

1 SCOB [2015] HCD 122**HIGH COURT DIVISION**

(Special Original Jurisdiction)

WRIT PETITION NO. 3843 of 2004

Noor Mohammad Khan

.... Petitioner

-Versus-

Government of Bangladesh, represented by the Secretary, Ministry of Land, Bangladesh Secretariat, Secretariat Building, Dhaka & others.
.... Respondents

Mr. Md. Zainul Abedin, Advocate

with

Mr. Khaled Mahmud Saifullah, Advocate

..... for the petitioner.

Mr. Mannan Rashid, Advocate

.....for Respondent No. 4

Heard on: 30.04.2015

and Judgment on: 05.05.2015.

Present:**Ms. Justice Zinat Ara****And****Mr. Justice J.N. Deb Choudhury.****Chittagong Hill-Tracts Regulation, 1900:**

It is now established that all civil suits will be triable from 1st July, 2008 by the Joint District Judge of the respective 3(three) Hill-Tract Districts and the parties aggrieved thereto may prefer an appeal before the learned District Judge of the respective Hill-Tract Districts and as such, any person aggrieved by the judgment and decree passed by the learned District Judge may prefer civil revisional application before the High Court Division under section 115 of the Code of Civil Procedure 1908. ... (Para 19)

Judgment**J.N. Deb Choudhury, J :**

1. On an application under article 102 of the Constitution of the People's Republic of Bangladesh made by the petitioner, this Court on 18.07.2004 was pleased to issue a Rule Nisi in the following terms:

“ Let a Rule Nisi issue calling upon the respondents to show cause as to why the judgment and order dated 10.06.2004 passed by the Land Appeal Board, Segunbagicha, Dhaka in Nathi No. 3-58/96(Appeal) in affirming the judgment and order dated 11.05.1996 passed by the Additional Divisional Commissioner, Chittagong in Civil Appeal (Rangamati) No. 88 of 1994 (Annexure-B) in dismissing the appeal and affirming the order dated 02.05.1994 passed by the Deputy Commissioner, Rangamati Hill District in Civil Case No. 29 of 1992 (Annexure-A) should not be declared illegal and to have been passed without any lawful authority and to be of no legal effect or such other or further order or orders passed as to this court may seem fit and proper.”

2. Relevant facts necessary for disposal of this Rule as stated in the writ petition, in brief, are that, the father of the writ petitioner filed a Civil Suit No. 29 of 1992 before the Deputy Commissioner, Rangamati Hill District contending, inter alia, that his share of land to the extent of 0.10 acres of land had been acquired vide LA Case No. 85/78-79, but, the acquiring body without paying the compensation money kept the land unused and accordingly, he prayed for payment of compensation money or in the alternative to return the acquired land to the plaintiff. The Deputy Commissioner, Rangamati by his judgment and order dated 02.05.1994 dismissed the suit on the ground that the plaintiff earlier filed Miscellaneous Case No. 60 of 1978 for getting the compensation money and accordingly, the Deputy Commissioner, Rangamati on considering the then market value prepared the award and the Miscellaneous Appeal being No. 49 of 1987, filed against that order was also dismissed. Thereafter, the father of the writ petitioner filed Appeal No. 168/88(appeal) before the Land Appellate Board which was also dismissed. The Deputy Commissioner, Rangamati also held that on 05.05.1990 the possession of the acquired land has been delivered to the requiring body, the respondent No.4. Being aggrieved, the father of the writ petitioner preferred Civil Appeal (Rangamati) No. 88 of 1994 before the Divisional Commissioner, Chittagong which was ultimately heard and disposed of by the Additional Divisional Commissioner,

Chittagong, who by his judgment and order dated 11.05.1996 dismissed the appeal mainly on the reasoning that regarding the selfsame prayer the appellant earlier filed Miscellaneous Case No. 60 of 1978 and lost up to the Land Appeal Board and also held that, there is no illegality in the judgment and order as passed by the Deputy Commissioner, Rangamati. Feeling aggrieved the father of the writ petitioner filed Nathi No. 3-58/96 (Appeal) Rangamati before the Land Appeal Board and the same was heard by the Member No. 1, Land Appeal Board, who by judgment and order dated 10.06.2004, dismissed the appeal on the ground of non-maintainability, observing that the aggrieved person may prefer an appeal to the concern Ministry and under the Land Appeal Board Act, 1999 and there is no scope to entertain any appeal from the order of the Additional Divisional Commissioner passed in any civil appeal.

