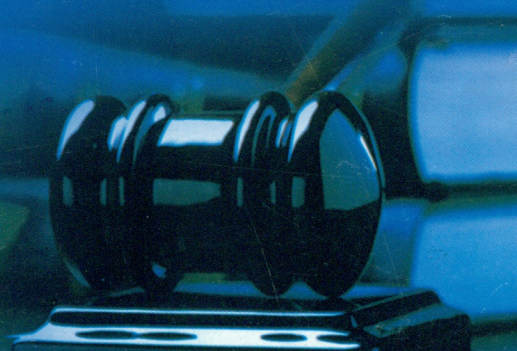
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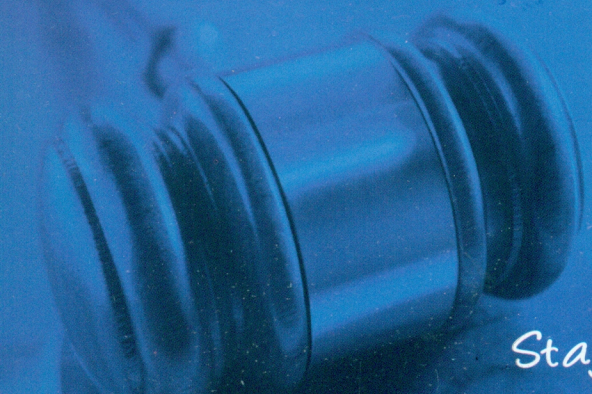
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Muhammad Imman Ali–J.
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CIVIL APPEAL NO.202 OF 2003 WITH C.P.NO. 1568 OF 2007

(From the judgment and order dated the 18th day of October, 2001 passed by the High Court Division in Civil Revision No. 2571 of 1998 with Civil Revision No. 2572 of 1998.

Md. Kalim Ullah .....
.... Appellant (in C.A. No. 202 of 2003).
Md. Kalim Ullah .....
.. Petitioner (in C.P. No. 1568 of 2007).

Vs.

Moulana Fariduddin Ahmed and others
.. Respondents (in C.A. No. 202 of 2003).
Mohiuddin Fahim and others .....
Respondents (in C.P. No. 1568 of 2007).

For the Appellants (in C.A. No. 202 of 2003) : Mr. Abdul Wadud Bhuiyan, Senior-Advocate instructed by Mr. Fakhrul Islam, Advocate-on-Record.

For the Petitioner (in C.P. No. 1568 of 2007) : Mr. Abdul Wadud Bhuiyan, Senior-Advocate instructed by Mr. Fakhrul Islam, Advocate-on-Record.

For the Respondent Nos. 1-1(b) (in C.A. No. 202 of 2003) : Mr. Mahbubey Alam, Senior Advocate with Mr. Nur Hossain Chowdhury, Advocate instructed by Syed Mahbubar Rahman, Advocate-on-Record.

For Respondent Nos. 2-10 (in C.A. No. 202 of 2003) : None represented.

As Amicus Curiae : Mr. Mahmudul Islam, Senior Advocate.

For Respondent No.1 (in C.P. No. 1568 of 2007) : Syed Mahbubar Rahman, Advocate-on-Record.

For Respondent Nos. 2-11 (in C.P. No. 1568 of 2007) : None represented.

Judgment: February 1, 2012

Waqf Ordinance, 1962–

Sections 56 and 57– Mutawalli of way waqf estate without the any previous sanction immovable property of waqf cannot be transferred by way of lease for a term exceeding 5 years and if any mutwalli without previous sanction of the Administrator lease any property to anybody else that will be void.

If we carefully see the language of subsection (1) of section 56 of the Ordinance, it would appear that in case of transfer of any immovable property of a waqf by a mutawalli by way of sale, gift, mortgage or exchange, the only bar has been created by the legislature is that before such transfer previous sanction of the Administrator of Waqfs must be accorded and without such sanction transfer so made shall not be valid. So far as the lease is concerned, the mutawalli has been empowered to lease out any immovable property of a waqf upto 5 years, and beyond that only with the previous sanction of the Administrator of Waqfs, proviso to the section has given a further rider that even the sanction by the Administrator shall not validate any transfer which is in contravention of any other law for the time being in force or is otherwise invalidate. .....
..(Para 62, per Abdul Wahhab Miah-J.)

In the instant case, the deceased mutawalli leased out 1.00 (92+8) acre of land of the waqf in question permanently to the defendant after obtaining previous sanction from the Administrator of Waqfs. It is not the case of the plaintiff-appellant that the sanction by the Administrator in granting lease of the land in question permanently to the defendant was given in contravention of any other law in force at the material time or was otherwise invalid. Mr. Abdul Wadud Bhuiyan has not also made any submission that the sanction given by the Administrator of Waqf to lease out the land in question was given in contravention of any other law of the land prevalent at the relevant time or was otherwise invalid, so the question of attraction of the proviso to sub-section (1) does not arise at all. .....
.. (Para 63, per Abdul Wahhab Miah-J.)

Therefore, we are not called upon to make any exercise in that respect. And if we do so that will be mere academic and that will make the judgment unnecessary lengthy.
.. (Para 64, per Abdul Wahhab Miah-J.)

JUDGMENT

MD. MUZAMMEL HOSSAIN–C.J: I have gone through the judgments proposed to be delivered by my brothers, Surendra Kumar Sinha, J. and Md. Abdul Wahhab Miah, J. I agree with the reasoning and findings given by, Md. Abdul Wahhab Miah, J.

SURENDRA KUMAR SINHA–J: I have had the advantage of reading the draft copy of the judgment prepared by my learned brother Md. Abdul Wahhab Mia,J. While agreeing with the conclusion arrived at by my learned brother

that the appeal and the connected petition be dismissed, as some vital questions of law are involved in these matters, it is desirable that I should add something of my own.

2. The pivotal question which arises for consideration in these matters is whether the Administrator of Waqfs can accord sanction for transferring any part of the Waqf property by way of lease exceeding 5(five) years in exercise of it's power under section 56 of the Waqfs Ordinance, 1962 or in the alternative, a mutawalli of a waqf estate can transfer by lease in perpetuity any part of the waqf property with prior approval of the Administrator. An opinion on the point requires consideration of the facts which are succinctly narrated below:

3. Appellant is a mutawalli of a Waqf Estate who instituted Title Suit No.26 of 1992 (the plaintiff) against the respondent Nos.1-3 seeking nullity of lease deed dated 18th May, 1965 executed by his father Ahidulla as mutawalli of the waqf estate in favour of respondent Nos.1 (the defendant) on the ground that his father. though executed the lease deed in respect of the suit land measuring an area of .92 acre, he did not pay the salami and rent and also did not take over possession of the suit land and thus, the defendant violated the terms of the lease deed, and that the lease was not acted upon. Defendant also instituted Title Suit No.38 of 1992 seeking declaration of title in respect of 1st schedule land and for recovery of khas possession in respect of 2nd schedule land measuring an area of .04(.03) acre. His case is that the plaintiff's father Ahidulla, the mutawalli, with prior sanction of the Administrator of Waqfs leased out .92 acre of land of plot No. 932 at a premium of Tk.300/- and handed over possession on the same day. He developed the land and constructed houses in a portion of the land. He also purchased .04 acre of land of plot No.933 situated contiguous to the suit plot for path way and mutated his name, paid rent and taxes to the authorities and thereafter, he was dispossessed from the 2nd schedule of land taking advantage of his temporary absence from the suit land. Appellant's defence case in the latter suit is similar to that of his plaint case and vice versa.

4. The trial Court heard both the suits analogously and held that the plaintiff-appellant had no title and possession in the suit land; that the suit without seeking consequential relief is not maintainable under section 42 of the Specific Relief Act; that the defendant acquired title in pursuance of lease deed dated 18th May, 1965; that he is in possession of a portion of the suit land but, he failed to prove the portion in which he is in specific possession and that the defendant's claim of dispossession in respect of the second schedule land by the plaintiff by raising 4(four) thatched huts is inconsistent with his pleadings. With these findings the trial Court dismissed both the suits. Two appeals were filed, one by the plaintiff and the other by the defendant being Title Appeal Nos.57 of 1995 and 182 of 1995 respectively. The court of appeal below allowed Title Appeal No.57 of 1995, decreed Title Suit No. 26 of 1992 and declared the impugned deed void and not binding upon the plaintiff, dis-

missed Title Appeal No.182 of 1990 and thereby affirmed the judgment of the trial Court dismissing Title Suit No. 38 of 1992. Feeling aggrieved by the said judgments, the defendant moved the High Court Division in Civil Revision Nos.2571 and 2572 of 1998. A Single Bench of the High Court Division heard both the rules analogously and by the impugned judgment made both the rules absolute, set aside the judgment and decree passed in Title Suit Nos.26 of 1992 and sent back the Title Suit No.38 of 1992 to the trial Court for writing out a fresh judgment for deciding the defendant's claim of possession and dispossession in respect of 2nd schedule land on the basis of the evidence available with the record. The learned Judge noticed that there are conflicting findings as regards the findings of possession followed by dispossession as claimed by the defendant in respect of the 2nd schedule land.

5. After remand, the trial Court dismissed the suit, but the Court of appeal below believed the defendant's case of possession followed by dispossession and decreed the suit declaring the defendant's title in the suit land and allowing the prayer for recovery of khas possession in respect of .03 acre of land. Plaintiff moved a revision petition in the High Court Division which affirmed the judgment of the court of appeal below observing that the Court of appeal below rightly found on the basis of the evidence that the plaintiff dispossessed the defendant in respect of .03 acre of land and that the plaintiff could not point out any misreading or non-consideration of the evidence on record. The High Court Division rightly found that the defendant has been able to prove his title in the suit land and that the plaintiff has dispossessed the defendant in respect of .03 acre of land without due process of law and thereby, it has committed no illegality in maintaining the judgment of the Court of appeal below. More so, the leave petition is also barred by 242 days and the explanation offered for the delay is not satisfactory. Mr. Abdul Wadud Bhuiyan appearing for the plaintiff also finds it difficult to assail the judgment of the High Court Division.

6. It was urged on behalf of the appellant that the High Court Division misconstrued section 56 of the Waqfs Ordinance, 1962 and illegally held that a mutawalli of a waqf estate can transfer a portion of the waqf property by lease exceeding five years in failing to notice that such lease tantamount to absolute transfer which is not intended by the legislature. It was further urged that the Administrator has power to accord sanction of grant of lease for a limited period, inasmuch as, the use of coma (,) after the word 'exchange' in sub-section (1) of section 56, and the use of words 'or by way of lease for a term exceeding 5 years' thereafter manifestly suggest that a mutawalli has no power even with prior sanction of the Administrator to grant lease of any part of the waqf property in perpetuity.

7. Points raised require analytical consideration of certain provisions of the Waqfs Ordinance and other laws relevant for the disposal of the matters. Sections 27 to 46 have been placed in

Chapter III of the Ordinance under the heading "Powers and Functions of the Administrator and the Committee" like saplings in a row. Section 27 relates to the general powers and functions of the Administrator which include investigation and determination of the nature and extent of waqfs and waqf properties, inspection of accounts, returns for ensuring that the waqf properties and income arising therefrom are applied to the objects and for the benefit of any class of persons for which such waqfs are created and to give direction for proper administration of the Waqfs, etc. Section 28 deals with general powers and functions of the Committee, which consists as per section 20, the Administrator as chairman and ten members to be appointed by the Government, of whom, one shall be a mutawalli of the Shia Sect, three from the mutawallis of Sunnis Sect and the remaining six shall be from among the prominent, respectable and benevolent citizens of Muslim community. Section 32 authorizes the Administrator of Waqfs to remove the mutawalli in cases covered by clauses I-IV of sub-section (1). Sub-section (4) of section 32 authorizes the Administrator to appoint a new mutawalli under the circumstances mentioned therein. Section 33 empowers the Administrator of Waqfs to transfer any part of a waqf property with previous sanction of the Government for the improvement and benefit of the waqf, and section 34 empowers the Administrator to take administration, control, management and maintenance of any waqf property.

8. According to Mr. Bhuiyan, the power of sanction for transfer of a portion of the waqf property has exclusively been given to the Government and section 33 shall override the other provisions of the Ordinance, in view of the non-obstante clause "notwithstanding anything contained elsewhere in this Ordinance", used in it. This section, it is contended, shall prevail despite anything contrary contained in any other provision, i.e. section 56 of the Ordinance, which authorizes a mutawalli of any immovable property of a waqf to transfer by sale, gift, mortgage or exchange, or by way of lease for a term exceeding 5 years with previous sanction of the Administrator. True, this clause is used in contradiction to the expression 'subject to' any other provision of the Ordinance, but when the non-obstante clause refers to the provision of a statute in general, the intention of the legislature must be determined and the clause has to be construed accordingly. It is often used by way of abundant caution, but mainly used as a legislative device, in case of conflict to give the provision containing non-obstante clause an overriding effect over any other provision of the statute. But, when the two provisions are apparently inconsistent, it is the duty of the Court to harmoniously interpret those provisions so that both the provisions may be operative. Reference in this connection is the case of Dominion of India V. Shribai A. Arabinda Bose, AIR 1955 S.C.296 in which, it has been observed:

> "Although ordinarily there should be a close approximation between the non-obstante clause and the operative part of the section, the non-obstante clause need not necessarily and

always be co-extensive with the operative part, so as to have the effect of cutting down the clear terms of an enactment. If the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical construction of the words thereof a non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment."

9. What's more, I find no inconsistency between the two provisions. Section 33 deals with the power of the Administrator to transfer waqf property when he is in charge of such property in the absence of the mutawalli. This section is found in chapter III, whereas, section 56 is found in Chapter VI under the heading 'Transfer of Waqfs Property.' These two chapters provide for two distinct purposes. It is established principle that the duty of the Court is to effectuate the purpose of an enactment and not to defeat it. In Bates, (1965)1 WLR 1133 (1147), Lord Denning, M.R. stated, 'The object is to ascertain the intention of the legislature. This intention must be discovered, of course, from the words which they have used but the words must be sensibly interpreted. We are not here to make nonsense of them'. If we look at the history, the practice of grouping sections of an Act under different headings was first introduced in UK in 1845 in the Clauses Consolidation Acts (Thring, Practical legislation, Ed. 1902). According to Maxwell on the Interpretation of Statutes, 12th Edn. page 11, 'the headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles of those sections. They cannot control the plain words of the statute but they may explain ambiguous words', Head notes may, in some cases, be looked upon in the light of preambles if there is any ambiguity in the meaning of the sections on which they throw light. The arrangement of sections into parts and their headings are substantive parts of the Act and as is pointed out by Craies on Statute Law, 5th Edn, page 165, 'they are gradually winning recognition as a kind of preamble to the enactments which they precede limiting or explaining their operations'. The above views make no hesitation in arriving at the conclusion that sections 33 and 56 deal with different subjects showing operation in separate fields and are not intended to overlap so as to restrict each other.

10. We have the privilege of hearing Mr. Mahmudul Islam as amicus curiae. Learned amicus curiae argued that sections 33 and 56 do not conflict with each other for, the sections are found in two chapters for different objects. Section 56 does not restrict permanent lease by a mutawalli provided that the mutawalli has obtained previous sanction of the Administrator. In this connection he has referred to the proviso to sub-section (1) of section 56 which, according

to him, manifests that the bar is qualified by the words 'in contravention of any other law'. Mr. Islam contended that if such transfer by way of sale, gift, mortgage, exchange or lease for a period exceeding 5 years is barred by any existing law in force then notwithstanding the previous sanction of the Administrator, the transfer would be invalid. He has referred the case of State of Rajasthan V. Sripal Jain, AIR 1963 SC 1323 and Rohit Pulp and Paper Mills Ltd. V. Collector of Central Excise, Baroda, (1990) 3 SCC 447 in support of his contention. According to Mr. Islam, the words used in both sections are clear enough to come to the conclusion that there is no scope to give any statutory interpretation by restricting the power of the Waqfs Administrator. Mr. Islam finally contended that the generic words used in section 33 should receive a limited interpretation by reason of its context by legitimately drawing upon the 'noscitur a sociis' principle. In the other words, it is submitted that the restricted words used in the section should be interpreted by applying the principle of 'noscitur a sociis' or on the analogy of the 'ejusdem generis' principle.

11. In the case of Rohit Pulp and Paper Mills Ltd., the assessee has a factory in which different variety of paper and paper boards are being manufactured. "Paper and paper board' are goods falling under Item 17(1) of the Central Excise and Salt Act, 1944. Two notifications were issued one on 1st March, 1984 in respect of the above Item providing 10% ad valorem paper plus-Rs 1005 per metric tonne. Second notification provides for a concession in respect of paper and paper boards falling under Item 17(1) of the schedule manufactured out of pulp containing not less than 50% by weight of pulp made from materials other than bamboo and cleared on or after April 1, 1944, at the rate of Rs 450 per metric tonne. The above concessional rates were subject to certain conditions set up in the proviso to the notification stating that the exemption contained in the notification shall not apply to cigarette tissue, glassine paper, coated paper (including waxed paper) and so on. The assessee initially paid excise duty as per previous notification but later on it claimed concessional rate prescribed by the latter notification. The Excise Department refused to permit the assesse to avail this concession in respect of his manufactured goods. It claimed concessional rates on the ground that the word 'coated paper' has been set out in the proviso along with other 4 items and used in wider sense and includes coated, papers of all varities, it should be interpreted by applying the principle of 'noscitur a sociis' or on the analogy of 'ejusdem generis' principle.

12. The Supreme Court accepted the claim holding that there is no reason why rationally logical restriction should not be placed in the proviso based on the classification and that "coated paper in the second proviso refers only to coated paper used for industrial purposes and not to coated vanieties of printing and writing paper" and in the context with which "we can legimately draw upon the noscitur a sociis" principle.

In State of Bombay V, Hospital Mazdoor Savha, AIR 1960 SC 610, the question involved was that two employees of a chain of hospitals were removed and in their place two state servants were appointed. The retrenched employees filed a writ of mandamus directing to reinstatement in their posts on the ground that the retrenchment was void as it did not comply the provisions of sections 25F and 25H of the Industrial Disputes Act, 1947. The petition was resisted on the ground that the writ petition was not maintainable, inasmuch as, the hospitals did not constitute an 'industry' and so, the relevant provisions of law were not applicable. The question involved in the appeal for consideration is whether group of hospitals constitutes an 'industry'. The writ petition was ultimately allowed on the reasoning that the orders had not complied the mandatory provisions of law. On appeal from the said judgment it was raised that the definition of 'industry' defined in section 2(j) of the said Act is so wide denotation, 'hospitals' can be excluded from the definition. It was urged that in construing the definition, the Court must adopt the rule of construction 'noscuntur a sociis'.

13. GAJENDRAGADKAR–J: upon consideration of the opinions expressed by different authors on Interpretation of Statutes came to the conclusion that the maxim 'noscuntur a sociis' "is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied, it can also be applied where the meaning of the words of wider import is doubtful; but where the object of the Legislature in using wider words is clear and free of ambiguity, the rule of construction in question can not be pressed into service".

> "Noscitur a sociis' is a Latin maxim which means that it is known by its associates. To say more clearly, the meaning of a word is to be judged by the company it keeps. It is a rule laid down by Lord Bacon that the coupling of words together shows that they are to be understood in the same sense. Where the meaning of a particular word is doubtful or obscure, or where a particular expression taken singly is inoperative, the intention of the Legislature may be ascertained by looking at adjoining words, or at expressions occurring in other parts of the same statute. One provision of the statute must be construed by the bearing it will have upon another (Latin for Lawyers, 3rd Edn, page 195).

14. In this connection the Judicial Committee of the Privy Council in Attorney General for Ortario V. Mercer, (1883) A.C. 767(778) said 'It is a sound maxim of law that every word in a statute-ought *prima-facie* to be construed in its primary and natural sense, unless a secondary or more limited sense is required by the subject or the context. Whether there is a particular

description of objects, sufficient to identify what was intended, followed by general or omnibus description, the latter description will be confined to the objects of the same class or kind of the former. This rule is not applicable in this case, inasmuch as, the philosophy of this rule is applied in cases when the Meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it. When two or more words which are susceptible of analogous meaning, the more general is restricted to a sense analogous to a less general'.

15. The ejusdem generis rule is a particular application of the broader maxim 'noscitur a sociis' principle. The difference between these two rules as explained in 'Words and Phrases' Vol.XIV, page 207, is thus: 'Associated words take their meaning from one another under the doctrine of noscitur a sociis, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim ejusdem generis'. The ejusdem generis rule has been clearly explained in a New Zealand case in Cooney, (1901) 21 NZLR 106(108) by William,J. thus:

> "There is a very well known rule of construction that if a general word follows a particular and specific word of the same nature as itself, it takes its meaning from that word, and is presumed to be restricted to the same genus as that word. No doubt that rule is one which has to be followed with care; but if not to follow it leads to absurd results, then it ought to be followed".

16. This doctrine, according to Maxwell on the Interpretation of Statutes, 12th Edn. P.289 means that, where two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, i.e. the more general is restricted to a sense analogous to a less general. Lord Campbell in RV. Edmundson (1859) 28 LJMC 213 explained this rule by saying 'I accede to the principle laid down in all the cases which have been cited, that, where there are general words following particular and specific words, the general words must be confirmed to thing's of the same kind as those specified'.

17. In dealing with wider words in the context of the ejusdem generis rule, Lord Bramwell in Great Western Ry. V. Sarindon Ry, (1884) 9 A.C. 786 said 'As a matter of ordinary construction where several words are followed by a general expression which is as much applicable to the first and other words as to the last, that expression is not limited to the last, but applies to all. For instance, horses, oxen, pigs, and sheep, from whatever country they may come' - the latter words would apply to horses as much as to sheep." The ejusdem generis rule according to Craies on Statute Law, Seventh Edition, is one to be applied with caution and not pushed too far, as in the case of many discussions, which treat it as automatically applicable, not as being, what it is, a mere presumption, in the absence of other indications

of the intention of the Legislature. In N.A.1.G.O.V. Bolton Corporation, (1943) AC 166, Lord Wright said 'The ejusdem generis rule is often useful or convenient, but it is merely a rule of construction, not a rule of law'.

18. The position has been summed up in Halsbury's Laws of England, 3rd Edn. , page 397 thus: "As a rule, where a statute there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified, although this, as a rule of construction, must be applied with caution, and subject to the primary rule that statutes are to be constructed in accordance with the intention of the parliament. For the ejusdem rule to apply, the specific words must constitute a category, class or genus; if they constitute such a category, class or genus; if they constitute such a category, class or genus, then only things which belong to that category, class or genus fall within the general words".

19. According to the established principle of interpretation of statutes, the specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of object. Where this is lacking the rule cannot apply. Where the words are clearly wide in their meaning they ought not to be qualified on the ground of their association with other words. So, general words following particular words will not include anything of a class superior to that to which the particular words belong. In cases where there is no doubt that the wider words have been deliberately used in order to make the scope of the defined words correspondingly wider. Where the intention of the legislature in associating wider words with words of narrower significance is used is doubtful, the above rule of construction can be used. It is the established rule of construction that the statutes are to be construed in accordance with the intention of the Legislature.

20. On a plain reading of section 56 we find no ambiguity in the language used therein with the language used in section 33 of the Ordinance. There is no doubt on reading section 33 as a whole about the meaning of the words used therein which can be ascertained by reference to the meaning of words associated with it. Therefore, we need not draw upon the noscitur a sociis or ejusdem generis principles. Section 33 restricts the Administrator in transferring any part of a waqf property while he is in charge of the said property. He can transfer the property for the welfare of the estate with prior permission of the Government. Whereas, the substance of sub-section (1) of section 56 is that a mutawalli can transfer any part of a waqf property in any manner as provided therein but the only restriction is in respect of lease for a period exceeding five years. In such case previous permission of the Waqfs Administrator is necessary. Even if any transfer by way of lease is made for a period exceeding five years without sanction of the Administrator, such transfer can be declared void by the Civil Court only on the prayer of the Administrator. Sub-section (4) makes

the thing more clear, which provides that even if a mutawalli transfers any property in contravention of sub-section (1) and afterwards he becomes the owner of the property, he may re-convey the property on the direction of the Administrator. It is also provided in sub-section (5) that if any transfer is made in contravention of sub-section (1), such transfer shall be deemed to be an act of malfeasance.

21. If the object and purpose of section 56 are considered together, there would be no difficulty in holding that the words of wide import have been deliberately used by the Legislature in the exercise of powers by the mutawalli to transfer any part of the waqf property by way of lease exceeding 5 years with the sanction of the Administrator. Section 33 empowers the Administrator any sort of transfer of any portion of the Waqf Property with previous sanction of the Government, whereas, in case of transfer by mutawalli other than lease not exceeding 5 years previous sanction of the Administrator is not necessary. There is no ambiguity in the words used in those provisions. There cannot be any doubt of using wider words in section 56(1) and the intention of the Legislature in using wider words is clear and free from any ambiguity. These two provisions would be realized if we bear in mind the scheme of Chapters III and VI. The intention of the Legislature in providing these two provisions in different chapters is clear. On a plain reading of section 56 it suggests that it would be inappropriate to put a restrictive interpretation.

22. In the proviso to sub-section (1) of section 56, it is stated that even if there is previous sanction such transfer shall not be validated if it is in contravention of any other law, that is, if any other law prohibits such transfer, any lease exceeding five years even with the previous sanction of the Administrator shall be invalid. Now it is to be looked into whether the lease in question has been granted in violation of any existing law, that is, the Non-Agricultural Tenancy Act, 1949 (Act, 1949) and the State Acquisition and Tenancy Act, 1950 (Act, 1950). The answer to this point depends upon the determination of the nature of the land transferred and the application of those laws in the context of the execution of the deed in question. Admittedly the suit land is situated within Sylhet City Corporation area and the nature of the suit land has been mentioned as সবজি বাগান (vegetable garden). Thus the suit land is non-agricultural land. 'Non-agricultural land' within section 2(4) of the Act, 1949 means "land which is used for purposes not connected with agriculture or horticulture and includes any land which is held on lease for the purposes not connected with agriculture or horticulture irrespective of whether it is used for any such purposes .....".

A land which was originally leased for agricultural or horticultural purposes but is being used for purposes not connected with agriculture or horticulture without the consent of the landlord and if the period for which the land has been so used is less than twelve years will not be included in the category of 'non-agricultural land' in view of section 2(4) (b).

This exception is not applicable to this case in view of the admitted fact that the lease was granted not for a period less than twelve years. So the primary test in determining a particular land is 'non-agricultural' or not, rests firstly as to whether the land is a 'non-agricultural land' as defined in the Act of 1949, and secondly, the purpose for which the tenancy was created.

23. This definition excludes agricultural and horticultural lands including the lands held in lease for purposes not connected with agriculture and horticulture. The land is in the nature of horticulture but the lease deed does not show that the lease was granted for horticulture purposes. It means that the land which is used for purposes not connected with agriculture or horticulture and includes any land which is held on lease for purposes not connected with agriculture or horticulture irrespective of whether it is used for any such purposes or not is 'non-agricultural land'. There are two classes of non-agricultural tenants under the said Act, namely (a) tenants, and (b) under-tenants. 'Non-agricultural tenant' within the meaning of section 2(5) of Act, 1949 is 'a person who holds non-agricultural land under another person with consent of that person and is, or but for a special contract would be, liable to pay rent to such person for that land. ....'. In the Act of 1950, almost similar definition has been given in section 2(17). Under this Act, a tenant who holds land for purposes not connected with agriculture or horticulture, but does not include a person holding land together with any building standing thereon and necessary adjuncts thereto under a lease other than a lease in perpetuity.

24. The difference under these two enactments is that if any person holds any premises on such land under a contract to pay rent for such occupation such person shall not become a 'non-agricultural tenant' under the Act of 1949 and secondly, a lease in perpetuity has been excluded from the category in the latter Act. According to section 3(2) of the Act of 1949 the word 'tenant' means a person who has acquired from the proprietor or a tenure holder a right to hold non-agricultural land for any of the purposes provided in the said Act, and includes also the successors-in-interest of persons who have acquired such a right. Under the latter Act, tenant means a person who holds land under another person and is, or but for a special contract would be, liable to pay for that land to that person. Under the definition a 'borga cultivator' is excluded from the category of tenant. "Under-tenant" as per sub-section (3) of section 3 of Act, 1949 means a person who has acquired a right to hold non-agricultural land for any of the purposes provided in the Act either immediately or under a tenant and includes also the successors-in-interest of persons who have acquired such a right.

25. The defendant's tenancy was created after the Act of 1949 came into force in 1965, and therefore, he was an under-tenant within the meaning of Act, 1949 during the relevant times. Section 4 provided the purpose for which a non-agricultural tenant may hold non-agricultural land i.e. for (a)

homestead or residential purposes; (b) manufacturing or business purposes; or (c) religious or other purposes. The word 'homestead' includes gardens, tanks and land necessary for enjoyment as homestead. Under section 2(14) of the Act, 1950, the word 'homestead' means a dwelling house with the land under it, together with any courtyard, garden, tank, place of worship and private burial or cremation ground attached and appertaining to such dwelling house, and includes any out-buildings used for the purpose of enjoying the dwelling house or for purposes connected with agricultural or horticulture and such lands, within well-defined limits, whether vacant or not, as are treated to be appertaining thereto.

26. The expression 'other purposes' used in clause (c) of section 4 of Act, 1949 means purposes other than non-agricultural and horticulture. The courts below an construction of the lease deed came to a definite finding that the lease was granted in perpetuity. Provisions have been made for the protection of under-tenants in Chapter IV of Act, 1949. Section 20 provides that an under-tenant shall be liable to ejectment on two grounds namely (a) if he has used the land in a manner which renders it unfit for use for any of the purposes specified in section 4, and (b) the term of the lease has expired when he holds the non-agricultural under a written lease. There is no allegation that the defendant has been using the land in contravention of section 4. Since the lease is in perpetuity, clause (b) of Section 20 is not also applicable in this case.

27. Other protections given to an 'under-tenant' are those provided in sections 21 and 22. Section 21 recognizes the succession by the heirs of 'under-tenant' in case of his death subject to the provisions of sections 90 and 91 of the Act, 1950. These provisions are also not applicable in this case. Section 22 recognizes all rights and liabilities of a tenant as set forth in sections 7, 8 and 10 if the term is not less than twelve years specified in the lease deed and in that case, section 6 shall apply and also section 20 in so far as they are inconsistent with the provisions of section 22 shall not apply. Section 6 provides the manner of use of non-agricultural land by a tenant.

28. Since there is no allegation of violation of section 6 no discussion on this provision is called for. Section 7 provides the rights and liabilities of the tenants in respect of a tenancy created before or after the commencement of the Transfer of Property Act, and in case of a lease created in writing for a period not less than twelve years, and if the landlord has allowed the tenant to raise constructions or structures before the expiry period of lease, then the tenant holding the non-agricultural land shall not be ejected by the landlord on any grounds other than for the purposes specified in the section. In case of death of the tenant his heirs shall inherit the tenanted property. These protections provided to an under-tenant in Chapter IV would be applicable to the defendant if section 26A had not been inserted in the Act of 1949 in 1967 but the scenario has totally been changed after the amendment.

29. Section 23 of the Act provides the manner of transfer of non-agricultural land. It is provided that every transfer of the non-agricultural land by a non-agricultural tenant shall be made by registered instrument. The lease in question was executed by a registered instrument and thus, the lease satisfied the requirements of section 23. There is another aspect which is very much important for resolving the dispute in controversy. After the acquisition of rent receiving interest, there was restriction for subletting of any land by section 75A of the Act, 1950 which was inserted by Act XII of 1954. Under this provision the creation of a subordinate tenancy was prohibited and/or invalidated. Under the amendment the rent-receivers were themselves to retain certain classes of retainable khas land as tenant directly under the Government. They were restricted to create further sub-tenancies under them. The creation of sub-tenancy was validated which were effected before the publication of the Notification under sections 17(3) or 31(1) of the said Act. Similar prohibition for sub-letting has been provided in section 26A (1) of Act, 1949 by the East Pakistan Ordinance No.IX of 1967, which provides, 'Notwith-standing anything contained in this Act or in any other law for the time being in force or in any contract, no non-agricultural tenant shall sub-let the whole or any part of his tenancy on any terms or conditions whatsoever.'

30. All rent receiving interests of persons who have been described as 'rent-receivers' in clause (23) of Section 2 in Act, 1950 i.e. the rent receiving interest of (i) proprietors, (ii) tenure-holders, (iii) raiyats, (iv) under-raiyats, (v) non-agriculture tenants, when a non-agricultural tenant has let out non-agricultural lands, and (vi) landlords in respect of service-tenures have been acquired by the Government. What cannot be acquired under the Act of 1950 are non-rent receiving interests in respect of non-agricultural land with building standing thereon together with necessary adjuncts held under a lease not being a lease in perpetuity as per clauses (17) and (23) of Section 2; portion in hats and bazaars which do not fall within the definition of hat or bazaar and having structure and held under lease; khas lands to the extent of 100 standard bighas; khas lands in excess of the above limit where a rent-receiver, cultivating raiyat or cultivating under-raiyat has or have undertaken large-scale farming, dairy-farming duly certified by the Revenue Authority; lands held for the purpose of cultivation and manufacture of tea or coffee or for cultivation of rubber if certified by the Revenue Authority; land covered by buildings or structures and necessary adjuncts thereto in case of any large scale industry, and land held under waqf or debutter when incomes from such property are wholly applied to religious or charitable purposes in view of section 20(5) (i) (c) and (ii) of Act, 1950.

