

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Badruzzaman.

And

Ms. Justice Aynun Nahar Siddiqua

Civil Revision No. 2444 of 2024.

Majeda Begum

...Petitioner.

-Versus-

Zipsam Developers Limited and others

....Opposite parties.

None appears

... For the petitioner

Mr. Lokman Karim, Advocate

... For opposite party No. 1.

Heard on: 22.04.2026, 26.04.2026 and 30.04.2026.

Judgment on: 03.05.2026.

Md. Badruzzaman, J:

This Rule was issued calling upon the opposite party to show cause as to why order dated 30.10.2022 passed by learned District Judge, Chattogram in Arbitration Miscellaneous Case No. 152 of 2020 disposing of the miscellaneous case and appointing two Arbitrators and one Umpire should not be set aside.

At the time of issuance of Rule, the operation of the impugned order was stayed for a period of 06(six) months which was subsequently extended. Thereafter, the petitioner filed an application for injunction upon which another Bench of this Court vide order dated 11.12.2024 directed the parties to maintain *status-quo* in respect of possession and position of the suit property till disposal of the Rule.

Facts, relevant for the purpose of disposal of this rule, are that opposite party No. 1, Zipsam Developers Limited (herein after referred

to as the developer) as petitioner filed Arbitration Miscellaneous Case No. 152 of 2020 under section 12 of the Arbitration Act, 2001 against the petitioner and opposite party Nos. 2-4 before the learned District Judge, Chattogram for appointment of Arbitrator to resolve the dispute between the parties as per terms of agreement dated 14.10.2012. The case of the developer was that the developer and opposite party Nos. 1-5 (who are land owners) entered into an agreement dated 10.04.2012 for construction of multistoried residential building on the suit land measuring .04 acre followed by a power of attorney executed and registered on the same date. In terms of the agreement and power of attorney, the land owners handed over possession of the suit property to the developer and after getting possession of the suit property the developer got building plan approved by C.D.A and after obtaining necessary permissions from the concerned authorities started construction work of the residential building and when the construction work was almost completed, the land owners forcibly dispossessed the developer from the suit property and are forcefully occupying the property without giving any opportunity to the developer to complete the construction work. It has further stated that the developer, as per development agreement, sold out their portion of the flats to 3rd party purchasers. For illegal occupation and taking over possession by the land owners, the developer sustained huge loss amounting to total Tk. 7,07,60,250/-. To resolve the dispute between the parties, the developer vide letter dated 06.05.2017 requested Mr. Farid Ahmed, the uncle of the land owners, to resolve the dispute amicably who, held several meetings with the land owners but the land owners did not agree with the settlement proposal suggested by Farid Ahmed. Thereafter, the developer by a legal notice dated 28.02.2018 claimed

compensation to the land owners but they did not receive the legal notice and lastly on 08.01.2020 the developer sent a notice of arbitration in view of term No. 27 of the agreement to resolve the dispute through arbitration but the land owners did not receive the notice and accordingly, the developer was constrained to initiate the arbitration proceeding under section 12 of the Arbitration Act, 2001 to resolve the dispute between the parties.

The land owners entered appearance in the arbitration proceeding but neither filed written objection nor proposed any name of arbitrator on their behalf and lastly, the learned District Judge vide impugned order dated 30.10.2022 disposed of the arbitration proceeding by appointing two arbitrators and one umpire to resolve the dispute between the parties. Challenging the legality of said order, one of the land owners namely Majeda Begum as petitioner has filed this application under section 115 of the Code of Civil Procedure and obtained the instant Rule, order of stay and *status-quo*.

This matter was fixed at the instant of opposite party No. 1, the developer on 21.04.2026 and was taken up for hearing on 22.4.2006, 26.04.2026 and 30.04.2026 but none appeared for the petitioner to press the Rule. However, since only law points are involved in this matter we have heard the learned for opposite party No. 1 and after conclusion of hearing fixed today for pronouncement of judgment. Today also none appears for the petitioner to represent the petitioner.

We have perused the revisional application and heard the learned Advocate for opposite party No. 1. In the revisional application the petitioner contented that section 36 of the Real Estate Management and Development Act, 2010 provides provision to resolve the dispute between the developer and land owner or flat purchaser

through Arbitral Tribunal outside the Court and on failure to resolve the dispute through such tribunal, any party may file case before appropriate Court constituted under the Ain, 2010 for his redress and accordingly, an arbitration proceeding under section 12 of the Arbitration Act, 2001 is not maintainable but the learned District Judge without considering above aspect of the matter illegally entertained the arbitration miscellaneous case and appointed arbitrators. It has further contended that the learned District Judge traveled beyond his jurisdiction while passing the impugned order appointing arbitrators who has no such jurisdiction under section 12 of the Arbitration Act and as such, the impugned order is liable to be set aside.

