

**1 SCOB [2015] HCD 99****HIGH COURT DIVISION**  
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 5420 of 2014

**Md. Safiqul Islam** ... Petitioner

-Versus-

**The Government of Bangladesh and others.**  
... RespondentsMr. Subrata Saha with  
Mr. Kamal Hossain, Advocates  
...For the petitionerMr. Md. Borhan Uddin, Advocate  
...For respondent nos. 7-10Heard on 29.04.2015, 30.04.2015, 06.05.2015,  
12.05.2015 and Judgment on 18.05.2015**Present:****Mr. Justice Md. Emdadul Huq****&****Mr. Justice Muhammad Khurshid Alam Sarkar.****State Acquisition Tenancy Act, 1950****Section 143:****Respondent nos. 7-9 were not legally allowed to approach the A/C Land for correction of the record-of-rights at a time, when the same dispute and grievance is being taken care of by a competent civil Court.**

...(Para 22)

**The Revenue Officers are not performing any judicial function under the provisions of the SAT Act:****Provisions of Section 75 of the SAT Act and rule 39 of the State Acquisition Rules, 1951 and rules 14 & 36 of the State Tenancy Rules, 1955 give the Revenue Officers the powers of a civil Court merely to the extent of enforcing attendance of witnesses or of any person, having interest in the estate, and production of documents for the purpose of conducting any enquiry and, thus, not for adjudication upon a lis between the parties.****Our above view is reinforced by the provision of Section 146 of the SAT Act and rule 17 of the State Acquisition Rules, 1951 inasmuch as from a plain reading of the said Section 146 of the SAT Act and rule 17 of the State Acquisition Rules, 1951, we find that the functions of the Revenue Officers under Section 75 of the SAT Act and rule 39 of the State Acquisition Rules, 1951 and rules 14 & 36 of the State Tenancy Rules, 1955 are not sufficient to brand them within the category of Court.**

...(Para 25 &amp; 26)

**Absence of the finality in the orders of the Revenue Officers, reduces them to the administrative functionaries only:****The Provision of Section 146 of the SAT Act as well as rule 17 of the Rules, 1951 clearly indicate the absence of the finality in the orders of the Revenue Officers, reducing them to the administrative functionaries only under the Board of Land Administration and the Government. Thus, from this point of view as well, the Revenue Officers are not performing any judicial function under the provisions of the SAT Act.**

...(Para 29)

**If there is a case pending in a competent Court of law regarding any dispute over any land property and on the same dispute, pending disposal of the said case, a Revenue Officer is subsequently approached by any claimant with a prayer to update a record-of-rights in the form of amendment or the correction of the record-of-rights, the Revenue Officer should abstain from proceeding with the mutation case.**

...(Para 38)

**Unless a Revenue authority is presented with a registered instrument of amicable settlement or the contending parties of a mutation case agrees on their respective shares, no Revenue Authority is competent to change the record-of-rights by apportioning/allocating shares to the claimants of any landed property.**

...(Para 39)

**Revenue Officer must not proceed further when a civil suit is pending:**

**In dealing with the mutation proceedings the Revenue Officers' duties are only to record the names of the owners of the land upon examining the relevant papers and documents, if the same are produced before them without raising/taking any objection thereto. But the moment the Revenue Officer would come to know, either through an enquiry conducted by him with the assistance of the Tahshilder or any other staff of his office, or through an application filed by a private party for mutation, that there are disputes regarding the produced papers and documents and there are contending claimants over any land and the matter is pending in the Court for disposal, the concerned Revenue Officer must not proceed further with regard to the said mutation case until the said civil suit is finally disposed of.**

...(Para 40)

### Judgment

#### MUHAMMAD KHURSHID ALAM SARKAR, J:

1. This Rule was issued calling upon the respondents to show cause as to why the impugned judgment and order dated 18.05.2014, passed by the Full Board in Review Case no. 5-08/2014 (Mutation) Full Board, Satkhira (Annexure-L) filed against the Land Appeal Board's order dated 17.04.2014 in Appeal no. 5-06/2013 (Mutation Appeal), Satkhira affirming the order dated 31.12.2012, passed by the Additional Divisional Commissioner (Revenue), Khulna, in Miscellaneous Appeal no. 25 of 2012 dismissing the appeal, which was preferred against the order of the Additional Deputy Commissioner (Revenue) Satkhira in Miscellaneous Appeal no. 47 of 2010 reversing the order dated 18.05.2009 passed in Mutation Case no. 380/85-86, shall not be declared to have been passed without lawful authority and is of no legal effect and/or such other or further order or orders as may seem fit and proper to this Court.

2. Succinctly, the facts of the case, as stated in the writ petition, are that the CS recorded tenants, namely Kalipada Karmakar and Jitendra Nath Karmakar, filed Rent Suit no. 1785 of 1950 for recovery of arrears of rents against two full brothers, namely Md. Abdul Wahab Mondal and Md. Abdul Latif Mondal, in the Court of Munsif, 2<sup>nd</sup> Court, Satkhira on 27.09.1950 and through a compromise agreement (Solenama) Md. Abdul Wahab

Mondal got  $\frac{3}{4}$  share and his brother Abdul Latif Mondal got  $\frac{1}{4}$  share of 15.08 acres of land. On 05.04.1956

Md. Abdul Latif Mondal sold out his above  $\frac{1}{4}$  share i.e. entire 4.00 annas shares of the above entire 15.08 acres of land by the registered sale deed no. 2036 dated 05.04.1956 to Most. Hasne Banu, Most. Futfuti, Most. Bedana

and Most. Kamala. Out of above  $\frac{3}{4}$  share i.e. 12.00 annas share of the entire 15.08 acres of land, Md. Abdul

