18 SCOB [2023] HCD 247

HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)
WRIT PETITION NO. 12985 OF 2021

Abu Khair Md. Nazmul Huq and others
Vs.
The Government of Bangladesh and others

Mr. Shasti Sarker, Advocate
...for the petitioners.
Mr. Noor Us Sadik Chowdhury, D.A.G
with Mr. Md. Awlad Hossain, A.A.G
with Mr. Rashedul Islam, A.A.G
... for the respondents
Heard on: 21.04.2022, 26.04.2022, 27.04.2022, 16.05.2022, 17.05.2022, 18.05.2022 and judgment on: 22.05.2022.

Present:
Madam Justice Kashefa Hussain
And
Madam Justice Fatema Najib

Editors' Note:
In this case question arose whether the Power of Attorney executed to file the writ petition was a valid Power of Attorney. The petitioner argued that although the power of attorney was executed outside Bangladesh, since it is a General power of attorney and not an irrevocable power of attorney, Rule 10(5) of the Power of Attorney Rules 2015 is not applicable in the petitioners' case and they are not under any obligation to get the endorsement of the Ministry of Foreign Affairs along with payment of stamp duties. The High Court Division, however, analyzing different provisions of Power of Attorney Act 2012 and Power of Attorney Rules 2015 came to the conclusion that all classes of power of attorneys whether it is special, general or irrevocable, when it is executed outside Bangladesh, the procedure prescribed by Rule 10(5) ক,খ, গ must be mandatorily followed by the power of attorney holder. The Petitioners did not follow the said Rule. Consequently, the Rule was discharged as the writ petition was not maintainable as not being in form.

Key Words:
Section 2, 7 of the Power of Attorney Act 2012; Rule 8, 9, 10 of the Power of Attorney Rules 2015;

Rule 10 of the Power of Attorney Rules 2015:
We are of the considered view that Rule 10 of the Power of Attorney Rules 2015 in its entirety does not distinguish between the classes of the power of attorneys when a power of attorney is executed outside Bangladesh so far as the duty of the power of attorney holder pursuant to execution is concerned. It is clear that all classes power of attorneys whether it is special, general or irrevocable, in the case of the power of attorneys being executed outside Bangladesh, the procedure prescribed by Rule 10(5) ক,খ, গ must be mandatorily followed by the power of attorney holder. (Para 24)

Rule 8 and 10 of the Power of Attorney Rules 2015:

Rule 8 essentially sets out the procedure that is to be followed by the executor while executing a power of Attorney. While Rule 10(5) clearly contemplates the procedure that needs to be followed in cases of all classes of power of attorneys relating to power of attorneys which are executed outside of Bangladesh. The provisions of Rule 10(5) (ক),(খ), (গ) has clearly imposed such duty upon the power of attorney holder following execution by the executors. It is clear that the intention of law is cases of those power of attorneys which are executed outside of Bangladesh following execution is the same irrespective of the classes of power of attorney. The power of attorneys whether those are Special, General, Irrevocable power of attorney so long they are executed outside Bangladesh certain conditions inter alia must be followed and fulfilled by the power of attorney holder which conditions are clearly prescribed under Rule 10(5) (ক),(খ), (গ) of the Rules . (Para 25)

We are of the considered finding that the General power of attorney which is marked Annexure-I in the instant writ petition is not a valid power of attorney. Since we are of the opinion that the power of Attorney by virtue of which the power of attorney holder swore affidavit to file instant the writ petition representing the petitioners such power of Attorney does not constitute a valid piece of document therefore we are also of the considered opinion that the writ petition is not maintainable as not being in form. (Para 27)

JUDGMENT

Kashefa Hussain, J:

1. Supplementary affidavit do form part of the main petition.

2. Rule nisi was issued calling upon the respondents to show cause as to why the Memo No. ভূঃমঃ/শা-৮/খাজব/৬৬/২০০১/৪৬৮(৬৪) dated 07.06.2005 passed by the Senior Assistant Secretary, Section-8, Ministry of Land, Respondent No. 3 cancelling the memo No. 8-28-85/1023(64) dated 17.10.1985 as to renewal of long term lease of non-agricultural Khas land and memo No. ভূঃমঃ/শা-৮/খাজব/১৩৫/২০১১/৫৮৯ dated 10.05.2011 passed by the Deputy Secretary, Section-8, Ministry of Land, Respondent No. 2 imposing new conditions as to renewal of long term lease of non-agricultural Khas land should not be declared to have been made without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

