

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique, C.J.

Mr. Justice Obaidul Hassan

Mr. Justice M. Enayetur Rahim

CIVIL APPEAL NO.204 OF 2004

(From the judgment and order dated the 8th day of July, 2002 passed by a Division Bench of the High Court Division in Writ Petition No.5722 of 2001)

Imam Sirajul Hoque and another : . . . Appellants

-Versus-

Director General Land Record and : . . . Respondents
Survey Tejgaon Dhaka and others

For the Appellants : Mr. Qumrul Hoque Siddique,
Advocate instructed by Mr. Zainul
Abedin, Advocate-on-Record

For the Respondents : Mr. Probir Neogi, Senior Advocate
instructed by Ms. Madhumalti
Chowdhury Barua, Advocate-on-
Record

Date of Judgment : **The 25th day of May, 2022**

JUDGMENT

M. Enayetur Rahim, J: This appeal, by leave, is directed against the judgment and order dated 08.07.2002 passed by the High Court Division in writ petition No.5722 of 2001 arose from proceedings of Appeal Case No.1810 of 1995, 1811 of 1995, 1813 of 1995, 1812 of 1995, 1814 of 1995 and 1889 of 1995 under section 31 of State Acquisition and Tenancy Rules, 1955 (hereinafter referred as to Tenancy Rules, 1955) which was restored after setting aside the earlier order of dismissal.

The facts, relevant for disposal of the instant appeal are as follows:

The present appellants filed Writ Petition No.5722 of 2001 before the High Court Division challenging the proceedings of appeal Nos.1810 of 1995, 1812 of 1995, 1813 of 1995, 1814 of 1995 and 1889 of 1995 under rules 31 of the Tenancy Rules, 1995.

In the writ petition it was contended, *inter-alia*, that the name of the appellants recorded correctly in respect of disputed land situated under Bogura Settlement Zone. Against such record of rights some persons raised objection under rule 30 of the Tenancy Rules, 1955, which was ultimately rejected. Thereafter Appeal Case Nos.1810/95, 1811/95, 1813/95, 1812/95, 1814/95 and 1889/95 under rule 31 of the said Rules were dismissed by the Appellate Authority by an order dated 24.08.2000 on the ground of limitation. Eventually, one Rokyea Begum filed an application before the Ministry of Land and on the basis of the said application writ-respondent No.2, Director of Lands after making an inquiry set aside the earlier order of dismissal of the appeals without serving any notice to the appellants and appointed respondent No.3, Assistant Settlement officer for re-hearing of the appeals. Consequently, the proceedings of all of the 5 (five) appeals were again started. The appellants without finding any other alternative remedy compelled to file the Writ Petition challenging the proceeding of said appeals.

The writ-respondent Nos.5 and 6 contested the writ petition by filing Affidavit-in-Opposition contending, *inter-alia*, that, the writ-petitioners-appellants filed an application for setting aside the order of restoration passed by the Director, Land Records before the Director General, Land Records and Surveys on 07.10.2001 and without waiting

for the result of the said application filed the Writ Petition on 15.10.2001 which is not maintainable and is liable to be discharged. They further contended that the Director of Land Records in exercising the power conferred upon him as per provision of Rule 44 of the Tenancy Rules, 1955 restored the appeal cases. It was further contended that, the Director, Land Records in due exercise of his power set aside the dismissal order of the appeals and passed a legal and valid order for re-hearing of the appeals by a competent Assistant Settlement Officer under Bogura Zonal Settlement Office and hence, there is no illegality in passing the order of restoration. It was further contended that, at the time of attestation, the attestation officer on the basis of a false and fabricated deed of gift dated 16.06.1942 deleted the names of some heirs, who raised objection under Rule 30 of the Tenancy Rules, 1955 and the objection officer illegally rejected the same and against the said rejection order they filed the appeals within date but the Authority has been wrongly dismissed the appeals solely on ground of limitation on 21.08.2000. Against the order of dismissal the writ-respondent No.5 filed an application before the Ministry of Land who forwarded the said application to the Director General, Land Records and Surveys. The Director General, Land Records and Surveys ordered Director, Land Records to take necessary action for disposal of the matter. The Director, Land Records ordered the Zonal Settlement Officer, Bogura for disposal of the appeals after re-hearing the same as because the appeals were filed within the limitation period. But the writ-respondent No.5 filed an application before the Director, Land Records to the effect that they would not get justice at Bogura

Settlement Office and hence on 03.09.2001 the said officer passed an order to settle the appeals by the Assistant Settlement Officer, Zonal Settlement Office, Dhaka.

