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and register the deed of sale in his favour by the 20th day of December, 2003 and to receive the balance amount of Taka 1,26,80,000 only from him. In spite of the above requests and persuasions of the plaintiff, defendant No.1 failed to execute and register the deed of sale in favour of the plaintiff by 28-12-2003. Lastly on 29-12-2003, the plaintiff in presence of the witnesses offered the balance amount to defendant No.1 and requested him to execute and register the sale deed, but the defendant refused to do so. The plaintiff to his utter shock and surprise learnt "on or about 8th December, 2003" about publication of a "বিজ্ঞপ্তি" in the daily "Janakantha", i.e. after issuance of the legal notice dated 1-12-2003 published by one Engineer Shamsul Kabir Humayun Reza that he was the owner of the suit plot and he had entered into a contract with Eastern Housing Limited for constructing a building thereon and on the basis of the contract Eastern Housing Limited had already started all the works in that respect after approval of the plan by RAJUK. Thus, the plaintiff hunched a foul play in the matter for which he was compelled to publish a protest notice (বিজ্ঞপ্তি) in the daily Janakantha on 10-12-2003 protesting the aforementioned notice (বিজ্ঞপ্তি) dated 18-11-2003 and stating that the contents of the notice dated 18-11-2003 were false, imaginary and fraudulent as he became the owner of the suit plot on the basis of bainapatra entered into with him by its owner Shamsul Kabir Humayun Reza, son of Md Hossain and all the original documents relating to the suit plot were with him. In the protest notice, it was further stated that the fact of entering into contract by Shamsul Kabir Humayun Reza, original owner, was intimated to RAJUK by a letter dated 6-1-2003 which was received by RAJUK on 7-1-2003. As some mistakes occurred in the protest notice dated 10-12-2003 as to the father's name of Md Shamsul Kabir Humayun Reza, a corrigendum was issued stating his father's name as Md Yeadul Hossain in place of Md Hossain. Thereafter, the plaintiff could manage to look into the records of RAJUK and found his application dated 5-1-2003 was in the file and further learnt that a plan had been approved by RAJUK for construction on the suit plot, but the plaintiff could not collect the exact name and address of the person in whose favour or upon whose request, the alleged plan was approved by RAJUK. There had been no protest from any quarter against the protest notice issued by the plaintiff in the daily Janakantha on 10-12-2003. The plaintiff went to the suit plot on 22-12-2003 and found that some people were taking steps for construction removing the old structures and on query he learnt that they were the employees/workers of defendant No.2 who was claimed by them to be the owner of the suit plot and on hearing the same, the plaintiff was further surprised and puzzled. The failure/inaction/refusal of defendant No.1 to execute and register the sale deed in favour of the plaintiff in spite of the request and legal notice mentioned hereinabove and also in applying for and in obtaining permission for sale of the suit plot in favour of the plaintiff in spite of his readiness and willingness to perform his obligation under the deed of agreement compelled the plaintiff to file the suit for specific performance of contract.

13. The suit was contested by the heirs of Engineer Shamsul Kabir Humayun Reza of 157, Bara Moghbazar, i.e. the plaintiffs of Title Suit No.81 of 2006 as defendant Nos.1(a)-1(e) by filing written statement denying the material allegations made in the plaint and stating, *inter alia*, the facts as stated in the plaint of Title Suit No.81 of 2006 as have been stated hereinbefore. Therefore, we do not consider it necessary to repeat the same here. However, it is pertinent to state that the heirs of Engineer Shamsul Kabir Humayun Reza of Bara Moghbazar were substituted as defendant Nos.1(a)-1(e) at the instance of the plaintiff, i.e. MA Hashem although they applied to be added as defendants in the suit as the heirs of Engineer Shamsul Kabir Humayun Reza in their own independent capacity.

14. One Shamsul Kabir Humayun Reza claiming himself to be the son of late Md Yeadul Hossain showing his address at the suit plot, filed Title Suit No.176 of 2004 in the same Court of the Joint District Judge, (1st Court, Dhaka) impleading: (a) the Chairman, RAJUK (b) the Member (Estate) RAJUK, (c) the Director (Estate) RAJUK and (d) the Deputy Director (Estate) RAJUK as defendants for declaration that he was legally entitled to get sale permission and the defendants were also bound to issue sale permission in respect of the suit plot "by receiving the proper transfer fees" from him as per the rules of RAJUK asserting the facts as stated in the written statement filed by him in Title Suit No.81 of 2006 as defendnat No.3 which have been stated hereinbefore. Therefore, those are not repeated herein.

15. The suit was contested by the defendants by filing written statement denying the material statements made in the plaint and contending, *inter alia*, the facts as stated in the written statement filed in Title Suit No.81 of 2006. In the written statement additional facts stated were that the plaintiff by posing himself as Engineer Shamsul Kabir Humayun Reza filed the suit to grab the suit plot. So proceeding should be drawn against him under section 476(1) of the Code of Criminal Procedure for filing the suit by creating forged document. Value of the suit plot was about Taka 10 crore, whereas the plaintiff, fake Shamsul Kabir Humayun Reza created a forged bainapatra showing the value of the suit plot at Taka 2,35,00,000 only. The original lessee of RAJUK did not file any application to it on 18-2-2004 or on any other day for permission to sell the suit plot to the person mentioned in the plaint and no such application was also available with the record of RAJUK, therefore, no declaration as prayed for could be given from the Court. Plaintiff, fake Shamsul Kabir Humayun Reza of the instant suit neither got any allotment of the suit plot from RAJUK nor got possession thereof nor got any lease deed. The original lessee died on 2-2-2004. Plaintiff, fake Shamsul Kabir Humayun Reza had no right, title and interest in the suit plot and, as such, he was not entitled to get any relief in the suit and the same was liable to be dismissed.

16. All the three suits were disposed of by the learned Joint District Judge, First Court, Dhaka on the same date, i.e. on 30-7-2009 by separate judgment and decree. Of the three suits, Title Suit No.81 of 2006 was decreed declaring the plaintiffs' title in the suit plot as the heirs of Engineer Shamsul Kabir Humayun Reza of 157, Bara Moghbazar. The learned Joint District Judge also restrained the defendants permanently from creating any obstacle in the title and possession of the plaintiffs in the suit plot. The learned Joint District Judge dismissed Title Suit Nos.51 of 2004 and 176 of 2004.

17. Being aggrieved by and dissatisfied with the judgment and decree passed by the learned Joint District Judge in Title Suit No.51 of 2004, plaintiff-MA Hashem filed Appeal from Original Decree (First Appeal) No.357 of 2009 before the High Court Division. Against the judgment and decree passed in Title Suit No.81 of 2006, MA Hashem, defendant No.1, filed Appeal from Original Decree (First Appeal) No.358 of 2009. Against the judgment and decree passed in Title Suit No.81 of 2006, defendant No.3-Shamsul Kabir Humayun Reza, i.e. the plaintiff of Title Suit No.176 of 2004, filed Appeal from Original Decree (First Appeal) No.346 of 2009 and against the judgment and decree passed in Title Suit No.176 of 2004, he also filed Appeal from Original Decree (First Appeal) No.327 of 2009. A Division Bench of the High Court Division hearing the four appeals analogously by the impugned judgment dismissed all of them.

18. Against the judgment and decree passed in First Appeal Nos.346, 357, 358 and 327 of 2009, the respective petitioner has filed these four leave petitions.

19. Mr Abdul Wadud Bhuiyan, learned Advocate, appearing for the petitioner in CP No.2199 of 2009, Mr Rokanuddin Mahmud, learned Advocate, appearing for the petitioner in CP No.1672 of 2009, Mr AF Hassan Ariff, learned Advocate, appearing for the petitioner in CP No.2198 of 2009 and Mr Fida M Kamal, learned Advocate, appearing for the petitioner in CP No.1671 of 2009, have made common submission that the learned presiding Judge of the Division Bench proceeded to dispose of the appeals with the adverse view as to documents produced by the respective petitioner before considering the respective case with reference to the evidence on record as is apparent from the observation made by him at the beginning of the judgment to the effect: "The cases before me are unique cases of forgery. Allottees, 3 in number are of same name, same parentage, similar hand writings with similar apparently same documents but 3 persons claiming the plot of RAJUK of them one must be genuine with original papers and others are not. I have taken a strong heavy burden to single out that genuine person with original documents." and because of such adverse view, due consideration to the evidence produced by the respective petitioner, both oral and documentary, was not given in deciding the merit of his claim to the suit plot and thus, they have been seriously prejudiced. The learned Advocates have further submitted that in the facts and circumstances of the case, particularly, of the fact that three sets of Shamsul Kabir Humayun Reza surfaced in the scene with three sets of original documents which included the letter of allotment, receipts showing payment of installments against the suit plot and the lease deed, it was incumbent upon the trial Court to frame an issue as to which sets of documents, were genuine and who was the actual Shamsul Kabir Humayun Reza and then to decide the issue by calling the originals of those documents from RAJUK, but the trial Court neither framed any issue nor decided the matter on verification of the originals kept with RAJUK and thus, erred in law in decreeing Title Suit No.81 of 2006 while dismissing the two other suits and that the High Court Division being the last Court of fact could also call for the originals from RAJUK and decide the above points, but it did not do and decided the merit of the appeals on the documents produced by the parties concurring with those of the trial Court and thus fell into an error in passing the impugned judgment and decree. The learned Advocates have made prayer for sending the suit back on remand to the trial Court for ascertaining the genuineness of three sets of documents produced by the parties and also to ascertain which Shamsul Kabir Humayun Reza was the actual allottee of the suit plot. In the alternative, they have also prayed that the appeals may be sent back to the High Court Division for decision afresh to decide the above points raised by them. The learned Advocates have also made a common submission that the trial Court erred in law in adopting the depositions of the PWs examined in Title Suit Nos.51 of 2004, 176 of 2004 and 81 of 2006 as evidence in support of the respective case as made out in the respective written statement filed in the respective suit in violation of the provisions of section 33 of the Evidence Act and that although the said point was agitated before the High Court Division, it discarded the same on misconception of the provisions of section 33 thereof. On this point, Mr Bhuiyan relied upon the cases of *Ali Haider vs State, 10 DLR (SC) 193* and *Allah Ditta vs State, 11 DLR (SC) 38.*

20. Mr Abdul Wadud Bhuiyan has further submitted that the documents filed by the petitioner (CP No.2199 of 2011) as plaintiff in Title Suit No.176 of 2004 (he was defendant No.3 in Title Suit No.81 of 2006) were the original documents regarding the lease of the suit plot and those conclusively proved that he was the actual Shamsul Kabir Humayun Reza and allottee of the suit plot, the trial Court was wrong in decreeing Title Suit No.81 of 2006 on the view that the plaintiffs (Title Suit No.81 of 2006) proved that the suit plot was allotted to Shamsul Kabir

Humayun Reza of 157, Bara Moghbazar and the High Court Division also being the last Court of fact failed to consider the documents filed by him with reference to his case as made out in his written statement filed in the suit and thus fell into an error in affirming the judgment and decree passed by the trial Court.

21. Mr Fida M Kamal appearing in CP No.1671 of 2011 has submitted that petitioner MA Hashem as plaintiff of Title Suit No.51 of 2004 proved conclusively that Shamsul Kabir Humayun Reza of 157, Bara Moghbazar, i.e. father of defendant Nos.1(a)-1(c) entered into an agreement with him for selling the suit plot at a consideration of Taka 16,50,00,000 and accordingly, executed the bainapatra on 29-12-2002 on receipt of Taka 35,00,000 as advance and the subsequent payment of Taka 3,20,000 and his willingness to pay the balance amount and thus fulfilled all the requirements within the meaning of section 12 of the Specific Relief Act, the trial Court as well as the High Court Division erred in law in dismissing the suit. Mr Fida M Kamal has further submitted that from order No.5 dated 20-3-2004, it was clear that after the death of defendant No.1, Engineer Shamsul Kabir Humayun Reza, the plaintiff filed an application for substituting his heirs and ultimately, the said application was allowed and the heirs of defendant No.1 were substituted on 15-7-2004 by order No.13, the High Court Division was wrong in observing that from 8-2-2004 to 15-7-2004, the plaintiff did not take any step in the matter either for substituting or adding the heirs of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar in the suit and thus, fell into an error in deciding the genuineness of the agreement dated 29-12-2002 on the view that the plaintiff did not accept Shamsul Kabir Humayun Reza as his vendor. Mr Fida M Kamal has further submitted that the evidence on record proved conclusively that Shamsul Kabir Humayun Reza of Mirpur and of 157, Bara Moghbazar was the same and similar person, who entered into an agreement with the plaintiff on 29-12-2002 for selling the suit plot, but the High Court Division on misreading and on misappreciation of the evidence on record erroneously held that Shamsul Kabir Humayun Reza of Mirpur and Bara Moghbazar were two different persons and that Shamsul Kabir Humayun Reza of Bara Moghbazar did not enter into any agreement for sale of the suit plot with the plaintiff and thus, erred in law in dismissing the suit.

22. Mr Rokanuddin Mahmud, appearing for MA Hashem in CP No.1672 of 2011, has submitted that Title Suit No.81 of 2006 was not maintainable in law as prior to the filing of that suit, the petitioner (defendant No.1 of Title Suit No.81 of 2006) had already filed Title Suit No.51 of 2004 for specific performance of contract against the plaintiffs' predecessor, Shamsul Kabir Humayun Reza and in that suit, they were substituted as defendant Nos.1(a)-1(e) and thus, they had the scope to prove their case, but the High Court Division failed to consider this factual and legal aspect of the case in affirming the judgment and decree passed by the trial Court. He has further submitted that a suit for specific performance of contract cannot be converted into a title suit, but, in fact, the heirs of Shamsul Kabir Humayun Reza by filing Title Suit No.81 of 2006 for declaration that the agreement for sale in favour of defendant No.1 and another agreement in favour of defendant No.4 were false, forged and not binding upon them and also for declaration of their title and for permanent injunction, the suit was converted into a title suit. Therefore, the trial Court ought to have dismissed Title Suit No.81 of 2006 as being not maintainable; the High Court Division failed to apply its judicial mind to consider this legal aspect of the case as well and thus erred in law in dismissing the appeal affirming those of the trial Court.

23. Mr AF Hassan Ariff appearing in CP No.2198 of 2011 separately argued that plaintiff,

Shamsul Kabir Humayun Reza proved conclusively that he was the actual Shamsul Kabir Humayun Reza and the actual owner of the suit plot and, as such, he had every right to dispose of his property by way of sale and since RAJUK did not give permission to sell the same in spite of prayer made by him, he had no other alternative but to file the suit. But the High Court Division, on an erroneous approach to the case and also on misreading of the evidence on record, found that the plaintiff was not the real owner of the suit plot and thus dismissed the suit. He has further submitted that the trial Court as well as the High Court Division erred in law in holding that Shamsul Kabir Humayun Reza of Bara Moghbazar was the actual Shamsul Kabir Humayun Reza and the owner of the suit plot ignoring the fact that the plaintiff Shamsul Kabir Humayun Reza of Title Suit No.176 of 2004 produced all the relevant original documents from his custody, such as: letter of allotment, money receipts showing payment of installments in respect of the suit plot, paper handing over possession of the suit plot to him, the standard lease deed, approved plan dated 29-10-1966 by the then DIT for constructing building on the suit plot, permission letter issued by DIT to undertake construction on the suit plot, DCR, mutation khatian, rent receipts and RS Khatian prepared in his name. He has lastly submitted that the trial Court as well as the High Court Division rejected the plaintiff's claim that he was the Executive Engineer of C&B under the Ministry of Communications considering the extraneous matters than the documentary evidence produced by him and thus fell into an error in dismissing the suit.

24. Mr Khalilur Rahman, learned Advocate, entering caveat on behalf of the respondents in CP Nos.2199 of 2011, 1671 and 1672 of 2011, on the other hand, has supported the impugned judgment passed by the learned Judges of the High Court Division affirming those of the trial Court passed in the respective suit. He has submitted that in view of the conflicting pleadings of the respective party, possession of the suit plot was a very vital and crucial issue to be decided in the suits. The trial Court as well as the High Court Division considering the tenancy agreements entered into by late Engineer Shamsul Kabir Humayun Reza of 157, Bara Moghbazar with the tenants, rent receipts, RS Khatian, bills of the utility services, came to the specific finding that the plaintiffs' father, Engineer Shamsul Kabir Humayun Reza of 157, Bara Moghbazar had been in possession of the suit plot right from the time of delivery of possession, pursuant to the letter of allotment and rightly decreed Title Suit No.81 of 2006 and dismissed the other two suits. He has further submitted that the findings of the Courts below that plaintiffs' (Title Suit No.81 of 2006) father, late Engineer Shamsul Kabir Humayun Reza of 157, Bara Moghbazar was the actual allottee of the suit plot and he never entered into any contract with defendant No.1, MA Hashem or defendant No.4, MNH Bulu and that defendant No.2, Shamsul Kabir Humayun Reza of Mirpur was a fake person, are concurrent findings of facts based on proper consideration of the evidence on record adduced by the parties, there is no scope of interference by this Court with such findings and, as such, the question of sending the suit or the appeal back on remand to the Court below does not arise at all and he submits that all the petitions be dismissed.

25. Before considering the propriety of the submissions of the respective learned Advocate appearing in four leave petitions, we consider it necessary to see the findings of the Courts below.

26. As already stated hereinbefore, three suits, namely: Title Suit Nos.51 of 2004, 176 of 2004 and 81 of 2006, were disposed of by separate judgments and decrees by the learned Joint District Judge, First Court, Dhaka, although there was only one set of evidence in each suit. And we propose to proceed serially according to the number of the suit.

27. Title Suit No.51 of 2004:

The trial Court dismissed the suit. One of the findings on which the trial Court dismissed the suit, was that the suit plot was allotted to Shamsul Kabir Humayun Reza, a BSc Engineer of 157, Bara Moghbazar and not to Shamsul Kabir Humayun Reza of Mirpur and that at the time of allotment, he was the Executive Engineer of C&B, Dhaka and he joined the Department in 1952. In coming to the said finding, the trial Court relied upon exhibit-'ঙ', the letter dated 29-10-1966, issued by the then DIT to Shamsul Kabir Humayun Reza of 157, Bara Moghbazar giving permission to carry on with the proposed construction on the suit plot. The trial Court also relied upon the testimony of PW 2 Shammima Zaman, daughter of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar and PW5-Dr Md Arifur Rahman, her husband who was the principal of National Medical College (they were examined in Title Suit No.81 of 2006 and their depositions were adopted in Title Suit No.51 of 2004) and DW 1 who was examined in Title Suit No.176 of 2004 on behalf of RAJUK. The trial Court came to the further finding that the plaintiff could not file any document to show that Shamsul Kabir Humayun Reza of Mirpur was a BSc Engineer and Executive Engineer in C&B. From the plaint, it was clear that the address of defendant No.1, Shamsul Kabir Humayun Reza was given at House No.31, Lane No.6, Section 6/A, Mirpur, Dhaka. Plaintiff, MA Hashem, in his deposition as PW 1, admitted that as defendant No1 was not registering the sale deed in respect of the suit plot, he through his lawyer issued a legal notice to him on 20-12-2003 who duly received the same. The trial Court observed that question could not arise that Shamsul Kabir Humayun Reza, a BSc Engineer, who joined Bengal Development Company as Director after leaving the job of C&B and subsequently, became a Director of Uttara Bank Limited, would construct a house at Mirpur and reside there. The trial Court came to the further specific finding that the plaintiff on 29-12-2002 entered into the agreement for purchasing the suit plot with Shamsul Kabir Humayun Reza of Mirpur, who was not the allottee of the suit plot. Plaintiff, MA Hashem, in the written statement filed in Title Suit No.81 of 2006 (he was defendant No.1 in the suit) clearly asserted that Shamsul Kabir Humayun Reza of 157, Bara Moghbazar was the original allottee, but he as a witness deposed that Shamsul Kabir Humayun Reza of Mirpur was the allottee of the suit plot and the Court observed that "তাহা হইলে বাদী এম এ হাশেম সাহেব নিজেই সম্পত্তির মূল বরাদ্দ গ্রহীতার বিষয়ে দুই রকম বক্তব্য প্রদান করিতেছে।" The two other witnesses examined by the plaintiff were none, but his employees. The trial Court further noticed that DW1 (Abu Bakkar Siddique examined on behalf of RAJUK in Title Suit No.176 of 2004) stated in his evidence that the suit plot was a residential plot and an application was filed to convert the same as an industrial plot. The DW further stated that letter was issued to Shamsul Kabir Humayun Reza on 14-8-2001 to deposit a sum of Taka 38,28,125 as a conversion fee and pursuant to the said letter, he deposited a sum of Taka 38,28,125 on 25-9-2001. Shamsul Kabir Humayun Reza filed an application to RAJUK on 26-9-2001 to accept the said transfer fees. The application for conversion of the suit plot and the letter written by Shamsul Kabir Humayun Reza were proved by DW1 as exhibits-'ণ', and 'থ'. The trial Court further found that Shamsul Kabir Humayun Reza gave power of attorney to Eastern Housing Limited to do all acts in respect of the suit plot (in Bangla it has been written নালিশি সম্পত্তির যাবতীয় কার্য পরিচালনার জন্য) and to accept the said power of attorney, he filed an application to RAJUK on 24-12-2003 and RAJUK approved the power of attorney on 5-1-2004 and the said letter was filed and proved and marked as exhibit-'ন'. There was no paper with RAJUK to show that application was filed to it for permission to sell the suit plot by

Shamsul Kabir Humayun Reza of Mirpur. The trial Court concluded that the plaintiff did not enter into the agreement on 29-12-2002 with the original allottee to purchase the suit plot, so his suit for specific performance of contract was not maintainable.

28. Title Suit No.176 of 2004:

The trial Court dismissed the suit on the findings, *inter alia*, that plaintiff, Shamsul Kabir Humayun Reza, was not the original allottee, therefore, RAJUK could not give permission to him to sell the suit plot and that RAJUK recognized Shamsul Kabir Humayun Reza of 157, Bara Moghbazar as the allottee of the suit plot and also approved Eastern Housing Limited as his attorney; the plaintiff's suit was not maintainable. In coming to the said findings, the trial Court held that the suit plot was allotted to Engineer Shamsul Kabir Humayun Reza, who was the Executive Engineer of C&B and that RS khatian No.1174 in respect of the suit plot was recorded in the name of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar; plaintiff, Shamsul Kabir Humayun Reza as PW1 in his cross-examination clearly stated that he never resided at 157, Bara Moghbazar and while he deposed, he was residing at 911/1 Shewrapara as a tenant of one Monowara; the suit plot was allotted to Executive Engineer, Shamsul Kabir Humayun Reza and admittedly the plaintiff was Diploma Engineer and therefore, it was not believable that he could join a big Department like C&B as Assistant Engineer in 1950/1952 and was promoted as the Executive Engineer in 1956/57 and therefore, it could not be accepted that the plaintiff got the allotment of the suit plot as Executive Engineer. The trial Court further noticed that PW1 (Shamsul Kabir Humayun Reza) admitted in his cross-examination that in 1965, he was a voter at Ishwardi and after liberation of Bangladesh, he participated in an election at Fulbaria under the district of Dinajpur, which was not believable, as it was not natural that a person, who served as an Executive Engineer, would go to an Upazila and participate in the election. The trial Court further observed that it was not natural that a person, who became the Executive Engineer, would live at Pabna, then at Dinajpur and then in Dhaka. The trial Court further observed that it was also not believable that a person, who got a plot from RAJUK at Gulshan, would reside at Ishwardi in the district of Pabna and then at Fulbaria in the district of Dinajpur. Although the plaintiff claimed that he accepted domicile certificate but that was not with him. The trial Court further observed that the plaintiff in his cross-examination admitted that though he served as an Executive Engineer in C&B, he did not open any bank account, which also proved that he was not an Executive Engineer, because the salary of a first class employee is given through cheque and in the absence of bank account, he could not draw his salary. The trial Court further noticed that the plaintiff admitted in his cross-examination that he had gone to India in 1958 and married his cousin (খালাতো বোন) at 'Arai' in India. The trial Court noticed that a person, who migrated to this country, in 1947 and was a high official in C&B, could not go to India without the permission of his office or the Government for marrying there. PW2, a guard of Sonali Bank, Motijheel Branch, was disbelieved by the trial Court on the ground that when the plaintiff admitted that he had no bank account, it was not believable that he would be acquainted with a guard of Sonali Bank. The trial Court also observed that it was not natural that the plaintiff, who claimed to be an Executive Engineer, would develop a relationship with a guard of a bank. The trial Court disbelieved PW3 on the ground that he deposed that he got himself acquainted with the plaintiff through one of the relative, namely, Shamim; when PW1 in his cross-examination admitted that he had no relative in this country. (PWs 2 and 3 were examined to prove plaintiff's possession in the suit plot.)

The trial Court relied on the evidence of DW1, an official of RAJUK that no application was filed by the plaintiff, Shamsul Kabir Humayun Reza, to RAJUK for permission to sell the suit plot to MNH Bulu and that no application was filed by the plaintiff to RAJUK on 18-2-2004 to sell the suit plot. The trial Court further held that RAJUK did not recognize the plaintiff of the instant suit as the allottee of the suit plot, rather RAJUK admitted Shamsul Kabir Humayun Reza of 157, Bara Moghbazar as the allottee and approved the power of attorney given by him to Eastern Housing Limited.

29. Title Suit No.81 of 2006:

The trial Court decreed the suit on the findings, *inter alia*, that the plaintiffs proved conclusively that the suit plot was allotted to Shamsul Kabir Humayun Reza of 157, Bara Moghbazar; Shamsul Kabir Humayun Reza of Bara Moghbazar after obtaining permission from RAJUK vide letter dated 29-10-1996, exhibit-16(ka) (the lefter was also proved by DW1 in Title Suit No.176 of 2004 as exhibit-'ঙ') constructed building on the suit plot by mortgaging the same with the House Building Finance Corporation as apparent from exhibit-'17', the loan sanction letter dated 2-3-1967 issued by the House Building Finance Corporation and had been in possession of the building by letting out the same to various tenants vide exhibit-'18 series. The trial Court further observed that the first tenancy agreement was entered into in 1967 wherein the address of Shamsul Kabir Humayun Reza was written as 157, Bara Moghbazar and in all the subsequent tenancy agreements his address was also written as 157, Bara Moghbazar. The trial Court further found that the plaintiff of Title Suit No.176 of 2004, who was impleaded in the instant suit (Title Suit No.81 of 2006) as defendant No.3, stated in his examination-in-chief as PW1 that he was residing at 911/1 East Sheurapara, Thana-Kafrul and in cross-examination, he stated that he never resided at 157, Bara Moghbazar. The trial Court came to further finding that as per own admission, defendant No.3 (plaintiff of Title suit No.176 of 2004) neither resided at Bara Moghbazar nor at the suit plot, but he claimed to have prayed for permission to sell the suit plot. The trial Court further noticed that PW1 (Shamsul Kabir Humayun Reza examined in Title Suit No.176 of 2004) stated in his examination-in-chief that he had no issue and that though he got the domicile certificate, but he would not be able to file the same as the same was not with him. The trial Court concluded by saying that defendant No.3, Shamsul Kabir Humayun Reza was not the owner of the suit plot and that the plaintiffs' father Shamsul Kabir Humayun Reza was the owner thereof and had the right, title and possession therein and after his death, the plaintiffs became its owners. The trial Court further noticed that defendant No.1 in his written statement admitted that the plaintiffs' father was the owner of the suit plot and thus admitted the plaint case. The trial Court further noticed that in the agreement for sale between defendant No.1 and Shamsul Kabir Humayun Reza, his address was mentioned at the suit plot and at present Mirpur, whereas the owner of the suit plot was Shamsul Kabir Humayun Reza of 157, Bara Moghbazar. The trial Court on consideration of the evidence of MA Hashem examined in Title Suit No.51 of 2004 further held that Shamsul Kabir Humayun Reza of Mirpur neither being the allottee of the suit plot nor being in possession thereof, the agreement, even if, entered into by him with defendant No.1 was not "Executable". The trial Court also found that DW1 (examined in Title Suit No.176 of 2004 on behalf of RAJUK) clearly admitted in his deposition that in the Nathi of RAJUK, only the names of the plaintiffs were mutated. The trial Court further held that the plaintiffs are in possession of the suit plot and after the death of their father, Engineer Shamsul Kabir Humayun Reza of 157, Bara Moghbazar, became its owner.The trial

Court came to further finding that RS record of the suit plot was recorded in the name of the plaintiffs' predecessor, Shamsul Kabir Humayun Reza, wherein his address has been clearly mentioned as 157, Bara Moghbazar which fact also confirmed that he was the allottee of the suit plot and since defendant No.1 entered into a contract with fake Shamsul Kabir Humayun Reza of Mirpur without permission of RAJUK and claimed possession in the suit plot and thus also posed threat to the plaintiffs' possession therein as well as their title, their suit as framed was maintainable and they were entitled to get the relief prayed for in the suit.

30. Now, the findings of the High Court Division:

As stated earlier, the appeals were heard and disposed of by a Division Bench. The learned Judges dismissed all the appeals. They gave separate findings and decisions in respect of each of the suits giving rise to the appeals.

From the impugned judgment, it further appears that the learned presiding Judge after giving his findings/decisions as to the merits of the respective appeal made some observations/comments and remarks about the inhabitants of India, a part of it being Bangladesh, its political leaders and the independence of judiciary (the observations will be quoted hereinafter at an appropriate place). The learned second Judge differed with those observations /comments and remarks of the learned presiding Judge and wrote his own views separately on the issues involved in each of the appeals. Therefore, we cannot help but to refer to the findings of both the learned Judges and in doing so, there may be repetitions.

31. Civil Petition for Leave to Appeal No.1671 of 2011:

This leave petition has been filed against the judgment and decree passed by the High Court Division in First Appeal No.357 of 2009, which was preferred against the judgment and decree passed in Title Suit No.51 of 2004. The suit was dismissed by the trial Court. The learned presiding Judge formulated two points for decision: (a) whether the plaintiff entered into the agreement "with false person in the name of Shamsul Kabir Humayun Reza" and (b) whether the plaintiff proved the necessary ingredients to get the decree for specific performance of contract. The learned Judge on consideration of the evidence on record and the order sheets of the suit, particularly, from 8-2-2004 to 15-7-2004, came to the specific findings that the plaintiff entered into agreement with Shamsul Kabir Humayun Reza of Mirpur and he filed the suit for specific performance of contract against him. Shamsul Kabir Humayun Reza of Mirpur was not the actual allottee of the suit plot and it was Shamsul Kabir Humayun Reza of 157, Bara Moghbazar who was the actual allottee and he died on 2-2-2004, i.e. six days before filing of the suit (the suit was filed on 8-2-2004). The learned Judge noticed that on 18-3-2004, the plaintiff filed an application for temporary injunction for restraining defendant No.1(Shamsul Kabir Humayun Reza) and defendant No.2 (Akhtaruzzaman, Director, Eastern Housing Ltd.) from changing the nature and character of the suit plot, in any manner, (although Shamsul Kabir Humayun Reza of 157, Bara Moghbazar died on 2-2-2004) and the Court by order dated 25-3-2004 issued notices upon the defendants to show cause as to why an order of temporary injunction should not be granted. Considering the order sheets from 8-2-2004 up to 15-7-2004, the learned Judge observed that the plaintiff did not take any step in the suit either for substituting or adding the heirs of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar which indicated that the plaintiff entered into the agreement with Shamsul Kabir Humayun Reza of Mirpur and filed the suit against him. And had the plaintiff-MA Hashem, accepted defendant Nos. 1(a) to 1(c) as the heirs of Shamsul Kabir Humayun Reza of 157, Bara

Moghbazar than he would not have moved the High Court Division against the order passed by the learned Additional District Judge, 7th Court, Dhaka in Civil Revision No.358 of 2004 adding them as the heirs of late Shamsul Kabir Humayun Reza. The learned Judge further noticed that on an application filed by defendant No.2 (name has been mentioned hereinbefore) for the personal appearance of defendant No.1, Shamsul Kabir Humayun Reza of Mirpur, the learned Joint District Judge by order dated 27-5-2004 directed the plaintiff to produce defendant No.1, but he failed to produce him in Court and till that time (27-5-2004), the plaintiff did not accept Shamsul Kabir Humayun Reza of 157, Bara Moghbazar as his vendor. The learned Judge further observed "As I find his presence in the suit after six months of filing of the suit and thereafter he disappeared and the plaintiff could not or did not satisfy the Court by producing any documents that Shamsul Kabir Humayun Reza, defendant No.1 resides at Bara Moghbazar at any point of time." The plaintiff made prayer for specific performance of contract from defendant No.1 and also for a direction upon him to obtain necessary sale permission from RAJUK in his favour and had he disowned defendant No.1 than after substitution or addition of defendant Nos.1(a)-1(e), the prayer and other incidental statements of the plaint ought to have been amended, but the plaintiff did not amend the plaint which showed that till hearing, he claimed original defendant No.1, i.e. Shamsul Kabir Humayun Reza of Mirpur as his vendor. The learned Judge held that "Thereby it can safely be concluded that so called bainapatra or agreement for sale was entered into by plaintiff with the person whom the plaintiff by his own act sometime did and sometime did not recognize as his vendor as plaintiff allowed defendant Nos.1(a) to 1(e) to substitute in place of defendant No.1 who did not recognize defendant No.1 as their father as defendant Nos.1(a) to 1(e) did not step aside from their original position that they are not substituted heirs of defendant No.1 of Mirpur but they are the heirs of Shamsul Kabir Humayun Reza of 157, Bara Magbazar against whom the suit has not been filed and no agreement or bainapatra was arrived at by plaintiff."

32. The learned Judge further held that from the conduct of the plaintiff, it was clear that he, in order to grab the suit plot at a meager price of Taka 1,65,00,000, sometime accepted Shamsul Kabir Humayun Reza of Mirpur as his vendor and sometime Shamsul Kabir Humayun Reza of Bara Magbazar as his vendor and having dilemma lastly "gulped" Shamsul Kabir Humayun Reza of Bara Moghbazar as his vendor by accepting the heirs added/substituted in place of defendant No.1, but without amending the material statements or prayer of the plaint. The learned Judge further observed that the agreement was entered into on 29-12-2001 in between MA Hashem (the plaintiff) and Shamsul Kabir Humayun Reza of Mirpur and in the plaint, the address of Shamsul Kabir Humayun Reza was given at House No.31, Lane 6, Section 6/1, Mirpur, Dhaka, although from the protest notice published in the daily Janakantha and the corrigendum thereto, it appeared that before filing the suit, the plaintiff could know that the address of Shamsul Kabir Humayun Reza was 157, Bara Moghbazar, Dhaka. The learned Judge considering the agreement, the evidence of the PWs and the letter allegedly written by the plaintiff to defendant No.1, Shamsul Kabir Humayun Reza of Mirpur and the legal notices issued by his lawyer on his behalf (exhibits 8/1, 8/2, 9/1, 10/1,10/2/11/1, 11/2) held that the execution of bainapatra was suspicious and that no money was transacted and when there was doubt as to the payment of earnest money, decree for specific performance of contract could not be passed. In this regard, the learned Judge referred to the evidence of PW1, MA Hashem that he would not produce supporting documents "in the matter of passing of earnest

money." The learned Judge further observed that on the question of possession, the plaintiff did not "state a single word in his plaint as to whether he was inducted into possession or not, although exhibit-2 was entered on 29-12-2002." The learned presiding Judge further observed that in the plaint, the plaintiff stated that he went to the suit property on 22-12-2003 and found that some people were taking step for construction upon removal of the old structure, but there was no explanation "as to the fact that old structure belonged to whom". The plaintiff did not also inform the matter to defendant No.1 with whom he allegedly entered into the contract or to RAJUK, the lessor, either any GD entry was made or any legal proceeding was taken about the matter and he kept mum till filing the suit on 8-2-2004, i.e. about 8(eight) months from the said date. The learned Judge further observed that in the bainapatra and also in the deposition of PW1, it has been mentioned that all the original papers and documents, i.e. allotment letter of DIT (exhibit-1), standard lease agreement of DIT (exhibit-2), payment of installment receipts from National Bank (exhibit-3) were handed over to the plaintiff; defendant Nos.1(a) to 1(e) produced before the Court 28 original deeds/documents of them exhibits 1 to 5 "in original copies produced, proved and exhibited in the suit. Plaintiff after finding that original deeds were produced from the side of defendant Nos.1(a) to 1(e) did not challenge as to genuinity of them at least, exhibits 1 to 5 of the defendants documents ought to be challenged but he did not." In the concluding paragraph, the learned Judge gave the finding that the "plaintiff's case for specific performance of contract is totally a hopeless case."