3. The petitioners No. 1. Abu Khair Md. Nazmul Huq son of late Nurul Huq land late Lutfun Nahar, Permanent Address: House # 10/C, Shegunbagicha, Post Office: GP-1000-, Police Station: Shahbagh, District: Dhaka. Present Address: Reechcroft Gardens, Wembley Park, HA9 8EP, London, UK. Petitioner 2. Shamima Ahmed daughter of late Nurul Huq land late Lutfun Nahar, Permanent Address: House # 10/C, Shegunbagicha, Post Office: GP-1000-, Police Station: Shahbagh, District: Dhaka. Present Address: 35 Gorse Avenure, Street Ford, Manchester, M32, 04 E, UK. petitioner 3. Md. Muhummed Manzural Haque son of late Nurul Huq land late Lutfun Nahar, Permanent Address: House # 10/C, Shegunbagicha, Post Office: GP-1000-, Police Station: Shahbagh, District: Dhaka. Present Address: Brookfield Road, Crumpsall, Manchester, M8, 55E, UK. petitioner 4. Saida Habeen, daughter of late Nurul Huq land late Lutfun Nahar, Permanent Address: House # 10/C, Shegunbagicha, Post Office: GP-1000-, Police Station: Shahbagh, District: Dhaka. Present Address: 10, Carlton

Drive, Prest Drive, Prest Wich, Manchester, M21, OGD, UK. petitioner 5. Rokeya Akhter, daugher of late Nurul Huq land late Lutfun Nahar, Permanent Address: House # 10/C, Shegunbagicha, Post Office: GP-1000-, Police Station: Shahbagh, District: Dhaka. Present Address: 287 Southbury Road, Enfield, Greater London, Eni IRQ, UK all are citizens of Bangaldesh represented by their Constituted Attorney- Kazi Mazaharul Anwar, Son of late Kazi Belayet Hossain and late Homeara Begum. Permanent Address: Village: Konagram, Post Office: Majhigati High School, 8100, Police Station: Gopalgonj, District: Gopalgonj.

4. The respondent No. 1 is the Secretary, Ministry of Land, Bangladesh Secretariat, Shahbag, Dhaka, respondent No. 2 is the Deputy Commissioner, Section -8, Ministry of Land, Bangladesh Secretariat, Shahbag, Dhaka, respondent No. 3 is the Senior Assistant Secretary, Section-8, Ministry of Land, Bangladesh Secretariat, Shahbag, Dhaka, respondent No. 4 is the Deputy Commissioner, Dhaka and respondent No. 5 is the Additional Deputy Commissioner (Revenue), Dhaka.

5. The petitioner's case inter alia is that the petitioners are the owners of the land proportionately 10.16 decimal in District-Dhaka. Mouza- Ramna police station Ramna C.S, Khatian No. 28, S.A khatian No. 96, R.S khatian No. 145 and 116, Dhaka City Jarip Khatian No. 488 and 489, C.S plot No. 184, S.A plot No. 532, R.S plot No. 1406, Dhaka City Jarip plot No. 2027, 2028 and 2029. The aforesaid land was with Raiyati Right under Khas Mahal under the Dhaka Collectorate Khas Mahal Touzi No. 15725. One Radha Ballav Das, Son of Bepin Behari Das, of village Sholaghare police Station- Srinagare in the District of Dhaka paid rent to the khas mahal under agreed rent under the agreement. The agreement was executed between him and the collector, at the time of taking settlement of this of the land. Thereafter the said Radha Ballav Das defaulted in payment of rent and he fell into huge arrears. For the realization of the arrears Certificate Case No. 260 of 1950-51 was started and on the basis of which the said land was sold in auction and purchased by Moulavi Abu Hamid Mohammad for consideration of an amount of R.s. 2000/- only and the said sale was duly confirmed on 27.10.1951. That thereafter Moulavi Abu Hamid Mohammad transferred the property to Mosammat Badrunnesa Bibi and Mosammat Fazila Khatun Luthfun Nahar vide deed No. 3748 dated 05.06.1952. That correspondingly the Dhaka City Jorip in the name of Bodrunnesha Bibi and Lutfun Nahar respectively was correctly recorded in the Dhaka City Jarip being khatian No. 488 and 849, plot No. 2027, 2028, 2029. The present petitioners of the writ petition, are the heirs of Lutfun Nahar Begum. That they are using the land for residential purpose and they have been living peacefully there upon paying government revenue and constructed six and four storied buildings. That the Government of the People's Republic of Bangladesh, Ministry of Land Administration and Land Reformation by a circular under the signature of Section Chief, Section-8, vide Memo No. 8-28/85/1023(64) dated 17.10.1985 proclaimed that long term lease would be recognized as permanent settlement and no further renewal would be necessary. That there was another circular issued by the Senior Assistant Secretary, Section-8, Ministry of Land Administration and Land Reformation Government of the People's Republic of Bangladesh vide Memo No. 8-393/86/1456 dated 12.11.1986 where it was specifically stated that long term lease would be recognized as permanent settlement and no permission would be necessary for its transfer. The aforesaid lease transferred the land splitting to different persons and accordingly through different hands the petitioners obtained the ownership of the land jointly. They also mutated their names in usual course. Now there are eight storied buildings on the lands and the petitioners have been living there peacefully upon paying government revenue regularly. That there was another circular issued by the Senior Assistant Secretary, Section-8, Ministry of Land Administration and Land Reformation vide Memo No. 8-393/86/1456 dated 12.11.1986