31. A rent receiver within the meaning of Section 2(23) of Act, 1950 includes a proprietor or a tenure-holder and a raiyat, under-raiyat or a non-agricultural tenant whose land has been let out and also the immediate landlord of a

person who holds any land free of rent in consideration of some service to be rendered. Therefore, we find that a non-agriculture tenant has been included in the category of a rent-receiver in the said Act. In the Act, 1949, the expression 'raiyat' or 'rent-receiver' has not been used or defined and in its place, the term a 'tenant' or an 'under-tenant' has been used. On a combined reading of these provisions, we find that the expressions of "raiyat" or a "tenant" are genus and an 'under-raiyat' or a 'sub-tenant' or an 'under-tenant' are species. The rent receiving interest of a raiyat passes to the Government after the acquisition of receiving interest and the rent-receiver accrued the right to receive compensation. Similarly a tenant under the Act of 1949 becomes a rent-receiver when his land has been let out to another person who holds it on a contract to pay rent after section 26A comes into effect.

32. Next the question to be considered is whether in view of section 70 of Act, 1949, the defendant can be evicted by the plaintiff in execution of a decree of civil Court. Section 70 provides "no non-agricultural tenant shall be ejected from the tenancy or from any non-agricultural land which he holds except in execution of a decree of a competent civil Court". This provision clearly suggests that a non-agricultural tenant can be evicted by the landlord through a decree of a civil Court. This section is in pari materia with section 89 of Bengal Tenancy Act. The effect of this section is to limit the landlord the right of ejectment under the Act. This section was in existence in the original Act of 1949 with a view to protect the tenants from being evicted by the landlords from non-agricultural land other than by due process of law. This section becomes obsolete after section 26A has come into force.

33. Section 83 of Act, 1950 provides that a raiyat shall have the right to occupy and use the land comprised in his holding in any manner he likes. With the acquisition of lands of different classes of rent receivers, rent receiving interest extends up to the end of Part IV. The second division starts with Part V and extends upto the end of Act, 1950. Different provisions of Part V became operative in different areas or districts from the date of publication of notifications and thereupon Bengal Tenancy Act stood repealed on those areas or districts. All holders of land within the areas in respect of which compensation assessment-roll has been published, became tenants under the Government. Section 81A of Act, 1950 provides rights and liabilities of non-agricultural tenants. It says;

> "(1) Except as otherwise provided in this Part, the rights and liabilities of a holder of non-agricultural land, who has become a tenant under the Government in respect of such land by virtue of the acquisition of the superior right in such land under the provisions of this Act, shall, where the provisions of the Non-Agricultural Tenancy Act, 1949, applied to such land, at the time of such acquisition, be regulated by provisions of that Act.
>
> (2) The rights and liabilities of other non-agricultural tenants shall,-except

in the matter of determination, enhancement or reduction of rent, be governed by the terms of the lease and the provisions of the Transfer of Property Act, 1882."

34. This section 81A has been inserted by the East Pakistan Ordinance No.VIII of 1967 simultaneously on the same day the Ordinance No. IX of 1967 was inserted in the Act of 1949. Section 81A says that the rights and liabilities of a tenant under the Government with regard to his non-agricultural land shall be governed by the provisions of Act, 1949 and the rights and liabilities of other non-agricultural tenants i.e. excluding tenants with regard to non-agricultural land envisaged in sub-section (1) of section 81A shall be governed by the Transfer of Property Act "except in the matter of determination, enhancement or reduction of rent". With regard to these excepted matters the Act of 1950 will, of course be applicable. The proviso to section 81A puts an embargo on non-agricultural tenant against sub-letting of non-agricultural land containing a provision of forfeiture in case of breach of this prohibition.

Section 81 of Act, 1950 says that after coming into force of Part V in any area, there shall be only one class of holders of agricultural land, namely, 'maliks'. Section 82(2) also contains in Part V of Act, 1950 which defines the word "raiyat", means a person who, by virtue of section 44 or otherwise, has acquired a right to hold land directly under the Government mainly for the purpose of cultivating it by himself or by members of his family or by, or with the aid of, servants or laborer or with the aid of partner or borgader, and includes also the successor-in-interest of persons who had acquired such right. According to sub-section (8) of section 82, on and from the date on which Part V comes into effect in any area, the word "malik" shall be deemed to have been substituted for the word "raiyat" or "tenant", and the word "land revenue" shall stand for the word 'rent'.

35. If a non-agricultural tenant sublets his tenancy or a part thereof in contravention of subsection (1), the tenancy shall be extinguished and shall vest in the Government as per sub-section (2) of section 26A. When the lease under consideration was created this provision was nonexistent. As observed above, the defendant was an under-tenant when the tenancy was created. Now the question for consideration is to determine the status of the defendant after insertion of section 26A. On a combined reading of sections 81 and 82(8), there is no gainsaying that a sub-tenant or under-tenant created by a tenant has matured his status as a tenant/malik under the Act of 1949 on and from the date of section 26A coming into force.

36. In Province of East Pakistan Vs. Muhammad Hossain, 16 DLR (S.C.) 667, the question arose for consideration was whether after the acquisition of rent receiving interest, a tenancy created by a rent-receiver in respect of non-agricultural land is hit by section 75A or in the alternative there is conflict between section 9 and 75A of the Act. It was observed by H. Rahman, J. 'Section 75A, though it came into force on the

30th August, 1954, was made operative only from the date of notification under section 17(3) or Section 31(1) and, as such, it had not retrospective operation and did not invalidate leases created before such date." Similar principle will be applicable to the case of defendant whose lease was created prior to the insertion of section 2.6A.

37. Section 26(2) (a) explained the word 'transfer' used in section 23 of Act, 1949. It says, "transfer" does not include partition or a sub lease or until, a decree or order absolute for foreclosure is made, simple or usufructory mortgage or mortgage by conditional sale. The words 'or a sub-lease' were deleted by Ordinance IX of 1967. Though in the original Act, 1944 a sub-lease was not treated as 'transfer', the defendant having continued as tenant in the suit land in the same manner even after the amendment, his lease in respect of the suit land has become 'transfer' within the meaning of the Act of 1949.

The purpose of omitting the word 'sub-lease' by Ordinance IX of 1967 as evident is only for the purpose of avoiding preemption under section 24 of the Act. In the said Act the word "sub-let' has not been defined. Only the word 'under-tenant' has been defined in section 3(3). The use of the expression 'sub-let' in my view is misnomer, inasmuch as, if we read this provision along with sections 3, 21 and 22, the intention of the Legislature will be discernible. The expression 'sub-lease' or 'sub-let' have been used in the same context of the term 'under-tenant' and they are used in cognate sense. A Subordinate tenancy under which an under-tenant would be liable to pay for that land to a person other than the Government is liable pay to the Government after section 26A came into force and his status has been upgraded to a tenant/malik. In other words, after insertion of section 26A by Ordinance No. IX of 1967, there is one category of non-agricultural tenant on and from 22nd December 1967 and the defendant is a tenant/malik under the Government and whatever right the plaintiff had in respect of the suit land extinguished from that date. Thus, there is no violation of section 26A or any other provisions of the Act, 1949 or Act, 1950. Now the rights which have been given to a raiyat under section 83 of the Act, 1950 can also be exercised by a under-tenant created before 1967, such as, to occupy and use the non-agricultural land in any manner he likes.

38. As noticed above, in the definition of 'non-agricultural tenant', a lease in perpetuity has been excluded from the category of non-agricultural tenant. Since the status of the defendant has become a tenant/malik within the meaning of section 3(2) of the Act, 1949 and section 2(27) of the Act, 1950, on and from 22nd December, 1967, the ex-landlord, i.e. the plaintiff has no locus-standi to maintain the suit as framed in view of the fact that whatever right or interest he had in the suit land had ceased to exist after section 26A came into force. More so, the trial Court after the construction of the lease deed and other evidence on record held that the lease was acted upon as it was created by a registered deed followed by the

delivery of possession, mutation of the name of the defendant and the payment of rent to the Government and those findings having been maintained by the High Court Division observing that the trial Court was justified in arriving at such conclusion, the suit as framed is not maintainable as the same is barred by section 42 of the Specific Relief Act.

39. Mr. Bhuiyan contended that even if it is assumed that the Administrator accorded sanction, such sanction was obtained mechanically without holding any inquiry and giving notice to the persons affected by the transfer and also without hearing the parties and as such, the sanction is not a sanction in the eye of law. Therefore, the lease, according to him, is violative to section 57 of the Waqfs Ordinance. This point is devoid of substance, inasmuch as, neither in the plaint nor at any stage of the proceeding the plaintiff has raised this point. The learned counsel has raised this point for the first time before this Division. If such point had been raised at the initial stage of the proceedings, the defendant would have been able to prove that the lease was granted following the procedures by calling the record from the office of the Waqfs Administrator. More so, in the recital of the deed there are averments that as the residential houses of the Waqf Estate were in a dilapidated condition and could not be repaired due to shortage of fund, the land was leased out for the welfare of the Waqf Estate with prior sanction the Waqfs Administrator. Therefore, the lease was granted for the benefit and welfare of the Waqf Estate and also for the purpose of fulfilling the objects for which the waqf was created.

40. An Administrator is appointed by the Government in exercise of powers conferred under section 7 of the Waqfs Ordinance. Section 10 of the Ordinance states that the Administrator shall be deemed to be a public officer within the meaning of the Code of Civil Procedure. Naturally, he is a public servant and he has accorded the sanction while discharging public duties as a public servant. There is presumption of regularity of the official acts by a person in discharge of his official duty until the contrary is proved. The court, in the absence of anything to the contrary, may presume that such permission was accorded after holding a proper inquiry in accordance with law. Over and above, since the plaintiff has no right or interest in the suit land, he has no locus standi to raise question about the legality of the lease.

41. Now turning to the merit of the case, it appears that the trial Court on assessment of the evidence on record held that the lease deed was executed in accordance with law which was legal; that the plaintiff's predecessor Ashid Ullah handed over possession of the suit land after the execution of the deed; that the plaintiff failed to prove the manner of his possession of the suit land after the death of his father; that the plaintiff did not acquire title in the suit land; that the defendant proved that he is in possession of the suit land, but that he failed to prove his possession in respect of the entire suit land and that the lease was acted upon. The

ambiguity in the finding of trial Court is in respect of the possession followed by dispossession. In order to remove this anomaly, the High Court .Division remanded Title Suit No.38 of 1992 to the trial Court for fresh decision on this point. The court of appeal below after the remand came to a definite finding that the plaintiff dispossessed the defendant in respect of only .03 acre of land.

42. The Court of appeal while disposing of the original appeals arose out of the suits observed that lease having been granted in perpetuity with the right of inheritance on the death of the defendant and also with the power to transfer, it was created in the similar manner as the Landlords used to settle lands by pattas before the Act, 1950 came into force. Such transfer is not permissible in that in case of lease, no ownership is transferred. It is further observed that a lease for a limited period can be made but after the expiry of the period, such lease can be extended for the purpose of enjoyment of the land and that in case of violation of the terms, the lease can be cancelled without service of notice under section 106 of the Transfer of Property Act.

43. These findings are based on misconception of law. The Court of appeal below misconstrued section 56 of the Ordinance in assuming that a mutawalli can not grant lease of any part of waqf property in perpetuity with prior sanction of the Administrator. The language used in this section is so explicit that the mutawalli can exercise the right of transfer by way of lease for a period exceeding 5 years witn prior approval of the Administrator. There is no prohibition either directly or impliedly to create such a lease. The words and figure 'exceeding 5 years' are wide enough to infer to any period. There is no scope to read the word 'exceeding' in a narrower sense like 'otherwise than in perpetuity' in view of the fact that if we read the words 'by way of sale' with the. words and figure 'by way of lease for a term exceeding 5 years', there is no doubt thatthe intention of the Legislature is wide enough to infer a transfer by way of lease in perpetuity. The words 'or by way of lease for a term, exceeding 5 years shall be void' used after 'comma' before the word 'exchange' are clear enough to arrive at a conclusion that the mutawalli can transfer by way of lease of the nature provided. he had obtained previous sanction of the Administrator.

44. The Court of appeal below committed another fundamental error in assuming that no lease of immovable property could be granted other than a lease for occupation of the land for a limited period. Further, the Court of appeal below compared creation of the tenancy with the settlement of land made by ex-landlords under the Bengal Tenancy Act, 1985 on a misconception of law. The Court of appeal below ought to have ascertained the nature of the land, the laws applicable to such lease and the construction of the deed before deciding the question on whether the mutawalli of a waqf estate has power, to transfer a portion of the waqf property by way of lease for a period exceeding 5 years. As observed above, the lease was

created in respect of non-agricultural land. A tenant holding non- agricultural land under a lease in writing for a period exceeding twelve years shall not be ejected by the landlord on any grounds other than the grounds specified in section 4 of Act 1949 and his interest shall, in case of death, be devolved upon his heirs in view of clauses (i) and (ii) respectively of sub-section (3) of section 7. Similarly in case of a tenancy created to an 'under-tenant' corresponding rights of protection have been given be sections 20, 21 and 22 of the Act, 1949.

45. The Court of appeal below committed further error by treating the questioned lease similar to one of cases not governed by a contract or local law or usage. Section 106 of the Transfer of Property Act applies to a case whether no period of lease is agreed between the parties or whether the lease being unregistered cannot be looked at to ascertain the agreed period. Finally, it has committed another fundamental error in assuming that a mutawalli can grant only such nature of lease of immovable property the rescission of which does not require service of notice under section 106 of the Transfer of Property Act. The Court of appeal below failed to notice that a lease of immovable property cannot be determined by either parties without due service of notice. As to the duration of a lease, a statutory presumption is permitted.

46. In the case of leases for agricultural or manufacturing purposes, the presumption will be that they are from year to year and. in the case of other leases the tenancy is deemed to be from month to month. In the former case a six month's notice is necessary for terminating lease and in the latter case fifteen days notice is necessary. These provisions are quite distinguishable and not applicable to the case of the defendant in view of the discussions made above. The Court of appeal below approached the matter on wrong premise in considering the lease in question and such wrong approach had reflected in the latter part of the judgment. It has not explained why a lease of non-agricultural land granted with prior sanction of the Administrator in respect of any part of Waqf property by the mutawalli for the welfare of the waqf estate would be illegal. The High Court Division on consideration of section 56 of the Ordinance has rightly approved the views of the trial Court. The High Court Division held that the lease having been created with prior sanction of the Administrator was legal and valid. Accordingly, the High Court Division has rightly found that the plaintiff's suit is not maintainable and is liable to be dismissed.

MD. ABDUL WAHHAB MIAH–J: The appeal and the petition for leave to appeal have been heard analogously and are disposed of by this common judgment.

CIVIL APPEAL NO. 202 OF 2003:

47. This appeal, by leave, has arisen out of the judgment and order dated 18.10.2001 passed by a learned Judge of the Single Bench in Civil Revision No. 2571 of 1998 heard analogously with

Civil Revision No. 2572 of 1998 making the Rule absolute .

The appellant as plaintiff filed Title Suit No. 50 of 1990 in the Court of the then Subordinate Judge (now Joint District Judge), Second Court, Sylhet against Moulana Fariduddin Ahmed, predecessor-in-interest of respondent Nos.l(a)-1(b) and respondent Nos.2-10 for declaration that the registered lease deed dated 18.05.1965 corresponding to 4th Jaishtha, 1372 B.S. in between his father, the predecessor-Mutwalli, Asidullah as first party and defendant No.l, Moulana Fariduddin Ahmed as second party being deed No.5679 registered in the office of Sadar Sub-Registrar, Sylhet was void, inoperative, illegal and not binding upon him and also for further declaration that Miscellaneous Mutation Case No.2 of 1987-88 of the office of Assistant Commissioner (Land) of Sadar Upazila as void, ineffective and collusive. Eventually, the suit was transferred to the Court of Subordinate Judge and Artha Rin Adalat, Sylhet and was renumbered as Title Suit No.26 of 1992.

48. The case of the plaintiff as made out in the plaint, in short, was that after the death of his father, Asidullah, he became the Mutawalli of Reazullah Waqf Estate (E.C.No.12876) and continued to be in possession of the land of the waqf estate. Reazullah Waqf Estate is the owner of the second schedule land to the plaint along with other lands and the said lands were recorded in the name of the mutawalli of the Waqf Estate, Asidullah, the predecessor mutawalli. For protection of the lands of the waqf estate, a lease deed was executed and registered on May 18, 1965 by Asidudllah in favour of defendant No.1 (hereinafter referred to as the defendant) in respect of the second schedule land at a Nazrana of taka 300.00 and at the yearly rent of taka 40.00. But the defendant during the life time of the predecessor-mutawalli, Asidullah and after his death did not pay the Nazrana and the yearly rent and thus did not fulfill the terms of the lease. Since the death of Asiduilah, the plaintiff is in possession of the land described in the second schedule to the plaint. The defendant did not get possession of the land leased out to him and thus the lease deed was not acted upon and that the lease of the land described in the second schedule to the plaint was a mere paper transaction. The defendant taking the advantage of the non-effective lease deed got his name mutated in the revenue records in collusion with defendant No.4.

49. The defendant as plaintiff filed Title Suit No. 58 of 1990 in the Court of Subordinate Judge, Second Court, Sylhet for declaration of title to the first schedule land to the plaint on the basis of his lease hold right and for recovery of khas possession in respect of part of the second schedule land out of the first schedule land and also for permanent injunction restraining the principal defendants (as made in the prayer of the plaint) from erecting any pucca building in the second schedule land or changing its nature and character and transfer the same to any body and also restraining the defendants from creating any obstacle in the peaceful possession of

the plaintiff in the remaining portion of the first schedule land (excluding the second schedule land).

50. In the plaint, it was averred that along with the other lands, the first schedule land belonged to Riaz Ullah Waqf Estate, enrolled as E.G. No. 12876 and the same were recorded in the name of the late Asidullah, the then Mutwalli, father of the present Mutawalli-Md. Kalimullah. Defendant No. 1 as plaintiff earlier filed Title Suit No.26 of 1992 in the same Court. Former Mutwalli, Asidullah by taking prior sanction from the Administrator of Waqfs, vide his Memo No.2270 dated 15.05.1965 granted lease of 92 decimals of land out of dag No.932 and 08 decimals of land out of dag No. 923 at a Najrana of taka 300.00. The lessee paid the Najrana to the mutawalli-Asidullah on 18.05.1965, on which date lease deed was executed and registered in between the parties and possession of the lease hold land was handed over to the lessee, who continued to be in peaceful possession thereof in his own right. The plaintiff purchased 04 decimals of land from the adjacent dag No. 933 from its owner Amzadullah by registered deed dated 21.12.1965 and opened a pathway over there for peaceful enjoyment of his leasehold land and then he brought Mutation Case No. 5/1973-74 and D.P. Khatian No. 1/234 was opened in his name. Later the plaintiff by filing Miscellaneous Case No. 2/1987-88 prayed for inclusion of his name in the printed khatian where the present Mutawalli filed objection and the matter being heard in presence of both sides, the name of the plaintiff was entered in Chhapa khatian No.230 and he continued to possess by paying rents to the Government and re-claimed some portions thereof, planted fruit bearing trees and vegetables and also dug a well for water and has been in possession thereof for over more than the period of limitation. The plaintiff also sold a part of the land in 1978 to one Moulana Solaiman, one of the defendants who being in possession engaged a caretaker, namely: Mukibur Rahman who started residing there with his brother, Maznur Rahman and they in collusion with the son of the former Mutawalli denied the title of Moulana Solaiman, who then brought Title Suit No. 26 of 1990 in the Court of Assistant Judge for eviction of the aforesaid two brothers from his land. After the death of former mutawalli-Asidullah in 1979, his son Kalimullah, defendant No.1 (plaintiff of Title Suit No.26 of 1992) became the Mutawalli of the waqf estate and he in collusion with the owner of the adjacent dag Nos.922 and 929 tried to cut away earth forcibly by entering into dag No. 932, the plaintiff brought Title Suit No.38 of 1988 in the Court of Assistant Judge against defendant No. 1 and others for permanent injunction and got an order of ad-interim injunction against them. But defendant No. 1 in collusion with defendant Nos.7-12 in order to grab the suit property and taking the advantage of the absence of the plaintiff dispossessed him from 3 (three) decimals of land as described in the second schedule to the plaint and hurriedly erected 4 (four) ekchala chhapra; hence the plaintiff was com-

pelled to file the suit for the aforementioned reliefs.

51. Eventually Title Suit No. 58 of 1990 was transferred to the Court of Subordinate Judge and Artha Rin Adalat, Sylhet and was renumbered as Title Suit No.38 of 1992.

The plaintiff of Title Suit No.26 of 1992 who was defendant No. 1 in Title Suit No.38 of 1992 contested the same by filling a written statement denying the material allegations of the plaint and contending, *inter alia,* the facts as were stated in the plaint of Title Suit No.26 of 1992. The plaintiff of Title Suit No.38 of 1992 as defendant also contested Title Suit No.26 of 1992 by filing written statement denying the material allegations made in the plaint of the said suit and stating, *inter alia,* the facts as stated in the plaint of Title Suit No.38 of 1992.

52. Both suits were heard analogously by the learned Subordinate Judge and Artha Rin Adalat, Sylhet who by his judgment and decree dated the 30th day of June, 1994 dismissed the suits. Being aggrieved by and dissatisfied with the judgment and decree of the Subordinate Judge, the plaintiff of Title Suit No.26 of 1992 filed Title Appeal No.57 of 1995 before the District Judge, Sylhet; the plaintiff of Title Suit No.38 of 1992 filed Title Appeal No.182 of 1994 before the District Judge, Sylhet. The learned Additional District Judge, Third Court, Sylhet who heard the appeals by his judgment and decree dated 05.04.1998 allowed Title Appeal No.57 of 1995 and thus decreed Title Suit No.26 of 1992 and dismissed Title Appeal No. 182 of 1994 and dismissed Title Suit No.38 of 1992. Against the judgment and decree passed in Title Appeal No.57 of 1995, defendant-respondent No.l, deceased Moulana Fariduddin Ahmed, predecessor-in-interest of respondent Nos.1 (a)-1(b) filed Civil Revision No.2571 of 1998 before the High Court Division. The same defendant-respondent who was plaintiff of Title Suit No.38 of 1992 (defendant No.1 of Title Suit No. 26 of 1992) filed Civil Revision No.2572 of 1998 against the judgment and decree passed in Title Appeal No.182 of 1994. The High Court Division on hearing the Rules analogously by a common judgment and order dated 18.10.2001 made both the Rules absolute in the following terms:

(I) the judgment and decree passed by the Appellate Court in Title Appeal No.57 of 1995 (arising out of Title Suit No.26 of 1992) was set aside and those of the trial Court was restored.

(II) the judgment and decree of the Appellate Court passed in Title Appeal No.182 of 1994 (arising out of Title Suit No.38 of 1992) was set aside and the suit was sent back on remand to the trial Court for writing out a "fresh judgment on the question of possession and dispossession only as made out by the petitioner, Fariduddin Ahmed" in the light of the observations made in the judgment.

Being aggrieved by and dissatisfied with the judgment and order passed by the High Court Division in Civil Revision No.2571 of 1998, the plaintiff, appellant herein preferred Civil Petition for Leave to Appeal No.462 of

2002 before this Division and leave was granted on the 29th June, 2003 to consider the following submissions:

"The learned Counsel for the petitioner submits that the learned Judge of the High Court Division failed to correctly interpret the provisions of Section 56 of the Waqf (sic) Ordinance relating to power of the Administrator of Waqf (sic) to accord sanction to transfer immovable property of Waqf Estate by way of lease for a term exceeding 5 years in that Section 56 of the Waqf Ordinance having barred transfer of such property by way of sale, gift, mortgage or exchange cannot be interpreted to have conferred power on the Administrator to sanction perpetual lease of the Waqf property which amounts to absolute transfer not intended by the legislature and therefore, the Administrator can be said to have power to accord sanction to grant lease beyond 5 years but for a limited period and not a lease in perpetuity and therefore, the judgment of the High Court Division is not sustainable in law."

CIVIL PETITION FOR LEAVE TO APPEAL NO. 1568 OF 2007.

53. Delay in filing the leave petition is condoned.

Pursuant to the order of remand passed by the High Court Division in Civil Revision No. 2572 of 1998 Title Suit No. 38 of 1992 was heard afresh and the learned Joint District Judge by judgment and decree dated 10.09.2002 again dismissed the suit. Against the judgment and decree of the Joint District Judge, the plaintiff filed Title Appeal No. 197 of 2002 before the District Judge, Sylhet. The learned Additional District Judge who heard the appeal by his judgment and decree dated 21.05.2003 allowed it in part and declared the plaintiff's title over the suit land and also gave decree for recovery of 03 decimals of land as described in the second schedule to the plaint. This appellate decree was challenged by defendant No.l, Md. Kalimullah (appellant in Civil Appeal No.202 of 2003) in Civil Revision No.170 of 2004 before the High Court Division. A Single Bench of the High Court Division by judgment and order dated 25.02.2007 discharged the Rule; hence this petition for leave to appeal.

54. Mr. Abdul Wadud Bhuiyan, learned Counsel, appearing for the appellant, has submitted that the learned Judge of the Single Bench of the High Court Division erroneously interpreted the provisions of section 56 of the Waqf Ordinance, shortly, the Ordinance as to the power of the Administrator of Waqfs to accord sanction to transfer immovable property of the Waqf Estate by way of lease for a term exceeding 5(five) years. He has further submitted that section 56 of the Ordinance having barred transfer of waqf property by way of lease by the mutawalli for more than 5(five) years without the sanction of the Administrator of Waqfs cannot be interpreted to have conferred power on the Administrator of Waqfs to give sanction for perpetual lease of any property of the waqf, because such sanction would amount to absolute transfer which was

not intended by the legislature and hence, the permanent lease given by the mutawalli Asidullah vide lease deed No.5679 dated 18.05.1965 in favour of defendant No.1 was void and by such lease he did not acquire any right and title therein. Mr. Bhuiyan, by referring to section 57 of the Ordinance, has further submitted that the Administrator of Waqfs acted illegally in giving sanction to the mutawalli to lease out the suit property inasmuch as before such sanction no inquiry as required by the said section was held. He has lastly submitted that the Appellate Court being the last Court of fact, on consideration of the evidence, came to the clear finding that the lease deed No.5679 executed on 18.05.1965 did not take legal effect, the learned Judge of the Single Bench erred in law in setting aside the judgment and decree of the Appellate Court without setting aside the said finding of fact arrived at by the said Court and therefore, the impugned judgment and order is liable to be set aside.

55. In support of his contentions Mr. Bhuiyan has referred to the cases of A.K. Gopalan Vs. State of Madras AIR 1950, SC 27 and Hafizuddin Ahmed Vs. M. Aslam Miah and others 55 DLR, 95.

Mr. Mahbubey Alam, learned Counsel, appearing on behalf of the respondents, on the other hand, has submitted that the learned Judge of the Single Bench correctly interpreted the provisions of section 56 of the Ordinance in holding that the Appellate Court was wrong in holding that the lease for a term exceeding 5 (five) years even with sanction of the Administrator of Waqfs could not be valid and in restoring those of the trial Court. He, by referring to the issues framed in the suits and the findings of the trial Court, has further submitted that in none of the suits, any issue as to the non-sufficiency of the inquiry or non-holding of enquiry by the Administrator of Waqfs as required under section 57 of the Ordinance before giving sanction to the mutawalli to lease out the land in question was suggested or raised, the appellant is not entitled to raise the issue before this Court for the first time. Mr. Mahabubey Alam has lastly submitted that the lessee duly paid the Najarana and the rent to the lessor and he was delivered possession of the leasehold land and thus the lease was acted upon, the trial Court rightly dismissed the suit, but the Appellate Court though the final Court of fact approached the case from a wrong stand point in taking converse view on total misinterpretation of the provisions of section 56 of the Ordinance and thus erred in law in decreeing Title Suit No. 26 of 1992 and the High Court Division rightly interfered with the same and as such, the impugned judgment and order does not call for any interference by this Court and the appeal be dismissed.

56. Mr. Mahmudul Islam, learned Counsel who was appointed as amicus curiae, has submitted that to interpret a statute or law other accompanying words are to be read together. Mr. Islam by invoking the rule of "noscitur a sociis" has submitted that if the other accompanying words of section 56(1) before the words "or by way of lease for

a term exceeding 5 years shall be valid without the previous sanction of the Administrator" are read together it would appear that the legislature has not put any bar to transfer any immovable property of a waqf by way of lease for a period exceeding 5(five) years with the previous sanction of the Administrator of Waqfs. In support of his submission Mr. Islam has referred to the case of Rohit Pulp and Paper Mills Ltd-versus-Collector of Central Excise Baroda, Supreme Court Cases, 1990 Vol, III, 447.

57. Let us examine the submissions of the learned Counsel of the respective parties and the learned amicus curiae in the light of the pleadings of the parties, the findings given by the Courts below and the relevant provisions of the Ordinance.

From the judgment of the trial Court, it appears that though both suits were disposed of by a common judgment, it decided the merit of the suit separately and decided the merit of Title Suit No.26 of 1992 first. The trial Court dismissed Title Suit No.26 of 1992 on the finding, *inter alia,* that (i) defendant No.1 (plaintiff of Title Suit No.38 of 1992) got possession of the lease hold land from the lessor pursuant to the lease deed dated 18.05.1965. In coming to the said finding the trial Court considered the kabala dated 21.12.1965 being No.5384, exhibit-K(l) by which defendant No.l purchased 4(four) decimals of land from the adjacent plot being plot number 933, rent receipts: exhibits-'Kha and Kha (1)' by which he paid rents in respect of the land in question upto 1379-1382 and exhibit-'Ga' the certified copies of the order sheets of the mutation proceedings, (ii) the lease deed of defendant No.1 dated 18.05.1965 is valid and is in existence and he produced sufficient documentary evidence in support of his claim of acquisition of title in the lease-hold land, (iii) The plaintiff failed to prove his title and possession in the second schedule land, (iv) the defendant acquired his valid title in the second schedule land by virtue of the lease deed dated 18.05.1965 and he is in possession thereof, but not in its entire area and he also failed to prove his possession in any particular direction (in Bangla it has been stated এবং তাহার দখল কোন দিকে আছে তাহা সুনির্দিষ্ট ভাবে প্রমানিত হয় নাই।) (v) The plaintiff failed to prove his possession in the second schedule land, so he was not entitled to get the decree as prayed for and (vi) the suit was barred by limitation and was also not maintainable in its present form.

58. Title Suit No.38 of 1992 was dismissed with the finding, *inter alia,* that (i) the suit was filed within time, (ii) the suit was maintainable, (iii) there was no defect of party in framing the suit and (iv) the plaintiff was not entitled to the decree as prayed for as he failed to prove his exclusive possession in the specific area of the first schedule land excluding the second schedule land though he proved his title therein.

From the judgment of the Appellate Court, it appears that it allowed Title Appeal No.57 of 1995 (this appeal was filed against the judgment and decreed passed in Title Suit No.26 of 1992) on the view that section 56 of the

Ordinance did not authorise the mutawalli of a waqf estate to lease out its immovable property permanently. The Appellate Court further held that though exhibit-'Kha' showed that the Administrator of Waqfs gave sanction to the then mutawalli-Asidullah, the father of the plaintiff to lease out the land in question of the waqf permanently, the Administrator of Waqf had no power to give such sanction under section 56 of the Ordinance. The Appellate Court further held that the defendant failed to file any receipt showing payment of rent to the waqf estate and by mutating his name as apparent from exhibit-'Kha', he did not acquire any title to the lease hold land and the evidence adduced by the defendant as to his possession in the said land and then dispossession from the second schedule land did not prove his exclusive possession therein.

As stated earlier, the High Court Division sent Title Suit No. 38 of 1992 back on remand to the trial Court for writing out a fresh judgment on the question of possession and dispossession only as made out by the plaintiff in the plaint in the light of the observations made in the judgment. From the impugned judgment and order, it appears that about the finding of possession of the trial Court as well as the Appellate Court, the High Court Division observed as follows:

> "with regard to possession, the trial court appears to have considered the oral evidence and came to a finding that opposite party No. 1 failed to prove his possession and that the petitioner was in possession in one part of his judgment but at the conclusion it held the possession of the petitioner was not definitely and clearly proved. Upon such view, the trial Court dismissed the suit of the petitioner. Appellate Court appears to have considered no oral evidence at all. The conclusion of the appellate court on possession is influenced by its wrong decision on the deed of lease. Such finding on possession based on total 'non-reading of the evidence oral and documentary on record cannot also be sustained in law."