33. The learned second Judge, while dismissing the appeal, gave clear finding that it was manifest that Shamsul Kabir Humayun Reza of Mirpur and Engineer Md Shamsul Kabir Humayun Reza of Gulshan was not the same person and that the dispute regarding the title of the suit plot was started before "expiry of the Engineer Md Shamsul Kabir Humayun Reza who died on 2-2-2004", whereas the plaintiff filed the suit on 8-2-2004 impleading defendant No.2, Akhtaruzzaman, a Director of Eastern Housing Limited, as the attorney of late Engineer Shamsul Kabir Humayun Reza showing defendant No.1 as his vendor. The learned second Judge noticed that on 20-3-2004, 3rd party, i.e. the heirs of late Shamsul Kabir Humayun Reza, filed an application in the suit under Order I, rule 10 of the Code of the Civil Procedure for adding them as defendants in the suit as his heirs and not to substitute them in place of defendant No.1 stating that they got the information that the suit was filed by the plaintiff on the basis of false bainapatra created by him with fictitious person having no title and interest and possession in the suit plot, but the learned Joint District Judge by his order dated 15-7-2004 allowed the application for addition of party, not as the third party, but as the heirs of defendant No.1. The learned Judge also considered the fact that on 23-3-2004, the plaintiff by filing a fresh vokalatnama prayed for hearing the application for temporary injunction filed on 18-3-2004 and the Court on hearing the application issued notices upon defendant Nos.1 and 2 to show cause as to why an order of temporary injunction should not be granted and on 27-5-2004 defendant Nos.1 and 2 filed hajira and then again concluded that "So, from the record and conduct of the plaintiff it was crystal clear that defendant No.1, Shamsul Kabir Humayun Reza of Mirpur and Engineer Shamsul Kabir Humayun Reza of 157 Bara Maghbazar is not the same and one person." Considering the evidence of PW1(the plaintiff) the learned Judge came to the findings that "it is further manifest" that the plaintiff at the time of filing the suit and sometime after, did not admit rather denied the existence, right, title and possession of Engineer Md Shamsul Kabir Humayun Reza of Bara Moghbazar, later on only to escape and justify his earlier false activities admitted "with a device that

defendant Nos.1(a) to 1(e) are the legal heirs of defendant No.1, i.e. Shamsul Kabir Humayun Reza of Mirpur" by substituting them. The plaintiff neither made a contract for purchasing the suit plot with a genuine person nor the documents submitted in Court were genuine and on the basis of those documents, he could not get decree for specific performance of contract and that the total case of the plaintiff was nothing but a got-up story only to grab the suit plot on the basis of forged deed and papers with the help of a fake person. The plaintiff failed to prove his alleged bainapatra and part payment of consideration money. The learned Judge disbelieved PWs 2 and 3 on the finding that they being employees of the plaintiff could not but oblige their master. The learned Judge also took adverse presumption against the plaintiff for non-examination of a vital and important witness, namely, Shawkat Ali, who figured as a witness in the bainapatra and lived in the same holding with defendant No.1, Shamsul Kabir Humayun Reza at Mirpur. In this regard, the learned Judge further opined that the identity of defendant No.1 could only be clarified by Shawkat Ali, who is also a relative of the plaintiff. The learned Judge concluded that "plaintiff not only failed to prove his own case but produced some forged and fabricated deeds and papers because from the facts and circumstances it (sic) clear that plaintiff PW.1 produced the exhibit 1, 2, 3, 4 and 5 in the court showing his vendor as custodian of those exhibit's who failed to appear before the court and from the materials on record it is proved that he is none but a fake person. So, exhibit "6"(the agreement) is nothing but obviously the creation of forgery only to grab the suit property. Furthermore, the defence story and facts as setforth are quite believable not only by oral evidences, however, facts and circumstances with possession and documentary evidences, as find support from the testimony of PWs of title suit No.81 of 2006 which has been adopted in this case with the consent of all the parties."

34. Civil Petition for Leave Appeal No.2198 of 2011:

This petition has been filed by the plaintiff, Shamsul Kabir Humayun Reza of Title Suit No.176 of 2004 against the judgment and decree passed in First Appeal No.327 of 2009 which was filed against the judgment and decree passed in the said suit. In this appeal, the learned presiding Judge formulated only one point for determination namely, "whether there was any application pending before the defendants to be considered by RAJUK." It may be stated that in the suit 4(four) persons, namely: the Chairman, RAJUK, (ii) the Member (Estate) (iii) RAJUK, (iv) the Deputy Director (Estate), RAJUK were impleaded as defendants. In the context, it is necessary to state that plaintiff, Shamsul Kabir Humayun Reza, filed the suit for the principal relief as under:

> "A. Pass a decree in favour of the plaintiff and against the defendants declaring that the plaintiff is legally entitled to get sale permission and the defendants are also bound to issue sale permission in respect of the scheduled property by receiving the proper transfer fees from the plaintiff as per rule of RAJUK."

Then by way of amendment prayer 'B' was added to the effect:

> "B. Pass a decree in favour of the plaintiff and against the defendants declaring that the defendants are bound to dispose of the application dated 18-2-2004 filed by the plaintiff for sale permission in respect of the schedule property within a specified time as directed by the Court by receiving the proper transfer fees as per rule of RAJUK."

35. The learned presiding Judge noticed that on 18-9-2008, i.e. long after 4 years and 4 months of the institution of the suit (the suit was instituted on 26-5-2004) further amendment was made in paragraph 4 of the plaint as to the number of the deed of lease executed and registered by RAJUK, i.e. figure "1198" was replaced by the figure "7198". The learned Judge came to the finding

that the plaintiff did not produce any copy of his application filed to RAJUK for sale permission of the suit plot. The learned Judge further noticed that RAJUK in its written statement stated that "such file in the name of Shamsul Kabir Humayun Reza as mentioned is not traceable in the office of RAJUK and I find plaintiff did not produce any copy of his application in the suit or exhibited it." The learned Judge concluded that "So, it may be legally presumed that such application was not filed and alternatively it may be presumed that the suit plot was not allotted to the plaintiff." Considering the deposition of PW1, the learned Judge observed that after his son disappeared with his brother-in-law in 1972 who had allegedly gone to the suit plot in the month of December, 1972, till filing the suit on 26-5-2004, i. e. for the last 32 years, the plaintiff did not go to the suit plot and that he did not also take any step through legal process for recovery of the same and that had he been allotted the suit plot as lessee by RAJUK, he ought to have informed this fact to RAJUK for recovery of possession, but he did nothing. Although, in his deposition, the plaintiff claimed that he had lived in the suit plot till 1971 and then left the suit plot for security reason keeping his Caretaker, Abul Khair and then again came back there, in 1972, he did not examine Abul Khair. The plaintiff did not also produce his domicile certificate. The learned Judge further noticed that the plaintiff stated in his deposition that after coming to Dhaka, he resided at 154, Bara Moghbazar thereafter at Mirpur with his uncle, but the RS Khatian was prepared in the name of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar and not in the name of Shamsul Kabir Humayun Reza of 154, Bara Moghbazar. The learned Judge further observed that if it was true that after getting permission for construction from RAJUK, the plaintiff constructed a two storied building on the suit plot then a man of prudence could not sit idol and keep mum when he found his property occupied by a third person and dismantling the building standing therein. The learned Judge came to the finding that the claim of possession of the plaintiff in the suit plot was not true. The plaintiff claimed to be a Government employee, but he had no bank account, then how he could draw his salary, because salary could not be paid in hand or in cash but through a bank account. The learned Judge further noticed that the plaintiff, Shamsul Kabir Humayun Reza first produced "allotment deed as deed No.1198 and no sooner its genuinity when challenged he produce (sic) deed No.7198 shows how quick such forgery could (sic) made. Both the deeds are on record."

36. The learned second Judge considering the evidence of the plaintiff as PW1 came to the finding that though PW1(Shamsul Kabir Humayun Reza) claimed that he was an Executive Engineer, his testimony regarding service book, ACR and organogram clearly proved that he was not a service holder at all. In coming to the said finding, the learned Judge observed that "He stated that he was executive engineer but could not understand the ACR and organogram." The learned Judge came to further finding that the documents filed by the plaintiff exhibited in the suit clearly showed that those were prepared in the name of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar, which was admittedly the permanent address of Engineer Shamsul Kabir Humayun Reza, a different person. The learned Judge further held that the suit of the plaintiff for sale permission simpliciter to sell the suit plot was not maintainable as he himself admitted in the plaint as well as in his deposition that he was out of possession and that Title Suit No.81 of 2006 filed by the heirs of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar for declaration of title and permanent injunction heard simultaneously by the same Court (the plaintiff was defendant No.3 in the suit) was decreed. The learned Judge rejected the objection raised by Mr Abdul Wadud Bhuiyan who also appeared before the High Court Division that the trial Court erred in law "in adopting the

evidence of PW1 as a (sic) evidence of DW1 in the respective cases" as such adoption was done in violation of section 33 of the Evidence Act, on the view that the said section had no manner of application as the plaintiff of both suits, i.e. Title Suit Nos.51 of 2004 and 176 of 2004 failed to prove the respective case. More so, from the record, it appeared that the defendants by filing application on 30-6-2009 prayed for adoption of their depositions given as PW1 in Title Suit Nos.176 of 2004 and 51 of 2004 respectively as deposition of "DW in Title Suit No.81 of 6 at their own risk." The learned Judge further held that the appellants were not entitled to raise objection as to the adoption of evidence before the Appellate Court as no objection was raised either before the trial Court or any such ground was taken in the Memorandum of Appeal and that no one was entitled to get benefit of his own wrong. On the above findings, the learned Judge concluded that the trial Court did not commit any error of law in dismissing the suit.

37. Civil Petition for Leave to Appeal Nos.2199 of 2011and 1672 of 2011:

These two leave petitions have been filed by Shamsul Kabir Humayun Reza and MA Hashem respectively against the judgment and decree passed by the High Court Division in First Appeal Nos.346 and 357 of 2009 which were preferred against the judgment and decree passed in Title Suit No.81 of 2006. First Appeal No.346 of 2009 was preferred by Shamsul Kabir Humayun Reza and First Appeal No.358 of 2009 was preferred by MA Hashem, who were defendant Nos.3 and 1, respectively in the suit. Both the appeals have been dismissed.

38. The learned presiding Judge observed that though defendant No.3 (also plaintiff in Title Suit No.176 of 2004) claimed that he was in possession in the suit plot, but "no where he ever stated how he was inducted into possession and when he was dispossessed." There was only a solitary statement in his deposition that in 1970, (it will be 1972) he sent his brother-in-law and the only son to the suit plot and thereafter, both of them disappeared. If that fact was true, then the defendant and other family members would have left no stone unturned to find out the whereabouts of his only son and brother-in-law, but nothing was done. PW1 stated that he made a GD entry, but the copy of GD entry was not produced. The learned Judge observed that since the time of missing of his only son and the brother-in-law till the date of hearing of the appeal, the defendant did not take any step either to recovery the possession of the suit plot or for a declaration that he was the lawful owner thereof. Considering the documents of the plaintiffs, namely: allotment letter (exhibit-1); general power of attorney executed by the heirs of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar (exhibits-2, 3, and 3Ka) in favour of Eastern Housing Limited; matriculation certificate of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar (exhibit-4); intermediate certificate of Shamsul Kabir Humayun Reza of 157 Bara Moghbazar (exhibit-4Ka); BSc Engineering certificate Part II of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar (exhibit-4Kha); BSc Engineering certificate of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar (exhibit-4Ga); Pakistani domicile declaration of Shamsul Kabir Humayun Reza (exhibit-5); deed of sale executed in favour of AZM Sanaullah dated 24-9-1957 (exhibit-6); deed of sale executed by AZM Sanaullah dated 24-9-1957 in favour of Shamsul Kabir Humayun Reza in respect of the property at Bara Moghbazar; deed of heba dated 17-8-1979 executed by Shamsul Kabir Humayun Reza in favour of his wife, Selima Begum (exhibit-7); approved plan of DIT (exhibit-8); voter identity card of Shamsul Kabir Humayun Reza (exhibit-9); passport of Shamsul Kabir Humayun Reza (exhibit-'9Ka); certificate issued by the

Government of Canada in favour of Shamsul Kabir Humayun Reza (exhibit-10); promotion letters (exhibit-11series); allotment letter of DIT in favour of Shamsul Kabir Humayun Reza (exhibit-12); receipts showing payment of installments (exhibits-12Ka to 12Gha); the letters written by Shamsul Kabir Humayun Reza of 157, Bara Moghbazar to DIT informing about the fact of payment of installments (exhibits 13uma to 13Cha); letter written by the then DIT to Shamsul Kabir Humayun Reza as to the delivery of possession of the suit plot and also asking him to deposit Taka 51 (exhibit-14); Standard lease deed of the suit plot (exhibit-15); letter of DIT approving plan (exhibit-16); photostat copy of approved plan of DIT (exhibit-16Ka); letter of House Building Finance Corporation sanctioning loan (exhibit-17); mortgaged deed executed by Shamsul Kabir Humayun Reza of 157, Bara Moghbazar in favour of House Building Finance Corporation (exhibit-17Ka); tenancy agreements between Shamsul Kabir Humayun Reza and the tenants spreading over the period from 1967 to 2000 (exhibit-18 series); letters of WASA for water connection and bills showing payment of gas, electricity and WASA charges (exhibits-19 series); municipal assessment tax for the period 1967 to 1968 (exhibit-20); the receipts of tax as to the payment of tax of the Municipality for the period 2003 to 2004 (exhibit-20Kha); receipt showing payment of land tax (exhibits-21-21Na); RS Khatian No.1174 recorded in the name of Shamsul Kabir Humayun Rezan of 157, Bara Moghbazar (exhibit-22); Memorandum and Articles of Association of Bengal Development Corporation Limited (exhibits-23-23Ka); audit reports of Uttara Bank Limited for the period 1996-2001 (exhibits-24-24Uma); letter of DIT to Shamsul Kabir Humayun Reza of 157, Bara Moghbazar regarding fees for changing the suit plot from residential to commercial (exhibit-25); letter issued by RAJUK to Shamsul Kabir Humayun Reza of 157, Bara Moghbazar approving the conversion of the suit plot into a commercial plot from residential plot (exhibit-26); certified copy of the general power of attorney executed by Shamsul Kabir Humayun Reza of 157, Bara Moghbazar in favour of Eastern Housing Limited (exhibit-27); approval letter of RAJUK in respect of the power of attorney given by Shamsul Kabir Humayun Reza to Eastern Housing Limited (exhibit-28); approved plan (exhibits 29-29Kha); notices published in the Daily Janakatha (exhibits-30-30Kha); corrigendum published in the Daily Janakatha (exhibits 31-31Ka); Death certificate of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar (exhibit 32); news published in different news papers by Uttara Bank Limited on the death of Shamsul Kabir Humayun Reza (exhibit-33); Succession certificate issued by the ward Commissioner of Ward No.53, Dhaka City Corporation (exhibit-33Ka); Succession certificate issued by the 3rd Joint District Judge, Dhaka (exhibit-34); plaint of Title Suit No.51 of 2004 (exhibit-35); plaint of Title Suit No.176 of 2004(exhibit-36); pay bills (exhibits-37-37Ka); Passport No.B-57985 of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar (exhibit-38); came to the positive finding that the plaintiffs proved that from 1967 till the hearing of the suit, i.e. for more than 35 years, they had been in possession of the suit plot and such continuous possession gave them title and that the lessor, RAJUK always recognized the plaintiffs as the lessees and it did not challenge their title in the suit plot in any form. The learned Judge further held that the case of defendant No.3, Shamsul Kabir Humayun Reza, could be considered if he were found to be in possession "but his case on possession is downright false" and by his own statement, it was proved that at no point of time, he was in possession thereof. Considering the documents filed by defendant No.3, namely: letter of allotment dated 21-3-1962, receipts showing deposit of install-

ments against the suit plot, letter as to the delivery of possession of the suit plot, approved plan by RAJUK for construction on the suit plot and the certified copy of the RS Khatian (these documents were proved and marked as exhibits 1, 2 series, 3, 6 and 9 respectively) further held that "the exhibits although resemble or appear to be true are not genuine or true, but he has manage(sic) to get those document which apparently original documents" to claim title to the suit plot. If the case of defendant No.3 that he was thrown out of his possession of the suit plot after he was inducted therein and that too when his only son with his brother-in-law disappeared in 1972, was true, he would have left no stone unturned to get back his son and brother-in-law and also the possession of the suit plot, but he only made a GD entry and moved the Parliamentary Standing Committee which had no business in the matter "of declaring title and getting possession of a property which can only be done by Court." Another aspect is that defendant No.3 gave his address "in his suit as of the disputed allotted suit plot which shows that he is a fake person as addressless person can be used by any person for any illegal purpose." The learned Judge further observed that it was the case of defendant No.3 that he entered into an agreement with MNH Bulu to sell the suit plot and to prove that fact defendant No.3 could examine Bhulu but he did not which"shows that he lives in false in making out his case." The learned Judge found the documents of the plaintiffs genuine considering two vital and relevant facts (i) when on physical verification of the suit plot, a fraction chhatak/decimal was found to be in excess of the allotted plot, the then DIT directed their father (wrongly written as plaintiff) to pay for the excess land and by the 5th deposit excess amount of Taka 51 was paid and (ii) plaintiffs' predecessor, Shamsul Kabir Humayun Reza of Bara Moghbazar took loan from House Building Finance Corporation by mortgaging the suit plot as evidenced by exhibit-17. Defendant No.3 did not produce any paper to show that he was present when the suit property/plot was measured and in fact, he was never inducted into possession of the suit plot.

39. The learned second Judge considered the evidence on record, both oral and documentary, particularly, the documentary evidence (as have been noted hereinbefore while noting the findings of the learned presiding Judge) and came to the specific finding that the plaintiffs' predecessor, Shamsul Kabir Humayun Reza, was the lessee of RAJUK and he had been exercising his right, title and interest over the suit plot from 1962 till his death within the knowledge of all others. The learned Judge came to the further finding that exhibits-15 (lease deed in original), 15(ka) and 15(kha) (signatures of the attesting witnesses) revealed that those were compared with the original standard lease deed kept in the custody of RAJUK and RAJUK recognized Engineer Shamsul Kabir Humayun Reza, as its lessee. Exhibit-14 dated 7-4-1962 showed that possession of the suit plot was handed over to the father of the plaintiffs. The learned Judge separately considered exhibit-12 series, which are the original allotment letter and original copies of receipts of the payments of installements by the plaintiff to the DIT against the suit plot; exhibit-17, the loan sanction letter by Housing Building Finance Corporation and exhibiit-17Ka dated 17-5-1967, the mortgage deed by which the suit plot was mortgaged by the plaintiffs' father with the House Building Finance Corporation in order to obtain loan; exhibits-18, 19, and 20 series which are the tenancy agreement, the gas bill, electricity bill and City Corporation tax receipts and rent receipts respectively and came to further finding that it was proved "beyond any doubt" that the plaintiffs after getting lease of the suit plot from RAJUK

have been in continuous and uninterrupted possession therein. The learned second Judge further considered exhibits-25 and 26 which proved that "earlier" the suit plot was residential plot and at the instance of the plaintiffs' father, it was converted into commercial plot and exhibits-27 and 28 which proved that after conversion, RAJUK accepted the legal transfer fees and exhibit-29, the approved plan of multistoried commercial building by Eastern Housing Limited as the attorney of the plaintiffs' father and these showed that RAJUK accepted plaintiffs' father, Shamsul Kabir Humayun Reza as its lessee and did not accept Shamsul Kabir Humayun Reza of Mirpur and the living Shamsul Kabir Humayun Reza (defendant No.3). The learned Judge came to further finding that other two Shamsul Kabir Humayun Rezas who claimed the suit plot admittedly were not in possession thereof and both of them made agreement for sale of the suit plot "not as admitted lessee of Rajuk because their papers and documents filed in Title Suit No.51 of 2004 and 176 of 2004 never produced before RAJUK and claimed that they are the allottee of RAJUK."

40. Now, we shall consider the propriety of the submissions made by the learned Advocates of the respective party keeping in view the findings given by the Courts below as summarized hereinbefore, the pleadings of the parties and the evidence adduced by them and the other materials on record. And in doing so, there may be repetitions as to the findings of the Courts below, but we cannot avoid that in view of the peculiar nature of the suits and the issues involved therein.

41. In these four leave petitions, in fact, three suits are involved being Title Suit Nos.51 of 2004, 176 of 2004 and 81 of 2006. Before considering the propriety of the common submissions, we deem it proper to see the individual merits of the three suits. We shall do that serially.

42. The first suit which comes for consideration is Title Suit No.51 of 2004. In this suit, MA Hashem was the plaintiff and the suit was filed for specific performance of contract. The trial Court as well as the High Court Division dismissed the suit. It does not require any elaboration as regards the burden of the plaintiff to prove his case, because, by now, it is well settled that the plaintiff has to succeed on his own legs and he cannot succeed on the weakness of the defendant's case, if there be any. It is also well settled that even a suit is heard ex-parte, the plaintiff has to prove his case.

43. In a suit for specific performance of contract, the plaintiff has to prove that there was a valid contract entered into by him with the owner of the suit plot/the suit land, the consideration passed as a part performance of the contract and that the plaintiff was willing to perform his rest part as per the terms of the contract. Let us see how far the plaintiff proved the above things.

44. In the suit (Title Suit No.51 of 2004), the plaintiff impleaded one Shamsul Kabir Humayun Reza as defendant No.1 showing his address at House No.31, Lane No.6, Section 6/A, Mirpur, Dhaka as his vendor and prayed for specific performance of contract against him. The other defendants, in the suit, were: Md Akhtaruzzaman, Director, Eastern Housing Limited, Chairman RAJUK and the People's Republic of Bangladesh respresented by the Deputy Commissioner, Dhaka. Prayer was also made for a direction upon defendant No.1 to obtain necessary sale permission from RAJUK (defendant No.3) and for a further direction upon RAJUK to accord necessary permission for sale of the suit plot to the plaintiff. In the suit, the heirs (sons and daughters) of Engineer Shamsul Kabir Humayun Reza of 157, Bara Moghbazar filed an application for adding them as defendants asserting categorically that

their father, late Engineer Shamsul Kabir Humayun Reza, was the owner of the suit plot who died on 2-2-2004. After the filing of the said application, plaintiff MA Hashem filed an application for substituting the heirs of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar as the heirs of defendant No.1, Shamsul Kabir Humayun Reza of Mirpur. The learned Joint District Judge rejected the application filed by the sons and the daughters of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar, but allowed the prayer of substitution made by the plaintiff. This substitution was not accepted by the heirs of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar and they filed a civil revision being No.358 of 2004 before the District Judge, Dhaka which was allowed by the learned Additional District Judge, 7th Court, Dhaka and thus, they were added in the suit as the heirs of late Shamsul Kabir Humayun Reza of 157, Bara Moghbazar and not as the heirs of defendant No.1, that is, Shamsul Kabir Humayun Reza of Mirpur, but challenging this order passed in the civil revision, plaintiff MA Hashem filed Civil Revision No.4608 of 2004 before the High Court Division and eventually, the Rule was made absolute and the order passed by the learned Additional District Judge, was set-aside and thus, the heirs of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar remained on record in Title Suit No.51 of 2004 as the substituted heirs of defendant No.1. However, the heirs of Shamsul Kabir Humayun Reza as defendant Nos.1(a)-1(e) filed written statement categorically stating that their father, Shamsul Kabir Humayun Reza of 157, Bara Moghbazar was the allottee of the suit plot and he never entered into any contract with MA Hashem to sell the same and Shamsul Kabir Humayun Reza of Mirpur against whom the plaintiff filed the suit for specific performance of contract was a fake person. Therefore, burden was heavily upon plaintiff MA Hashem either to prove that Shamsul Kabir Humayun Reza of Mirpur was the actual allottee of the suit plot, who entered into the contract with him on 29-12-2002 to sell the same and as a part performance of the contract, advance money as claimed by him was paid to him or that Shamsul Kabir Humayun Reza of 157, Bara Moghbazar, the father of defendant Nos.1(a) to 1(e), the actual allottee of the suit plot entered into the contract with him on 29-12-2002 to sell the suit plot and as part performance of the contract, advance payment was made to him. In this regard, it is to be noted that Shamsul Kabir Humayun Reza, plaintiff of Title Suti No.176 of 2004, was not a party in this suit. Interesting thing is that though, in the plaint (of Title Suit No.51 of 1984), MA Hashim claimed that it is defendant No.1, i.e. Shamsul Kabir Humayun Reza of Mirpur, who entered into the contract with him on 29-12-2002 to sell the suit plot to him, in the written statement filed by him in Title Suit No.81 of 2006, (the suit filed by the heirs of Engineer Shamsul Kabir Humayun Reza) clearly admitted that Shamsul Kabir Humayun Reza of 157, Bara Moghbazar was the actual allottee of the suit plot and the plaintiff of Title Suit No.81 of 2006 being his heirs were bound by the terms of the bainapatra executed by their father and thus, plaintiff MA Hashem gave up his plaint case that Shamsul Kabir Humayun Reza of Mirpur was the allottee of the suit plot and he entered into the contract with him on 29-12-2002 to sell the suit plot. But the plaintiff did not make any corresponding amendment to the plaint, both in the body as well as in the prayer. From the judgment of the trial Court, it appears that it framed 5(five) issues, viz:

"১। বাদীর মোকদ্দমাটি বর্তমান আকারে ও প্রকারে চলিতে পারে কি?

২। বাদীর মোকদ্দমাটি তামাদিতে বারিত কি?

৩। ২৯-১২-২০০২ ইং তরিখের বায়নাটি মূল বরাদ্দ গ্রহীতা সম্পাতন করিয়া দিয়াছিল কি এবং ১নং বিবাদী রাজউক হইতে বিত্রয়ের অনুমিতি প্রাপ্ত হইয়া বাদীকে নালিশী সম্পত্তির দলিল রেজিষ্ট্রি করিয়া দিতে আইনতঃ বাধ্য কি?

৪। ২৯-১২-২০০২ ইং তারিখের বায়নাভূক্ত সম্পত্তির মূল বরাদ্দ গ্রহীতা ১৫৭ নং বড় মগবাজার নিবাসী শামসুল কবির রেজা না মিরপুর নিবাসী শামসুল কবির হুমায়ুন রেজা?

৫। বাদী অত্র মোকদ্দমায় প্রার্থীত মতে ডিক্রী পাওয়ার অধিকারী কি?"

45. Of the five issues, issue Nos.3 and 4 clearly show that one of the crucial fact to be decided in the suit was whether the deed of agreement dated 29-12-2002 was executed by the actual allottee of the suit plot, namely: Shamsul Kabir Humayun Reza of 157, Bara Moghbazar or Shamsul Kabir Humayun Reza of Mirpur. The other fact to be decided was whether defendant No.1 (Shamsul Kabir Humayun Reza of Mirpur) was bound to register the kabala in respect of the suit plot on obtaining permission from RAJUK. In order to prove the case, the plaintiff examined three witnesses including himself as PW1. PWs 2 and 3 were none but his employees. The trial Court discussing the evidence on record came to the specific findings, *inter alia*, that it is Shamsul Kabir Humayun Reza, a BSc Engineer of 157, Bara Moghbazar, who was allotted the suit plot and not Shamsul Kabir Humayun Reza of Mirpur; at the time of allotment, Shamsul Kabir Humayun Reza of 157, Bara Moghbazar was the Executive Engineer of C&B, Dhaka; from the plaint, it was clear that the address of defendant No.1, Shamsul Kabir Humayun Reza, was given at House No.31, Lane No.6, section 6/1, Mirpur, Dhaka; plaintiff MAHashem, in his deposition as PW1, admitted that as defendant No.1 was not registering the sale deed in respect of the suit plot, he through his lawyer issued a legal notice on 20-12-2003 to him, who duly received the same; though plaintiff MA Hashem in the written statement filed in Title Suit No.81 of 2006 (MA Hashem was defendant No.1 in the suit) categorically asserted that Shamsul Kabir Humayun Reza of 157, Bara Moghbazar was the original allottee, he, as a witness, deposed that Shamsul Kabir Humayun Reza of Mirpur was the allottee of the suit plot and thus, the plaintiff gave two different versions as to the original allottee of the suit plot; the plaintiff made the agreement on 29-12-2002 with Shamsul Kabir Humayun Reza of Mirpur for purchasing the suit plot, who was not the allottee of the suit plot; as the plaintiff did not enter into the agreement on 29-12-2002 with the original allottee to purchase the suit plot, his suit for specific performance of contract was not maintainable. The trial Court came to those findings, on detailed discussions of the evidence on record, both oral and documentary. The High Court Division as the last Court of fact discussed the evidence on record, both oral and documentary, in a more detailed manner and affirmed the said finding of the trial Court. The High Court Division came to the further findings that the plaintiff made prayer for specific performance of contract from defendant No.1 and also for a direction upon him to obtain necessary sale permission from RAJUK in his favour and had he disowned defendant No.1 than after substitution or addition of defendant Nos.1(a) to 1(e), the prayer and other incidental statements of the plaint ought to have been amended, but the plaintiff did not amend the plaint which shows that till hearing, he claimed original defendant No.1, i.e. Shamsul Kabir Humayun Reza of Mirpur as his vendor. The learned Judges came to further finding that execution of bainapatra was suspicious and no money was transacted *(emphasis supplied)* and when there was doubt as to the payment of earnest money, decree for specific performance of contract could not be passed. The learned Judges also came to the finding that Shamsul Kabir Humayun Reza of Mirpur and Engineer Md Shamsul Kabir Humayun Reza of Gulshan were not the same persons *(emphasis supplied)*; Engineer Shamsul Kabir Humayun Reza died on 2-2-2004, whereas the plaintiff filed the suit on 8-2-2004 impleading Md Shamsul Kabir Humayun Reza as defendant No.1 as his vendor and Md Akhtaruzzaman, a Director of Eastern Housing Limited, the attorney of Engineer late Shamsul Kabir Humayun Reza as defendant No.2; at the time of filing of the suit

and also for sometime thereafter, the plaintiff did not admit rather denied the existence, right, title and possession of Engineer Shamsul Kabir Humayun Reza of 157, Bara Moghbazar in the suit plot and later on, only to escape and justify his earlier false activities admitted "with a device that defendant Nos.1(a) to 1(e) are the legal heirs of defendant No.1, i.e. Shamsul Kabir Humayun Reza of Mirpur" *(emphasis supplied)* and substituted the heirs of Shamsul Kabir Humayun Reza of Mirpur; the plaintiff neither made a contract for purchasing the suit plot with a genuine person nor the document submitted in Court were genuine and on the basis of those documents he could not get decree for specific performance of contract and that the total case of the plaintiff was nothing but got up story only to grab the suit plot on the basis of forged deed and paper with the help of a fake person *(emphasis supplied)*. The learned Judges also opined that the identity of defendant No.1 could only be clarified by Showkat Ali who figured as a witness in the agreement and is also a relative of the plaintiff and used to live in the same holding with defendant No.1, Shamsul Kabir Humayun Reza of Mirpur, but he was not examined. The learned Judges gave further finding that the plaintiff not only failed to prove his own case but produced some forged and fabricated deeds and papers and that from the facts and circumstances, it was clear that the plaintiff produced exhibits-1, 2, 3, 4 and 5 in the Court "showing his vendor as custodian of those exhibit's who failed to appear before the Court and from the material on record it is proved that he is none but a fake person" and that exhibit-6 (the agreement) was nothing but the creation of forgery only to grab the suit plot *(emphasis supplied)*. These are all findings of facts.

46. Mr Fida M Kamal, who appeared for the plaintiff leave petitioner, failed to show with reference to the evidence on record that the findings of the Courts below as jotted down hereinabove were either the result of misreading of the evidence on record or non-consideration of the material evidence on record by the Courts below or otherwise perverse.

47. We have also gone through the evidence on record, both oral and documentary. The findings of the Courts below appeared to us based on correct appreciation of the evidence.

48. In view of the findings given by the Courts below, can a suit for specific performance of contract be decreed? A man of even ordinary produence would answer in the negative. As for ourselves, we do not find any error committed by the High Court Division in concurring with the decision of the trial Court in dismissing the suit factually and legally.

49. Title Suit No.176 of 2004, giving rise to Civil Petition for Leave to Appeal No.2198 of 2011, was filed by one Shamsul Kabir Humayun Reza impleading the officials of RAJUK only for two reliefs (i) that he was legally entitled to get the sale permission of the suit plot and the defendants were bound to issue such sale permission on receiving the proper transfer fees from him and (ii) that the defendants were bound to dispose of the application filed by him on 18-2-2004 for sale permission of the suit plot within a specified time as to be directed by the Court claiming himself to be the allottee of the suit plot. He claimed that he was an Executive Engineer of C&B under the Ministry of Communications. But in support of his said claim, he did not file a single paper. The trial Court considering the evidence on record, both oral and documentary, dismissed the suit on the clear findings, *inter alia*, that the suit plot was allotted to Engineer Shamsul Kabir Humayun Reza, who was the Executive Engineer of C&B *(emphasis supplied)*; the plaintiff was a Diploma Engineer and it was not believable that he could join a big department like C&B as an Assistant Engieer in 1950/1952 and then promoted as

Executive Engineer in 1956/57. The trial Court further observed that the plaintiff in his cross-examination admitted that though he served as an Executive Engineer in C&B, he did not open any bank account, which also proved that he was not an Executive Engieer, because the salary of a first class employee is given through cheque and in the absence of bank account, he could not draw his salary and that he was not the allottee of the suit plot *(emphasis supplied)*. Therefore, RAJUK could not give permission to him to sell the suit plot. RAJUK recognized Shamsul Kabir Humayun Reza of 157, Bara Moghbazar as the allottee of the suit plot and also approved Eastern Housing Limited as his attorney and that the suit was not maintainable. The trial Court further held that the suit plot was allotted to Engineer Shamsul Kabir Humayun Reza, who was an Executive Engineer of C&B and RAJUK did not recognize the plaintiff as the allottee of the suit plot. RS Khatian No.11174 in respect of the suit plot was recorded in the name of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar and plaintiff Shamsul Kabir Humayun Reza as PW1 in his cross-examination clearly stated that he never resided at 157, Bara Moghbazar *(emphasis supplied)* and while he deposed, he was residing at 911/1 Shewrapara as a tenant of one Monowara. The trial Court further held that no application was filed to RAJUK by the plaintiff on 18-2-2004 for permission to sell the suit plot to MNH Bulu *(emphasis supplied)*. While dismissing the first appeal, the learned Judges affirmed the said findings of the trial Court, but giving their own reasonings. The learned Judges gave further finding that the plaintiff did not produce any copy of his application filed to RAJUK for sale permission of the suit plot *(emphasis supplied)*. The learned Judges taking into notice of the fact that RAJUK in its written statement stated that "such file in the name of Shamsul Kabir Humayun Reza as mentioned is not traceable in the office of RAJUK" concluded that "so, it may be legally presumed that such application was not filed and alternatively it may be presumed that the suit plot was not allotted to the plaintiff." The learned Judges came to further finding that documents filed by the plaintiff exhibited in the suit clearly show that those were prepared in the name of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar which was admittedly the permanent address of Engineer Shamsul Kabir Humayun Reza, a different person *(emphasis supplied)*. The learned Judges further held that the suit of the plaintiff for sale permission simpliciter was not maintainable as he himself admitted in the plaint as well as in his deposition that he was out of possession and that Title Suit No.81 of 2006 filed by the heirs of Shamsul Kabir Humayun Reza of 157, Bara Moghbazar for declaration of title and permanent injunction heard simultaneously by the same Court (the plaintiff was defendant No.3 in the suit) was decreed. The learned Judges came to further finding that though PW1 (Shamsul Kabir Humayun Reza) claimed that he was an Executive Engineer, but his testimony regarding Service Book, ACR, and Organogram clearly proved that he was not a service holder at all *(emphasis supplied)*. The findings given by the trial Court as well as the High Court Division as to the actual allottee of the suit plot are so specific and well reasoned that we see no scope of touching with those findings. More interesting thing is that the whole case of the plaintiff was that he filed an application to RAJUK on 18-2-2004 to give him permission to sell the suit plot to MNH Bulu, but that application was not disposed of by RAJUK, which gave him the cause of action to file the suit. And, in fact, the plaintiff prayed for a relief to give direction to RAJUK to dispose of his said application within certain specific time fixed by the Court, but no such application was filed before the Court. Thus, the very foundation of the plaintiff's case had no existence. So, the plaintiff was not entitled to get any relief in the suit. Mr Abdul Wadud Bhuiyan and Mr AF Hasan Ariff, appearing for the petitioner, could not lay their hands on any of

the material evidence on record to assail the findings jotted down hereinabove either on the ground of misreading or non-consideration of any material evidence by the Courts below and thus, term those as perverse. (The reasonings, given by the trial Court and the learned Judges of the High Court Division in coming to their findings, have been exhaustively noted while summarizing their findings, so those are not repeated.)

