

LEX/BDAD/0188/2014

Equivalent/Neutral Citation: 12ADC(2015)451, 3CLR(AD)(2015)251, 3CLR(AD)(2015)251

**IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION)**

Civil Review Petition Nos. 136-41 of 2010

**Decided On:** 13.07.2014

Bhawal Raj Court of Wards Estate **Vs.** Rasheda Begum and Ors.

**Hon'ble Judges/Coram:**

*Md. Muzammel Hossain, C.J., Surendra Kumar Sinha, Md. Abdul Wahhab Miah, Hasan Foez Siddique and A.H.M. Shamsuddin Choudhury, JJ.*

**Counsel:**

*For Appellant/Petitioner/Plaintiff: N.K. Saha, Senior Advocate instructed by Mahmuda Begum, Advocate-on-Record*

*For Respondents/Defendant: Khalilur Rahman, Advocate instructed by Zahirul Islam, Advocate-on-Record*

**JUDGMENT**

**Md. Abdul Wahhab Miah, J.**

**1.** These review petitions have been filed by the same petitioner for reviewing the judgment dated the 14th day of July, 2009 passed by this Division in Civil Petition for Leave to Appeal Nos. 1447-52 of 2008 dismissing all of them. Facts necessary for disposal of these petitions are that the respective writ-petitioner-respondents (hereinafter referred to as the writ-petitioner(s)) filed Writ Petition Nos. 6262, 6971 of 2004, 2678 of 2005, 1512 and 1513 of 2006 and 3797 of 2003 before the High Court Division challenging the order passed on different dates by the Officer-in-Charge and Assistant Settlement Officer, Dhaka (in some case approved by the Settlement Officers, Dhaka) in the separate respective appeal in exercise of the power under rule 42A of the State Acquisition and Tenancy Rules, 1955 (hereinafter referred to as Rules, 1955) setting aside the earlier order passed on different dates by the same Officer in the same appeal which were filed under rule 31 of the Rules, 1955 by the petitioner, Bhawal Raj Court of Wards Estate.

**2.** The common case of all the writ-petitioners, as it appears from the judgment sought to be reviewed, was that the respective case land involved in the respective writ petition originally belonged to Bhawal Raj Court of Wards Estate; the writ-petitioners were the successors-in-interest of the tenants under the Bhawal Raj Court of Wards Estate. In the C.S. Khatian, the respective case land stood recorded in the name of Bhawal Raj Court Wards Estate. After the acquisition of the land of the Zaminders on cessation of the Zamindari system, the rent receiving interest of the Mouza under which the respective case land belonged, was acquired by the Government under section 3(1) of the State Acquisition and Tenancy Act, 1950 (the Act, 1950) vide notification No. 2773 L.R. dated 26.02.1952 and the said notification of acquisition was published in the Dhaka Gazette on 24.03.1952, whereby it was notified that all rent receiving interest vested in the Government with effect from 14.04.1952 and the schedule given in the said Gazette notification includes the Mouza under which the case lands are situated. Thereafter, by notification No. 3126 L.R. dated 27.02.1956 published in the Dhaka Gazette on