3. Being aggrieved by and dissatisfied with the judgment and order dated 10.06.2004, passed by the Land Appeal Board, the writ petitioner moved this Court and obtained the instant Rule Nisi.

4. Respondent No. 4, Manager, Janata Bank, Rangamati Branch, Rangamati Hill District contested the Rule by filing an affidavit-in-opposition and supported the judgment and orders as passed by the Deputy Commissioner, Rangamati, Additional Divisional Commissioner, Chittagong and Land Appeal Board.

5. Mr. Mohammad Zainul Abedin, the learned advocate takes us through the writ petition as well as the annexures thereto, along with the materials on record and submits that in view of section 5 of the Land Appeal Board Act, 1989, the Land Appeal Board has the jurisdiction to entertain the appeal filed by the father of the writ petitioner. The learned advocate also places before us an office order dated 23.05.1989 of the Ministry of Land and on referring to clause (1) of the said order submits that the Land Appeal Board has the jurisdiction to entertain the appeal as filed and accordingly, he submits that the dismissal order of the appeal by the Land Appellate Board on the ground of non-maintainability, cannot sustain and that was not in accordance with law. Accordingly, he prays for making the Rule absolute.

6. On the other hand, Mr. Mannan Rashid, the learned advocate appearing on behalf of the respondent No. 4 submits that section 5 of the Land Appeal Board Act, 1989 read with order dated 23.05.1989 of the Ministry of Land do not give any jurisdiction or authority to the Land Appeal Board to entertain any appeal from the judgment and order passed by the Additional Divisional Commissioner, Chittagong in Civil Appeal (Rangamati) No. 88 of 1994 and accordingly, he submits that the Land Appeal Board rightly dismissed the appeal on the ground of non-maintainability.

7. We have heard the learned advocates for both the parties and perused the writ petition, affidavit-in-opposition, along with the annexures thereto.

8. The only question before us to decide in this writ petition is, whether the Land Appeal Board has any jurisdiction to entertain any appeal against the judgment and order passed by Additional Divisional Commissioner, Chittagong in Civil Appeal (Rangamati) No. 88 of 1994 affirming the judgment and order passed by the Deputy Commissioner, Rangamati Hill District in civil suit No. 29 of 1992.

9. For appreciating the points raised by the respective parties, we have to examine firstly, section 5 of the Land Appeal Board Act, 1989 (Act No. 24 of 1989) . For better understanding, we would like to quote the relevant section 5 of the Act as follows:

“বোর্ডের এখতিয়ারঃ- বোর্ড উহার উপর সরকার কর্তৃক অথবা কোন আইনের দ্বারা কিংবা আইনের অধীন অর্পিত ক্ষমতা প্রয়োগ ও দায়িত্ব পালন করিবে।”

And we also consider it necessary to examine clause (1) of the order dated 23.05.1989 of the Ministry of land issued vide Memo No. Bhu:Ma:Sha:-15 (Bhu:Sha:Bho) 231/88/412 which is quoted as under:

“(১) বোর্ড নিম্নলিখিত বিষয়ে নির্ধারিত সময়সীমার মধ্যে জেলা (কালেক্টর)/ অতিরিক্ত জেলা প্রশাসক (রাজস্ব) ও বিভাগীয় কমিশনারগণের রায়/সিদ্ধান্ত এর বিরুদ্ধে আইন ও বিধি মোতাবেক উপযুক্ত ক্ষেত্রে আপীল/পুনঃবিবেচনার আবেদনসমূহের আইনানুগ নিষ্পত্তি করিবেনঃ-