59. From the documents incorporated in the paper book of Leave Petition No.1568 of 2007, it appears that pursuant to the direction given in the impugned judgment and order in connection with Civil Revision No.2572 of 1998 the Joint District Judge on rehearing Title Suit No. 38 of 1992 by judgment and decree dated the 10th day of September, .2002 dismissed the suit again. Against the said judgment and decree of the Joint District Judge, the plaintiff filed Title Appeal No.197 of 2002 before the District Judge, Sylhet. The appeal was allowed in part by the learned Additional District Judge, first Court, Sylhet in the following terms:

> "That the appeal be partly allowed on contest against the defendant-respondent No. 1 and ex- parte against the rest without costs. The impugned judgment and decree passed by the learned Court below are hereby set aside. The plaintiff-appellants' title over the suit land is hereby declared. The appellants' prayer for

recovery of khas possession against the defendant-respondents in respect of .03 decimals of land is also allowed. The defendant-respondents are hereby directed to vacate the said land and deliver the possession of the same to the plaintiff appellants by peaceful means as stated in the 2nd schedule of the plaint within 90 (Ninety) days from the date of this-orders, violation of which shall be seriously dealt with in accordance with law. At the same time, the plaintiff appellants after the expiry of those days, could recover the khas possession of the same by the aid and assistance of the lawful means through the court concerned."

60. Defendant of Title Suit No.38 of 1992 (plaintiff of Title Suit No.26 of 1992), that is, the present appellant filed Civil Revision No. 170 of 2004 before the High Court Division against the judgment and decree passed by the Appellate Court in Title Appeal No.197 of 2002 and the Rule in the civil revision was discharged on the 25th of February, 2007 leading to the filing of the leave petition (C.P.No.1568 of 2007). So with the disposal of Title Appeal No.197 of 2002 as affirmed in Civil Revision No.170 of 2004, by the High Court Division, findings of possession and dispossession given earlier by the Courts below in Title Suit Nos.26 and 38 of 1992 and Title Appeal Nos.57 of 1995 and 182 of 1974 lost all its legal force. In this regard, it is very pertinent to state that the appellant did not file any leave petition against the judgment and order passed by the High Court Division in Civil Revision No.2572 of 1998 sending Title Suit No. 38 of 1992 back on remand to the trial Court and thus he allowed Title Suit No.38 of 1992 to be heard and disposed of afresh. And in the instant case, leave has been granted only to decide the point as to whether the learned Judge of the Single Bench correctly interpreted section 56 of the Ordinance as to the power of the Administrator of Waqfs to accord sanction to the mutawalli of the waqf estate to give permanent lease of its immovable property. So, we see no scope of deciding the other points as argued by Mr. Abdul Wadud Bhuiyan, namely: that before according sanction to the mutawalli to lease out 92 decimals of land of the waqf estate, no enquiry under section 57 of the Ordinance was held and that defendant No.1 (Moulana Fariduddin Ahmed) failed to prove that he paid the najarana and the yearly rent as per terms of the lease deed as well as question of possession and dispossession as alleged by the deceased defendant (predecessor-in-interest of respondent Nos.l(a) and 1(b). In the context, Mr. Mahbubey Alam rightly pointed out that no issue as to the non holding of enquiry by the Administrator of Waqfs under section 57 of the Ordinance was raised in the Courts below and even before the High Court Division. And such a question being fundamentally a question of fact cannot be decided by this Court as a Court of first instance.

61. In order to decide the point on which leave has been granted, we consider it beneficial to quote section 56 of the Ordinance in its entirety. The section reads as under:

"56 (1) No transfer by a mutawalli of any immovable property of a waqf by way of sale, gift, mortgage or exchange, or by way of lease for a term exceeding 5 years shall be valid without the previous sanction of the Administrator:

Provided that the sanction by the Administrator shall not validate any transfer which is in contravention of any other law for the time being in force or is otherwise invalid.

(2) No Court shall grant permission to any Receiver appointed by the Court for the transfer of any waqf property unless the prior sanction of the Administrator has been obtained.

(3) In the absence of the sanction required by sub-section (1), any transfer made by a mutawalli shall be declared void, if the Administrator, within 4 months of his coming to know of such transfer, or within 3 years from the date of such transfer, whichever is later, applies to the Civil Court in this behalf.

(4) Where a mutawalli transfers a waqf property in contravention of sub-section (1) and afterwards himself becomes the owner of the property, the mutawalli shall, on the direction of the Administrator, reconvey the property to the waqf.

(5) Any transfer made in contravention of the provisions of sub-section (1) shall be deemed to be an act of malfeasance and breach of trust for the purpose of sub-section (1) of section 32"

62. For our purpose sub-sections (2), (3), (4) and (5) of the section are not relevant as admittedly sanction was accorded to the mutawalli by the Administrator of Waqfs to give permanent lease of 92 decimals of land of plot No. 932 of the waqf estate.

If we carefully see the language of sub-section (1) of section 56 of the Ordinance, it would appear that in case of transfer of any immovable property of a waqf by a mutawalli by way of sale, gift, mortgage or exchange, the only bar has been created by the legislature is that before such transfer previous sanction of the Administrator of Waqfs must be accorded and without such sanction transfer so made shall not be valid. So far as the lease is concerned, the mutawalli has been empowered to lease out any immovable property of a waqf upto 5 years, and beyond that only with the previous sanction of the Administrator of Waqfs, proviso to the section has given a further rider that even the sanction by the Administrator shall not validate any transfer which is in contravention of any other law for the time being in force or is otherwise invalidate.

63. *In the instant case, the deceased mutawalli leased out 1.00 (92+8) acre of land of the waqf in question permanently to the defendant after obtaining previous sanction from the Administrator of Waqfs. It is not the case of the plaintiff-appellant that the sanction by the Administrator in granting lease of the land in question permanently to the defendant was given in contravention of any other law in force at*

the material time or was otherwise invalid. Mr. Abdul Wadud Bhuiyan has not also made any submission that the sanction given by the Administrator of Waqf to lease out the land in question was given in contravention of any other law of the land prevalent at the relevant time or was otherwise invalid, so the question of attraction of the proviso to sub-section (1) does not arise at all.

64. *Therefore, we are not called upon to make any exercise in that respect. And if we do so that will be mere academic and that will make the judgment unnecessary lengthy.*

Now, we are to see whether the Administrator of Waqfs acted within his jurisdiction in according the sanction. Another corollary question arises when the legislature has not used the expression permanent lease, but used the expression lease for a term exceeding 5(five) years, that is, in other words has spoken about periodical lease of any immovable property of a waqf can it be said that such sanction also include the power to give sanction to lease out an immovable property of a waqf permanently.

65. The principle of statutory interpretation by which a generic word receives a limited interpretation in the context of a case is well established. In the context, as submitted by Mr. Mahmudul Islam, we can legitimately invoke the rule of "noscitur a sociis." This expression means that "the meaning of a word is to be judged by the company it keeps." According to Maxwell the rule "noscitur a sociis" means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense, they take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general.

From a mere reading of other words used in sub-section (1) of section 56 of the Ordinance, it is clear that the legislature has created no bar in according sanction by the Administrator of Waqfs to the mutawalli of a waqf estate to transfer its immovable property by way of sale, gift, mortgage or exchange. Transfers by sale, gift, or exchange is definitely permanent in nature though as per section 58 of the Transfer of Property Act mortgage is the transfer of an interest in specific "immovable property" for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. So, when in the same section, the Administrator of Waqfs has been given the power to accord sanction to the mutawalli of a waqf to transfer any of its immovable property by way of sale, gift, or exchange then it will be a too narrow interpretation to say that the legislature did not mean to empower the Administrator of Waqfs to accord sanction to a mutawalli to lease out any immovable property of waqf permanently but only of temporary in nature, that is, periodic lease.

66. In the context, we may also refer to section 33 of the Ordinance. This section has provided that notwithstanding anything contained elsewhere in the

Ordinance or any other law for the time being in force or in any waqf deed or in any contract, the Administrator may, with the previous sanction of the Government, transfer any part of waqf property for the improvement and benefit of the waqf (emphasis supplied). So, the legislature has not created any absolute bar from transferring any part of the waqf property, but such transfer must be necessary for the improvement and benefit of the waqf. However, we make it very clear that the power conferred upon the Administrator of Waqfs to accord sanction to a mutawalli of a waqf to transfer any immovable property of a waqf by way of sale, gift, mortgage or exchange or by way of lease for a term exceeding five years or permanent (as in the instant case) by section 56(1) of the Ordinance must be subject to fulfillment of the requirement of section 57 thereof. The section has stipulated 3 (three) obligations to be discharged by the Administrator of Waqfs before according sanction to transfer any immovable property of waqf, these are: (a) to make enquiry by himself for the transfer prayed for, (b) to give notice to such persons in such manner as the Administrator thinks fit and (c) hearing them (that is the persons so notified) , if they desire to be heard. To us, it appears that the enquiry so made must be in the true sense, that is, it must not be mechanical but transparent as to the necessity for transferring any immovable property of the waqf and the notice must be given to all concerned persons of the waqf particularly, the beneficiaries of the waqf and giving fair chance of hearing to the parties involved in the matter. We do not also see any reason for not reading the conditions or limitations as provided in section 33 of the Ordinance in section 56(1) thereof that before granting sanction the Administrator must be satisfied that such transfer is necessary for the improvement and benefit of the waqf and not to cause any injury, waste or loss of the waqf. In the context, we may recall the pleading of the plaintiff that the lease was granted for the protection of the land of the waqf estate. In the facts and circumstances of the instant case as discussed hereinbefore the principle of law enunciated in the cited cases referred by Mr. Abdul Wadud Bhuiyan does not help him. Therefore, we find no substance in the submission of Mr. Bhuiyan that since the Administrator of Waqfs has not been vested with the power to accord sanction to the mutawalli of a waqf estate to give permanent lease of any immoveable property of the waqf, the lease deed dated 18.05.1965 executed and registered by the deceased mutawalli on the basis of sanction given by the Administrator of Waqfs was void and by such deed defendant No. 1 acquired no right, title and interest in the lease hold land, that is, the suit land.

67. From the judgment passed in Title Appeal No.197 of 2002, it appears that the Appellate Court being the last Court of fact considered the evidence on record regarding the possession and the dispossession of the contending parties including the appellant and came to the specific finding that after the lease deed dated 18.05.1965, the plaintiff got possession of the leasehold land and then he was dispossessed from 03 decimals of

land as described in the second schedule to the plaint (of Title Suit No. 38 of 1992). From the impugned judgment and order (passed in Civil Revision No.170 of 2004), it appears that none appeared in support of the Rule when the same was taken up for hearing. The learned Judge of the Single Bench made the Rule absolute affirming those of the Appellate Court on the finding as follows:

"I have considered the grounds taken in the revisional application which are general in nature and I do no find any ground for misreading of evidence or non consideration of evidence or misconstruction of evidence and thus I do not find any merit in this rule."

Mr. Abdul Wadud Bhuiyan could not point out any perversity in the finding of possession and dispossession arrived at by the Appellate Court, consequently we find no reason to interfere with the impugned judgment and order passed in Civil Revision No. 170 of 2004.

For the discussions made above, we do not find any merit in the appeal and in the leave petition.

Accordingly, the appeal and the leave petition are dismissed. But we make no order as to costs.

NAZMUN ARA SULTANA–J: I have gone through the judgments proposed to be delivered by my brothers, Surendra Kumar Sinha, J. and Md. Abdul Wahhab Miah, J. I agree with the reasoning and findings given by Md. Abdul Wahhab Miah, J.

SYED MAHMUD HOSSAIN–J: I have gone through the judgments proposed to be delivered by my brothers, Surendra Kumar Sinha, J. and Md. Abdul Wahhab Miah, J. I agree with the reasoning and findings given by Md. Abdul Wahhab Miah, J.

MUHAMMAD IMMAN ALI–J: I have gone through the judgments proposed to be delivered by my brothers, Surendra Kumar Sinha, J. and Md. Abdul Wahhab Miah, J. I agree with the reasoning and findings given by Md. Abdul Wahhab Miah, J.

MD. SHAMSUL HUDA–J: I have gone through the judgments proposed to be delivered by my brothers, Surendra Kumar Sinha, J. and Md. Abdul Wahhab Miah, J. I agree with the reasoning and findings given by my learned brother Md. Abdul Wahhab Miah–J.

Cases cited:

* ***Province of East Pakistan Vs. Muhammad Hossain, 16 DLR (S.C.) 667.***
* ***A.K. Gopalan Vs. State of Madras AIR 1950, SC 27.***
* ***Hafizuddin Ahmed Vs. M. Aslam Miah and others 55 DLR, 95.***
* ***Dominion of India V. Shribai A. Arabinda Bose, AIR 1955 S.C.296.***
* ***State of Rajasthan V. Sripal Jain, AIR 1963 SC 1323***
* ***Rohit Pulp and Paper Mills Ltd. V. Collector of Central Excise, Baroda, (1990) 3 SCC 447***
* ***Privy Council in Attorney General for Ortario V. Mercer, (1883) A.C. 767(778)***
* ***ejusdem generis rule, Lord Bramwell in Great Western Ry. V. Sarindon Ry, (1884) 9 A.C. 786***

HIGH COURT DIVISION
(Special Original Jurisdiction)

Naima Haider–J.
and
Zafar Ahmed–J.

WRIT PETITION NO. 10402 OF 2011

(An application under Article 102 of the Constitution of the People's Republic of Bangladesh.)

Md. Sayed Mahmud and others ..... Petitioners.

Vs.

Bangladesh, represented by the Secretary, Power Division, Ministry of Power, Energy and Mineral Resources, Bangladesh Secretariat, Ramna, Dhaka and others. ..... Respondents.

For the Petitioners : Mr. Abdur Rab Chaudhury, Senior Advocate with Mr. Mohammad Ibrahim Khalil, and Mr. Mansurul Haque Shafi, Advocate.

For respondents No. 2 & 3 : Mr. Kazi A Habib.

For respondents No. 4 to 17 : Mr. Md. Solaiman Hossain, Advocate.

Judgment: October 07, 2013

Bangladesh Constitution–

Article 102– It is a legitimate rights once any benefits allowed by decision of the court shall be available also who did not join the proceedings standing on the same footing.

Since this issue has been settled by Apex Court in CPLA No. 184/2009, the petitioners are entitled to have the benefit of the said judgment according to the principle laid down in case of A.F.M Mustafizur Rahman and others Vs. Monohan Mazumder and others reported in 9 MLR (AD) 2004. Wherein it was held as under:

"Benefits allowed by decision of the court shall be available also to those who did not join the proceedings standing on the same footing". ..... (Para 13)

JUDGMENT

NAIMA HAIDER–J: In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon' the respondents to show cause as to why the inaction in not considering the case of the petitioners for one step out of turn promotion as Assistant Manager following the principle laid down in the Office Order No. 1130-WP (C) IV/6A-36/66 dated 11th August 1966 and decisions of the Apex Courts in Writ Petition No. 323/99 and 9289/2007 and the Judgment and order dated 19th October 2011 should not be declared to have been made without lawful authority and is of no legal effect and why a direction shall not be issued to consider the case for one step out of turn promotion to the petitioners and/or such other or fur-

ther order or orders passed as to this Court may seem fit and proper.

2. At the time of issuance of the instant Rule, direction was given upon the respondents to keep 12 posts vacant in the grade of Assistant Manager (Technical) for the petitioners.

3. On an application, the respondents No. 4 to 17 were added as added respondents

The facts necessary for disposal of the Rule, in brief are: The petitioners after obtaining the Diploma in Engineering were appointed as Sub-Assistant Engineers (SAE) by the Dhaka Electric Supply Authority, in short DESA. There was a regular practice in DESA pursuant to the office order No. 1130-WP (C) IV/6A-36/66 dated 11th August 1966 issued by the then East Pakistan Water and Power Development Authority, that a "Diploma Engineer working as SAE would be given one step out of turn promotion on their obtaining Graduation". The petitioners with the prior permission of DESA obtained B.Sc Engineering/ Graduation and made representation to the DESA to allow them one step out of turn promotion and ultimately the DESA Management submitted a summary to the Board of Directors of DESA in its 228 meeting held on 16.11.2005 for one step out of turn promotion to 11 graduated engineers as Assistant Engineer.

4. The function and responsibility was taken over by the Dhaka Power Distribution Company hereinafter referred as DPDC effecting from 30.06.2008. It is to be noted that the DPDC is a wholly Government owned company. Under the amended Section 21(2)(3)Ka, of the Dhaka Electric Supply Authority Act, 1990, the DPDC was under legal obligations to take over all assets, loans, liabilities and responsibilities of the dissolved DESA. As per agreement, between Government, DESA and the DPDC, the petitioners were released from DESA and joined in DPDC with a release order from dissolved DESA. The petitioners after joining with DPDC, made representation to the DPDC Authority to allow the petitioners one step out of turn promotion and the DPDC set-up a committee to inquire into the matter. The committee submitted its reported and highly recommended for allowing the petitioner one step out of turn promotion. But the authority did not consider the legal claim of the petitioners. The function and responsibility was taken over by the Dhaka Power Distribution Company DPDC effecting from 30.06.2008. Under the amended Section 21(2)(3)Ka, of the Dhaka Electric Supply Authority Act 1990, the DPDC was under legal obligations to take over all assets, loans, liabilities and responsibilities of the dissolved DESA.. All assets and liabilities including manpower were taken over by the Dhaka Power Distribution Company (DPDC) under the provisions of section 2 of Act No. 22 of 2009. It was also ensured in the agreement executed between the Government, DESA and the DPDC that all employees of dissolved DESA will have the protection of

their service in the DPDC which was also reflected in the Service Rules of DPDC at clause 3.3.3.

5. Being aggrieved by and dissatisfied with the inaction of the respondent DPDC, the petitioner moved this Court and obtained the instant Rule Nisi.

6. Mr. Abdur Rab Chaudhury, learned Senior Counsel appearing with Mr. Mohammad Ibrahim Khalil learned Advocate for the petitioner submits that the petitioners being Diploma Engineers entered into the service of the DESA. With the prior permission of DESA, they obtained B.sc Engineering degree in order to be considered for one step out of turn promotion to the post of Assistant Engineer pursuant to the promotion to the office order No. 1130-WP (C) IV/6A-36/66 dated 11th August 1966. Mr. Chaudhury next submits that the petitioner after obtaining B.sc Engineering Degree made representation to the management of DESA to consider them for one step out of turn promotion to the post of Assistant Engineer and consequently, the matter was placed before the 28th board meeting of DESA held on 16.11.2005. The said board of DESA was of the opinion to allow the petitioners one step out of turn promotion. Mr. Chaudhury next submits that the petitioners were released from DESA and joined in DPDC. After their joining with the DPDC, the petitioner made representation to allow them one step out of turn promotion to the post of Assistant Engineers. The DPDC management set-up a committee to inquire into the matter and the committee in its report strongly recommended to allow the petitioners one step out of turn promotion to the post of Assistant Engineers.

7. Mr Chaudhury further submits that all the issues involved in this writ petition was previously elaborately dealt with by this Division in Writ petition No. 323/99 and 9289/2007 and by the Supreme Court in its Judgment and order dated 14th August 2011 passed in Civil Petition For Leave To Appeal No. 184 of 2009. He lastly submits that since this issue has been settled by Apex Court in CPLA No. 184/2009, the petitioners are entitled to have the benefit of the said judgment according to the principle laid down in case of A.F.M Mustafizur Rahman and others Vs. Monoharan Mazumder and others reported in 9 MLR (AD) 2004. Wherein it was held that "Benefits allowed by decision of the court shall be available also to those who did not join the proceedings standing on the same fooling".

8. Mr. Kazi A. Habib, learned advocate for the respondent nos.2 & 3 submits that the petitioners are not entitled to get the benefit as claimed for. In support of his contention, the learned advocate submits that the office order No. 1130-WP (C) IV/6A-36/66 dated 11th August 1966 was suspended by the dissolved DESA in its 28th Board Meeting dated 06.03.1993 after allowing three engineers one-step-out-of-turn promotion therefore, there is no existence of the office order No. 1130-WP (C) IV/6A-36/66 and the rule is liable to

be discharged. He further submits that the promotion cannot be claimed as of right thus the petitioners' claim for one step out of turn promotion is not sustainable.

9. Mr. Md. Solaiman Hossain, learned advocate appearing for respondent Nos. 4 to 17 simply adopted the submission made by Mr.Kazi A. Habib.

10. We have perused the writ petition, its annexures, affidavit in opposition filed by respondent nos.2 &3 and 4-17.

11. It appears from the record that that the office order No. 1130-WP (C) IV/6A-36/66 dated 11th August 1966 was suspended by the dissolved DESA in its 28th Board Meeting dated 06.03.1993 and the effect of suspension/revocation of the circular was elaborately dealt with in the decision by the High Court Division in Writ Petition No, 323 of 1999 wherein it was held that since the decision to revoke the facilities provided by the circular No. 1130-WP (C) IV/6A-36/66 dated 11th August 1966 was not published in any gazette, such revocation would not affect the terms and conditions of the service given to the petitioners pursuant to the circular dated 11.08.1966. Moreover, the said suspension order was cancelled by DESA in its 157th Board meeting. We note that although promotion cannot be claimed as of right but to be considered for promotion is a right and the petitioners have invoked writ jurisdiction challenging the inaction of the respondents in not considering them for one step out of turn promotion in spite of their completion of B.sc Engineering Degree. However, this is not an ordinary departmental promotion, this promotion is authorized by law on fulfillment of certain condition which in the case of the petitioners is completion of B.sc Engineering Degree and this promotion is given once an incumbent fulfills the condition provided in the office order No. 1130-WP (C) IV/6A-36/66 dated 11th August 1966. During the course of the argument it was brought to our notice that this Court earlier directed the respondents to promote the petitioners to the post which were kept vacant according to the direction of this Court.

12. This Court further notes that all the issues involved in the instant writ petition has been elaborately dealt with by both the Divisions of the Supreme Court in Writ petition No. 323 of 1999, Writ Petition No. 9289 of 2007 and Civil Petition For Leave To Appeal No. 184 of 2009. The respondents have not been able to bring any new issue for us to deviate from the previous Judgment of the both Division passed in Writ petition No. 323 of 1999, Writ Petition No. 9289 of 2007 and Civil Petition For Leave To Appeal No. 184 of 2009. The DPDC has given a report where the inquiry committee gave a recommendation. The extract of recommendation dated 16.11.2011 is quoted as under:

বর্তমানে গঠিত কমিটির সুপারিশঃ

১। সূত্র নং 1130-WP (C) IV/6A-36/66, dated 11th August,1966 ইং মোতাবেক

তৎকালীন EP WAPDA এর জারীকৃত দপ্তরাদেশ-এ কর্মরত ডিপ্লোমা ইঞ্জিনিয়ারদের কর্তৃপক্ষের অনুমোদন সাপেক্ষে AMIE/বিএসসি ইঞ্জিনিয়ারিং ডিগ্রী অর্জন করার পরে এ্যাসিসটেন্ট ইঞ্জিনিয়ার হিসাবে নিয়োজেনের ক্ষেত্রে অগ্রাধিকার প্রদানের বিষয়ে উল্লেখ আছে (কপি সংযুক্ত)। সে মতে আবেদনকারীদের সহকারী ব্যবস্থাপক (কারিগরী) পদে নিয়োজেনের ক্ষেত্রে অগ্রাধিকার প্রদান করা যেতে পারে।

(মোঃ রফিকুল ইসলাম)
ম্যানেজার এইচ. আর
কোম্পানি সচিবালয় ও
সদস্য-সচিব, যাচাই কমিটি

(সৈয়দ আশরাফ আলী)
ম্যানেজার টেকনিক্যাল
মিটারিং নর্থ ও
সদস্য, যাচাই কমিটি

(বিদ্যুৎ মজুমদার)
ডেপুটি জেনারেল ম্যানেজার (চলতি দায়িত্ব) ও
এনওসিএস, মগবাজার সদস্য যাচাই কমিটি

মির্জা তরিকুল হোসেন
জেনারেল ম্যানেজার
সিস্টেম অপারেশন এন্ড স্ক্যাডা
ও
আহ্বায়ক, যাচা কমিটি
(emphasis supplied)

13. *Since this issue has been settled by Apex Court in CPLA No. 184/2009, the petitioners are entitled to have the benefit of the said judgment according to the principle laid down in case of A.F.M Mustafizur Rahman and others Vs. Monoharan Mazumder and others reported in 9 MLR (AD) 2004. Wherein it was held as under:*

"Benefits allowed by decision of the court shall be available also to those who did not join the proceedings standing on the same footing".

14. In view of the above discussions, made hereinbefore, we find merit in this Rule.

15. Accordingly, the rule is made absolute.

16. The respondents arc directed to grant one-step-out-of turn promotion to the petitioners effective from the date of their joining in the Dhaka Power Distribution Company, (DPDC) in accordance with the office order No. 1130-WP (C) IV/6A-36/66 dated 11th August 1966 within one month from the date of receipt of a copy of this judgment and order.

There is, however, no order as to cost.

Case cited:

* ***A.F.M Mustafizur Rahman and others Vs. Monoharan Mazumder and others, 9 MLR (AD) 2004.***

HIGH COURT DIVISION
(Criminal)

A.K.M. Fazlur Rahman–J.
And
Md. Rezaul Hasan–J.

CRIMINAL MISCELLANEOUS NO. 5240 OF 2010

(Arising out of Gulshan P.S.Case No.56 date14.04.2008 corresponding to G.R.No.340 of 2008 arising out of Druto Bichar Case No.01 of 2010 now pending in the court of Druto Bichar Tribunal No.01,Dhaka.)

Minara Akter Mili & another .....
..... Petitioners.

Vs.

The State ..... Opposite party.

For the petitioners : Mr. M. Amirul Islam, Senior Advocate with Ms. Eva Quasem, Adv. and Most. Sultana Nasrin, Advocate.

For the Opposite party No.2 : Mr. M. A. Baset Majumder, Senior Advocate with Mr. Md. Nasir Uddin Khan, Advocate.

For the State : Mrs. Shakila Rowshan, D.A.G. with Mrs.Sharmin Haque, A.A.G. and Mr. Md. Sarwardhi, A.A.G.

CRIMINAL MISCELLANEOUS NO. 9733 OF 2010

Amir Faysal ..... Petitioner.

Vs.

The State ..... Opposite party.

For the petitioner : None appears.

For the Opposite party No.2 : Mr. M. A. Baset Majumder, Senior Advocate with Mr. Md. Nasir Uddin Khan, Advocate.

For the State : Mrs. Shakila Rowshan, D.A.G. with Mrs.Sharmin Haque, A.A.G. and Mr. Md. Sarwardhi, A.A.G

CRIMINAL MISCELLANEOUS NO. 12884 OF 2010

Md. Firoz Shah ..... Petitioner.

Vs.

The State ..... Opposite party.

For the petitioner : None appears

For the Opposite party No.2 : Mr. M. A. Baset Majumder, Senior Advocate with Mr. Md. Nasir Uddin Khan, Advocate.

For the State : Mrs. Shakila Rowshan, D.A.G. with Mrs.Sharmin Haque, A.A.G. and Mr. Md. Sarwardhi, A.A.G.

Judgment: April 19, 2012

Code of Criminal Procedure, 1898–

Section 561A– Quashment of Proceedings–

In a fit case even at an initial stage may be justified where the facts are so preposterous and that further prolongation of the prosecution would amount harassment to an innocent party and is a sheer abuse of the process of the court, to prevent which and to secure ends of justice.

Even if these facts and circumstances are taken at their face value and accepted in their entirety do not disclose accused-

petitioner Rabeya's involvement in the offence. Thus the neither the F.I.R nor the charge sheet made out prima-facie case against accused Rabeya. There is no circumstance to connect her with the crime. So continuation of the case against her is a sheer abuse of process of the Court, to prevent which and to secure ends of justice, the proceeding of the case so far as it relates to her (Rabeya), should be quashed in exercising inherent power of this court under section 561A of the Code of Criminal Procedure. .....
(Para 20, per A.K.M. Fazlur Rahman–J.)

JUDGMENT

MD. REZAUL HASAN–J: On three separate applications, filed under section 561A of the Code of Criminal Procedure (the Code), at the instance of 1) the accused-petitioners Minara Akter Mili (Mili) & another, in Criminal Miscellaneous Case No. 5240 of 2010, 2) the accused-petitioner Md. Amir Faysal, in Criminal Miscellaneous Case No. 9733 of 2010 and 3) the accused-petitioner Md. Firoz Shah, in Criminal Miscellaneous Case No. 12884 of 2010, three separate rules have been issued calling upon the opposite party to show cause as to why the proceeding of Druto Bichar Case No. 01 of 2010 arising out of Gulshan Police Station Case No. 56 dated 14.04.2008 corresponding to G. R. No. 340 of 2008 under section 302/34/109 of the Penal Code, now pending in the court of Druto Bichar Tribunal No.1, Dhaka, should not be quashed and/or such other or further order or orders passed as to this court may seem fit and proper.

2. Since all these three rules have been originated from the same proceeding of Druto Bichar Case No. 01 of 2010, arising out of Gulshan Police Station Case No. 56 dated 14.04.2008, corresponding to G. R. No. 340 of 2008, so all these rules have been taken together for analogous hearing and disposal by one and the same judgment.

3. Facts, in short, leading to the issuance of these rules are that one Md. Farhad Ahmed Bhuiyan had lodged an F.I.R. on 14.04.2008 with the Gulshan Police Station alleging, amongst other, that his elder brother Md. Faruk Ahmed Bhuiyan had been living in the United States of America (U.S.A) for about last ten years. He returned to the country about two years back and started living at house No.01, NAM Flat No-A/2, (3rd Floor) at Banani, Police Station Gulshan (with his spouse Mili and two minor children). His brother would have frequently travelled to the U.S.A. from Bangladesh. At one stage the conjugal relationship between his brother and his brother's wife (the accused Mili) had turned sour. Informant further stated that his brother told him that Faysal (another accused-petitioner) would have come to his brother's flat and he had illicit relationship with Mili, as told by his brother. His brother came to Bangladesh about two months back and that he was willing

to continue the family tie with Minara Akter Mili, considering future of his minor children, but his sister-in-law (Mili) went to her father's house taking with her their children on the following day. Mili, thereafter, started living at a separate rented house at Banani. He further states that on 12.04.2008, at about 12.00 noon, his brother went to his sister-in-law's flat to give her a private car, but his brother had received ill treatment from her. Thereafter, his brother left the private car in Mili's disposal and came back and informed his mother over phone that his wife would kill him. Thus, being anxious upon hearing this, his mother called at the mobile phone of Faruk on 13.04.2008, at about 9.00 a.m., but found no response to the phone call. Hence, the informant and his other relatives went to the flat of Faruk, knocked the door and pressed the calling bell, but found the door closed and heard no sound from inside. Accordingly, they made a G.D. entry number 1008 dated 13.04.2008 with Gulshan Police Station, apprehending that some incident might have taken place inside the flat. Accordingly, at about 10.00 p.m. that night, police arrived at that flat, opened the door by breaking the same and found dead body of Faruk. There were marks of several injuries on the dead body and bad smell was coming out from the flat. There was three mobile phone sets in one pocket and cash taka 51,084/- was also found in another pocket of the deceased. Then they went to the kitchen room of the said flat and found there another dead body of Sumi (29), the maid in that flat, her hands and legs fastend with rope. Police sent these two dead bodies to mortuary for post mortem examination. The informant accordingly suspected that some time between 10.a.m of 12.04.2008 to 10.00 p.m. 13.04.2008 the killers had killed his brother Faruk and the maid, owing to the family feud. Accordingly Gulshan Police Station Case No. 56 dated 14.04.2008 was registered.

4. The police, thereafter, started investigation into the case, inspected the place of occurrence, seized alamots, recorded statements of the witnesses under section 161 and of two witnesses under section 164, got recorded the statement of two accuseds under section 164 of the Code of Criminal Procedure (Cr. P.C), prepared draft sketch map with index and, having found a prima facie case against these four accused-petitioners alongwith five others, have submitted charge sheet No. 65 dated 05.02.2009 under section 302/34/109 of the Penal Code. At one stage these petitioners obtained bail from the court and thereafter moved three applications under section 561A of the Code of Criminal Procedure and obtained the instant rules.

5. None appeared to press the rule in Criminal Miscellaneous Case No. 9733 of 2010 filed by Md. Amir Faysal and the Criminal Miscellaneous Case No. 12884 of 2010 filed by Md. Firoz Shah.