Wahab Mondal gifted .50 annas share of land to his brother's daughter Ambia Khatun and, accordingly, in the SA Khatian no. 452, 11.50 annas share was recorded in the name of Md. Abdul Wahab Mondal, .50 annas share was recorded in the name of Ambia Khatun and 4.00 annas share was recorded in the names of Hasne Banu, Futfuti Bibi, Bedana Bibi and Kamala Bibi being 1.00 anna for each of them. Thereafter, Md. Abdul Wahab Mondal sold his remaining entire share of 11.50 annas, which is 10.33 acres of land, to the petitioner by the registered sale deed no. 5363 dated 03.06.1985 and, pursuant to the said transfer on 03.10.1985, the Mutation Case no. 380(IX-I)/85-86 was filed before the Assistant Commissioner of Debhatta Land Office (hereinafter referred to as the A/C Land, Debhatta) and vide the order dated 15.10.1985 the mutation was done in favour of the petitioner and, accordingly, the SA Khatian no. 233/2 was prepared in the name of the petitioner in respect of 10.33 acres of land. It is stated that after creation of the SA Khatian no. 233/2, the petitioner conjointly with Bedana Bibi, Kamala Bibi sold 40 decimals of land to one Abdul Gaffur Gazi under the record shown in the SA Khatian no. 233/2.

3. On 05.05.2005, Mst. Futfuti Bibi, Mst. Bedana @ Vejali Bibi, Mst. Kamala Bibi and others filed Title Suit no. 25 of 2005 before the Assistant Judge, Debhatta, Satkhira against the petitioner and others praying for partition and cancellation of the petitioner's aforesaid deed no. 5363 dated 03.06.1985 when the plaint of the aforesaid suit was returned by the said Court under Order 7 rule 10 of the Code of Civil Procedure (shortly, the CPC) by the order dated 25.03.2013. Subsequently, on 20.06.2013 the same was instituted in the Court of learned Joint District Judge, 2<sup>nd</sup> Court, Satkhira and was renumbered as Title Suit no. 50 of 2013 which is still pending. Thereafter, Mst. Futfuti Bibi, Bedana Bibi, Kamala Bibi and Amina Bibi filed an application to the A/C Land, Debhatta and the said application was registered as Miscellaneous Case no. 02/08-09 under Section 149 of the State Acquisition Tenancy Act, 1950 and (hereinafter referred to as the SAT Act) for review of the order passed in Mutation Case no. 380/85-86 with a prayer for cancellation of the petitioner's mutation and,

thereby, to restore the previous status of the mutation with six names as was recorded in the SA Khatian no. 233. The above review application was rejected on 18.05.2009 and against the said order they moved the Collector who, by his order dated 28.12.2011, registered their representation as Miscellaneous Appeal no. 47 of 2010 and allowed the same. Against the aforesaid order dated 28.12.2011 the petitioner filed Miscellaneous Appeal no. 25 of 2011 before the Divisional Commissioner, Khulna who dismissed it by his order dated 31.02.2012. Against the said order the petitioner filed Appeal no. 5-06/2013 (Mutation), Satkhira before the Land Appeal Board and the same was dismissed on 17.04.2014. Against which the petitioner filed a review case being no. 5-08/2014 (Mutation) Full Board, Satkhira and the Full Board dismissed the said review case by its order dated 18.05.2014.

4. The petitioner being aggrieved and dissatisfied with the said order dated 18.05.2014 approached this Court and obtained this Rule.

5. Respondent nos. 7 to 9 contested the Rule by filing an affidavit-in-opposition contending, *inter-alia*, that the total land under the SA Khatian no. 233 is 15.08 acres and there were 6 (six) recorded owners and each of them had equal share of 2.51 acres of land. It is claimed that Md. Abdul Wahab Mondal was entitled to have a share of 2.51 acres of land only under the SA Khatian no. 233 and, accordingly, he did not have any right and title to sell 10.33 acres of land. It is alleged that the statements regarding Rent Suit no. 1785 of 1950 are concocted as no such a suit had ever been instituted by the CS recorded tenants against Md. Abdul Wahab Mondal and Md. Abdul Latif Mondal and, further, no Solenama was ever made between the said CS recorded tenants and the two brothers and the judgment and decree dated 27.09.1950 is a forged and fraudulent one. It is further alleged that the registered deed no. 5363 dated 03.06.1985 is also a forged one. It is claimed that the Mutation Case no. 380(IX-1)/85-86 was allowed by the A/C Land, Debhata without issuing any notice to all the recorded owners of the SA Khatian no. 233. It is stated that the petitioner and respondent nos. 7-10 are 12 brothers and sisters and they have some other paternal land properties and since it was necessary for partition and declaration of title of the property among them, the Partition Suit no. 25 of 2005 was instituted initially in a Court which did not have jurisdiction to entertain the said suit and subsequently the said suit was filed in a competent Court. It is stated that the Collector had rightly allowed the appeal of these respondents and, thereafter, the Divisional Commissioner, then, the Land Appeal Board had correctly dismissed the appeals and, finally, vide the impugned order the Full Board of the Land Appeal Board also rightly dismissed the review case.

6. Respondent no. 10 filed an affidavit on 03.03.2015 having complained that she never authorized any person to contest this case and, further, alleged that her purported signature shown in the letter of authority, annexed as annexures Z-2 to the affidavit-in-opposition filed by respondent nos. 7-9, is a forged one.