On the other hand Mr. Lokman Karim, learned Advocate appearing for the developer opposite-party No. 1 submits that though there is a legal bar under sub-section (5) of section 36 of the Real Estate Development and Management Act, 2010 to file case before any court other than the Court constituted under the Ain but the Ain did not give any opportunity to file any case before the Court as per section 36 of the Ain when the land owners forcefully dispossessed the developer from the property and as such, this arbitration proceeding is maintainable under section 12 of the Arbitration Act. Learned Advocate further submits that the petitioner had waived her right to nominate and appoint arbitrator by her own choice pursuant to section 12 of the Arbitration Act by not responding to the arbitration notice served upon her by the developer and since the landowner-petitioner failed to respond the aforesaid notice and contest the subsequent arbitration miscellaneous case and did not make any choice, the learned District Judge had the authority as per law to appoint arbitrator(s) to resolve the dispute between the parties. In support of his contention learned

Advocate has referred to the case of Line N Shape Limited vs. First S.S Enterprise Private Limited, 29 BLC 281 and Basic Bank Limited vs. Business Recourses Limited and another, 30 BLC 402.

Upon hearing the learned Advocate for the opposite party No. 1 and perusing the grounds taken in the revisional application and other materials available on record we feel that the issues should be resolved by us to dispose of the Rule i.e whether the arbitration proceeding under section 12 of the Arbitration Act, 2001 was maintainable and whether learned District Judge has any authority or jurisdiction to appoint arbitrator to resolve the dispute between the parties.

An arbitration proceeding is initiated mainly under section 12 of the Arbitration Act, 2001 to resolve dispute between the parties through arbitration as per agreement between the contending parties. After promulgation of Arbitration Act, 2001, the Real Estate Development and Management Act, 2010 was promulgated. Section 36 of the Act, 2010 provides provision to resolve the dispute between the land owner, developer and flat purchaser through arbitration. For ready reference, section 36 is reproduced below:

“৩৬। বিরোধ নিষ্পত্তি।-(১) রিয়েল এস্টেট প্রকল্প বাস্তবায়নের ঐ কোন পর্যায়ে প্রকল্প সংশ্লিষ্ট ক্রেতা, ডেভেলপার, অথবা ভূমির মালিকের মধ্যে এই আইনের ধারা ২১, ২২, ২৩, ২৪, ২৫, ২৭, ২৮, ২৯ এবং ৩০ এ বর্ণিত অপরাধের জন্য বা তাহাদের মধ্যে সম্পাদিত চুক্তির কোন বিধান লংঘনের জন্য মতবিরোধের সৃষ্টি হইলে পক্ষগণ, প্রথমে নিজেদের মধ্যে আপোষে উহা নিষ্পত্তির চেষ্টা করিবেন।

(২) উপ-ধারা (১) অনুযায়ী আপোষের পদক্ষেপ গ্রহণের পর ঐদি কোন পক্ষের অসহযোগিতার জন্য উহা ব্যর্থ হয় তবে অপর পক্ষ বিবাদমান বিষয়টি নিষ্পত্তির জন্য সালিস আইন, ২০০১ মোতাবেক সালিসী ট্রাইব্যুনালে ঐওয়ার অভিপ্রায় ব্যক্ত করিয়া অপর পক্ষকে নোটিশ প্রদান করিবেন।

(৩) উপ-ধারা (২) এর অধীন নোটিশ প্রাপক উক্ত নোটিশ প্রাপ্তির ৩০ (ত্রিশ) দিনের মধ্যে নোটিশ প্রেরকের সহিত চৌথভাবে সালিসী ট্রাইব্যুনাল গঠন করিবেন।

(৪) সালিস আইন, ২০০১ এ চাহা কিছুই থাকুক না কেন, পক্ষগণ কর্তৃক গঠিত সালিসী ট্রাইব্যুনালের রোয়েদাদ পক্ষগণ এবং তাহাদের মাধ্যমে বা অধীন দাবীদার কে কোন ব্যক্তির উপর বাধ্যকর হইবে এবং উহার বিরুদ্ধে কোন আদালতে কোন পক্ষের আপত্তি উত্থাপনের অধিকার থাকিবে না।