A Division Bench of the High Court Division after hearing the said Rule by the impugned judgment and order dated 08.07.2002 discharged the same.

Feeling aggrieved by the said judgment and order, the writ petitioner's preferred civil petition for to appeal No.1601 of 2002 before this Division and eventually leave was granted.

Mr. Qumrul Hoque Siddique, learned Advocate, appearing for the appellants having referred to Rule 31, 32, 42, 44 and 42A of the Tenancy Rules, 1995 submits that once appeal has been disposed of on contest under Rule 31 of the Tenancy Rules 1995, no review or other application lies and the settlement authority has no jurisdiction to re-open the matter other than to send to draft publication khatian of final publication under Rule 32 of the said Rules. Even rule 42 does not empower the settlement officer to sit and act as an appellate authority over the appellate order passed under Rule 31 of the Tenancy Rules, 1955.

Mr. Hoque further submits that in the instant case no allegation of fraud has been proved, thus the order passed by the Director of Land Records is absolutely illegal and without lawful authority and the High Court Division in passing the impugned order failed to consider this legal aspect and as such the impugned judgment and order is liable to be set aside.

Mr. Hoque also submits that Director of Land Records and Surveys having been upgraded to Director General of Land Records and the Director of Land Records being a sub-ordinate

officer, the exercise of power under Rule 44 of the Tenancy Rules, 1955 by the said Director of Land Records is illegal and without jurisdiction.

Per contra, Mr. Probir Neogi, learned Senior Advocate, appearing for the respondent Nos.5(a)-(d) and 6 submits that the High Court Division correctly held that the Director of Land Records and the Director of Land Records and Survey is the same officer, when this officer performs his duty as regards the matter of land records only, he is designated as Director of Land Records, So, it is not acceptable at all that the Director of Land Records is not authorized to exercise the power of Rule 44 of Tenancy Rules. The correctness of the view taken by the High Court Division could be further clear from rule 44 which contemplates the powers of Revenue-Officers under Chapter XIV of the State Acquisition and Tenancy Act, 1955.

Mr. Neogi further submits that a complaint made by Rokeya Begum [predecessor of respondents No. 5(a)-(d)] to the Ministry of Land would clearly show that deprivation of female heirs in the district of Bogura by some Revenue and Settlement Officers led by the then Zonal Settlement Officer has been categorically alleged with material particulars, and the Government in the Ministry of Land taking into consideration the entire perspectives and facts of the case directed the Directorate of Land Records and Surveys to look into the matter, who passed the order impugned in the writ petition.

Mr. Neogi having referred to the memo No. **ভূঃ গরঃ ২৩/৯৫/খন্ড-১)১৬৬৬** তারিখ ২৩/০৮/২০০১ issued by the Director, Land Records addressed to the zonal settlement office, Bogura submits that on an inquiry it was found that fraud had committed in disposing

the 05 appeals in question and thus, the competent authority cancelled the orders and directed the competent settlement officer to hear the appeals afresh. The above order was passed by the Director, Land Records within its jurisdiction and thus, the instant appeal is liable to be dismissed.

We have considered the rival submissions of the learned Advocates for the respective parties, perused the impugned judgment, the materials placed before us as well as the relevant provisions of law.