(ক) ভূমি সংক্রান্ত মামলা,

- (খ) নামজারী ও খরিজ মামলা,
 (গ) পরিত্যক্ত, অর্পিত ও বিনিময় সম্পত্তি বিষয়ক মামলা,
 (ঘ) সাধারণত ও জলমহাল সংক্রান্ত মামলা,
 (ঙ) ভূমি রেকর্ড সম্পর্কিত মামলা,
 (চ) ভূমি উন্নয়ন কর, সার্টিফিকেট মামলা,
 (ছ) ওয়াকফ/দেবোত্তর সম্পত্তি সংক্রান্ত মামলা,
 (জ) খাস জমি বন্দোবস্ত সংক্রান্ত মামলা।”

10. In this connection we like to mention some relevant laws regarding civil and criminal disputes in the three Hill Districts of Chittagong namely, Rangamati, Khagrachori and Bandorbon. In those hill districts the civil and criminal litigations were entertained under sections 7 and 8 of the Chittagong Hill Tracts Regulation, 1900 (herein after referred to as Regulation). For better understanding, we would like to quote sections 7 and 8 of the Regulation, 1900 as follows:

“7. *The Chittagong Hill Tracts shall constitute a district for the purpose of criminal and civil jurisdiction and for revenue and general purposes, the Superintendent shall be the District Magistrate, and subject to any orders passed by the Local Government under section 6, the General Administration of the said Tracts in criminal, civil, revenue and all other matters, shall be vested in the Superintendent.*

8. (1) *The Chittagong Hill Tracts shall constitute a sessions division, and the Commissioner shall be the Sessions Judge.*

(2) *As Session Judge the Commissioner may take cognizance of any offence as a Court of original jurisdiction, without the accused being committed to him by a Magistrate for trial, and when so taking cognizance shall follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant-cases by Magistrates.”*

11. Next we find from section 17 of the Regulation, the procedure to be followed after completion of the procedure as stated in section 7 concerning civil dispute. For better understanding, section 17 of the said Regulation is quoted as follows:

“17. (1) *All officers in the Chittagong Hill Tracts shall be subordinate to the Superintendent, who may revise any order made by any such officer, including an Assistant Superintendent invested with any of the powers of the Superintendent under section 6.*

(2) *The Commissioner may revise any order made under this Regulation by the Superintendent or by any other officer in the Chittagong Hill Tracts.*

(3) *The Local Government may revise any order made under this Regulation.”*

(Underlines for giving emphasis)

12. The Chittagong Hill Tracts Regulation, 1900 has been amended by the Chittagong Hill Tracts Regulation (Amendment) Act, 2003 (Act No. XXXVIII of 2003), which was published in the Bangladesh Gazette on 21.09.2003 and by the amendment two new sections 2(c) and 2(d) were inserted, after section 2(b). The relevant amended sections 2(c) and 2(d) as follows:

“(c) ‘District Judge’ means the District Judge appointed by the Government in consultation with the Supreme Court of Bangladesh;

(d) ‘Joint District Judge’ means the Joint District Judge appointed by the Government in consultation with the Supreme Court of Bangladesh.”

13. Three new sub-sections as (3), (4) and (5) were also included in section 8 of the Regulation by way of amendment. For better understanding, we would like to quote the said sub-sections of section 8 of the Regulation as follows:

“(3) *The Rangamati, Khagrachory and Bandarban districts of the Chittagong Hill-Tracts shall constitute three separate civil jurisdictions under three District-Judges.*

(4) *The Joint District Judge as a court of original jurisdiction, shall try all civil cases in accordance with the existing laws, customs and usages of the districts concerned, except the cases arising out of the family laws and other customary laws of the tribes of the district of Rangamati, Khagrachory and Bandarban respectively which shall be triable by the Mauza Headmen and Circle Chiefs.*

(5) *An appeal against the order, judgment and decree of the Joint District Judge shall lie to the District Judge.”*

14. It has been stated in the Act of 2003 that, “ ১(২) সরকার, সরকারী গেজেট প্রজ্ঞাপন দ্বারা, যে তারিখ নির্ধারণ করিবে সেই তারিখে এই আইন বলবৎ হইবে।”

15. While the Government was making delay for implementation of the said amendment, a Writ Petition No. 606 of 2006 was filed by Bangladesh Legal Aid and Services Trust before the High Court Division and after hearing by the judgment and order dated 24.02.2008 (reported in 61 DLR 109) the High Court Division directed the respondents of that writ petition as follows:

“এমতাবস্থায়, সংশ্লিষ্ট প্রতিবাদীগণ

(১) উপরোক্ত রাঙ্গামাটি, খাগড়াছড়ি ও বান্দরবান জেলাসমূহে Chittagong Hill-Tracts Regulation (Amendment) Act, 2003, এর বিধান অনুসারে দেওয়ানী ও ফৌজদারী আদালত স্থাপন করিবেন

(2) উপরোক্ত ওজিয়ায় ৩টি নারী ও শিশু নির্যাতন দমন ট্রাইব্যুনাল স্থাপন করিবেন।

উপরোক্ত নির্দেশাবলী প্রতিবাদীগণ যতদূর সম্ভব অদ্য হইতে এক বৎসরের মধ্যে বাস্তবায়ন করিবেন।

অতএব, উপরোক্ত মন্তব্য ও নির্দেশনা সহ খরচা ব্যতিরেকে অত্র রুলটি Absolute করা হইল।”

And in the judgment it was also held that, “প্রতীয়মান হয় যে, উপরোক্ত ৩টি জেলায় বাংলাদেশের অপর ৬১ জেলার অনুরূপ দেওয়ানী ও ফৌজদারী উভয় কার্যক্রমই পরিচালিত হইবে বলিয়া সংশোধিত আইন প্রণীত হয়।”

16. Against the said judgment the Government filed Civil Petition for Leave to Appeal No. 1791 of 2009 before the Hon’ble Appellate Division and the same was dismissed on 09.02.2014 as being infructuous. (*information collected from Website of the Supreme Court of Bangladesh*)

17. It appears that by Gazette Notification dated 04.06.2008, the Government has given effect of the said amendment from 1st July, 2008, which was published in the Bangladesh Gazette (Additional edition) on 04.06.2008.

18. In view of the amendments made in the Chittagong Hill-Tracts Regulation, 1900 read with section 3 of the Civil Courts Act, 1887 the District Judge and Joint District Judge are Civil Court. For better understanding we like to quote section 3 of the Civil Courts Act, 1887 as follows:

“3. *There shall be following classes of Civil Courts, namely:-*

(a) *The Court of the District Judge;*

(b) *The Court of the Additional District Judge;*

(c) *The Court of the Joint District Judge;*

(d) *The Court of the Senior Assistant Judge; and*

(e) *The Court of the Assistant Judge.*”

19. In view of the amendments made in the regulation it is now established that all civil suits will be triable from 1st July, 2008 by the Joint District Judge of the respective 3(three) Hill-Tract Districts and the parties aggrieved thereto may prefer an appeal before the learned District Judge of the respective Hill-Tract Districts and as such, any person aggrieved by the judgment and decree passed by the learned District Judge may prefer civil revisional application before the High Court Division under section 115 of the Code of Civil Procedure 1908.

20. In the present case, it appears that the order of the Deputy Commissioner, Rangamati was passed on 02.05.1994 in Civil Suit No. 29 of 1992 and the appeal therefrom was also dismissed by the Additional Divisional Commissioner, Chittagong on 11.05.1996 in Civil Appeal (Rangamati) No. 88 of 1994 by the Additional Divisional Commissioner, Chittagong and as such, the amendment of the regulation which came into force on 1st July, 2008 has no manner of application in the present case and in view of section 17 of the Regulation which provides that any aggrieved person from any judgment and order passed by the Commissioner may apply for revise of the said order before the local Government under sub-section (3) of section 17.

21. In view of the above, the Land Appeal Board had no jurisdiction to entertain the appeal filed against the judgment and order passed by the Additional Divisional Commissioner, Chittagong in Civil Appeal (Rangamati) No. 88 of 1994 and as such, the Land Appeal Board rightly held that the appeal filed by the father of the writ petitioner being Nathi No. 3-58/96(Appeal) was not maintainable for want of jurisdiction.

22. In view of the above discussions and the provisions of law, we find no substance in the arguments of the learned advocate for the petitioner and we find substance in the arguments of the learned advocate for the respondent No. 4.

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

24. Communicate the judgment to respondent No. 4 at once.