where it was stated that long term lease would be recognized as permanent settlement and no permission would be necessary for its transfer. That obtaining ownership of the land the aforesaid lessees, their transferees and successors have been possessing the land for more than 80 (eighty) years. As such the impugned circular is not applicable to them as the said circulars were published after obtaining ownership as permanent lessees. That recently the petitioners have come to know that the aforesaid Memo No. 8-28/85/1023(64) dated 17.10.1985 whereby the said lease was made permanent by the Government has been cancelled vide Memo No. ভূঃমঃ/শা-৮/খাজব/৬৬/২০০১/৪৬৮(৬৪) dated07.06.2005 passed by the Senior Assistant Secretary, Section-8, Ministry of Land, the Respondent No. 3. That thereafter another circular was issued by the Deputy Secretary, Secretary Section-8, Ministry of Land vide Memo No. ভূঃমঃ/শা-৮/খাজব/১৩৫/২০১১/৫৮৯ dated 10.05.2011 where it has been stated that for transferring any lease hold land permission from the Ministry of Land is mandatory and that 25% of the market value of the land has to be deposited to the Government Treasury. It has been further stated that if any lease hold land has been transferred without permission of the Government, the transferees must deposit 30% of the market value of the land to the Ministry of Land and the said Ministry would consider the matter of renewal of the concerned lease. Being aggrieved by the memo dated 7.06.2005 cancelling the memo dated 17.10.1985 the petitioner filed the instant writ petition.

6. Learned Advocate Mr. Shasti Sarker appeared on behalf of the petitioners while learned D.A.G Mr. Noor Us Sadik Chowdhury with Mr. Md. Awlad Hossain, A.A.G along with Mr. Rashedul Islam, A.A.G appeared for the respondents.

7. Learned Advocate for the petitioners submits that the impugned Memo dated 7.06.2005 passed by the respondent No. 3 cancelling the earlier Memo dated 17.10.1985 regarding renewal of long term leases of non-agricultural Khas land and Memo dated 10.05.2011 passed by the respondent No. 2 imposing new conditions as to renewal of long term lease of non-agricultural khas land adversely affected the fundamental right of the petitioners. He asserts that therefore the impugned memo is issued without lawful authority and ought to be declared unlawful. He continues that the petitioners are lawful lessees of the property given that their predecessors were lawful lessees having executed valid and lawful lease agreement with the respondent Government and therefore the petitioners have a vested right to avail the benefit of the earlier memo of 1985. He draws attention to Annexure-D which is the earlier Memo dated 17.10.1985 and points out that by Annexure D dated 17.10.1985 those lessees who were granted long term lease a new legal right was created that they would be pursuant to the memo dated 17.10.1985 be considered as permanent lessees and therefore in case of such long term lease there will not be any necessity to renew their lease any more. He agitates that the memo dated 17.10.1985 created a legitimate expectation of the petitioner that their lease being long term lease, they will henceforth avail the benefit of the memo after the expiry of their earlier term of lease. He submits that during the issuance of the memo dated 17.10.1985 which is the earlier memo, the predecessor of the present petitioners' were in possession of the leased property and availed the benefit of Annexure-D by way of being long term lessees. He continues that after their demise the present petitioners are the lawful owners of one of the lessees being Lutfun Nahar who along with another person had entered into an agreement with the respondent government in the year 1962. He draws attention to Annexure-J of the supplementary affidavit wherefrom he shows that the predecessor of the present petitioners F.A Lutfun Nahar was one of the parties to the lease granted by the government in the year 1962. He submits that it is a principle of law by way of provisions of Transfer of Property Act 1882 and also by way of Succession Act1925 including the Muslim Law of Inheritance that the legal heirs of any person shall inherit the property of their