50. However, Mr Abdul Wadud Bhuiyan has raised a specific objection that in deciding the merits of Title Suit No.176 of 2004, the High Court Division did not consider the evidence of plaintiff, Shamsul Kabir Humayun Reza as PW1 (deposition of PW1 was also adopted in Title Suit No.81 of 2006 as defendant No.3) that he applied to the Parliamentary Standing Committee to get possession of the suit plot and the Standing Committee heard him and saw his papers, but none appeared on behalf of the defendants (the defendants were RAJUK and its officials). Then the Parliamentary Standing Committee gave letter to RAJUK, who was the actual Humayun Kabir Reza (in Bangla it has been written কে প্রকৃত হুমায়ুন রেজা ছিল)? and on being asked by the Parlimentary Standing Committee, a report was sent to RAJUK from where it appeared that the plaintiff was the Executive Engineer, Design Division (nothing mentioned of which Department or Directorate) on the ground that the Parliamentary Standing Committee had no business to declare title and give possession of a property without considering that there was no legal bar in approaching the Parliamentary Standing Committee for the purpose and the report given to the Committee was an official one. The comments of the High Court Division as objected to by Mr Bhuiyan cannot be considered in isolation. From the judgment, it appears that the High Court Division made the comments after giving clear finding that though the only son and the brother-in-law of plaintiff, Shamsul Kabir Humayun Reza, did not come back after they had allegedly gone to the suit property in December, 1972; till hearing of the appeal, he neither filed any criminal case nor took any step to recover the possession of the suit plot, nor informed the matter to RAJUK nor took any step for declaration of his title to the suit plot for the last 32 years. The High Court Division also took note of the fact that the plaintiff as PW1 stated in his examination-in-chief that after the death of his son and brother-in-law, he did not even go to the suit plot. The High Court Division further observed that the application filed before the Parliamentary Standing Committee was neither proved nor filed and the file "which according to him was opened was not called for" and therefore, disbelieved plaintiff's (Shamsul Kabir Humayun Reza) story of approaching the Parliamentary Standing Committee and then made the comment. To us it also appears unusal and against the common course of natural events and human conduct that an actual allottee or actual owner of a plot at a posh area like Gulshan in Dhaka City shall not go to his owned land for 32 years and moreso, when a building was allegedly constructed thereon *(emphasis supplied)*. We have gone through the evidence of PW1, Shamsul Kabir Humayun Reza. From his evidence, it appears that after examining him partly in Court on 13-3-2008 and 15-4-2008, he got him examined on commission. Whilc examined on commission, on 8-6-2008, by the learned Advocate Commissioner, Jamaluddin Ahmed, he filed the photostate copy of the so-called report of the Parliamentary Standing Committee along with other relevant papers (in Bangla it has been written (সংসদীয় কমিটির প্রতিবেদনসহ আনুষঙ্গিক দলিলাদির) (17 pages), but this was not accepted as an exhibit and rightly so, as the same was not admissible in evidence in the absence of any proof that the same was made from the original. It is to be further noted that no one was examined to prove the report allegedly given by the Parliamentary Standing Committee. Though PW1 in his examination-in-chief on 15-4-2008 stated that as per the order of the Parliamentary Standing Committee the report came, which was kept with

RAJUK. But the report given by the Parlia-mentary Standing Committee was not called for from RAJUK; onus was squarely upon the plaintiff to prove the report by examining a competent witness as per the rules of evidence. In this connection, it is also very pertinent to state that plaintiff, Shamsul Kabir Humayun Reza though claimed that he joined the then C&B Department under the Ministry of Communications as an Assistant Engineer in 1952 and then was promoted as an Executive Engineer in 1960, in support of his said case, did not file any scrap of paper. Whereas, the palintiffs of Title Suit No.81 of 2006 in support of their case that their father, late Engineer Shamsul Kabir Humayun Reza, was a BSc Engineer and was the Executive Engineer of C&B and went to Canada for higher training, filed all the relevant papers, such as, BSc Engineering certificate (exhibit-'4Gha'), certificate issued by the Government of Canada in favour of Shamsul Kabir Humayun Reza (exhibit-10), promotion letters (exhibit-11 series). So, we find no substance in the objection taken by Mr Abdul Wadud Bhuiyan.

51. Title Suit No.81 of 2006 was filed by the sons and the daughters of late Engineer Shamsul Kabir Humayun Reza of 157, Bara Moghbazar. In the suit, the plaintiffs prayed reliefs, amongst others, for declaration of title to the suit plot and for further declarations that defendant No.2, Shamsul Kabir Humayun Reza of House No.31, Lane No.2, Section 6/A, Mirpur, Dhaka, who executed bainapatra on 29-12-2002 as claimed by defendant No.1 and defendant No.3, (plaintiff of Title Suit No.176 of 2004) were not their father and that both the living Shamsul Kabir Humayun Rezas were the creations of defendant Nos.1 and 4 (defendant No.4 was MNH Bulu) and that the bainapatra dated 29-12-2002 showing defendant No.2 as its executor as claimed by defendant No.1 and the bainapatra dated 18-1-2004 executed by defendant No.3 in favour of defendant No.4 as claimed by him (defendnat No.3) were fraudulent, collusive, illegal, without any consideration and in-executible (অকার্যকর) and were not binding upon them.

52. In the suit, plaintiff of Title Suit No.51 of 2004, MA Hashem and Shamsul Kabir Humayun Reza, plaintiff of Title Suit No.176 of 2004, were impleaded as defendant Nos.1 and 3 respectively and Shamsul Kabir Humayun Reza of Mirpur was impleaded as defendant No.2. The trial Court decreed the suit on the clear findings that the plaintiffs proved conclusively that the suit plot was allotted to Shamsul Kabir Humayun Reza of 157, Bara Moghbazar, their father and he constructed building therein on obtaining loan by mortgaging the same with House Building Finance Corporation and had been in possession thereof by letting out the same to various tenants as apparent vide exhibit-18 series. Defendant No.3, Shamsul Kabir Humayun Reza was not the owner of the suit plot *(emphasis supplied)*. The trial Court on consideration of the evidence of MA Hashem examined in Title Suit No.51 of 2004 further held that Shamsul Kabir Humayun Reza of Mirpur neither was the allottee of the suit plot nor was in possession thereof. The agreement, even if, entered into by him with defendant No.1 was not executable. After the death of plaintiffs' father, Engineer Shamsul Kabir Humayun Reza of 157, Bara Moghbazar, they became the owners of the suit plot and they were in possession thereof. Defendant No.1 entered into a contract with fake Shamsul Kabir Humayun Reza of Mirpur without permission of RAJUK and claimed possession in the suit plot and thus posed threat to the plaintiffs' possession therein as well as their title. So, the suit was maintainable *(emphasis supplied)*. Defendant No.1 in his written statement admitted that the plaintiffs' father was the owner of the suit plot and thus, admitted the plaint case. The trial Court came to the further findings that the RS record of the suit plot was recorded in the name of the plaintiffs' predecessor, Shamsul Kabir Humayun Reza wherein his address had been clearly mentioned

as 157, Bara Moghbazar which fact also confirmed that he was the allottee of the suit plot *(emphasis supplied)*. The High Court Division, being the last Court of fact besides affirming the above findings of the trial Court, came to the finding that from 1967 till the hearing of the suit, i.e. more than 35 years, the plaintiffs had been in possession of the suit plot continuously and uninterruptedly and such possession gave them title and RAJUK, lessor always recognized the plaintiffs as lessees. In coming to the said finding, the High Court Division considered the documents filed by the plaintiffs, being 38 in number and the oral evidence as well. The High Court Division found the documents of the plaintiffs genuine *(emphasis supplied)*. The High Court Division further held that defendant No.3 (plaintiff of Title Suit No.176 of 2004) claimed that he was in possession in the suit plot, but "no where he ever stated how he was inducted into possession and when he was dispossessed." The High Court Division further observed that had it been true that defendant No.3 sent his brother-in-law and the only son to the suit plot in 1972 and from there, both of them disappeared, then the defendant and the other family members would have left no stone unturned to find out their whereabouts, but nothing was done. Although PW1, Shamsul Kabir Humayun Reza (examined in Title Suit No.176 of 2004) stated that he made a GD entry over the incident, but copy of the GD entry was not produced. The High Court Division further observed that since the time of missing of the only son and the brother-in-law of plaintiff, Shamsul Kabir Humayun Reza, till the hearing of the appeals, he did not take any step either to recover the possession of the suit plot or for declaration that he was the lawful owner of the suit plot. The High Court Division further found that though the letter of allotment dated 21-3-1962, receipts showing deposit of installments against the suit plot, letter as to the delivery of possession of the suit plot, approved plan by RAJUK for construction on the suit plot and the certified copy of the RS khatian (exhibits-1, 2 series, 3, 6 and 9 respectively) produced by defendant No.3 resemble or appear to be true, are not genuine or true, but he managed to get those documents, which apparently appear to be original documents just to claim the suit property *(emphasis supplied)*. In this appeal, the High Court Division also considered the fact that though plaintiff, Shamsul Kabir Humayun Reza (of Title Suit No.176 of 2004) claimed to have filed application before the Parliamentary Standing Committee, such application was neither exhibited nor filed and that "the file which according to him was opened was not called for." The High Court Division further observed that though defendant No.3 claimed that he entered into an agreement with MNH Bulu to sell the suit plot for which he applied to RAJUK for sale permission, but Bulu was not examined. The High Court Division further found that the plaintiffs' father, Shamsul Kabir Humayun Reza, was the lessee of RAJUK and till his death, he exercised his right, title and interest over the suit plot to the knowledge of all. Exhibit-14 dated 7-4-1962 showed that possession of the suit plot was handed over to the father of the plaintiffs. The High Court Division separately considered exhibit-12 series, the original allotment letter and original copies of receipts of the payments of installments by the plaintiffs' father to the DIT against the suit plot; exhibit-17, the loan sanction letter by the Housing Building Finance Corporation and exhbiit-17Ka dated 17-5-1967, the mortgage deed by which the suit plot was mortgaged by the plaintiffs' father with the House Building Finance Corporation in order to obtain loan; exhibits-18, 19, and 20 series which are the tenancy agreements, the gas bills, electricity bills and City Corporation tax receipts and rent receipts respectively and came to the further finding that it was proved "beyond any doubt" that the plaintiffs' father after getting lease of the suit plot from RAJUK had been exercising his continuous and uninterrupted possession therein. The High Court Division further considered exhibits-25 and 26 which proved that the suit

plot was converted into a commercial plot from residential one at the instance of the plaintiffs' father, Shamsul Kabir Humayun Reza of 157, Bara Moghbazar; exhibits-27 and 28 which proved that RAJUK accepted the transfer fees for converting the suit plot as a commercial plot and exhibit-29 showed the approval of plan of multi-storied commercial building by Eastern Housing Limited as the attorney of the plaintiffs' father and these documents showed that RAJUK accepted the plaintiffs' father, Shamsul Kabir Humayun Reza as its lessee and did not accept Shamsul Kabir Humayun Reza of Mirpur and the living Shamsul Kabir Humayun Reza (defendant No.3) as the lessee of the suit plot. The High Court Division came to the further finding that other two Shamsul Kabir Humayun Rezas, who claimed the suit plot admittedly, were not in possession thereof and both of them made agreement for sale of the suit plot "not as admitted lessee of RAJUK because their papers and documents filed in Title Suit No.51 of 2004 and 176 of 2004 never produced before RAJUK and claimed that they are the allottee of RAJUK." *(emphasis supplied)*. Plaintiff, Shamsul Kabir Humayun Reza was a fake person. These are all findings of facts.

53. Mr Abdul Wadud Bhuiyan and Mr Rokanuddin Mahmud appearing for the respective petitioner (CP Nos.2199 of 2004 and 1672 of 2011), failed to show, with reference to the evidence on record, both oral and documentary that the findings given by the High Court Division concurring with those of trial Court, were not based on correct sifting of the evidence on record or contrary to the evidence on record and that the reasonings given by the High Court Division in affirming those of the trial Court, were not based on sound judicial principle or otherwise fallacious.

54. This suit being a suit for title along with other prayers, we have also perused the evidence on record and found that the findings, given by the High Court Division in concurring with those of the trial Court, based on proper consideration of the evidence on record. The documents filed by the plaintiffs in support of their case that at the time of allottment of the suit plot by the then DIT, their father was the Executive Engineer of the then C&B and that he used to live at 157, Bara Moghbazar and got possession of the suit plot, paid the installments against the suit plot to the then DIT, got the standard lease deed, constructed building on the suit plot by taking loan from the House Building Finance Corporation and had been in possession thereof althrough by letting out the same to the various tenants and now they are in possession thereof through their attorney, Eastern Housing Limited, are so interlinked and clockwise that no prudent man can have any difficulty to come to the decision as to the truth of their claim of title and possession in the suit plot. And a single broad fact as admitted by defendant No.3, Shamsul Kabir Humayun Reza in his deposition as PW1 in Title Suit No.176 of 2004 (in this suit, he was plaintiff and his evidence was adopted in Title Suit No.81 of 2006) that he did not go to the suit plot after December, 1972 when his only son and the brother-in-law disappeared, is enough to disbelieve his case that he was the actual allottee of the suit plot and also to conclude that he was trying to be an imposter just to claim the suit plot. In this regard, we are tempted to say that "possession follows title" and the very fact that the plaintiffs filed all the documents of possession, such as: RS Khatian prepared in the name of their father showing his address at 157, Bara Moghbazar, rent receipts, municipal tax receipts, bills of various utility services, the tenancy agreements first one being of the year, 1967, *prima-facie,* proved their possession in the suit plot, besides other documents already discussed earlier and the oral evidence. It is also necessary to state that defendant No.3 has failed to file any muncipal tax receipts and utility services bills in respect of the suit plot to show that he ever asserted his title to the suit plot and possession therein. The trial Court rightly decreed the suit and the High

Court Division committed no wrong in affirming the same.

55. Now the common submissions made by the learned Advocate for the petitioners:

> "As to the first common submission, the learned presiding Judge proceeded to dispose of the appeals with the adverse view in respect of the documents produced by the respective petitioner before considering the respective case with reference to the evidence on record as is apparent from the observation made by him at the beginning of the judgment to the effect:
>
> "The cases before me are unique cases of forgery, Allottees, 3 in number are of same name, same parentage, similar hand writings with similar apparently same documents but 3 persons claiming the plot of RAJUK of them, one must be genuine with original papers and others are not. I have taken a strong heavy burden to single out that genuine person with original documents."

56. We find no substance. Our reason being that the learned Judge has not pin-pointed his finger to the documents of any particular party. From the findings given in the judgment as noted earlier, it appears that the learned Judge discussed every bit of evidence, both oral and documentary, adduced by the respective party and gave due weight to their evidence and then gave the finding in respect of the merits of the suits. It is also a fact that from the pleadings of the parties in the 3(three) suits, 3(three) Shamsul Kabir Humayun Rezas surfaced as the claimants of the suit plot as its allottees. As already stated hereinbefore, we have also gone through the evidence on record and found the findings given by the learned Judge, based on proper appreciation of the evidence on record.

57. We do not also find any substance in the second common submission. It appears that though no specific issue was framed by the trial Court in terms as formulated by the learned Advocate for the petitioners, it gave specific finding that Shamsul Kabir Humayun Reza of Mirpur was a fake person and the suit plot was not allotted to him and that Shamsul Kabir Humayun Reza of 157, Bara Moghbazar was the actual allottee of the suit plot. The trial Court gave the further finding that Shamsul Kabir Humayun Reza, plaintiff of Title Suit No.176 of 2004 and also defendant No.3 of Title Suit No.81 of 2006 was not the allottee of the suit plot. The High Court Division, being the last Court of fact, on detailed consideration of the evidence on record, adduced by the parties affirmed those findings of the trial Court and gave further specific finding that the plaintiff of Title Suit No.51 of 2004 produced some forged and fabricated deeds and papers; the documents filed by plaintiff, Shamsul Kabir Humauyun Reza, were not genuine or true. The High Court Division gave the further finding that plaintiff, Shamsul Kabir Humayun Reza, was also a fake person. The High Court Division found the documents of the plaintiffs of Title Suit No.81 of 2006 genuine. The evidence adduced by the parties, particularly, those of the plaintiffs of Title Suit No.81 of 2006, were quite sufficient to decide the issues/points and, in fact, both the Courts decided the points/issues as raised and formulated by the learned Advocate for the petitioners. From the findings of the Courts below, it is apparent that none of the Courts below found any difficulty in giving the finding as to who was the actual allottee and whose documents were genuine and whom RAJUK recognized as its allottee, the real issue in the suits. Therefore, the question of sending either the suit or the appeal back on remand as submitted by the learned Advocates, does not also arise at all. In this regard, we like to observe further that a suit or appeal cannot be sent back on remand as a matter of course or at the fancy of the parties, particularly, when the Courts below decided all the points including the one raised by the learned Advocates.

58. The third and last common submission relates as to the adoption of the evidence by defendant Nos.1 and 3 in Title Suit No.81 of 2006 adduced by them in Title Suit Nos.51 of 2004 and 176 of 2004 in support of their respective case as made out in their written statement as defendants in the suit. The learned presiding Judge discarded the point with the finding as under:

"In civil proceeding as per section 101 of the evidence Act the burden to prove the case of a party in a suit is entirely depend upon him at his own risk. If any party is not interested to prove his case, the court can not make him bound to prove his case. Here in these three suits since the material issue for decision arisen as to the identity of the real Reza and real lessee all the parties of three suits decided to adopt the evidences given as plaintiff in his suit as evidence of other suit wherein he is a defendant. Accordingly on the application of adoption of each party, the deposition of defendant in the other suit with the consent of all the parties. So, the consented party now at the appellate stage cannot raise the question of validity or legality of adoption. Moreover section 33 of evidence Act have also empowers the court to adopt the deposition of one suit as of the deposition of other suit on the consent of the parties involved in the suit. On the other hand, if any plaintiff suit is not desire to adopt his and his witnesses' deposition, as position of DWs in other suit wherein he is defendant, but agrued the case without giving evidences it would be at his own risk."

The learned second Judge discarded the point with the finding that

"It further appears from the record that the defendants by applications dated 30-6-2009 prayed for adoption of their depositions given as PW1 in title suit Nos.176 of 2004 and 51 of 2004 respectively as deposition of DW in title suit No.81 of 6 at their own risk. So it is the plaintiffs of TS Nos.51 of 2004 and 176 of 4 by whose instance the adoption has been made. It will not be out of place to mention here that when the plaintiffs themselves applied in court for adoption of their deposition to late proceedings pending before the same court in respect of same suit land. Appellants surely would not be allowed to raise such questions before the appellate court without raising any question in trial and taking any grounds in the memo of appeal."

59. The learned second Judge took the further view that as the respective plaintiff of Title Suit Nos.51 of 2004 and 176 of 2004 failed to prove their case, the provision of section 33 of the Evidence Act had no manner of "application in the instant appeal, in other word, it cannot be said that the trial Court erred in law in dismissing Title Suit Nos.51 of 2004 and 176 of 2004."

60. Before we examine as to whether the learned Judges were correct in taking the above views, in view of the provisions of section 33 of the Evidence Act, the context, in which the trial Court allowed the prayer for adopting the evidence adduced by defendant Nos.1and 3 in their respective suit, has to be seen. As it appears from the records, three suits were heard by the same Joint District Judge simultaneously. It is true that in 3(three) suits, the plaintiffs were distinct and separate and the defendants were also not same. But in Title Suit No.81 of 2006, the plaintiffs of the two other suits (Title Suit Nos.51 of 2004 and 176 of 2004) were defendants and the defendants of those two suits were also impleaded as defendants and the questions involved in the suits were virtually the same as have already been discussed earlier in other context.

61. In Title Suit No.81 of 2006, the plaintiffs were the sons and daughters of late Engineer Shamsul Kabir Humayun Reza of 157, Bara Moghbazar, who claimed that their father was the actual allottee of the suit plot. In this suit, MA

Hashem, plaintiff of Title Suit No.51 of 2004, was impleaded as defendant No.1 and plaintiff of Title Suit No.176 of 2004, Shamsul Kabir Humayun Reza, was impleaded as defendant No.3 and Shamsul Kabir Humayun Reza of Mirpur with whom defendant No.1, MA Hashem, claimed to have entered into a contract on 29-12-2002 to purchase the suit plot, was impleaded as defendant No.2; MNH Bulu with whom defendant No.3 allegedly entered into a contract to sell the suit plot was impleaded as defendant No.4; RAJUK and its officials were impleaded as defendant Nos.5-8 and Eastern Housing Limited was impleaded as defendant No.9. In this suit, defendant Nos.1 and 3 filed written statement stating similar facts as stated in the respective plaint (the case of the respective plaint and the written statement has been stated in detail while stating case of the parties). Defendant Nos.4 and 5-8 also filed written statement. In Title Suit No.51 of 2004, the plaintiffs of Title Suit No.81 of 2004 were substituted as defendant Nos.1(a) to 1(e) and they filed written statement stating similar facts as stated in the plaint of Title Suit No.81 of 2006. In Title Suit No.176 of 2004 filed by Shamsul Kabir Humayun, only RAJUK and its officials were made parties. From the pleadings of the parties, a common issue emerged that out of 3(three) Shamsul Kabir Humayun Rezas, who was the actual Shamsul Kabir Humayun Reza and who was the actual allottee of the suit plot? The plaintiffs of Title Suit No.81 of 2006 examined 5(five) witnesses in support of the case that their father late Engineer Shamsul Kabir Humayun Reza of 157, Bara Moghbazar was the actual allottee of the suit plot and their father had been in possession thereof and after his death, they inherited the suit plot and they were in possession thereof and that their father did not enter into any contract with MA Hashem, plaintiff of Title Suit No.51 of 2004. Defendant Nos.1 and 3 who were plaintiffs of Title Suit Nos.51 of 2004 and 176 of 2004 respectively cross-examined each and every PWs (Defendant No.2 did not appear and contest the suit. Defendant No.4 though filed written statement ultimately did not show up). Defendant Nos.1 and 3 neither examined themselves nor examined any other witness in this suit. However, they examined themselves and examined other witnesses in their respective suit being Title Suit Nos.51 of 2004 and 176 of 2004 respectively. It is also pertinent to note that the plaintiff of Title Suit No.51 of 2004 who was examined as PW1 was cross-examined by the plaintiffs of Title Suit No.81 of 2006 and defendant Nos.5-8 (RAJUK and its officials) and the plaintiff of Title Suit No.176 of 2004 also was cross-examined by the defendants, namely: RAJUK and its officials. On behalf of RAJUK, one of its officers was examined as DW1 in Title Suit No.176 of 2004 and he was duly cross-examined by the plaintiff. On 30-6-2009, defendant Nos.1 and 3 filed applications in Title Suit No.81 of 2006 to adopt their evidence adduced in their respective suit, which was allowed by the trial Court. Similarly, the plaintiffs of Title Suit No.81 of 2006 filed application in Title Suit No.51 of 2004 to adopt their evidence in the suit which they adduced in Title Suit No.81 of 2006 and the Court allowed the prayer. Similarly RAJUK also filed application in Titile Suit Nos.51 of 2004 and 81 of 2006 to adopt its evidence adduced in Title Suit Not No.176 of 2004 and the Court allowed the prayer. It further appears from the record that no objection, whatsoever, was raised by any of the parties in adopting such evidence and the suits were disposed of accordingly. It is true that Title Suit No.81 of 2006 was filed subsequent to Title Suit Nos.51 of 2004 and 176 of 2004, but it was heard simultaneously with the other two suits. However, it may be kept on record that the examination of PW1 in Title Suit No.51 of 2004 commenced on 2-4-2006 and examination of the witnesses was concluded on 29-5-2009, examination of witness in Title Suit No.176 of 2004 commenced on 13-3-2008 and was concluded on 12-8-2008 and examination of the witness-

es in Title Suit No.81 of 2006 commenced on 13-3-2008 and was concluded on 30-6-2009.

62. A reading of section 33 of the Evidence Act shows that the evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same proceeding, the truth of the fact which it states. But to consider such evidence the conditions, which must be fulfilled, are that the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; provided that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding (Explanation given to the section is not relevant to decide the instant petitions, so omitted from being quoted.) One of the stringent conditions to take recourse to the section on the ground of incapability of a witness of giving evidence has to be proved.

63. In support of his contention, Mr Abdul Wadud Bhuiyan has referred to the cases of *Ali Haider vs the State (supra)* and *Allah Ditta vs the State (supra)*. Those two cases arose out a criminal trial. In the first case, the depositions of some of witnesses recorded by the Committing Magistriate were transferred to the Sessions record without summoning them on the ground that their evidence were of a formal nature and with a view to avoid unnecessary expenses to the State and the order of the learned Sessions Judge was acquisesed in by the learned Counsel for the accused and then the depositions of the witnesses examined during the committal proceeding were read over to the accused and were used against them. In the context, it was held that in a criminal case, the provisions of section 33 of the Evidence Act cannot be waived; the evidence of the witnesses, illegally admitted, must be excluded. It was also held that the defect was not curable under section 537 of the Code of Criminal Procedure. In the second case, the evidence of a witness named Lala examined during the committal proceeding was also transferred to the Sessions case under section section 33 of the Evidence Act and order was passed admitting the evidence declaring that Lala's evidence could not be procured "without delay and unnecessary adjournment" without any evidence before the Court that the witness was incapable of giving evidence on the later date. The defence Counsel conceded that he had no objection to take recourse to section 33 of the Act and in those circumstances, it was held that the Court had misapplied section 33 of the Evidence Act. In that case, it was further held that the witness "could not be found" has to be proved by direct evidence of persons having personal knowledge. It was further held that the defence Counsel's consent did not do away with the necessity of the Court being satisfied by proof on the requirements of section 33. In holding so, in the second case, Cornelius, J who wrote the opinion on behalf of the Court, relied on the observations made by the Privy Council in the case of Chainchal Singh vs Emperor, AIR 1946 PC 1 to the effect:

> "Where it is desired to have recourse to section 33 of the Evidenc Act on the ground that a writness is incapable of giving evidence, that fact must be proved, and proved strictly. It is an elementary right of an accused person ... ... that a witness who is to testify against him should give his evidence before the Court trying the case, which then has the opportunity of seeing the witness and ovserving his demeanour and can thus form a far better opinion as to his reliability than is possible from reading a statement or deposi-

tion. It is necessary that provision should be made for exceptional cases where it is impossible for the witness to be before the Court, and it is only by a statutory provision that this can be achieved. But the Court must be careful to see that the conditions on which the statue permits previous evidence given by the witness to be read are strictly proved."

64. In both the cited cases, the witnesses were not examined in the trial Court and it had no advantage to see the demeanour of the witnesses and the accused had no chance to cross-examine them. But in the instant cases, the context as stated earlier is totally different. Defendant Nos.1 and 3 (petitioner of Civil Petition for Leave to Appeal No.1672 of 2011 and 2199 of 2011) by filing applications adopted the evidence addued by them in the respective suit as plaintiffs after closing the examination of the plaintiffs' witness in Title Suit No.81 of 2006. And in Title Suit No.81 of 2006 in which their evidence was adopted and considered, they had the advantage to cross-examine the PWs. Therefore, the principle of law enunciated in the cases cited by Mr Bhuiyan, has got no manner of application in the instant cases. The depositions of the witnesses-examined in the two suits (Title Suit Nos.51 of 2004 and 176 of 2004) and the documents exhibited therein by the respective plaintiff, are defintely evidence within the meaning of section 3 of the Evidence Act. So, we do not see any bar under section 33 of the Act to consider the evidence adduced in the suits having been heard simultenuously and the common questions of facts and laws were involved. Moreso, the onus to prove the facts as asserted by defendant Nos.1 and 3 in their respective written statement filed in Title Suit No.81 of 2006, was squarely upon them within the meaning of sections 101 and 102 of the Evidence Act and they opted not to examine any witness in Title Suit No.81 of 2006 in support of their case and adopted the evidence adduced by them in their own suits. In the context, we do not also see any illegality committed by the trial Court in allowing the prayer made by the respective defendant to adopt the evidence adduced in the respective suit and such a course, in no way, caused any prejudice to them. Therefore, the trial court did not commit any illegality in considering the evidence of the respective defendant adduced in the respective suit as plaintiff within the meaning of section 33 of the Evidence Act in coming to the finding as to the proof and disproof of facts involved in the suits and thus deciding their merits. In this regard, we consider it necessary to state the law that in the Code of Civil Procedure, there is no specific provision to allow a party in a suit or a civil proceeding to adopt evidence adduced by him in another suit or proceeding heard simultaneously or analogously, but section 151 of the Code has given inherent power to the Court to pass any such order to secure the ends of justice and in the instant cases by allowing the prayer of the defendants to adopt their evidence given as plaintiff in their respective suit in Title Suit No.81 of 2006, ends of justice has been served and that also prevented the abuse of the process of the Court. It is also a fact that the petitioners herein did not raise any objection, whatsoever, before the trial Court against the adoption of their evidence in their respective suit as a defence in Title Suit No.81 of 2006 and allowed the suits to be disposed accordingly, and the petitioners did not also take any ground in the Memorandum of Appeal in that respect as observed by the High Court Division. A party should not be allowed to change its position as per its own sweet will and cannot be allowed to make a summer sault or make a 'U' turn after the disposal of the suit and that there was no allegation of fraud as well. It appears to us that objection as to the adoption of the evidence given in Title Suit Nos.51 of 2004 and 176 of 2004, in Title Suit No.81 of 2006 citing section 33 of the Evidence Act was taken before the High Court Division for the first time during the hearing of the appeal just to delay the disposal of the suits by way of sending them back on remand to the trial Court giving them chance to adduce evidence.

65. In view of the above, we find no merits in the last common submission of the learned Advocates. And, yet we are to address another objection raised by the learned Advocates for the

petitioners as to observations/comments and remarks made by the learned presiding Judge in his judgment with which the learend second Judge also differed.

66. The learned presiding Judge after considering the merits of the respective appeal with reference to the pleadings and the evidence on record and giving his findings thereon made the following observations/ comments and remakrs:

> "Before lifting my pen I put a question to myself as to what is our destiny. Lord Macauley said before leaving for India for making laws stated that chieknery *(sic)*, purgery and forgery are basic character of the inhabitants of India about 200 years before. I feel it is still continuing. For a piece of land all these people even changes their parentage, for a post we superseed(sic) our friend by selling our head and for grabbing any thing we tell lie off and on. Leadership start(sic) with a small lie in family. It increases with the advancement of leadership i.e. from own home to national. Every leader's hands are smeared with bloods. If the leaders could realise how much blood is required to make them leader then they might not tell lie and might not have done mischiefs to the nation which they are doing. I can rest a sure that except a few most of the leaders have no source of income. If head of institute sells his/her head then what remain. The person who is the beneficieny (sic) of any wrong in open breast shouted for doing good, doing justice and to prevent corruption. Person submerged in corruption shouted for preventing corruption. After getting a 'so called independency' judiciary become more dependent than its earlier days. Now a days we are deciding disputed political issues without considering these are the business of Parliament which represents the entire nation and its citizens. We are pleasing a master at the expense of the institution. What a funy. Our National Poet Kazi Nazrul Islam in one of his verse wrote:চাপরাশীর ঐ তকমার চেয়ে তলোয়ারে বড় যেন' and in other place 'যাহা চাই যেন জয় করে পাই গ্রহণ না করি দান' I do not know how the future generation will judge us and what they will think about us."

67. These observations/comments and remarks of the learned presiding Judge were absolutely unnecessary and uncalled for as those were beyond the issues involved in the appeals. After the learned Judge had come to the conclusions of his findings as to the merit of the respective appeal, he should have stopped there. A Judge should not be emotional and should not embark upon making unnecessary observations/comments and remarks, such observations/comments and remarks may give bad message to the litigants and the public, at large, as to the independence of judiciary and dispensation of even handed justice by it. While disposing of a matter, a Judge must confine himself to the pleadings of the parties and answer the issues which would emerge from the pleadings in the light of the evidence adduced and materials placed before it and the law governing the field. A Judge must refrain himself from making unnecessary observations/comments and remarks as have been made in the instant cases. In the context, the observations /comments and remarks as quoted hereinbefore cannot remain as part of the judgment and accordingly, those are expunged.

68. Be that as it may, in view of the findings given by the High Court Division on the issues involved in the suits concurring with those of the trial Court as discussed hereinabove, we maintain the direction given by the learned presiding Judge to the effect "I am directing Registrar of this Court to initiate a case as per Section 476 of the Code of Criminal Procedure before the appropriate Court immediately against the fictitious Shamsul Kabir Humayun Reza and MA Hashem for using false documents before Courts. I (sic) further directing

the Registrar of this Court to send a copy of the judgment to the Chairman, RAJUK so that he shall make inquiry for sliping so many apparently original documents/deeds from the custody of DIT and start criminal case against those persons who are involved in forging all these documents. Dhaka Improvement Trust now RAJUK is custodian of Dhaka but their activities shows(sic) that they are not reliable persons. As soon as possible it trace(sic) out the culprits of RAJUK and act in accordance with law will better for the inhabitants of Dhaka City."

69. We find no merits in the petitions.

Accordingly, the petitions are dismissed.

Ed.

APPELLATE DIVISION
(Civil)

ABM Khairul Haque CJ
Md Muzammel Hossain J
SK Sinha J

Judgment
October 13th, 2010.

British American Tobacco Bangladesh Company Ltd.....
.....Petitioner

vs

Begum Shamsun Nahar....Respondent*

Code of Civil Procedure (V of 1908)
Order VII, rule 11

Where the existence of the cause of action is required to be determined by adducing evidence, plaint cannot be rejected under Order VII, rule 11.

Whatever may be the allegations made by the plaintiff in the plaint, whether the employees of the defendant-company harassed her in the work place, or the plaintiff made written complaints to the management of the defendant-petitioner-company about the sexual harassment and bullying by the said employees of the defendant-petitioner-company and whether the defendant-petitioner-company took any step to remedy the grievances of the plaintiff-respondent, or the defendant-petitioner-company took steps to prevent or deter the commission of the acts of sexual harassment and bullying by its employees and whether the defendant-petitioner-company could be held responsible for such sexual harassment and bullying caused to the plaintiff-respondent are all questions of facts and can only be decided on the evidence. .....(13)

Vicarious liability

Question of vicarious liability is a question of fact to be proved adducing evidence. .....(13)

Sexual Harassment

A person can be liable for tort as well and damages may be claimed against him for such wrong doing as well as against an organization or establishment if it fails to ensure the prevention of sexual harassment and bullying to a woman, where she can work with honour and dignity and without being harassed or disturbed by her male boss or other male colleagues.

Sexual harassment has a devastating effect on both the economic opportunities and the physical and emotional well-being of working woman. Victim suffers from insomnia, depression, nervousness, fear, feeling of powerlessness and other symptoms of psychological harm which sometimes lead to a complete emotional breakdown. In consequence of this emotional breakdown and sometimes independently physical effects such as headache, loss of appetite, loss of weight, nausea and fatigue may occur. It hinders a woman's chances of economic prospects by

*Civil Petition for Leave to Appeal Nos. 2410 of 2009.

(From the judgment and order dated 19-8-2008 passed by the High Court Division in Civil Revision No.3544 of 2005)

reducing her performance at job. So sexual harassment definitely gives birth of a liability under the law of tort.

.....(13 & 12)

Code of Civil Procedure (V of 1908)
Order VII, rule 11

A plaint cannot be rejected for defect of parties because such an exigency has not been contemplated under Order VII, rule 11 of the Code. Defect of parties can be cured by the plaintiff by impleading the concerned employees of the defendant company in the plaint.

.....(13)

Abul Khair vs Pubali Bank, 53 DLR (AD) 62; Vishaka vs State of Rajasthan, AIR 1997 SC 3011 and Bangladesh National Women Lawyers Association (BNWLA) vs Bangladesh, 14 BLC 694 at page 706, ref.

Sigma Huda, Advocate, instructed by Md Taufique Hossain, Advocate-on-Record—For the Petitioner.

Mohammad Jamiruddin Sircar, Senior Advocate, instructed by Md Aftab Hossain, Advocate-on-Record—For the Respondent.

Judgment

Md Muzammel Hossain J: This petition for leave to appeal under Article 103 of the Constitution of People's Republic of Bangladesh is directed against the judgment and order dated 19-8-2008 passed by a Division Bench of the High Court Division in Civil Revision No.3544 of 2005 discharging the Rule and affirming the judgment and order dated 10-5-2005 passed by the learned Joint District Judge, 1st Court, Dhaka in Money Suit No.32 of 2004 rejecting the application under Order VII, rule 11(a) and (d) read with section 151 of the Code of Civil Procedure,1908 filed by the defendant-petitioner.

2. The present respondent as plaintiff filed Money Suit No.32 of 2004 for realization of a sum of Taka 2,50,038,000 as damages from the defendant-petitioner along with interest at the rate of 15% stating, interalia, that the plaintiff was appointed as "Lady Confidential Typist" vide Memo No.SE/1 dated 17-1-1985 with effect from 1-1-1985. After her appointment, considering her performance in service she was upgraded twice in 1996 and 2001 to the post of Secretary and Co-ordination Officer respectively. Since 1986 the plaintiff was the sole permanent female employee of the defendant-company and from the begining she was the recipient of unwelcome attention from two employees of the defendant-company, namely Mr Ezaz Ahmed Choudhury, the Head of Leaf, who at the time of occurrence, was the Area Manager (Leaf) of the Company and Mr Golam Farook Khan who was the leaf Co-ordination and Export Manager at the time of filing the suit. The unwelcome attention included touching of her body, pulling of the hands by these two persons, unnecessarily patting her on the head, and suddenly embracing her from behind. Besides, the other overtures of Mr Golam Farook Khan were particularly disturbing as he was more explicit, even to the extent of offering the plaintiff extra-marital personal relationship. Other than the harassment mentioned above, the plaintiff had been enjoying her work in the defendant-petitioner-company and found support in respectful and considerate dealings of the other employees, particularly Mr Md Shahjahan who was then the Leaf Accountant, Kushtia and Mr Manzurul Haque who was then the Plant Manager of Kushtia GLT Plant of the defendant-company and the Supervisor of the plaintiff. Manzurul Haque gave her protection. The plaintiff on several occasions made verbal complaints to her immediate superior. The Head of the Leaf, Mr Ezaz Ahmed Choudhury had ordered the plaintiff in the year 2000 to report to the Head Office in Dhaka for working directly under him as his assistant and the plaintiff worked there until 2001 then she

returned to "her Kushtia Office as Co-ordination Officer. From then on the sexual overtures and hints became more pronounced in Mr Golam Farook Khan's dealings with the Plaintiff-respondent. Once, in 1988, when Mr Ezaz Ahmad Choudhury was stationed in Kushtia as Area Manager (Leaf) who used to reside in the defendant-petitioner's 1st Floor of the transit flat/rest house within the plant premises, the plaintiff-respondent in course of her official duties, had to go to the rest house and on her way out the plaintiff-respondent sought permission to use the toilet of the rest house since the place was empty and no one had arrived yet. After opening the door of the toilet the plaintiff-respondent discovered Mr Ezaz Ahmed Choudhury in a compromising position with a young married lady known to her and everyone else in the office. On 31-7-2003 i.e. a day later the plaintiff received a letter from Mr Quazi Mohammad Shahed, the Head of Human Resources, terminating the plaintiff-respondent's service with effect from 1-8-2003 i.e. the very next date. Due to such behaviour, the plaintiff-respondent filed the instant suit claiming damages against the defendant-petitioner-company for the tort committed by its employees at her work place by harassing her sexually and also for bullying her and though she had brought the matter to the notice of the Manager of the Company, yet no step was taken by him to stop such harassment and bullying rather she was terminated from her service.