6. Mr. M. Amir-Ul-Islam, learned Senior Advocate along with the learned

advocates Ms. Eva Quasem and Most. Sultana Nasrin, appearing for the accused petitioners in Criminal Miscellaneous Case No. 5240 of 2010, has taken us through the petition filed under section 561A of the Code of Criminal Procedure alongwith the materials on record and then submits that the accused Mili has been implicated in this case only out of grudge and suspecion because of the family feud with her and other members of the family of the deceased. He also submits that, as stated in the F.I.R. and in the charge sheet, this accused-petitioner (Mili) had left the place of occurrence and went to her father's house 2 months before the date of occurrence and lateron she had rented a flat at Banani to live with their minor daughters. It has further been stated in the F.I.R that, Faruk even went to that rented house at Banani, on 12.04.2008, to give a private car to Mili and left that car under her disposal and that the deceased Faruk had an intention to continue his marital tie with Mili. He next submits that the case narrated in the F.I.R. and in the charge sheet does not, in any way, connect this petitioner with the alleged conspiracy or with the preparation that was taken place at Uttara, on 12.04.2008, as she was not there, nor any motive on her part was disclosed to kill her husband Faruk. This petitioner was never seen at the said NAM flat ever after she had left for her fathers house 2 months before the date of occurrence. He also submits that even if, for argument's sake, it is conceded that Mili had an illicit relationship with Faysal and that she had taken away some belongings or package to her father's house or to her Banani flat, none of these facts however, constitutes any offence under section 302/34/109 of the Penal Code, nor does show her complicity with the alleged offences. Rather, she herself is a victim and has been made widow by this incident and was left to live an inscurced life with her minor children. Accordingly, this case is apparently a preposterous one and does not disclose any offence under the aforesaid sections of law, so far as this petitioner Mili is concerned. As regards the petitioner Rabeya Begum, the learned counsel submits that she had been implicated in this case without any basis, except for the allegation that she took some begs, said to contain belongings of Mili, to her relatives home at House No. 3, Flat E/2, Block-C, Section-2, Road No. 2, Mirpur-2. on 14.04.2008 and that she lives in the same building at Flat No. D/2. These allegations does not disclose any ingredients of aforesaid sections, nor does suggest her complicity with the incident. He concludes that the allegations brought against these two accused-petitioners, considered in their entirety and even if accepted as true, do not disclose any offence or their complicity in committing any offence under section 302/34/109 of the Penal Code. As such, further prolongation of this case against these two petitioners would amount to sheer abuse of the process of court and he has prayed for quashment of the impugned proceedings so far as these two petitioners are

concerned to prevent abuse of the process of the court or otherwise to secure ends of justice. The learned counsel has also submitted that, this court may issue a direction to transfer this case to an appropriate court as the tribunal could not conclude the trial within the time specified in section 10 of Druto Bichar Tribunal Ain, 2002.

7. The learned senior advocate Mr. M. A. Baset Majumder along with learned advocate Mr. Md. Nasir Uddin Khan, appearing for the opposite party No.2, being permitted by this court to assist the learned advocates appearing for the state, submits that the case is based on circumstantial evidence. Police after through investigation has submitted charge sheet No. 65 dated 05.02.2009 under section 302/34/109 of the Penal Code and the police report clearly discloses the motive and preparation on the part of the accused-petitioners to commit the murder and the circumstancial evidence is corroborated by the confessional statements of two co-accused. These are matters of fact and the prosecution is entitled to prove its case by adducing evidence at the time of trial against these accused-petitioners. Hence, he submits, that these three rules are liable to be quashed.

8. Mrs. Shakila Rowshan, Deputy Attorney General with Mrs. Sharmin Haque and Mr. Md. Sarwardhi, Assistant Attornies General, appearing for the state has adopted the submissions made by the senior counsel of Mr. M. A. Baset Majumder and prays that the rules may be discharged.

9. Points for determination in this case is to see (1) whether the proceeding has become quorum non judice because of expiry of the time limit prescribed under section 10 of Druto Bichar Tribunal Ain, 2002 and (2) whether the impugned proceeding amounts to abuse of the process of the court as submitted by the learned counsel for the petitioner or is otherwise table to be quashed for ends of justice.

10. We have heard the learned Advocates appearing for the parties, considered all the applications filed under section 561A of the Code of Criminal Procedure and the materials on record.

11. From perusal of the F.I.R. it is evident that none was named as accused. However, it appears that the charge sheet, filed after a through investigation, that the Investigating Officer (I.O) of CID, Dhaka, has recovered the dead bodies from the place of occurrence and sent the dead bodies for post mortem examination, obtained opinion of doctor, recorded statements of the witnesses under section 161, of two other witnesses under section 164, and has also got recorded statements of two accuseds under section 164 of the Code of Criminal Procedure (Cr. P.C), seized alamots, prepared sketch map alongwith index and, having found a prima facie case against these 4 petitioners and 5 others, submitted charge sheet No. 65 dated 05.02.2009.

12. Having further considered the police report it appears from the confes-

sional statement of the accused Mofazzal Hossain (Mofazzal), that on 11.04.2008, the accused Amir Faysal (Faysal) took him to a play ground attached to Road No.5, Uttara Sector No. 4, Dhaka, at about 1.30 p.m. Mofazzal was the personal driver of the private car No. Gha-15-9753 of the accused Faysal. Faysal was living in Flat No. D-2 of the same NAM apartment, Building No.1, Banani Road No.1, Dhaka. Having reached near the said play ground, Faysal asked his driver Mofazzal to stop the car and to wait at a place far from the parking place. However, before leaving the car, Mofazzal has seen that the accuseds Firoz (Md. Firoz shah, petitioner of Misc. Case No. 12884 of 2010) and Saiful Islam Seizure (with whom deceased Faruk had enmity for alleged misappropriation of 20,000/- U.S. Dollar by Faruk) were waiting there alongwith 3/4 unknown persons. All of them were looked very excited. At one stage the accused Firoz also told Mofazzal, in a hursh voice, to go far from that place. Thereafter, at about 3.00 p.m. to 3.30 p.m. these people, who had assembled at the said play ground, left that place and went to different directions, when Faysal asked Mofazzal to start the car and to go to his flat at Banani. At about 4.00 p.m. he reached at Banani flat, when Faysal asked Mofazzal that he has been granted two days leave from 12.04.2008 to 13.04.2008. Thereafter he (Mofazzal driver) left the place. This Mofazzal has also stated before the Magistrate that আনুমানিক দুপুর ৩.০০/৩.৩০ ঘটিকার সময় মাঠে থাকা বাকী ৫/৬ জন লোক বিভিন্ন দিকে রওয়ানা হয়ে যায়। তখন ফয়সাল সাহেব আমাকে ডাক দিয়ে গাড়ী ষ্ট্রাট দিতে বলেন এবং বলেন যে বনানী ফ্ল্যাটে চলো। অবশ্য আমি যখন গাড়ীর দিকে এগিয়ে আসি তখন ফয়সাল সাহেবকে বলতে শুনি তার সঙ্গীদের উদ্দেশ্যে "কাজ হয়ে যাবে।"

13. It further appears from the charge sheet that an enmity had developed between the accused Faysal and deceased Faruk. The cause of such inimical relationship has also been recorded in the charge sheet that, Faruk Ahmed would have sent some anonymous letters and distributed some leaflets, in the said apartment, attributing bad character on Faysal's mother. This was told to him by his mother over phone, when Faysal was at London to attend a meeting at "Probashi Palli Office", and at that time Amir Faysal got excited and loudly replied to his mother "মা তুমি একটু ধৈর্য্য ধর, আমি কালকেই দেশে আসিতেছি। কুত্তার বাচ্চা ফারুককে আমি দেখে নিব। এরপরের দিনই ফয়সাল সাহেব দেশে আসেন এবং তার কয়েকদিন পর হত্যাকান্ড সংঘটিত হয়।" Police has recorded this statement, from a witness present there, under 161 of the Cr. P.C.

14. As regards the case, stated in the charge-sheet, it appears that Md. Firoz (Firoz) was identified by the accused Mofazzal when he took Faysal to the play ground next to road No. 5, Sector 4 of Uttara. This Firoz very hurshly asked Mofazzal to leave the place, where this Firoz, Seizure (Saiful Islam Seizure), Faysal and 3/4 other unknown persons were assemblemed and, allegedly, had planned to kill Md. Faruk.

15. Besides, another confessing accused Md. Monir Gazi, who was the security guard at the concerned NAM Building and was on duty on 12.04.2008 also disclosed that, he was on duty, at gate number 2, from 6.00 a.m. to 14.00 noon. it is material to quote Md. Monir, who has stated that, "গত ১২.০৪.০৮ইং তারিখ সকাল ৬.০০ টা হইতে বিকাল ১৪.০০টা পর্যন্ত আমার ২নং গেটে ডিউটি ছিল। বেলা ১২.০০ টার দিকে ফারুক সাহেব তার গাড়ী নিজে ড্রাইভ করে বাইরে যায়। এর কিছুক্ষন পরেই আমির ফয়সাল সাহেব তার পিয়ন ফিরোজ শাহ সহ আরো তিনজন অজ্ঞাত নামা লোকদের সঙ্গে করে তার নিজের গাড়ী নিজেই চালিয়ে ২নং গেট দিয়ে ভেতরে প্রবেশ করে।

আমি তখন বলি স্যার এরা কারা, নাম লিখতে হবে না? সে বলে এরা আমার লোক তোকে কিছু করতে হবে না, ঐ লোকদের মধ্যে "ফিরোজ" ছাড়া কাউকে চিনি না, ইতি পূর্বে ও মাঝে মাঝে ফয়সাল সাহেবের বাসায় আসতে দেখি তাদের নাম ঠিকানা জানতাম না। আমি দুপুর ১৪.৩০ পর্যন্ত ডিউটি স্থলে ছিলাম। তখন পর্যন্ত তারা কেউ বাইরে আসে নাই। ফারুক সাহেব ১নং গেট দিয়ে কখন পুনরায় বাসায় প্রবেশ করেছে তাও দেখি নাই। ডিউটি শেষে আমি বাসায় চলে যাই। পরে ১৩.০৪.২০০৮ইং তারিখ রাত ১০.০০টা পর্যন্ত ডিউটি করে।

১৪.০৪.২০০৮ইং তারিখ সকালে ডিউটি স্থলে এসে জানতে পারি ফারুক সাহেব এবং কাজের মেয়ে খুন হয়েছে।" (underlining is mine).

16. In the statements, recorded under section 164 of the Code of Criminal Procedure, the above-named two co-accuseds persons, who are also eye witness of the facts narrated in their statements, have clearly implicated the accuseds Faysal and Firoz Shah in this case. At this stage we do not find any intention, on the part of these two confessing accused, to falsely implicate the accused Faysal or Firoz Shah. Rather, the charge sheet prima facie contains materials showing motive, preparation and pre-concert in these two accused, to kill Faruk and the maid, in the maner the crime has been committed. The fact that the accused Faysal granted 2 days leave form 12.04.2008 to 13.04.2008 to his driver Mofazzal and his refusal to disclose identity of 3 unknown co-passengers or to record their name and name of Firoz in the visitors book, who had entered the said apartment with Faisal, in his private car on 12.04.2008 at 12.00 noon and that Faisal himself was driving the car, granting leave to his driver Mofazzal on 12.04.2008 etc prima facie discloses circumstances showing their involvement with incident, their pre-concert to secretly commit the double murder and to screen the crime. Besides, the record prima facie shows an unbroken chain of events, from 11.4.2008 to 14.04.2008, leading to the commission of the crime alleged. The prosecution is entitled to prove these facts and circumstances at the time of trial, while the allegations against these two accused-petitioners, if accepted as true, constitutes the offence they are charged with. Hence so far as these accused-petitioner are concerned the impugned proceedings can not be said to be an abuse of the process of the court and we find no merit in these two rules, issued in Criminal Miscellaneous Case No. 12884 of 2010 and 9733 of 2010.

17. Now turning attention to the rule issued in Criminal Miscellaneous Case No. 5240 of 2010, it appears from the charge sheet that the allegations against Rabeya (petitioner No. 2 in Misc. Case No. 5240 of 2010), in substance, is that she had carried some begs containing belongings of Mili, from her flat to the flat of her relative Roksana Ferodousi at House No. 3, Flat E/2, Block-C, Section No. 2, Road No. 2, Mirpur. The record does not disclose motive in her to be a party to the plan of killing Faruk and another victim. She has not been implicated in the confessional statements showing preparation or pre-concert for committing the aforesaid killing. As such the case stated against her, even if accepted as true and considered in its entirety, does not constitute any offence under section 302/34/109 of the Penal Code. So in our considered view further prolongation of this case, so far as this petitioner is concerned, will amount to sheer abuse of the process of the court and the impugned proceedings is liable to be quashed against this petitioner.

18. As regards the accused-petitioner Minara Akter Mili (petitioner No. 1 in Misc. Case No. 5240 of 2010), it appears from the F.I.R. that the informant has attributed family feud between this petitioner and her husband Md. Faruk, later on found killed in his Flat. In the F.I.R it has also been stated that "আমার ভাই আমেরিকা থাকার সময় আমার ভাবী উক্ত ফয়সালের সাথে অবৈধ মিলামেশা করিয়াছে। আমার ভাই সব কিছু জেনে ও বাচ্চা দুইটির ভবিষ্যৎ চিন্তা করিয়া তার স্ত্রীর সাথে ঘর সংসার করার জন্য গত দুই মাস আগে দেশে আসে। এসে দেখে বাসার মালামাল ভাবী সরাইয়া ফেলেছে। আসার পর দিন ভাবী তার মেয়ে আয়শা ফারিয়াকে নিয়া বাপের বাসায় চলিয়া যায়। পরে বনানীতে বাসা ভাড়া করে বসবাস করতে থাকলে আমার ভাই বার বার অনুরোধ করলেও আমার ভাবী ভাইয়ের বাসায় আসে নাই। গত ১২.০৪.২০০৮ইং তারিখ বেলা অনুমান ১২.০০ টার সময় আমার ভাই একটি গাড়ী (প্রাইভেট কার) ভাবীর বাসায় দিতে গেলে ভাবী ভাইকে অকথ্য ভাষায় গালি গালাজ করে অপমান অপদস্ত করে। আমার ভাই ভাবীর বাসায় গাড়ী রাখিয়া চলিয়া আসে এবং মাকে ফোন করে ঘটনা বলে। আরো বলে যে, এই বউ আমাকে খুন করবে।" Md. Monir Gazi (security guard of the said NAM Building) also stated before the Magistrate that on 12.04.2008 "বেলা ১২টার দিকে ফারুক সাহেব তার গাড়ী নিজে ড্রাইভ করে বাইরে যায়।" It corroborates the F.I.R Case that on 12.04.2008 at about 12 noon Faruk went to Mili's flat to give her a car. (under lining is mine).

19. Then having considered the police report, it appears that nothing has been disclosed, in the chain of events, from 11.04.2008 to 14.04.2008, when the accused Fysal, Firoz, sizure and 3/4 other unknown persons met at uttara, developed a pre-concert, took preparation, entered the said NAM apartment and till discovery the dead body in the night on 13.04.2008, no implication of this accused-petitioner have been revealed. Rather, admittedly, when Faruk came to Bangaldesh two months before the date of occurrence, his wife Mili had left the said NAM flat on the following day and went to her father's house at Narayangong, with their minor children. Admittedly, at the time

of the alleged occurrence she was not living with the deceased in the said NAM flat, where the occurrence took place, and she was living a separate life since 2 months back from the date of occurrence. She even did not went into hide. Rather she resided in the same area at Banani by renting a flat, within the knowledge of her husband Faruk, who had, admittedly, went to her house at about 12.00 a.m. on 12.04.2008 and gave a private car for her use. If she had any ill-motive then obviously she would not have resided in the same area. Such family dispute is not unusal in a family life. Moreover, had she been determined to marry the accused Faysal then it would remain as a great mistry as to why she should prefer killing her husband instead of divorcing him (Faruk).

20. It is also revealed from the F.I.R. that knowing about the alleged illicit relationship her husband wanted to keep the marital bondage with her and tried to bring her back to his flat. If he would not have trusted his wife Mili or had any actual fear of his life in the hands of his wife then he would not have asked her to come or tried to bring her back to his flat. Rather Faruk went to her Flat on 12.04.2008 and left a car at her disposal. These facts on the record expells showing any motive on her part to kill Faruk. There is noting in the police report to show her taking part in the plan to kill Faruk, while none of the accused, who has made confessional statements has implicated her in the preparation or developing any pre-concert in committing the murder, nor and none has stated to have seen her entered into the NAM flat of Faruk, once she had left the same 2 months before the date of occurrence. The motive, pre-concert and preparation of committing the crime have been attributed on Faysal for distributing anonymous leaflet slinging mud on his mother's character and the accused Seizure because of his dispute with Faruk for alleged misappropriation 2000/- U.S. Dollar by Fruk. It has been recorded in the police report that Faruk Ahmed removed 20,000/- dollers from an account of Seizure, from some bank account in U.S.A., by hacking his credit card and a dispute between Faruk and Seizure had ensued culminating to the top of bitterness. It is also stated in the police report that "সিজার বার বার ঐ টাকার জন্য চাপ সৃষ্টি করে। এমনকি বনানীর বাসায় গিয়া মিনারা আক্তার মিলির সামনেই ফারুকের বুকে পিস্তল পর্যন্ত ধরে ঐ টাকার জন্য। তদন্তে জানা যায়, ফারুক আহমেদ ভুইঁয়া সাইফুল ইসলাম সিজারকে সাত লক্ষ টাকা তার স্ত্রী মিনারা আক্তার মিলির একাউন্ট হতে তুলে দেয়। অবশিষ্ট টাকা পরে দিবে বলে আশ্বস্ত করে, কিন্তু দেয় না। এর মধ্যে গত ০৩.০৯.২০০৭ইং তারিখে ফারুক আহমেদের নামে কুরিয়ার সার্ভিস পার্শ্বেল নং ৬৩/৩৪০৯৯৯-এ একটি চরমপত্র ও কাফনের কাপড়সহ বিভিন্ন ভীতিকর জিনিষপত্র ফারুক আহমেদের নামে পাঠায়। এ ব্যাপারে ফারুক আহমেদ গুলশান থানায় একটি সাধারণ ডায়রী করে যাহার নং-৩৭৫, তাং ৫.৯.২০০৭ইং। যদিও এ ব্যাপারে কাউকে সন্দেহ করা হয় নাই। তবে ফারুক সাহেব তার মা, ভাই, বোন, ভগ্নিপতি ও তার স্ত্রীকে বলে এটা সাইফুল ইসলাম সিজারের কাজ। সে ছাড়া আর কেউ করতে পারে না।" (underlining is mine).

21. At this stage it is also found that Mili used her own account to pay a sum to pay off (in part) Seizure and that Seizure threatened Faruk, pointing a Pistol at him and allegedly sent '*Kafan cloth*' (a pice of cloth used to wrap a dead body for burial). This Seizure was found in the aforesaid play ground on 11.04.2008 alongwith Faysal, Firoz, and 3/4 unknown persons showing seizure's possible involvement in this case. vide statement of Mofazzal made before the Magistrate under section 164 Cr. P.C.

22. Besides, these situations, considered together disclose motive, pre-concert and preparation on the part of Seizure alongwith Faysal and Firoz Shah, although all these are questions of facts and circumstance which the prosecution will have to prove at the time of trial. However, it is to be noted here that the apprehension in the mind of Faruk that, Seizure had been doing all these things to frighten him was told to his wife Mili and others. This fact again shows that Mili was always trusted to Faruk, inspite of her alleged illicit relationship with Faysal.

23. Considering all these facts and circumstances, the prosecution case does not disclose any motive on the part of Mili or her participation any where in the chain of events from preparation to the killing of the victims, in between 11.04.2008 to 13.04.2008, or her taking part in the alleged pre-concert to commit the murders. She was even not seen in the company of any one of the accused, as per the record. Rather she herself is a victim of this situation and has been widowed, alongwith two minor children, for killing her husband. Hence, so far as Mili is concerned the impugned proceeding, even if accepted as true and considered in its totality is apparently preposterous, vexations, oppressive, harrasing, based on mere suspicion and the same do not constitute any offence under section on 302/34/109. Accordingly, in my considered view, further prolongation of the impugned proceeding would amount to abuse of the process of the court and the same is tiable to be quashed otherwise to secure ends of justice. Besides, the motive on the part of Faysal and Seizure are their individual, independent and respective motive, Mili having nothing to do with that. Alleged illicit relationship of accused Fysal with Mili or her taking away some articles, as alleged in the F.I.R or her strained relation with her husband etcetra, even if taken as true, does not constitute any offence under section 302/34/109 of the Penal Code. She appears to have been implicated on mere suspicion by the informant because of the family feud. The settled law is that mere suspicions, however strong it might be, is not a substitute for evidence on which to base a conviction, vide 11 BLD (AD) 2 = 42 DLR (AD) 253. So, there is no ingredient on record to implicate Mili, so far the allegations under section 302/34/109 of the Penal Code is concerned. This case against Mili would amount to abuse of the process of the

court and the entire case stated against her, if taken to be true and considered in its totality, does not disclose the ingreclients of any offence under section 302/34/109 of the Penal Code. There is merit in this rule.

24. As to the questions of quorum non judice, I have examined the time limit prescribed under section 10 of the Druto Bichar Tribunal Ain, 2002. Only 66 working days have gone. Time limit prescribed has not yet expired. Even if it had expired the proceedings would not be without lawful jurisdiction. It should only be sent back to the court, from which it has been transferred, vide sub-section (3) of section 10. As such, there is no substance in this argument.

25. In the result, the rules issued in Criminal Miscellaneous Case No. 12884 of 2010 and 9733 of 2010 are hereby discharged. Stay granted at the time of issuance of these rules shall stand vacated and the rule issued in Criminal Miscellaneous Case No. 5240 of 2010 is made absolute and the impugned proceeding of Druto Bichar Case No. 01 of 2010, arising out of Gulshan Police Station Case No. 56 dated 14.04.2008 corresponding to G. R. No. 340 of 2008 under section 302/34/109 of the Penal Code, now pending in the court of Druto Bichar Tribunal No.1, Dhaka, is hereby quashed, so far as it relates to the petitioners, namely- Minara Akter Mili and Rabeya Begum. They are hereby discharged from the allegations brought against them.

The accused-petitioners shall be released from their respective bail bonds. Stay granted shall stand vacated as regards these two petitioners.

Communicate the order at once.

A.K.M. FAZLUR RAHMAN–J: I have heard the judgment dictated by my learned brother Mr. Md. Rezaul Hasan, J, by which the Rules issued in Criminal Miscellaneous Case Nos. 9733 and 12884 of 2010 have been discharged and the Rule issued in Criminal Miscellaneous Case No. 5240 of 2010 has been made absolute. Though I agree with his decision of discharging the Rules issued in aforesaid two cases, I respectfully differ with the reasoning given by him. I also respectfully disagree with his decision to make the Rule issued in Criminal Miscellaneous Case No. 5240 of 2010 absolute and quashing the impugned case relating to both the petitioners of that case. I agree with his decision to make the Rule absolute so far as it relates to petitioner no 2, Rabeya Begum and quashing the case so far as it relates her, (Rabeya Begum), but I respectfully disagree with the decision taken by him as to make the Rule absolute so far as it relates to petitioner no. 1 Mirana Aktar Mili and quashing the impugned case, so far as it relates to her (Mirana Aktar Mili). I also respectfully differ with his reasoning of making the Rule absolute relating to petitioner no. 2 Rabeya Begum. So I am delivering a separate judgment.

2. These three cases, in which the proceeding of same case has been sought to be quashed, have been heard together and are being disposed of by this single judgment.

On three separate applications under section 561A of the Code of Criminal Procedure, first one filed by accused-petitioner nos. (1) Mirana Aktar Milia and (2) Rabeya Begum, registered as Criminal Miscellaneous Case No. 5240 of 2010, second one filed by accused-petitioner Md. Amir Faisal, registered as Criminal Miscellaneous Case no. 9733 of 2010 and last one filed by accused -petitioner Md. Firoj Shah, registered as Criminal Miscellaneous Case No. 12884 of 2010, three separate Rules were issued calling upon the opposite party (state) to show cause as to why the proceeding of Druta Bichar Case No. 1 of 2010, arising out of Gulshan Police Station Case No. 56 dated 14-04-2008, corresponding to G.R Case No. 340 of 2008, pending in the Druta Bichar Tribunal No. 1, Dhaka, should not be quashed.

3. The facts relevant for the purpose of disposal of these three Rules, in brief, are that, informant Farhad Ahmed Bhuyain, on 14-04-2008 at 12-05 noon, lodged First Information Report with Gulshan police station of Dhaka Metropolitan Police, without naming any accused, alleging, *inter alia,* that his elder brother, Md. Faruk Ahmmad Bhuyain (the deceased), used to reside in United States of America for long. His wife Mirana Aktar Mili (accused-petitioner no. 1 of Criminal Miscellaneous Case No. 5240 of 2010) also would live with him there for ten years. Two years before the deceased with family returned to the country and started living with his wife and children at Flat no. A/2 (2nd floor) of House no.1, NAM building, at Banani. He leaving his wife and children there occasionally used to visit U.S.A. Since returning to the country his conjugal life became unhappy. Six months before the occurrence their strained relationship raised to the extreme. He would not like his wife's movement. In his absence Faisal (accused-petitioner of Criminal Miscellaneous Case No. 9733 of 2010), son of Rabeya Begum (petitioner no. 2 Criminal Miscellaneous Case No. 5240 of 2010), a resident of the contiguous flat, used to visit his (deceased's) flat and meet with his wife Mili. Illicit relationship between Faisal and Mili developed. The deceased, being aware of the same when pointed it to her she became furious and threatened to kill him. The deceased thinking future of his two children returned to the country from America two months before the occurrence. He found that his wife had removed valuables from his flat. Next day of his returning to the country his wife with her daughter Faria left his (deceased's) residence for the residence of her parents at Narayanganj. Later on she began to live in a separate rented house at Banani. In spite of his repeated request she did not return to him. On 12-04-2008 at 12-0 noon, when the deceased went to his wife's rented

residence to give her a car she abused her in filthy language and insulted him. The deceased leaving the car there for her returned. He informed this incident to the informant over telephone. He said that he apprehended that he would be killed by his wife. Next day on 13.04.2008 morning their mother being aware of it rang the deceased, but got no response. At this at 9-0 a.m. the informant and his sister's husband Firoj Alam came to the residence of the deceased and found his flat locked. They pressing the button of the calling bell and knocking at the door did not get any response. He (informant) then made a G.D. Entry at Gulshan Police Station, being G.D. Entry No. 1008 dated 13-04-2008 and at 10-00 p.m. in presence of the local people and police of Gulshan Police Station breaking open the door entered in the flat of the deceased and found the dead body of the deceased lying with cut injuries and besmeared with a pool of blood. He was found lying properly dressed with shoes, shirt and trousers. His mobile phone and cash of Taka 51,084/- were in tact in the pockets of his wearing trousers. In the kitchen the dead body of his domestic help, named Sumi, was lying. At any time from 10-0 a.m. of 12-04-2008 to 10-0 p.m. of 13-04-2008 they were brutally killed by unknown killers.

4. On the basis of that First Information Report Gulshan Police Station Case No. 56 dated 14-04-2008, corresponding to G.R. Case No. 340 of 2008, under sections 302/34 of the Penal Code, was started. Police after investigation of the case submitted charge sheet against ten accused. During investigation of the case the investigating officer recorded the statements of the father, mother, two sisters', two sister's husbands of the deceased and also of the informant under section 161 of the Code of Criminal Procedure. Accused Moffazal Hossain, the driver of accused Faizal, was arrested and his statement under section 164 of the Code of Criminal Procedure was recorded, who in his statement stated that Faisal had deep affair with Mili, who would mix with Faisal freely and they would go by the car driven by him wherever they liked even at night. On 11-04-2008 Faisal by the car driven by him went to Uttara, beside a play ground, where Faisal conspired with accused Firoj, Sizar and three/four unknown others. Next day Faisal gave him leave for two days. On 14-04-2008 in the morning he rang the mother of Faisal and could know that Faruk and his domestic help had been murdered and Faisal was arrested in that connection. The mother of Faisal asked him to join in his duty at once. At 5-12 a.m. when he resumed in duty, mother of Faisal, gave him 5/6 bags of different sizes belonged to Mili for shifting those to the residence of Rubi, a distant cousin and co-villager of Mili. Accordingly he carried those bags to the residence of Rubi at Mirpur by the car driven by him. On the day before killing Faruk and his domestic help, accused Faisal, Firoj, Sizar and unknown others

met at Uttar, wherein they planned and made conspiracy to kill Faruk.

5. It is stated in the charge sheet that Sizar, a cousin ('fufato bhai') of accused Mili, is a son of an industrialist, who used to visit U.S.A, oftenly when he would stay in the residence of Faruk. He had good terms with Faruk, who (Faruk) some how knowing the number of Sizer's credit card withdrew a large amount of U.S dollar from the account of Sizar, behind his knowledge. Subsequently Sizar could know it and claimed twenty thousand dollar to the deceased. Faruk paid Sizar two hundred dollar only. Sizar threatened Faruk to dire consequence for non-payment of the remaining amount. Once Sizar in presence of Mili pointed a pistol at Faruk for the unpaid dollar. The statements of witnesses Rubi and her husband Nizamul Haq were recorded under section 164 of the Code of Criminal Procedure, who admitted that accused Rabeya, mother of Faisal, kept five/seven locked bags in their residence, which at their request next day morning Muktar Ali, husband of accused Rabeya, took away.

6. The statement of Manir Gazi, a security guard of the place of occurrence building, was recorded under section 164 of the Code of Criminal Procedure, wherein he stated that while the deceased was in America, his wife Mili would go out with Faisal. On the date of occurrence at 12-0 noon the deceased with his car went out of the building. Some time after Faisal with his office peon, accused Firoj Shah, and three unidentified persons came to the place of occurrence building. Faisal said to him (Manir Gazi) that there was no need to register the names of those persons, who entered in the building with him (Faisal).

7. It is further stated in the charge sheet that while the deceased would stay in America, in his absence, illicit relationship between his wife Mili with Faisal had developed. Moreover Faisal's relationship with Faruk became strained as Faruk allegedly made some adverse remark against his mother (accused Rabeya) and circulated leaf lets and anonymous letters questioning her character. It is further stated in the charge sheet and also in the statement of Manir Gazi that accused Saiful Islam Sizar had enmity with deceased Faruk as Faruk withdrew a large amount of American dollor from sizar's credit card account behind his back. On those grounds accused Mili, Munni, Rabeya, Faisal and Sizar incollusion with Faisal's peon accused Firoj Shah, security guards Manir Gazi and Maznu Miah, and driver Mafazzal killed Faruk and his maid by hired killers.

On the basis of that charge sheet, the learned Metropolitan Magistrate, Dhaka took cognizance of the offence under sections 302/34/109 of the Penal Code against accused (1) Amir Faisal, (2) Saiful Islam Sizar, (3) Manir Gazi (4) Minara Aktar Mili, (5) Rabeya Begum, (6) Maznu Miah, (7) Mofazzal

Hossain, (8) Hanif Hossain, (9) Munni Begum and (10) Firoj Shah. and sent the case to the Metropolitan Sessions Judge, Dhaka for trial. The case was registered as Metropolitan Sessions Case No. 5263 of 2009 and transferred to the 1st Court of Metropolitan Additional Sessions Judge, Dhaka, for trial. Under section 6 of the Druta Bichar Tribunal Ain, 2002 the Government, publishing a notification in the official Gazette dated 01-11-2009, transferred the case to the Druta Bichar Tribunal No. 1, Dhaka, for trial. That Tribunal received the case on 20-01-2010 and remembered as it Druta Bichar Tribunal Case No. 1 of 2010. While the case was fixed in the Tribunal for hearing as to framing of charge, accused Mirana Aktar Mili and Rabeya Begum jointly filed one application, accused Md. Amir Faisal filed the second application and accused Firoj Shah filed another application under section 561A of the Code of Criminal Procedure for quashing the proceeding of that case, mainly on the grounds that there is no eye witness of causing death of deceased Faruk and his domestic helper Sumi, that none of the witnesses whose statements were recorded under section 161 of the Code of Criminal Procedure implicated the petitioners, that there is no direct or circumstantial evidence to connect the petitioners with the killing of deceased Faruk and his maid, that the F.I.R and charge sheet do not disclose any prima facie case against the petitioners and that the trial of the case could not be concluded within the prescribed period of 90 working days of receipt of the case by the Tribunal and as such continuation of the proceeding of the case is a sheer abuse of the process of the Court, to prevent which the case should be quashed in exercising inherent power of this Court under section 561A of the Code of Criminal Procedure . On those three separate applications under section 561A of the Code of Criminal Procedure three separate Rules as aforesaid were obtained.

8. Mr. M. Amirul Islam, the learned Senior Counsel appearing on behalf of accused Mirana Aktar Mili and Rabeya Begum, the petitioners of Criminal Miscellaneous Case No. 5240 of 2010, in support of the Rule issued in that case, submits that accused Mirana Akter Mili is the wife of deceased Faruk. At the material time she would not live with her deceased husband Faruk in the place of occurrence flat. She used to live in a rented apartment of a different building at Banani. Petitioner no. 2 Rabeya Begum, wife of Moktar Hossain and mother of accused Faisal, used to live in flat No D/2, situated just opposite of the residence of deceased Faruk. She is a house wife and a neighbour of the deceased. During investigation no direct or circumstantial evidence could be collected to connect these two accused petitioners (Mili and Rabeya) with the killing deceased Faruk and his maid. The F.I.R. and charge sheet do not disclose any prima facie case against them. So continuation of the proceeding of the case against them is

abuse of the process of the Court, to prevent which exercising the inherent power of this Court under section 561A of the Code of Criminal Procedure, the case so far as it relates to them should be quashed.

9. None appears on behalf of the petitioners of Criminal Miscellaneous Case Nos. 9733 and 12884 of 2010 to support the Rules issued in those cases.