7. Mr. Subrata Saha, the learned Advocate appearing for the petitioner, at the very outset, takes us through the impugned order in tandem with the preceding orders thereto namely, the orders passed by the A/C Land, Debhata of Satkhira, the Collector (Additional Deputy Commissioner) of Satkhira and the Divisional Commissioner of Khulna and submits that while the order passed by the A/C Land appears to be in consonance with the provisions of the SAT Act, the subsequent orders passed by the appellate authorities namely, the Collector (the Additional Deputy Commissioner), the Divisional Commissioner and finally the Land Appeal Board, are beyond the provisions of the SAT Act. In an endeavor to elaborate his submission on this point, he places Section 143 of the SAT Act and submits that the Collectors and all other Revenue Officers, while performing the functions of mutation, subdivision, amalgamation etc, are carrying out executive nature of jobs/tasks and their duty is only to record the names of the present tenants as per the papers and information presented to them by the Tahshilders or as per the information provided by the applicant. He continues to submit that in the case at hand, however, the appellate authorities have exceeded their jurisdictions in directing the A/C Land to apportion the shares of the owners of the case land and then mutate their names against their respective shares inasmuch as ascertainment of saham among the co-sharers can only be done by a competent civil Court, and the Revenue Officers under the SAT Act, having not the status and power of a Court, cannot order for apportionments of the saham. He, then, places Section 143B of the SAT Act and forcefully submits that a revision in the record-of-rights by distribution of the respective shares of any land to the co-sharers can only be done by fulfilling the requirements outlined therein. In continuation of his submission on this point, he argues that if there are conflicting claims by the co-sharers as to the title and possession of a landed property, the A/C Land cannot proceed with a mutation case until the dispute is settled by a competent Court of law.

8. He, then, points out to the fact that the mutation in the name of the petitioner was done in the year 1985 and long after 20 years of the said mutation, the respondents filed the civil suit in the year 2005, claiming their saham as well as for cancellation of the said mutation case. He submits that since it is evident that they sought to cancel the mutation of the petitioner in the year 2005, thus, at the time of filing the application before the A/C

Land in the year 2009 for cancellation of the petitioner's mutation, the respondents were under an obligation to disclose the said fact to the A/C Land and also to all the appellate authorities. In an endeavour to clarify this facet of his submission, he canvasses that had this fact been disclosed before the first appellate authority namely, the Collector, Satkhira, the outcome might have been different inasmuch as he might have taken the fact into consideration that since the competent civil Court is in seisin of the matter, he should not proceed with the mutation case.

9. Then, Mr. Shaha, by placing the observation and finding portion of the final authority, namely, the Full Board of the Land Appeal Board, submits that even though the fact, as to filing the civil case by the respondents, was placed by this petitioner before the Full Board and, thus, the same was available before the said authority for their consideration, but in arriving at a decision the said Full Board of the Land Appeal Board completely failed to address the said fact for their consideration and, consequently, arrived at an erroneous decision. He submits that the Land Appeal Board utterly failed to apply their mind judiciously in adjudication upon the matter as they missed to frame a crucial issue for their consideration and decision that since the matter is being dealt with by a competent civil Court, they are legally debarred from proceeding further. He, then, submits that since it is evident that the respondents Bedana Bibi and Kamala Bibi had clear knowledge about creation of the SA Khatian no. 233/2 when the petitioner conjointly with them had sold some portion of the property from the SA Khatian no. 233/2, therefore, under Section 115 of the Evidence Act, 1872 they are estopped from challenging the said SA Khatian no. 233/2.

10. By making the aforesaid submissions, the learned Advocate for the petitioner prays for making the Rule absolute.

11. Per contra, Mr. Md. Borhanuddin, the learned Advocate claims that he represents respondent nos. 7-10. At the very outset, he refers to annexure-Z to the affidavit-in-opposition and submits that the basis of the petitioner's claim is Rent Suit no.1785 of 1950 but from the annexure-Z, it is evident that the said suit was not about the present suit land and, accordingly, he submits that the papers and documents produced in corroboration of the title and possession of the suit land on the basis of the said Rent Suit no. 1785 of 1950 are forged. He, then, refers to annexure-Z1 to the affidavit-in-opposition filed by respondent nos. 7-10, which is the SA Khatian no. 233, and submits that the said respondents are the co-sharers with the petitioner's vendor Md. Abdul Wahab, and since no share was stated in the said SA Khatian, it is to be taken that all the 6 (six) persons named in the SA Khatian are the owners with equal shares and, accordingly, it is the submission of the learned Advocate for respondent nos. 7-10 that while Md. Abdul Wahab was legally owner of only 2.51 acres of land, he was not competent and entitled to sell 10.33 acres of land and to execute and register the sale deed no. 5365 dated 03.06.1985 in favour of the petitioner. Finally, he submits that the civil suit has been instituted by these respondents for partition of the ejmali properties and, on the other hand, the application for review under Section 150 of the SAT Act, which has been registered as Miscellaneous Case no. 2/08-09, was filed by them before the A/C Land for correction of mutation cancelling the petitioner's Mutation Case no. 380(IX-I)/85-86 and, thus, it is argued that given the nature of the remedy sought for by respondent nos. 7-10 in the civil suit and in the mutation proceedings, the above two moves were required to make in two different fora and, further, in view of the provisions of the SAT Act, barring institution of any suit against the orders passed by the Revenue Officers, these respondents have rightly moved the A/C Land and, thus, there is no wrong in the impugned order.