3. The sole defendant-petitioner appeared in the suit and filed an application under Order VII, rule 11(a) and (d) read with section 151 of the Code of Civil Procedure for rejection of the plaint on the grounds, inter alia, that the word "defamation" falls within the purview of an action in person, but the plaintiff-respondent brought the case against the defendant-petitioner which was not personally liable for any alleged damages caused to her in the form of harassment and bullying in work place while she was in the employment of the respondent-company. The suit is not in the nature of a suit as contemplated in section 9 of the Code of Civil Procedure,1908 and that the suit is barred by law. The plaintiff has no cause of action to file this suit against the defendant-company and, as such, the application is liable to be allowed. The plaint can be rejected at any stage of the suit and, as such, the prayer under Order VII, rule 11(a) and (d) should be allowed and the plaint is liable to be rejected.

4. The application was heard by the learned Joint District Judge, 1st Court, Dhaka who after hearing both the parties by the order dated 10-5-2005 rejected the application filed by the present petitioner seeking rejection of the plaint.

5. Being aggrieved by the aforesaid judgment and order dated 10-5-2005 the defendant-petitioner moved the High Court Division in Civil Revision No.3544 of 2005 and a Division Bench of the High Court Division by the impugned judgment and order dated 19-8-2008 discharged the Rule.

6. The defendant-petitioner being aggrieved by the impugned judgment and order passed by a Division Bench of the High Court Division moved the instant Civil Petition for Leave to Appeal before this Division.

7. Mrs Sigma Huda, the learned Advocate appearing for the defendant-petitioner submits that the High Court Division erred in law in applying the doctrine of the vicarious liability which cannot be applied in deciding the cause of action of the instant suit in absence of two essential conditions of co-existence of the relationship of master and servant and the offence has not been committed in the course of employment as "in the course of employment" means the acts done by the employees having been authorised by the employment which are very much related with the

affairs of the employment. She then submits that the High Court Division committed error of law occasioning failure of justice in not considering that the defendant-petitioner will be vicariously liable for those acts committed by its employees only if it had authorised them to do for carrying on the business of the Company and that the offence as allegedly committed, is not in any way related with the business of the defendant-petitioner and, as such, the defendant-petitioner cannot be held liable for the wrongful act of the employees which is beyond the scope of service. She contends that the High Court Division as well as the 1st Court of Joint District Judge, Dhaka failed to appreciate that no cause of action can lie against the defendant-petitioner even vicariously since after termination, the plaintiff-respondent having accepted all dues and benefits from the defendant-petitioner against such termination without any protest precludes the right of any additional claim at any subsequent stage.

8. We have heard the learned Counsel appearing for both the parties and perused the judgment and order of the High Court Division and other materials on record. It appears that in various paragraphs of the plaint particularly in paragraph Nos. 6, 7, 10, 21 and 22 the plaintiff-respondent has stated about the sexual harassment and bullying caused to her by the employees of the defendant-petitioner and about her attempt by approaching the management of the defendant-petitioner to get rid of such harassment and bullying but instead, she was terminated from her service. According to Order VII, rule 11(a) a plaint is liable to be rejected if it does not disclose a cause of action. In the case of *Abul Khair vs Pubali Bank, 53 DLR (AD) 62* this Division held that the Court while deciding an application for rejection of plant is not permitted to travel beyond the averments made in the plaint. In the instant case from a clear reading of the plaint it appears that the plaintiff-respondent has made allegations against the defendant-petitioner about its inaction to remedy the sexual harassment and bullying caused to her by its employees. Supreme Court of India while formulating guideline against sexual harassment at workplace in *Vishaka vs State of Rajasthan, AIR 1997 SC 3011,* defines sexual harassment as under:

> "sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:
>
> a) physical contact and advances;
>
> b) a demand or request for sexual favours;
>
> c) sexually coloured remarks;
>
> d) showing pornography;
>
> e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature."

9. High Court Division in the case of *Bangladesh National Women Lawyers Association (BNWLA) vs Bangladesh, 14 BLC 694* at page 706 paragraph 61 defines sexual harassment as under:

> "a. Unwelcome sexually determined behaviour (whether directly or by implication) as physical contact and advances;
>
> b. Attempts or efforts to establish physical relation having sexual implication by the abuse of administrative, authoritative or professional powers;
>
> c. Sexually coloured verbal representation;
>
> d. Demand or request for sexual favours;
>
> e. Showing pornography;
>
> f. Sexually coloured remark or gesture;
>
> g. Indecent gesture, teasing through abusive language, stalking, joking having sexual implication;
>
> h. Insult through letters, telephone calls, cell phone calls, SMS, pottering, notice, cartoon, writing on bench, chair, table,

notice boards, walls of office, factory, classroom, washroom having sexual implication;

i. Taking still or video photographs for the purpose of blackmailing and character assassination;

j. Preventing participation in sports, cultural, organizational and academic activities on the ground of sex and / or for the purpose of sexual harassment;

k. Making love proposal and exerting pressure or posing threats in case of refusal to love proposal;

l. Attempt to establish sexual relation by intimidation, deception or false assurance."

10. The original definition of tort that appeared in the well-known work on Law of Torts by Clerk and Lindsell ran as follows: "A tort may be described as a wrong independent of contract, for which the appropriate remedy is a common law action." Underhill amplifies this definition thus:

"A tort is an act or omission which is not authorised by law, and independently of contract infringes either—

(a) some absolute right of another;

(b) some qualified right of another causing damage; or

(c) some public right resulting in some substantial and particular damage to some person beyond that which is suffered by the public generally;

and gives rise to an action for damages at the suit of the injured party."

11. Sexual harassment in employment may be termed as any attention of a sexual nature in the context of work situation which has the effect of making a woman uncomfortable on the job, impeding her ability to do the work or interfering with her employment opportunities. Sexual harassment may on its extreme form take the shape of a direct demand for sexual compliance coupled with the threat of firing if the woman refuses.

12. Sexual harassment has a devastating effect on both the economic opportunities and the physical and emotional well-being of working woman. Victim suffers from insomnia, depression, nervousness, fear, feeling of powerlessness and other symptoms of psychological harm which sometimes lead to a complete emotional breakdown. In consequence of this emotional breakdown and sometimes independently physical effects such as headache, loss of appetite, loss of weight, nausea and fatigue may occur. It hinders a woman's chances of economic prospects by reducing her performance at job. So sexual harassment definitely gives birth of a liability under the law of tort.

13. A person can be liable for tort as well and damages may be claimed against him for such wrong doing as well as against an organization or establishment if it fails to ensure the prevention of sexual harassment and bullying to a woman, where she can work with honour and dignity and without being harassed or disturbed by her male boss or other male colleagues. In the plaint the plaintiff has categorically stated about the touching of her body, pulling her hands, unnecessarily patting her on the head, suddenly embracing her from behind besides the other overtures by Mr. Ezaz Ahmed, an employee of the defendant-petitioner. She also alleged overtures against Mr Golam Farooq Khan, another employee of the petitioner-company disturbing her in a more explicit manner. From the statements made in paragraph No.21 of the plaint it appears that the plaintiff-respondent made written complaints to the Human Resources Manager and the Managing

Director of the petitioner-company and the other authorities for the harassment caused to her who has a duty of care towards her. We are of the view that where the existence of the cause of action is required to be determined by adducing evidence, plaint cannot be rejected under Order VII, rule 11. Whatever may be the allegations made by the plaintiff in the plaint, whether the employees of the defendant-company harassed her in the work place, or the plaintiff made written complaints to the management of the defendant-petitioner-company about the sexual harassment and bullying by the said employees of the defendant-petitioner-company and whether the defendant-petitioner-company took any step to remedy the grievances of the plaintiff-respondent, or the defendant-petitioner-company took steps to prevent or deter the commission of the acts of sexual harassment and bullying by its employees and whether the defendant-petitioner-company could be held responsible for such sexual harassment and bullying caused to the plaintiff-respondent are all questions of facts and can only be decided on the evidence to be adduced by the concerned parties in the trial of the case. Moreover, question of vicarious liability of the defendant-petitioner-company is also a question of fact to be proved by adducing evidence. Both the High Court Division and the Trial Court from clear reading of the plaint rightly found that the plaintiff has clearly stated the facts of the cause of action to bring the suit against the defendant. The power to reject a plaint should not be exercised hastily without affording opportunity to the plaintiff to cure the defect or to amend the plaint. A plaint cannot be rejected for defect of parties because such an exigency has not been contemplated under Order VII, rule 11 of the Code of Civil Procedure. Defect of parties can be cured by the plaintiff by impleading the concerned employees of the defendant company in the plaint. It is worth mentioning that in an application under Order VII, rule 11 of the Code of Civil Procedure a plaint shall be rejected in the following cases: (a) where it does not disclose a cause of action; (b) where the relief claimed is undervalued and the plaintiff on being required by the Court to correct the valuation within a time to be fixed by the Court fails to do so; (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so; (d) where the suit appears from the statement in the plaint to be barred by any law.

14. From a clear reading of the plaint, judgments and orders passed by the High Court Division and the trial Court in the instant case it appears that both the High Court Division and the trial Court have rightly observed that none of these four conditions is attracted in the instant case. The grounds raised by the defendant petitioner do not come within the provisions of Order VII, rule 11 of the Code of Civil Procedure. In the instant case we have found that the plaintiff respondent has clearly made out a case. There is a proper cause of action and none of the four grounds for rejection of plaint is attracted. The points raised by the defendant petitioner has no merit because all these points can be decided only by adducing evidence at the time of trial of the case and for those reasons the plaint cannot be rejected under Order VII, rule 11 of the Code of Civil Procedure.

15. For the aforesaid findings and observations the High Court Division rightly discharged the Rule. In view of the above findings and observations we do not find any merit in the leave petition.

Accordingly, the leave petition is dismissed.

Ed.

APPELLATE DIVISION
(Civil)

ABM Khairul Haque CJ
Md Muzammel Hossain J
SK Sinha J

Judgment
February 23rd, 2011.

Executive Chairman, Bangladesh Export Processing Zones Authority (BEPZA)...
.....Petitioner
vs
M/s. Abdul Mannan and anothers.....
.....Respondents*

Evidence Act (I of 1872)
Sections 63 and 65

Secondary evidence—Admissibility of secondary evidence is regulated by section 63 of the Act. Secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in possession or power of the person against whom the document is sought to be proved or of any person legally bound to produce it, or when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest....(20)

Maico Jute and Bag Corporation vs Bangladesh Jute Mills Corporation, 8 MLR (AD) 4 = 55 DLR (AD) 23; State of UP vs Janki Saran Kailash Chandra, AIR 1973 SC 2071 and Popular Biscuit Limited vs Beximco Bremer Export Cantor Brand, 4 ADC (2007) 743 ref.

Md Bodruddoza, Advocate, instructed by Md Nawab Ali, Advocate-on-Record—For the Petitioner No.1(In both the petitions)

Khair Azaz Masud, Advocate, instructed by AKM Shahidul Huq, Advocate-on-Record—For the Respondent No. 1(In both the petitions)

None Represented—For the Respondent Nos. 2-6 (In both the petitions)

Judgment

Md Muzammel Hossain J: These two civil petitions for leave to appeal arising out of the same judgment and order, taken together for hearing analogously are directed against the judgment and order dated 17-11-2009 passed by a Division Bench of the High Court Division making the Rules absolute in Civil Revision Nos.389 of 2008 and 422 of 2008.

2. CP No.1602 of 2010 has arisen out of judgment and order dated 17-11-2009 passed by a Division Bench of the High Court Division in Civil Revision No.389 of 2008 which was directed against the judgment and decree dated 13-9-2007 passed by the learned District Judge, Comilla in Money Appeal No.2 of 2007 allowing the appeal and reversing the judgment and decree dated 13-11-2006 passed by the learned Joint District Judge, 1st Court, Comilla in Money Suit No.5 of 2003 decreeing the suit in part.

3. CP No.1603 of 2010 has arisen out of the judgment and order dated 17-11-2009 passed by a Division Bench of the High Court Division in Civil Revision No.422 of 2008 which was directed against the judgment and decree dated 13-9-2007 passed by the learned District Judge, Comilla in Money Appeal No.1 of 2007 allowing the appeal and reversing the judgment and decree dated 13-11-2006 passed by the learned Joint District Judge, 1st Court, Comilla in Money Suit No.4 of 2003 decreeing the suit in part.

4. The relevant facts in respect of CP No.1602 of 2010 are as follows:

"The present respondent No.1 as the

*Civil Petition for Leave to Appeal Nos. 1602 and 1603 of 2010.

(Arising out of the same judgment and order dated 17-11-2009 passed by the High Court Division in Civil Revision Nos.389 of 2008 and 422 of 2008)

plaintiff instituted Money Suit No.5 of 2003 against the defendants in the 1st Court of Joint District Judge, Comilla praying decree for realization of Taka 5,19,258.00 from the defendants-petitioners. The plaintiffs' case, in short, is that the Chief Engineer, Bangladesh Export Processing Zone Authority (BEPZA) issued work order being No.BEPZA/CE-11-99/71 dated 12-2-2001 in his favour through tender procedures for development of the land of Kha Goup being eighteen industrial plots with construction of roads of Comilla EPZ (Export Processing Zone) fixing the date for completion of the work on 27-8-2001. As per tender schedule, formation level of earth was fixed at 04.00 metre height. Accordingly the plaintiff started earth work on 12-2-2001 in full speed under the supervision of defendant nos. 1 and 2 and was allowed to withdraw running bills of Taka 85,77,895.22 in four installments. In the midst of work, the defendants verbally directed the plaintiff to reduce the formation level of earth from 4.00 metre to 3.50 metre height. For this, a considerable quantum of earth became surplus and the defendant No. 6, on 21-5-2001 verbally asked the plaintiff to extend the said volume of work with the surplus earth to their chosen site and accordingly, the plaintiff started the modified work relying upon the verbal assurance of the defendant No.6 that written sanction for extension of time for completion of work would be communicated later on. However, verbally the time for completion of the work was changed and extended up to 26-9-2001. As per measurement book (MB), the plaintiff-respondent No.1 completed the original Schedule work before 27-8-2001 and additional modified work within revised time schedule. After completion of work, the work value was assessed at Taka 1,15,70,173.51 and after deduction of the amount withdrawn by current bills, Taka 24,68,629.42 was payable to the plaintiff-respondent No.1 but the defendants arbitrarily allowed him to withdraw Taka 21,60,577.91 deducting Taka 3,73,396.94 from the actual dues as penalty on the plea of violation of contractual time limit for completion of work as per schedule. The plaintiff then submitted an application on 11.03.2002 to defendant No. 6 for withdrawal of the penalty arbitrarily imposed upon him but to no effect. Hence, the suit was filed for recovery of money amounting to total Taka 5,19,258.00 being the deducted amount of Taka 3,73,369.00 and compensation thereon at the rate of Bank interest amounting to Taka 1,45,862.00.

5. The relevant facts in respect of CP No.1603 of 2010 are stated below:

"The present respondent No.1 as the plaintiff instituted Money Suit No.4 of 2003 against the defendants in the 1st Court of Joint District Judge, Comilla praying for realization of Taka 5,84,982 from the defendants-petitioners. The plaintiff's case, in short, is that the Chief Engineer, BEPZA issued work order being No.BEPZA/CE-11/ 99/72 dated 12-2-2001 in his favour through tender procedures for development of land of 'Ga Group' eighteen industrial plots with construction of roads of Comilla EPZA fixing the date for completion of the work on 27-8-2001. As per tender schedule, formation level of earth was fixed at 4.00 metre height. Accordingly, the plaintiff started earth work on 12-2-2001 in full speed under the supervision of defendant Nos.1 and 2 and was allowed to withdraw running bills of Taka 97,35,875.61 in four installments. In the midst of work the defendant verbally directed the plaintiff to reduce the formation level of earth from 4.00 metre to 3.50 metre height. For this alternation, a considerable quantum of earth became surplus and the defendant No. 6 on 21-5-2001 verbally asked the plaintiff to extend the side volume of work with the surplus earth to their chosen site and accordingly, the plaintiff started the modified work relying upon the

verbal assurance of the defendant No. 6 that the written sanction for extension of time for completion of the work would be communicated later on. However, time schedule for completion of work was verbally extended to 26-9-2001. In the measurement book (MB) maintained by the plaintiff-respondent it is noted that the plaintiff completed the original work as per tender schedule before 27-8-2001 and he also completed the additional modified work as per verbally revised schedule of time. But after deduction of the amount already withdrawn by current bills, the defendants allowed him to receive Taka 29,66,688.91 deducting Taka 4,21,083.66 as penalty charge on the plea of violation of contractual time limit for completion of work as per schedule. The plaintiff-respondent then submitted an application on 11.03.2002 to the defendant No. 6 for withdrawal of the penalty arbitrarily imposed allowing him to have the money, but to no effect. Hence, the suit for recovery of money amounting to total Taka 5,84,982.00 being the deducted amount of Taka 4,21,083.66 and compensation thereon at the rate of bank interest amounting to Taka 1,63,898.34.

6. The present petitioner as defendant contested both the suits by filing joint written statements separately stating, interalia, that they admit that the work orders were issued to the plaintiff-respondent and the formation level of earth was changed from 4.00 metre to 3.50 metre height and the plaintiffs were asked to fill up adjoining areas of the work-site with the surplus earth within the same specified time. They denied the extension of time for completion of the work stating that since the subsequent instruction modifying original work order, did not increase the total volume of work, time was not necessary for rescheduling the tender work. Their further case was that the plaintiffs having failed to complete the work within specified time penalty was imposed upon them at the rate of 3% which was deducted from their submitted bills and that no verbal assurance of extending time of work was given to the plaintiff and that suit was liable to be dismissed.

7. The learned Joint District Judge, 1st Court, Comilla decreed the Money Suit No.4 of 2003 in part for Taka 4,21,083 and Money Suit No.5 of 2003 in part for Taka 3,73,696.94 by separate judgments and decrees both dated 13-11-2006.

8. The defendants-petitioners being aggrieved by the aforesaid judgments and decrees preferred Money Appeal No.1 of 2007 against the judgment and decree passed in Money Suit No.4 of 2003 and Money Appeal No.2 of 2007 against those passed in Money Suit No.5 of 2003. The learned District Judge, Comilla having heard both the appeals analogously disposed of the same by a single judgment and decree dated 13-9-2007 allowing the appeals.

9. Being aggrieved by the aforesaid judgment and decree dated 13-9-2007 passed by the learned District Judge the plaintiff-respondent moved the High Court Division in revisional jurisdiction in Civil Revision Nos.422 of 2008 and 389 of 2008 respectively and a Division Bench of the High Court Division by a single judgment and order dated 17-11-2009 made both the Rules absolute setting aside the judgments and decrees passed by the Court of appeal below. The defendant-petitioner being aggrieved by the impugned judgment and order dated 17-11-2009 passed by the High Court Division in aforesaid two civil revisions preferred the instant two Civil Petitions for Leave to Appeal before this Court.

10. Mr Bodruddoza, the learned Advocate appearing on behalf of the petitioners in both the petitions submits that the High Court Division erred in law in passing the impugned judgment and order on the issue of the existence of Arbitration Clause and that these suits are not maintainable without exhausting the remedy

Judgment

Nozrul Islam Chowdhury J: Leave was granted under section 115(4) of the Code of Civil Procedure calling upon the opposite-parties to show cause as to why the order dated 16-3-2010 passed by the learned District Judge, Dhaka in Civil Revision No. 63 of 2010 dismissing the same summarily upon affirming the order dated 17-11-2009 passed by the learned Joint District Judge,6th Court, Dhaka in Title Suit No. 255 of 2008 rejecting an application filed by the petitioner for staying further proceedings of decree Execution Case No. 5 of 2001 pending in a different court.

2. Heard Mr Abul Quiyyum Chowdhury, the learned Advocate appearing for the petitioners in support of the leave, perused the petition .We have also heard Mr Md. Serajul Islam Bhuiyan, the learned Advocate appearing for the opposite-party Nos.1-3 who has entered appearance upon filing an exhaustive counter affidavit showing that the same order dated 16-3-2010 passed by the learned District Judge was challenged before this court two times earlier and this is for the third time the same order has been challenged in this Revision.

3. On hearing of the learned Advocate and on perusal the materials on record we find it is a fight in between the landlord and tenants and the original suit is for ejectment that was decreed as back as on 31-7-1993 yet the decree could not have been executed because of many tactful devices adopted by the petitioner. The details have been narrated exhaustively by the opposite-party Nos. 1-4 in their counter affidavit. The decree has also been challenged by the petitioners as plaintiffs in Title Suit No. 554 of 2008 which has been pending before the learned Joint District Judge, 6th Court, Dhaka; on the other hand, the said decree obtained long about 19 years back is also pending in an execution case being Execution Case No. 5 of 2001 pending before the learned Assistant Judge, 10th Court, Dhaka. This time the petitioner filed an application in Title Suit No. 554 of 2008 before the learned Joint District Judge, Dhaka praying for stay of further proceedings of Decree Execution Case No. 5 of 2010 pending before the 10th Court of Assistant Judge, Dhaka. The said application having been heard by the Joint District Judge, 6th Court, Dhaka, was rejected by the learned Joint District Judge by assigning reasons which apparently may not be sustainable yet we find that the application for stay of further proceeding of execution case can be knocked down on a different ground namely, mere institution of a suit challenging a decree obtained as back as in the year 1993 cannot be a ground for staying a proceeding arising out of a contested decree obtained 17 years back, moreover, the petitioner has challenged the same order twice before and failed , therefore, it is evident that the petitioner is adopting dilatory tactics one after another to cause delay in executing the decree obtained 17 years back adopting unfair measures since long. We have also noticed that in a previous judgment passed by this court a cost of Taka 5000 was imposed on the petitioner because of his conduct noticed by this court in previous proceeding. This revisional application appears to us a devise to deprive the opposite-parties from the fruits of litigation. This sort of practice should be discouraged by all means, therefore, having found no merit in the revision the same is discharged but it should also be attached with examplary costs of Taka 25,000 as condition precedent. Consequently order of stay vacated.

The office is directed to communicate this order to the court of Assistant Judge where the execution case is pending. The learned Assistant Judge is also directed to proceed with the execution case No. 5 of 2001 in accordance with law.

Ed.

HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Sheikh Abdul Awal J

Judgment
May 22nd, 2013.

Bimol Rosario.....
.....Petitioner
vs
Barbara Rosario and others
.....Opposite Parties*

Evidence Act (I of 1872)
Section 73

Expert's opinion is not a conclusive evidence which enables the court to come to a satisfactory conclusion, though the said opinion is not binding upon the Court. The Court itself can compare any signature or LTI of any concerned person under section 73 of the Act and come to a decision in accordance with law....(21)

19 BLT 568; 37 DLR (AD) 205, 45 DLR 279 and 19 DLR188 ref.

Md Khandker Aminul Haque, Advocate—For the Petitioner.

Moudud Ahmed with Md. Abdun Nur, Advocates—For the Opposite Party No. 1.

Judgment

Sheikh Abdul Awal J: This Rule was issued calling upon the opposite party No.1 to show cause as to why the judgment and decree dated 23-8-2010 passed by the learned Joint District Judge, 1st Court, Gazipur in Title Appeal No.34 of 2010 affirming those dated 24-11-2009 passed by the learned Assistant Judge, 3rd Court, Gazipur in Title Suit No. 100 of 2009 should not be set-aside.

2. Material facts of the case, in brief, are that the opposite party No.1, Barbara Rosario as plaintiff brought the aforesaid Title Suit No. 100 of 2009 in the Court of Assistant Judge, 3rd Court, Gazipur for cancellation of the gift Deed No.2453 dated 30-6-2004 registered in Tongi Sub-registry Office in respect of the suit land as described in the schedule of the plaint on the averments that the CS, recorded tenant of the suit land as described in the schedule of the plaint was Razu Rosario, who died leaving behind only son Gabriel Rosario alias Gabu Rosario whose name has been rightly recorded in SA 181 and RS Khatian Nos.92 and 93. Gabriel Rosario died leaving behind 3 sons and 3 daughters as his legal heirs and the plaintiff got 31,25 decimals of land including the suit land on amicable partition. The plaintiffs husband died leaving behind the plaintiff and two children, the plaintiff being earned the livelihood by working in small NGO. In this backdrop the defendant Nos. 1-2 in the first part of the year 2003 told the plaintiff that they have good relation with the Manager and other officials of the House Building Finance Corporation and thus, they can manage to get loan of Taka 10/15 lakh from the House Building Finance Corporation. The plaintiff then being a helpless widow believed the defendant Nos.1 and 2 in good faith and gave the Photostat copies of the relevant papers and Taka 20,000 to the defendant No.1. After 3/4 months later the defendant No.1 told that loan amount of 10,00,000 has been sanctioned and claimed some additional costs. The plaintiff, thereupon, lending some money gave Taka 30,000 to the defendant No.1 as costs and the defendant Nos.1 and 2 took signature of the plaintiff on blank stamps. After 10/15 days while the plaintiff asked the defendant Nos. 1-2 about the loan then the defendant No. 1 told that the plaintiff will get loan amount within 4/5 days but after 5 days defendant No.1 told that it will take some more time. The plaintiff, thereafter, disclosed the matter to her relatives and ultimately, the defendant No.1 on 12-10-2003 denied the whole matter. The defendant Nos.1 and 2 thereafter, on 28-3-2006 threatened the plaintiff stating that they will dispossess the plaintiff from the suit land and claimed the suit land on the basis of the impugned deed. The defendant Nos.1 and 2 created the gift deed collusively in order to grab the suit land. The plaintiff never went to the Sub-registry office to execute

*Civil Revision No. 1033 of 2011.

and register the impugned deed and hence, the suit.

3. The petitioner (defendant No.l) and defendant No.2 entered appearance in the suit and filed written statement denying most of allegations of the plaint contending, *inter-alia,* that the suit is not maintainable in its present form and manner inasmuch as the suit is barred by estoppel, waiver and acquiescence. The plaintiff-opposite party No. 1 voluntarily gifted the suit land in favour of the defendant Nos. 1 and 2 (nephews of the plaintiff) and registered the impugned deed of gift No.2453 dated 30-6-2004 AD and on the same day delivered possession of the suit land to them and since then the defendants have been residing thereon by mutating their name and paying rents to the Government. The plaintiff has no right, title and interest in the suit land and, as such, the suit is liable to be dismissed.

4. The learned Assistant Judge, upon considering the pleadings of the parties framed the following issues for determination:—

(i) Whether the suit is maintainable in its present form ?

(ii) Whether the suit is barred by limitation?

(iii) Whether the impugned gift No.2453 dated 30-6-2004 is liable be cancelled ?

(iv) Whether the plaintiff is entitled to get a decree, as prayed for or any other reliefs?

5. At the trial plaintiff side examined as many as 3 witnesses and the defendant side examined 2 witnesses and both the parties also exhibited some documents including gift deed No.2453 dated 30-6-2004 and hand writing expert's opinion.

6. The learned Assistant Judge upon hearing argument of the parties and on considering the materials on record by his judgment and decree dated 24-11-2009 decreed the suit in favour of the plaintiff. Against which the defendant Nos. 1-4 preferred Title Appeal No. 34 of 2010 in the Court of District Judge, Gazipur which was eventually, transmitted to the Court of Joint District Judge, Ist Court, Gazipur for disposal, who by the impugned judgment and decree dated 23-8-2010 affirmed the decision of the trail Court on the finding that the trial Court rightly on assigning sound reason doubted the execution of deed of gift dated 30-6-2004.

7. Being aggrieved thereby the present defendant-petitioner has come before this and obtained the present Rule.

8. Mr Khandker Aminul Haque, the learned Advocate appearing for the defendant-appellant-petitioner, Bimol Rosario submits that both the Courts below without applying its judicial mind into the facts and circumstance of the case and law bearing on the subject most illegally disbelieved the execution of the registered deed of gift dated 30-6-2004 (Exhibit A) and the same has occasioned failure of justice. He next upon placing Exhibit B, hand writing expert's opinion submits that DW-2, hand writing expert upon applying modern technology found signatures of the plaintiff appearing in the deed of gift in question are not forged and hand writing expert as DW-2 in his deposition categorically stated that the deed of gift is genuine and he proved his investigation report along with films as "Exhibit B series" though, both the Courts below without assigning any sound reason rejected the report submitted by DW-2. Mr Khandker Aminul Haque, the learned Advocate while elaborating his submission referred to the decisions reported in *19 BLT 05* and *19 BLT 568* and submits that in this modern world science has been developing day by day and it is also need of the day to detect the truth by applying modern technology and it is apparent from the record that in this case the officer of the CID in order to detect the genuineness of thumb impression of the plaintiff-opposite party by

applying modern technology has found that the thumb impressions on the alleged documents with the admitted thumb impressions of the plaintiff are in the hand of the plaintiff-opposite party and in that view of the matter both the Courts below ought to have believed the report of the hand writing expert and in not doing so committed an error of law resulting in an error in the impugned decision occasioning failure of justice.

9. Mr Moudud Ahmed, the learned Advocate appearing for the plaintiff-opposite party No.l, on the other hand, by filing counter affidavit contested the Rule. Mr Moudud Ahmed in the course of his argument upon placing the judgments of two Courts below submits that both the Courts below on perusing the deed in question (Exhibit l) found there is overwriting, re-writing, wrong spelling in the signatures of the donor and DW-2 in his cross-examination admitted that date of the impugned deed and the date in the thumb impression book is not the same and in that view of the matter both the Courts below rightly ignored the expert's opinion. Mr Moudud Ahmed further points out that at the trial the defendants miserably failed to examine any witness to prove their so-called deed of gift which raised a serious question of doubt as to the genuineness of the deed of gift and in that view of the matter both the Courts below committed no wrong in cancelling the impugned gift deed No.2453 dated 30-6-2004 AD registered at Tongi Sub-registry office. Finally, Mr Moudud Ahmed contends that in the facts and circumstance of the case with regard to probability and improbability the learned Judge of the Court .of appeal below rightly held "that the plaintiff is a 45 years old lady, she has two minor children. It is quite unnatural that depriving that minor child their mother could gift her property to her nephews."

10. Mr Moudud Ahmed in support of his submission has relied on the decisions reported in *37 DLR (AD) 205, 45 DLR 279* and *19 DLR188.*

11. I have heard the learned Advocates of both the sides at length and perused the Revision application, judgments of two Courts below, deposition of witnesses, exhibits and other materials on record.

12. Now, the real question for consideration in this case whether both the Courts below were justified in cancelling the deed of Heba (Exhibit A) upon disbelieving expert's opinion (Exhibit B series).

13. As I have already noticed that the opposite party No.l as plaintiff filed Title Suit No. 100 of 2009 in the Court of Assistant Judge, 3rd Court, Gazipur for cancellation of the gift deed No.2453 dated 30-6-2004 registered at Tongi Sub-registry office as described in the schedule of the plaint. It is found that the plaintiff-opposite party to prove his case examined 3 witnesses and the plaintiff herself was examined as PW-1, who in her deposition stated that:—

নাঃ জমিতে আমি ভোগ দখলে থাকাকালে স্বামী মারা যায়। ১ পুত্র ও কন্যা রেখে। ১/২ নং বিবাদী আমাকে ব্যাংকের থেকে লোন নিয়ে দেবে বলে জানায়। সে জমিতে বিল্ডিং করে বাস করার জন্য। এজন্য কিছু টাকাসহ জমির কাগজপত্র দিই। কিন্তু লোন দেয় নাই। বলে যে ব্যাংকের সংগে চুক্তি করা লাগবে, ষ্ট্যাম্পে সই লাগবে। আমি ৫টি ষ্ট্যাম্পে সই দিই। ষ্ট্যাম্প ও টাকা ফেরৎ চাই। ১/২ নং বিবাদী বলে যে, টাকাও নাই, জমিও নাই। আত্মীয় স্বজনকে জানাই। তল্লাশী দিয়ে নাঃ জাঃ দলিলের নকল উঠিয়ে বিগত ৪-৯-২০০৬ ইং তাং নাঃ জাঃ দলিলের বিষয়ে জানতে পারি। ২৪৫৩ নং দানপত্র দলিল ৩০-৬-২০০৪ইং তাং আমি কখনো রেজিষ্ট্রী করে দেই নাই।

14. PW-2, Malati Rosario stated in her deposition that the plaintiff is her sister and the defendants are her nephews and her sister got the suit land by inheritance. This witness also stated that she came to know about the forged deed from the plaintiff. This witness in her cross-examination denied the suggestion that she deposed falsely as per instruction of her sister.

15. PW 3, Somor Rosario, who stated in his deposition that:—

আমি বাদী বিবাদী নাঃ জমি চিনি। বাদী আমার পিসী। বিবাদীরা চাচাতো ভাই। বিবাদীরা লোন দেবার কথা বলে নাঃ জমির দলিল করে নেয়। নাঃ জমি বাদী শাক সবজি করে ভোগ করেন।

16. Let me now advert to the evidence of defendant side. It appears that defendant No. 1 Bimol Rosario himself was examined as DW-1, who in his deposition stated that:-

বাদীসহ আমার অন্যান্য ফুপুগনের সংগে খুব ভাল সম্পর্ক, বড়দিন, ইষ্টার সানডে সহ বিভিন্ন পালা শুর পাঠনে আমাদের বাড়ীতে আসতেন। আমরা আদর আপ্যায়ন করতাম। বাদী উক্তরুপে আমাদের প্রতি সন্তষ্ট হয়ে নাঃ সম্পত্তি দান করে দখল বুঝিয়ে দেন।

17. DW 2, Md Shahidullah, who examined the thumb impressions of the plaintiff as hand writing expert and submitted a report. This witness proved his report along with films as "Exhibit B series". This witness in his cross-examination also stated that" প্রতিবেদনে কি প্রকারের ছাপ পরীক্ষা করেছি তা উল্লেখ করি নাই। জানতে চায় নাই।"

18. It is found that the trial Court below on consideration of the evidence and materials on record came to a finding that "DW-2 admitted that date of the impugned deed and the date in thumb impression book is not the same even what type of impression has been examined is not mentioned in the report." On perusal of the exhibits and the depositions of the DWs. contradicts found and, as such, the expert opinion is rejected, and, on this finding the learned Assistant Judge cancelled the deed in question (Exhibit A) and decreed the suit. Further, it appears from the "Exhibit A" that the attesting witness of the impugned deed was not the member of the donee and donar's family. DW-1 in his cross-examination admitted that:—

"নাঃ দলিলে আমার অন্য কোন পিসাতো ভাই সাক্ষী নাই। নাঃ দলিলের সাক্ষী একজন আমার প্রতিবেশী অপর জন আমার শ্বশুর।"

19. In this case it is found that the defendant Nos. 1-2 did not or could not examine any attesting witness to prove the deed of gift (Exhibit A). It is also found that the appellate Court below on the facts of the case and on consideration of the evidence and materials on record arrived at a finding that "the plaintiff is a 45 years old lady, she has two minor children. It is quite unnatural that depriving that minor child their mother could gift her property to her nephews."

20. On a close perusal of the record, I find nothing on record to suggest that any of the witnesses corroborated the evidence of DW 1 on the point of possession of the defendant-petitioner in the suit land.

21. The proposition of law is by now well settled that the expert's opinion is not a conclusive evidence which enables the court to come to a satisfactory conclusion, though the said opinion is not binding upon the Court. The Court itself can compare any signature or LTI of any concerned "person under section 73 of the Evidence Act and come to a decision in accordance with law.

22. In this case the trial Court as well as the Court of appeal below considered the entire evidence on record and came to a concurrent finding that in the facts and circumstances of the case there was no reason on the part of the plaintiff-opposite party to gift the suit land to her nephews depriving her minor child.

23. On assessment of the evidence on record together with the impugned deed of gift dated 30-6-2004 (Exhibit A), I do not find any valid ground to differ with the view taken by the Courts below. Therefore, I am unable to accept the contentions raised by the learned Advocate for the petitioner that both the Courts below without applying its judicial mind into the facts and circumstance of the case most illegally rejected the expert's opinion and decreed the suit.