Mrs Shakila Rowshan, the learned Deputy Attorney General, appearing on behalf of the opposite party, being assisted by Mr. Md. Nasir uddin Khan, the learned Advocate for the informant, opposes all the three Rules issued in the aforesaid three cases. She submits that the allegations against the petitioners as made in the charge sheet are that they with the aid and assistance of other accused persons committed the offences of murder intentionally causing death of Faruk and Sumi. Though there is no ocular evidence of commission of the offences, sufficient circumstantial evidence have been collected to connect the petitioners with the offences. Those circumstance are that while deceased Faruk used to live in America illicit relationship between his wife accused Mirana Aktar Mili with accused Faisal, son of accused Rabeya Begum, who used to live in the neighbouring flat, developed, that the deceased returning to the country from America lastly found that his wife accused Mili removed and concealed his valuables documents and articles, over that matter there was exchange of hot talks between them, Mili vandalized various articles and misbehaved with Faruk and his mother and ultimately left the residence of Faruk for her parent's house at Narayanganj, that some days after she started living in a rented house at Banani, that her relationship with deceased Faruk was animus, that Faruk before his death disclosed to his parents, brothers, sister's and the sister's husbands that his wife accused Mili would kill him and marry accused Faisal.

10. The learned Deputy Attorney General further submits that there is specific allegation that Faisal, Mili and Mili's cousin Sizar, with whom deceased Faruk had enmity, in collusion with other accused persons, including Firoj Shah, an office peon of Faisal, caused the death of deceased Faruk by hired killers. After the occurrence accused Mili never visited the place of occurrence and saw the dead body of her deceased husband. It is in the statement of accused Manir Gazi, the security guard, recorded under section 164 of the Code of Criminal Procedure, that on the date of occurrence accused Firoj Shah and three other unidentified persons with accused Faisal came to the place of occurrence building. It is in the statement of accused Mofazzal Hossain the driver of Faisal, recorded under section 164 of the Code of Criminal Procedure, that Faisal, Firoj Shaj and Sizer, with some unknown persons made conspiracy for killing Faruk standing in a play

ground at Uttara. The learned Deputy Attorney General urges that it is in the statement of accused driver Mofazzal that in the morning of 14-04-2008, that is, two days after the occurrence, accused Rabeya by the car driven by him shifted 5/6 bags containing valuable documents of Mili from her flat to the flat of Ruksana Ferdous Rubi, a distant relation of Mili, situated to the west of Mirpur Stadium No. 2. Witnesses Raksana Ferdous Rubi and her husband Nazmul Haq in their statements recorded under section 164 of the Code of Criminal Procedure supported that on 14-04-2008 accused Robeya and her driver Mofazzal came to their residence with 5/6 bags containing valuable papers allegedly belonged to accused Mili, the wife of deceased Faruk and left those bags in their residence and on their request next day morning Moktar Ali, husband of accused Rabeya, took away those bags from their residence . Witness Saifur Rahman, a resident of Landon in his statement recorded under section 161 of the Code of Criminal Procedure stated that while accused Faisal was in Landon, his mother Rabeya over telephone informed him (Faisal) that deceased Faruk by circulating anonymous letters and leaf lets gave out that she (Rebya) was a woman of questionable character, for which none inclined to rent any residence to her. Faisal became furious and requested his mother over telephone to have patience and assured her saying that he would teach Faruk a good lesson. The learned Deputy Attorney General adds that the period specified for conclusion of trail has not yet elapsed. Moreover failure to conclude trial within the specified time cannot be a ground for quashing of the case. If trial could not be concluded within the specified time, the case will be remanded to the court, wherefrom it was transferred to the Druta Bichar Tribunal. According to the Deputy Attorney General on the above grounds the proceeding of the impugned case is not liable to be quashed as sought for.

11. We have given our anxious consideration on the above submissions advanced by Mr. M. Amirul Islam, the learned Senior Counsel appearing on behalf of the petitioners of Criminal Miscellaneous Case No. 5240 of 2010, and the learned Deputy Attorney General appearing on behalf of the opposite party and gone through the F.I.R, the statements of the witnesses recorded under section 161 of the Code of Criminal Procedure, statements of witnesses Roksana Ferdous @ Rubi and her husband Nazmul Haq, accused Mofazzal Hossain (driver of accused Faisal) and Manir Gazi (security guard of place of occurrence building) recorded under section 164 of the Code of Criminal Procedure, charge sheet and all the orders passed by the Metropolitan Magistrate, Metropolitan Sessions Judge, Metropolitan Additional Sessions Judge, 1st Court, Dhaka, and Druta Bichar Tribunal no. 1, Dhaka, on different dates in the impugned case.

12. The pertinent question before us is whether the proceeding of the impugned case should be quashed in exercising the inherent power of this Court under section 561A of the Code of Criminal Procedure.

In the case of Abdul Quader Chowdhry Vs State 28 DLR (AD) 38, it is held;

"Ordinarily Criminal Proceedings instituted against an accused person must be tried under the provisions of the Code and said proceedings should not be generally interfered with at an interrogatory stage in exercise of the inherent jurisdiction provided under section 561A of the Code. But a pertinent question may be posed as to when and under what circumstances the said jurisdiction can and should be exercised by the High Court. The consensus of judicial opinion is that it is not possible, desirable or expedient to lay down any inflexible rule which should govern the exercise of this inherent jurisdiction. The exercise of this jurisdiction will depend upon the facts and circumstances of each case. Interference even at an initial stage may be justified where the facts are so preposterous that even on the admitted facts no case can stand against the accused and that a further prolongation of the prosecution would amount to harassment to an innocent party and abuse of the process of the Court. Besides some categories of cases may also be indicated where the inherent jurisdiction can and should be exercised for quashing the proceeding. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceeding against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceeding would secure the ends of justice. If the criminal proceedings in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appear that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceedings on that ground. Cases may also arise where the allegations in the First Information Report or the complaint even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged, in such cases no question of appreciating evidence arises, it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such case it would be legitimate for the High Court to hold that it would be manifestly unjust to allow process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be invoked may also rise. In cases falling under this category

the allegations made against the accused person do constitute an offence alleged, but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge."

In the case of Ali Akkas Vs. Enayat Hossain and others, 17 BLD (AD) 44, it is held,

"In the case of Abdul Quader Chowdhury and others vs. The State, reported in 28 DLR(AD) 38, this Division has clearly spelt out the categories of cases where the High Court Division should interfere to quash a criminal proceeding. In that decision this Division observed as follows :-

(1) Interference even at an initial stage may be justified when the facts are so preposterous that even on the admitted facts no case stands against the accused.

(2) Where institution or continuance of criminal proceedings against an accused person may amount to an abuse of the process of the Court or when quashing of the impugned proceeding would secure ends of justice.

(3) Where there is a legal bar against institution or continuance of a criminal case against an accused person.

(4) In a case where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged and in such cases no question of weighing and appreciating evidence arises.

(5) The allegations made against the accused person do constitute an offence alleged, but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge."

13. The facts of the instant case are not so preposterous that even on admitted facts no case stands against the petitioners. The institution and continuance of the proceeding do not amount to an abuse of the process of the Court, nor barred by any law. It is not a case in which the allegations made in the F.I.R. and charge sheet do not constitute any offence. The allegations made therein constitute offences of double murder.

14. It is alleged in the F.I.R. and charge sheet that at any time from 10-0 a.m. of 12-04-2008 to next day morning deceased Faruk and his maid Sumi were killed in the residence of Faruk at flat no. A/2 (2nd floor) of House no. 1 of NAM Building at Banani. There is no eye witness of the occurrence. So exact time and manner of the occurrence is not known . In the morning of 13-04-2008 informant Farhad Bhuiyan, brother of deceased Faruk and his sister's husband Firoj Alam found the flat of deceased Faruk

locked. They pressing the button of calling bell and knocking at the door did not get any response. Then they making a G.D. Entry in the local police station, in presence of the police and local people breaking open the main door of entrance in the flat, entered therein and found the dead bodies of Faruk and Sumi lying with injures and besmeared with pool of blood. They were killed secretly. There is no eye witness of their killing. Thus undisputedly the offences of double murder were committed.

15. The prosecution sought to connect the accused petitioners with such offence by some circumstances. The circumstances are that when Faruk used to live abroad illicit relationship between his wife accused Mili and accused Faisal, of the neighbouring flat, developed, that accused Mili would mix with Faisal freely, that she would go out with Faisal according to their desire at any time and they would remain out side till mid night, that deceased Faruk raised objection against such dealings of his wife, who abused Faruk, misbehaved with his mother, vandalized various domestic articles and threatened to kill him (Faruk), that their matrimonial tie cracked, that Mili left Faruk's residence and lived in a rented apartment, that their relationship was very much animus, that in absence of the deceased accused Mili allegedly shifted many valuables from his (deceased's) residence, that one day before the occurrence Mili abused Faruk when he went to her residence to give her a car, that she refused to accept the car, that before death Faruk expressed to his parents, brothers, sister's and sisters' husbands as to his apprehension that he might be killed by his wife to get her married with Faisal and that even after the occurrence Mili did not go to the place of occurrence to see the dead body of her deceased husband.

16. There is specific allegation that Faisal, Firoj Shah and Sizar made conspiracy to kill the deceased with some unidentified hired killers, that on the date of occurrence accused Firoj Shah, Sizar and three unknown persons entered in the place of occurrence building with Faisal, when Faisal told the security guard of the building not to enter the names of those persons in the visitors register maintained and that the relationship of Faisal with Faruk was hostile, who used to give out that he would teach Faruk a good lesson.

17. The above circumstances disclose a strong prima facie case against petitioners Mili, Faisal and Firoj Shah. So there is no ground of quashing the proceeding of the impugned case against them. Moreover none appears on behalf of Faisal and Firoj Shah, (petitioners of Criminal Miscellaneous Case Nos . 9733 and 12884 of 2010) to press the Rules issued in those two cases.

18. The sessions case pending for trial in the 1st court of Metropolitan

Additional Sessions Judge, Dhaka, was transferred to the Druta Bichar Tribunal No. 1, Dhaka, by the Government under section 6 of the Druta Bichar Tribunal Ain 2002 by publication of a notification in the official Gazette on 01-11-2009. The Druta Bichar Tribunal received the case on 20-01-2010. Further proceeding of the case so far as it relates to accused petitioners Mili and Rabeya was stayed by this court by the order dated 03-03-2010 passed in Criminal Miscellaneous Case No. 5240 of 2010. The Tribunal in view of that order by the order dated 25-03-2010 stayed further proceeding of the entire case. The period of such stay was extended time to time. Now further proceeding of the case is stayed. By the order dated 20-04-2010 passed in Criminal Miscellaneous Case No 9733 of 2010 filed by accused Md. Amir Faisal further proceeding of the impugned case so far as it relates of accused Faisal was stayed. The period of such order of stay was extended time to time. Till now the proceeding of the case against him is stayed. By the order dated 29-04-2010 passed in Criminal Miscellaneous Case No. 12884 of 2010 further proceeding of the case so far as it relating to accused petitioner Firoj Shah was stayed. Such stay order is still in force. Thus it appears that before expiry of 90 working days from the date of receipt of the case by the Druta Bichar Tribunal further proceeding of the case so far as it relates to the accused petitioners was stayed. So it is not connect that trial of the case could not be concluded within the specified time. Even if trial could not be concluded within the specified time, that is, within (90 +30+15) = 135 working days of receipt of the case by the Tribunal, the proceeding of the case could not be quashed on that ground, but would go back to the Court wherefrom it was transferred to the Tribunal. In that view of the matter Mr. M. Amirul Islam, the learned Senior Counsel appearing on behalf of petitioners Mili and Rabeya has not pressed this ground.

19. Accused Rabeya is the mother of accused Faisal. She used to live in flat no. D/2 of the place of occurrence building, situated just opposite to flat No. A/2 of deceased Faruk. The prosecution has sought to connect her with the offence of causing death of Faruk and his maid by the circumstances that two days after the occurrence she (Rabeya) shifted 5/6 bags containing documents allegedly belonged to accused Mili from her residence to the residence of Ruksana Ferdous Rubi, a distant relation of Mili at Mirpur and next day husband of accused Rabeya took away those bags therefrom. Another circumstance attributed is that while her son accused Faisal was in abroad she over cell phone informed him (Faisal) that deceased Faruk circulated leaflets and anonymous letters touching her character for which every body was unwilling to rent any residence to her.

20. *Even if these facts and circumstances are taken at their face value*

and accepted in their entirety do not disclose accused-petitioner Rabeya's involvement in the offence. Thus the neither the F.I.R nor the charge sheet made out prima-facie case against accused Rabeya. There is no circumstance to connect her with the crime. So continuation of the case against her is a sheer abuse of process of the Court, to prevent which and to secure ends of justice, the proceeding of the case so far as it relates to her (Rabeya), should be quashed in exercising inherent power of this court under section 561A of the Code of Criminal Procedure. But as strong prima facie case against three other accused-petitioners, namely, Faisal, Firoj Shah and Mirana Akter Mili, has been made out, the proceeding of the impugned case so far as it relates to them should not be quashed.

In the result the Rules issued in Criminal Miscellaneous Case No. 9733 of 2010 and 12884 of 2010 are discharged.

The Rule issued in Criminal Miscellaneous Case 5240 of 2010 is made absolute in part and discharged in part. The Rule so far as it relates to accused petitioner Mirana Aktar Mili is discharged and so far as it relates to accused petitioner Rabeya Begum is made absolute.

The impugned Druta Bichar Tribunal Case No. 1 of 2010, corresponding to Dhaka Metropolitan Session Case No. 5263 of 2009, arising out of Gulshan Police Station Case No. 56 dated 14-04-2008 and G.R. Case No. 340 of 2008, pending in Druta Bichar Tribunal No. 1, Dhaka, so far as it relates to accused Rabeya Begum is hereby quashed.

The order passed in this case staying further proceeding of the impugned Druta Bichar Tribunal case earlier in hereby vacated. The case as against aforesaid three accused petitioners namely Mili, Faisal and Feroj Shah will proceed in accordance with law.

SYED A.B. MAHMUDUL HUQ–J: This dissenting judgment has been sent to this Bench for hearing and disposal by an order of Hon'ble Chief Justice dated 9.7.12. The case was posted in the list of this Court for hearing. Subsequently, I have heard the case at length. After closing hearing on 8.8.12 of the Rule, the delivery of the judgment was kept in abeyance. And on constitution of this bench, during vacation the judgment is being delivered today.

2. This rule in Criminal Misc. Case No 5240 of 2010, was issued on 03.03.10, at the instance of Minara Akter Mili and Rabeya Begum accused petitioners for quashing the proceeding of Druta Bichar Case No.1 of 10, arising out of Gulshan P.S. Case No.56, dated 14.4.08, corresponding to G.R. No. 340 of 08, under sections 302/34/109 of the Penal Code, pending in the court of Druta Bichar Tribunal No.1, Dhaka. The aforesaid Druta Bichar case arose out of an F.I.R. lodged by Md. Forhad Ahmed Bhuiyan,

on the allegations that his elder brother Md. Faruk Ahmed Bhuiyan was living in the U.S.A., for the last 10 years with his wife and had returned back to Dhaka two years back and started living in Nam Flat No.–A/2, in 3rd Floor, at Banani, under Gulshan Police Station, Dhaka, with his family. But he used to visit America often keeping his wife and children in the said flat. After return back of his brother from U.S.A there started a marital discord with his wife Minara Akter Mili, for the last sixteen months. The dispute reached at its climax. His brother used to complain against his wife, saying that, he did not like the style of living his wife, who, in his absence had mixed with one Faysal of a nearby flat. His brother also had enquired to his wife about her conduct, but his wife threatened his brother to cause his murder. His brother came to know about the mixing of his wife with Faysal while he was in America. But considering the future of his two kids, he decided to continue with the marriage with his wife, and for which he had returned back to Dhaka two months back. But on returning back Dhaka, he found that his wife had removed valuables from the house, and on the following day of return of his brothers, his wife had left the flat with children for her father's house. Thereafter, she started living in another rented house in Banani. Despite, his brother's several requests, she did not return back to his brother's flat. At about 12 O'clock on 12.04.2008, his brother went to his wife's house for giving her a car, but his brother's wife misbehaved and scolded him in filthy languages. His brother returned back to his house leaving the car, and then he had informed about the same to his mother over telephone, and had told her that this wife would kill him. On getting the said telephone call, being anxious his mother gave a call to the brother of the informant, over Mobile phone, but she did not get any response from his side. At 9, in the morning on 13.04.08, the informant along with his sister's husband Firoj went to the house of his brother, and pressed the door bell, but they did not get any response from inside and then they entered G.D. entry being no.1008 dated 13.4.08, with the Gulshan P.S., suspecting any untoward incidence might have occurred inside the flat. Gulshan thana police and some of the local inhabitants broke open the door of the flat, at about ten in the night, and dead body of his brother was found lying in front of the door inside the flat. The dead body was stained with blood, decomposed, and blood was oozing out. There were marks of indiscriminate chopping on the forehead, back, belly and chest of the deceased and it was wearing a pant, shirt and shoes. Three mobiles and amount of cash of Tk. 51084/-, were found in his pocket. In the kitchen, a dead body of house maid Sumi was found lying, and her legs were tied. The dead bodies were sent to the morgue after preparing inquest report. The informant suspected that

in between 12.04.08 to 13.04.08, at about 10 in the night or at any time, out of family feud his brother, and his house maid, Sumi were killed by assailants in pre-planned manner.

3. This information report gave rise to Gulshan Police Station Case No. 56, dated 14.04.08, under sections 302/34/109 of the Penal code. The police after investigation into the case, submitted charge sheet being No. 65 dated 5.2.09, against the accused petitioners and seven others, under sections 302/34/109 of the Penal Code. Thereafter, the case was transferred to the Druta Bichar Tribunal No.1, Dhaka, for trial, and it gave rise to Druta Bichar Case No.1 of 2010.

This rule was issued on 03.03.10, but the charges in the case was framed later on 18.03.10 under sections 302/34/109 of the Penal code. This rule was heard by a Division Bench of this Court comprising with Mr. Justice A.K.M. Fazlur Rahman, and Mr. Justice Md. Rezaul Hasan, along with the Rules issued in Criminal Misc. No. 9733 of 10, and 12884 of 10. The Rules in other two miscellaneous cases were discharged. The rule in instant Crl. Misc. No. 5240 of 10, was made absolute by Mr. Justice Md. Rezaul Hasan in his Judgment, but the rule was made absolute in part, and the rule was discharged by dissenting opinion, so far relating to accused petitioner Minara Aktar Mili passed by Mr. Justice A.K.M. Fazlur Rahman, differing with the reasoning and findings passed in the judgment of Mr. Justice Md. Rezaul Hasan.

4. I have heard Mr. M. Amir-ul Islam, learned Advocate, appearing in support of the rule in Misc. Case No. 5240 of 10. He placed the judgment passed by Mr. Justice Md. Rezaul Hasan, and also the dissenting judgment passed by Mr. Justice A.K.M. Fazlur Rahman, and he submits that the petitioner No.1, of the rule is an unfortunate wife of the victim. The marriage between the victim and the petitioner wife was subsisting. Although, in the information report, the informant stated about an allegation of a strained marital relationship between them. The informant suspected the wife, as one of the killers of the victim. The allegations as contained in the F. I. R., against her, are all imaginary. He submits that the informant is a brother of the victim, having conflicting interests with the surviving wife of his brother, because the victim was a wealthy man having enough money and property died leaving one son, one daughter, and a wife, to survive him, and they are all entitled to inherit the properties of the victim as his legal successors. The victim is also survived by his father, mother, sister and brother, The son and daughter are minors. He submits that although, it has been stated that the victim had a strained marital relationship, at a verge of termination of marriage. But, he submits, that there is no proof that the husband made any complain against his wife, and there is no

such record of any complaint. The allegations of strained marital relationship, and extra marital behavior of the wife, are all wild allegations and baseless made by informant. He submits that the allegation against the wife, and suspecting her as killer, are based as that she had not visited the dead body of the deceased husband. He submits that in course of investigation, it has been found that there was a conspiracy of the case at a certain place in Uttara, and it has been stated who had been in that conspiracy there. The investigation report contains that statements of witness were recorded under section 161 of Cr.P.C. and some accused recorded statements under section 164 Cr.P.C. The statements will show that none had implicated the accused wife in any conspiracy. None also implicated her at any stage, right from the conspiracy, till to the commission of offence. He submits that in this case charge has been framed against the accused petitioner and six others under sections 302/34/109 of the Penal Code. The prosecution has to prove the charges against the accused petitioner, but the allegations as has been made against this accused petitioner, cannot be proved, on the basis of the material of the case as because, she had no role in the conspiracy, on in the commission of the offence. The charges as has been framed will definitely fail. The case against the accused petitioner is therefore, a vexatious, and harassing, and the rule is liable to be made absolute, the proceedings of the case against the accused petitioner is liable to be quashed. He specifically submits that the ingredients of the sections 302,109, and 34 of the Penal Code are absent against this accused petitioner. The petitioner was not in the instigation, nor had she engaged any body nor had she any information of committing the murder. He lastly submits that according to the F.I.R., she was living apart from her husband, in a separate house, with her minor children since before and after return of the husband. It is the case that she did not go for living with her husband, despite requests from her husband. She was living separately. She had left at first for her parent's house, and then there from she had been living in a separate house in Banani, and she had no role in the occurrence. Mr. Munsurul Huq choudhury, learned Advocate appeared for the petitioner. He submits in the line, as that has been submitted by Mr. M. Amir-ul-Islam.

5. Mr. Abdul Baset Majumder, the learned Advocate appeared for the informant, to assist the D. A. G. Mr. Biswajit Debnath, for the State. The learned D. A. G. submits that in this case the rule was issued on 3.3.10, till when no charge was framed in the case. Of course, the charge, was framed on 18.3.10, as it appears from a supplementary affidavit filed by the informant side. The F.I.R. contains allegations against the wife. The marital relationship between the victim and his wife, was bitter, and there is

allegation in the F.I.R. that the wife had extra marital relation with one of the accused, and the wife had hatred toward her husband, who was later on found murdered in his house, and the investigation disclosed offence against the accused wife, and there is sufficient materials against the wife to proceed against her with the case. He submits that in this case, the petitioner has taken plea, which plea is a defense plea, and on such defense plea, the proceedings of the case cannot be quashed and referred the case reported on 5 BLT(AD) page 22 and he further submits that the charges was framed on 08.03.2010, while the rule was issued on 3.3.2010 when there was no charge. He cited the case of Nurul Islam, reported in 13 M.L.R.(AD) 184, and submits that the statements recorded under section 161 Cr.P.C, cannot be a substitute for evidence, and cited the case of Ali Akkas Vs. Enayet Hossain and others reported in 17 B.L.D. (SC) page 40. He submits lastly, that the ingredients of the sections 302/34/109 of the Penal Code are to be proved in the trial.

6. I have heard the learned advocates for the petitioner, and also the learned D.A.G. for state. Mr. Baset Majumder for the informant, who appeared to assistant the state. I have gone through the dissenting judgment delivered by Mr. Justice A.K.M. Fazlur Rahman, and also the judgment delivered by Mr. Justice Md. Rezaul Hasan. It appears in the dissenting judgment, the case reported in 28 D.L.R.(AD) page 38, Case of Ali Akkas Vs. Enayet Hossain and others, reported in 17 B.L.D,(AD) 44, have been considered, and by giving reasoning, the learned Judge has discharged the rule together with consideration of the facts revealed in the investigation. In the case of Ali Akkas Vs. Enayet Hossain and others, reported in 17 BLD (AD) 44, it has been held in quashing the proceeding, the High Court Division is only to see whether there are materials on record to shows that the allegations made in the F.I.R. and the charge-sheet do, in fact, constitute an offence, and not beyond that, and in that decision the case of Abdul Quader Chowdhury and others Vs. The State, reported in 28 D.L.R AD 38, was considered. On going through the decisions, it appears that in a case under section 561A, Cr.P.C, the court is to see only whether there are materials on record to show the allegation made in the F.I.R. and charge sheet do constitute any offence? I have carefully gone through the decisions, F.I.R., Charge-sheet and statements recorded under section 164 Cr.P.C. and other materials in the charge-sheet. It appears that the informant suspected the wife of the victim, as an accused to have committed the offence, because she had a strained marital relationship, and she had allegedly an extra-marital relationship with one of the neighbours of her flat, an accused in the case. The F.I.R was made by a brother of the victim, an in law of the wife. In the form of informa-

tion report none was suspected, as killer, but in the statement of F.I.R. there are allegations made against the wife, and she was suspected as one of the killers. It appears that the marriage had never been terminated by either side, and the petitioner was wife till the death of her husband. She is now a widow. It further appears from the statements recorded under section 161 Cr.P.c. that the victim had huge property in Bangladesh. He purchased 3 flats in Banani, one in his own name, one in the name of his father, and another in the name of his wife. The wife had been residing in the flat purchased in the name of the father of the victim by the victim, which flat, according to the F.I.R., the wife had left. She was living in a separate house in the neighborhood at Banani. The wife had visited the flat after the occurrence, with her son as per statements of charge sheeted witness Khatija Khatun, and S.M. Liton. Sahina Akter, another witness in charge-sheet, stated in her examination under section 161 Cr.P.C. that she was a tenant of the flat No. A-2, and after the death of Faruk Ahmed Bhuiyan, the brother, father and the wife of deceased claimed rents from her, but she did not pay them rent because, the real owner of the flat was not decided till then.

7. I have also seen the statements of witness recorded under section 164, Cr.P.C, and also the confessional statements made by the accused, in which I do not find any material to constitute an offence against the accused, and anything to show that on the allegations made in F.I.R, any role of the wife in the occurrence. In the aforesaid facts as revealed, in the investigation, and the F.I.R. and those facts being on the record of the case, as prosecution materials, and in the case the charge has been framed, and made part of the record, and the decisions of the case reported in 5 BLT AD page 22, Mosammat Rahela Khatun and others, and the case reported in 13 MLR AD page 184, do not apply in the case. Because, in the case charge has been already framed, and made part of the record, and that there has been prosecution report, and we have gone through the prosecution materials from the record, I am inclined to agree with the findings made by Mr. Md. Rezaul Hasan, J, in respect of the petitioner Minara Akter Mili, and accordingly, I am inclined to agree with the order of the learned Judge, making the rule absolute. Accordingly I concur with the reasoning's and findings and the order passed by Mr. Md. Rezaul Hasan, J.

In the result, the rule is made absolute and the proceedings against the accused petitioner Minara Akter Milis, is hereby quashed.

Cases cited:

* ***11 BLD (AD) 2.***
* ***42 DLR (AD) 253.***
* ***Abdul Kader Choudhury Vs. State 28 DLR (AD) 38.***
* ***Ali Akkas Vs. Enayet Hossain and others 17 BLD (AD) 44.***

বাংলাদেশ জাতীয় সংসদ

ঢাকা, ২২ সেপ্টেম্বর, ২০১৩/০৭ আশ্বিন, ১৪২০

সংসদ কর্তৃক গৃহীত নিম্নলিখিত আইনটি ২২ সেপ্টেম্বর, ২০১৩ (০৭ আশ্বিন, ১৪২০) তারিখে রাষ্ট্রপতির সম্মতি লাভ করিয়াছে এবং এতদ্বারা এই আইনটি সর্বসাধারণের অবগতির জন্য প্রকাশ করা যাইতেছেঃ

২০১৩ সনের ৩৩নং আইন

Bangla Academy Ordinance, 1978 রহিতপূর্বক সংশোধনসহ উহা পুনঃপ্রণয়ন ও সংহত করিবার উদ্দেশ্যে প্রণীত আইন

যেহেতু Bangla Academy Ordinance, 1978 (Ordinance No. XIX of 1978) রহিতপূর্বক সংশোধনসহ উহা পুনঃপ্রণয়ন ও সংহত করিবার উদ্দেশ্যে বিধান করা সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্বারা নিম্নরূপ আইন করা হইল:–

১। সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।– (১) এই আইন **বাংলা একাডেমি আইন, ২০১৩** নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। সংজ্ঞা।– বিষয় বা প্রসঙ্গের পরিপন্থি কোনো কিছু না থাকিলে, এই আইনে;–

(১) **"একাডেমি"** অর্থ ধারা ৩ এর অধীন প্রতিষ্ঠিত বাংলা একাডেমি;

(২) **"একাডেমির সভাপতি"** অর্থ ধারা ৬ এর অধীন নিযুক্ত একাডেমির সভাপতি;

(৩) **"তহবিল"** অর্থ একাডেমির তহবিল;

(৪) **"নির্ধারিত"** অর্থ বিধি বা প্রবিধান দ্বারা নির্ধারিত;

(৫) **"নির্বাহী পরিষদ"** অর্থ ধারা ২৩ এর অধীন গঠিত নির্বাহী পরিষদ;

(৬) **"নির্বাহী পরিষদের সভাপতি"** অর্থ ধারা ২৩ এর উপ-ধারা (১) এর দফা (ক) এ উল্লিখিত নির্বাহী পরিষদের সভাপতি;

(৭) **"প্রবিধান"** অর্থ এই আইনের অধীন প্রণীত প্রবিধান;

(৮) **"ফেলো"** অর্থ ধারা ৭ এ উল্লিখিত ফেলো ও সাম্মানিক ফেলো;

(৯) **"বিভাগ"** অর্থ ধারা ১২ এর অধীন গঠিত একাডেমির বিভাগ;

(১০) **"বিধি"** অর্থ এই আইনের অধীন প্রণীত বিধি;

(১১) **"মহাপরিচালক"** অর্থ ধারা ২৬ এর অধীন নিযুক্ত একাডেমির মহাপরিচালক;

(১২) **"সাধারণ পরিষদ"** অর্থ ধারা ১৯ এর অধীন গঠিত একাডেমির সাধারণ পরিষদ;

(১৩) **"সচিব"** অর্থ ধারা ৩০ এর অধীন নিযুক্ত একাডেমির সচিব;

(১৪) **"সদস্য"** অর্থ ধারা ৮ এ উল্লিখিত একাডেমির জীবন সদস্য ও সদস্য।

৩। একাডেমি প্রতিষ্ঠা, ইত্যাদি।– (১) এই আইন কার্যকর হইবার সঙ্গে সঙ্গে, এই আইনের উদ্দেশ্য পূরণকল্পে, বাংলা একাডেমি নামে একটি একাডেমি প্রতিষ্ঠিত হইবে।

(২) একাডেমি একটি সংবিধিবদ্ধ সংস্থা হইবে এবং ইহার স্থায়ী ধারাবাহিকতা ও একটি সাধারণ সীলমোহর থাকিবে এবং এই আইনের বিধানাবলি সাপেক্ষে ইহার স্থাবর ও অস্থাবর উভয় প্রকার সম্পত্তি অর্জন করিবার, অধিকারে রাখিবার ও হস্তান্তর করিবার ক্ষমতা থাকিবে এবং ইহা স্বীয় নামে মামলা দায়ের করিতে পারিবে এবং উক্ত নামে ইহার বিরুদ্ধেও মামলা দায়ের করা যাইবে।

৪। একাডেমির প্রধান কার্যালয়।– একাডেমির প্রধান কার্যালয় ঢাকায় থাকিবে।

৫। একাডেমি গঠন।– নিম্নবর্ণিত সদস্য সমন্বয়ে একাডেমি গঠিত হইবে, যথা:–

(ক) একাডেমির সভাপতি;

(খ) নির্বাহী পরিষদের সভাপতি;

(গ) ফেলো; এবং

(ঘ) সদস্য।

৬। একাডেমির সভাপতি নিয়োগ, মেয়াদ, পদত্যাগ, অপসারণ, ইত্যাদি।– (১) রাষ্ট্রপতি একাডেমির সভাপতি নিয়োগ করিবেন।

(২) প্রথিতযশা শিক্ষাবিদ, পন্ডিত, সাহিত্যিক অথবা স্বাধীনতা পদক বা একুশে পদকপ্রাপ্ত ব্যক্তিগণের মধ্য হইতে একাডেমির সভাপতি নিযুক্ত হইবেনঃ

তবে শর্ত থাকে যে, বাংলাদেশের নাগরিক নহেন এমন কোনো ব্যক্তিকে সভাপতি হিসাবে নিয়োগ করা যাইবে না।

(৩) একাডেমির সভাপতি তাহার কার্যভার গ্রহণের তারিখ হইতে ৩(তিন) বৎসর মেয়াদে স্বীয় পদে অধিষ্ঠিত থাকিবেন।

(৪) একাডেমির সভাপতি যে কোনো সময়ে রাষ্ট্রপতির উদ্দেশে স্বাক্ষরযুক্ত পত্রযোগে স্বীয় পদ ত্যাগ করিতে পারিবেন।

(৫) এই আইন লঙ্ঘন বা গুরুতর অনিয়ম বা অসদাচরণের অভিযোগে সাধারণ পরিষদের দুই-

তৃতীয়াংশ সদস্য একাডেমির সভাপতির বিরুদ্ধে লিখিতভাবে অনাস্থা জ্ঞাপন করিলে, নির্বাহী পরিষদ উহা রাষ্ট্রপতির নিকট প্রেরণ করিবে এবং রাষ্ট্রপতি স্বীয় বিবেচনায় তাহাকে অপসারণের লক্ষ্যে প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবেন।