(৫) উপ-ধারা (৩) মোতাবেক পক্ষগণ সালিসী ট্রাইব্যুনাল গঠনে ব্যর্থ হইলে কে কোন পক্ষ বিবাদমান বিষয়টি বিচারের জন্য এই আইনের অধীন উপরুক্ত আদালতে মামলা দায়ের করিতে পারিবেন।”

A plain reading of sub-sections (1)-(4) of section 36 of the Real Estate Development and Management Act, 2010 as a whole suggests that those provisions stipulate alternative dispute resolution mechanism amicably or through appointing joint Arbitral Tribunal as per provision of Arbitration Act, 2001 at the instance of the developer, purchaser or the land owner at any stage of implementation of a real estate project in respect of offences provided under sections 21-25 and 27-30 of the Act, 2010 or violation of any terms of the contract between them and the decision of the Arbitral Tribunal would be binding upon them and the Arbitral Award cannot be questioned before any Court of law. The provision under sub-section (5) of section 36 of the Act, 2010 is very significant which clearly provides a forum to the parties to file case in an appropriate Court constituted under the Act, 2010 for their redress if they fail to constitute Arbitral Tribunal under section 36(3) of the Act, 2010 amicably. Except the offences arose out of the disputes between the parties as described in sections 21-25 and 27-30 of the Real Estate Development and Management Act, other disputes in regards implementation of the real estate project are not covered by section 36 of the Arbitration Act and in that case the parties concerned may resort to arbitration proceeding under section 12 of the

Arbitration Act, 2001 to resolve the dispute or in the absence of any arbitration clause, in other appropriate court of law.

In this case, in the application of the arbitration proceeding filed under section 12 of the Arbitration Act the developer contended that during implementation of the Real Estate Project the land owners forcefully dispossessed the developer from the disputed property and illegally occupied the project without giving any opportunity to the developer to complete the project for which the developer sustained a huge financial loss. This dispute, as has been stated in the arbitration miscellaneous case, is not covered by sections 21-25 and section 27-30 of the Real Estate Development and Management Act, 2010 which may cover the provision of section 36 of the Real Estate Development and Management Act, 2010 and as such, the developer has rightly initiated proceeding under section 12 of the Arbitration Act to resolve the dispute between the parties. In that view of the matter, the present arbitration miscellaneous case under section 12 of the Arbitration Act, 2001 is maintainable.

Now question arises whether in the absence of the land owners the learned District Judge has any authority to appoint arbitrator on their behalf to resolve the dispute between the parties. In *Line N Shape Limited vs. First S.S Enterprise (Private) Limited*, 29 BLC 281 a Division Bench of this Court, after consulting the provision of section 12 of the Arbitration Act, 2001 held as follows:

“The opposite party No. 1 had waived his right to nominate and appoint arbitrator by their own choice pursuant section 12 of the Arbitration Act as well as universal principle of ‘party autonomy’ by not responding to the Arbitration Notice served upon them by the petitioner under section 12 of the Act.

Since the petitioner failed to respond to the aforesaid Notice and contest the subsequent Arbitration Miscellaneous Case, therefore, it is the District Judge who has the authority, as per law, to appoint Arbitrator for the opposite party.”

The petitioner-landowner was opposite party No. 1 in the Arbitration Miscellaneous Case. It has been contended in the arbitration miscellaneous case that the developer served notice under section 12 of the Arbitration Act to her but she did not respond. It appears from the record that the present petitioner appeared in the arbitration miscellaneous proceeding and filed adjournment petitions to contest the proceeding by filing written objection but thereafter, did not turn up and lastly the learned District Judge upon hearing the learned Advocate for the developer appointed two arbitrators (one as per choice of the developer) and an umpire to resolve the dispute between the parties. Since the learned District Judge has authority under section 12 of the Arbitration Act to appoint any arbitrator in absence of any of the parties to the arbitration proceeding, we are of the view that he committed no illegality in appointing arbitrators to resolve the dispute between the parties. Moreover, the appointed Arbitral Tribunal initiated proceeding by serving notice upon the land owners who appeared in the proceeding and the proceeding was continued for about two years and when the proceeding was almost completed, one of the land owners namely the present petitioner has challenged said order. In our view this application is filed to delay the disposal of the proceeding pending before the arbitral tribunal.

In view of the above, we find no merit in this Rule.

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

The order of stay and status-quo granted earlier by this Court is hereby vacated.

The Arbitral Tribunal is directed to conclude the proceeding as early as possible in accordance with law.

Communicate a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Justice Aynun Nahar Siddiqua)