To determine the issue involved in the present case it is necessary to peruse rule 42A of the Tenancy Rules 1955, which is as follows:

¹42A. Correction of fraudulent entry before final publication of record-of-rights-The Revenue-officer, with the additional designation of 'Settlement Officer' shall, on receipt of an application or on receipt of an official report for the correction of an entry that has been procured by fraud in record-of-rights before final publication thereof, after consulting relevant records and making such other enquiries as he deems necessary, direct excision of the fraudulent entry and his act in doing so shall not be open to appeal. At the same time, the Revenue-officer shall make the correct entry after giving the parties concerned a hearing and recording his finding in a formal proceeding for the purpose of future reference.

This Division in the case of **Bhawal Raj of Wards Estate Vs. Rasheda Begum**, reported in 15 BLC(AD) page-115 has held to the effect:

"After final publication of the record of right, after the SA Survey the only mode for correction of the same was through Civil Court and thus subsequent to preparation of SA record of right, the RS record of right was prepared and after final publication thereof the mode for correction of any wrong entry appearing in the RS record was through Civil Court and without moving the Civil Court no correction in recent records of right is lawful or permissible and as such, the draft record of right in the instant case having been prepared following the preparation of the SA and RS records in accordance with law, the attempts of the leave petitioner for correction under Rules 30 and 31 of the State Acquisition Rules, 1955 have failed. The plain reading of the application dated 14-7-2002 allegedly filed under Rule 42A of the State Acquisition Rules, 1955, ex-facie appears to be a vague application, inasmuch as the said post contains no specific allegation of any act of fraud and it is the settled principle of law that an application, not having disclosed any act of fraud in its body, is not entertainable and liable to be rejected." *(underlines supplied to give emphasis)*

Further in **Civil Appeal No.02 of 2004, Government of Bangladesh and others Vs. Shamsul Haque and another**, this Division has also held that;

"From the order of the Director General, it appears that there was no finding or observation of the Director General that the writ petitioner-respondents managed to procure the entry in the record-of-right by practicing fraud or entry was fraudulent one or that he consulted the relevant records or that made other enquires or that gave the parties concerned a hearing concerned a hearing in as much as Rule 42A of the Rules empowered the Director General to correct the entry after due compliance of the aforesaid legal requirements. Rule 42 provided that a Revenue Officer appointed with the additional designation of a "Settlement Officer" may, at any time before the publication of final record-of-rights, direct that any portion of the proceedings referred to in rules 28 to 32 in respect of a district, or local area, should be cancelled and that the proceedings should be taken up fresh from such stage as he may direct. But in the instant proceeding, as it appears from the order of the Director General, that the provisions of Rule 42A and 42 had not been followed, that is, it is apparent from the order of the Director General itself that the same was unlawful."

(underlines supplied)

In view of the above settled proposition it is clear that a Revenue-officer, with the additional designating of 'settlement officer' has got the authority/jurisdiction to re-open an appeal if on receipt of an application or on receipt of official report for the correction of an entry that has been procured by fraud in record-of-rights before

final publication thereof, after consulting relevant records and making such other enquires as he deems necessary, direct excision of fraudulent entry and at the same time, revenue officer has got the power to make the correct entry after giving the parties concerned a hearing and recording his findings.

Thus, it is crystal clear that if fraud has been done in recording of right before final publication thereof, the Revenue Officer can hear the matter afresh after consulting relevant records, making such other enquiry necessary, if he deems and giving opportunity of being heard of the parties.

Rule 41 of the Tenancy Rules, 1955 provides power of settlement officer, which is as follows:

"41. Power of Settlement Officer of withdraw and transfer cases: - A Revenue-officer appointed with the additional designation of "Settlement Officer" may also withdraw from the file of any Assistant Settlement Officer or Revenue-officer subordinate to him any of the proceedings under Chapter XVII and may dispose of them himself or transfer them for disposal to any other Assistant Settlement Officer or Revenue Officer subordinate to him."

Mr. Hoque has raised another issue that Director of Land Records has no authority to pass an order pursuant to the Rule 44 of Rules, 1955 as the said post has been upgraded as Director General of Land Records and Surveys.