12. By making the above submissions, the learned Advocate for respondent nos. 7-10 prays for discharging the Rule.

13. On the other hand, by filing a separate affidavit, though respondent no. 10 has alleged that she has not authorized respondent nos. 7-9 or any other attorney to contest this writ petition and annexure- Z-2 is a product of forgery, but none appeared before this Court to make any submissions. However, there is a submission in her affidavit that this Court should take legal action against the respondent nos. 7-10 for committing forgery. Given the above categorical disowning by respondent no. 10 by swearing affidavit, which has not been protested and resisted by any counter affidavit by the learned Advocate for respondent nos. 7-9, presence of respondent no. 10 as a party to this writ petition is ignored henceforth.

14. We have heard the learned Advocates for the petitioner and respondent nos. 7-9, perused the writ petition, affidavit-in-opposition and the affidavit filed by respondent no. 10 together with the annexures appended thereto and we have also gone through the relevant laws and decisions placed before us and considered the same carefully towards an effective disposal of the case at hand.

15. The issues to be examined by this Court are that whether respondent nos. 7-10 were competent to approach the A/C Land after invoking the jurisdiction of the civil Court seeking partition and declaration of title to the case property as well as for cancellation of mutation of the writ petitioner and, simultaneously, whether the Revenue Officers, starting from the A/C Land upto the Land Appeal Board, possess any authority to deal with a mutation case, when a civil suit is pending over a claim and counter-claim as to the title of any landed property.

16. Before embarking upon the examination of the above issues of this case, for which we will be engaged to look at the relevant provisions of the SAT Act scatteredly, it would be a prudent exercise for this Court to get acquainted with the scheme of the SAT Act.

17. The SAT Act deals with multi-mode subjects relating to acquisition and tenancy by the State. Broadly, the SAT Act may be divided in to two portions. The extent of the first portion of the Act is from Section 1 to Section 78 and the said provisions are concerned with the acquisition of different classes of rent-receivers, rent-receiving interests together with some other interests. For the purpose of application of these provisions, in some cases for their implementation, the State Acquisition Rules, 1951 were framed, and operational space of the said rule is confined within Section 1 to Section 78 of the SAT Act.

18. The second portion starts with Section 79 under Part V of the SAT Act and extends upto the end of the Act, that is, to Section 152, the last Section of the said Act. This portion deals with the law of tenancy in its different aspects. For proper application of the provisions of this portion of the SAT Act, the Legislature framed State Tenancy Rules, 1955.

19. It is the submission of the learned Advocate for respondent nos. 7-9 that the functions performed or orders passed by the Revenue Officers are beyond the periphery of the jurisdiction of the civil Courts and, thus, alongside the civil suit, which would determine and adjudicate mainly the saham and title but not be capable of changing the names in the record-of-rights, they had to approach the A/C Land for correction of the record-of-rights. In order to deal with the above submission, we are required to look at the concerned Sections of the SAT Act seeking to oust the jurisdiction of the civil Courts. The following Sections, namely Sections 30, 46B, 69, 72, 86A, 115, 134, 144B and 145F of the SAT Act put an embargo to take recourse to the jurisdiction of the civil Courts.

20. From a minute reading of the above provisions, it appears that Section 30 prohibits resorting to the jurisdiction of the civil Courts when an order is made directing preparation or revision of a record-of-rights, Section 46B puts the said embargo when Compensation Assessment-roll has been prepared. Also, as per Section 69, until all the rent receivers' interests, which were liable to be acquired, have been acquired, the rent receivers were made ineligible to file any execution case for recovery of their interests, Section 72 prohibits resorting to the jurisdiction of the civil Courts when Compensation Assessment-roll has been published, Section 86A puts a bar to sue with regard to the right in any land which re-appears on account of alluvion or abatement of rent on account of diluvion, Section 115 ousts the jurisdiction of the civil Courts in respect of the determination of rent-rates, Section 134 prohibits resorting to the jurisdiction of the civil Courts when an order is passed relating to consolidation of holdings of raiyats, Section 144B prohibits resorting to the jurisdiction of the civil Courts when an order has been made under Section 144(1) directing the preparation of revision of the record-of-rights in respect of any area and Section 145F puts an embargo to institute a suit in the civil Court with regard to a matter which is triable by the Land Survey Tribunal. Out of the above Sections, while Sections 30, 46B, 69 and 72 are the relevant provisions for acquisition, the rest Sections are linked up with the provisions of resolving the tenancy issues.

21. Our understanding from the perusal of these ouster provisions is that there are some purposes behind barring to take recourse to the jurisdiction of the civil Courts. The first motto is that the massive and gigantic task of acquisition of different classes of rent-receivers and rent-receiving interests undertaken by the State was intended by the Legislature to complete without being interrupted and, secondly, the process of ascertaining the tenancy matters, which requires to be commenced by the State from time to time, also is expected by the Legislature to be carried out without encountering any obstacle.

22. However, the fact of the instant case does not attract any of the above barring provisions of the SAT Act given that the petitioner's case is covered by Section 143 of the SAT Act which does not put any bar to seek remedy in the civil Court. In view of the fact that the petitioner is claiming the case property on the basis of a registered sale deed, respondent nos. 7-9 appear to have rightly invoked the civil Court's jurisdiction where they will have all the opportunity to examine their title & partition vis-a-vis that of their co-sharers on the case land

and, then, pursuant to the judgment and decree from the civil Court, the A/C Land shall be duty bound to update the record-of-rights on the case land. It follows that respondent nos. 7-9 were not legally allowed to approach the A/C Land for correction of the record-of-rights at a time, when the same dispute and grievance is being taken care of by a competent civil Court.