(৬) সভাপতির পদ শূন্য হইলে কিংবা অনুপস্থিতি, অসুস্থতা বা অন্য কোনো কারণে সভাপতি তাহার দায়িত্ব পালনে অসমর্থ হইলে শূন্য পদে নবনিযুক্ত সভাপতি কার্যভার গ্রহণ না করা পর্যন্ত কিংবা সভাপতি পুনরায় স্বীয় দায়িত্ব পালনে সমর্থ না হওয়া পর্যন্ত, নির্বাহী পরিষদের সিদ্ধান্তের আলোকে একজন ফেলো সভাপতির দায়িত্ব পালন করিবেন।

৭। ফেলো।– (১) একাডেমি কর্তৃক সাহিত্য পুরস্কারপ্রাপ্ত প্রত্যেক ব্যক্তি, নির্বাহী পরিষদের অনুমোদনক্রমে, একাডেমির ফেলো হইবেন।

(২) ভাষা, সাহিত্য, সংস্কৃতি, বিজ্ঞান, শিল্পকলা, সামাজিক বিজ্ঞান বা জ্ঞানের বিশেষ ক্ষেত্রে গুরুত্বপূর্ণ মৌলিক অবদান রাখিয়াছেন এমন কোনো ব্যক্তিকে নির্ধারিত পদ্ধতিতে নির্বাহী পরিষদ কর্তৃক সাম্মানিক ফেলো করা যাইবে:

তবে শর্ত থাকে যে, কোনো ব্যক্তিকে মরণোত্তর সাম্মানিক ফেলো করা যাইবে না।

(৩) এক খ্রিষ্টীয় বৎসরে সর্বোচ্চ ৭(সাত) জন ব্যক্তিকে সাম্মানিক ফেলো করা যাইবে।

(৪) কোনো ফেলোকে একাডেমির সভাপতি হিসাবে নিয়োগ করা হইলে, যতদিন পর্যন্ত তিনি সভাপতি হিসাবে দায়িত্ব পালন করিবেন, ততদিন পর্যন্ত ফেলো হিসাবে তাহার ভোটাধিকার স্থগিত থাকিবে।

(৫) কোনো ফেলো মহাপরিচালকের উদ্দেশে স্বাক্ষরযুক্ত পত্রযোগে ইস্তফা দিতে পারিবেন।

৮। জীবনসদস্য ও সদস্য।– (১) ভাষা, সাহিত্য, সংস্কৃতি, বিজ্ঞান, শিল্পকলা, সাংবাদিকতা, সামাজিক বিজ্ঞান অথবা জ্ঞানের বিশেষ ক্ষেত্রে বিশেষ অবদান রহিয়াছে এবং যাহার বয়স কমপক্ষে ৩০(ত্রিশ) বৎসর পূর্ণ হইয়াছে, এইরূপ বাংলাদেশের কোনো নাগরিক নির্ধারিত পদ্ধতিতে একাডেমির জীবন সদস্য ও সদস্য পদ লাভ করিতে বা অব্যাহতি গ্রহণ করিতে পারিবেন।

(২) এক খ্রিষ্টীয় বৎসরে সর্বোচ্চ ২১(একুশ) জন ব্যক্তিকে সদস্য করা যাইবে:

তবে শর্ত থাকে যে, প্রতি তিন খ্রিষ্টীয় বৎসরে সদস্যের সংখ্যা, উক্ত তিনবৎসর কাল শুরু হইবার পূর্বে মোট সদস্য সংখ্যা যাহা ছিল, উহা হইতে ৫(পাঁচ) শতাংশের অধিক বৃদ্ধি করা যাইবে না।

(৩) কোনো সদস্যের সদস্যপদ কোনো কারণে বাতিল হইলে, সদস্যপদ হইতে অব্যাহতি গ্রহণ বা সদস্যপদ হইতে পদত্যাগ করিলে তিনি পুনর্বার সদস্য হইতে পারিবেন না।

৯। সদস্যপদ বাতিল।– একাডেমি নিম্নবর্ণিত কোনো কারণে কোনো সদস্যের সদস্যপদ বাতিল করিতে পারিবে, যথা:–

(ক) নৈতিক স্খলনজনিত কোনো ফৌজদারি অপরাধে দোষী সাব্যস্ত হইয়া অন্যূন ৬(ছয়) মাস কারা দণ্ডে দণ্ডিত হইলে;

(খ) একাডেমির স্বার্থ বা আদর্শের পরিপন্থি কোনো কর্মকাণ্ডের সহিত জড়িত থাকিলে;

অথবা

(গ) সদস্যপদ প্রাপ্তির জন্য নির্ধারিত যোগ্যতার সহিত অসঙ্গতি দেখা দিলে।

১০। একাডেমির কার্যাবলি।– একাডেমির কার্যাবলি হইবে নিম্নরূপ, যথাঃ–

(১) জাতীয় আশা আকাঙ্খার সহিত সঙ্গতি রাখিয়া বাংলা ভাষা, সাহিত্য ও সংস্কৃতির উন্নয়ন, লালন ও প্রসার সাধন;

(২) দ্রুত পরিবর্তনশীল ও প্রযুক্তিগত পরিবর্তন ও সম্প্রসারণের সহিত সঙ্গতি রক্ষা করিয়া এবং একই সঙ্গে, বাংলা ভাষার গৌরবময় ঐতিহ্য সমুন্নত রাখিয়া জীবনের সর্বস্তরে এবং জ্ঞানচর্চার সর্বক্ষেত্রে বাংলা ভাষার প্রচলন, ব্যবহার ও বিকাশের জন্য প্রয়োজনীয় উদ্যোগ গ্রহণ ও সহায়তা প্রদান;

(৩) বাংলা ভাষার প্রামাণ্য অভিধান, পরিভাষা ও ব্যাকরণ রচনা, রেফারেন্স গ্রন্থ, গ্রন্থপঞ্জি এবং বাংলা ভাষায় বিশ্বকোষ প্রণয়ন, প্রকাশন ও সহজলভ্যকরণ;

(৪) বিজ্ঞান ও প্রযুক্তির ক্ষেত্রে বাংলা ভাষার ব্যবহার ব্যাপকতর ও সমৃদ্ধতর করিবার উদ্দেশ্যে ব্যবস্থা গ্রহণ;

(৫) বাংলা শব্দের প্রমিত বানান ও উচ্চারণ নির্ধারণের জন্য প্রয়োজনীয় ব্যবস্থা গ্রহণ;

(৬) বাংলা সাহিত্যের সমৃদ্ধি সাধনকল্পে উন্নতমানের গবেষণা পরিচালনা এবং সৃষ্টিশীল ও গবেষণাধর্মী গ্রন্থ প্রকাশ এবং তদুদ্দেশ্যে প্রয়োজনীয় ব্যবস্থা গ্রহণ;

(৭) বাংলা ভাষা, সাহিত্য ও সংস্কৃতি সম্যকরূপে অনুধাবনের সুবিধার্থে বাংলা ভাষার সহিত সম্পর্কযুক্ত অন্যান্য ভাষা চর্চা এবং উক্তরূপ ভাষা ও উক্তরূপ ভাষায় লিখিত সাহিত্য বিষয়ে গবেষণার ব্যবস্থা গ্রহণ;

(৮) বাংলা ভাষা ও সাহিত্যের বিবর্তন ও উহার ইতিহাস রচনা বিষয়ে গবেষণা ও প্রকাশনার সুযোগ সৃষ্টি করা এবং এই ক্ষেত্রে বাংলাদেশের বাহিরে কোনো উল্লেখযোগ্য কর্ম সম্পাদিত হইয়া থাকিলে উহার সহিত পরিচয় ও প্রয়োজনে, সমন্বয়ের ব্যবস্থা গ্রহণ;

(৯) বাংলা ভাষায় উচ্চতর পর্যায়ে পাঠ্যপুস্তক রচনা করা ও জ্ঞানচর্চায় সহায়তা প্রদান এবং উক্ত উদ্দেশ্যে গবেষণা, অনুবাদ ও অন্যান্য প্রয়োজনীয় ব্যবস্থা গ্রহণ;

(১০) আন্তর্জাতিক পরিমন্ডলে বাংলা সাহিত্যের প্রচার ও প্রসারের লক্ষ্যে বিশ্বের বিভিন্ন ভাষায় বাংলা সাহিত্যকর্মের অনুবাদের ব্যবস্থা করা এবং অন্যান্য ভাষার উল্লেখযোগ্য সাহিত্যকর্ম বাংলায় অনুবাদের ব্যবস্থা করা;

(১১) ভাষা-আন্দোলন এবং বাংলাদেশের স্বাধীনতা সংগ্রামের ইতিহাস সম্পর্কে গবেষণা, সংকলন ও গ্রন্থ প্রকাশের ব্যবস্থা করা;

(১২) আন্তর্জাতিক মাতৃভাষা ইনস্টিটিউটের সহিত যোগাযোগ রক্ষা করিয়া বিভিন্ন কার্যক্রম গ্রহণ;

(১৩) বাংলা ভাষা ও সাহিত্য, এবং বাংলাদেশের সংস্কৃতি ও জ্ঞানচর্চা বহির্বিশ্বে প্রচার ও পরিচিত করিবার জন্য বিদেশে সেমিনার ও বইমেলার আয়োজন করা এবং বিভিন্ন দেশে বাঙালি অভিবাসী এবং তাহাদের নূতন প্রজন্মের সহিত বাংলা ভাষা, সাহিত্য ও ঐতিহ্যের সংযোগ সৃষ্টির ব্যবস্থা গ্রহণ;

(১৪) বিদেশি বিশ্ববিদ্যালয়ের পাঠক্রমে বাংলা ভাষা ও সাহিত্য অন্তর্ভুক্ত করিবার জন্য সরকারকে উদ্যোগ গ্রহণের পরামর্শ প্রদান এবং বাংলা ভাষা, সাহিত্য ও সংস্কৃতি বিষয়ে প্রত্যক্ষ জ্ঞানলাভের উদ্দেশ্যে বিদেশের উৎসাহী ব্যক্তিদের আমন্ত্রণ;

(১৫) বাংলাদেশের ক্ষুদ্র নৃ-গোষ্ঠীসমূহের ভাষা, সাহিত্য ও সংস্কৃতির সংরক্ষণে সহায়তা করা এবং তাহাদের জীবন ও সংস্কৃতি বিষয়ে গ্রন্থ প্রকাশ;

(১৬) সাহিত্য পুরস্কার প্রদান এবং বাংলা ভাষা এবং বাংলাদেশের সাহিত্য ও সংস্কৃতি চর্চার ক্ষেত্রে আন্ত র্জাতিক পুরস্কার প্রবর্তন;

(১৭) বাংলা ভাষা সাহিত্য ও সংস্কৃতি বিষয়ে অধ্যয়ন ও গবেষণার জন্য বাংলা ভাষা, সাহিত্য, সংস্কৃতি ও ঐতিহ্য বিষয়ে পূর্ণাঙ্গ আধুনিক ও ডিজিটাল প্রযুক্তিসম্পন্ন গ্রন্থাগার স্থাপন এবং পৃথিবীর বিখ্যাত গ্রন্থাগারসমূহের সঙ্গে যোগাযোগ স্থাপন;

(১৮) দেশের সাংস্কৃতিক ঐতিহ্য সমৃদ্ধ করিবার ক্ষেত্রে লোকজ সংস্কৃতির সংগ্রহ, সংরক্ষণ, অধ্যয়ন ও গবেষণা জোরদারকরণ;

(১৯) যে কোনো বিষয়ে বাংলাদেশের প্রতিভাবান লেখক ও গবেষকদের সহায়তা প্রদান এবং বাংলা ভাষা ও সাহিত্যে মৌলিক গবেষণার জন্য বৃত্তি প্রদান;

(২০) ফেলো, জীবনসদস্য ও সদস্যপদ প্রদান;

(২১) সরকার কর্তৃক অনুরোধ করা হইলে সরকারি কর্মকর্তা ও কর্মচারীদের বাংলা ভাষায় দক্ষতা অর্জন, বাংলা বানান রীতি ও ব্যবহার সম্পর্কে বিশেষ প্রশিক্ষণের আয়োজন; এবং

(২২) এই আইনের উদ্দেশ্য পূরণকল্পে প্রয়োজনীয় অন্য কোনো কার্য সম্পাদন।

১১। মুখ্য প্রতিষ্ঠান।– বাংলা ভাষা প্রমিতকরণ ও উহার উৎকর্ষ সাধন এবং বাংলা ভাষার অভিধান প্রণয়নের জন্য একাডেমি মুখ্য প্রতিষ্ঠান হিসাবে গণ্য হইবে।

১২। একাডেমির বিভাগ।– (১) একাডেমির নিম্নবর্ণিত বিভাগ থাকিবে, যথা:–

(ক) গবেষণা, সংকলন এবং অভিধান ও বিশ্বকোষ;

(খ) অনুবাদ, পাঠ্যপুস্তক ও আন্তর্জাতিক সংযোগ;

(গ) জনসংযোগ, তথ্য প্রযুক্তিও প্রশিক্ষণ;

(ঘ) বিক্রয়, বিপণন ও পুনর্মুদ্রণ;

(ঙ) সংস্কৃতি, পত্রিকা ও মিলনায়তন;

(চ) গ্রন্থাগার;

(ছ) ফোকলোর, জাদুঘর ও মহাফেজখানা;

(জ) প্রশাসন, মানবসম্পদ উন্নয়ন ও পরিকল্পনা।

(২) নির্বাহী পরিষদ, সরকারের পূর্বানুমোদনক্রমে, উপ-ধারা (১) এ উল্লিখিত বিভাগের অতিরিক্ত বিভাগ গঠন এবং পুনর্বিন্যাস করিতে পারিবে।

(৩) একাডেমির প্রত্যেক বিভাগের দায়িত্ব ও কার্যাবলি প্রবিধান দ্বারা নির্ধারিত হইবে।

১৩। গবেষণা কেন্দ্র বা ইনস্টিটিউট স্থাপন।– জ্ঞানের কোনো বিশেষ বিষয়ে মৌলিক গবেষণা এবং উহার উৎকর্ষ সাধনের লক্ষ্যে, একাডেমি, সরকারের পূর্বানুমোদনক্রমে, গবেষণা কেন্দ্র বা ইনস্টিটিউট স্থাপন করিতে পারিবে।

১৪। মুদ্রণালয়।– একাডেমির একটি আধুনিক প্রযুক্তিনির্ভর মুদ্রণালয় থাকিবে, যাহা নির্ধারিত পদ্ধতিতে পরিচালিত হইবে।

(১৫) কোনো বিশ্ববিদ্যালয় বা প্রতিষ্ঠানের সহায়তা গ্রহণ, ইত্যাদি।– একাডেমি, প্রয়োজনে, নির্বাহী পরিষদের পূর্বানুমোদনক্রমে, ধারা ১০ এ উল্লেখকৃত কোনো কার্য সম্পাদনের জন্য কোনো বিশ্ববিদ্যালয়, গবেষণামূলক প্রতিষ্ঠান বা অনুরূপ অন্য কোনো প্রতিষ্ঠানের সাহায্য বা সহযোগিতা গ্রহণ করিতে পারিবে:

তবে শর্ত থাকে যে, উক্তরূপ বিশ্ববিদ্যালয় বা প্রতিষ্ঠান যদি বিদেশি বিশ্ববিদ্যালয় বা প্রতিষ্ঠান হয়, তাহা হইলে উক্তরূপ সাহায্য বা সহযোগিতা গ্রহণ করিবার পূর্বে সরকারের অনুমোদন গ্রহণ করিতে হইবে।

১৬। চেয়ার প্রতিষ্ঠা।– (১) একাডেমি, নির্ধারিত পদ্ধতিতে কিংবা বিধি বা প্রবিধান প্রণীত না হওয়া পর্যন্ত নির্বাহী পরিষদের সিদ্ধান্তক্রমে, বাংলা ভাষার জ্ঞানচর্চার ক্ষেত্রে চেয়ার প্রতিষ্ঠা করিতে পারিবে।

(২) উপ-ধারা (১) এর সামগ্রিকতাকে ক্ষুণ্ন না করিয়া, বাংলা ভাষা, সাহিত্য ও সংস্কৃতির ক্ষেত্রে অধিকতর অবদান রাখিতে পারিবেন, এইরূপ ব্যক্তিবর্গ যাহাতে উক্তরূপ অবদান রাখিবার সুযোগ লাভ করিতে পারেন সেই উদ্দেশ্যে বিশিষ্ট ব্যক্তিদের জন্য নির্ধারিত সময় ও পদ্ধতিতে একাডেমি, নির্বাহী পরিষদের সিদ্ধান্তক্রমে চেয়ার প্রতিষ্ঠা করিতে পারিবে।

১৭। পুরস্কার ও সম্মাননা প্রদান।– বাংলা ভাষা, সাহিত্য, সংস্কৃতি ও বাংলা ভাষার জ্ঞানচর্চার ক্ষেত্রে বিশেষ অবদানের জন্য একাডেমি, বিধি অনুযায়ী, পুরস্কার অথবা সম্মাননা প্রদান করিতে পারিবে :

তবে শর্ত থাকে যে, বাংলাদেশের নাগরিক নহেন এইরূপ ব্যক্তিকে পুরস্কার বা সম্মাননা প্রদানের ক্ষেত্রে সরকারের পূর্বানুমোদন গ্রহণ করিতে হইবে।

১৮। বিদেশী লেখক ও গবেষকদের আমন্ত্রণ।– এই আইনের উদ্দেশ্য পূরণকল্পে, একাডেমি, নির্বাহী পরিষদের সিদ্ধান্ত অনুসারে এবং সরকারের পূর্বানুমোদনক্রমে, বিদেশের বিশিষ্ট কোনো লেখক বা গবেষককে বাংলাদেশে আগমনের জন্য আমন্ত্রণ জানাইতে পারিবে।

১৯। সাধারণ পরিষদ।– একাডেমির একটি সাধারণ পরিষদ থাকিবে, যাহা নিম্নবর্ণিত ব্যক্তিগণের সমন্বয়ে গঠিত হইবে যথা:–

(ক) একাডেমির সভাপতি;

(খ) মহাপরিচালক;

(গ) ফেলো; এবং

(ঘ) সদস্য।

২০। সাধারণ পরিষদের দায়িত্ব।– (১) এই আইনের অন্যান্য বিধানসাপেক্ষে, একাডেমির সর্বময় কর্তৃত্ব সাধারণ পরিষদের উপর ন্যস্ত থাকিবে।

(২) সাধারণ পরিষদ একাডেমির কার্যাবলি তদারকি ও পর্যালোচনা করিবে এবং নির্বাহী পরিষদকে প্রয়োজনীয় দিক-নির্দেশনা প্রদান করিবে।

২১। সাধারণ পরিষদের সভা।– (১) এই ধারার অন্যান্য বিধানসাপেক্ষে, সাধারণ পরিষদ উহার সভার কার্য পদ্ধতি নির্ধারণ করিতে পারিবে।

(২) সাধারণ পরিষদের সকল সভা একাডেমিতে অনুষ্ঠিত হইবে এবং মহাপরিচালক, নির্বাহী পরিষদের সহিত আলোচনা ক্রমে, সভার তারিখ ও সময় নির্ধারণ করিবেন।

(৩) প্রতি বৎসর সাধারণ পরিষদের কমপক্ষে একটি সভা অনুষ্ঠিত হইবে।

(৪) একাডেমির সভাপতি সাধারণ পরিষদের সকল সভায় সভাপতিত্ব করিবেন এবং তাহার অনুপস্থিতিতে নির্বাহী পরিষদের সিদ্ধান্ত অনুসারে একজন ফেলো সভাপতিত্ব করিবেন।

(৫) সাধারণ পরিষদের সভার কোরামের জন্য কমপক্ষে এক-পঞ্চমাংশ সদস্যের উপস্থিতির প্রয়োজন হইবে।

(৬) সাধারণ পরিষদের আলোচ্য বিষয় মহাপরিচালক, নির্বাহী পরিষদের সহিত আলোচনাক্রমে, নির্ধারণ করিবেন।

(৭) সাধারণ পরিষদের প্রত্যেক সদস্যের একটি করিয়া ভোট থাকিবে এবং ভোটের সমতার ক্ষেত্রে সভায় সভাপতিত্বকারী ব্যক্তির দ্বিতীয় বা নির্ণায়ক একটি ভোট প্রদানের ক্ষমতা থাকিবে।

২২। তলবি সভা।– (১) সাধারণ পরিষদের কমপক্ষে এক-তৃতীয়াংশ সদস্য কোনো বিষয় বিবেচনার উদ্দেশ্যে তলবি সভা আহ্বান করিবার জন্য মহাপরিচালক লিখিতভাবে অনুরোধ করিবে, মহাপরিচালক, নির্বাহী পরিষদের সহিত আলোচনাক্রমে, অনূধর্ষ্ণ ১৫ (পনের) কার্যদিবসের মধ্যে তলবি সভার তারিখ ও সময় নির্ধারণ করিবেন।

(২) মহাপরিচালক উপ-ধারা (১) অনুযায়ী নির্দিষ্ট সময়ের মধ্যে তলবি সভা আহক্ষান করিতে ব্যর্থ হইলে, আহ্বানকারী সদস্যগণ উক্ত সময়সীমা অতিক্রান্ত হইবার

অব্যবহিত পরবর্তী ১৫ (পনের) কার্যদিবসের মধ্যে তলবি সভা অনুষ্ঠানের আয়োজন করিতে পারিবেন এবং উক্ত সময়সীমার মধ্যে সভা অনুষ্ঠিত না হইলে তলবি সভা বাতিল বলিয়া গণ্য হইবে।

(৩) তলবি সভা অনুষ্ঠানের অন্যূন ৭ (সাত) দিন পূর্বে উহার আলোচ্য বিষয় সংযুক্ত করিয়া সাধারণ পরিষদের সকল সদস্যকে বিজ্ঞপ্তি প্রদান করিতে হইবে।

(৪) তলবি সভার কোরামের জন্য সাধারণ পরিষদের অন্যূন অর্ধেক সদস্যের উপস্থিতির প্রয়োজন হইবে।

(৫) তলবি সভায় সাধারণ পরিষদের প্রত্যেক সদস্যের একটি করিয়া ভোট থাকিবে এবং ভোটের সমতার ক্ষেত্রে সভায় সভাপতিত্বকারী ব্যক্তির দ্বিতীয় বা নির্ণায়ক একটি ভোট প্রদানের ক্ষমতা থাকিবে।

২৩। নির্বাহী পরিষদ।– (১) একাডেমির একটি নির্বাহী পরিষদ থাকিবে, যাহা নিম্নবর্ণিত সদস্য সমন্বয়ে গঠিত হইবে, যথা:–

(ক) মহাপরিচালক, পদাধিকারবলে, যিনি ইহার সভাপতিও হইবেন;

(খ) সংস্কৃতি বিষয়ক মন্ত্রণালয় কর্তৃক মনোনীত অন্যূন যুগ্ম-সচিব পদমর্যাদার একজন কর্মকর্তা;

(গ) অর্থবিভাগ কর্তৃক মনোনীত অন্যূন যুগ্ম-সচিব পদমর্যাদার একজন কর্মকর্তা;

(ঘ) কোনো পাবলিক বিশ্ববিদ্যালয়ের বাংলা, ভাষাতত্ত্ব ও ইংরেজি বিভাগ এবং বিজ্ঞান অনুষদ হইতে সরকার কর্তৃক মনোনীত একজন করিয়া সর্বমোট চারজন অধ্যাপক;

(ঙ) সরকার কর্তৃক মনোনীত একজন বিশিষ্ট বিজ্ঞানী ও একজন বিশিষ্ট তথ্যপ্রযুক্তিবিদ;

(চ) নির্বাহী পরিষদ কর্তৃক মনোনীত একজন বিশিষ্ট সাহিত্যিক ও একজন বিশিষ্ট সমাজবিজ্ঞানী;

(ছ) ফেলোগণ কর্তৃক নির্বাচিত তিনজন ফেলো;

(জ) সাধারণ পরিষদ কর্তৃক নির্বাচিত চারজন সদস্য;

(ঝ) সচিব, যিনি ইহার সদস্য-সচিবও হইবেন।

(২) উপ-ধারা (১) এর দফা (ছ) ও (জ) এর অধীন যথাক্রমে, ফেলো ও সদস্য নির্বাচনের ক্ষেত্রে একটি করিয়া আসন মহিলাদের জন্য সংরক্ষিত থাকিবে এবং ফেলো বা সদস্য নির্বাচন, আচরণবিধি, ইত্যাদি বিধি দ্বারা নির্ধারিত হইবে।

(৩) উপ-ধারা (১) এর দফা (ছ) ও (জ) এর অধীন নির্বাচিত সদস্যগণ নির্বাচিত হইবার পর অনুষ্ঠিত নির্বাহী পরিষদের প্রথম সভার তারিখ হইতে ৩ (তিন) বৎসর মেয়াদের জন্য নির্বাহী পরিষদের সদস্য হইবেন এবং তাঁহারা ২ (দুই) মেয়াদের অধিক সদস্য হিসাবে নির্বাচিত হইতে পারিবেন না।

(৪) উপ-ধারা (১) এর দফা (ঘ), (ঙ) ও (চ) এর অধীন মনোনীত সদস্যগণ মনোনয়নের তারিখ হইতে ৩ (তিন) বৎসর মেয়াদে স্বীয় পদে বহাল থাকিবেন।

(৫) নির্বাহী পরিষদের কোনো সদস্য নির্বাহী পরিষদের সভাপতির নিকট স্বাক্ষরযুক্ত লিখিত পত্রযোগে নির্বাহী পরিষদের সদস্যপদ ত্যাগ করিতে পারিবেন।

(৬) পদত্যাগ বা অন্য কোনো কারণে নির্বাহী পরিষদের নির্বাচিত কোনো সদস্যের পদ শূন্য হইলে, উক্ত পদ শূন্য হইবার ৩০ (ত্রিশ) দিনের মধ্যে উক্ত পদ পূরণের জন্য নির্বাচন অনুষ্ঠিত হইবে এবং উক্তরূপে নির্বাচিত সদস্য অবশিষ্ট মেয়াদের জন্য বহাল থাকিবেন:

তবে শর্ত থাকে যে, শূন্য পদের অবশিষ্ট মেয়াদ যদি ৯০ (নব্বই) দিন বা তাহার কম হয়, তাহা হইলে শূন্য পদে নির্বাচন অনুষ্ঠিত হইবে না।

(৭) নির্বাহী পরিষদের মনোনীত সদস্যগণ সাধারণ পরিষদের সদস্য না হইয়া থাকিলে, তাঁহারা যতদিন নির্বাহী পরিষদের সদস্য থাকিবেন, ততদিনের জন্য সাধারণ পরিষদের সদস্য হিসাবে গণ্য হইবেন।

২৪। নির্বাহী পরিষদের কার্যাবলি।– (১) নির্বাহী পরিষদের কার্যাবলি হইবে নিম্নরূপ, যথা:–

(ক) এই আইনের উদ্দেশ্য পূরণকল্পে একাডেমিকে প্রয়োজনীয় নির্দেশনা ও পরামর্শ প্রদান;

(খ) একাডেমির লক্ষ্য ও উদ্দেশ্য অর্জনের জন্য প্রয়োজনীয় সিদ্ধান্ত গ্রহণ ও প্রয়োজনে, নীতি নির্ধারণ;

(গ) সাহিত্য, সংস্কৃতি, গবেষণা ও প্রযুক্তি সংক্রান্ত বিষয়ে প্রশিক্ষণের ব্যবস্থা গ্রহণ;

(ঘ) বার্ষিক প্রতিবেদন অনুমোদন; এবং

(ঙ) সরকার বা সাধারণ পরিষদ কর্তৃক প্রদত্ত অন্য কোনো দায়িত্ব পালন।

(২) নির্বাহী পরিষদ উহার কার্যাবলির জন্য সাধারণ পরিষদের নিকট দায়ী থাকিবে।

২৫। নির্বাহী পরিষদের সভা।– (১) নির্বাহী পরিষদের সভাপতির অনুমোদনক্রমে এবং নির্ধারিত পদ্ধতিতে সচিব নির্বাহী পরিষদের সভা আহ্বান করিবেন।

(২) প্রতি বৎসর নির্বাহী পরিষদের কমপক্ষে ৪ (চার) টি সভা অনুষ্ঠিত হইবে।

(৩) নির্বাহী পরিষদের সভাপতি নির্বাহী পরিষদের সকল সভায় সভাপতিত্ব করিবেন এবং তাঁহার অনুপস্থিতিতে তৎকর্তৃক মনোনীত নির্বাহী পরিষদের কোনো সদস্য সভায় সভাপতিত্ব করিবেন।

(৪) নির্বাহী পরিষদের সভার কোরামের জন্য কমপক্ষে এক-পঞ্চমাংশ সদস্যের উপস্থিতির প্রয়োজন হইবে।

(৫) নির্বাহী পরিষদের প্রত্যেক সদস্যের একটি করিয়া ভোট থাকিবে এবং ভোটের সমতার ক্ষেত্রে সভায় সভাপতিত্বকারী ব্যক্তির দ্বিতীয় বা নির্ণায়ক একটি ভোট প্রদানের ক্ষমতা থাকিবে।

২৬। মহাপরিচালক নিয়োগ, মেয়াদ, ইত্যাদি।– (১) একাডেমির একজন মহাপরিচালক থাকিবেন।

(২) বাংলাদেশের নাগরিক এইরূপ কোনো ফেলো অথবা প্রথিতযশা শিক্ষাবিদ বা গবেষকদের মধ্য হইতে সরকার মহাপরিচালক নিয়োগ করিবে এবং তাহার চাকুরির শর্তাবলি সরকার কর্তৃক স্থিরীকৃত হইবে।

(৩) মহাপরিচালক তাহার কার্যভার গ্রহণের তারিখ হইতে ৩ (তিন) বৎসর মেয়াদে স্বীয় পদে অধিষ্ঠিত থাকিবেন:

তবে শর্ত থাকে যে, একই ব্যক্তি দুই মেয়াদের অধিক নিয়োগ লাভ করিবেন না।

(৪) সরকারের উদ্দেশ্যে স্বাক্ষরযুক্ত পত্রযোগে মহাপরিচালক স্বীয় পদ ত্যাগ করিতে পারিবেন।

(৫) মহাপরিচালকের পদ শূন্য হইলে, বা অনুপস্থিতি, অসুস্থতা বা অন্য কোনো কারণে মহাপরিচালক তাহার দায়িত্ব পালনে অসমর্থ হইলে, নবনিযুক্ত মহাপরিচালক কার্যভার গ্রহণ না করা পর্যন্ত কিংবা মহাপরিচালক পুনরায় স্বীয় দায়িত্ব পালনে সমর্থ না হওয়া পর্যন্ত, সচিব অস্থায়ীভাবে নিজ দায়িত্বের অতিরিক্ত দায়িত্ব হিসাবে, ভারপ্রাপ্ত মহাপরিচালক হিসাবে দায়িত্ব পালন করিবেন।

২৭। মহাপরিচালকের দায়িত্ব।– মহাপরিচালক একাডেমির সার্বক্ষণিক কর্মকর্তা ও প্রধান নির্বাহী হইবেন এবং তিনি–

(ক) একাডেমির কার্যাবলি সম্পাদনের জন্য দায়ী থাকিবেন;

(খ) একাডেমির উন্নয়ন সংক্রান্ত বিষয়াদি ও প্রশাসনিক কার্যাবলির সার্বিক তত্ত্বাবধান ও পরিচালনা করিবেন;

(গ) নির্বাহী পরিষদের সকল সিদ্ধান্ত বাস্তবায়নের জন্য দায়ী থাকিবেন;

(ঘ) একাডেমির কার্যাবলি এবং নির্বাহী পরিষদের সিদ্ধান্তসমূহ একাডেমির সভাপতিকে নিয়মিত অবহিত করিবেন;

(ঙ) প্রতি অর্থ-বৎসরে একাডেমির কার্যক্রমের বার্ষিক প্রতিবেদন প্রস্তুত করিয়া উহা নির্বাহী পরিষদের অনুমোদনের জন্য উপস্থাপন করিবেন;

(চ) একাডেমির কার্যক্রমের বার্ষিক প্রতিবেদন নির্বাহী পরিষদের অনুমোদনক্রমে সাধারণ পরিষদের সভায় উপস্থাপন করিবেন;

(ছ) সাধারণ পরিষদ বা নির্বাহী পরিষদ কর্তৃক, সময়ে সময়ে, প্রদত্ত ক্ষমতা প্রয়োগ বা দায়িত্ব পালন করিবেন;

(জ) এই আইন ও তদধীন প্রণীত বিধি ও প্রবিধানের বিধান প্রতিপালন নিশ্চিত করিবেন।

২৮। মহাপরিচালকের অপসারণ।– (১) এই আইন লঙ্ঘন বা গুরুতর অনিয়ম বা অসদাচরণের অভিযোগে নির্বাহী পরিষদের দুই-তৃতীয়াংশ সদস্য লিখিতভাবে একাডেমির সভাপতির নিকট মহাপরিচালকের বিরুদ্ধে অনাস্থা জ্ঞাপন করিলে, একাডেমির সভাপতি উক্ত বিষয়ে যথাযথ ব্যবস্থা গ্রহণের জন্য সরকারকে অনুরোধ করিবেন এবং সরকার তাঁহাকে অপসারণের লক্ষ্যে প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবে।