Section 44 of the Tenancy Rules, 1955 runs as follows;

"44. Powers vested in Director of Land Records and Surveys:- In respect of all operations

under Chapter XVII of the Act which have been placed under the administrative control of the Director of Land Records and Surveys, Bangladesh, he may discharge all the functions of a Revenue-Officer under the said Chapter and shall have all the powers of a Settlement Officer under rules 36, 38,39, 40, 41, 42, 42A and 42B."

Upon perusal of the above rule it is clear that the Director of Land Records and Surveys has been vested with the power to discharge all functions of a Revenue Officer and shall have all powers of Settlement Officer under rule 42A along with some other rules in respect of all operation under chapter XVII of the State Acquisition and Tenancy Act.

In the instant case it reveals from the record that predecessors of the present Respondents No.5(a)-(d), Rokeya Begum, filed a compliant before the Ministry of Land regarding the alleged fraudulent entry in the record and thereafter Ministry of Land forwarded the same to Director General, Land Records and Surveys who ordered the Director, Land Records to dispose of the matter. Thereafter Director, Land Records after making an enquiry on the allegation made by Rokeya Begum and upon consideration of the said enquiry report he set aside the orders passed in 05 appeals and directed a competent officer to hold hearing of the appeals in question.

The letter dated 23.08.2001 contains the decision of Director, Land Records runs as follows:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

ভূমি রেকর্ড ও জরিপ অধিদপ্তর

তেজগাঁও, ঢাকা-১২০৮।

স্মারক নং-ভূঃজঃ২৩/৯৫/খন্ড-১)১৬৬৬ তারিখঃ ২৩/০৮/২০০১

প্রাপকঃ জোনাল সেটেলমেন্ট অফিসার, বগুড়া।

বিষয়ঃ বগুড়া জোনের আক্কেলপুর উপজেলার ১নং রুকিন্দীপুর মৌজার ১৮১০/৯৫, ১৮১১/৯৫ ১৮১২/৯৫, ১৮১৩/৯৫, ১৮১৪/৯৫ এবং ১৮৮৯/৯৫ নং আপীল কেসের পুনঃশুনানী প্রসংগে।

জনৈকা রোকেয়া বেগম জং ময়েন উদ্দিন সরকার এবং অন্যান্যের উল্লিখিত আপীল কেসগুলির পুনঃশুনানীর আবেদন এর পরিপ্রেক্ষিতে সংশ্লিষ্ট আপীল কেসনথী, আপীল রেজিস্ট্রার আপত্তি রেজিস্ট্রার, কোর্ট ফি রেজিস্ট্রার, দরখাস্তকারির পক্ষের প্রদর্শিত আপীল কেস দাখিলের রশিদ, এবং অন্যান্য কাগজপত্র পরীক্ষা এবং পর্যালোচনা করা হয়। দেখা যায় যে, ১৮১০/৯৫, ১৮১১/৯৫ ১৮১২/৯৫, ১৮১৩/৯৫, ১৮১৪/৯৫ এবং ১৮৮৯/৯৫ নং আপীল কেস দাখিলে কোনরূপ তামাদি হয় নাই। অথচ, আপীল কেস ৫ (পাঁচ) টি-তে তামাদি দেখাইয়া খারিজ করিয়া দেওয়া হইয়াছে।

১৮৮৯/৯৫নং আপীল কেসটি ২২-৭-৯৫ইং তারিখে দাখিল করায় উহা $8\frac{1}{2}$ মাসে তামাদি হইয়াছে দেখা যায়। ১৮৮৯/৯৫ নং আপীল কেসের প্রথম দিনের শুনানীতে বিজ্ঞ আপীল অফিসার লিখিয়াছেন “আপীল মোকদ্দমাটি ২ মাস ২৬ দিনের তামাদিতে দায়ের করা হইয়াছে। তামাদি মওকুফ করা হইয়াছে।” কিন্তু বিজ্ঞ আপীল অফিসার গত ২৪-৮-২০০০ইং তারিখে ১৮৮৯/৯৫ নং আপীল কেসটি ৩ মাস ১৮ দিন এবং ১৮১১/৯৫ নং আপীল কেসটি ২ মাস ৫ দিন তামাদি দেখাইয়া খারিজ করিয়াছেন যাহা স্ববিরোধীতাপূর্ণ দেখা যায়। উল্লেখ্য, ১৮১১/৯৫ এবং ১৮৮৯/৯৫ নং আপীল কেস ২টি একত্রে শুনানী দেওয়া হইয়াছে।

