

Present:
Mr. Justice Mohammad Bazlur Rahman
and
Mr. Justice Md. Ruhul Quddus

Writ Petition Nos.8844-8845 of 2011

Topesh Narayan Saha and others
...Petitioners in both the writ petitions

-Versus-

Government of the Peoples Republic of
Bangladesh and others
...Respondents in both the writ petitions

Mrs. Nahid Yesmin, Advocate
... for the petitioners

Mr. Moinuddin with Mrs. Anjuman Ara
Begum, Advocates

... for respondents 6- 7

Mr. Goutam Kumar Roy D.A.G with Mr. S.M.
Qumrul Hasan, A.A.G

... for the Government-respondents
(with leave of the Court)

Judgment on 5.11.2012

Md. Ruhul Quddus,J:

These two writ petitions have been heard simultaneously and are being disposed of by this common judgment as the facts therein are similar, and the law involved and parties are same.

The Rules were issued to examine the legality of order dated 17.8.2011 passed by the Zonal Settlement Officer, Comilla in

Miscellaneous Case Nos.12-13 of 2011 under rule 42A of the Tenancy Rules, 1955 (in brief Tenancy Rules) allowing the cases and thereby canceling D.P. Khatian Nos. 1712 and 1713 prepared in the names of writ petitioners in compliance with a common order passed in Appeal Nos.6282 and 6284 of 2010.

Facts relevant for disposal of the Rules, in brief, are that the land measuring 69 decimals or thereabout appertaining to C. S. Khatian No. 180, Plot No.595 and 04 decimals of Bata Plot No. $\frac{595}{1331}$ originally belonged to Krishna Chandra Saha, Harish Chandra Saha, Balaram Saha and Khetra Mohan Saha in four equal shares. The petitioners are their descendants and successors-in-interest. Their predecessors or any of them did not sell any land to any other person. As the D. P. khatians were wrongly prepared including their land in the names of respondents, they prayed for correction of the record by filing Appeal Nos.6281-6284 of 2010 under rule 31 of the Tenancy Rules, which were ultimately heard by the Assistant Settlement Officer, Comilla. The said appeals were preferred against orders passed in Objection Case Nos.1736-1739. The Assistant Settlement Officer, Comilla heard the appeals analogously and dismissed Appeal Nos.6281 and 6283 of 2010, while allowed Appeal Nos. 6282 and 6284 of 2010 by a common order dated 21.9.2010 directing preparation of separate khatians in the names of appellants (herein writ petitioners) curtailing 28 and 44 decimals of land from D. P. Khatian Nos.1524 and 948 respectively. Accordingly

D. P. Khatian Nos.1712 and 1713 were prepared in their (petitioners) names on 19.12.2010 for 28 and 44 decimals of land respectively in Plot No.3298, $\frac{3319}{3814}$, 3305; 3306 and 3319. (annexes-B and B -1)

Against the said order dated 21.9.2010 so far it relates to Appeal Nos.6282 and 6284 of 2010, respondent Nos. 6-7 had filed Miscellaneous Case Nos. 8-9 of 2011 before the Zonal Settlement Officer, Comilla under rule 42A of the Tenancy Rules. On hearing, the said miscellaneous cases were dismissed by two separate orders both dated 4.4.2011. (annexes-C and C-1)

Thereafter, respondent Nos.6-7 again filed the present Miscellaneous Case Nos.12-13 of 2011 against the same order dated 21.9.2010 passed in Appeal Nos.6282 and 6284 of 2010. The Zonal Settlement Officer by order dated 26.5.1991 started the said cases on receipt of a report filed by a Preliminary Committee for Scrutiny and subsequently passed an order on 6.6.2011 for analogous hearing of the two cases. A five member inquiry committee was formed by order dated 22.6.2011 and on receipt of the inquiry report, he allowed the miscellaneous cases by order dated 17.8.2011 reducing 28 and 44 decimals of land from D. P. Khatian Nos.1712 and 1713 respectively and thereby virtually cancelled the said D. P. Khatians prepared in the names of writ petitioners.

The writ petitioners moved in this Court with two separate writ petitions against the said order dated 17.8.2011 passed by the Zonal Settlement Officer, Comilla in Miscellaneous Case Nos.6282 and 6284 of 2010 and obtained the Rules with interim orders of stay.

Mrs. Nahid Yesmin, learned Advocate appearing for the petitioners submits that respondent Nos. 6 and 7 had filed the applications under rule 42A of the Tenancy Rules on vague allegations of fraud, which were liable to be rejected summarily. Instead, the Zonal Settlement Officer allowed the cases to proceed on a report of a Preliminary Committee for Scrutiny and ultimately cancelled the D. P. Khatians duly prepared in the names of writ petitioners on the basis another inquiry report, which did not establish even disclose any fraud in preparing the D. P. Khatians in the names of writ petitioners.

Mr. Moinuddin, learned Advocate appearing for respondent Nos.6 and 7 submits that the miscellaneous cases were filed by these respondents on clear allegations of fraud. The cases were started on the basis of a report of the Preliminary Committee for Scrutiny, wherein it was found that the writ petitioners interpolated their appeal numbers on D. P. Khatian Nos.1524 and 948, and suppressed the facts relating to disposal of earlier Appeal Nos. 4906, 5110 and 5112 of 2007 on the same land. During proceedings of the cases, there was another inquiry by a five member committee, wherein title and possession of the land in question was found in

favour of the respondents and as such the impugned order was rightly passed under section 42A of the Tenancy Rules. There is nothing to interfere with by this Court exercising its authority of judicial review under article 102 of the Constitution.