(২) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, সরকার মহাপরিচালককে তাঁহার পদ হইতে অপসারণ করিতে পারিবে, যদি তিনি–

(ক) কোনো উপযুক্ত আদালত কর্তৃক দেউলিয়া ঘোষিত হন;

(খ) পারিশ্রমিকের বিনিময়ে স্বীয় দায়িত্ব-বহির্ভূত অন্য কোনো পদে নিয়োজিত হন;

(গ) কোনো উপযুক্ত আদালত কর্তৃক অপ্রকৃতস্থ ঘোষিত হন; বা

(ঘ) নৈতিক স্খলনজনিত কোনো ফৌজদারি অপরাধে দোষী সাব্যস্ত হন।

২৯। একাডেমির তহবিল।– (১) একাডেমির একটি তহবিল থাকিবে এবং উহাতে নিম্নবর্ণিত উৎস হইতে প্রাপ্ত অর্থ জমা হইবে, যথা:–

(ক) সরকার কর্তৃক প্রদত্ত অনুদান;

(খ) সদস্য কর্তৃক প্রদত্ত চাঁদা;

(গ) স্থানীয় কর্তৃপক্ষ, প্রতিষ্ঠান, কোম্পানী বা ব্যক্তি কর্তৃক প্রদত্ত অনুদান;

(ঘ) সরকারের পূর্বানুমোদনক্রমে, কোনো বিদেশি সরকার বা সংস্থা হইতে প্রাপ্ত অনুদান;

(ঙ) একাডেমি কর্তৃক প্রকাশিত পুস্তকাদির বিক্রয়লব্ধ অর্থ, দেশের ও দেশের বাহিরে অন্য কোনো সংস্থা কর্তৃক প্রকাশিত একাডেমির বইয়ের রয়্যালটি এবং বিক্রয়লব্ধ অর্থ;

(চ) সরকার বা সরকারি প্রতিষ্ঠান বা সংস্থার অনুরোধে প্রস্তুতকৃত পাণ্ডুলিপি, রচনা বা দলিলের জন্য প্রাপ্ত অর্থ;

(ছ) তহবিলের অর্থ বিনিয়োগের মাধ্যমে প্রাপ্ত আয়; এবং

(জ) অন্য কোনো বৈধ উৎস হইতে প্রাপ্ত অর্থ।

(২) তহবিলে জমাকৃত অর্থ এক বা একাধিক তফসিলি ব্যাংকে জমা রাখা যাইবে এবং বিধি দ্বারা নির্ধারিত পদ্ধতিতে তহবিল পরিচালিত হইবে।

ব্যাখ্যা।– "তফসিলি ব্যাংক" বলিতে Bangladesh Bank Order, 1972 (P.O. NO. 127 of 1972) এর Article 2(J) তে সংজ্ঞায়িত Scheduled Bank-কে বুঝাইবে।

(৩) তহবিল হইতে একাডেমির যাবতীয় ব্যয় নির্বাহ করা যাইবে।

(৪) সরকার কর্তৃক অনুমোদিত কোনো খাতে তহবিল বা উহার অংশ বিশেষ বিনিয়োগ করা যাইবে।

৩০। সচিব।– (১) একাডেমির একজন সচিব থাকিবেন, যিনি সরকার কর্তৃক নিযুক্ত হইবেন এবং তাঁহার চাকুরির শর্তাবলি সরকার কর্তৃক স্থিরীকৃত হইবে।

(২) সচিব একাডেমির সার্বক্ষণিক কর্মকর্তা হইবেন এবং তিনি–

(ক) মহাপরিচালকের সার্বিক তত্ত্বাবধান ও নির্দেশক্রমে সাধারণ পরিষদ ও নির্বাহী পরিষদের সিদ্ধান্ত বাস্তবায়নের জন্য দায়ী থাকিবেন; এবং

(খ) সাধারণ পরিষদ ও নির্বাহী পরিষদের নির্দেশ মোতাবেক একাডেমির অন্যান্য কার্য সম্পাদন করিবেন।

(৩) সচিবের পদ শূন্য হইলে, বা অনুপস্থিতি, অসুস্থতা বা অন্য কোনো কারণে সচিব তাঁহার দায়িত্ব পালনে অসমর্থ হইলে, নবনিযুক্ত সচিব কার্যভার গ্রহণ না করা পর্যন্ত কিংবা সচিব পুনরায় স্বীয় দায়িত্ব পালনে সমর্থ না হওয়া পর্যন্ত সরকার একাডেমির কোনো কর্মকর্তাকে সচিবের দায়িত্ব প্রদান করিতে পারিবে।

৩১। চুক্তিভিত্তিক বিশেষজ্ঞ পরামর্শক নিয়োগ।– (১) এই আইনের উদ্দেশ্য পূরণকল্পে, একাডেমি, নির্বাহী পরিষদের অনুমোদনক্রমে, চুক্তিভিত্তিক বিশেষজ্ঞ পরামর্শক নিয়োগ প্রদান করিতে পারিবে এবং এইরূপ বিশেষজ্ঞ পরামর্শক নিয়োগের ক্ষেত্রে সরকারি বিধি-বিধান অনুসরণ করিতে হইবে।

(২) উপ-ধারা (১) এর অধীন নিযুক্ত পরামর্শকের চুক্তির মেয়াদ হইবে ২ (দুই) বৎসর এবং কোনো ব্যক্তিকে দুই বারের বেশি চুক্তিভিত্তিক নিয়োগ প্রদান করা যাইবে না।

৩২। কর্মকর্তা, কর্মচারী নিয়োগ, ইত্যাদি।– (১) সরকার কর্তৃক অনুমোদিত সাংগঠনিক কাঠামো সাপেক্ষে, একাডেমি উহার কার্যাবলী সুষ্ঠুভাবে সম্পাদনের নিমিত্ত প্রয়োজনীয় সংখ্যক কর্মকর্তা ও কর্মচারী নিয়োগ করিতে পারিবে।

(২) একাডেমির কর্মকর্তা ও কর্মচারীদের নিয়োগ ও চাকুরির শর্তাবলি প্রবিধান দ্বারা নির্ধারিত হইবে।

৩৩। চুক্তি সম্পাদন।– এই আইনের উদ্দেশ্য পূরণকল্পে, একাডেমি, সরকারের পূর্বানুমোদনক্রমে, কোনো আন্তর্জাতিক সংস্থার সহিত চুক্তি, সমঝোতা স্মারক, স্কলার এক্সচেঞ্জ প্রোগ্রাম বা অনুরূপ কোনো কর্মকাণ্ড সম্পাদনের জন্য চুক্তি সম্পাদন করিতে পারিবে।

৩৪। ঋণ গ্রহণের ক্ষমতা।– একাডেমি, সরকারের পূর্বানুমোদনক্রমে, প্রয়োজনবোধে, কোনো বাণিজ্যিক ব্যাংক বা কোনো আর্থিক প্রতিষ্ঠান হইতে ঋণ গ্রহণ করিতে পারিবে এবং উহা পরিশোধ করিতে বাধ্য থাকিবে।

৩৫। ক্ষমতা অর্পণ।– (১) নির্বাহী পরিষদ উহার যে কোনো ক্ষমতা, প্রয়োজনবোধে, তৎকর্তৃক নির্ধারিত শর্তসাপেক্ষে, মহাপরিচালক অথবা সচিবকে অর্পণ করিতে পারিবে।

(২) মহাপরিচালক তাঁহার যে কোনো ক্ষমতা, প্রয়োজনবোধে, তৎকর্তৃক নির্ধারিত শর্তসাপেক্ষে, সচিব বা একাডেমির যে কোনো কর্মকর্তাকে অর্পণ করিতে পারিবেন।

৩৬। বার্ষিক বাজেট বিবরণী।– (১) একাডেমি, সরকার কর্তৃক নির্ধারিত সময়ের মধ্যে, প্রতি অর্থ বৎসরের সম্ভাব্য আয় ও ব্যয় এবং উক্ত অর্থ বৎসরে সরকারের নিকট হইতে কী পরিমাণ অর্থের প্রয়োজন হইবে উহা উল্লেখ করিয়া একটি বাজেট সরকারের অনুমোদনের জন্য পেশ করিবে।

(২) সরকারের পূর্বানুমোদন ব্যতীত সরকার কর্তৃক অনুমোদিত বাজেটের অর্থ এক খাত হইতে অন্য খাতে স্থানান্তর করা যাইবে না।

৩৭। হিসাবরক্ষণ ও নিরীক্ষা।– (১) সরকার কর্তৃক নির্ধারিত পদ্ধতিতে একাডেমি উহার হিসাবরক্ষণ করিবে এবং হিসাবের বার্ষিক বিবরণী প্রস্তুত করিবে।

(২) বাংলাদেশের মহা-হিসাব নিরীক্ষক ও নিয়ন্ত্রক প্রতি বৎসর একাডেমির হিসাব নিরীক্ষা করিবেন এবং নিরীক্ষা প্রতিবেদনের একটি করিয়া অনুলিপি সরকার ও একাডেমির নিকট প্রেরণ করিবেন।

(৩) এই ধারার অধীন হিসাব নিরীক্ষার উদ্দেশ্যে, বাংলাদেশের মহা-হিসাব নিরীক্ষক ও নিয়ন্ত্রক কিংবা তাঁহার নিকট হইতে এতদুদ্দেশ্যে ক্ষমতাপ্রাপ্ত কোনো ব্যক্তি অথবা উপ-ধারা (৪) এর অধীন নিযুক্ত চার্টার্ড একাউনটেন্ট একাডেমির সকল রেকর্ড, দলিল-দস্তাবেজ, নগদ বা ব্যাংকে গচ্ছিত অর্থ, জামানত ভাণ্ডার এবং অন্যবিধ সম্পত্তি পরীক্ষা করিয়া দেখিতে পারিবেন এবং নির্বাহী পরিষদের যে কোনো সদস্য বা একাডেমির যে কোনো কর্মকর্তা ও কর্মচারীকে জিজ্ঞাসাবাদ করিতে পারিবেন।

(৪) উপ-ধারা (২) এর অধীন হিসাব-নিরীক্ষা ছাড়াও Bangladesh Chartered Accountants Order, 1973 (P.O. No. 2 of 1973) এর Article 2(1) (b) তে সংজ্ঞায়িত চার্টার্ড একাউনটেন্ট দ্বারা একাডেমির হিসাব নিরীক্ষা করা যাইবে এবং এতদুদ্দেশ্যে একাডেমী এক বা একাধিক চার্টার্ড একাউনটেন্ট নিয়োগ করিতে পারিবে।

৩৮। প্রতিবেদন।– (১) প্রত্যেক অর্থ বৎসর সমাপ্তির ৯০ (নব্বই) দিনের মধ্যে মহাপরিচালক একাডেমির পূর্ববর্তী বৎসরে গৃহীত ও সম্পাদিত কার্যাবলির উপর একটি বাৎসরিক প্রতিবেদন প্রস্তুত করিয়া নির্বাহী পরিষদের নিকট উপস্থাপন করিবেন এবং নির্বাহী পরিষদের অনুমোদনক্রমে, বার্ষিক সাধারণ সভায় পেশ করিবেন।

(২) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, সরকার, প্রয়োজনে, যে কোনো সময়ে একাডেমির নিকট হইতে উহার যে কোনো বিষয়ে প্রতিবেদন বা বিবরণী আহ্বান করিতে পারিবে এবং একাডেমি সরকারের নিকট উহা সরবরাহ করিতে বাধ্য থাকিবে।

৩৯। তদন্তের ক্ষমতা।– (১) এই আইনের উদ্দেশ্য পূরণকল্পে, একাডেমির সার্বিক কর্মকান্ড বা কোনো বিশেষ বিষয়ে তদন্ত করিবার জন্য সরকার কমিটি গঠন করিতে পারিবে।

(২) কমিটি, সরকার কর্তৃক নির্ধারিত সময়ের মধ্যে, তদন্তের বিষয়ে উহার প্রতিবেদন সরকারের নিকট প্রদান করিবে, এবং উক্ত প্রতিবেদন বিবেচনাক্রমে সরকার, প্রয়োজনবোধে, একাডেমিকে যথাযথ ব্যবস্থা গ্রহণের নির্দেশ প্রদান করিতে পারিবে।

৪০। বিধি প্রণয়নের ক্ষমতা।– এই আইনের উদ্দেশ্য পূরণকল্পে, সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, বিধি প্রণয়ন করিতে পারিবে।

৪১। প্রবিধান প্রণয়নের ক্ষমতা।– এই আইনের উদ্দেশ্য পূরণকল্পে, একাডেমি, সরকারের পূর্বানুমোদনক্রমে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইন বা বিধির সহিত অসামঞ্জস্যপূর্ণ নহে, এইরূপ প্রবিধান প্রণয়ন করিতে পারিবে।

৪২। ইংরেজিতে অনুদিত পাঠ প্রকাশ।– (১) এই আইন কার্যকর হইবার পর সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, ইংরেজিতে অনুদিত এই আইনের একটি নির্ভরযোগ্য পাঠ (Authentic English Text) প্রকাশ করিবে।

(২) বাংলা ও ইংরেজি পাঠের মধ্যে বিরোধের ক্ষেত্রে বাংলা পাঠ প্রাধান্য পাইবে।

৪৩। রহিতকরণ ও হেফাজত।– (1) Bangla Academy Ordinance, 1978 (Ordinance No. XIX of 1978), অতঃপর উক্ত Ordinance বলিয়া উল্লিখিত, এতদ্বারা রহিত করা হইল।

(২) উপ-ধারা (১) এর অধীন রহিতকরণ সত্ত্বেও–

(ক) উক্ত Ordinance এর অধীন প্রতিষ্ঠিত Bangla Academy, অতঃপর বিলুপ্ত Academy বলিয়া উল্লিখিত, বিলুপ্ত হইবে;

(খ) এই আইনের অধীন নির্বাহী পরিষদ গঠিত না হওয়া পর্যন্ত উক্ত Ordinance এর অধীন গঠিত কার্যনির্বাহী পরিষদ একাডেমির নির্বাহী পরিষদ হিসাবে গণ্য হইবে;

(গ) বিলুপ্ত Academy-র সকল বিভাগ এই আইনের অধীন একাডেমির বিভাগ হিসাবে গণ্য হইবে;

(ঘ) বিলুপ্ত Academy-র সভাপতি, ফেলো, জীবনসদস্য ও সদস্যগণ যথাক্রমে, একাডেমির সভাপতি, ফেলো, জীবনসদস্য ও সদস্য বলিয়া গণ্য হইবেন; এবং

(ঙ) উক্ত Ordinance এর অধীন প্রণীত কোনো বিধি, জারিকৃত কোনো আদেশ, বিজ্ঞপ্তি বা প্রজ্ঞাপন, প্রদত্ত কোনো নোটিশ, পেশকৃত কোনো দরখাস্ত বা গৃহীত কোনো ব্যবস্থা অথবা কৃত বা চলমান কোনো কাজ-কর্ম এই আইনের বিধানাবলির সহিত সামঞ্জস্যপূর্ণ হওয়া সাপেক্ষে, রহিত বা সংশোধিত না হওয়া পর্যন্ত বলবৎ থাকিবে, এবং এই আইনের সংশ্লিষ্ট ধারার অধীন প্রণীত, জারিকৃত, প্রদত্ত, পেশকৃত, গৃহীত, কৃত বা চলমান বলিয়া গণ্য হইবে।

(৩) উক্ত Ordinance রহিত হইবার সঙ্গে সঙ্গে–

(ক) বিলুপ্ত Academy-র সকল সম্পদ, অধিকার, ক্ষমতা, কর্তৃত্ব ও বিশেষ অধিকার এবং ভূমি, ইমারত, নগদ স্থিতি, সংরক্ষিত তহবিল, বিনিয়োগ, সকল স্থাবর ও অস্থাবর সম্পত্তি এবং উক্ত সম্পত্তিতে বা উহা হইতে উদ্ভব অন্য সকল অধিকার ও স্বার্থ এবং সকল হিসাব বহি, রেজিস্টার, নথি-পত্রসহ সকল দলিলপত্র একাডেমির নিকট হস্তান্তরিত ও ন্যস্ত হইবে;

(খ) বিলুপ্ত Academy-র সকল ঋণ, দায় ও দায়িত্ব এবং উহার দ্বারা, উহার পক্ষে বা উহার সহিত সম্পাদিত সকল চুক্তি, যথাক্রমে, একাডেমির ঋণ, দায় ও দায়িত্ব এবং উহার দ্বারা, উহার পক্ষে বা উহার সহিত সম্পাদিত চুক্তি বলিয়া গণ্য হইবে;

(গ) বিলুপ্ত Academy-র বিরুদ্ধে বা তৎকর্তৃক দায়েরকৃত সকল মামলা একাডেমির বিরুদ্ধে বা একাডেমি কর্তৃক দায়েরকৃত মামলা বলিয়া গণ্য হইবে;

(ঘ) বিলুপ্ত Academy-র মহাপরিচালক, সচিবসহ সকল কর্মকর্তা ও কর্মচারী তাৎক্ষণিকভাবে একাডেমিতে স্থানান্তরিত হইবেন এবং তাঁহারা, ক্ষেত্রমত, সরকার বা একাডেমি কর্তৃক নিযুক্ত মহাপরিচালক, সচিব, কর্মকর্তা ও কর্মচারী বলিয়া গণ্য হইবেন এবং উক্তরূপ স্থানান্তরের পূর্বে তাঁহারা যে শর্তে চাকুরিতে নিয়োজিত ছিলেন, সরকার বা একাডেমি কর্তৃক পরিবর্তিত না হওয়া পর্যন্ত সেই একই শর্তে একাডেমির চাকুরিতে নিয়োজিত থাকিবেন।

মোঃ মাহফুজুর রহমান
সচিব।

বাংলাদেশ জাতীয় সংসদ

ঢাকা, ২২ সেপ্টেম্বর, ২০১৩/০৭ আশ্বিন, ১৪২০

সংসদ কর্তৃক গৃহীত নিম্নলিখিত আইনটি ২২ সেপ্টেম্বর, ২০১৩ (০৭ আশ্বিন, ১৪২০) তারিখে রাষ্ট্রপতির সম্মতি লাভ করিয়াছে এবং এতদ্বারা এই আইনটি সর্বসাধারণের অবগতির জন্য প্রকাশ করা যাইতেছেঃ–

২০১৩ সনের ৩৪ নং আইন

জন্ম ও মৃত্যু নিবন্ধন আইন, ২০০৪ এর অধিকতর সংশোধনকল্পে প্রণীত আইন

যেহেতু নিম্নবর্ণিত উদ্দেশ্যসমূহ পূরণকল্পে জন্ম ও মৃত্যু নিবন্ধন আইন, ২০০৪ (২০০৪ সনের ২৯ নং আইন) এর অধিকতর সংশোধন সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্বারা নিম্নরূপ আইন করা হইলঃ–

১। সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।– (১) এই আইন **জন্ম ও মৃত্যু নিবন্ধন (সংশোধন) আইন, ২০১৩** নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। ২০০৪ সনের ২৯নং আইনের ধারা ২ এর সংশোধন।– জন্ম ও মৃত্যু নিবন্ধন আইন, ২০০৪ (২০০৪ সনের ২৯নং আইন), অতঃপর উক্ত আইন বলিয়া উল্লিখিত, এর ধারা ২ এর–

(ক) দফা (খ) এর পরিবর্তে নিম্নরূপ দফা (খ) প্রতিস্থাপিত হইবে, যথাঃ–

"(খ) **"ইউনিয়ন পরিষদ"** অর্থ স্থানীয় সরকার (ইউনিয়ন পরিষদ) আইন, ২০০৯ (২০০৯ সনের ৬১ নং আইন) এর অধীন গঠিত কোন ইউনিয়ন পরিষদ;

(খ) দফা (ঘ) এর পরিবর্তে নিম্নরূপ দফা (ঘ) প্রতিস্থাপিত হইবে, যথাঃ–

"(ঘ) "কাউন্সিলর" অর্থ সিটি কর্পোরেশন বা পৌরসভার কোন কাউন্সিলর;";

(গ) দফা (চ) এর পরিবর্তে নিম্নরূপ দফা (চ) প্রতিস্থাপিত হইবে, যথাঃ–

"(চ) **"জন্ম বা মৃত্যু সনদ"** অর্থ নিবন্ধন বহিতে লিপিবদ্ধ তথ্যের ভিত্তিতে নিবন্ধক কর্তৃক প্রদত্ত জন্ম বা মৃত্যু সনদ;";

(ঘ) দফা (ট) এর পরিবর্তে নিম্নরূপ দফা (ট) প্রতিস্থাপিত হইবে, যথাঃ–

"(ট) **"নিবন্ধন বহি"** অর্থ হস্তলিখিত উপায়ে বা তথ্য প্রযুক্তির মাধ্যমে সৃজিত এমন কোন বহি,

যাহাতে কোন ব্যক্তির জন্ম বা মৃত্যুর তথ্য লিপিবদ্ধ করা হয়;";

(ঙ) দফা (ঠ) এর পরিবর্তে নিম্নরূপ দফা (ঠ) প্রতিস্থাপিত হইবে, যথাঃ–

"(ঠ) **"পৌরসভা"** অর্থ স্থানীয় সরকার (পৌরসভা) আইন, ২০০৯ (২০০৯ সনের ৫৮নং আইন) এর অধীন গঠিত কোন পৌরসভা;";

(চ) দফা (ড) এর পরিবর্তে নিম্নরূপ দফা (ড) প্রতিস্থাপিত হইবে, যথাঃ–

"(ড) **"প্রশাসক"** অর্থ স্থানীয় সরকার (সিটি কর্পোরেশন) আইন, ২০০৯ (২০০৯ সনের ৬০নং আইন) অথবা ক্ষেত্রমত, স্থানীয় সরকার (পৌরসভা) আইন, ২০০৯ (২০০৯ সনের ৫৮নং আইন) এর অধীন কোন প্রশাসক;";

(ছ) দফা (থ) এ উল্লিখিত "এবং" শব্দ বিলুপ্ত হইবে;

(জ) দফা (দ) এর পরিবর্তে নিম্নরূপ দফা (দ) প্রতিস্থাপিত হইবে, যথাঃ–

"(দ) **"সিটি কর্পোরেশন"** অর্থ স্থানীয় সরকার (সিটি কর্পোরেশন) আইন, ২০০৯ (২০০৯ সনের ৬০ নং আইন) এর অধীন প্রতিষ্ঠিত সিটি কর্পোরেশন; এবং";

(ঝ) দফা (দ) এর পর নিম্নরূপ দফা (ধ) সংযোজিত হইবে, যথাঃ–

"(ধ) **"রেজিস্ট্রার জেনারেল"** অর্থ ধারা ৭ক এর অধীন নিয়োগপ্রাপ্ত রেজিস্ট্রার জেনারেল।"।

৩। ২০০৪ সনের ২৯ নং আইনের ধারা ৪ এর প্রতিস্থাপন।– উক্ত আইনের ধারা ৪ এর পরিবর্তে নিম্নরূপ ধারা ৪ প্রতিস্থাপিত হইবে, যথাঃ–

"৪। **নিবন্ধক।**– (১) উপ-ধারা (২) এর বিধান সাপেক্ষে, জন্ম ও মৃত্যু নিবন্ধনের জন্য নিম্নবর্ণিত ব্যক্তিগণ নিবন্ধক হিসাবে দায়িত্ব পালন করিবেন, যথাঃ–

(ক) সিটি কর্পোরেশন এলাকায় জন্মগ্রহণকারী, মৃত্যুবরণকারী অথবা স্থায়ীভাবে বসবাসকারী ব্যক্তির ক্ষেত্রে সংশ্লিষ্ট কর্পোরেশনের মেয়র বা, ক্ষেত্রমত, প্রশাসক কর্তৃক, নির্ধারিত সময় ও অধিক্ষেত্রের জন্য, ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা বা কাউন্সিলর;

(খ) পৌরসভা এলাকায় জন্মগ্রহণকারী, মৃত্যুবরণকারী অথবা স্থায়ীভাবে বসবাসকারী ব্যক্তির ক্ষেত্রে সংশ্লিষ্ট পৌরসভার মেয়র বা, ক্ষেত্রমত, প্রশাসক বা তৎকর্তৃক, নির্ধারিত সময় ও অধিক্ষেত্রের জন্য, ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা বা কাউন্সিলর;

(গ) ইউনিয়ন পরিষদ এলাকায় জন্মগ্রহণকারী, মৃত্যুবরণকারী অথবা স্থায়ীভাবে বসবাসকারী ব্যক্তির ক্ষেত্রে সংশ্লিষ্ট ইউনিয়ন পরিষদের চেয়ারম্যান বা সরকার কর্তৃক, নির্ধারিত সময় ও অধিক্ষেত্রের জন্য, ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা বা সদস্য;

(ঘ) ক্যান্টনমেন্ট এলাকায় জন্মগ্রহণকারী, মৃত্যুবরণকারী অথবা স্থায়ীভাবে বসবাসকারী ব্যক্তির ক্ষেত্রে সংশ্লিষ্ট ক্যান্টনমেন্ট বোর্ডের নির্বাহী কর্মকর্তা বা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা;

(ঙ) বিদেশে জন্মগ্রহণকারী, মৃত্যুবরণকারী অথবা সরকার কর্তৃক সরকারি গেজেটে প্রজ্ঞাপন দ্বারা নির্দিষ্ট সময় বা তারিখ পর্যন্ত বিদেশে বসবাসরত কোন বাংলাদেশীর ক্ষেত্রে বাংলাদেশ দূতাবাসের রাষ্ট্রদূত কর্তৃক ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা।

(২) জন্ম ও মৃত্যু নিবন্ধনের জন্য একই এলাকায় একই সময়ে একাধিক ব্যক্তি নিবন্ধক হিসাবে দায়িত্ব পালন করিতে পারিবেন না।"।

৪। ২০০৪ সনের ২৯নং আইনের ধারা ৬ এর সংশোধন।– উক্ত আইনের ধারা ৬ এর দফা (গ) এর পরিবর্তে নিম্নরূপ দফা (গ) প্রতিস্থাপিত হইবে, যথাঃ–

"(গ) নিবন্ধন সংক্রান্ত কার্যাবলী, নথিপত্র এবং নিবন্ধন বহি সংরক্ষণ করা ;"।

৫। ২০০৪ সনের ২৯নং আইনে নূতন ধারা ৭ক এর সন্নিবেশ।– উক্ত আইনের ধারা ৭ এর পর নিম্নরূপ নূতন ধারা ৭ক সন্নিবেশিত হইবে, যথাঃ–

"**৭ক। রেজিস্ট্রার জেনারেল নিয়োগ, ইত্যাদি।**–(১) সরকার, এই আইনের উদ্দেশ্য পূরণকল্পে একজন রেজিস্ট্রার জেনারেল এবং প্রয়োজনীয় সংখ্যক কর্মকর্তা ও কর্মচারী নিয়োগ করিতে পারিবে এবং তাহাদের চাকুরির শর্তাবলী সরকার কর্তৃক স্থিরীকৃত হইবে।

(২) রেজিস্ট্রার জেনারেল এর দায়িত্ব ও কার্যাবলী বিধি দ্বারা নির্ধারিত হইবে।"।

৬। ২০০৪ সনের ২৯ নং আইনের ধারা ৮ এর সংশোধন।– উক্ত আইনের ধারা ৮ এর উপ-ধারা (২) এ উল্লিখিত "৩০ (ত্রিশ)" সংখ্যা, বন্ধনী ও শব্দের পরিবর্তে "৪৫ (পঁয়তাল্লিশ)" সংখ্যা, বন্ধনী ও শব্দ প্রতিস্থাপিত হইবে।

৭। ২০০৪ সনের ২৯ নং আইনের ধারা ৯ এর সংশোধন।– উক্ত আইনের ধারা ৯ এর উপ-ধারা (১) এর দফা (গ) এ উল্লিখিত "কমিশনার" শব্দের পরিবর্তে "কাউন্সিলর" শব্দ প্রতিস্থাপিত হইবে।

৮। ২০০৪ সনের ২৯ নং আইনের ধারা ১৫ এর প্রতিস্থাপন।– উক্ত আইনের ধারা ১৫ এর পরিবর্তে নিম্নরূপ ধারা ১৫ প্রতিস্থাপিত হইবে, যথাঃ–

"**১৫। নিবন্ধন বহি এবং জন্ম বা মৃত্যু সনদ সংশোধন, ইত্যাদি।**– (১) নিবন্ধন বহিতে বা, ক্ষেত্রমত, জন্ম বা মৃত্যু সনদে কোন ভুল তথ্য লিপিবদ্ধ হইয়া থাকিলে, উহা সংশোধনের জন্য নির্ধারিত ফিসহ সংশ্লিষ্ট নিবন্ধকের বরাবরে আবেদন করা যাইবে।

(২) জন্ম বা মৃত্যু সনদ প্রদানের ৯০ (নব্বই) দিনের মধ্যে উপ-ধারা (১) এর অধীন আবেদন প্রাপ্ত হইলে, নিবন্ধক উক্ত আবেদন প্রাপ্তির ৩০ (ত্রিশ) কার্যদিবসের মধ্যে–

(ক) আবেদন যথাযথ মনে করিলে–

(অ) নিবন্ধন বহি বা, ক্ষেত্রমত, জন্ম বা মৃত্যু সনদ সংশোধন করিবেন;

(আ) নিবন্ধন বহির সংশোধিত স্থানে তারিখসহ স্বাক্ষর প্রদান করিবেন; এবং

(ই) সংশোধিত আকারে একটি নূতন জন্ম বা মৃত্যু সনদ প্রদান করিয়া ইতিপূর্বে প্রদত্ত সনদ সংরক্ষণের উদ্দেশ্যে আবেদনকারীর নিকট হইতে ফেরত লইবেন;

(খ) আবেদন বিবেচনা করিবার যুক্তিসঙ্গত কারণ না থাকিলে, উক্ত আবেদন নামঞ্জুর করিয়া, উহা আবেদনকারীকে লিখিতভাবে অবহিত করিবেন।

(৩) জন্ম বা মৃত্যু সনদ প্রদানের ৯০ (নব্বই) দিন অতিক্রান্ত হইবার পর উপ-ধারা (১) এর অধীন আবেদন প্রাপ্ত হইলে, উক্ত আবেদন প্রাপ্তির ১০ (দশ) কার্যদিবসের মধ্যে ধারা ৪ এর উপ-ধারা (১) এর–

(অ) দফা (ক), (খ) ও (ঘ) এ উল্লিখিত নিবন্ধক সংশ্লিষ্ট জেলা প্রশাসক;

(আ) দফা (গ) এ উল্লিখিত নিবন্ধক সংশ্লিষ্ট উপজেলা নির্বাহী অফিসার; এবং

(ই) দফা (ঙ) এ উল্লিখিত নিবন্ধক রেজিস্ট্রার জেনারেল এর নিকট উহা বিবেচনার জন্য প্রেরণ করিবেন।

(৪) উপ-ধারা (৩) এর অধীন আবেদন প্রাপ্তির ১৫ (পনের) কার্যদিবসের মধ্যে, ক্ষেত্রমত, সংশ্লিষ্ট উপজেলা নির্বাহী অফিসার, জেলা প্রশাসক বা রেজিস্ট্রার জেনারেল উক্ত আবেদন পরীক্ষা করিয়া মঞ্জুর বা নামঞ্জুর আদেশ প্রদান করিয়া উক্ত আদেশ সংশ্লিষ্ট নিবন্ধকের বরাবরে প্রেরণ করিবেন।

(৫) উপ-ধারা (৪) এর অধীন আবেদন নামঞ্জুর হইলে সংশ্লিষ্ট নিবন্ধক উক্ত আদেশ প্রাপ্তির ৭ (সাত) কার্যদিবসের মধ্যে উহা আবেদনকারীকে লিখিতভাবে অবহিত করিবেন।

(৬) উপ-ধারা (৪) এর অধীন আবেদন মঞ্জুর হইলে সংশ্লিষ্ট নিবন্ধক উক্ত আদেশ প্রাপ্তির ৭ (সাত) কার্যদিবসের মধ্যে–

(অ) নিবন্ধন বহি বা, ক্ষেত্রমত, জন্ম বা মৃত্যু সনদ সংশোধন করিবেন;

(আ) নিবন্ধন বহি সংশোধিত স্থানে তারিখসহ স্বাক্ষর প্রদান করিবেন; এবং

(ই) সংশোধিত আকারে একটি নূতন জন্ম বা মৃত্যু সনদ প্রদান করিয়া ইতিপূর্বে প্রদত্ত সনদ সংরক্ষণের উদ্দেশ্যে আবেদনকারীর নিকট হইতে ফেরত লইবেন।"

৯। ২০০৪ সনের ২৯ নং আইনে নূতন ধারা ১৫ক এর সন্নিবেশ।– উক্ত আইনের ধারা ১৫ এর পর নিম্নরূপ নূতন ধারা ১৫ক সন্নিবেশিত হইবে, যথাঃ–