24. The decisions cited by the learned Advocate for the petitioner are distinguishable on facts.

25. In view of my discussion made in the foregoing paragraphs it is by now clear that the instant Rule must fail.

26. In the result, the Rule is discharged without any order as to costs. The judgments of both the Courts below are hereby maintained.

Let a copy of this judgment along with the lower Courts record be sent down at once.

Ed.

HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

ANM Bashir Ullah J

Judgment
May 21st, 2013.

Nazrul Islam (Md) & ors
...Defendant-Petitioners
vs
Mahfuzur Rahman and others.....Plaintiff-Opposite Parties*

Code of Civil Procedure (V of 1908)
Order VI, rule 17

Amendment of the pleadings is always justified if the same is found to be necessary for the purpose of determining the real question of controversy between the parties. Since in the suit, the real controversy between parties appears to be as to from when the defendants were inducted into possession of the suit land is the subject matter of the amendment, so if the suit is remanded back that will serve the purpose of the ends of justice. .....(23)

Md Abdul Jabbar with Md Ibrahim Advocates—For the Petitioners.

Mansur Habib with Khairul Alam with Rumana Alam, Advocate—For the Opposite Parties.

*Civil Revision No/688 of 2004.

Judgment

This Rule on an application under Section 115(1) of the Code of Civil Procedure (in short, the CPC) filed by the defendant-petitioners was issued calling upon the opposite party Nos. 1-12 to show cause as to why judgment and decree dated 22-2-2004 passed by the Additional District Judge, 3rd Court, Bogra in Other Class Appeal No. 28 of 2002 allowing the appeal and thereby reversing the judgment and decree dated 11-11-2001 passed by the learned Assistant Judge, Shariakandi, Bogra in Eviction Suit No. 57 of 1 997 dismissing the suit, should not be set-aside and or pass such other or further order or orders as to this Court may seem fit and proper.

2. The facts leading to the issuance of the Rule, in short, is that the present opposite-party Nos. 1-12 as plaintiffs instituted above numbered suit for the eviction of the present defendant-petitioners and opposite party Nos. 13-16 from the suit land appertaining to CS plot No. 364 and 368 of CS khatian 46 of Tajru para mouja under Shariakandi Police Station of Bogra district comprising an area of 1.77 acres of land averring inter-alia that the land of CS khatian No. 46 was correctly recorded in the name of Meherullah Akond, Esharat Akond, Topijan Bibi, Sema Bibi, Syednesa Bibi, Danes Uddin Mondal, Idris Mondan, Ajirunnessa, Nojibunnesa and Asmat ullah Mondal in different share.

3. One of the recorded tenant Meherullah Akond died leaving wife Kosiran Bibi and daughter Halima Khatun. While Kosiran Bibi was possessing 1.77 acres of land and which is suit land also sold by a registered kabala on 13-11-1936 to Keramatullah Mia, Fazlar Rahman, the predecessor of the plaintiffs and Ator Ali Mia, the predecessor of the defendant-petitioners. Halima khatun died leaving daughter Waheda Khatun who sold 5.00 acres of land by a registered kabala on 17-5-1946 to the plaintiff No. 4 of the suit. Fazlar Rahman died leaving the plaintiffs thus the plaintiffs have been possessing the land inherited

by them from their predecessor Fazlor Rahman erecting dwelling huts and cultivating the rest land therein.

4. One of the recorded tenant Esharat Ali died leaving daughter Fatema Khatun who filed Partition Suit No. 150 of 1951 for the partition of the land of CS khatian No. 46. In the said suit, Fazlar Rahman, the predecessor of the plaintiffs was defendant No. 16, the present plaintiff No. 4 was defendant No. 23 and Ator Ali, the predecessor of the defendants was defendant No. 10.In the said Partition Suit some of the defendants filed written statements in order to contest the suit and some of the co-sharers prayed for saham.

5. The said suit was decreed finally on 14-1-1957 and pursuant to the said decree the suit land along with other lands were allotted in the saham of Fazlar Rahman and the plaintiff Nos. 1/3-4 but no share of land was allotted in favour of Ator Ali, the predecessor of the defendants thus he became land less in the suit holding and under the said prevailing circumstances he had requested his elder brother Fazlar Rahman to continue into the suit land.

6. Since Fazlar Rahman used to serve in the police department he did not usually reside in his native dwelling hut on the suit land and in the vacation he and his family members used to visit the dwelling hut casually from time to time and under above facts and circumstance Fazlar Rahman allowed his younger brother Ator Ali to live on the suit land during his life time. Fazlar Rahman also asked his sons and daughter not to disturb Ator Ali to live on the suit land during his life time and accordingly though the defendants were trying to grab the suit land in this or that way but heirs of Fazlar Rahman did not disturb Ator Ali for the "asiyat" of their predecessor Fazlar Rahman.

7. Ator Ali died on 29-5-1997 leaving the defendant Nos. 1 and 2 and Nasir uddin as sons and defendant No.5 as wife. The plaintiffs requested the defendants to surrender the vacant possession of the suit land in favour of the plaintiffs on 16-7-1997 and though they assured the plaintiffs that within 15 days there of they will vacate the suit land but ultimately they did not leave the suit land and accordingly the plaintiffs again requested the defendants on 16-8-1997 to hand over the vacant possession of the suit land in their favour but the defendants denied the same. Hence the plaintiffs have been constrained to file the suit.

8. The defendant Nos. 2, 6 and 7 filing a joint written statement denied the material allegations of the plaint. The case of the defendants, in short, is that 71.92 acres of land appertaining CS to khatian No. 46 originally belong to Meherullah Akond and others in different share who mortgaged the land to Naimullah Fakir and accordingly CS khatian No. 76 was prepared in the name of Naimullah Fakir. One Kobej Mollah was the borgader under the Naimullah Fakir as such CS khatian No. 77 was also prepared in the name of Kobej Mollah articulating his possession thereon.

9. For the arrear of rents, the entire land of Tajru para mouja along with the lands of 9 other moujas were sold in an auction and since there was no purchaser, the Deputy Commissioner Bogra, purchased the said land in the auction. The Deputy Commissioner was inducted into the possession of the said land and the tenancy of the former tenants were annuled through the case No. 126(12)53-54.

10. The Deputy Commissioner took initiative for the settlement of said land among the people of that locality and one Amzadur Rahman took settlement of 2.99 acres of land from the Deputy Commissioner Bogra, on 5-2-1956 through the settlement case No. 196(12) 66-67. Amzadur Rahman set Ator Ali, the predecessor of the defendants to look after the said land and Ator Ali with the permission of Amzadur Rahman erected house

on the land of plot No. 364. Amzadur Rahman sold .37 acres of land on 26-10-1988 to defendant No. 1. The defendants entered into an agreement on 15-3-1997 with Amzadur Rahman to purchase 1.77 acres of land from him. Amzadur Rahman also sold some land on different date to the defendants, thus the defendants have been possessing the suit land acquiring the same from Amzadur Rahman.The plaintiffs have no right, title, interest and possession into the suit land the suit is liable to be dismissed with cost.

11. Upon the above pleadings, the trial Court framed as many as 6 issues to dispose of the suit whereupon the plaintiffs examined 6 witnesses and filed some documentary evidences which has been marked as exhibits-1 to 6 and the contesting defendants examined 4 witnesses and filed some documentary evidences which has been marked as exhibit K-Tha and the trial Court considering the evidence and other materials on record dismissed the suit by his judgment dated 11-11-2001. Against the said judgment, the plaintiffs preferred title appeal No. 28 of 2002 in the Court of District Judge Bogra which has been heard by the Additional district Judge 3r Court, Bogra who by his impugned judgment dated 22-2-2004 reversing the judgment of the trial Court, decreed the suit in favour of the plaintiffs. The defendant-petitioners being aggrieved by and dissatisfied with said judgment and decree of the appellate Court below dated 22-2-2004 moved this Court and obtained the present Rule.

12. Mr Md Abdul Jabbar along with Md Ibrahim, the learned Advocate appearing for the defendant-petitioners supports the Rule. He submits that the plaintiffs filed the suit for eviction of the defendants from the suit land but the plaintiffs could not show and manifest in the plaint as to from when the defendants or their predecessor Ator Ali was possessing the suit land under them as permissive possessor. He categorically submits that in fact the defendants had been possessing the suit land from 13-11-1936 when their predecessor Ator Ali and Fazlar Rahman, the predecessor of the plaintiffs had purchased 1.77 acres of land from Kosirannesa, the wife of recorded tenant Meherullah Akond. He also submits that a partition suit being No. 150 of 1951 was filed where the Ator Ali, the predecessor of defendants was defendant No. 10 and from the materials on record it appears that the defendant No. 10 in that suit neither filed a written statement nor prayed for saham but for that reasons his share and right title in the suit land will not be extinguished in any way. There is no paper to show that Ator Ali was even evicted in pursuant of the final decree of that partition suit. He also submits that possession of the defendants is admitted in the suit and in fact Ator Ali and his heirs have been possessing the suit land from 1936 as their purchased land, so the eviction of such original owner from their own land is neither possible nor desirable.

13. He further submits that the trial Court categorically found that the plaintiffs could not prove the title and possession into the suit land but the appellate Court below without giving any reasons whatsoever found the title of the plaintiffs into the suit land and this sort of findings of the appellate Court below is against the provisions of law. He submits that Order XLI Rule 31 CPC provides that the appellate Court must record reasons of its decision but the appellate Court below without assigning the reasons reversed the judgment of the trial Court and thereby committed an error of law resulted into an error into the decision occasioning failure of justice to the defendant-petitioners and, as such, the judgment and order of the appellate Court below is liable to be set-aside making the Rule absolute.

14. Mr Mansur Habib, the learned Advocate appearing for the plaintiff-opposite parties opposes the Rule. He submits that the trial Court on the wrong assessment of the evidence on found that the plaintiffs have no title into the suit land but the appellate Court below on due consideration of the evidence and other materials on record came to a

right conclusion that the plaintiffs had acquired title into the suit land and after the final decree of former partition suit No. 150 of 1951, Ator Ali, the predecessor of the defendants became landless and the appellate Court below also rightly found that the defendants could not prove his case adducing any cogent and nitid oral and documentary evidences thus the appellate Court below did not commit any error of law and fact in decreeing the suit in favour of the plaintiff-opposite parties as such the Rule is liable to be discharged with costs.

15. At the fanged of the hearing of this Rule, the learned Advocate for the plaintiff-opposite parties submitting a petition sought amendment in the plaint of the original suit. In the said petition it was articulated that after the final decree of the partition suit on 16-3-1957, Ator Ali sought permission to stay in the suit land and his full brother Fazlar Rahman allowed him to continue with his possession into the suit land on and from 17-3-1957 as his permissive possessor. The learned Advocate for the opposite-parties also submits that for removing any kind of confusion in the suit, the amendment sought today would be helpful.

16. I have considered the above submissions of the learned Advocates of both the parties with profound attention and have gone through the materials on record.

17. On going to the materials on record it appears that the plaintiffs filed the suit for eviction of the defendants from the suit land claiming them (defendants) as their permissive possessor but the plaint was totally silent as to from when the defendants were inducted into the suit land as their permissive possessor and infact to address this lacuna of the plaint, the plaintiff-opposite parties sought the amendment today as stated hereinbefore.

18. The learned Advocate for the defendant-petitioners in this regards submits that the total case of the plaintiffs is centered around this point that as to from when they (defendants) were allegedly inducted into the possession of the suit land as their permissive possessor and since the plaint is totally silent on this vital point, the trial Court rightly held there was no cause of action of the present suit and the plaintiffs at this stage to fill up the lacuna sought the amendment which they cannot do at all and if the amendment as sought for is allowed that will be simple in justice to the defendant-petitioners and an undue premium to the plaintiffs. He also submits that the date as has been shown in the amendment is a question of fact which cannot be answered through the momentary hearing of the Rule rather the defendant-petitioners require to submit additional written statements but if the same is done at this stage that will be cumbersome for all.

19. From the plaint and other materials on record it appears that by the deed of 13-11-1936 Fazlar Rahman and Ator Ali and their father had acquired 1.77 acres of land which is the suit land now, from Kosirannesa, the wife of recorded tenant Meherullah Akond. So, we find that Ator Ali, the predecessor of the defendants had every reason to be in possession of the suit land at his own accord and it is also fact that during the partition suit being No. 150 of 1951 though the Ator Ali was the defendant No. 10, but he neither filed written statements nor prayed for saham. But if anybody who had acquired land in a partiable land, do not pray for saham in a partition suit his right, title and interest will not be extinguished in anyway.

20. Moreso, from the commissioner report of that partition suit, exhibit l(a) goes to show that in page No. 4, the advocate commissioner at the time of allotment of the land in the field noticed the ownership of Ator Ali along with the Fazlar Rahman and Keramotullah into the partiable through the kabala dated 13-11-1936. But it is

very astonishing and surprising to me that the defendant in their written statements denied this kabala although the learned advocate for the defendant-petitioners submits that in fact the defendant being misconceived and misconstrued of the fact denied the said kabala erroneously and which was a blatant error on the part of the defendants and also on the part of their lawyer who had conducted the suit on their behalf at trail. However, I feel that there should no comment on this submission of the learned advocate for the petitioners at this stage of the proceeding.

21. The defendants in their very dishevelled and wishy-washy written statements adverted many things but proved nothing at trial. The written statement occupies some important facts that the entire land of Tajru para mouja along with the lands 9 other moujas were sold in an auction arising out of the rent suits, but the written statement did not disclose the names of the parties and the numbers of the rent suit. It was further adverted in the written statement that through the case No. 126(12) 53-54 the tenancy of the former tenants were annuled but their appears no documents in support of this important contention. Though the defendants filed papers marked exhibit 'Ga' to show that Amzadur Rahman took settlement of 2.99 acres of land from the government through settlement case No. 196(12) 6667 but this document did not contain the particulars of the suit land. So it is difficult for this court to come into a fair conclusion that by exhibit 'Ga' Amzadur Rahman, the predecessor in interest of the defendants took settlement of the suit land from the government.

22. The defendants could have claimed the suit land as their own relying on the kabala dated 13-11-1936 very easily and sharply but it is not under stood as to why the defendants had disowned the same. However, be that as it may, now, come to the fact of seeking amendment to day again.

23. In a suit for eviction of the defendants from a particular land it is always important for the plaintiffs to disclose as to from when the defendants were inducted into possession in to the suit land but the plaint was more or less silent till today from the date of filing on 27-8-1997. Since the learned advocate for the defendant-petitioners finds that the defendants were inducted into the possession into the suit land on the basis of kabala dated 13-11-1936. So, I find that if the suit is sent back on remand for trial afresh giving a chance to the plaintiffs and the defendants to amend their pleadings and to adduce further evidence on the said amendments that will be a proper course to render the justice to both the parties. It is also pertinent to point out that amendment of the pleadings is always justified if the same is found to be necessary for the purpose of determining the real question of controversy between the parties. Since in the present suit, the real controversy between parties appears to be as to from when the defendants were inducted into possession of the suit land is the subject matter of the amendment, so if the suit is remanded back that will serve the purpose of the ends of justice. Since I have taken the decision to sent the suit back on remand upon setting aside the impugned judgment and decree of the appellate Court below it will be beneficial for both parties not to be more details on any other point.

24. Having regards to the above discussion, the original suit is sent back on remand to the trial Court upon setting-aside the impugned judgment of the appellate Court below.

25. In the result, the Rule is made absolute and the original suit is sent back on remand to the trial Court for trial afresh. The trial Court will allow both the plaintiffs and defendants to amend their plaint and written statement and to adduce further evidence in support of their amended pleadings and thereafter pronounce the judgment afresh.

Let a copy of this judgment and order along with the lower Courts record be sent down to the concerned Court for information and necessary action.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Md Ashfaqul Islam J
Md Ashraful Kamal J

Judgment
November, 20th
2013.

Sheikh Md Rafiqul Islam (Babul).....Petitioner

vs

Manager, Uttara Bank Limited and others.....
.....Respondents*

Artha Rin Adalat Ain (VIII of 2003)
Sections 4(7) and 41

Artha Rin Adalat can only be constituted by Joint District Judge alone. If due to illness or for any other reason or the court is in vacation the Adalat cannot function with its regular work the District Judge will appoint temporarily a Joint District Judge to continue function of Artha Rin Adalat. For the purpose of functioning of Adalat to be more particular to hold the trial jurisdiction lies with the Joint District Judge. Section 41 of Ain clearly says that the District Judge and the Additional District Judge are the appellate authority to dispose of the appeal against the judgment and order passed by the Joint District Judge in the capacity of Artha Rin Adalat Judge. .....(10)

Md Harunur Rashid, Advocate—For the Petitioner.

SM Moniruzzaman, DAG with Khairun Nessa and Purabi Saha, AAGs—For the Respondent No.l.

*Writ Petition No. 3064 of 2008

Judgment

Md Ashfaqul Islam J : At the instance of the petitioner, Sheikh Md Rafiqul Islam (Babul), Managing Director of M/s Sigma Garments Industries Ltd., this Rule Nisi was issued calling upon the respondent Nos. 1-3 to show cause as to why the order No. 187/Pro: B: dated 18-11-2007 passed by the respondent No.2, District Judge Chittagong so far as it relates to constitution of the Artha Rin Adalat at Chittagong by the respondent No. 3, Additional District Judge Mr Sharif Uddin Ahmed, should not be declared to have been passed without lawful authority, illegal and is of no legal effect and why the auction notice dated 5-4-2008 published in the Daily Azadi for auction sale on 23-4-2008 in Artha Jari Case No. 502 of 2004 (Annexure-D) should not be declared to have been passed without lawful authority and is of no legal effect. At the time of issuing Rule the impugned auction notice dated 5-4-2008 was stayed.

2. The background leading to the Rule, in short, is that the respondent No.l as the plaintiff filed a Case No.41 of 2001 for realization of Taka 2,42,81,224.86 against the borrower which was decreed on 22-9-2004 and filed Artha Jari Case No. 502 of 2004. Mr Sharif Uddin Ahmed, the respondent No.3 was holding the rank and status of the Joint District Judge till 10-11-2007 and was allocated the judicial function of Joint District Judge, First Court and Artha Rin Adalat No.l, at Chittagong. Thereafter, Mr Sharif Uddin Ahamed got promotion as Additional District Judge and his promotion was given effect by office order No.742- Bichar-3/lT, 2/2001 dated 11-11-2007 issued under the signature of the Deputy Secretary (Administration), Judicial Section-3, Ministry of Law, Justice and Parlia-mentary Affairs, Government of Bangladesh (Annexure-"B").

3. The respondent No. 3 Mr Sharif uddin Ahmed, then resumed the post of Additional District Judge and now holding the rank and sta-

tus of Additional District Judge. The respondent No. 2 Mr Moinul Ahsan, the District Judge at Chittagong by his office Order No. 187/Pro: B dated 18-11-2007 distributed judicial function to 4 (four) judicial officers and the respondent No.3 Sharif Uddin Ahmed was allocated the judicial function of the Additional District Judge, First Court, Chittagong along with the additional function of Artha Rin Adalat, Accounts Division and Forms & Stationary Division with effect from 19-11-2007.

4. On 30-3-2008 a circular was issued by the Bangladesh Bank for reschedule of outstanding dues for rehabilitation of sick industries. Auction notice dated 5-4-2008 for auction sale to be held on 23-4-2008 under challenge was published in the Daily Azadi (Annexure-D). Under the circumstances the petitioner mainly challenging the order passed by the respondent No.2 the learned District Judge. Chittagong who by his office order No.187/Pro B: dated 18-11-2007 gave jurisdiction to try the cases relating to Artha Rin matter to the respondent No.3 Mr Sharif Uddin Ahmed who was promoted in the rank of Additional District Judge, First Court, Chittagong, moved this petition.

5. Mr Md Harunur Rashid, the learned Advocate appearing for the petitioner after placing the petition and Annexures appended to it mainly argued that the order dated 18-11-2007 so far as it relates to constitution of the Artha Rin Adalat at Chittagong by the Additional District Judge Mr Sharif Uddin Ahmed is without lawful authority, illegal and is of no legal effect owing to the fact that section 4 of the Artha Rin Ain, 2003 provides for constituting Artha Rin Adalat by a joint district Judge, that even after Consultation with the Hon'ble Supreme Court followed by Government Gazette Notification and if there be any vacancy, for the time being, the District Judge of respective District may put the jurisdiction of Artha Rin Adalat to any other joint District Judge as additional responsibility to his original function. But in the instant case instead of Joint District Judge, the Artha Rin Adalat has been constituted by the Additional District Judge hence the mandatory provision of section 4 of the Artha Rin Adalat has been violated.

6. In elaborating his submission the learned counsel further submits that the order dated 18-11-2007 so far as it relates to constitution of the Artha Rin Adalat at Chittagong is without lawful authority, illegal and is of no legal effect owing to the fact that section 5(11), section 26 and section 41 of Artha Rin Adalat Ain-2003 categorically and clearly said that the Artha Rin Adalat is a Civil Court and if no contradiction has arisen between two law, then the provisions of Code of Civil Procedure would be applicable in case of Artha Rin Adalat; that section 4 of Artha Rin Adalat Ain, 2003 vested the original jurisdiction of trial court and the Joint District Judge and section 41 of the said vested the jurisdiction of appellate Court, subject to pecuniary limitation up to Taka 50,00,000, upon the District Judge including the Additional District Judge, hence there is a legal difference regarding jurisdiction between Joint District Judge and District Judge including Additional District Judge.

7. He also contends that the constitution given to the Additional District Judge being without lawful basis subsequently notice of auction published in the Daily Newspaper Azadi cannot also be sustained under law since it has been passed by the respondent No.3 Additional District Judge under his direction which he cannot do under the law.

8. Mr SM Moniruzzaman, the learned Deputy Attorney-General appearing for the respondent No.1 by filing affidavit in opposition opposes the Rule. He submits that respondent No. 2 the Additional District Judge was given additional charge of Artha Rin Adalat by Administra-

tive order under challenge dated 18-11-2007 but during the pendency of this Writ Petition respondent No.3 had been transferred from Chittagong and a Joint District Judge resumed the function as a judge of Artha Rin Adalat, Chittagong together with fact that the date of auction had already been expired, the Rule has become infructuous which should be discharged.

9. Heard the learned counsel of both, sides and considered their respective submissions. We have categorically gone through the impugned order dated 18-11-2007 and the relevant laws on the point. To appreciate the point raised by the petitioner it would be profitable to quote section 4 of the Artha Rin Adalat Ain, 2003.

"আদালত প্রতিষ্ঠা-(১) আর্থিক প্রতিষ্ঠান কর্তৃক মামলার বিচার ও এই আইনের সংশ্লিষ্ট অন্যান্য বিষয়ের উদ্দেশ্যপূরণকল্পে সরকার, উপ-ধারা (২) ও (৩) এর বিধান সাপেক্ষে, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, প্রত্যেক জেলায় এক বা একাধিক অর্থঋন আদালত প্রতিষ্ঠা করিতে পারিবে।

(২) সরকার, সুবিধাজনক মনে করিলে, দুই বা ততোধিক জেলার জন্য একটি অর্থঋণ আদালত প্রতিষ্ঠা করিতে পারিবে।

(৩) উপ-ধারা (১) বা (২) এর অধীনে অর্থঋণ আদালত প্রতিষ্ঠিত বা ঘোষিত না হইয়া থাকিলে, আর্থিক প্রতিষ্ঠানের ঋণ আদায় সম্পর্কিত মামলা সংশ্লিষ্ট স্থানীয় অধিক্ষেত্রের যুগ্ম-জেলা জজ আদালতে দায়ের করিতে হইবে এবং এই আইনের বিধানাবলী ঐ সকল মামলার শুনানী, জারী, আপীল ইত্যাদি যাবতীয় কার্যক্রমে এমনভাবে অনুসরণীয় হইবে, যেন উক্ত যুগ্ম-জেলা জজ আদালত এই আইনের অধীনেই প্রতিষ্ঠিত বা ঘোষিত আদালত এবং এই আইনের উদ্দেশ্য সাধন কল্পে উক্ত যুগ্ম-জেলা জজের আদালত এই আইনের অধীন অর্থঋণ আদালত হিসাবে গন্য হইবে।"

Pertinently sub-section 7 is also quoted below:—

"(৭) ছুটি, অসুস্থতা বা অন্য কোন কারণে এই ধারার অধীন প্রতিষ্ঠিত, ঘোষিত বা গণ্য হওয়া অর্থঋণ আদালতে নিযুক্ত বিচারক দায়িত্ব পালনে সাময়িকভাবে অসমর্থ হইলে, জেলা জজ তাহার স্থানীয় অধিক্ষেত্র ও প্রশাসনিক নিয়ন্ত্রণে নিযুক্তকোন যুগ্ম-জেলা জজকে সাময়িকভাবে নিজ দায়িত্বেও অতিরিক্ত বা পূর্ণকালীন সময়ের জন্য অর্থঋণ আদালতের দায়িত্বে নিযুক্ত করিতে পারিবেন।"

10. On a plain reading of the law it becomes clear that Artha Rin Adalat (for the purpose of trial) can only be constituted by Joint District Judge alone. This proposition finds support from sub-section 7 of section 4. When we read sub-section 7 we find that if due to illness or for any other reason or the court is in vacation the Artha Rin Adalat cannot function with its regular work the District Judge will appoint temporarily a Joint District Judge to continue function of Artha Rin Adalat. So it becomes clear that for the purpose of functioning of Artha Rin Adalat to be more particular to hold the trial jurisdiction lies with the Joint District Judge. Section 41 of Ain clearly says that the District Judge and the Additional District Judge are the appellate authority to dispose of the appeal against the judgment and order passed by the Joint District Judge in the capacity of Artha Rin Adalat Judge. This position being clear and unambiguous we are of the view that the constitution given by the District Judge the respondent No. 2 empowering the respondent No.3 the Additional District Judge to exercise jurisdiction as a Artha Rin Adalat is absolutely without jurisdiction and *coram non judice*. Further publication of the notice which is under challenge also cannot be sustained.

11. Be that as it may we are not required to dwell upon the other points with emphasis since the question of Coram nonjudice as already discussed has been well proved. That being the position this Rule merits substance which should be made absolute.

12. In the result, the Rule is made absolute. The impugned order is set-aside. The trial court is directed to proceed with the suit immediately in accordance with law.

Communicate at once.

Ed.

HIGH COURT DIVISION
(Criminal Appellate Jurisdiction)

Moyeenul Islam Chowdhury J
Kazi Md Ejarul Haque Akondo J

Judgment
November, 18th 2013.

Akbar Ali Lalu alias Roni.....Appellant

vs

State.....Respondent*

Penal Code (XLV of 1860)
Section 396

The measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. .....(201)

Penal Code (XLV of 1860)
Section 391

In order to commit 'dacoity', there must be at least five persons as contemplated by section 391 of the Code. Naturally a question arises as to whether the four accused, can be convicted and sentenced under section 396 of the Code. There is an illuminating decision in the case of *Abdul Wahed vs State, 8 DLR 50.* .....(211)

Evidence Act (I of 1872)
Sections 3 and 8

Unexplained abscondence of the accused is a supporting circumstance which must be considered along with the substantive evidence on record, if any, forthcoming against the accused. ...(198)

Circumstantial Evidence

The circumstances should form a chain so complete that there is no escape from the probability that the crime was committed by the accused and no one else.

When a case rests on circumstantial evidence, such evidence must satisfy three tests. In the first place, the circumstances from which an inference of guilt is sought to be drawn must be firmly established by unimpeachable evidence; secondly, the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused; and thirdly, the circumstances taken cumulatively are incapable of explanation of any reasonable hypothesis save and except that of the guilt sought to be proved against the accused. .....(181)

Evidence Act (I of 1872)
Section 114(g)

Suspicion—Mere conjectures and probabilities cannot take the place of proof. The Court of law has to dispense justice in accordance with law and not according to the moral conviction of the Judge with regard to the occurrence. .....(182)

Code of Criminal Procedure (V of 1898)
Section 374

Ends of justice demand that the accused Saiful be awarded the extreme penalty of death. .....(209)

Geedo vs State, 1986 P CrLJ Karachi 2192; Lal Singh vs Emperor, 40 CrLJ Allahabad 132; Alaluddin vs State, 49 DLR 66; Md Rezaul Karim vs State, 23 BLD 255; Md Akbar Ali vs State, 19 BLD 268; State vs Md Gaush Meah, 10 BLC 74; State vs Abul Khair, 44 DLR 284; Khalil Mia vs State, 4 BLC (AD) 223; State vs Moslem, 55 DLR 116; Emperor vs Nga Tha Hmwe, AIR 1935 Rangoon 504; Habibur Rahman vs State, 8 BLD 210; Abul Hossain vs State, 13 BLD 311; Nurul Haque vs State, 20 DLR 780; 1986 (BLD) 436, Ali Asgar vs State; State vs Punardhar Joydhar, 31 DLR 312; Hazrat Ali vs State, 1990 BLD 38; Bakul Chandra Sarkar vs State, 45 DLR 260; Bhuboni Sahu vs The King, 76 Indian Appeals, 147; Emran Ali vs State, 37 DLR 1; Amir Hossain

*Criminal Appeal Nos. 251, 273 of 2013 with Jail Appeal Nos. 7 of 8, 9, 10 of 2013 and Death Reference No. 2 of 2013.

Howlader vs State, 37 DLR (AD) 139; Rezaul Karim (Md) vs State, 55 DLR 382; State vs Mir Hossain, 56 DLR 124; Joygun Bibi vs State, 2 DLR SC 156; Shahidul Islam vs State, 8 BLT 150; Mrs Mahmuda Khatun, 49 DLR 66; Md Luqman vs State, 21 DLR SC 461; Alkas Mia vs State, 25 DLR 398; Kashmira Singh vs State, AIR 1952 SC 474; Moqbul Hossain vs State, 12 DLR SC 217; State vs Md Gaush Meah,10 BLC 74; State vs Rokeya Begum, 13 BLT 377; Madan Gopal Kakkad vs Naval Dubey, 3 SCC (1992) 204; 40 CrLJ Allahabad 132, Lal Singh vs Emperor; Empero vs Nga Tha Hmwe, AIR 1935 Rangoon 504; Sk Abdul Wahed vs State, 8 DLR 50, ref.

Khandker Mahbub Hossain with M. Masud Rana, Md Hadayet, Kamrun Nahar (Shima) and Nasrin Khandaker, Advocates—For the condemned-appellant in Criminal Appeal No. 251 of 2013.

Yusuf Hossain Humayun with Md Saiful Islam Khandker, Advocates—For the condemned-appellants in Criminal Appeal No. 273 of 2013.

Md Aminur Rashid (Razu), Advocate appointed by the National Legal Aid Services Organization, Dhaka, Bangladesh—For the condemned-appellants in Jail Appeal Nos. 7 of 2013 and 9 of 2013.

Md Khabir Uddin Bhuiyan, Advocate appointed by the National Legal Aid Services Organization, Dhaka, Bangladesh—For the condemned-appellants in Jail Appeal Nos. 8 of 2013 and 10 of 2013.

Mahmuda Khatun, State Defence Advocate—For the absconding condemned-accused Md Selim Chowdhury alias Selim Ahmed in Death Reference No. 2 of 2013.

Mahbubey Alam, Attorney-General with Md Khurshedul Alam, DAG, Mahmuda Parveen, AAG and Md Abdul Bari, AAG—For the State in Criminal Appeal Nos. 251 of 2013 and 273 of 2013 and Jail Appeal Nos. 7 of 2013, 8 of 2013, 9 of 2013 and 10 of 2013 and Death Reference No. 2 of 2013.

Judgment

Moyeenul Islam Chowdhury J: The Criminal Appeal Nos. 251 of 2013 and 273 of 2013 and the Jail Appeal Nos. 7 of 2013, 8 of 2013, 9 of 2013 and 10 of 2013, at the instance of the condemned-prisoners, are directed against the judgment and order of conviction and sentence dated 30-12-2012 passed by the Judge of the Druto Bichar Tribunal No. 4, Dhaka in Druto Bichar Tribunal Case No. 18 of 2012 arising out of GR Case No. 156 of 2012 corresponding to Gulshan Police Station Case No. 15 dated 7-3-2012. By the impugned judgment and order, the learned Tribunal Judge convicted the accused-appellants and the co-accused Md Selim Chowdhury under section 396 of the Penal Code, 1860 and sentenced each of them thereunder to death. The learned Tribunal Judge also made a Reference to the High Court Division under section 374 of the Code of Criminal Procedure for confirmation of the death sentence imposed upon them.

2. All the appeals and the Death Reference have been heard together and are disposed of by this consolidated judgment.

3. The prosecution version of the case, in short, is as follows:

One Mr Khalaf Mohammed S Al Ali, Head of Saudi Citizens' Affairs, The Royal Embassy of Saudi Arabia, Dhaka, Bangladesh went for a nocturnal walk in the late hours of 5-3-2012 and while he was on the nocturnal walk at 1-00 AM on 6-3-2012 in the vicinity of his rented flat in Gulshan, the accused Saiful Islam alias Mamun, Md Al-Amin, Akbar Ali Lalu alias Roni, Md Rafiqul Islam alias Khokon and Md Selim Chowdhury alias Selim Ahmed came to the northern side of Road No. 120 which is on the southern side of House No. 19/B, Road No. 117, Gulshan Police Station, DMP, Dhaka by a car bearing registration No. Dhaka Metro-Ga-12-9688 and encircled the Saudi diplomat Khalaf. At one stage, the

accused attempted to commit dacoity and to that end, some of them started grappling with Khalaf. Finding no valuables in the possession of Khalaf, the accused Saiful Islam fired a shot on Khalaf with a 0.22 calibre 8-chamber revolver bearing No. 1616819-ARMINIUS-Made in Germany. As a result of the revolver shot, Khalaf fell down on the drain-slab on the northern side of Road No. 120, Gulshan-2. Thereafter, he was whisked away to the near-by United Hospital wherein he succumbed to his injury. Eventually the informant Sub-Inspector Md Mosharraf Hossain of Gulshan Police Station lodged a First Information Report (FIR) therewith. In this connection, it may be noted that at the time of lodgment of the FIR, the names of the accused did not transpire. Anyway, during the investigation of the case, their names transpired and excepting Selim Chowdhury, all the remaining four accused were tracked down by the police and two of them, namely, Md Al Amin and Akbar Ali Lalu made judicial confessions under section 164 of the Code of Criminal Procedure making a clean breast of the whole incident.

4. The Investigating Officers of the case are the PW 31 Inspector Md Nure Azam Miah, PW 32 Inspector Md Azizul Haque and PW 33 Assistant Commissioner Md Obaidul Haque. They investigated the case by visiting the place of occurrence. During the investigation of the case, a sketch-map of the place of occurrence along with a separate index was made, witnesses were examined and their statements were recorded under section 161 of the Code of Criminal Procedure. A copy of the autopsy-report of the deceased Khalaf was procured. Having found a *prima facie* case, the last Investigating Officer Md Obaidul Haque (PW 33) submitted charge-sheet No. 379 dated 19- 9-2012 against all the accused including the absconding accused Md Selim Chowdhury alias Selim Ahmed under section 396 of the Penal Code.

5. At the commencement of the trial of the case, the learned Trial Judge charged all the accused-appellants and the co-accused Md Selim Chowdhury under section 396 of the Penal Code. The charge was read over and explained to the accused present in the dock; but they pleaded not guilty thereto and claimed to be tried as per law.

6. The defence version of the case, as it appears from the trend of cross-examination of the prosecution witnesses, is that the accused are innocent and have been falsely implicated in the case out of oblique motives and the victim Khalaf was a man of immoral character and his maid-servant was a call-girl and she along with others caused the death of Khalaf at the relevant time and the alleged confessional statements of the accused Md Al-Amin and Akbar Ali Lalu are the products of police torture, oppression and maltreatment

7. After hearing both the prosecution and the defence and on an in-depth appraisal of the evidence and materials on record and having regard to the attending circumstances of the case, the learned Tribunal Judge came to the finding that the prosecution brought the charge home against the appellants and the co-accused Selim and accordingly, he convicted and sentenced them by the impugned judgment and order as aforesaid.

8. Being aggrieved at and dissatisfied with the impugned judgment and order, the convict-appellants have preferred the instant appeals. As already observed, the Tribunal below has also made a Statutory Reference to the High Court Division for confirmation of the death sentence imposed upon the appellants and the co-accused Selim.

9. The only point for determination in the appeals and the Death Reference is whether the impugned judgment and order dated 30-12-2012 is sustainable in law or not?

10. At the outset, Mr Khandker Mahbub Hossain, learned Advocate appearing on behalf of the appellant Akbar Ali Lalu alias Roni in Criminal Appeal No. 251 of 2013, candidly sub-

mits that he does not dispute the time, place and manner of the occurrence and also the finding of conviction arrived at against his client Lalu, but the fact remains that the Tribunal below overlooked the individual culpability of Lalu in sentencing him along with the co-accused and in view of the role played by Lalu in the commission of the offence as manifested from his judicial confession dated 1-8-2012, he should have been sentenced to 10(ten) years' rigorous imprisonment at the most. In this connection, Mr Khandker Mahbub Hossain relies on the decisions in the cases of *Geedo vs State, 1986 P CrLJ Karachi 2192* and *Lal Singh vs Emperor, 40 CrLJ Allahabad 132.*

11. Mr Khandker Mahbub Hossain also submits that as per section 396 of the Penal Code, three options in respect of awarding of sentence to the accused have been provided depending upon the degree of culpability of each individual accused, though indisputably 'dacoity' is a conjoint offence and the learned Tribunal Judge failed to exercise his discretion properly in sentencing the accused Lalu and that being so, the sentence recorded against the accused Lalu is liable to be reviewed by this Appellate Court.