23. Now, let us see whether the Revenue Officers, ranking from the A/C Land to the Land Appeal Board, have any authority to deal and proceed with a mutation case when a civil suit over the selfsame matter is pending. In order to adjudicate upon the issue effectively, we have gone through all the provisions of the SAT Act from Sections 1 to 152 together with the State Acquisition Rules, 1951 and State Tenancy Rules, 1955. To say it more specifically, our searching was aimed at spotting the nature of the duties and functions of the Revenue Officers as to whether they carry out the performance of a Court, or of an administrative body. Upon skimming through the entire SAT Act, it appears to us that only the forums created under Sections 51, 53, 111 of the SAT Act by appointing judicial officers as the appellate authorities and the Land Survey Tribunals and Land Survey Appellate Tribunals constituted under Sections 145A and 145B of the SAT Act respectively hold/enjoy the status of a Court and perform the functions of a Court and all other Revenue Officers are to be taken as executive officers or forums.

24. However, a few provisions of the SAT Act and State Acquisition Rules, 1951 and State Tenancy Rules, 1955 have caught sight of us to be apparently different from the above provisions. These are Section 75 of the SAT Act and rule 39 of the State Acquisition Rules, 1951 and rules 14 & 36 of the State Tenancy Rules, 1955, which are quoted below:

**Section 75 of the SAT Act:**

For the purposes of any enquiry under this Act, a Revenue Officer shall have power to summon and enforce the attendance of witnesses or of any person having any interest in any estate, tenure, holding or land and to compel the production of documents by the same means, and so far as may be, in the same manner as in provided in the case of Civil Court under the Code of Civil Procedure, 1908.

**Rule 39 of the State Acquisition Rules, 1951** is as under:

When Revenue Officer is appointed for the purpose of preparation or revision of a record-of-rights, or for the purpose of preparation of Compensation Assessment Roll under Part IV of the Act, within any district, part of a district or local area, he shall be appointed either with or without the additional designation of ‘Settlement Officer’ or ‘Assistant Settlement Officer’. Every such officer is hereby vested with-

- (a) the power to cut and thresh the crops on any such land and to weigh the produce with a view to estimating the capabilities of the soil; and
- (b) the power to take down evidence with his own hand in the English language in proceedings held under Part IV of the Act in which an appeal is allowed in accordance with the procedure in the Code of Civil Procedure, 1908, for the trial of suits.

**Rule 14 of the State Acquisition Rules, 1955** runs as follows:

14. Powers of Revenue-officers under Chapter XIV of the Act:-(1) When a Revenue-office is appointed for the purpose of determination of rent-rates and for setting fair and equitable rents under Chapter XIV, of the Act, within any district, part of a district or local area, he shall be appointed either with or without the additional designation of “Settlement Officer” or “Assistant Settlement Officer”. Every such officer shall have-

- (a) The power to cut and thresh the crop of any land included within the area in respect of which an order under section 99 has been made, and to weigh the produce with a view to determine the productive capacity of the soil;
- (b) The power to take down evidence in his own hand in English language in proceedings held under the said chapter in accordance with the procedure laid down in the Code of Civil Procedure, 1908, for the trial of suits; and
- (c) .....
- (2) .....
- (3) .....

(4) A Revenue Officer appointed with additional designation of “Settlement Officer” or “Assistant settlement Officer” shall also have all the powers exercisable by a Civil Court in the trial of suits under the Civil Procedure Code, 1908 Act V of 1908).

**Rule 36 of the State Acquisition Rules, 1955** runs as follows:

36. Power vested in Revenue Officers- When a Revenue-officer is appointed for the purpose of revision of a record-of-rights under chapter XVII of the Act within any district, part of a district or local area, he shall be appointed either with or without the additional designation of “Settlement Officer” or “Assistant Settlement Officer”. Every such Officer shall have,-

- (a) the power to take down evidence in his own hand in English language in proceedings held under the said Chapter, in which an appeal is allowed, in accordance with the procedure laid down in the Code of Civil procedure, 1908, for the trial of suits; and
- (b) to enter upon any land included within the area in respect of which an order under section 144 has been made to survey and demarcate and prepare a map of the same.

25. Although from the reading of Section 75 of the SAT Act, rule 39 of the State Acquisition Rules, 1951 and rules 14 & 36 of the Tenancy Rules, 1955, it may appear that the powers and functions of the Revenue Officers, as disclosed above by the Act and Rules, clothe them with all the qualities of a Court and those also tend to indicate the judicial nature of their work, however, when any one would read through the whole SAT Act, he would be of the view that the provisions of Section 75 of the SAT Act and rule 39 of the State Acquisition Rules, 1951 and rules 14 & 36 of the State Tenancy Rules, 1955 give the Revenue Officers the powers of a civil Court merely to the extent of enforcing attendance of witnesses or of any person, having interest in the estate, and production of documents for the purpose of conducting any enquiry and, thus, not for adjudication upon a lis between the parties.

26. Our above view is reinforced by the provision of Section 146 of the SAT Act and rule 17 of the State Acquisition Rules, 1951 inasmuch as from a plain reading of the said Section 146 of the SAT Act and rule 17 of the State Acquisition Rules, 1951, we find that the functions of the Revenue Officers under Section 75 of the SAT Act and rule 39 of the State Acquisition Rules, 1951 and rules 14 & 36 of the State Tenancy Rules, 1955 are not sufficient to brand them within the category of Court.

27. Section 146 of the SAT Act is as under:

146(1) The general superintendence and control over all Revenue Officers shall be vested in, and all such officers shall be subordinate to, the Board of Land Administration.

(2) Subject to the provisions of sub-section (1), a Commissioner of Division shall exercise control over all other Revenue Officers in his Division.

(3) Subject as aforesaid and to the control of the Commissioner of the Division, a Collector shall exercise control over all other Revenue Officers in his district.