predecessors subject to all the rights, liabilities and duties of their predecessor attached to the property. He continues that therefore in the instant case the petitioner being the lawful heirs of Lutfun Nahar is entitled to avail the benefit of memo dated 17.10.1985. He next contends that the Government most illegally cancelled the memo dated 17.10.1985 and arbitrarily issued the impugned memo dated 07.06.2005 and another memo dated 10.05.2011 issued by the respondent No. 3 and the respondent No. 2 respectively. He draws attention to Annexure F which is the impugned memo dated 07.06.2005 issued by the Senior Assistant Secretary, Ministry of Land who is the respondent No. 3 in the writ petition. He points out that by Annexure F the respondents by giving retrospective effect to the impugned memo most arbitrarily cancelled the memo dated 17.10.1985 issued earlier by the respondents. He reiterates that while the memo of 1985 afforded to the petitioner the benefit of not having to renew leases in case of long term lease, conversely on the other hand by Annexure-F such benefit which the petitioners acquired by way of being long term lessees was most arbitrarily seized and deprived the petitioners of their legitimate expectation and legal rights. He submits that the respondents cannot within the ambits of law issue any circular or enact any other law which may take away any person's lawful right or otherwise be detrimental to his lawful rights upon giving retrospective effect to such circular. On the issue of retrospective effect he continues that since the earlier memo which is Annexure No. D was issued in the year 1985 therefore from that date onwards the petitioner had earned a vested right to avail the benefit of being long term lessees from the predecessors and hence not subject to the requirement of renewing such long lease. He assails that a decision of the respondents seizing a person of his vested right which he is entitled to cannot be given retrospectively effect after so many years later depriving him of his fundamental right and legitimate expectation.

8. He next draws attention to Annexure-G the memo dated 10.05.2011 which the instant petitioners also challenged in this writ petition. He points out to Annexure-G and submits that Annexure G has imposed some new conditions that must be fulfilled prior to transferring the property to any other person. He continues that particularly clause Nos. Ga(গ) and Gha (ঘ) has imposed some conditions upon the lessees before transferring a lease property. He further continues that the conditions are basically payment of 25% of the market value of the property set out in clause Gha of Annexure G. He submits that such arbitrary imposition of payment of 25% market value before transfer of property is in direct violation of the petitioners fundamental right and detrimental to their interests. He continues that since the petitioners have acquired their vested right not to have to renew the lease as long terms lessees from the year 1985 therefore the issuance of the impugned memo arbitrarily imposing a condition of having to pay 25% of the market value is an arbitrary decision and violative of the fundamental rights of the petitioners.

9. The learned Advocate for the petitioners however mainly revolves his submissions around the illegality of Annexure F by which he contends that his fundamental right and legitimate expectation in not having to renew his long terms lease has been violated. Upon a query from this bench he submits that his predecessors are lawful lessees who entered into a lawful lease with the government which is palpable from Annexure J of the supplementary affidavit. He relies on Annexure J which is the agreement executed between the petitioner's predecessor and another person with the Government (Respondents). Relying on his substantive argument that their predecessor is a lawful lessee of the government, he draws attention to certain documents regarding possession of land by way of S.A records, khatian etc which has been marked as annexure A, A1 and which are the in the name of the petitioners' predecessor. He next draws attention to annexure B which is the sale certificate of sale of land which was sold in auction by the government and which land was originally

owned by Radha Ballav Das as is apparent from annexure-B. He submits that these documents are clear proof that the petitioners' predecessor was a lawful lessee and particularly by way of annexure-J the agreement of 1962 it palpably shows that the petitioner's predecessor lawfully entered into the lease with the government along with another person.

10. In support of his submissions that the cancellation of the earlier memo 1985 by way of later memo in the year 2005 is unlawful, he relies on a decision in a judgment of this Division filed in Writ Petition No. 9643 of 2014 along with several other writ petitions. He submits that in these writ petitions similar issues were raised and under challenge and that the Rules in those writ petitions were made absolute and the respondents were given direction in accordance with law. Relying on this decision also that no retrospective effect adversely affecting and/or detrimental to the petitioners legal rights such retrospective right cannot be given by cancelling an earlier memo by any later memo.