29.02.1956, the Government acquired the lands of the Bhawal Raj Courts of Ward Estate, in respect of which, the rent receiving interest was acquired earlier on declaration of the compensation assessment Roll under section 43(2) read with section 46C and 46E(3) of the Act, 1950 and thereby, the respective case land of the respective writ-petitioner(s) vested in the Government with effect from the date of publication of the said notifications and since then the tenants under the Bhawal Raj Court of Wards Estate became the tenants under the Government in respect of such vested lands. Accordingly, during the S.A. survey operation; the names(s) of the respective writ-petitioner(s) and or his/their predecessors-in-interest was/were correctly recorded without any objection from any quarter. During the revisional survey operation, the name(s) of the respective writ-petitioner(s) and or his/their predecessors-in-interest was/were correctly recorded without objection. The respective writ-petitioner(s) directly or through his/their predecessors-in-interest has/have been owning and possessing his/their respective case land as tenants on payment of rents initially to the Bhawal Raj Court of Wards Estate and subsequently, after cessation of Zamindari system to the revenue authority of the Government openly and publicly without any objection. During the recent Mahanagor survey operation, the revenue authority found the respective writ-petitioner(s) in possession of his/their respective case land and accordingly the draft record of rights was prepared in his/their respective names(s) in accordance with law, i.e. under rule 29 of the Rules, 1955. The petitioner, Bhawal Raj Court Wards Estate, filed objection under rule 30 of the Rules, 1995 for removing the name(s) of the writ-petitioner(s) as appearing against his/their respective possession in respect of his/their respective case land in the draft record of rights challenging their tenancy; the revenue authority after full-fledged hearing rejected the objection of the petitioner. Against the said order of the revenue authority, the petitioner preferred separate appeal under rule 31 of the Rules, 1955 unsuccessfully and thereby, the draft record of rights was published in the respective name(s) of the writ-petitioner(s) under rule 33 thereof. The petitioner, Bhawal Raj Court of Wards Estate, filed an application before the Settlement Officer mentioning rule 42A of the Rules, 1995 for correction of the published draft record of rights and on the basis of the said application, fresh hearing was taken and the name(s) of the writ-petitioner(s) was/were substituted by the name of Bhawal Raj Court of Wards Estate as tenants in respect of the respective case land in the respective khatian on the basis of the C.S. Khatian, disbelieving the intermediary the transfers made during the period till the promulgation of the Act, 1950 and disregarding the acquisition of the rent receiving interest and vesting of the case land in the Government through gazette notification dated 26.02.1952 and 27.02.1956 mentioned above and the fact of payment of rents and taxes to the Government by the respective writ-petitioner(s) in respect of his/their respective case land as tenant(s). Though the name(s) of the respective writ-petitioner(s) was/ were ordered to be substituted by the name of the petitioner, the writ-petitioner(s) was/were ordered to be shown as "illegal possessors through force" and thus the possession of the writ-petitioners in the case lands is admitted. As stated hereinbefore, this order passed in the respective appeal was challenged in the respective writ petition to have been passed without lawful authority and was of no legal effect.

**3.** The High Court Division on hearing the parties by the judgment and order dated 20.05.2008 made the Rules Nisi issued in the writ petitions absolute with some observations.

**4.** Having felt aggrieved by the judgment and order of the High Court Division, the petitioner filed 6(six) petitions for leave to appeal being Nos. 1447-52 of 2008 and this Court by the judgment sought to be reviewed dismissed all the petitions; now these review petitions.

**5.** Heard Mr. Nikhiles Kumar Saha, learned Advocate, for the petitioner (in all the petitions) and Mr. Khalilur Rahman, learned Advocate, entering caveat on behalf of the writ-petitioner-respondents (in all the petitions).

**6.** Mr. Nikhiles Kumar Saha canvassed the reasons in the review petitions which are same and similar. On the other hand, Mr. Khalilur Rahman submitted that this Court rightly dismissed the petitions for leave to appeal considering the facts and circumstances of the case and the provisions of rule 42A of the Rules, 1955 and as such, the review petitions do not deserve any consideration and are liable to be dismissed.

**7.** In all the review petitions as many as 5(five) reasons have been assigned for reviewing the judgment of the Division.

**8.** A perusal of the judgment shows that the points taken in the reasons have been dealt with by this Court elaborately while dismissing the petitions affirming those of the High Court Division. Moreso, in the reasons, in fact, the findings of the High Court Division have been sought to be reconsidered. In none of the reasons, the petitioner has been able to point out any mistake or error apparent in the judgment sought to be reviewed within the meaning of rule 1 of Order XLVII of the Code of Civil Procedure. However, from the judgment, it appears that the main question involved in all the writ petitions was whether the application filed by Bhawal Raj Court of Wards Estate petitioners herein to the settlement officer, Dhaka Land Records and Land Survey Directorate, Tejgaon under rule 42A of the Rules, 1955 to hear the appeals filed under rule 31 thereof afresh was maintainable in law or not. The High Court Division decided the question in the negative and this Court concurred with the view taken by the High Court Division. This Division considering the application filed before the Settlement Officer under rule 42A of the Rules, 1955, the connected facts, particularly, the gazette notifications dated 24.03.1952 and 29.02.1956 as to the acquisition and vesting of rent receiving interest of the lands of Bhawal Raj Court of Wards including the land involved in the respective writ petition upon the Government, the S.A. and the R.S. khatian and payment of rents by the respective writ-petitioner(s) of the Government, concluded that "Thus we are of the view that the leave petitioner had no locus-standi to challenge the draft Mahanagor survey khatian as prepared in the names of the respective writ-petitioners, at least after publication of the gazette notifications dated 24.03.1952 and 29.02.1956"

**9.** Mr. Saha could not assail the above view taken by this Division legally and factually. Therefore, we find no reason to review the judgment passed by this Division. Accordingly, all the petitions are dismissed.

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