28. Rule 17 of the Rules, 1951 is as under:

Except as otherwise provided for by the Act or by these Rules, all proceedings and orders of a Revenue Officer passed in the discharge of any duty imposed upon him by the Act or these Rules shall be subject to the supervision and control of the Provincial Government; and the proceedings and orders of each Revenue Officer under the Act or these Rules shall be subject to the supervision and control of the Revenue Officer or Revenue Officers to whom he may be declared or ordered by the Provincial Government to be, for the purpose of the Act or these Rules, subordinate.

29. The Provision of Section 146 of the SAT Act as well as rule 17 of the Rules, 1951 clearly indicate the absence of the finality in the orders of the Revenue Officers, reducing them to the administrative functionaries only under the Board of Land Administration and the Government. Thus, from this point of view as well, the Revenue Officers are not performing any judicial function under the provisions of the SAT Act.

30. The Apex Courts of this sub-continent are sharply divided in opining on the issue as to whether the word/expression ‘Court’ used in Section 195(1)(c) of the Criminal Procedure Code (CRPC) includes the Revenue Officers under the SAT Act. Our Apex Court in the case of Sahera Khatun Vs Abdur Rahim Sheikh 13 BLC (AD) 24 upon examining the cases of Abul Hossain Vs State 55 DLR (AD) 125, Abdul Hai Khan & another Vs State 8 BLD (AD) 195 & Nur Mohammad VS Kalimuddin BCR 1987 (AD) 152 and some other conflicting opinions of the High Court Division passed in the cases of Malik Fateh Khan Vs Najibullah Khan 9 DLR(WP) Lahore 40, SM Lutfullah Vs Bibi Badrunnessa and others 20 DLR 1019, Idris Ali and another Vs State 38 DLR 270, Ajit Kumar Sarkar Vs Radha Kanta Sarkar 44 DLR 533 and Chitta Ranjan Das Vs Shashi Mohan Das 56 DLR 276 opined that while the Revenue Officers are carrying out their duties under Section 143 of the SAT Act, they should be regarded as executive functionaries, but when they are performing their duties under Section 144 of the SAT Act they should be considered as the Courts. However, the *ratio* laid down therein is not applicable in this case inasmuch as in all the afore-cited cases, the jurisdiction of Section 561A of the

CRPC was sought to be invoked in an attempt to quash the criminal proceedings on the ground that the Revenue Officers, while discharging their functions under the provisions of the SAT Act, are not functioning as the Courts and, accordingly, in the afore-cited cases there were occasions for this Court to examine as to what kind of Court was meant in couching the words under Section 195(1)(c) of the CRPC. Be that as it may, if the *ratio*, even, is to be taken to be applicable, nevertheless, the present case's fact having arisen out of a proceeding under Section 143 of the SAT Act, our opinion on this issue, as expressed hereinbefore, is in conformity with that of the Apex Court.

31. To this end, Section 143 of the SAT Act requires to be taken up and discussed towards adjudication of this case. Section 143 runs as follows:

143. **Maintenance of the record-or-rights:** The Collector shall maintain up-to-date, in the prescribed manner, the record-or-rights prepared or revised under Part IV, or under this Part by correcting clerical mistakes and by incorporating therein the changes on account of-

- (a) the mutation of names as a result of transfer or inheritance;
- (b) the subdivision, amalgamation or consolidation of holdings;
- (c) the new settlement of lands or of holdings purchased by the Government; and
- (d) the abatement of rent on account of abandonment or diluvion or acquisition of land.

32. From a minute reading of the above provisions of law, it appears that the duty of maintenance of the record-of-rights has been conferred upon the Collectors and he, with the assistance of the sub-ordinate Revenue Officers, shall perform the said duty apparently on two occasions. Firstly, when a clerical mistake occurs in passing an order on mutation, or after preparation of the record-of-rights or after revision of the same under Part VI of the SAT Act and, secondly, when there is any change in the ownership of the land as a result of transfer/inheritance, or on account of the events having taken place as enunciated in sub-Sections (b) to (d) of Section 143 of the SAT Act.

33. To put the provisions of Section 143(a) in a bit detail, it may be said that under Section 89 of the SAT Act, the happening of any transfer of land, upon being registered by the registering officer, must be notified to the Revenue Officer whose duty, then, becomes to open a file for mutation of record of rights and issue notice to the co-sharers of the transferred land, as provided in Section 143C of the SAT Act. However, if the landed property is acquired by inheritance and the partition taken place amicably through a registered instrument upon observing the provisions of the personal laws, Section 143B(2) of the SAT Act empowers the Revenue Officers to cause changes in the record-of-rights. On the other hand, the provisions of Section 143(b) to (d) of the SAT Act provide that if there is any amalgamation of land under Section 116 of the SAT Act, or subdivision of a joint tenancy under Section 117 of the SAT Act, or there happens a consolidation of holdings under Section 125 of the SAT Act, the Revenue Officer under the authority of the Collector shall incorporate the said changes in the record-of-rights. Also, whenever there is the new settlement of the lands or the Government purchases holdings, or there is abatement of rent on account of abandonment, diluvion and acquisition of land, the Collector's duty is to cause the said changes in the record-of-rights.