12. Mr Khandker Mahbub Hossain further submits that he only challenges the propriety and correctness of the sentence imposed upon the accused Lalu in view of his self-inculpatory confessional statement made under section 164 of the Code of Criminal Procedure and having regard to the role played by the accused Lalu in the commission of the offence, the capital sentence awarded to him appears to the very harsh.

13. Mr Yusuf Hossain Humayun, learned Advocate appearing on behalf of the condemned-appellants Saiful Islam alias Mamun, Md Al Amin and Md Rafiqul Islam alias Khokan in Criminal Appeal No. 273 of 2013, contends that admittedly the finger-prints on the revolver bearing No. 1616819 allegedly used by the accused Saiful in firing the fatal shot on the victim Khalaf were not examined by any expert and in this perspective, there is a room for doubt as to whether the accused Saiful fired the fatal shot on Khalaf resulting in his ultimate death at the United Hospital, Gulshan, Dhaka and this being the scenario, the accused Saiful should be awarded the benefit of doubt.

14. Mr Yusuf Hossain Humayun further contends that the confession of the accused Md Al Amin dated 30-7-2012 (Exhibit-11) is a product of police torture, oppression and maltreatment and that is why, he filed a petition on 2-12-2012 retracting the earlier confessional statement dated 30-7-2012, but the learned Tribunal Judge did not consider this dimension of the case resulting in a miscarriage of justice.

15. Mr Yusuf Hossain Humayun also contends that the PW 31 Md Nure Azam Miah (1st Investigating Officer) did not seize any wet earth from the place of occurrence nor did he seize any blood-stain therefrom and this being the position, it cannot be said that the alleged occurrence took place on the drain-slab on the northern side of Road No. 120 which is on the southern side of House No. 19/B, Road No. 117, Gulshan Police Station, DMP, Dhaka and if the place of occurrence cannot be pinpointed by that reason, his clients, namely, Saiful Islam, Al-Amin and Khokon are entitled to an order of acquittal.

16. Mr Yusuf Hossain Humayun next contends that there is hardly any credible evidence on record connecting the accused Khokon with the commission of the offence, though allegedly at his showing and identification, the private car bearing No. Dhaka Metro-Ga-12-9688 was recovered from Manikdi area of Dhaka Cantonment on 24-7-2012, but the Tribunal below caused a failure of justice by convicting and sentencing him by the impugned judgment.

17. Mr Yusuf Hossain Humayun further contends that there does not appear to be any corrob-

oration of the alleged confessional statement of the accused Al Amin made under section 164 of the Code of Criminal Procedure and because of this lack of corroboration, Al Amin cannot be fastened with any criminal liability in the commission of the offence and above all, his confession being involuntary in character ought to have been discarded by the Tribunal below.

18. Mr Md Khabir Uddin Bhuiyan, learned Advocate appearing on behalf of the appellant Saiful Islam alias Mamun in Jail Appeal No. 8 of 2013 and the appellant Akbar Ali Lalu alias Roni in Jail Appeal No. 10 of 2013, submits that it is an admitted fact that the finger-prints on the revolver with which the accused Saiful allegedly fired the fatal shot on the Saudi diplomat Khalaf were not examined by any expert and the non-examination of the finger-prints on the revolver renders the prosecution case topsy-turvy entitling the accused Saiful to an order of acquittal.

19. Mr Md Khabir Uddin Bhuiyan also submits that in the facts and circumstances of the case and having regard to the culpability of the accused Lalu in the commission of the offence as is apparent from his judicial confession dated 1-8-2012, his capital punishment under section 396 of the Penal Code is shockingly severe.

20. Mr Md Aminur Rashid (Razu), learned Advocate appearing on behalf of the appellant Md Rafiqul Islam alias Khokon in Jail Appeal No. 7 of 2013 and the appellant Md Al Amin in Jail Appeal No. 9 of 2013, argues that admittedly there is no eye-witness in this case and the accused Khokon is not a confessing accused and according to the judicial confessions of the co-accused Lalu and Al Amin, Khokon drove the car on the fateful night; but no other evidence is forthcoming on record against the accused Khokon and this being the landscape, the accused Khokon should have been acquitted of the charge by the learned Tribunal Judge.

21. Mrs Mahmuda Khatun, learned State Defence Advocate appearing on behalf of the absconding-accused Md Selim Chowdhury alias Selim Ahmed, argues that it is true that the accused Selim is still on the run and an accused may be on the run for a variety of reasons including his fear of police harassment and it seems that the co-accused Lalu and Al Amin have implicated the accused Selim in their respective judicial confessions and these circumstances *per se* are not sufficient for the conviction of Selim; but the learned Tribunal Judge failed to appreciate the circumstances in their proper perspective and came to an erroneous finding that the accused Selim was very much involved in the offence resulting in the awarding of the death sentence to him.

22. Mrs Mahmuda Khatun also argues that confessions of the co-accused Lalu and Al Amin cannot be used against the absconding accused Selim as substantive evidence and the confessions were extracted from Lalu and Al Amin under coercion and physical torture and as the confessing accused (Lalu and Al Almin) were kept in police custody more than three days preceding their judicial confessions, the same are necessarily involuntary in character and, as such, the prosecution cannot capitalize on the judicial confessions against the absconding accused Selim and in view of the facts and circumstances of the present case, Mrs Mahmuda Khatun emphatically banks upon the decisions in the cases of *Alaluddin alias Alauddin vs State, 49 DLR 66; Md Rezaul Karim alias Rezaul Aalm Rikshawala vs State, 23 BLD 255* and *Md Akbar Ali vs State, 19 BLD 268.*

23. In contrast, Mr Md Khurshedul Alam, learned Deputy Attorney-General appearing on behalf of the State-respondent and in support of the Death Reference, submits that the accused Lalu, Al Amin, Saiful and Khokon were shown arrested in this case on 24-7-2012 and the Investigating Officer concerned prayed for ten days' remand, but the Court allowed them eight

days' remand and Al Amin and Lalu made their judicial confessions on 30-7-2012 and 1-8-2012 respectively and it transpires that the learned confession- recording Magistrate Mr Shahriar Mahmud Adnan (PW 20) recorded their confessions by complying with all legal formalities and in such a situation, it cannot be said that the confessions of the accused Al Amin and Lalu are involuntary.

24. Mr Md Khurshedul Alam further submits that it appears from the cross-examination of the PW 20 Shahriar Mahmud Adnan that no suggestion has been put to him to the effect that the judicial confession of Lalu was obtained from him under duress and probably for that reason, the learned Advocate Mr Khandaker Mahbub Hossain does not challenge the voluntariness and truth of the judicial confession of the accused Lalu.

25. Mr Md Khurshedul Alam next submits that a revolver bearing no 1616819 was recovered from the rented flat of Saiful at his instance in presence of the PW 23 Md Atiqur Rahman Munshi (owner of the flat) and his son Md Faisal Ahmed Munshi (PW 24) and the members of the raiding party, that is to say, PW 25 Md Mosleh Uddin, PW 26 Md Mahbubur Rahman Tarafdar, PW 27 Kazi Haniful Islam and PW 28 KM Robiul Islam and that revolver was previously looted away by Saiful and others at the time of commission of dacoity in the house of one Md Abul Hossain (PW 21) of Khilkhet, Dhaka and this is why, Md Abul Hossain initiated Khilkhet Police Station Case No. 16 dated 30-9-2011 under sections 395/397 of the Penal Code and in that case Saiful and Khokon made judicial confessions under section 164 of the Code of Criminal Procedure and in view of the Forensic Ballistic Report dated 18-3-2012 (Exhibit-16) and Forensic Ballistic Report dated 19-7-2012 (Exhibit-17), it is manifestly clear that the accused Saiful fired the fatal shot on Khalaf at the material time and the learned Tribunal Judge rightly found him guilty along with others.

26. Mr Md Khurshedul Alam further submits that the place of occurrence has been pinpointed by the relevant evidence on record and the letter 'A' in the sketch-map as indicated by the index thereto and in this view of the matter, no doubt arises at to the place of occurrence.

27. Mr Md Khurshedul Alam next submits that it is in the evidence of the PW 33 Md Obaidul Haque that at the showing of the accused Khokon, the car bearing No. Dhaka Metro-Ga-12-9688 was recovered from Manikdi area and thereafter it was seized as per seizure-list dated 24-7-2012 (Exhibit-10) and in his petition of Jail Appeal, Khokon has claimed that he is a driver by profession and he drives in the Cantonment Manikdi Bazar area and it is also apparent from the confessions of the accused Al Amin and Lalu that the accused Khokon drove the car which was used in the commission of the dacoity at the relevant time and against this backdrop, it is palpably clear that the accused Khokon was very much connected with the commission of the offence and considered from this point of view, the accused Khokon cannot get off scot-free.

28. Mr Md Khurshedul Alam further submits that there is no gainsaying the fact that the revolver was recovered from the rented flat of the accused Saiful after about three months of the occurrence and no useful purpose would be served by examining the finger-prints on the revolver inasmuch as the accused Saiful might have used the revolver in the commission of other offences after the commission of the present one and taking the whole gamut of the facts and circumstances of the case into consideration, the prosecution did not take any step for examination of the finger-prints on the revolver; but on that account, the prosecution case cannot be rendered doubtful in the perspective of the unimpeachable, unblemished and invincible evidence on record.

29. Mr Md Khurshedul Alam also submits that it is true that there are three options with regard to awarding of sentence to the accused in section 396 of the Penal Code and since dacoity with murder as contemplated by section 396 of the Penal Code is a grave offence, it cannot be said that the Tribunal Judge exercised his discretion improperly in sentencing all the accused to death and, as such, no exception can be taken to the impugned judgment.

30. Mr Md Khurshedul Alam next submits that at the time of examination of the accused Lalu and Al Amin under section 342 of the Code of Criminal Procedure, they did not complain of any police torture or oppression to the Tribunal Judge vis-à-vis their confessions; rather they remained conspicuously silent thereabout and this circumstance is indicative of the truth and voluntary character of their confessions.

31. In support of the above submissions, the learned Deputy Attorney-General Mr Md Khursedul Alam refers to the decisions in the cases of *The State vs Md Gaush Meah alias Rana and others, 10 BLC 74; The State vs Abul Khair, 44 DLR 284; Khalil Mia* (condemned-prisoner) *vs The State, 4 BLC (AD) 223* and *The State vs Moslem, 55 DLR 116.*

32. Mr Mahbubey Alam, learned Attorney-General appearing on behalf of the State-respondent and in support of the Death Reference, submits that as dacoity with murder is a grave offence, all the accused have been rightly served by awarding capital punishment and this is why, the sentence of death imposed upon the convicts should be maintained by this Appellate Court.

33. Mr Mahbubey Alam also submits that the absconding accused Selim lived with Saiful in his rented flat as per the evidence of the PW 23 Md Atiqur Rahman Munshi and PW 24 Md Faisal Ahmed Munshi and presumably they were hand in glove with each other and Selim was an accused in an earlier criminal case, namely, Pallabi Police Station Case No. 22(1)11 under sections 395/397/412 of the Penal Code and the unexplained continuous abscondence of the accused Selim together with his implication in the commission of the offence in the confessions of the two co-accused, namely, Lalu and Al Amin conclusively go to show that Selim was very much concerned with the offence and the learned Tribunal Judge did not commit any illegality in convicting and sentencing Selim to death by the impugned judgment. With regard to awarding of capital sentence to all the accused including Selim, Mr Mahbubey Alam relies upon the decision in the case of *Emperor vs Nga Tha Hmwe, AIR 1935 Rangoon 504.*

34. We have heard the submissions of the learned Advocates Mr Khandker Mahbub Hossain, Mr Yusuf Hossain Humayun, Mr Md Khabir Uddin Bhuiyan, Mr Md Aminur Rashid (Razu) and Mrs Mahmuda Khatun and the counter-submissions of the learned Deputy Attorney-General Mr Md Khurshedul Alam and the learned Attorney-General Mr Mahbubey Alam.

35. However, with a view to arriving at a correct decision, we are to advert to and scrutinize the relevant evidence and attending circumstances by way of juxtaposing both the prosecution and defence versions of the case.

36. At the trial, the prosecution has examined 32 (thirty-two) witnesses and tendered 1(one) witness in all on its side. But the defence has examined none.

37. Anyway, the informant Md Mosharraf Hossain has examined himself as PW 1 in this case. He deposes that while he was on patrol duty pursuant to Gulshan Police Station General Diary No. 452 dated 5-3-2012, the Duty Officer of the Police Station, namely, Sub-Inspector Robiul informed him between 1-5 AM and 1-10 AM on 6-3-2012 over wireless that an unknown person

had been shot at on Road No. 117, Gulshan and on receipt of that message, he (PW 1) along with the accompanying force rushed there and saw an unknown person with a bullet injury on his left chest on the drain-slab on Road No. 120 which is on the southern side of House No. 120/B, Road No. 117 and then and there, he brought the wounded person to the United Hospital for treatment and while the wounded person was under treatment at the United Hospital, he succumbed to his injury at 5-15 AM on 6-3-2012.

38. The PW 1 Md Mosharraf Hossain also deposes that at 9-30 AM on 6-3-2012, he returned to the place of occurrence with a photograph of the deceased and the driver of the vehicle of the deceased identified the photograph as that of a senior officer of the Saudi Embassy whose name was Md Khalaf Ali and thereafter he (PW 1) informed the concerned officials of the Saudi Embassy of the occurrence and on coming back to the United Hospital, in presence of the officials of the Saudi Embassy and at their identification, he held an inquest on the deceased and found a bullet injury on the left side of his chest and seized a pair of trousers, a vest, a pair of keds, a pair of spectacles and an underwear as per seizure-list (Exhibit-2).

39. The PW 1 Md Mosharraf Hossain further deposes that the driver of the deceased told him that the deceased used to reside in a flat bearing No. A/4 of House No. 22/A, Road No. 122, Gulshan and the security guard of that house intimated him that on 5-3-2012 at 11-00 PM, the deceased went out from his flat and since, however, no officer or employee of the Saudi Embassy came forward to initiate any case, he (PW 1) himself lodged a First Information Report (FIR) (Exhibit-1) with Gulshan Police Station and sent the dead body of Khalaf to the morgue of Dhaka Medical College Hospital for autopsy through Constable No. 7454 Md Baseth.

40. In his cross-examination, the PW 1 Md Mosharraf Hossain states that after one minute of the receipt of the wireless message, he rushed to the place of occurrence and the flat of the victim Khalaf is near the place of occurrence.

41. In his cross-examination, the PW 1 Md Mosharraf Hossain denies a defence suggestion that he has fabricated the case falsely being influenced by some quarters.

42. The PW 2 is Abu Ansar. The sum and substance of his testimony is that on 7-3-2012, he was on duty as Duty Officer at Gulshan Police Station and at 13-00 hours on that day, on receipt of a written ejahar from the informant Md Mosharraf Hossain, he registered Gulshan Police Station Case No. 15 dated 7-3-2012 under sections 302/34 of the Penal Code by filling in the prescribed form of the First Information Report.

43. The PW 3 is Md Abdul Baseth Miah. He testifies that on 6-3-2012, he was on duty at Gulshan Police Station and at 9-30 hours, he went to the United Hospital and at 14-30 hours on that day, he carried the dead body of Khalaf to the Dhaka Medical College Hospital for post-mortem examination and after the post-mortem examination, he handed over the dead body to the officials of the Saudi Embassy.

44. The PW 3 Md Abdul Baseth Miah also testifies that the autopsy-holding doctor told him that there was a bullet lodged in the body of the deceased and the doctor handed over the bullet to him (PW 3) under sealed cover after extraction and he brought the same to the Police Station and handed it over to the Investigating Officer Nure Azam Miah at 9-15 hours on 7-3-2012 and in his presence, the Investigating Officer opened the packet containing the bullet, showed it to him (PW 3) and seized it as per seizure-list (Exhibit-6).

45. In his cross-examination, the PW 3 Md Abdul Baseth Miah denies the defence suggestions that the doctor concerned did not hand over

the bullet to him or that he did not hand over the bullet to the Investigating Officer concerned or that the Investigating Officer concerned did not seize it as per seizure-list.

46. The PW 4 is Md Abu Nur Shafiuzzaman. The long and the short of his deposition is that on 7-3-2012, he was on duty at Gulshan Police Station and while he was on duty, he came to the office chamber of the Investigating Officer Nure Azam Miah and then Constable Abdul Baseth handed over a sealed packet to the Investigating Officer and the Investigating Officer opened it, brought out a bullet therefrom, seized it as per seizure-list and he (PW 4) signed the seizure-list as a witness.

47. The PW 5 is Abu Sayeed. The gist of his evidence is that on 6-3-2012, he was on duty at the United Hospital and one Khalaf Mohammed S. Al Ali was admitted thereto at 1-15 AM and died there at 5-15 AM on that date and accordingly he (PW 5) issued a death report of Khalaf bearing passport No. S 025550 (Exhibit-7).

48. The PW 6 is Md Ripon. He states in his evidence that while he was on duty as Ward Boy at the United Hospital after 1-00 AM on 6-3-2012, one patient was admitted to the hospital and he shifted the patient to a bed of Intensive Care Unit (ICU) and at 5-00 AM, the patient died and subsequently the police came to the hospital and seized the wearing-apparels of the deceased, namely, one pair of trousers, a vest and an underwear and his other articles, namely, a pair of keds and a pair of spectacles from a staffer of the hospital, that is to say, Solaiman Miah as per seizure-list (Exhibit-2).

49. In his cross-examination, the PW 6 Md Ripon denies a defence suggestion that on 6-3-2012, no alamats were seized in his presence.

50. The PW 7 is Md Maksudur Rahman. He gives out in his evidence that he has been a Ward Boy of the United Hospital and at 7-00 AM on 6-3-2012, he was on duty at the hospital and came to know that one patient had died who was a Saudi national and the police held an inquest on the dead body and seized the wearing-apparels and other articles of the patient from the Ward Boy Solaiman as per seizure-list (Exhibit-2) and he (PW 7) signed the same as a witness.

51. In his cross-examination, the PW 7 Md Maksudur Rahman denies a defence suggestion that he has deposed falsely at the instance of the hospital authority.

52. The PW 8 is Md Motiur Rahman, son of Abdul Malek Sheikh. He claims in his evidence that he is a Duty Manager of the United Hospital and at 8-00 AM on 6-3-2012, he came to the hospital and learnt that a patient had been admitted to the hospital on the previous night at 1-15 o'clock and died at 5-15 o'clock and at 9-30/10-00 AM, he went to the ICU and saw some police personnel of Gulshan Police Station and the driver of the deceased there.

53. The PW 8 Md Motiur Rahman also claims in his evidence that the police held an inquest on the deceased and he saw a hole beneath the left nipple and an abrasion beneath the knee of the deceased and he signed the inquest-report (Exhibit-3) as a witness.

54. In his cross-examination, the PW 8 Md Motiur Rahman states that he saw the abrasion on the right knee of the deceased and he himself did not turn over the dead body for the purpose of inquest.

55. In his cross-examination, the PW 8 Md Motiur Rahman denies a defence suggestion that he has deposed falsely at the instance of the authority.

56. The PW 9 is Md Saiful Islam. He discloses in his evidence that at about 9-30/9-45 A M on 6-3-2012, he came to know from the driver Aminul that the Saudi Embassy official Khalaf

had died on the night following 5-3-2012 and the police came to the House No. 22/A where the deceased Khalaf used to reside in its 5th storey and the police showed the photograph of Khalaf to Aminul and Aminul identified the photograph as that of his boss and thereafter the police brought Aminul to the United Hospital.

57. In his cross-examination, the PW 9 Md Saiful Islam states that he is the caretaker of the building (House No. 22/A) and its owner is one SM Alam and he (PW 9) got the job of the caretaker through a security company.

58. The PW 10 is Md Aminul Islam. He states in his evidence that he is a driver of Saudi Embassy and after joining the Embassy, he was assigned the job of the driver of the vehicle of Khalaf and in the morning of 5-3-2012, he took his boss Khalaf to Saudi Embassy and returned therefrom to the flat of Khalaf at 5-00 PM by his vehicle and parked it inside the building.

59. The PW 10 Md Aminul Islam also states in his evidence that on 6-3-2012, he went to the house of his boss Khalaf as usual and made the vehicle ready after washing and cleaning and started waiting at the waiting-room for Khalaf and when Khalaf did not come down at 9-20 AM, he (PW 10) went up and pressed the calling bell of the flat of Khalaf, but in vain and afterwards he (PW 10) came down and saw many police personnel in front of the gate of the building.

60. The PW 10 Md Aminul Islam further states in his evidence that the police were showing a photograph for identification and he came forward and recognized the photograph as that of his boss Khalaf and the police told that Khalaf had already died from a bullet injury on the previous night at the United Hospital and he (PW 10) informed the Saudi Embassy of the incident and thereafter he went to the hospital and the police showed a bandage in the lower chest of his boss and after untying the bandage, he saw a hole there and an abrasion on his right leg and subsequently he signed the inquest-report (Exhibit-3) as the identifier of the deceased Khalaf.

61. In his cross-examination, the PW 10 Md Aminul Islam states that the police interrogated him both at Gulshan Police Station and at Saudi Embassy and also interrogated him over telephone.

62. In his cross-examination, the PW 10 Md Aminul Islam also states that Khalaf was a bachelor and used to reside in his flat alone.

63. In his cross-examination, the PW 10 Md Aminul Islam denies a defence suggestion that at the instance of some interested quarters and being gained over by them, he has deposed falsely.

64. The PW 11 is Md Zulfikar. He deposes that he was on duty in the guard room of House No. 19/B, Road No. 117, Gulshan from 10-00 PM on 5-3-2012 to the morning of 6-3-2012 and at about 1-00 AM, he heard a sound of firing and perceived that a white car had sped away past the house and at this, his colleague Kamrul blew a siren and he (PW 11) made a mobile phone call to the Police Station about the sound of firing and after 5/7 minutes, the police appeared on the scene and at a subsequent stage, on being questioned by the police, he told them that there was firing and a white car had sped away.

65. In his cross-examination, the PW 11 Md Zulfikar states that he is a security guard of the house of one Shakhawat Hossain and he did not come out of the house immediately after hearing the sound of firing.

66. The PW 12 is Md Helal Uddin. He discloses in his evidence that on hearing a sound of firing at 1-00 o'clock on the night following 5-3-2012, he drifted towards the gate of their house and saw that a vehicle had sped away from eastern direction to western direction and then a siren rang up from another house and thereafter the

police came.

67. In his cross-examination, the PW 12 Md Helal Uddin states that he knows the sound of firing.

68. The PW 13 is Kazi Robiul Haque. He deposes that while he was on duty as Sub-Inspector at Gulshan Police Station on the night following 5-3-2012, an unknown person told him over telephone immediately after 1-00 o'clock that some unknown persons had come by a private car, shot dead a man and left him on the road near House No. 19/B, Road No. 117, Gulshan and then and there he (PW 13) informed Sub-Inspector Mosharraf and Sub-Inspector Rashed Mobarak of the occurrence over wireless and requested them to rush to the place of occurrence quickly and he (PW 13) also apprised the Officer-in-Charge of the occurrence over his mobile phone and on account of the receipt of the telephonic message about the occurrence, a General Diary Entry being No. 460 dated 6-3-2012 was recorded by Assistant Sub-Inspector Kabir.

69. The PW 13 Kazi Robiul Haque also deposes that on the following morning, he came to learn that the unknown man had died at the United Hospital and he was an official of Saudi Embassy whose name was Khalaf Mohammed S. Al Ali.

70. In his cross-examination, the PW 13 Kazi Robiul Haque denies a defence suggestion that he has deposed under the pressure of certain quarters.

71. The PW 14 is Md Rezaul Karim. He claims in his evidence that he is a security guard of House No. 22/A and Khalaf used to reside in the 5th storey of that building and he used to go to office at 9-00 AM and return to his flat therefrom at 5-00 PM every day.

72. The PW 14 Md Rezaul Karim further claims in his evidence that at 11-00 AM on 5-3-2012, Khalaf went out for a walk from his flat in jogging apparels and he did not return to his flat on that night and on the following day at 9-00 AM, his driver Aminul asked him as to whether his boss was in his flat; but he told Aminul that his boss had gone out for a walk on the previous night and he did not return till that time and at this, the driver went upstairs and started waiting for his boss after he came downstairs and at about 9-45/ 10-00 AM, the police came to the house and showed a photograph and then the driver and he (PW 14) saw the photograph and identified the same as that of Khalaf and the driver Aminul phoned the Embassy and some people from the Embassy came to the spot and the police told them that Khalaf had already died at the United Hospital and then the driver and the Embassy staff rushed thereto.

73. In his cross-examination, the PW 14 Md Rezaul Karim states that the staff of Saudi Embassy also recognized the photograph as that of Khalaf and Khalaf was a bachelor and he used to reside alone in the flat.

74. The PW 15 is Md Abu Taleb. He deposes that he has been a security guard of Portugal Consulate at House No. 19/B since 2004 and on the night following 5-3-2012 at 1-00 o'clock, he heard a sound while he was at the pump-house of the building and then he came forward towards the gate, but he did not see anything and at the call of one Anwar, he proceeded towards southern direction and inferred that a white vehicle had sped away from eastern side to western side and the security guard Zulfikar made a phone call to the Police Station and after 6/7 minutes, the police came to the spot.

75. The PW 15 Md Abu Taleb also deposes that a person was lying on the road near the boundary wall of the Consulate and Anwar helped the police in lifting that person into their vehicle and thereafter Anwar came inside the Consulate and told them (PW 15 and others) that perhaps the person had been shot at and at 10-00 AM on the following day, the police came with a photograph

of that person who was a Saudi national named Khalaf as he (PW 15) learnt later.

76. In his cross-examination, the PW 15 Md Abu Taleb denies a defence suggestion that he has deposed falsely at the instance of certain quarters.

77. The PW 16 is Dr Md Kamrul Hassan Sardar. He states in his evidence that on 6-3-2012, he was on duty as Assistant Professor in the Department of Forensic Medicine in Dhaka Medical College and on that day, at the identification of Constable No. 7454 Md A Baseth, he held an autopsy on the dead body of Mr Khalaf Al Ali and found the following injuries thereon:

> "(1) Bullet wound-(A) Entry wound- One bullet entry wound measuring $^1/_3$" × $^1/_3$" found on front of left chest which lies at 6th intercostal space, 7" below suprasternal notch and 5" left to midline. (B) Direction-directed obliquely, medially, downwards and to the right. During its course, it has perforated skin, subcutaneous tissue muscle through 6th intercostal space, piercing pleura, lower lobe of left lung, diaphragm, as dominal aorta and right kidney. One deformed bullet is recovered from right kidney and handed over to the escorting constable No. 7454 as alamat. Liquid and ante-mortem clotted blood was found in thoracic and abdominal cavity.
>
> (2) One abrasion measuring 1" × $^1/_2$" on front of right upper leg which lies 1" below right knee joint."

78. The PW 16 Dr Md Kamrul Hassan Sardar also states in his evidence that in his opinion, the death of the victim Khalaf was due to haemorrhage and shock resulting from the bullet injury which was ante-mortem and homicidal in nature.

79. In his cross-examination, the PW 16 Dr Md Kamrul Hassan Sardar denies the defence suggestions that he did not extract the bullet from the deceased or that the deceased did not die from the bullet injury or that he has deposed falsely being influenced by certain quarters.

80. The PW 17 is Md Shahidul Islam. He claims in his evidence that he works in a garage and one day one Tanvir Ahmed sent a car bearing No. Dhaka Metro-Ga-12-9688 to the garage for necessary repair and while he was at work, one A. Salam came to him and asked him as to whether the car would be sold out and he (PW 17) replied in the affirmative and the price of the car was fixed at Taka 3,00,000 and A Salam took away the car on payment of Taka 2,50,000 and the real owner of the car was one Mariyam Faisal and in the month of July, 2012, the Detective Branch (DB) police called him to go to DB office and on being asked by the DB personnel, he narrated the incident to them.

81. In his cross-examination, the PW 17 Md Shahidul Islam states that he mediated in the matter of sale of the car belonging to Mariyam Faisal.

82. The PW 18 is Abul Hossain. He discloses in his evidence that he deals in rent-a-car business at Manikdi and at about 11-00 PM on 24-7-2012, some Detective Branch (DB) personnel along with an accused got down from a micro-bus at Manikdi Ideal School and CNG Auto-rickshaw Stand and at the CNG Auto-rickshaw Stand, the accused identified a private car bearing No. Dhaka Metro-Ga-12-9688 and DB police seized the car at the instance of the accused Khokon, son of Abdus Salam, as per seizure-list (Exhibit-10) and he (PW 18) signed the same as a witness.

83. In his cross-examination, the PW 18 Abul Hossain denies a defence suggestion that he has deposed falsely in order to save himself.

84. The PW 19 is Md Motiur Rahman, son of late Moksed. The pith and marrow of his testimony is that at 11-00 PM on 24-7-2012, they (PW 19 and others) were having tea at Manikdi Ideal School and CNG Auto-rickshaw Stand and then some DB personnel came there by a white micro-bus and they along with the accused Rafiqul Islam

Khokon got down therefrom and at the CNG Auto-rickshaw Stand, there was a white car bearing No. Dhaka Metro-Ga-12-9688 and the DB police took away necessary papers and the key of the car from Abdus Salam and seized the car as per seizure-list (Exhibit-10).

85. In his cross-examination, the PW 19 Md Motiur Rahman denies a defence suggestion that he has deposed falsely with a view to saving himself.

86. The PW 20 is Shahriar Mahmud Adnan. He testifies that as Metropolitan Magistrate, Dhaka, he recorded the confessional statement of the accused Al Amin (Exhibit-11) in accordance with the provisions of section 164 of the Code of Criminal Procedure and he put six and the accused Al Amin three signatures thereon on 30-7-2012.

87. The PW 20 Shahriar Mahmud Adnan also testifies that on 1-8-2012, he recorded the confessional statement of the accused Akbar Ali Lalu (Exhibit-12) as per section 164 of the Code of Criminal Procedure and he put five and the accused Lalu two signatures thereon.

88. In his cross-examination, the PW 20 Shahriar Mahmud Adnan states:

"আসামী বলেছে যে, ১৭-৫-২০১২ ইং তারিখে তাকে এরেষ্ট করে এবং ১-৮-২০১২ ইং তারিখে আমার নিকট উপস্থাপন করা হয়। প্রায় ৩ মাস পরে।"

In his cross-examination, the PW 20 Shahriar Mahmud Adnan denies a defence suggestion that there were marks of injuries on the person of the accused Al Amin.

89. The PW 21 is Md Abul Hossain. He discloses in his evidence that he is a businessman and on the night following 30th September, 2011 at about 3-30/4-00 o'clock, he and his wife were asleep, but he woke up from sleep at a huge bang and saw that 5/6 masked persons had entered his house by breaking open its door and compelled him to lie down on bed by brandishing arms and knives and his hands were tied behind and a vest was thrust into his mouth and he was covered with a bed-sheet and the dacoits forbade him to speak out and continued the commission of dacoity for about 30/40 minutes and looted away a licensed 0.22 calibre revolver, cash money, ornaments etc. from his house and subsequently he lodged a case with the Police Station concerned.

90. The PW 21 Md Abul Hossain also discloses in his evidence that after about 7/8 months, the Investigating Officer of the Detective Branch told him over telephone that his revolver had been recovered and requested him to go to DB office for verification and accordingly he went to DB office and identified the revolver bearing No. 1616819, Made in Germany as that of his own.

91. In his cross-examination, the PW 21 Md Abul Hossain denies the defence suggestions that he is not the actual owner of the revolver or that he has deposed falsely at the instance of certain quarters.

92. The PW 22 is Md Anwar Hossain. He gives out in his evidence that at the relevant time, he heard a sound of firing while he was at Portugal Consulate and at one stage, he heard the sound of groaning and thereafter he proceeded towards the southern wall and saw that a person was lying by the side of the drain which was close to the wall and there was a man and a white-like private car near the head of the lying person and that man boarded the car and went away and then one security guard blew a siren.

93. The PW 22 Md Anwar Hossain also gives out in his evidence that after 5/7 minutes, the police came to the spot and he helped the police in lifting the lying person into their pick-up and the police took him away and that person had a pair of trousers, a pair of keds, a pair of spectacles and a vest on and there was a small hole beneath his left

nipple and in the morning at 9-00 o'clock, the police came back with a photograph and showed it to them (PW 22 and others) and it was identified that that person was an official of Saudi Embassy.

94. The PW 22 Md Anwar Hossain next gives out in his evidence that at the call of DB personnel, he went to the DB office, saw a car there and that car exactly looked like the car of the place of occurrence.

95. In his cross-examination, the PW 22 Md Anwar Hossain denies a defence suggestion that he has deposed falsely at the instance of certain quarters.

96. The PW 23 is Md Atiqur Rahman Munshi. He deposes that on 1st May, 2012, he let out a unit (downstairs) of his building to Saiful Islam alias Mamun, his wife and her maternal cousin Selim and subsequently at 1-30 AM/ 2-00 AM on 4-6-2012, some DB personnel came to his building and told him that they would search the rented flat of Saiful Islam and during search, they found an arms on a rack in his flat and the arms appeared to be 0.22 calibre black revolver and the DB personnel made a seizure-list (Exhibit-14) by seizing the same and they requested him (PW 23) and his son to be witnesses thereto and accordingly he signed it.

97. In his cross-examination, the PW 23 Md Atiqur Rahman Munshi denies the defence suggestions that he did not let out the flat to the accused Saiful Islam and his wife or that he did not know them or that they did not reside in the flat.

98. In his cross-examination, the PW 23 Md Atiqur Rahman Munshi states that there are two units in the ground floor and he resides in one unit and let out the other unit to Saiful.

99. In his cross-examination, the PW 23 Md Atiqur Rahman Munshi also denies a defence suggestion that no revolver was recovered from the accused Saiful.

100. The PW 24 is Md Faisal Ahmed Munshi. He testifies that the accused Saiful, his wife and her maternal cousin Selim used to reside in their rented flat and at about 2-00 AM on 4-6-2012, some DB personnel along with the accused Saiful came to their house and they told that they would search the flat of Saiful and in response to the query of the DB personnel, Saiful confessed that he had a revolver in his flat and thereafter Saiful brought out the revolver from a rack in his flat and the DB personnel seized it as per seizure-list and he signed the same as a witness.

101. In his cross-examination, the PW 24 Md Faisal Ahmed Munshi denies a defence suggestion that there is no maternal cousin of Saiful's wife Selim by name.

102. The PW 25 is Md Mosleh Uddin. He states in his evidence that while he was in Detective Branch (DB), he interrogated the accused Akbar Ali Lalu in connection with Bhasantek Police Station Case No. 28 dated 22-5-2012 and on the basis of the information given by the accused Lalu, he along with Police Inspector Md Mahbubur Rahman Tarafdar, Sub-Inspector KM Robiul Islam and the accompanying force conducted a raid under the leadership of Senior Assistant Police Commissioner Obaidul Haque pursuant to DB Uttara GD Entry No. 93 dated 3-6-2012 and at about 2-00 AM on 4-6-2012, they hunted down the accused Saiful and Al Amin from Gaoyair area and interrogated them and at one stage of interrogation, they told that previously they had looted away an arms from the house of the owner of Sheba Clinic and that arms had been kept in the flat of Saiful and on the basis of this information, he (PW 25) and the accompanying force raided the rented flat of Saiful and at 2-15 AM on 4-6-2012, the accused Saiful brought out a revolver from a rack of his kitchen and he (PW 25) seized the revolver as per seizure-list in pres-

ence of witnesses and subsequently he lodged a First Information Report against the accused Saiful and others with Dakkhin Khan Police Station under section 19A of the Arms Act.

103. In his cross-examination, the PW 25 Md Mosleh Uddin states that he did not put any identification number on the revolver, but the revolver had its own number.

104. In his cross-examination, the PW 25 Md Mosleh Uddin denies a defence suggestion that he has deposed falsely being influenced by some interested quarters.

105. The PW 26 is Md Mahbubur Rahman Tarafdar. He discloses in his evidence that he along with the accompanying force conducted a raid in Gaoyair area and at 2-00 AM on 4-6-2012, they tracked down the accused Saiful and Al Amin at the showing of Akbar Ali Lalu and interrogated them and at one stage of interrogation, the accused Saiful confessed that he had a 0.22 calibre revolver in his flat.

106. The PW 26 Md Mahbubur Rahman Tarafdar also discloses in his evidence that on the basis of his confession, he (PW 26) along with the accompanying force rushed to the rented house of Saiful and in presence of the owner of the flat and witnesses concerned, Saiful brought out 0.22 calibre revolver from a rack of his kitchen and Sub-Inspector Mosleh seized the revolver as per seizure-list and took signatures of witnesses thereon.

107. The PW 26 Md Mahbubur Rahman Tarafdar further discloses in his evidence that on close examination, it appeared that the seized revolver was looted away in course of dacoity in connection with Khilkhet Police Station Case No. 16 dated 30-9-2011 under sections 395/397 of the Penal Code.