11. Upon further query from this bench regarding an issue raised by the learned D.A.G regarding the power of attorney not being a valid power of attorney which the instant petitioners granted to another person who is supposedly the power of attorney holder, he controverts that the petitioners who are presently residents in U.K are actually permanent resident in Bangladesh and they lawfully executed the power of attorney in favour of the power of the attorney holder who is presently representing them by swearing affidavit in the instant writ petition. He draws attention to annexure I which is a General (সাধারন) power of attorney and shows that by annexure-I the petitioners lawfully granted a general power of attorney in favour of the power of the attorney holder by name of Kazi Mazaharul Anwar. Upon further query from this bench he shows that the late Lutfun Nahar who is their predecessor and one of the lessees of the agreement of the year 1962 are the same person. To substantiate his claim he shows that it is apparent from the power of attorney that Lutfun Nahar's husband's name was Nurul Huq and which is also reflected in annexure J which is the lease agreement between Lutfun Nahar and Badrunnessa Begum with the Government dated 20.06.1962. Upon yet further query from this bench regarding non compliance of provisions of Power of Attorney Act, 2012 read along with the Power of Attorney Rules 2015, he asserts that there is no non compliance on the part of the petitioner non is their any non compliance on the part of the power of attorney holder. He asserts that the constituted attorney is a valid power of attorney holder within the ambits of the provisions of the Power of Attorney Act 2012 read with Power of Attorney Rules 2015. He argues that although the power of attorney was executed outside Bangladesh but since it is a General power of attorney and not an irrevocable power of attorney therefore Rule 10(5) of the Power of Attorney Rules 2015 is not applicable in the petitioners' case. He continues that therefore since it is a general power of attorney, the power of attorney holder is not under any obligation to comply with the provisions of Rule 10(5) Ka, Kha and Ga of the Rules. He contends that that only in case of irrevocable power of attorney, it needs endorsement of the Ministry of Foreign Affairs along with payment of stamp duties and also needs to comply with clause Ga of Rule 10(5). He reiterates that since the present power of attorney is only a general power of attorney and not an irrevocable power of attorney therefore it does not belong to a special class of power of attorney, and consequently it does not invoke compliance of the provisions of Rule 10(5)(ka)(Kha)(Ga). In elaborating his contention he takes us to Section 2 of the Power of Attorney Act-2012 and submits that Section 2(1) provides definition of power of Attorney. He continues that since Section 2(1) does not contemplate any validation of the Ministry of Foreign Affairs or payment stamp duties etc, pursuantly according to Section 2(1) of the Act, the present petitioners' power of attorney is a General power of attorney and does not suffer from any lacunas. He next points out to Section 2(4) of the Power of Attorney Act, 2012 wherefrom he points out that sub-rule 4

specifically contemplates some conditions to be followed to constitute an irrevocable power of attorney. He next points out to sub-section 7 of section 2 and points out that sub-section 7 of section 2 of the Power of Attorney Act 2012 clearly express the meaning of General Power of Attorney. He submits that Section 7(2) has clearly stated that a General power of attorney shall not be bound by any of the conditions and/or extra conditions that have been imposed upon an irrevocable power of attorney to validate its legality. He next points out to Section 4 and some other provisions of the Act and argues that it is clear from the scheme of the Power of Attorney Act, 2012 that a general power of attorney is not bound by the trappings that have been imposed to validate an irrevocable power of attorney.

12. He next points out to the Power of Attorney Rules 2015 wherefrom he particularly points out to Rule 8 of the Power of Attorney Rules 2015 and argues that nowhere in Rule 8 of the Power of Attorney Rules 2015 is it contemplated that a General Power of Attorney must follow the provisions of Rule 10(5). He further points out to Rule 9 of the Power of Attorney Rules 2015 and submits that Rule 9 has set out certain Rules to validate an irrevocable power of Attorney. He asserts that therefore it is clear from the Rules and scheme of the law that the power of attorney holder of a General Power of Attorney is not under any legal obligation to comply with the provisions of Rule 10(5). He persists that the provisions of Rule 10(5) of the Power of Attorney Rules 2015 is only applicable in the case of Irrevocable power of attorneys and not applicable for General power of attorneys. He continues that therefore the power of attorney executed by the petitioners who are presently residing in U.K are lawfully executed and there are no lacunas in the Power of Attorney and it is a valid power of attorney within the meaning of the Power of Attorney Act 2012 read with the Rules of 2015. He submits that the power of attorney holder filed the instant writ petition by swearing affidavit by virtue of the General power of attorney which is marked as annexure-I in the writ petition representing the petitioners there in. He contends that therefore the writ is maintainable since the power of attorney holder swore affidavit relying on a valid General power of attorney, validly constituted and validly executed and there is no lacuna in the said General Power of Attorney. He reiterates that furthermore the petitioners are armed with factual merits in the case since the cancellation of earlier memo of 1985 by the later memo 2005 is unlawful and therefore the Rule bears merits ought to be made absolute for ends of justice.