"**১৫ক। জন্ম বা মৃত্যু সনদ বাতিল।**– ভুল তথ্য প্রদান বা মিথ্যা ঘোষণার কারণে কোন জন্ম বা মৃত্যু সনদ প্রদান করা হইলে, উহা বাতিলের জন্য নির্ধারিত ফিসহ কোন ব্যক্তির আবেদনের প্রেক্ষিতে ধারা ১৫ এর উপ-ধারা (২) হইতে (৬) এর বিধান অনুসরণক্রমে নিবন্ধক সংশ্লিষ্ট জন্ম বা মৃত্যু সনদ বাতিল করিবেন এবং তদনুসারে নিবন্ধন বহির সংশ্লিষ্ট অংশ সংশোধনক্রমে স্বাক্ষর করিবেন।"।

১০। ২০০৪ সনের ২৯নং আইনের ধারা ১৮ এর সংশোধন।– উক্ত আইনের ধারা ১৮ এর–

(ক) উপ-ধারা (৩) এর দফা (ছ) এ উল্লিখিত "এবং" শব্দটি বিলুপ্ত হইবে এবং অতঃপর দফা এর পর নিম্নরূপ নূতন দফা (ছছ) এবং (ছছছ) সন্নিবেশিত হইবে, যথাঃ–

"(ছছ) জাতীয় পরিচয়পত্র;

(ছছছ) লাইফ ইন্স্যুরেন্স পলিসি; এবং";

(খ) উপ-ধারা (৩) এর পর নূতন উপ-ধারা (৩ক) সন্নিবেশিত হইবে, যথাঃ–

"(৩ক) অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, নিম্নবর্ণিত বিষয়াদির ক্ষেত্রে কোন ব্যক্তির মৃত্যু প্রমাণের জন্য এই আইনের অধীন প্রদত্ত মৃত্যু সনদ ব্যবহার করিতে হইবে, যথাঃ–

(ক) সাকসেশন সার্টিফিকেট প্রাপ্তি;

(খ) পারিবারিক পেনশন প্রাপ্তি;

(গ) মৃত ব্যক্তির লাইফ ইন্স্যুরেন্সের দাবী;

(ঘ) নাম জারী এবং জমাভাগ প্রাপ্তি; এবং

(ঙ) বিধি দ্বারা নির্ধারিত অন্য কোন বিষয়।";

(গ) উপ-ধারা (৫) এর পরিবর্তে নিম্নরূপ উপ-ধারা (৫) প্রতিস্থাপিত হইবে, যথাঃ–

"(৫) এই আইন কার্যকর হইবার অব্যবহিত পূর্বে অন্য কোন আইনের অধীন কোন জন্ম বা মৃত্যুর সনদ উপ-ধারা (৩) ও (৩ক) এর উদ্দেশ্য পূরণকল্পে ব্যবহার করা যাইবে।"

১১। ২০০৪ সনের ২৯ নং আইনের ধারা ২০ এর প্রতিস্থাপন।– উক্ত আইনের ধারা ২০ এর পরিবর্তে নিম্নরূপ ধারা ২০ প্রতিস্থাপিত হইবে, যথাঃ–

"**২০। আপীল।**– (১) নিবন্ধকের কোন আদেশের বিরুদ্ধে সংক্ষুব্ধ ব্যক্তি আদেশের ৩০ (ত্রিশ) দিনের মধ্যে নিম্নবর্ণিত কর্তৃপক্ষের নিকট আপীল করিতে পারিবেন, যথাঃ–

(ক) ইউনিয়ন পরিষদের চেয়ারম্যান অথবা ক্ষমতাপ্রাপ্ত কর্মকর্তা বা সদস্যের আদেশের বিরুদ্ধে উপজেলা নির্বাহী অফিসার;

(খ) পৌরসভার মেয়র বা প্রশাসক অথবা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা বা কাউন্সিলরের আদেশের বিরুদ্ধে জেলা ম্যাজিস্ট্রেট;

(গ) ক্যান্টনমেন্ট বোর্ডের নির্বাহী কর্মকর্তা অথবা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কোন কর্মকর্তার আদেশের বিরুদ্ধে জেলা ম্যাজিস্ট্রেট;

(ঘ) সিটি কর্পোরেশনের মেয়র বা প্রশাসক কর্তৃক ক্ষমতাপ্রাপ্ত কর্মকর্তা বা কাউন্সিলরের আদেশের বিরুদ্ধে জেলা ম্যাজিস্ট্রেট;

(ঙ) রাষ্ট্রদূত কর্তৃক ক্ষমতাপ্রাপ্ত কর্মকর্তার আদেশের বিরুদ্ধে রেজিস্ট্রার জেনারেল।

(২) ধারা ১৫ এর উপ-ধারা (৪) এবং ধারা ১৫ক এর অধীন কোন আদেশের বিরুদ্ধে সংক্ষুব্ধ ব্যক্তি আদেশের ৩০ (ত্রিশ) দিনের মধ্যে নিম্নবর্ণিত কর্তৃপক্ষের নিকট আপীল করিতে পারিবেন, যথাঃ–

(ক) উপজেলা নির্বাহী অফিসারের আদেশের বিরুদ্ধে জেলা প্রশাসক;

(খ) জেলা প্রশাসকের আদেশের বিরুদ্ধে রেজিস্ট্রার জেনারেল; এবং

(গ) রেজিস্ট্রার জেনারেল এর আদেশের বিরুদ্ধে সচিব, স্থানীয় সরকার বিভাগ।"।

১২। ২০০৪ সনের ২৯নং আইনের ধারা ২১ এর প্রতিস্থাপন।– উক্ত আইনের ধারা ২১ এর পরিবর্তে নিম্নরূপ ধারা ২১ প্রতিস্থাপিত হইবে, যথাঃ–

"**২১। দণ্ড।**– (১) এই আইন বা তদধীন প্রণীত বিধির কোন বিধান লঙ্ঘনকারী ব্যক্তি অনধিক ৫ (পাঁচ) হাজার টাকা অর্থদণ্ডে দণ্ডনীয় হইবেন।

(২) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, যদি কোন ব্যক্তি জন্ম বা মৃত্যু নিবন্ধনের জন্য মিথ্যা তথ্য প্রদান করেন বা এমন কোন লিখিত বর্ণনা বা ঘোষণা প্রদান করেন, যাহা তিনি মিথ্যা বলিয়া জানেন বা বিশ্বাস করেন, তাহা হইলে উক্ত ব্যক্তি অনধিক ৫ (পাঁচ) হাজার টাকা অর্থদণ্ডে অথবা অনধিক ১ (এক) বৎসর বিনাশ্রম কারাদণ্ডে অথবা উভয়দণ্ডে দণ্ডনীয় হইবেন।

(৩) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, যদি কোন নিবন্ধক উপ-ধারা (২) এ উল্লিখিত মিথ্যা তথ্য, লিখিত বর্ণনা বা ঘোষণা সম্পর্কে জ্ঞাত থাকা সত্ত্বেও জন্ম বা মৃত্যু নিবন্ধন করেন তাহা হইলে সংশ্লিষ্ট নিবন্ধক অনধিক ৫ (পাঁচ) হাজার টাকা অর্থদণ্ডে অথবা অনধিক এক বৎসর বিনাশ্রম কারাদণ্ডে অথবা উভয়দণ্ডে দণ্ডনীয় হইবেন, যদি না তিনি প্রমাণ করিতে সক্ষম হন যে উক্ত অপরাধ তাঁহার অজ্ঞাতসারে সংঘটিত হইয়াছে অথবা উক্ত অপরাধ রোধ করিবার জন্য তিনি যথাসাধ্য চেষ্টা করিয়াছেন।"।

১৩। ২০০৪ সনের ২৯নং আইনের ধারা ২২ এর সংশোধন।– উক্ত আইনের ধারা ২২ এর "নিবন্ধক" শব্দের পর "বা রেজিস্ট্রার জেনারেল" শব্দগুলি সন্নিবেশিত হইবে।

মোঃ মাহফুজুর রহমান
সচিব।

বাংলাদেশ জাতীয় সংসদ

ঢাকা, ২২ সেপ্টেম্বর, ২০১৩/০৭ আশ্বিন, ১৪২০

সংসদ কর্তৃক গৃহীত নিম্নলিখিত আইনটি ২২ সেপ্টেম্বর, ২০১৩ (০৭ আশ্বিন, ১৪২০) তারিখে রাষ্ট্রপতির সম্মতি লাভ করিয়াছে এবং এতদ্বারা এই আইনটি সর্বসাধারণের অবগতির জন্য প্রকাশ করা যাইতেছেঃ–

২০১৩ সনের ৩৫ নং আইন

Breast-Milk Substitutes (Regulation of Marketing) Ordinance, 1984 রহিত করিয়া সংশোধনসহ উহা পুনঃপ্রণয়নের উদ্দেশ্যে প্রণীত আইন

যেহেতু Breast-Milk Substitutes (Regulation of Marketing) Ordinance, 1984 (Ordinance No. XXXIII of 1984) রহিত করিয়া সংশোধনসহ উহা পুনঃপ্রণয়ন করা সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্‌দ্বারা নিম্নরূপ আইন করা হইলঃ–

১। **সংক্ষিপ্ত শিরোনামও প্রবর্তন**।– (১) এই আইন **মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য, বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য ও উহা ব্যবহারের সরঞ্জামাদি (বিপণন নিয়ন্ত্রণ) আইন, ২০১৩** নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। **সংজ্ঞা** ।– বিষয় বা প্রসঙ্গের পরিপন্থী কোন কিছু না থাকিলে, এই আইনে,–

(ক) **"জাতীয় উপদেষ্টা কমিটি"** অর্থ ধারা ৮ এর অধীন গঠিত জাতীয় উপদেষ্টা কমিটি;

(খ) **"ধারণপাত্র"** অর্থ যে কোন বাক্স, বোতল, ঝুড়ি, টিন, কৌটা, ব্যারেল, আধার (case), পাত্র, টিউব, গ্লাস, মগ, বস্তা বা অন্য কোন সামগ্রী যাহাতে বিপণন, বিক্রয় বা বিতরণের জন্য মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য বা বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য ভরা, পোরা বা রাখা হয়;

(গ) **"নির্ধারিত"** অর্থ বিধি দ্বারা নির্ধারিত;

(ঘ) **"পরিচালক"** অর্থ জনস্বাস্থ্য পুষ্টি প্রতিষ্ঠানের পরিচালক;

(ঙ) **"প্রচার"** অর্থ যে কোন ধরনের মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য, বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য বা উহা ব্যবহারের সরঞ্জামাদি সংক্রান্ত পণ্য বিপণন, বিক্রয় বা বিতরণের জন্য উহার বিভিন্ন তথ্য আকর্ষণীয়ভাবে বিজ্ঞাপনের মাধ্যমে প্রচার;

(চ) **"ফৌজদারী কার্যবিধি"** অর্থ Code of Criminal Procedure, 1898 (Act V of 1898);

(ছ) **"মাতৃদুগ্ধ বিকল্প"** অর্থ মায়ের দুধের, আংশিক বা পরিপূর্ণ, বিকল্প হিসেবে প্রস্তুতকৃত, বিপণনকৃত বা অন্য কোনভাবে উপস্থাপিত, শিশুর জন্মের পর হইতে ৬ (ছয়) মাস বয়স পর্যন্ত, শিশুর যে কোন খাদ্য;

(জ) **"শিশু খাদ্য"** অর্থ আংশিক বা পরিপূর্ণ, বিকল্প হিসেবে প্রস্তুতকৃত, বিপণনকৃত বা অন্য কোনভাবে উপস্থাপিত শিশুর পূর্ণ ৬(ছয়) মাস বয়সের পর হইতে যে কোন খাদ্য;

(ঝ) **"মোড়ক (label)"** অর্থ কোন ধারণপাত্রের গায়ে সংযুক্ত বা অন্য কোনভাবে লাগানো লিখিত, চিহ্নযুক্ত, সিলমোহরকৃত, মুদ্রিত, চিত্রিত বা নকশাকৃত কোন প্রদর্শনী;

(ঞ) **"বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য"** অর্থ জন্মের ৬ (ছয়) মাস বয়সের পর হইতে ৫ (পাঁচ) বৎসর বয়স পর্যন্ত বয়সের শিশুর প্রয়োজন অনুযায়ী সঠিক পুষ্টি সমৃদ্ধ বাণিজ্যিকভাবে প্রস্তুতকৃত যে কোন ধরনের খাদ্য, উহা যে নামেই অভিহিত হউক না কেন;

(ট) **"বিজ্ঞাপন"** অর্থে নোটিশ, পরিপত্র, খাম, মোড়ক বা অন্য কোন দলিলাদিসহ যে কোন প্রকার প্রিন্ট বা ইলেকট্রনিক মিডিয়া, ই-মেইল, ইন্টারনেট বা অন্য কোন মাধ্যমে লিখিত, ছাপানো, শব্দ বা আলোর মাধ্যমে কোন ঘোষণা বা উপস্থাপনাও অন্তর্ভুক্ত হইবে;

(ঠ) **"ব্যক্তি"** অর্থে কোম্পানী, সমিতি, সংস্থা, ব্যক্তিসমষ্টি, সংবিধিবদ্ধ হউক বা না হউক, মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য, বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য বা উহা ব্যবহারের সরঞ্জামাদির আমদানিকারক, উৎপাদনকারী, বিপণনকারী, বিক্রয়কারী বা বিতরণকারীও অন্তর্ভুক্ত হইবে;

(ড) **"স্বাস্থ্যকর্মী"** অর্থ এই আইনের উদ্দেশ্য পূরণকল্পে, শিশু, শিশুর মা বা গর্ভবতী কোন নারীর স্বাস্থ্য সেবায় নিয়োজিত কোন ব্যক্তি;

(ঢ) **"স্বাস্থ্য সেবা কেন্দ্র"** অর্থ শিশু, শিশুর মা বা গর্ভবতী কোন নারীর প্রত্যক্ষ বা পরোক্ষভাবে স্বাস্থ্য পরিচর্যার কাজে নিয়োজিত কোন সরকারি বা

বেসরকারি প্রতিষ্ঠান বা সংস্থা বা ক্লিনিক বা কোন ব্যক্তিগত চিকিৎসা প্রদান কেন্দ্র এবং শিশু-দিবা-যত্ন কেন্দ্র; নার্সারি বা অন্য কোন শিশু-যত্ন সুবিধাও ইহার অন্তর্ভুক্ত হইবে।

৩। আইনের প্রাধান্য।– আপাততঃ বলবৎ অন্য কোন আইন বা আইনের মর্যাদা সম্পন্ন অন্য কোন আইনগত দলিলে ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইনের বিধানাবলী প্রাধান্য পাইবে।

৪। মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য, ইত্যাদির বিষয়ে বিধি-নিষেধ।– (১) কোন ব্যক্তি মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য, বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য বা উহা ব্যবহারের সরঞ্জামাদির আমদানি, স্থানীয়ভাবে উৎপাদন, বিপণন, বিক্রয় বা বিতরণের উদ্দেশ্যে, কোন বিজ্ঞাপন মুদ্রণ, প্রদর্শন, প্রচার বা প্রকাশ করিবেন না বা অনুরূপ কোন কাজে নিজেকে নিয়োজিত করিবেন না।

(২) উপ-ধারা (১) এর সামগ্রিকতার আওতায়, বিশেষ করিয়া, অন্যান্য বিষয়ের মধ্যে, নিম্নবর্ণিত কর্মকাণ্ড পরিচালনা করা যাইবে না, যথাঃ–

(ক) জনগণের, বিশেষতঃ স্বাস্থ্য, পুষ্টি বা শিক্ষা ক্ষেত্রের সহিত জড়িত কোন ব্যক্তি, ছাত্র-ছাত্রী বা তাহাদের পরিবারের কোন সদস্যের, নিকট এমন কোন লিফলেট, হ্যান্ডবিল বা অনুরূপ কোন দলিল বিতরণ করা যাহাতে মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য, বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য বা উহা ব্যবহারের সরঞ্জামাদির বিজ্ঞাপন রহিয়াছে;

(খ) মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য, বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য বা উহা ব্যবহারের সরঞ্জামাদির বিক্রয় উৎসাহিত বা প্রলুব্ধ করিবার লক্ষ্যে–

(অ) কোন ব্যক্তিকে উপহার সামগ্রী, ডিসকাউন্ট কুপন, মূল্যহ্রাস বা বিনামূল্যে কোন সামগ্রী প্রদান বা প্রদানের জন্য কোনরূপ প্রস্তাব করা;

(আ) উহার প্রস্তুতকারী কর্তৃক আয়োজিত বা তাহাদের সহায়তায় (sponsor) কোন সেমিনার, কনফারেন্স, সিম্পোজিয়াম, কর্মশালা, প্রশিক্ষণ, বৈজ্ঞানিক সভা, শিক্ষা সফর বা আন্তর্জাতিক সম্মেলনে যোগদানসহ উচ্চ শিক্ষায় বা কোন গবেষণামূলক কর্মকাণ্ডে অংশগ্রহণের জন্য কোন ব্যক্তি বা স্বাস্থ্য সেবা কেন্দ্রের কোন কর্মকর্তা-কর্মচারী বা স্বাস্থ্যকর্মীকে কোনরূপ আর্থিক বা অন্য কোন সুবিধা প্রদান করা;

(ই) কোন স্বাস্থ্যকর্মী বা তাহার পরিবারের কোন সদস্যকে আর্থিক প্রলোভন বা অন্য কোন উপহার প্রদান করা;

(ঈ) কোন স্বাস্থ্য সেবা কেন্দ্র বা ঔষধ বিক্রয় কেন্দ্র ব্যবহার করা;

(গ) শিশুদের জন্য কোন ধরনের প্রতিযোগিতা বা কোন অনুষ্ঠানের আয়োজন বা অন্য কোনরূপ সহায়তা প্রদান করা;

(ঘ) মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য ও বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য মাতৃদুগ্ধের বিকল্প, মাতৃদুগ্ধ অপেক্ষা উত্তম বা মাতৃদুগ্ধের সমকক্ষ এরূপ ধারনা দেওয়া বা বিশ্বাস সৃষ্টির উদ্দেশ্যে কোন কর্মসূচী পরিচালনা করা;

(ঙ) কোন গর্ভবতী মহিলা, মাতৃদুগ্ধদানকারী বা শিশুর মায়েদের সহিত সরাসরি যোগাযোগ করা বা কোন ধরনের প্রলোভনমূলক প্রস্তাব করা;

(চ) যে কোন পণ্যের বিশেষতঃ শিশু পণ্যের (যেমন, ডায়াপার, কাপড়, খেলনা, পুতুল, প্রসাধন সামগ্রী, টয়লেট্রিজ ইত্যাদি) প্রচারের সময় মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য বা উহা ব্যবহারের সরঞ্জামাদির প্রচার সম্পর্কিত কোন ধরনের লিফলেট বা উপহার সামগ্রী বিতরণ করা;

(ছ) দুর্যোগ ব্যবস্থাপনা আইন, ২০১২ (২০১২ সনের ৩৪নং আইন) এর ধারা ২ এর দফা (১১) তে সংজ্ঞায়িত দুর্যোগের কারণে ক্ষতিগ্রস্ত বা বিপদাপন্ন গর্ভবতী মহিলা, সদ্যপ্রসূত মহিলা, নবজাতক শিশু বা ৫ (পাঁচ) বৎসর বয়সের কোন শিশুকে সুরক্ষা বা উহাদের ঝুঁকি হ্রাস করিবার উদ্দেশ্যে কোন ব্যক্তি মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য, বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য বা উহা ব্যবহারের সরঞ্জামাদি কোন প্রতিষ্ঠান বা আশ্রয়কেন্দ্রে দান বা বিতরণ করা;

(জ) নির্ধারিত অন্য কোন কর্মকাণ্ড করা।

৫। মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য, ইত্যাদি আমদানী, স্থানীয়ভাবে উৎপাদন, বিক্রয় ইত্যাদি সংক্রান্ত বিধান।– এই আইনের অধীন নিবন্ধন ব্যতীত কোন ব্যক্তি কোন প্রকার মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য, বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য বা উহা ব্যবহারের সরঞ্জামাদি আমদানি, স্থানীয়ভাবে উৎপাদন, বিপণন, বিক্রয় বা বিতরণ করিতে পারিবেন না।

৬। মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য, ইত্যাদি ধারণপাত্র ও মোড়কে প্রদেয় তথ্যাদি।– (১) আপাততঃ বলবৎ অন্য

কোন আইনের বিধানাবলী ক্ষুণ্ন না করিয়া, কোন ব্যক্তি মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য, বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য বা উহা ব্যবহারের সরঞ্জামাদি বিপণন, বিক্রয় ও বিতরণ করিতে পারিবেন না, যদি না উহার প্রত্যেক ধারণপাত্রে ও উহার সহিত সংযুক্ত মোড়কে সুস্পষ্ট, সহজে দৃশ্যমান, পাঠযোগ্য, বোধগম্য, সহজবোধ্য বাংলায় ও উজ্জ্বল রংয়ের লেখা দ্বারা "গুরুত্বপূর্ণ তথ্যাদি" শিরোনামাধীন নিম্নবর্ণিত তথ্য ও বিবরণাদি মুদ্রিত বা উল্লিখিত থাকে, যথাঃ–

(ক) পণ্যের নামের অব্যবহিত নিম্নে যে আয়তনের অক্ষরে উহার নাম মুদ্রিত হয় ঠিক সেই আয়তনের "মায়ের দুধের বিকল্প বা উহার সমকক্ষ কিছুই নাই" শীর্ষক একটি বিবৃতি;

(খ) ব্যাচ নম্বর, নিবন্ধন নম্বর এবং প্রস্তুতের ও মেয়াদ উত্তীর্ণের তারিখ;

(গ) প্রযোজ্য ক্ষেত্রে, "মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য শিশুর পুষ্টির মূল উৎস নহে" বা "বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য শিশুর পুষ্টির মুল উৎস নহে" মর্মে একটি সর্তকবাণী;

(ঘ) ব্যবহৃত উপাদানসমূহ ও উহার বিশ্লেষণ;

(ঙ) সংরক্ষণ সংক্রান্ত নির্দেশনাবলী;

(চ) নির্ধারিত অন্য কোন বিবরণ।

(২) উপ-ধারা (১) এ উল্লিখিত কোন ধারণপাত্র বা মোড়কে–

(ক) কোন শিশু বা শিশুর মা বা উভয়ের বা অন্য কোনরূপ ছবি থাকিতে পারিবে না;

(খ) মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য ও বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্যকে সহজে চিনিবার উদ্দেশ্যে কোন চিত্রলেখা বা কার্টুন চিত্র ব্যবহার করা যাইবে না;

(গ) শিশুর জন্য উপযুক্ত বা ব্যবহারযোগ্য বা অনুরূপ কোন শব্দ মুদ্রণ করা যাইবে না;

(ঘ) নির্ধারিত অন্য কোন বিবরণ মুদ্রণ বা ধারণ করা যাইবে না।

(৩) ধারণপাত্রের ভিত্তিতে মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য ও বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্যের ব্যবহার বিধি সংক্রান্ত একটি নির্দেশিকা থাকিতে হইবে যাহাতে নির্ধারিত বিবরণাদির সুস্পষ্ট উল্লেখ থাকিবে।

৭। শিক্ষামূলক বা অন্যান্য তথ্যাদি।– জন্ম-পূর্ববর্তী বা জন্ম-পরবর্তী সেবা দানের উদ্দেশ্যে কোন গর্ভবতী মহিলা বা মাতৃদুগ্ধদানকারী বা শিশুর মায়েদের সহিত যোগাযোগ স্থাপনের লক্ষ্যে লিখিত, দর্শনীয় বা শ্রবণীয় যে কোন শিক্ষামূলক বা তথ্যমূলক উপকরণে, অন্যান্য বিষয়ের মধ্যে, নিম্নবর্ণিত তথ্যাদি অন্তর্ভুক্ত থাকিতে হইবে–

(ক) মাতৃদুগ্ধের উপকারিতা এবং শ্রেষ্ঠত্ব সম্পর্কে ধারণা প্রদান;

(খ) যথাযথ পদ্ধতিতে মাতৃদুগ্ধ খাওয়ানো এবং উহার ধারাবাহিকতা বজায় রাখা;

(গ) জন্মের ১ (এক) ঘণ্টার মধ্যে মায়ের শাল দুধ খাওয়ানো, পূর্ণ ৬ (ছয়) মাস বয়স পর্যন্ত শুধু মাতৃদুগ্ধ খাওয়ানো, ৬ (ছয়) মাস পর মাতৃদুগ্ধের পাশাপাশি ঘরে তৈরি খাবার খাওয়ানোর উপকারিতা, এবং শিশুর পূর্ণ ২ (দুই) বৎসর বয়স পর্যন্ত মাতৃদুগ্ধ খাওয়ানোর প্রতি গুরুত্ব প্রদান;

(ঘ) মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য ও বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য খাওয়ানোর জন্য ব্যবহৃত সরঞ্জামাদি (যেমন-বোতল, প্যাসিফায়ার, ইত্যাদি) নবজাতক শিশুর স্বাস্থ্যের জন্য কেন ক্ষতিকর সেই সংক্রান্ত তথ্য;

(ঙ) দেশীয় উপকরণ (যেমন-দেশীয়ভাবে উৎপাদিত ফলমূল, শাকসব্জি, মাছ, মাংস, দুধ, ডিম ইত্যাদি) দ্বারা পরিপূরক খাদ্য সহজেই বাড়িতে তৈরি করা সম্ভব এবং উক্ত খাদ্য শিশুকে খাওয়ানোর ব্যাপারে উৎসাহিত করা বিষয়ক তথ্য;

(চ) মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য ও বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য ব্যবহারের ফলে মা ও শিশুর স্বাস্থ্যের ক্ষতি, রাষ্ট্রের সুনাগরিক গড়ে তোলার অন্তরায়, সামাজিক ও আর্থিক ক্ষতি এবং উহার কুফল সম্পর্কিত তথ্য;

(ছ) শিশুকে মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য খাওয়ানো শুরু করার পর আবার মাতৃদুগ্ধ গ্রহণের অভ্যাসে ফেরত যাওয়ার অসুবিধাসমূহ;

(জ) নির্ধারিত অন্য কোন বিষয়।

৮। জাতীয় উপদেষ্টা কমিটি গঠন।—(১) এই আইনের উদ্দেশ্য পূরণকল্পে, জাতীয় উপদেষ্টা কমিটি নামে একটি কমিটি থাকিবে।

(২) একজন চেয়ারম্যানসহ ০৯(নয়) সদস্যের সমন্বয়ে উক্ত কমিটি গঠিত হইবে।

(৩) কমিটির চেয়ারম্যান এবং সদস্যগণ ০৩(তিন) বৎসর মেয়াদে এবং সরকার কর্তৃক নির্ধারিত শর্তে মনোনীত হইবেন।

(৪) কমিটির সভা ও অন্যান্য কার্যাদি নির্ধারিত পদ্ধতিতে অনুষ্ঠিত হইবে।

(৫) জনস্বাস্থ্য পুষ্টি প্রতিষ্ঠান উক্ত কমিটির কার্য-সম্পাদনে প্রয়োজনীয় সাচিবিক ও অন্যান্য সহায়তা প্রদান করিবে।

৯। কমিটির কার্যাবলী।—জাতীয় উপদেষ্টা কমিটির কার্যাবলী হইবে নিম্নরূপ, যথাঃ–

(ক) মাতৃদুগ্ধ বিকল্প, শিশুখাদ্য, বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য বা উহা ব্যবহারের সরঞ্জামাদির জন্য প্রযোজ্য আন্তর্জাতিক বিপণন বিধি (International Code of Marketing) ও তদ্‌সম্পর্কিত আন্তর্জাতিক মানদণ্ড সম্পর্কে সরকারের যথাযথ পর্যবেক্ষণ ও কার্যক্রম গ্রহণের জন্য পরামর্শ প্রদান;

(খ) এই আইনের উদ্দেশ্য পূরণকল্পে, সরকার কর্তৃক অর্পিত বা নির্দেশিত বা নির্দিষ্টকৃত অন্যান্য কার্য সম্পাদন; এবং

(গ) নির্ধারিত অন্য কোন কার্য-সম্পাদন।

১০। মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য, ইত্যাদির নিবন্ধন।– (১) এই আইনের উদ্দেশ্য পূরণকল্পে, পরিচালক মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য ও বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্যের নিবন্ধন প্রদান করিবে।

(২) উপ-ধারা (১) এর অধীন নিবন্ধন প্রাপ্তির জন্য প্রতিটি আবেদন উক্ত উপ-ধারায় উল্লিখিত পরিচালকের নিকট, নির্ধারিত পদ্ধতিতে, ফরমে, শর্তে ও ফিস প্রদানক্রমে, দাখিল করিতে হইবে।

(৩) উপ-ধারা (২) এর অধীন দাখিলকৃত আবেদন, এই আইন ও তদধীন প্রণীত বিধির বিধান অনুসারে, বিবেচনাক্রমে, আবেদনপত্র দাখিলের ৬০ (ষাট) দিনের মধ্যে, নিবন্ধন প্রদান করিতে হইবে।

(৪) এই ধারার অধীন ইস্যুকৃত নিবন্ধন সনদে উহার মেয়াদ ও নিবন্ধনের জন্য প্রয়োজনীয় শর্তাবলী উল্লিখিত থাকিবে।

(৫) উপ-ধারা (৩) এর অধীন প্রদত্ত প্রতিটি নিবন্ধনের মেয়াদ হইবে নিবন্ধন প্রদানের তারিখহইতে ৩ (তিন) বৎসর এবং উহা নির্ধারিত ফিস প্রদান সাপেক্ষে নির্ধারিত মেয়াদে নবায়নযোগ্য হইবে।

১১। নিবন্ধন স্থগিত ও বাতিলকরণ, ইত্যাদি।– (১) এই আইন বা তদধীন প্রণীত বিধির কোনবিধান লংঘন করা হইলে বা নিবন্ধন সনদে উল্লিখিত কোন শর্ত ভঙ্গ করা হইলে বা নিবন্ধন প্রাপ্তির উদ্দেশ্যে কোন ভুল বা অসত্য তথ্য প্রদান করা হইলে পরিচালক, নির্ধারিত পদ্ধতিতে, নিবন্ধন স্থগিত বা, ক্ষেত্রমত, বাতিল করিতে পারিবেন।

(২) নিবন্ধন গ্রহীতাকে অন্যূন ১৫ (পনের) দিনের কারণ দর্শানোর সুযোগ প্রদান না করিয়া উপ-ধারা (১) এর অধীন কোন নিবন্ধন স্থগিত বা, ক্ষেত্রমত, বাতিল করা যাইবে না।

(৩) উপ-ধারা (১) এর অধীন প্রদত্ত কোন আদেশ দ্বারা কোন নিবন্ধন গ্রহীতা সংক্ষুব্ধ হইলে তিনি আদেশ প্রাপ্তির তারিখ হইতে ৩০ (ত্রিশ) দিনের মধ্যে সরকারের নিকট আপীল করিতে পারিবেন।

(৪) উপ-ধারা (৩) এর অধীন আপীল আবেদন দাখিলের সময় হইতে ৬০ (ষাট) দিনের মধ্যে এতদ্‌বিষয়ে সিদ্ধান্ত প্রদান করিতে হইবে; এবং উক্ত বিষয়ে সরকারের সিদ্ধান্ত চূড়ান্ত হইবে।

১২। দণ্ড।– (১) যদি কোন ব্যক্তি এই আইনের কোন বিধান লংঘন করেন, তাহা হইলে উক্ত লংঘন হইবে একটি অপরাধ এবং তজ্জন্য তিনি অনূর্ধ্ব ৩ (তিন) বৎসর কারাদণ্ড বা অনূর্ধ্ব ৫,০০,০০০ (পাঁচ লক্ষ) টাকা অর্থদণ্ড বা উভয় দণ্ডে দণ্ডনীয় হইবেন।

(২) মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য ও বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য বা উহা ব্যবহারের সরঞ্জামাদির কারণে কোন শিশু অসুস্থ হইলে বা মৃত্যুবরণ করিলে উহা হইবে এই আইনের অধীন একটি শাস্তিযোগ্য অপরাধ এবং তজ্জন্য উক্ত মাতৃদুগ্ধ বিকল্প, শিশু খাদ্য বাণিজ্যিকভাবে প্রস্তুতকৃত শিশুর বাড়তি খাদ্য বা উহা ব্যবহারের সরঞ্জামাদির প্রস্তুতকৃত কোম্পানী ১০(দশ) বৎসর কারাদন্ড বা অনূর্ধ্ব ৫০,০০০০০ (পঞ্চাশ লক্ষ) টাকা অর্থদন্ড বা উভয় দন্ডে দন্ডনীয় হইবে এবং অর্থদন্ড ক্ষতিপূরণ হিসেবে ক্ষতিগ্রস্ত শিশুর পরিবারকে নির্ধারিত পদ্ধতিতে প্রদান করা হইবে।

১৩। অপরাধ পুনঃ সংঘটনের দণ্ড।– এই আইনে উল্লিখিত কোন অপরাধের জন্য কোন ব্যক্তি দ্বিতীয় বার বা পুনঃ পুনঃ একই ধরনের অপরাধ সংঘটন করিলে তিনি পর্যায়ক্রমিকভাবে উক্ত দণ্ডের দ্বিগুণ হারে দণ্ডনীয় হইবেন। *[চলিবে]*