34. From the facts of the case at hand, it surfaces that there has been a transfer, as per the claim of the petitioner, by Md. Abdul Wahab Mondal, who is the father of the petitioner as well as of respondent nos. 7-9 and, accordingly, the petitioner had approached the concerned Revenue Officer namely, A/C Land, Debhatta, Stakhira, in the year 1985 by filing an application under Section 117 read with Section 143 of the SAT Act and through opening up the Mutation Case no. 380 (IX-I) 85-86 under the authority of Section 143(C) of the SAT Act, the A/C Land, Debhatta, Satkhira, at first, on 03/10/1985 had asked the Tahshilddar to submit a report thereon after making necessary inquires and on 15.10.1985, upon receiving the said report from the Tahshilddar, the record-of-rights was updated by the said Revenue Officer, Debhatta, Satkhira and, accordingly, in our way of scrutiny, we find that the duty performed by the said Revenue Officer namely, A/C Land, Debhatta, Satkhira, was completely in conformity with the provisions of Sections 117, 143 and 143C of the SAT Act and Rules 22-24 of the Tenancy Rules, 1955 inasmuch as under Section 143 of the SAT Act together with the provisions of relevant rules, namely rules 22-24 of the Tenancy Rules, 1955, the Collectors, with the aid of the Revenue Officers, have been vested with the duty to maintain the record-of-rights of the lands of this country and they are empowered to correct any clerical mistakes occurred in preparation or revision of the record-of-rights and, also, to amend the same when any change takes place in the ownership of the land, be it for sale, inheritance, vesting the property in the Government, acquisition or purchase by the Government etc.

35. Now, let us deal with the subsequent event namely, the steps taken by respondent nos. 7-9 by filing an application before the A/C. Land, Debhatta, Satkhira in the year 2009 for cancellation of the Mutation Case no. 380 (IX-I) 85-86, which was registered as Miscellaneous Case no. 02/08-09. The aforesaid move made by the said respondents may be seen as an application for review under Section 150 of the SAT Act. After receiving



the said application, a Revenue Officer is duty bound under Section 150(c) of the SAT Act to give notice to the contending parties and, then, dispose of the claim upon hearing them. From the order dated 18.05.2009 passed by the A/C Land, Debhatta, Satkhira, it appears that the said Miscellaneous Case no. 02/08-09 was heard in presence of both the parties and the same was rejected holding that since the mutation was done in the name of the petitioner pursuant to a registered sale deed and the writ petitioner is in possession of the case land, there is no reason to cancel the writ petitioner's mutation.

36. However, there is no observation by the said A/C Land as to the pendency of the civil suit. Though both the sides now unequivocally admit that a civil suit is pending before the competent Court of law with regard to the claim on the suit property, however, nothing was mentioned about it before the A/C Land, Debhatta, Satkhira neither by respondent nos. 7-9, nor by the writ petitioner. The reasons and motives of non-mentioning about the pendency of the suit are different for the petitioner and respondent nos. 7-9 and, in fact, opposite to each other. While it appears from the contents of the application, which was registered as Miscellaneous Case no. 02/08-09, made by respondent nos. 7-10 before the A/C Land, Debhatta, Satkhira, which has been placed before this Court as annexure-Y, that respondent nos. 7-9 cunningly remained silent about it, in contrast, the petitioner appears to have felt it not necessary to present this information to the A/C Land. Although the A/C Land, Debhatta, Satkhira rejected the said Miscellaneous Case no. 02/08-09 filed by respondent nos. 7-10, however, had the fact of the pendency of the civil suit been stated in the application by respondent nos. 7-10, the A/C Land would have an occasion to make his observation on this fact as well. When these respondents approached the appellate authority namely, Collector the appeal was allowed in absence of the petitioner and, thus, there was no scope for the petitioner to inform the Collector about the pendency of the civil suit on the same claim. Under the circumstance, the petitioner approached the superior appellate authority namely, Divisional Commissioner, Khulna who affirmed the order of the Collector, Satkhira without discussing the fact of institution of the civil suit. Finally, when the petitioner moved the Land Appeal Board where it transpires that the petitioner stated about the facts of the civil suit but the said final appellate authority did not take up the said issue for its consideration and simply arrived at a decision that the order passed by the Collector, Debhatta, Satkhira, to the effect that the record is required to be upgraded by distributing the share to the co-sharers named in the S.A. Khatian no. 233, does not suffer from any infirmity. As the last and final authority on the mutation matters, the Full Board of Land Appeal Board was expected to be astute in discharging their duties, for, a judicious order passed by the said final authority not only minimises the hassle of the parties to a mutation proceeding, which the litigant experience in dealing with the mutation cases, but it also saves the invaluable time of this Court.

37. The purpose behind carrying out the above lengthy exercise as to whether the Revenue Officers under the SAT Act are to be taken as the Courts or the executive functionaries was that if their positions are revealed to be of the Courts, then the next issue for our examination would be to find out whether the subsequent step taken in the Court of the A/C Land was barred by the principles of *res-judicata*. However, in the light of the revelation/outcome of our scrutiny that the duties and functions of the Revenue Officers, which they perform under the mandate of Section 143 of the SAT Act together with rules 22-24 of the Tenancy Rules, 1955, as have been carried out by them in this case, can not in any manner be considered as the judicial functions, as their functions are of administrative nature and they are competent only to pass executive order, which emerges from the *ratio* of the preponderance of the cases of our jurisdiction, we are not required to dwell on these issues any further. To this end, the only issue that becomes pivotal for our consideration is whether the Revenue Officers, from the posts of the A/C Land to the Land Appeal Board, being the executive functionaries as revealed hereinbefore, are competent to take up a matter for their consideration and decision when the same subject matter is pending before a civil Court.