13. On the other hand learned D.A.G appearing on behalf of the Respondents vehemently opposes the Rule. He makes some legal submissions regarding the issue of validity including on the issue of giving retrospective effect to the later memo having detrimental effect of the petitioners interests. He contends that the later memo of 2005 is not applicable to the petitioner's case since the petitioners could not prove that they are lawful heirs of Lutfun Nahar. He also controverts the petitioners on some factual issues regarding the identity of Lutfun Nahar and also raised on issue on genuineness as to whether the predecessor of the petitioners and the lessee by way of agreement F.M Lutfun Nahar are one and the same person. However the learned D.A.G mainly argued on the validity of the power of attorney which is presently before us marked as annexure-I of the writ petition. He vehemently argues that the writ petition is not maintainable in its present form since the power of attorney holder is not relying on a valid power of attorney and consequently the power of attorney relying on which he swore affidavit is not a valid Power of Attorney. In support of his submissions he takes us to the materials on record before us and points out that to constitute a valid Power of Attorney, Rule 10(5) of the Power of Attorney Rules 2015 must be complied with in case of all classes of power of attorneys. He draws attention to Rule 10 of the Power of attorney Rules and takes us to the heading : "১০। বাংলাদেশের বাহিরে সম্পাদিত পাওয়ার অব অ্যাটর্নি।" He points out that Rule 10 of the Power of Attorney Rules 2015 does not distinguish between the classes of power of attorneys. He submits that it is clear from the terms of rule 10(5) which includes বিশেষ, সাধারণ এবং অপ্রত্যাহার যোগ্য power of attorney that is all classes of power of

attorney within its meaning. He submits that therefore since Rule 10(5) clearly includes General power of attorney also within the meaning of this section therefore the power of attorney holder is bound to comply with Rule 10(5) subsequently to the execution of the power of attorney by the petitioners. He draws attention to Rule 10 (5) Ka(ক), Kha(খ) and Ga(গ). He points out that upon a plain reading of Rule 10 sub-rule 5(Ka)(Kha)(Ga) it is clear that the execution of power of attorney irrespective of the class/ type of Power of Attorney which has been executed outside of Bangladesh shall need endorsement of the Ministry of Foreign Affairs under 10 (5) (ক) followed by payment of stamp duties under 10(5) (খ) and also followed by clause Ga of Rule 10(5) which requires all power of Attorneys executed outside of Bangladesh to be filed before the concerned sub-registrar for registration with the required fees. He submits that for our purpose Rule 10 sub Rule 5 (ক) (খ) (গ) of the Power of Attorneys Rules 2015 contemplates the procedure to be followed in case of all classes of power of attorney which has been executed outside Bangladesh. He submits that nowhere in the scheme of the law does it indicate or allude that general power of attorneys executed outside of Bangladesh shall be outside the scheme of Rule 10(5).

14. Pointing out to Rule 8 of the Power of Attorney Rules 2015 he controverts the submissions of the learned Advocate for the petitioners and contends that the Learned Advocate for the petitioner gave a misconceived interpretation of Rule 8 of the Rules. He points out that Rule 8 contemplates power of attorney executed by the executor and does not contemplate any duty of the power of attorney holder. He submits that Rule 10 of the Power of Attorney Rules 2015 however has categorically expressed the duty of power of attorney holder in case of all Power of Attorneys, executed outside Bangladesh.

15. He agitates that the instant writ petition is barred on the face of it and the writ petitioner has no locus standi to challenge the memo of 2005. He contends that the pivotal point is that the instant writ petition is not maintainable since the power of attorney holder who swore affidavit in the instant writ petition is barred by law since the power of attorney by dint of which he represents the petitioners such power of attorney is not a valid power of attorney in the eye of law. He submits that therefore since in the instant case the power of attorney holder who is filing the writ petition on behalf of the petitioners is not armed by a genuine and valid power of attorney therefore evidently the writ is not maintainable in limine and the Rule bears no merits ought to be discharged for ends of justice.