108. In his cross-examination, the PW 26 Md Mahbubur Rahman Tarafdar denies a defence suggestion that he has deposed falsely being influenced by certain quarters.

109. The PW 27 is Kazi Haniful Islam. He claims in his evidence that on 4-6-2012, under the leadership of Assistant Commissioner Obaidul Haque, he along with Inspector Mahbubur Rahman, Sub-Inspector Mosleh, Sub-Inspector Robiul and the accompanying force conducted a raid taking the accused Lalu and arrested the accused Saiful and Al Amin from Gaoyair area under Dakkhin Khan Police Station and they interrogated the accused Saiful and Al Amin and at one stage of interrogation, the accused Saiful confessed that he along with his accomplices looted away a 0.22 calibre revolver from the house of the owner of Sheba Clinic in Khilkhet area previously and that revolver was lying in his rented flat and on the basis of that confession, they (PW 27 and others) raided the rented flat of Saiful and he brought out a 8-chamber 0.22 calibre revolver being No. 1616819, Made in Germany, from a rack of the kitchen of the flat and thereafter it was seized as per seizure-list and the signatures of the witnesses were taken thereon.

110. The PW 27 Kazi Haniful Islam next claims in his evidence that on 4-6-2012, Sub-Inspector Mosleh Uddin initiated Dakkhin Khan Police Station Case No. 8 dated 4-6-2012 against the accused Saiful and others under section 19A of the Arms Act and the investigation of that case was endorsed to him (PW 27) and he investigated the case and submitted charge-sheet on 25-6-2012.

111. The PW 27 Kazi Haniful Islam also claims in his evidence that his team in-charge was the Investigating Officer of the murder of the Saudi citizen Khalaf Al Ali and with the permission of the Court, he sent the seized revolver to the Criminal Investigation Department (CID) to examine whether it was used in the killing of Khalaf.

112. The PW 27 Kazi Haniful Islam further claims in his evidence that in his presence, Assistant Commissioner Md Obaidul Haque seized four test-fired bullets as per seizure-list (Exhibit-15) and he signed the same as a witness.

113. In his cross-examination, the PW 27 Kazi Haniful Islam denies the defence suggestions that no arms were recovered from the rented flat of the accused Saiful or that the accused Saiful did not reside therein.

114. The PW 28 Sub-Inspector KM Robiul Islam is a tendered witness.

115. The PW 29 is Md Sabdar Ali. He states in his evidence that while he was on duty as a Ballistic Expert in the Criminal Investigation Department (CID) on 8-3-2012, he received a plastic packet containing a fired bullet weighing 2.48 grams in connection with Gulshan Police Station Case No. 15 dated 7-3-2012 under sections 302/34 of the Penal Code from Inspector Nure Azam for examination and opinion pursuant to the order of the learned Metropolitan Magistrate, Dhaka through Constable No. 18161 Masud Rana and after examination of the fired bullet, he rendered his opinion as under:

> "আলামতটি ০.২২" ক্যালিবারের ফায়ার্ড বুলেট যাহাতে Lands And Grooves এর দাগ রহিয়াছে। যাহা একটি নিয়মিত (regular) ০.২২" ক্যালিবারের আগ্নেয়াস্ত্র দ্বারা ফায়ার করা হইয়াছে।"

116. In his cross-examination, the PW 29 Md Sabdar Ali denies the defence suggestions that this bullet is not the bullet of this case or that this bullet was picked up from a road and handed over to him for examination.

117. The PW 30 is Md Jamal Uddin. He deposes that on 20-6-2012, he was on duty as a Ballistic Expert in Dhaka and on that day, the Investigating Officer of this case sent a 8-chamber 0.22 calibre revolver being No. 1616819-ARMINIUS-Made in Germany and a fired bullet weighing 2.48 grams to Ballistics section and wanted to know whether the fired bullet was actually fired from the revolver being No. 1616819 and he (PW 30) was entrusted with that job.

118. The PW 30 Md Jamal Uddin also deposes that at the time of examination, he found that the revolver was a 8-chamber revolver having 0.22 calibre bearing No. 1616819 and on examination of barrel, it was found that there was gunshot residue and he took four 0.22 calibre bullets from the stock of the Ballistics Laboratory and he fired those four 0.22 calibre bullets with the revolver and marked those four test-fired bullets as T-1, T-2, T-3 and T-4 respectively.

119. The PW 30 Md Jamal Uddin next deposes that on examination, he found that that was a 0.22 calibre fired bullet which contained the marks of Lands And Grooves and he marked that fired bullet as 'E' and thereafter he examined the alamat 'E' and test-fired bullets, namely, T-1, T-2, T-3 and T-4 through Large Comparison Microscope and ABIS (Automated Ballistics Identification System) by comparison and analyzed the matter.

120. The PW 30 Md Jamal Uddin also deposes that "পরীক্ষান্তে আলামত ফায়ার্ড বুলেট 'E' এর দাগ সমূহের সাথে টেস্ট ফায়ার্ড বুলেট T-1, T-2, T-3 and T-4 এর দাগ সমূহের and from this, he came to the conclusion that the fired bullet marked-'E' was fired from the revolver bearing No. 1616819-ARMINIUS-Made in Germany and accordingly he sent a report (Exhibit-17) to the Investigating Officer concerned.

121. In his cross-examination, the PW 30 Md Jamal Uddin denies the defence suggestions that the fired bullet is not the alamat of this case or that he did not properly examine the bullet or that he has deposed falsely.

122. The PW 31 is Md Nure Azam Miah. He testifies that on 7-3-2012, he was on duty as Sub-Inspector at Gulshan Police Station and on that

day, the Officer-in-Charge of the Police Station endorsed the case to him for investigation after its registration and having taken up investigation of the case, he visited the place of occurrence and made a sketch-map thereof along with a separate index.

123. The PW 31 Md Nure Azam Miah also testifies that he seized a bullet as per seizure-list (Exhibit-6) which was extracted from the dead body of Khalaf during autopsy and he sent the seized bullet to the ballistic expert for examination and the wearing-apparels of the victim Khalaf to the Criminal Investigation Department (CID), Mohakhali for chemical examination.

124. The PW 31 Md Nure Azam Miah further testifies that he perused the autopsy-report of Khalaf and the chemical examination report of his wearing-apparels, examined the informant and some witnesses and recorded the statements of seven witnesses under section 161 of the Code of Criminal Procedure and on 15-3-2012, he handed over the case diary to the concerned authority for completion of the investigation of the case.

125. In his cross-examination, the PW 31 Md Nure Azam Miah states that he did not find any blood-stain at the place of occurrence and there were wet earth and sand there; but he did not seize that earth or sand and he just observed the same and he did not find the outer shell of the fired bullet there.

126. In his cross-examination, the PW 31 Md Nure Azam Miah denies the defence suggestions that the docket of the case was withdrawn from him because he did not investigate the case properly or that he did not visit the place of occurrence or that he did not examine the witnesses of the place of occurrence or that he did not make any attempt to seize the alamats of the case or that he performed his duty in a perfunctory manner being influenced by and at the instance of some quarters.

127. The PW 32 is Md Azizul Haque. He states in his evidence that on 15-3-2012, he was on duty as Police Inspector in Detective Branch, DMP, Dhaka and on that day, he took over investigation of the case, perused the docket, visited the place of occurrence, examined four witnesses and recorded their statements under section 161 of the Code of Criminal Procedure and deposited the alamats of the case with the Malkhana.

128. The PW 32 Md Azizul Haque also states in his evidence that he sent the alamats of the case, namely, trousers, underwear, vest, keds etc. to the National Forensic DNA Profiling Laboratory (NFDPL), Dhaka for DNA test and he perused the report of the DNA test and the opinions of the ballistic experts with reference to the seized bullet and by using Mobile Information Technology, he searched and procured various types of photographs from CC Televisions and on 13-6-2012, he handed over the docket of the case to the DB.

129. In his cross-examination, the PW 32 Md Azizul Haque states that he procured the photographs from CC Televisions, but he did not seize them and he did not send the bullet which was extracted from the deceased Khalaf for DNA test along with his trousers, underwear etc. in that the bullet was not blood-stained.

130. In his cross-examination, the PW 32 Md Azizul Haque denies the defence suggestions that he carried out the investigation of the case in a perfunctory manner or that he has deposed falsely.

131. The PW 33 is Md Obaidul Haque. He deposes that he has been an Assistant Police Commissioner in the Dhaka Metropolitan Detective Branch since 2008 and as per the order of the higher authority dated 12-6-2012, he was entrusted with the task of investigation of Gulshan Police Station Case No. 15 dated 7-3-2012 and on 13-6-2012, he received the docket of the case

from the previous Investigating Officer, namely, Mr Md Azizul Haque, perused the docket, visited the place of occurrence on 14-6-2012, consulted the informant and previous Investigating Officers of the case and found the narration of the place of occurrence and the sketch-map and the index thereto proper during his investigation of the case.

132. The PW 33 Md Obaidul Haque further deposes that during investigation, he interrogated the owner of the seized revolver Mr Md Abul Hossain and examined his licence and became satisfied that the revolver belonged to him which had been looted away earlier.

133. The PW 33 Md Obaidul Haque also deposes that on 20-6-2012, he sent the seized revolver and the fired bullet which was extracted from the body of the deceased to the Ballistic Experts of the CID, Dhaka for verification as to whether the said bullet was fired from the revolver.

134. The PW 33 Md Obaidul Haque further deposes that on 19-7-2012, he got the reports of the Ballistic Experts of the CID together with the seized revolver, fired bullet and four test-fired bullets, namely, T-1, T-2, T-3 and T-4 and it transpired from the opinions of the Ballistic Experts that the fired bullet was fired from the seized revolver.

135. The PW 33 Md Obaidul Haque next deposes that on 24-7-2012, he took the accused Saiful Islam, Al Amin, Akbar Ali Lalu and Rafiqul Islam alias Khokon on remand and interrogated them and at the initial stage of interrogation, the accused Khokon told that the private car bearing No. Dhaka Metro-Ga-12-9688 which was used in the commission of the instant offence had been under the control of his father and on the basis of this information of the accused Khokon, he (PW 33) took the accused Khokon to Manikdi area under Dhaka Cantonment Police Station and at his showing, the private car was recovered therefrom in presence of witnesses and he seized the keys, registration papers, tax token, insurance certificate etc. of the car as per seizure-list (Exhibit-10) and afterwards he brought the car along with those articles to the DB office and handed over the same to the Officer-in-Charge of DB Malkhana for safe-keeping vide DB PR No. 524/12 (north).

136. The PW 33 Md Obaidul Haque further deposes that on 25-7-2012, he called the witness Anwar Hossain who saw the private car speeding away immediately after the occurrence and showed the car to him under electric light and he identified the private car as the car which was used for the commission of the offence at the relevant time.

137. The PW 33 Md Obaidul Haque also deposes that the accused Al Amin wished to make a confession voluntarily in the Court and accordingly he was produced before the Court of the learned Chief Metropolitan Magistrate, Dhaka for recording his confession under section 164 of the Code of Criminal Procedure on 30-7-2012 and the learned Metropolitan Magistrate Mr Shahriar Mahmud Adnan recorded his confessional statement on that day.

138. The PW 33 Md Obaidul Haque next deposes that on 1-8-2012, the accused Akbar Ali Lalu wished to make a judicial confession and accordingly he was produced before the Court of the learned Chief Metropolitan Magistrate, Dhaka and he made his judicial confession under section 164 of the Code of Criminal Procedure on that day.

139. The PW 33 Md Obaidul Haque also deposes that having found a *prima facie* case, he submitted charge-sheet No. 379 dated 19-9-2012 against the accused Saiful Islam alias Mamun, Md Al Amin, Akbar Ali Lalu alias Roni, Md Rafiqul Islam alias Khokon and Selim Chowdhury alias Selim Ahmed under section 396 of the Penal Code, 1860.

140. In his cross-examination, the PW 33 Md Obaidul Haque denies the defence suggestions that he compelled the accused Akbar Ali Lalu and Al Amin to make their confessions by resorting to various forms of torture or that Lalu did not make the confession voluntarily or that Lalu made the confession being tutored by him and in fear of death.

141. In his cross-examination, the PW 33 Md Obaidul Haque also denies the defence suggestions that the maid-servant who was employed in the house of the deceased Khalaf was virtually a call- girl or that she used to respond to the calls of rich people.

142. In his cross-examination, the PW 33 Md Obaidul Haque states that during investigation, he consulted with Saudi Embassy officials, but he did not cite them as witnesses in the charge-sheet.

143. In his cross-examination, the PW 33 Md Obaidul Haque further denies a defence suggestion that the character of the deceased Khalaf was not good and because of disputes with his maid-servant and internal bickerings, Khalaf was killed by her cohorts.

144. In his cross-examination, the PW 33 Md Obaidul Haque further states:

"বহু পরে উদ্ধার হওয়ায় আঙ্গুলের ছাপ প্রমাণ হবে না জেনে এক্সপোর্টে দেয়া হয়নি।"

145. In his cross-examination, the PW 33 Md Obaidul Haque further states that the seized car was not white, but it was olive- coloured and since it was seized during night-time, it looked like a light white car and he saw the car in sunlight.

146. Out of 33 (thirty-three) prosecution witnesses, the PW 1 Md Mosharraf Hossain is the informant of the case. As the informant of the case, he has just set the criminal law in motion. Admittedly there is no eye-witness to the occurrence. That being so, the names of the accused-appellants and the absconding accused Selim have not found any place in the FIR. However, the confessional statements of the accused Al Amin and Lalu made under section 164 of the Code of Criminal Procedure have formed a part of the prosecution version of the case. In such view of the matter, the truth and voluntariness or otherwise of their confessional statements are of paramount importance. Besides, the various alamats seized by the Investigating Officer concerned and produced before the Tribunal below during the trial of the case are to be considered along with the relevant prosecution evidence on record.

147. There are certain criteria for assessment of the judicial confession of an accused. In the case of *Habibur Rahman @ Habib vs State* reported in *8 BLD 210*, it has been observed in paragraph 15:

"15.....

.....

Before a Court acts upon a confessional statement, it has to affirmatively satisfy that the statement is voluntary and true. In this regard, the judicial authorities always insist on the meticulous observance of all necessary formalities and precautions provided in section 164 (3) of the Code of Criminal Procedure with minute particularity so as to ensure that the confession is absolutely free from the slightest tinge or taint of extraneous influence. 'It is a settled principle of law' as pointed out by a Division Bench of this Court in the case of *Zaheda Bewa and another vs The State reported in 1985 BLD 9* 'that the requirement of adherence to the provisions of section 164 (3) of the Code of Criminal Procedure is not a mere matter of form, but of substance. section 164 (3) is a mandatory provision of law as has been settled by the Privy Council in the case of *Nazir Ahmed vs The King Emperor, AIR 1936 PC 253.* Before recording a confession, a Magistrate is bound to make a real and substantial enquiry as to the voluntariness of the confession. In so

doing, he must put questions to the accused with a view to finding out the real object of the confession, whether it is made out of repentance or for any other such good reason or whether it is the result of torture or tutoring by some body or whether it has been caused by any inducement, threat or promise. The questions put by the Magistrate and the answers given by the accused furnish sufficient data for coming to the conclusion whether the statement was voluntary or not."

148. In the decision in the case of *Abul Hossain vs State* reported in *13 BLD 311,* it has been held, *inter alia,* in paragraph 7 that Sub-section (3) of section 164 speaks of the manner as to how the confession of an accused is to be recorded by a Magistrate and this is a mandatory provision and failure to comply therewith shall make the confession invalid and unreliable. It has been further held therein that this provision of law together with the provisions of section 364 of the Code of Criminal Procedure require to be strictly observed and followed to make the confession voluntary and true in the real sense to be fit for reliance for convicting an accused on his confession.

149. In the case of *Nurul Haque vs State* reported in *20 DLR 780*, it has been spelt out:

"Before recording the confession, it must be explained to the accused that he is not bound to make a confession and if he makes a confession, it may be used as evidence against him. It is a mandatory provision of law. No Magistrate should record any confession unless, upon putting questions to the accused, he has reason to believe that the confession was made voluntarily. Any defect arising out of violation of any mandatory provision of law is not curable under section 533 of the Code of Criminal Procedure."

150. A reference may be made to the decision reported in *1986 (BLD) 436 (Ali Asgar and another vs State).* In the said decision at page 438, it has been held:

"Now let us consider the value of a retracted confession as against the maker. On consideration of evidence on record, if it is found that a confession is voluntary and true, conviction of the maker himself can solely be based upon the same, no matter whether it is retracted or not. In the case of the *State vs Minbun alias Gul Hassan* reported in *16 DLR (Supreme Court) 598,* their Lordships of the Supreme Court held as follows:

'As against the maker himself, his confession, judicial or extra-judicial, whether retracted, or not retracted, can in law validly form the sole basis of his conviction.' So we are also of the opinion that a confession, if proved true and voluntary, can be the sole basis for conviction of the maker of the confession."

151. In the case of the *State vs Punardhar Joydhar alias Kudu and Shefali, 31 DLR 312,* it has been held that the accused first made a confessional statement under section 164 of the Code of Criminal Procedure that he committed that murder, although subsequently he retracted his confessional statement before the Court and the confession being found voluntary and without any threat, coercion or inducement, conviction of the accused based on his confession, though subsequently retracted by him, is valid in law.

152. The principle that has been enunciated in the case of *Hazrat Ali vs State* reported in *1990 BLD 38* is that once a confession has been found to be true and voluntary, conviction can be based solely on the confession, even if it is retracted.

153. The 'ratio decidendi' of the case of *Bakul Chandra Sarkar vs State* reported in *45 DLR 260* is that if a confession recorded under section 164 of the Code of Criminal Procedure is true and voluntary, the same alone is sufficient for convicting the confessing accused and retraction

of confession is immaterial, once it is found to be true and voluntary.

154. The confession of a co-accused is a matter for consideration against another accused if tried jointly with him. By the way, section 30 of the Evidence Act, 1872 may be referred to:

> "30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other of such persons as well as against the person who makes such confession."

155. This section simply makes the confession of a co-accused a relevant fact. In other words, the confessional statement of a co-accused is admissible against other accused persons in the sense that it may be taken into consideration against them along with other evidence. But for this section 30, the confessional statement of one accused will be inadmissible in evidence against another accused in view of section 3 of the Evidence Act.

156. In the case of *Bhuboni Sahu vs The King, 76 Indian Appeals, 147*, the Privy Council has observed:

> "But a confession of a co-accused is obviously 'evidence' of a very weak type. It does not indeed come within the definition of 'evidence' contained in section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. Section 30, however, provides that the Court may take the confession into consideration and thereby, no doubt, makes it evidence on which the Court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of the facts proved in the case; it can be put into the scale and weighed with the other evidence."

157. In the decision in the case of *Emran Ali @ Md Emran vs The State* reported in *37 DLR 1*, it has been held that the statement of a co-accused is not a piece of evidence, because it is not made on oath and also not subjected to cross-examination and the confessional statement of a co-accused cannot be the basis of conviction of another accused.

158. In the decision in the case of *Amir Hossain Howlader vs State* reported in *37 DLR (AD) 139*, it has been opined that the statement of a co-accused does not fall within the definition of 'evidence' as it is not made on oath in presence of the person affected and its veracity is not tested by way of cross-examination.

159. In the decision in the case of *Rezaul Karim (Md) vs State* reported in *55 DLR 382*, it has been observed that the confession of an accused is not a substantive piece of evidence against the co-accused and, as such, the confession alone without any substantive corroborative evidence cannot form the basis of conviction of a co-accused.

160. In the decision in the case of *State vs Abul Khair* reported in *44 DLR 284*, it has been held, *inter alia*, in paragraph 9 that it is clear from the terms of section 30 of the Evidence Act that where more persons than one are being tried jointly for the same offence, a confession made by any one of them affecting himself and any one of the co-accused can be taken into consideration by the Court not only against the maker of the confession, but also against the co-accused. Strictly speaking, it may not be a piece of evidence within the meaning of the term, but it lends assurance to the other evidence on record.

161. In the decision in the case of *State vs Mir Hossain @ Mira* reported in *56 DLR 124*, it has

been held in paragraph 34:

"34. Under section 30 of the Evidence Act, confession of a co-accused can be taken into consideration and on the strength of that confession, another co-accused can be convicted provided the said confession is corroborated by any other evidence, either direct and circumstantial."

162. In the decision in the case of *Joygun Bibi vs State* reported in *12 DLR (SC) 156,* it has been held, amongst others, in paragraph 9 that the retraction of the confession is wholly immaterial, once it is found that it is voluntary as well as true.

163. At this stage, let us address the confessional statements of the accused Md Al Amin and Akbar Ali Lalu alias Roni one by one.

164. The confession of the accused Md Al Amin dated 30-7-2012 (Exhibit-11) runs as follows:

"আমি টঙ্গীবাজার এলাকায় মোবাইল এর দোকানে কাজ করতাম। আমি ইয়াবা ট্যাবলেট খাই। প্রায় দেড় দুই বৎসর আগে থেকে সাইফুল ইসলাম, আকবর আলী @ লালু ভাই, সেলিম @ সানি এবং রফিকুল ইসলাম খোকন সহ তাদের কিছু বন্ধু বান্ধবের সাথে আমার ইয়াবা খাইতে গিয়ে পরিচয় হয়। আমি তাদের জন্য ইয়াবা যোগাড় করে দিতাম টঙ্গীবাজার মুরগী দোকানদার রিয়াজের কাছ থেকে। তারা বিভিন্ন ডাকাতি ও ছিনতাই এর সাথে জড়িত ছিল-এ কথা আমি জানি। গত বছরের শেষের দিকে তারা খিলক্ষেত এলাকায় ডাকাতি করে একটা রিভলবার নিয়ে আসে। আমারে সাইফুল ভাই অস্ত্রটি দেখায়। খোকনের একটা পুরাতন প্রাইভেট কার আছে। সে তার বিভিন্ন বন্ধু নিয়ে আমার কাছে ইয়াবা খাইতে আসত। গত চার মাস পূর্বে সন্ধ্যার পর তারা আমাকে ইয়াবা যোগাড় করে রাখতে বলে। অনুমান রাত ১০.০০ টার দিকে খোকনের গাড়ীতে করে সাইফুল ভাই, লালু ভাই, সেলিম ও খোকন কুড়িল বিশ্বরোডেরর পাশে সাঈদের ভাঙ্গারীর দোকানের পিছনে ইয়াবা খেতে আসে। আমরা সবাই মিলে এক সাথে বসে ইয়াবা খাই, অনুমান রাত সাড়ে এগারটার দিকে আমি সহ সবাই খোকনের গাড়ীতে বের হই। আমি, সেলিম, লালু ভাই গাড়ীর পিছনের সিটে বসি এবং খোকন গাড়ী চালাচ্ছিল; সাইফুল ভাই তার পাশে বসা ছিল। ঘুরতে ঘুরতে রাত ১.০০ টার দিকে গুলশান এর ১ নং রোডে উঁচা-লম্বামতন এক বিদেশী লোককে আসতে দেখি। তার ব্যায়ামের পোশাক পরা ছিল। তাকে আসতে দেখে লালু ভাই বলে তাকে ধরলে ডলার পাওয়া যাইবে। এরপর খোকন গাড়ীটি ঐ লোকটার পাশে নিয়ে গিয়ে থামায়। তখন সাইফুল, লালু ভাই ও সেলিম গাড়ী থেকে নেমে লোকটিকে ঘিরে ধরে। আমি গাড়ীতেই বসা ছিলাম। আমি নামি নাই মাথা ধরছে দেখে। খোকনও গাড়ী ষ্টার্ট অবস্থায় গাড়ী থেকে নেমে লোকটির কাছে যায়। হঠাৎ দেখি ধস্তাধস্তি হচ্ছে। ধস্তাধস্তির এক পর্যায়ে সাইফুল ভাই গুলি করে লোকটাকে। আমি দেখি লোকটা মাটিতে পড়ে যায়। সবাই খুব দ্রুত গাড়ীতে উঠে পড়ে। খোকন দ্রুত গাড়ী চালিয়ে গুলশান-১ হয়ে কুড়িল বিশ্বরোড মোড়ে আমাকে নামিয়ে দিয়ে তারা সবাই চলে যায়। যাওয়ার সময় সাইফুল ভাই এই ঘটনা কাউকে না বলার জন্য বলে দেয়। পরের দিন শুনি যে, লোকটি সৌদি আরবের। এরপর সাইফুল আমার কাছে আবার এসে ইয়াবা ট্যাবলেট নিয়ে যায়। আমাকেও ৫/৬ টা দিয়ে যায়। পরে পুলিশ আমাকে এরেস্ট করে।"

165. The confession of the accused Akbar Ali Lalu alias Roni dated 1-8-2012 (Exhibit-12) is in the following terms:

"আমি বর্তমানে আমার ২য় স্ত্রীকে নিয়া জয়দেবপুর থানার বোর্ড বাজার থাকি। প্রায় দুই বছর পূর্বে থেকে আমার সাথে সাইফুল, আল-আমিন, সেলিম @ সানি এবং রফিকুল ইসলাম খোকনের সাথে পরিচয়। আমি এর পূর্বে সাইফুল, সোহানের সাথে মহাখালীর নৌ বাহিনীর বাসায় ডাকাতি করি। তাদের সাথে আমি নিয়মিত কুড়ির বিশ্বরোডের সাঈদের ভাঙ্গারীর দোকানের পিছনে বসে আড্ডা দিতাম এবং ইয়াবা খাইতাম। আমি টুকটাক ইয়াবা বেচতাম। ঘটনার দিন খোকনের প্রাইভেট কারে করে যাই সন্ধ্যার পর। রাত ১১.০০ টা কি ১১.৩০ ঘটিকার সময় সেখানে আমি, সাইফুল, আল-আমিন, সেলিম এবং খোকন বসে ইয়াবা খাই। পূর্বে খিলক্ষেত সেবা ক্লিনিকের বাসায় ডাকাতি করে সাইফুল একটি অস্ত্র নিয়ে আসে। ঘটনার দিন অস্ত্রটি তার সাথে ছিল। আমরা ইয়াবা খেয়ে খোকনের গাড়ীতে করে বের হয়ে ঘুরতে থাকি। ঘুরতে ঘুরতে গুলশান আবাসিকের একটি রোডে যাই। গাড়ীতে আমরা ঠ্যাগ দেয়ার চিন্তা করি। ঐ সময় রাত ১.০০ টা বাজে। একজন বিদেশী লোককে দেখতে পাই। ডলার পাওয়া যাওয়ার কথা চিন্তা করে আমরা গাড়ী থেকে নেমে তাকে ঘিরে ধরি। সেলিম তার পকেট হাতাতে চাইলে লোকটি বাধা দেয় এবং চিৎকার ও ধস্তাধস্তি করতে থাকে। তখন সাইফুল গুলি করে। আমি গাড়ীর কাছে

ছিলাম। পরে দ্রুত লোকটি মাটিতে পড়ে গেলে আমি গাড়ীতে উঠে যাই। সবাই দ্রুত উঠে পরে ষ্টার্ট দিয়ে আমরা চলে যাই। আমাকে খোকন টঙ্গী নামিয়ে দিয়ে চলে যায়। আমি লোকটিকে কিছু করে নাই। যা করেছে সব সাইফুল, সেলিম এবং খোকন মিলে করেছে। তারা সব সময় ডাকাতি ও ছিনতাই করে। আমি ঐ দিন সাথে গেছি এটাই দোষ হইছে।"

166. There is no denying the fact that the confessional statements of the accused Md Al Amin and Akbar Ali Lalu have been recorded in the prescribed forms. A reference to the confessional statements clearly and unmistakably shows that the learned Magistrate Mr Shahriar Mahmud Adnan (PW 20) has recorded the same after substantially complying with all legal formalities. It seems that he has given all statutory warnings to the confessing accused before recording their confessions. Mr Shahriar Mahmud Adnan, before recording the confessions, has explained to the confessing accused Md Al Amin and Akbar Ali Lalu that they are not bound to make any confessions and if they do so, those may be used as evidence against them and thereafter he has become satisfied upon questioning them that they are making the confessions voluntarily.

167. It may be recalled that Mr Khandker Mahbub Hossain does not dispute the voluntariness and truth of the confessional statement of the accused Akbar Ali Lalu dated 1-8-2012 (Exhibit-12). It has been stated earlier that Mr Khandker Mahbub Hossain has challenged the propriety and correctness of the sentence of death imposed upon his client Lalu.

168. Be that as it may, it is the contention of the learned Advocate Mr Yusuf Hossain Humayun that the confessional statement of the accused Md Al Amin dated 30-7-2012 (Exhibit-11) is a product of police torture, oppression and maltreatment and, as such, he submitted a petition in the Tribunal below for retraction of his confession on 2-12-2012. But it does not transpire from the evidence of the PW 20 Shahriar Mahmud Adnan that he has found any marks of injuries on the accused Al Amin at the time of recording of his confession. Besides, the accused Al Amin has not complained of any police torture or intimidation to the PW 20. The PW 20 has recorded the reasons for believing the confessional statement of the accused Al Amin to be voluntary.

169. Of course, a suggestion has been put to the PW 20 Shahriar Mahmud Adnan in his cross-examination on behalf of the accused Al Amin that there were marks of injuries on his person, but that suggestion has been squarely denied by the PW 20. Again a suggestion has been put to the Investigating Officer Md Obaidul Haque (PW 33) in his cross-examination that the confession of Al Amin was procured by torture, but that suggestion has been flatly denied by the PW 33.

170. As a matter of fact, we do not find anything on record that the learned Magistrate Mr Shahriar Mahmud Adnan (PW 20) has recorded the confessional statements of the accused Al Amin and Akbar Ali Lalu in contravention of the mandatory provisions of sub-section (3) of section 164 of the Code of Criminal Procedure. Moreover, the confession-recording Magistrate, after recording the confessions of the accused Al Amin and Lalu, has appended certificates thereto that they have made the confessions voluntarily. On top of that, at the time of their examination under section 342 of the Code of Criminal Procedure, neither the accused Al Amin nor the accused Lalu has made any allegation about perpetration of any torture upon them by the police before recording of their confessional statements by the PW 20 Shahriar Mahmud Adnan. It appears that the learned Deputy Attorney-General Mr Md Khurshedul Alam has rightly relied upon the decision in the case of *Khalil Mia (condemned-prisoner) vs State* reported in *4 BLC (AD) 223* in this regard. In that decision, our Appellate Division has held, *inter alia*, in paragraph 8 that the confession was specifically brought to the notice of

the condemned-prisoner while examining him under section 342 of the Code of Criminal Procedure; but he did not complain anything regarding the nature of his confession. Both the trial Court and the High Court Division, therefore, rightly believed the confession to be true and voluntary.

171. The record shows that the four accused, namely, Saiful, Al Amin, Lalu and Khokon were shown arrested in this case on 24-7-2012 and the Investigating Officer concerned prayed for ten days' remand, but the Court of 1st instance allowed eight days' police remand and ultimately the accused Al Amin and Lalu made judicial confessions to the PW 20 Mr Shahriar Mahmud Adnan under section 164 of the Code of Criminal Procedure. Had the police really perpetrated torture and oppression upon all the four accused, then the accused Saiful and Khokon would have made confessional statements. The non-making of any judicial confessions by the accused Saiful and Khokon following their police remand is undoubtedly a circumstance to be reckoned with. This circumstance also goes to show that the police did not torture the accused Al Amin and Lalu while on remand before recording of their confessions by the PW 20 Mr Shahriar Mahmud Adnan.

172. In the decision in the case of Md *Shahidul Islam @ Shahid vs State* reported in *8 BLT 150,* it has been observed that an application for retraction of the confession was made at a belated stage, that is to say, after more than two months of making the confession and if the confession was obtained under duress, there was no reason on the part of the accused to take such a long time for retraction. We are in respectful agreement with this observation.

173. In the instant case, the confessing accused Al Amin admittedly took more than four months' time to retract his confession by filing an application on 2-12-2012. Had the police actually obtained the confession from the accused Al Amin under duress, he would not have taken such a long time for retraction of his confession. This aspect of the case cannot be lost sight of in any view of the matter. So the allegation of the perpetration of any torture on the accused Al Amin by the police before recording of his confessional statement does not inspire any confidence in us.

174. It transpires from the confessions of the accused Al Amin and Akbar Ali Lalu that each of them has given a blow-by-blow account of dacoity in the course of which the co-accused Saiful fired the revolver shot on the victim (Khalaf) at the place of occurrence in the early hours of 6-3-2012. Their accounts of the incident of dacoity, as we see them, are very vivid, graphic, pictorial and expansive. It is manifestly clear from their confessions that the victim was fired upon by the co-accused Saiful while committing dacoity by all the accused.

175. The confessions of the accused Al Amin and Lalu, according to us, stand corroborated by the evidence of the PW 16 Dr Md Kamrul Hassan Sardar and the autopsy-report. It is the opinion of the PW 16 Dr Md Kamrul Hassan Sardar that the death of the victim Khalaf was due to haemorrhage and shock resulting from the bullet injury which was ante-mortem and homicidal in nature. Furthermore, recovery of the revolver bearing No. 1616819 from the rented flat of the accused Saiful and the car bearing registration No. Dhaka Metro-Ga-12-9688 from the Cantonment Manikdi area, Dhaka at the showing and identification of the accused Khokon has supported the confessions too.

176. Let us now scrutinize the decisions referred to by Mrs Mahmuda Khatun in the cases of *Md Rezaul Karim alias Rezaul Aalm Rikshawala vs State, 23 BLD 255; Md Akbar Ali vs State, 19 BLD 268* and *Alaluddin alias Alauddin vs State, 49 DLR 66.*

177. In the decision reported in *23 BLD 255*, it has been held, *inter alia,* in paragraph 26 that the confessional statement of a co-accused cannot be the basis of conviction of another co-accused and the confession of one co-accused cannot be used for corroborating the confession of another co-accused, as both are tainted evidence. There is no dispute about this proposition of law. But in that decision, the learned Additional Sessions Judge solely relied upon the alleged confessional statements of the co-accused in convicting the accused-appellant under sections 302/34 of the Penal Code and thereby committed an illegality. Taking a cue from this finding in the reported decision, Mrs Mahmuda Khatun has urged that her client Selim cannot be convicted on the basis of his implication in the commission of the offence in the confessional statements of the two co-accused, that is to say, Al Amin and Akbar Ali Lalu. We shall discuss the involvement or otherwise of her client Selim in the commission of the offence at a later stage.

178. In the decision reported in *19 BLD 268* (supra) relied on by Mrs Mahmuda Khatun, we find that in that decision, there is no independent evidence to corroborate the confessional statement of the accused and secondly the confessional statement appears to be exculpatory in nature and accordingly the conviction on the basis of the exculpatory confession of the accused was overturned by the High Court Division. The reference to this decision by Mrs Mahmuda Khatun does not appear to be of any avail to her.

179. The last decision that *Mrs Mahmuda Khatun* adverts to has been reported in *49 DLR 66.* On perusal of that decision, we find that the accused was kept in police custody for 3(three) days preceding his confession and the forwarding report mentioned injuries on his person and that is why, the confession was found to be involuntary. But coming back to the present case, we do not find that the forwarding reports of the accused Al Amin and Lalu mentioned any injuries on their person, albeit they were placed on eight days' police remand. In the absence of any injuries on the person of the accused Al Amin and Lalu and in view of the unimpeachable, invincible and unblemished evidence of the PW 20 Shariar Mahmud Adnan, it cannot be held that their confessions were involuntary in character. Over and above, as already mentioned, Mr Khandker Mahbub Hossain does not dispute the voluntariness and truth of the confessional statement of his client Akbar Ali Lalu. Against this backdrop, the reference to the decision reported in *49 DLR 66* appears to be a shot in the dark.

180. From the foregoing discussions and regard being had to the facts and circumstances of the case, we are led to hold that the judicial confessions of the accused Al Amin and Lalu are voluntary as well as true.

181. It has already been stated that there is no eye-witness in this case. This case is essentially grounded upon circumstantial evidence as regards the involvement of the accused Saiful, Khokon and Selim in the commission of the offence. Incidentally we would like to observe that it is well-settled that when a case rests on circumstantial evidence, such evidence must satisfy three tests. In the first place, the circumstances from which an inference of guilt is sought to be drawn must be firmly established by unimpeachable evidence; secondly, the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused; and thirdly, the circumstances taken cumulatively are incapable of explanation of any reasonable hypothesis save and except that of the guilt sought to be proved against the accused The circumstances should form a chain so complete that there is no escape from the probability that the crime was committed by the accused and no one else.

182. By the way, we would like to say that we

are clearly conscious that a conviction on circumstantial evidence cannot be based unless and until all the inferences to be drawn from the whole history of the case point so strongly to the commission of the crime by the accused that the defence version appears on the face of it impossible or highly improbable. We are also conscious of the principle stated in the case of *Md Luqman vs State, 21 DLR (SC) 461* that a finding of guilt against the accused cannot be based merely on the high probabilities that may be inferred from the evidence in a given case. Mere conjectures and probabilities cannot take the place of proof. We are also not unmindful of the principle enunciated in the case of *Alkas Mia vs State, 25 DLR 398* that the Court of law has to dispense justice in accordance with law and not according to the moral conviction of the Judge with regard to the occurrence.