38. The above core issue of this case surfaces to be a rare one of its kind in this Court as our research could not trace out any similar case on this point. On the other hand, there is no statutory provision as well to guide us a clear-cut path for adjudication upon the point. Under the circumstances, we have no other option but to put our best effort, based on sound and pertinent reasoning to adjudicate upon the issue. It is a universally recognized rule that Parliament or Executive does not take up any sub-judice matter for their consideration. The principle is rooted in our Constitution as well as in many of statutes of our country, including the Rules of the Procedure of Parliament, and, accordingly, it would be a sound and rational view to hold that if there is a case pending in a competent Court of law regarding any dispute over any land property and on the same dispute, pending disposal of the said case, a Revenue Officer is subsequently approached by any claimant with a prayer to update a record-of-rights in the form of amendment or the correction of the record-of-rights, the Revenue Officer should abstain from proceeding with the mutation case.

39. In the case at hand, all the Revenue Officers, from the A/C Land to the Land Appeal Board, utterly failed to address this issue. While it is apparent that the parties to this case were at fault at the initial stage before the A/C Land and the Collector for not disclosing the fact of pendency of the civil suit and, later on, when the petitioner had presented the said fact, although belatedly, the Divisional Commissioner and the Land Appeal Board failed to take up the fact for their consideration. Moreover, unless a Revenue authority is presented with a registered instrument of amicable settlement or the contending parties of a mutation case agrees on their respective shares, no Revenue Authority is competent to change the record-of-rights by apportioning/allocating shares to the claimants of any landed property. Thus, in the instant case, the first appellate authority namely, Collector, Satkhira when passed the order stating that the A/C Land, Debhata, Satkhira should update the record by distributing the share, we find that the said appellate authority exceeded its jurisdiction having attempted to usurp the functions of a civil Court inasmuch as it is for the civil Court to decide the share of the landed property in a situation where the claimed co-sharers are not in agreement as to their respective shares.

40. We are of the view that in dealing with the mutation proceedings the Revenue Officers' duties are only to record the names of the owners of the land upon examining the relevant papers and documents, if the same are produced before them without raising/taking any objection thereto. But the moment the Revenue Officer would come to know, either through an enquiry conducted by him with the assistance of the Tahshilder or any other staff of his office, or through an application filed by a private party for mutation, that there are disputes regarding the produced papers and documents and there are contending claimants over any land and the matter is pending in the Court for disposal, the concerned Revenue Officer must not proceed further with regard to the said mutation case until the said civil suit is finally disposed of.

41. In this case, it is an admitted fact that respondent nos. 7-9 have already invoked the competent jurisdiction, namely the jurisdiction of the civil Court, seeking cancellation of the mutation recorded in favour of the petitioner in the year 1985 together with a prayer for partition of the suit land and, thus, we are of the view that until their respective title is settled by the civil Court, the Revenue Officer shall not be in a position to distribute or apportion the respective portions of the share of the petitioner and that of respondent nos. 7-9 for recording the same in their respective record-of-rights.

42. Accordingly, we hold that the order passed by all the appellate authorities, starting from the Collector of Satkhira upto the Land Appeal Board, committed illegality in holding that the record-of-rights should be amended upon allocating the sahams among the contending parties. It follows that the impugned order is destined to be declared illegal and, thereby, the same requires to be set aside.

43. Resultantly, the Rule is made absolute without any order as to costs in the following terms:

(1) The order dated 18.05.2014 passed by the Full Board of Land Appeal Board (ভূমি আপীল বোর্ড) in Review Case ৫-০৮/২০১৪ (এমঃ ফুল বোর্ড, (সাতক্ষীরা), affirming the order dated 31.12.2012 passed by the Additional Divisional Commissioner, Khulna in Miscellaneous Appeal no. 25 of 2012 and thereby affirming the order dated 28.12.2011 passed by the ADC (Revenue), Satkhira in Miscellaneous Appeal no. 47 of 2010 is hereby declared illegal.

(2) Respondent no. 6, being the Assistant Commissioner (Land), Debhata, Satkhira, is directed to take his decision on updating the record-of-rights of the parties of Miscellaneous Case no. 47 of 2010 only when the adjudication of the Title Suit no. 50 of 2013, now pending before the Court of learned 2<sup>nd</sup> Joint District Judge, Satkhira, is finally completed.

(3) Respondent no. 1, being the Secretary of the Land Ministry, is directed that he shall, in an endeavour to prevent the recurrence of recording a mutation during pendency of a civil suit, issue a circular notifying all the Revenue Officers of Bangladesh and also the fig A/C Land that if a civil suit is pending involving claim of title on the basis of transfer or inheritance of an immovable property, the said Officers and the Board shall not, whether *suo-motu* or upon an application of any person, entertain a case for mutation of names in the record-of-rights under Section 143(a) of the State Acquisition and Tenancy Act, 1950 till a final decision is arrived at in such civil suit through exhausting appeal or revision arising therefrom.

(4) The Secretary, Land Ministry (Respondent no. 1) is further directed to take necessary steps for-

(1) ascertaining the exact powers and functions of the *fig AvCij tēW* as contemplated in Section 5 of the *fig AvCij tēW AvBb*, 1989, if not so ascertained already and to circulate it to all concerned,

(2) for effecting textual amendment of the State Acquisition and Tenancy Act, 1950 and the State Acquisition Rules, 1951 and the State Tenancy Rules, 1955 for substitution/incorporation of appropriate words in place of the 'Land Administration Board', 'Provincial Government' and other obsolete expressions, which have remained unattended in the aforesaid statutes.

44. Office is directed to send at once a copy of this judgment to Respondent no. 1 being the Secretary, Land Ministry and also a copy to the AC (Land), Debhata, Satkhira (Respondent no. 6).

45. Respondent no. 3 is directed to file an affidavit-in-compliance thereto on or before 09.09.2015.

46. Let the matter appear in the daily cause list on 10.09.2015 for necessary orders.

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