At the concluding stage of hearing, Mr. Goutam Kumar Roy, learned Deputy Attorney General with leave of the Court submits that the property in question having been enlisted as vested property, the instant Rules have been abated by operation of section 13 of the অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১. He, however, does not produce the gazette notification publishing the list of vested property.

We have considered the submissions of the learned Advocates and examined the record including the impugned orders. It appears that on the same D. P. Khatian Nos.1712 and 1713 respondent Nos.6-7 earlier had filed Miscellaneous Case Nos.8-9 of 2011 under rule 42A of the Tenancy Rules before the Zonal Settlement Officer, who rejected the same by order dated 4.4.2011 because of tampering on documents and warned the responsible employees of the Settlement Office. It further appears from order No.1 dated 26.5.1911 in Miscellaneous Case Nos.12-13 of 2011 that after filing of the applications under rule 42A of the Tenancy Rules, a Preliminary Committee scrutinized the records and submitted a report with prima facie finding *inter alia*, that the writ petitioners had committed fraud in obtaining the D. P. Khatian in their names by interpolating their appeal numbers on D. P. Khatians

Nos.1524 and 948 prepared in the names of respondents 6-7. On the basis of the said report, the Zonal Settlement Officer started proceedings of the miscellaneous cases. During the proceedings another inquiry was held by a five member committee. The said committee furnished its report on 29.6.2011 with findings of title and possession in favour of respondent Nos.6-7 and recommended reduction of land from D.P. Khatian Nos. 1712 and 1713, but without any affirmation or reference to the prima facie finding of fraud which was found earlier by the Preliminary Committee for Scrutiny. Ultimately the Zonal Settlement Officer allowed the miscellaneous cases by the impugned order dated 17. 8.2011 mainly on the basis of the inquiry report dated 29.6.2011 furnished by the Five Member Inquiry Committee. The impugned order or the inquiry report dated 29.6.2011, basing which the impugned order has been passed does not disclose any finding of fraud, but has been passed on reappraisal of title and possession of the respective parties.

In response to a query by the Court as to what benefit could be given to the writ petitioners by interpolation of the appeal numbers, Mr. Moinuddin, learned Advocate for respondent Nos. 6 and 7 remains silent and shifts his argument on suppression of material facts in the memoranda of appeals filed by the writ petitioners. But no memoranda have been annexed with the affidavit-in-opposition to substantiate his argument. Even respondent Nos.6-7 did not make any statement about the suppression of facts in their affidavit-in-opposition. From the order

sheets in Appeal Nos.4906 and 5110 of 2007 annexed with the supplementary affidavit filed by the writ petitioners and certified copy of the order sheet in Appeal No.5112 produced before the Court by their learned Advocate, it does not appear that the writ petitioners were made parties in those appeals. Therefore, the report of the Preliminary Committee for Scrutiny that earlier some other appeals were disposed of between the parties on the same land was also not correct.

Rule 42A of the Tenancy Rules confers authority on the Revenue Officer, before final publication of the record of rights, to excise any fraudulent entry and make it correct after giving hearing to the concerned parties, on an application or on receipt of an official report for correction of such entry that has been procured by fraud, and after consulting relevant records and making such other inquiries as he deems necessary. Therefore, unless an allegation of fraud is specifically disclosed in the application or in the official report the Revenue Officer will not proceed under rule 42A and unless commission of fraud in obtaining the entry is established, he will have no authority to excise any entry.

It has been settled that a vague application, which in its body does not contain any specific allegation of fraud, is not entertainable and liable to be rejected [reliance placed on 14 MLR (AD) 401, para-8]. It has also been settled that the authority has no power under rule 42A of the Tenancy Rules to amend or set aside judgment of

Settlement Officer passed in appeal under rule 31 of Tenancy Rules except on the ground of fraud. [reliance placed on 11MLR (HC) 256]

We fail to understand as to how the title and possession of the parties can be reappraised in a proceeding under rule 42A of the Tenancy Rules. We are also unable to accept the contentions of Mr. Moinuddin that the writ petitioners' appeals were hit by the principle of *res judicata* or that in obtaining orders in the appeals, they had committed fraud upon the Appeal Officer. It, rather, appears that respondent Nos.6-7 had suppressed the material facts of filing Miscellaneous Case Nos.8-9 of 2011 and rejection of the same in the petitions of the subsequent Miscellaneous Case Nos. 12-13 of 2011, out of which the instant writ petitions have arisen.

In order to appreciate the submission of learned Deputy Attorney General on abatement of the Rules, we have examined section 13 of the অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১. It provides abatement of suits or proceedings claiming title to any vested property or any proceedings for release of the same pending before the Custodian of Vested Property on the date of publishing the list of vested property in official gazette. The present miscellaneous case under rule 42A of the Tenancy Rules in no way affects the alleged vested character of the land in question and no question of seeking any relief regarding vested character of the land arises and as such it does not come within the scope of section 13 of the Ain. We are, therefore, unable to accept his submission that the Rules have already been abated. Moreover, it is not clear as to how the

Government-respondentsqinterest would be served if D. P. Khatian Nos. 1524 and 948 prepared in the names of respondent Nos.6 and 7 remain unchanged.

In view of the discussions made above we find substance in the Rules of both the writ petitions, and accordingly these are made absolute. The impugned order dated 17.8.2011 passed by the Zonal Settlement Officer, Commilla in Miscellaneous Case Nos.12-13 of 2011 is declared to have been passed without lawful authority and is of no legal effect.

Communicate a copy of the judgment.

Mohammad Bazlur Rahman, J:

I agree.