16. We have heard the learned counsels, perused the writ petition and materials on record including the judgments cited by the counsels. The petitioner initially challenged the legality of the impugned memo of 2005 followed by another memo of 2011. He also made some factual submissions regarding the genuineness of lawful heirs of the original lessees. However our considered view is that before embarking into the factual merits of the case, we must in this case address a vital question that has been raised regarding the validity of the General power of attorney by dint of which the writ petition has been filed by the power of attorney holder representing the petitioners. That the nature of the Power of Attorney is not a General Power of Attorney is admitted by the Learned Advocate for the petitioners. The power of attorney holder is namely Kazi Mazaharul Anwar.

17. The learned D.A.G has taken us to the relevant Power of Attorney Rules 2015 and points out that it is also an admitted fact that the said General power of Attorney in this particular case was executed outside Bangladesh. He pointed out to Rule 10(5) of the Rules of 2015 and vehemently argued that Rule 10(5) of the Power of Attorney Rules 2015 has not been complied with in the instant writ petition and therefore the said General power of attorney is incomplete and consequently an invalid piece of document.

18. We have carefully examined the Laws. We have particularly examined the Rules pertaining to constitution of valid power of attorneys executed outside Bangladesh. We have carefully examined Rule 10(5) (Ka)(Kha) and (Ga) of the Rules of 2015. The heading Rule 10(1) is reproduced hereunder:

> "১০(১): বাংলাদেশের বাহিরে বিশেষ, সাধারণ বা অপ্রত্যাহারযোগ্য প্রত্যেক পাওয়ার অব অ্যাটর্নি দলিল, এই বিধিমালার তফসিল ক এর ফরম-৩ অনুসরণক্রমে, দুই প্রস্থে, মূল ও প্রতিলিপি আকারে প্রস্তুত করিতে হইবে।"

19. Whatsoever the permanent address of the petitioner as contended by the learned Advocate for the petitioner may be, nevertheless it is an admitted fact and on the face of the record from Annexure – I including the cause title of the writ petition that the petitioners are residents abroad and the power of attorney was executed outside of Bangladesh. Keeping this vital factor in mind we have perused the provisions of Rule 10(5) which contemplate within its meaning the compliance of certain conditions irrespective of the class of power of attorney if they are executed outside Bangladesh.

20. It is a general principle of law that while interpreting a statute a statute must be read as a whole and not in part.

21. Maxwell on The Interpretation of Statutes (Twelfth Edition by P.St.J. Langan) page 47 states:

> **A statute is to be read as a whole**
> *It was resolved in the case of Lincoln College that the good expositor of an act of parliament should "make construction on all the parts together, and not of one part only by itself.'' Every clause of a statute is to "be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute." This principle is fully discussed in a later section of this chapter.*
> 3. READING WORDS IN CONTEXT: THE EXTERNAL ASPECT
> *Statutory language is not read in isolation, but in its context.*

22. Keeping these principles in mind we must also read Rule 10 along with the provision of sub-rule 5, Ka, Kha, and Ga together for a comprehensive appreciation of the intention of the legislators. We have perused sub-rule 5 of Rule 10 of the Power of Attorney Rules 2015. Sub-rule 5, Ka, Kha, and Ga of Rule 10 of the Power of Attorney Rules 2015 is reproduced hereunder:

> ৫(ক). ২ (দুই) মাসের মধ্যে পররাষ্ট্র মন্ত্রণালয় বা সরকার কর্তৃক এতদুদ্দেশ্যে নিযুক্ত কোন উপযুক্ত কর্মকর্তার নিকট দাখিলপূর্বক উক্ত কর্মকর্তা দ্বারা উল্লিখিত পাওয়ার অব অ্যাটর্নি ও উহার প্রতিলিপির সত্যায়ন কার্য সম্পন্ন করাইয়া লইবেন।
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> (খ). ৩ (তিন) মাসের মধ্যে স্ট্যাম্প আইনের বিধান অনুসারে স্ট্যাম্পযুক্তকরণের , বা ক্ষেত্রমত, Stamp Duties (ADDitional Modes of Payment) Act, 1974 (ACT No. LXXI of 1974) অনুসারে স্ট্যাম্পশুল্ক পরিধোধের যথাযথ পদক্ষেপ গ্রহণ করিবেন এবং উক্তক্ষেত্রে স্ট্যাম্প আইনের বিধানাবলী প্রযোজ্য হইবে;
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> (গ). ৪ (চার) মাসের মধ্যে উক্ত মূল পাওয়ার অব অ্যাটর্নি, প্রযোজ্য ক্ষেত্রে, নিবন্ধনের উদ্দেশ্যে যথাযথ ফিসহ সংশ্লিষ্ট সাব-রেজিস্ট্রার এর নিকট দাখিল করিবেন এবং উক্তক্ষেত্রে রেজিস্ট্রেশন আইনের বিধানবলী প্রযোজ্য হইবে।

