challenged the orders passed by the Deputy Commissioner, Bandarban but the said orders can be revised by the Divisional Commissioner, Chattogram as per provisions of Section 17 (2) of the Chittagong Hills Tracts Regulation, 1900 and as such the alternative remedy against the said orders is available before the Divisional Commissioner. The writ petitioners and their predecessors being transferors of the land cannot be the aggrieved parties on the plea that the provisions of section 64 of the "বান্দরবান পার্বত্য জেলা পরিষদ আইন, ১৯৮৯" have been violated. The Zila Parishad, Bandarban has not been implicated as a party in the instant writ petition whereas the petitioners are purporting to invoke section 64 of the Ain, 1989 (as amended in 2014) wherein it is stipulated that the prior consent of the Zila Parishad is required for transfer of land in question. Moreover, the Zila Parishad has not come before this Division for so called violation of section 64 of the said Ain, 1989.

We have also perused the record that the writ petitioners filed the instant Writ Petition by suppressing the facts that the predecessor of the writ petitioners sold most of his land in the said holdings to different persons including the present respondent No. 10 which is evident from the said Jamabandi.

We have carefully perused the record that there is specific provision for appeal or review by the parties to the Divisional Commissioner under Section 17(2) of the Chittagong Hills Tracts Regulation, 1900. Despite the said provision, the petitioners have filed this writ petition by filing a mere representation without filing any appeal or review. We are of the view that if the law clearly provides for an appeal or review, then there is no reason why the petitioners have file the present writ petition on the basis of a mere representation without appeal or review. Moreover disputed question of facts is involved which cannot be decided under writ jurisdiction and the writ petitioner has no locus standi to file the writ petition.

In the above facts and circumstances of the case, as there is no reason to proceed with the present case as the Deputy Commissioner duly permitted to sale the land in accordance with law.

In view of the discussion made above we find substances submission of the learned Advocate for the respondent.

Thus, we find no merit in this Rule.

In the result, the Rule is discharged without any order as to cost.

The order of stay granted earlier by this court is hereby vacated.

Communicate the order at once.

Mustafa Zaman Islam, J:

I agree

Asad/B.O