উল্লিখিত আপীল কেসগুলি তামাদি না হওয়া স্বত্বেও তামাদি দেখাইয়া খারিজ করিয়া দেওয়ায় পৈত্রিক সম্পত্তিতে দাবীদার দরখাস্তকারনীগণ ভীষণ ভাবে ক্ষতিগ্রস্ত হইয়াছে এবং উল্লিখিত আপীল কেসগুলির নিষ্পত্তিতে মারাত্মক ধরনের বে-আইনী এবং অনিয়ম করা হইয়াছে দেখা যায়।

এমতাবস্থায়, ন্যায় বিচার এবং নির্ভুল রেকর্ড প্রনয়নের স্বার্থে বগুড়া জোনের আক্কেলপুর উপজেলার ১নং রুকিন্দীপুর মৌজার ১৮১০/৯৫, ১৮১১/৯৫ ১৮১২/৯৫, ১৮১৩/৯৫, ১৮১৪/৯৫ এবং ১৮৮৯/৯৫ নং আপীল কেসের ২৪-০৮-২০০০ইং তারিখের রায় ১৯৫৫ সনের প্রজাস্বত্ব বিধিমালার ৪৪নং বিধিতে প্রদত্ত ক্ষমতাবলে এতদ্বারা বাতিল করা হইল। ১৮৮৯/৯৫ নং আপীল কেসের তামাদি ১৯০৮ সনের তামাদি আইন এর বিধানমতে মওকুফ করা হইল। উক্ত আপীল কেসগুলি একজন বিশেষ এবং অভিজ্ঞ সহকারী সেটেলমেন্ট অফিসার দ্বারা (প্রাক্তন আপীল অফিসার ব্যতীত) জোনাল সেটেলমেন্ট অফিসার বগুড়ার শুনানী দিয়া নিষ্পত্তি করিবার প্রয়োজনীয় পদক্ষেপ গ্রহণ করিতে তাহাকে নির্দেশ প্রদান করা হইল। ইহা অত্যন্ত জরুরী। জনস্বার্থে অত্র আদেশ জারী করা হইল।

স্বাঃ/
(মোঃ মঞ্জুরুল ইসলাম)
পরিচালক (ভূমি রেকর্ড)

From the above, it is clear that fraudulent act had been committed in disposal of the appeal Nos.1810/95, 1811/95, 1813/95, 1812/95, 1814/95 and 1889/95 under rule 31 of the Tenancy Rules, 1955 and concerned authority i.e. Director Land Records after holding enquiry passed the necessary

orders, which is within the ambit of rule 42A and 44 of the Tenancy Rules, 1955.

From 'ভূমি রেকর্ড ও জরিপ অধিদপ্তর কর্মকর্তাদের দায়িত্ব বন্টন' as produced before this court by Mr. Hoque, it transpires that Director General of Land Records and Surveys Directorate has been empowered to 'অধীনস্থ কর্মকর্তাদেরকে প্রয়োজনীয় ক্ষমতা অর্পনের আদেশ প্রদান।' And Director, Land Records is bound to do perform any assignment delegated to him by the Director General. Thus, in exercising power under rule 42A and 44, the Director, Land Records did not commit any illegality; rather he passed the same within his jurisdiction. Thus, we find no substance in the submission of Mr. Hoque, that the Director, Land Records had passed the order exceeding his jurisdiction.

Having considered the facts and circumstances of the present case coupled with the settled proposition of law by this Division, we find no substance in the appeal.

Accordingly, the appeal is dismissed without any order as to cost.

C.J.

J.

J.