23. From a plain reading of Sub-rule 5, Ka, Kha, and Ga of Rule 10 of the Power of Attorney Rules 2015 it clearly appears that certain duties have been mandatorily and clearly imposed upon the Power of Attorney holder with regard to all classes of power of attorneys. In cases of power of attorneys executed outside of Bangladesh, Sub-rule 5 of Rule 10 of the Rules of 2015 clearly imposes the duty of the power of attorney holder when a power of attorney is executed outside Bangladesh. These duties are clearly stated in sub Rule 5 ক, খ, গ

of Rule10. Sub-rule Ka mandates the endorsement from the Ministry of Foreign Affairs, Sub-rule খ (Kha) imposes payment of Stamp Duties (Additional Modes of Payment) Act, 1974 followed by Sub Rule গ (Ga) which imposes duty upon the power of attorney holder to file the power of attorney that have received endorsement from the Ministry of Foreign Affairs and pursuant to payment of stamp duties must be filed for purposes of registration of the power of attorney duly before the concerned sub registrar.

24. We are of the considered view that Rule 10 of the Power of Attorney Rules 2015 in its entirety does not distinguish between the classes of the power of attorneys when a power of attorney is executed outside Bangladesh so far as the duty of the power of attorney holder pursuant to execution is concerned. It is clear that all classes power of attorneys whether it is special, general or irrevocable, in the case of the power of attorneys being executed outside Bangladesh, the procedure prescribed by Rule 10(5) ক,খ, গ must be mandatorily followed by the power of attorney holder.

25. The learned Advocate for the petitioner drew upon Rule 8 of the Power of Attorney Rules 2015 and contended that Rule 8 which contemplates a General power of attorney does not impose any such condition as is imposed by sub-rule 5 of Rule 10 of the Power of Attorney Rules 2015. Regrettably the submissions and reliance of the learned Advocate for the petitioners on Rule 8 of the Power of Attorney Rules 2015 is misconceived. Rule 8 essentially sets out the procedure that is to be followed by the executor while executing a power of Attorney. While Rule 10(5) clearly contemplates the procedure that needs to be followed in cases of all classes of power of attorneys relating to power of attorneys which are executed outside of Bangladesh. The provisions of Rule 10(5) (ক),(খ), (গ) has clearly imposed such duty upon the power of attorney holder following execution by the executors. It is clear that the intention of law is cases of those power of attorneys which are executed outside of Bangladesh following execution is the same irrespective of the classes of power of attorney. The power of attorneys whether those are Special, General, Irrevocable power of attorney so long they are executed outside Bangladesh certain conditions inter alia must be followed and fulfilled by the power of attorney holder which conditions are clearly prescribed under Rule 10(5) (ক),(খ), (গ) of the Rules .

26. We are also of the considered opinion that since in this case there is nothing on record to show that pursuant to the execution of power of attorney, the power of attorney holder complied with the provisions of Rule 10(5), Ka, Kha and Ga, therefore it is presumed that Rule 10(5), Ka, Kha, and Ga was not complied with by the power of attorney holder before filing the instant writ petition.

27. Hence we are of the considered finding that the General power of attorney which is marked Annexure-I in the instant writ petition is not a valid power of attorney. Since we are of the opinion that the power of Attorney by virtue of which the power of attorney holder swore affidavit to file instant the writ petition representing the petitioners such power of Attorney does not constitute a valid piece of document therefore we are also of the considered opinion that the writ petition is not maintainable as not being in form.

28. Since we are rejecting the instant writ petition on the ground of not being maintainable therefore, we are not inclined to enter into the other merits or demerits whatsoever in the instant case.

29. Under the facts and circumstances and relying on the submission of the learned counsels from both sides and relying on the materials and the relevant Laws and Rules before us we find no merits in this Rule.

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

31. Communicate this judgment at once.