183. At this juncture, let us turn to the professed role of the accused Saiful in the commission of the offence. The evidence on record unerringly shows that after apprehension of the accused Saiful in the early hours of 4-6-2012, he told the police party that he had a revolver in his rented flat at 132, Gaoyair Madrasha Road under Dakkhin Khan Police Station, DMP, Dhaka and on the basis of that information, the police party, namely, PW 25 Md Mosleh Uddin, PW 26 Md Mahbubur Rahman Tarafdar, PW 27 Kazi Haniful Islam and PW 28 KM Robiul Islam took the accused Saiful to his rented flat and in presence of the landlord Md Atiqur Rahman Munshi (PW 23) and his son Md Faisal Ahmed Munshi (PW 24), the accused Saiful himself brought out the revolver bearing No. 1616819 from a rack of his kitchen. It appears that the recovery of the revolver has been conclusively proved by the evidence of the PW 23 Md Atiqur Rahman Munshi, PW 24 Md Faisal Ahmed Munshi, PW 25 Md Mosleh Uddin, PW 26 Md Mahbubur Rahman Tarafdar and PW 27 Kazi Haniful Islam. Moreover, the PW 21 Md Abul Hossain has identified the revolver as his licensed revolver which was looted away in the course of commission of dacoity from his Khilkhet house previously. A reference to Exhibit-13 indicates that the licence of the revolver is in the name of the PW 21.

184. Precisely speaking, it is the claim of the prosecution that the accused Saiful fired the fatal shot on the victim Khalaf with the revolver bearing No. 1616819. In this connection, the evidence of the PW 29 Md Sabdar Ali and PW 30 Md Jamal Uddin, two Forensic Ballistic Experts, seems to be of vital importance. We do not find any earthly reason on their part to depose falsely or to make any false statements in their respective Forensic Ballistic Reports. There is no evidence or material on record to indicate that they are ill-disposed towards the accused Saiful. The seizure of the four test-fired bullets, namely, T-1, T-2, T-3 and T-4 by the PW 33 Md Obaidul Haque as per seizure-list dated 19-7-2012 (Exhibit-15) has been well proved by the evidence of the PW 27 Kazi Haniful Islam and PW 33 Md Obaidul Haque. From a combined reading of the evidence of the PW 29 Md Sabdar Ali and PW 30 Md Jamal Uddin coupled with the Forensic Ballistic Report dated 18-3-2012 (Exhibit-16) and Forensic Ballistic Report dated 19-7-2012 (Exhibit-17), we find that the accused Saiful fired the fatal shot on the victim Khalaf from the revolver bearing No. 1616819.

185. What we are driving at boils down to this: the evidence of the PW 21 Md Abul Hossain, PW 23 Md Atiqur Rahman Munshi, PW 24 Md Faisal Ahmed Munshi, PW 25 Md Mosleh Uddin, PW 26 Md Mahbubur Rahman Tarafdar, PW 27 Kazi Haniful Islam, PW 29 Md Sabdar Ali, PW 30 Md Jamal Uddin and PW 33 Md Obaidul Haque and the attending circumstances of the case are so intertwined and interwoven that a man of ordinary prudence will come to the conclusion that no one else, but the accused Saiful himself fired the fatal revolver shot on the victim Khalaf on the drain-slab on the northern side of Road No. 120 which

is on the southern side of House No. 19/B, Road No. 117, Gulshan Police Station, DMP, Dhaka at the time of commission of dacoity.

186. It transpires from the record that the accused Khokon is a driver by profession and he has also stated so in his petition of appeal. It is in the evidence of the PW 33 Md Obaidul Haque that at the instance of the accused Khokon, the car bearing No. Dhaka Metro-Ga-12-9688 was recovered from Manikdi area and he seized the same as per seizure-list dated 24-7-2012 (Exhibit-10) in presence of the PW 18 Abul Hossain and PW 19 Md Motiur Rahman. The recovery of the car at the showing and identification of the accused Khokon from the Cantonment Manikdi area, Dhaka, in our opinion, has been proved by the evidence of the PWs 18, 19 and 33 beyond any shadow of doubt. The seizure-list dated 24-7-2012 (Exhibit-10), it goes without saying, is a corroboration of the substantive evidence adduced by all these three prosecution witnesses. What is more, on 25-7-2012, the PW 22 Md Anwar Hossain identified the car at the DB office which he saw immediately after the occurrence while it was speeding away. The evidence of the PW 22 Md Anwar Hossain to that effect cannot be brushed aside at all.

187. In the case of *Kashmira Singh vs State of Madhya Pradesh* reported in *AIR 1952 SC 474,* the Indian Supreme Court has spelt out:

> "The confession of an accused-person can only be used against a co-accused to lend assurance to other evidence against the co-accused. The proper way to approach a case of this kind is, first, to marshal the evidence against the co-accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event, the Judge may call in aid the confession and use it to lend assurance to other evidence and thus fortify himself in believing that without the aid of the confession, he would not be prepared to accept."

188. In the case of *Moqbul Hossain vs State* reported in *12 DLR SC 217,* the Pakistan Supreme Court has held:

> "The language of the section (section 30 of the Evidence Act) is very guarded and lends no warrant to the inference that such a statement made by a co-accused could be treated as substantive evidence against the other person sufficient to sustain his conviction. It is well-settled that there ought to be other evidence, whether direct or circumstantial, linking such a person with the crime, before a confession made by a co-accused could be adverted to, in adjudging the guilt of that person."

189. We have already found the judicial confessions of the co-accused Al Amin and Lalu voluntary and true. Those confessions obviously lend assurance to the overwhelmingly incriminating evidence on record against the accused Saiful and Khokon as detailed above. We call in aid the confessions of the co-accused Al Amin and Lalu only to fortify ourselves in our finding that the accused Saiful and Khokon were very much connected with the commission of dacoity in the course of which Khalaf was shot at by the accused Saiful. The incriminating circumstances appearing against the accused Saiful and Khokon, to be sure, are full, complete and self-contained. They are of a conclusive nature. We do not find any missing link in those circumstances. The circumstances taken cumulatively are incapable of explanation of any reasonable hypothesis save and except that of the guilt of the accused Saiful and Khokon. In such a posture of things, they cannot eschew their

penal liability. In a word, the culpability of the accused Saiful and Khokon vis-à-vis the occurrence has been brought home to us, apart from the involvement of the accused Al Amin and Lalu therein.

190. It is the contention of Mr Yusuf Hossain Humayun and Mr Md Khabir Uddin Bhuiyan that admittedly the finger-prints on the revolver were not examined by any expert and in the absence of examination of the finger-prints on the revolver, the prosecution case is suspect entitling the accused Saiful to acquittal on the score of benefit of doubt. The evidence on record shows that the revolver was recovered from the rented flat of the accused Saiful long after three months of the occurrence. During this long interval, the revolver might have been used either by Saiful or by his cohorts at some points of time making the earlier finger-prints thereon blurred. By that reason, the Investigating Officer Md Obaidul Haque (PW 33) did not think it proper to get the finger-prints on the revolver examined in this case. In such a situation, we hold that the prosecution case has not been affected on merit in the absence of examination of the finger-prints on the revolver bearing No. 1616819 which was used in the commission of the offence.

191. As to the argument of Mr Yusuf Hossain Humayun that the PW 31 Md Nure Azam Miah (1st Investigating Officer) did not seize any wet earth from the place of occurrence nor did he seize any blood-stain therefrom rendering the prosecution case doubtful, it is in the cross-examination of the PW 31 that he did not find any blood-stain at the place of occurrence at the time of his visit and although there were wet earth and sand there, he did not seize and just observed the same. In the facts and circumstances of the case and in view of the evidence on record, the non-finding of any blood-stain at the place of occurrence and the non-seizure of any wet earth or sand therefrom, in our estimation, do not render the prosecution case doubtful. So we are not impressed by this contention of Mr Yusuf Hossain Humayun.

192. A question may arise as to the colour of the car bearing registration No. Dhaka Metro-Ga-12-9688— whether it is white or olive-coloured? In this context, the finding of the learned Tribunal Judge appears to be very well-reasoned which is as follows:

> "আসামী পক্ষ শুধু দাবী করেছে জব্দকৃত গাড়ীর রং জলপাই রংয়ের। বাস্তবতার নিরিখে বিশ্লেষণ করলে প্রতীয়মান হয় যে, জলপাই রংয়ের গাড়ী রাতের বেলায় সাদা রংয়ের মতো বলেই প্রতীয়মান হয়। সাক্ষীরা জব্দকৃত গাড়ীকে সম্পূর্ণ সাদা রং বলে নাই। তারা বলেছে সাদা রংয়ের মতো গাড়ী। সুতরাং জব্দকৃত গাড়ী ঘটনার সময় ব্যবহৃত গাড়ী এ বিষয়ে কোন সন্দেহ নাই।"

193. The reason assigned in support of the above finding, to our mind, is realistic, pragmatic and very much in consonance with the relevant prosecution evidence on record. Besides, as already found, the car in question was recovered from the Cantonment Manikdi area at the showing of the accused Khokon and subsequently indentified by the PW 22 Md Anwar Hossain at the DB Office, Minto Road, Dhaka. So we are completely at one with the learned Tribunal Judge on this point.

194. It is on record that the PW 1 Sub-Inspector Md Mosharraf Hossain (informant) seized a pair of trousers, a pair of keds, a torn vest, a torn underwear etc. as per seizure-list dated 6-3-2012 (Exhibit-2). Needless to say, the seizure of those articles has been proved by the PW 1 Sub-Inspector Md Mosharraf Hossain himself, PW 6 Md Ripon and PW 7 Md Maksudur Rahman. The seized wearing-apparels and keds of the deceased Khalaf were sent for chemical examination and the chemical examination report dated 12-3-212 is self-explanatory being a proved document under section 510 of the Code of Criminal Procedure. As per the chemical examination report dated 12-3-2012, the seized keds and wearing-apparels con-

tained human blood. So there cannot be any shred of doubt that the keds and wearing-apparels contained the blood of the Saudi diplomat Khalaf.

195. We have mentioned earlier that Mr Khandker Mahbub Hossain does not dispute the time, place and manner of the occurrence; but Mr Yusuf Hossain Humayun disputes the place and manner of the occurrence, though he does not dispute the time of the occurrence. Anyway, we have already found the place of the occurrence, that is to say, drain-slab on the northern side of Road No. 120 which is on the southern side of House No. 19/B, Road No. 117, Gulshan Police Station, DMP, Dhaka as testified to by the prosecution witnesses concerned. Over and above, the place of occurrence has been pinpointed by the letter 'A' in the sketch-map as indicated in the index thereto. Although Mr Yusuf Hossain Humayun challenges the place and manner of the occurrence, yet he fails to cast any reasonable doubt thereon, regard being had to the evidence and materials on record. Under the circumstances, the challenge as to the place and manner of the occurrence by Mr Yusuf Hossain Humayun falls through.

196. We have already discussed the involvement of the accused Saiful, Al Amin, Lalu and Khokon in the commission of the offence. As to the absconding accused Selim, it seems that there are mainly two circumstances appearing against him-(1) his continuous unexplained abscondence since the commission of the offence and (2) his implication in the commission of the offence in the judicial confessions of the two co-accused, namely, Al Amin and Lalu. In this connection, a million-dollar question arises: Are those two circumstances sufficient for the conviction of the accused Selim?

197. However, both the Deputy Attorney-General Mr Md Khursedul Alam and the Attorney-General Mr Mahbubey Alam have submitted that in view of the evidence of the PW 23 Md Atiqur Rahman Munshi and PW 24 Md Faisal Ahmed Munshi, it is crystal clear that the accused Selim lived with the accused Saiful in his rented flat and the accused Selim happened to be a maternal cousin of the wife of the accused Saiful and it is on record that Saiful and others were accused in a number of cases which were initiated prior to the present case and since Selim and Saiful lived together in the rented flat and since earlier Selim and others were accused in a case, it may be presumed that Selim's living together with Saiful in the self-same rented flat is an incriminating circumstance indicating Selim's involvement in the commission of the instant offence which ought to be taken into account along with his implication in the commission of the offence in the confessions of the co-accused Al Amin and Lalu and Selim's continuous unexplained abscondence. In view of this submission of Mr Md Khurshedul Alam and Mr Mahbubey Alam, a pertinent question crops up: Does Selim's living together with Saiful in the self-same rented flat give rise to any presumption that Selim was involved in the commission of the instant offence? The answer is obviously in the negative, though Selim was an accused along with others in an earlier case, namely, Pallabi Police Station Case No. 22(1)11 under sections 395/397/412 of the Penal Code.

198. It is true that immediately after the occurrence, the accused Selim absconded and has been on the run as of now. This long unexplained abscondence of the accused Selim is, no doubt, a relevant fact under section 8 of the Evidence Act and favours the prosecution pointing a finger at his alleged guilt, though abscondence by itself is not conclusive of one's guilt. This unexplained abscondence of the accused Selim, in our view, is a supporting circumstance which must be considered along with the substantive evidence on record, if any, forthcoming against the accused Selim. The implication of the accused Selim in the commission of the offence in the confessions of the two co-accused, namely, Al Amin and Lalu, it

is well-settled, is not a piece of substantive evidence within the meaning of section 3 of the Evidence Act. This implication of the accused Selim in the commission of the offence in the confessions of the two co-accused may lend support to the independent evidence on record, if any, connecting him with the commission of the offence. To sum up, apart from the abscondence of the accused Selim and his implication in the commission of the offence in the confessions of the co-accused Al Amin and Lalu, we do not find any independent substantive evidence on record linking the accused Selim with the commission of the offence. This being the panorama, we cannot find the accused Selim guilty along with the co-accused Saiful, Al Amin, Lalu and Khokon. In this context, the reference made by the learned Deputy Attorney-General Mr Md Khurshedul Alam to the decisions in the cases of *State vs Md Gaush Meah alias Rana, 10 BLC 74* and *State vs Moslem, 55 DLR 116* has misfired. Having regard to the totality of the evidence and materials on record and in the facts and circumstances of the case, we are inclined to award the benefit of doubt to the accused Selim.

199. The defence version of the case that the victim Khalaf was a man of immoral character and his maid-servant was a call-girl and she along with others caused the death of Khalaf at the relevant time and the confessions of the accused Md Al Amin and Akbar Ali Lalu are the products of police torture, oppression and maltreatment do not receive any support or indication from the evidence and materials on record. So we are of the opinion that the defence version is a blatant falsehood. It is like "A drowning man catches at a straw."

200. It seems that the learned Advocate Mr Khandker Mahbub Hossain has rightly pointed out that there are three options in section 396 of the Penal Code in respect of awarding of sentence to the accused. However, we deem it worthwhile to quote section 396 of the Penal Code which runs as under:

> "396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

201. As there are three options in respect of awarding of sentence in section 396 of the Penal Code, it lies at the discretion of the Court to award an appropriate sentence to each of the accused, regard being had to his individual culpability and role in the commission of the offence, though dacoity is a conjoint offence. The measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminals. Justice demands that the Court should impose punishment befitting the crime so that the Court reflects public abhorrence of the crime. The Court must not only keep in view the rights of the criminal, but also the rights of the victim of the crime and the society at large while considering imposition of appropriate punishment.

202. It is axiomatic that in the criminal justice delivery system, sentencing is the cutting-edge of the judicial process. In sentencing any accused, aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.

203. In the case of the *State vs Rokeya Begum alias Rokaya Begum* (condemned-prisoners) reported in *13 BLT 377*, it has been stated in paragraph 51:

> "51. Sentencing discretion on the part of a Judge is the most difficult task to perform.

It is, also, not possible to lay down any cut and dry formula for imposition of sentence, but the object of sentence should be to see that crime does not go unpunished and the victim of crime as, also, the society has the satisfaction that justice has been done. It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and cruel act perpetrated by the offenders. To give lesser punishment to the condemned-prisoners who stand convicted in a shocking and revolting crime would render the Justicing System of the country suspect. Sympathy to impose inadequate sentence would do more harm to Justice System to undermine public confidence in the efficacy of law."

204. In the decision in the case of *Madan Gopal Kakkad vs Naval Dubey* reported in *3 SCC (1992) 204,* it has been observed in paragraph 58:

"58. We feel that Judges who bear the Sword of Justice should not hesitate to use that Sword with the utmost severity, to the full and to the end, if the gravity of the offence so demands."

205. In the decision in the case of *Geedo vs State* reported in *1986 P CrLJ Karachi 2192* adverted to by Mr Khandker Mahbub Hossain, it has been spelt out:

".....

.....

But the case of dacoity accompanied with murder should be viewed separately. Here no member of the band had a premeditated design to kill any particular person. The paramount intention of each member of the gang was to acquire property. The lust for booty and not the lust for blood was the motivating force behind the mind of each member which brought them to the scene of the crime. Individually and collectively they were keen to avoid any clash and would resort to force most reluctantly much against their will. This inhibition to cause any injury, simple or grave, would be shared by each of them whether his fingers are on the trigger of his gun or on the lock of the safe. The bodily injuries caused during such an encounter usually occur much to their distress and out of sheer necessity for accomplishing the object. The intruder causing death has no previous enmity with his target. More often than not such a misfortune occurs in an effort to break the cordon and ensure their escape. Can any discrimination be made between any one of them and can it be said that the quantum of retribution to each would depend on the part played by each? In my humble opinion, the legislative intent specified in section 396, PPC, provides the answer.

.....

.....

There is no doubt that in the case on hand all the five convicts who were armed to the teeth reached the scene of offence with intention to commit dacoity. They all shared the common intention to commit dacoity. None of them even Geedo who fired the fatal shot had any design or premeditated intention to cause death of Bhambho. But once it is shown that murder was committed by Geedo while all the five were "conjointly committing dacoity", then all of them would be equally liable for the murder. Had it been a case of murder punishable under section 302, PPC then each one of them could not be made liable until his individual role was not determined in terms of section 34. But section 396 has a combined effect of sections 302 and 34, PPC. The concept of immunity for those to whom no overt act is attributed is misconceived in the present situation. This is a case where the intention from the start to the end for committing dacoity is common. Their

very presence during the commission of the offence would be deemed to be an overt act and enough to saddle them with the consequences prescribed in the section."

206. While referring to the other decision reported in *40 Cr LJ Allahabad 132 (Lal Singh vs Emperor)*, Mr Khandker Mahbub Hossain has laid much emphasis on its last paragraph which is in the following terms:

"There remains the question of sentence. It is true that a man was wounded in the dacoity and eventually died. It is also true that the accused carried a gun in this dacoity. But it is stated that there were several guns carried in this dacoity and none of the witnesses say that the accused was the man who fired the shot which had fatal effects. We do not consider that as a general rule a sentence of death should necessarily follow a conviction under section 396, Indian Penal Code, and this section differs from section 302, Indian Penal Code in that respect. The rule is under section 302 that a sentence of death should follow unless reasons are shown for giving a lesser sentence, no such rule applies to section 396, Indian Penal Code. Accordingly we find no reason in this case why the sentence of death should be imposed. We, therefore, maintain the conviction of Lal Singh under section 396, Indian Penal Code, and we reduce the sentence from a sentence of death to a sentence of transportation for life."

207. Reverting to the case in hand, we find that out of all the accused, only the accused Saiful was armed with a revolver. At the time of commission of the offence, the victim Khalaf was defenceless and in jogging apparels. There is nothing on record to show that the accused were encircled by the local people at the material time and with a view to effecting their escape, the accused Saiful fired the fatal revolver shot on the victim Khalaf resulting in his eventual death at the United Hospital, Dhaka. In any case, the firing of the fatal revolver shot on Khalaf by the accused Saiful was not necessitated by the exigency of the situation and it was senseless indeed.

208. As to the case of *Emperor vs Nga Tha Hmwe* reported in *AIR 1935 Rangoon 504* adverted to by the learned Attorney-General Mr Mahbubey Alam, we find that the facts and circumstances of that case are quite distinguishable from those of the instant case. So the aforesaid referred case is an exercise in futility.

209. According to the observation of the Indian Supreme Court in the case of *Madan Gopal Kakkad vs Naval Dubey, 3 SCC (1992) 204* (supra), we feel that we should not hesitate to use the Sword of Justice with the utmost severity, to the full and to the end in so far as the accused Saiful is concerned. There goes an age-old adage- "Give the Devil his due". So we are of the opinion that the ends of justice demand that the accused Saiful be awarded the extreme penalty of death. We see eye-to-eye with the learned Tribunal Judge on this question.

210. As regards the remaining three condemned-appellants, namely, Md Al Amin, Akbar Ali Lalu alias Roni and Md Rafiqul Islam alias Khokon, we have already found that they were involved in the commission of dacoity, though they did not inflict any injuries on the victim Khalaf. But in any event, they should be awarded deterrent punishment commensurate with their culpability and roles in the commission of the offence. We think, the ends of justice will be sufficiently met if those three accused, that is to say, Md Al Amin, Akbar Ali Lalu and Khokon are sentenced to imprisonment for life.

211. In order to commit 'dacoity', there must be at least five persons as contemplated by section 391 of the Penal Code. So naturally a question

arises as to whether the four accused, namely, Saiful Islam, Md Al Amin, Akbar Ali Lalu and Khokon can be convicted and sentenced under section 396 of the Penal Code. On this question, there is an illuminating decision in the case of Wahed alias *Abdul Wahed alias Sk Abdul Wahed vs State, 8 DLR (Dhaka) 50.* In that decision, it has been held:

> "Mr Abdullah, lastly, argued that only four persons out of fifteen on trial have been convicted on a charge of dacoity and, as such, the conviction is not maintainable in law, as to constitute an offence of dacoity there must be at least five persons involved therein.....
> .....
> In the case before us as many as 15 persons were tried on a charge under section 396 of the Pakistan Penal Code, that is, dacoity with murder. Out of these, 11 were acquitted of the charge for want of sufficient evidence. There is no finding in the judgment of the learned Additional Sessions Judge that only these four appellants took part in the dacoity. The evidence on record shows that the number of the persons was not 5 but much more than 5. Moreover, the 'dacoity' occurring in the charge, according to the provisions contained in section 294 CrPC is to be taken to bear the same sense in which it has been defined in section 391 of the Pakistan Penal Code. Further, the charge as it stood contains 15 names and accordingly no fault can be found therewith. The appellants knew very well that they had to meet a charge of dacoity with murder and the defence, as a matter of fact, was conducted on that line. We, accordingly, hold that no surprise was sprung on the appellants at any stage of the trial and no failure of justice has been occasioned on account of their conviction under section 396 of the Pakistan Penal Code. In any view of the matter, this conviction cannot be said to be wrong in law inasmuch as it does not infringe any mandatory provision of law."

212. In the present case before us, as many as five accused including the absconding accused Md Selim Chowdhury were charge-sheeted under section 396 of the Penal Code. They also faced trial under that section of the said Code. Defence was necessarily conducted on that line. It may be recalled that we have awarded the benefit of doubt to the accused Md Selim Chowdhury in the absence of any independent substantive evidence on record connecting him with the commission of the offence. Following the 'ratio decidendi' of the decision reported in *8 DLR (Dhaka) 50,* the conviction recorded against the four accused, namely, Saiful Islam, Md Al Amin, Akbar Ali Lalu and Khokon under section 396 of the Penal Code cannot be found fault with.

213. From the aforementioned discussions and in the facts and circumstances of the case, we do not find any merit in Criminal Appeal Nos. 251 of 2013 and 273 of 2013 and Jail Appeal Nos. 7 of 2013, 8 of 2013, 9 of 2013 and 10 of 2013. As such, all those appeals are dismissed with the commutation of the death sentence of the appellants Md Al Amin, Akbar Ali Lalu alias Roni and Md Rafiqul Islam alias Khokon to imprisonment for life. The death sentence awarded to the appellant Saiful Islam alias Mamun does not call for any interference from this Court. In the result, the Death Reference is accepted in part and the sentence of death imposed upon him (Saiful Islam alias Mamun) is maintained. The absconding accused Md Selim Chowdhury alias Selim Ahmed is acquitted of the charge on the ground of benefit of doubt. Accordingly the impugned judgment and order stands modified.

Let the records of the Tribunal below along with a copy of this judgment be sent down immediately for information and necessary action.

Ed.

HIGH COURT DIVISION
(Criminal Appellate Jurisdiction)

Md Miftah Uddin Choudhury J
Sheikh Hassan Arif J

Judgment
July, 31st 2011.

State.....Petitioner
vs
Zalal @ Zillu and another..
.....Condemned Prisoners*

Penal Code (XLV of 1860)
Section 120B

Evidence Act (I of 1872)
Section 10

Conspiracy is done in secret. It is not possible to prove conspiracy by direct evidence. It has to be proved by circumstantial evidences.

.....(56)

Penal Code (XLV of 1860)
Section 34

Actively participated in the killing in furtherance of common intention, which is enough to bring him under the preview of section 34 of the Code.

Therefore, it is evident from evidences on record that the presence of Biplob was not a mere presence as boldly suggested by Mr Hossain, rather his presence at the relevant time at the place of occurrence was to participate in the killing and, accordingly, he played a role although there is lakh of unambiguous direct evidence that he shot a gun fire. Thus, it is crystal clear that the presence of Biplob at the crime scence with Zalal was not a mere presence but an active participation in the killing to bring him within the mischief of section 34 of the Penal Code.

.....(51 & 53)

Bangladesh Legal Aid and Services Trust vs Bangladesh, 22 BLD 206 = 7 BLC 85; Jaibar Ali Fakir vs State, 28 BLD 627 = 61 DLR 208; State vs Ershad Ali Sikder 56 DLR 305, Belal Ahmed vs State 40 DLR 154 and Aminul Islam vs State 12 MLR 21 = 12 BLC 332.

Khandokar Mahbub Hossain, Advocate with Shakhawat Hossain, Advocate Sheikh Mohammad Ali, Advocate—For the Appellant.

Hasna Begum, Advocate—For the Appellant.

Momtaj Uddin Fakir, Addl. AG with M Ejarul Haque, DAG Shafquat Hussain, AAG Kazi Bazlur Rashid, AAG—For the State in Death Reference No. 103 of 2006, Criminal Appeal Nos. 5053, 5070, 5103 of 2006 and Jail Appeal Nos. 1020,1081 of 2006.

Judgment

Sheikh Hassan Arif J: The aforesaid Death Reference, Criminal Appeals and Jail Appeals have arisen out of the same judgment and order dated 12-10-2006 ("Impugned judgment and order") passed by the Druto Bichar Tribunal No.1, Dhaka in Druto Bichar Tribunal Case No.7 of 2003 convicting the appellants Zalal alias Zillu, Maksudur Rahman Biplob and Porash under sections 302/120-Kha and 34 of the Penal Code. By the said impugned judgment and order, the Tribunal awarded death sentences on Zalal alias Zillu and Maksudur Rahman Biplob (hereinafter called "Zalal and Biplob" respectively), but sentenced Porash to life imprisonment and to pay a fine of Taka 50,000 in default to suffer rigorous imprisonment for one year more.

2. The prosecution case, in short, is that Tanvir Sharif Apon and SM Sabbir Rahman Shantunu (hereinafter called "Apon" and "Shantunu" respectively) were students of Class-seven in Dhanmondi Government Laboratory High School, Dhaka and the deceased Swapan Goswami was a teacher of that school. Apon and Shantunu became unsuccessful in the Class-seven final examination. However, when Shantunu attended the classes of Class-eight, Mr Goswami

*Death Reference No. 103 of 2006 with Criminal Appeal Nos. 5053, 5070, 5103 of 2006 with Jail Appeal Nos. 1020 & 1081 of 2006.

took him down to Class-seven. On the other hand, when Apon's mother met Mr Goswami, he insulted her. As a result, Apon and Shantunu became furious on the said teacher and decided to engage the condemned prisoners Zalal, Biplob, Porash and others to kill him in exchange for Taka one lakh and a pistol owned by the father of Shantunu. Accordingly, on 24-10-2002, they hatched a plan to kill Mr Goswami through a visit at his home on the pretext of obtaining tuition, but they did not succeed. Again, on 25-10-2002 at 9-00 AM, they made out another plan at Green Corner to commit dacoity at Swapan Goswami's house and kill him. Accordingly, on that day at 10-00 AM they went to Mr Goswami's house, but could not succeed. On the day of occurrence, i.e. on 26-10-2002 at about 9-15 AM, Zalal, Biplob and Rifat again went to Vuter Goli to kill Mr Goswami. When Mr Goswami came out of his house, Biplob, Zalal and Rifat followed him. As Mr Goswami stopped at the Sikder Store to by cigarettes from its employee Monzu (PW 3), Zalal shot him at the head from behind. As he fell down, Zalal shot him two more fires. Biplob then took out a pistol and shot the teacher. Thereafter, both Zalal, Biplob and Rifat fled away.

3. After the incident, an FIR was lodged by one cousin (PW 1) of Mr Goswami with the Dhanmondi Police Station, Dhaka suspecting some village people over land dispute. With the lodging of the said FIR, Dhanmondi PS Case No. 62 dated 26-10-2002 commenced and PW 19 took up the investigation and prepared the sketch map. In the meantime, one ASI Md Shafiqul Islam (PW 15) of Dhanmondi Police Station conducted inquest on the dead body and sent the same for the post-mortem. After two days, i.e. on 28-10-2002, the investigation was handed over to the DB branch of police and one Md Abdul Malik, DB Inspector (PW 20) took up the investigation as the 2nd IO who prepared another sketch map of the place of occurrence. On 29-10-2002, the said 2nd IO arrested accused Rifat Akond who gave confessional statement before the Magistrate on 30-10-2002, and this statement of Rifat became the basis of the prosecution case promption the 2nd IO (PW 20) to arrest other accused one after another-of whom accused Jalal, Shantunu and Apon made confessional statements before the Magistrate. In addition, some witnesses, namely PWs 3, 4 and 6, also gave statements before the Magistrate under section 164 of the Code of Criminal Procedure. After completion of the investigation, PW 20 submitted charge-sheet, being Charge-sheet No. 7 dated 8-1-2003 under sections 302/109/34 of the Penal Code, against Jalal, Biplob, AKM Mosarrof Hossain Arman, Porash, SM Sabbir Rahman Shantunu, Tanvir Sharif Apon, Shahidul Islam Shuvo, Mahmudul Hasan Joni and Rifat Akond. However, since four of the above accused, namely Apon, Shantunu, Joni and Shuvo, were blow the age of 16, a separate charge sheet was submitted against them for their trial before the Juvenile Court under the provisions of the Children Act, 1974. During investigation, accused Rifat Akond filed application under section 337 of the Code of Criminal Procedure for treating him as 'Approver', whereupon the Chief Metropolitan Magistrate, Dhaka, allowed the same by order dated 26-12-2002 and accordingly the said charge-sheets were submitted and accepted upon treating him as 'Approver'.

4. The case, being ready for trial, was sent to the court of the Metropolitan Sessions Judge, Dhaka, who sent the same to the First Court of Additional Sessions Judge, Dhaka for trial. Thereafter, pursuant to an executive order dated 5-2-2003, the case was sent to the Court of Druto Bichar Tribunal No.1, Dhaka and renumbered as Druto Bichar Tribunal Case No.7 of 2003. The Tribunal by order dated 13-3-2003 framed charge against the accused under sections 120B/302/34/109 of the Penal Code to which the accused present pleaded not guilty and demanded trial. Since accused Biplob and Arman were absconding, State Defence lawyers were engaged for

(অ) ঘূর্ণিঝড়, কালবৈশাখী, টর্নেডো, সামুদ্রিক জলোচ্ছ্বাস, অস্বাভাবিক জোয়ার, ভূমিকম্প, সুনামি, অতিবৃষ্টি, অনাবৃষ্টি, বন্যা, নদীভাঙ্গন, উপকূল ভাঙ্গন, খরা, মাত্রাতিরিক্ত লবণাক্ততা, মাত্রাতিরিক্ত আর্সেনিক দূষণ, ভবনধস, ভূমিধস, পাহাড়ধস, পাহাড়ী ঢল, শিলাবৃষ্টি, তাপদাহ, শৈত্যপ্রবাহ, দীর্ঘস্থায়ী জলাবদ্ধতা, ইত্যাদি;

(আ) বিস্ফোরণ, অগ্নিকাণ্ড, জলযান ডুবি, বড় ধরনের ট্রেন ও সড়ক দুর্ঘটনা, রাসায়নিকও পারমাণবিক তেজস্ক্রিয়তা, জ্বালানি তেল বা গ্যাস নিঃসরণ অথবা গণবিধ্বংসী কোন ঘটনা;

(ই) মহামারী সৃষ্টিকারী ব্যাধি, যেমন প্যান্ডেমিক ইনফ্লুয়েঞ্জা, বার্ডফ্লু, এনথ্রাক্স,ডায়রিয়া, কলেরা, ইত্যাদি;

(ঈ) ক্ষতিকর অণুজীব, বিষাক্ত পদার্থ এবং প্রাণসক্রিয় বস্তুর সংক্রমণসহ জৈব উদ্ভূত বা জৈবিক সংক্রামক দ্বারা সংক্রমণ;

(উ) অত্যাবশ্যকীয় সেবা বা দুর্যোগ প্রতিরোধ অবকাঠামোর অকার্যকারিতা বা ক্ষতিসাধন; এবং

(ঊ) ব্যাপক প্রাণহানি ও ক্ষয়ক্ষতি সৃষ্টিকারী কোন অস্বাভাবিক ঘটনা বা দৈব দুর্বিপাক;

(১২) **"দুর্যোগ বিষয় স্থায়ী আদেশাবলী"** অর্থ খাদ্য ও দুর্যোগ ব্যবস্থাপনা মন্ত্রণালয় কর্তৃক দুর্যোগ ব্যবস্থাপনা বিষয়ে প্রণীত Standing Orders on Disaster (SOD) বা দুর্যোগ বিষয়ক স্থায়ী আদেশাবলী;

(১৩) **"দুর্যোগ ব্যবস্থাপনা"** অর্থ দুর্যোগ ঝুঁকি হ্রাস এবং দুর্যোগ পরবর্তী জরুরি সাড়াদানের নিমিত্ত পদ্ধতিগত প্রাতিষ্ঠানিক কাঠামো ও কার্যক্রম, যাহার মাধ্যমে দুর্যোগ মোকাবেলার জন্য নিম্নলিখিত পদক্ষেপ বা কার্যক্রম গ্রহণ করা হয়, যথাঃ—

(অ) দুর্যোগের বিপদাপন্নতা, পরিধি, মাত্রা ও সময় নির্ণয়;

(আ) ব্যবস্থাপনাসহ সকল প্রকার পরিকল্পনা গ্রহণ, সমন্বয় সাধন ও বাস্তবায়ন;

(ই) আগাম সতর্কতা, হুঁসিয়ারি, বিপদ বা মহাবিপদ সংকেত প্রদান ও প্রচারের ব্যবস্থা এবং জান-মাল নিরাপদ স্থানে স্থানান্তর;

(ঈ) দুর্যোগ পরবর্তী অনুসন্ধান ও উদ্ধার অভিযান পরিচালনা,জীবন ও সম্পদের ক্ষয় ক্ষতির হিসাব ও চাহিদা নিরূপণ, মানবিক সহায়তা কার্যক্রমের অধীন ত্রাণ সামগ্রী বিতরণ, পুনর্বাসন ও পুনর্গঠন এবং অত্যাবশ্যকীয় সেবা, পুনরুদ্ধার ও উন্নয়ন কার্যক্রম গ্রহণ; এবং

(উ) আনুষঙ্গিক অন্যান্য কার্যক্রম পরিচালনা;

(১৪) **"দুর্যোগ ব্যবস্থাপনা পরিকল্পনা"** অর্থ ধারা ২০ এর অধীন প্রণীত, ক্ষেত্রমত, জাতীয় দুর্যোগ ব্যবস্থাপনা পরিকল্পনা বা স্থানীয় দুর্যোগ ব্যবস্থাপনা পরিকল্পনা;

(১৫) "পুনর্বাসন অর্থ—

(অ) দুর্যোগে ক্ষতিগ্রস্ত অবকাঠামো পূর্বাবস্থায় বা অধিকতর ভাল অবস্থায় ফিরাইয়া আনা;

(আ) ক্ষতিগ্রস্ত জনগোষ্ঠীর মানসিক; অর্থনৈতিক ও ভৌত কল্যাণ সাধনসহ তাহাদের সাংগঠনিক সক্ষমতা বৃদ্ধির মাধ্যমে আক্রান্ত এলাকায় স্বাভাবিক জীবন, জীবিকা ও কর্মপরিবেশ ফিরাইয়া আনা;

(ই) ক্ষতিগ্রস্ত জনগোষ্ঠীকে স্বাভাবিক জীবনযাত্রায় ফিরাইয়া আনিবার লক্ষ্যে, প্রয়োজনে, অন্যত্র স্থানান্তর করা;

(ঈ) ক্ষতিগ্রস্ত গবাদি পশু, মৎস্য, ইত্যাদির সু-চিকিৎসার ব্যবস্থা করা এবং প্রযোজ্য ক্ষেত্রে, সংশ্লিষ্ট খামার পূর্বাবস্থায় ফিরিয়া আনা;

(উ) পুকুর, নদী-নালা, খাল-বিল ও জলাধারে মৃত মানুষ, গবাদি পশু, মৎস্য ইত্যাদি অপসারণের ত্বরিৎ ব্যবস্থা করা এবং উহাদের পানি শোধনের ব্যবস্থা করাসহ মানুষ ও জীব-জন্তুর জন্য বিশুদ্ধ ও নিরাপদ পানির ব্যবস্থা করা;

(ঊ) ক্ষতিগ্রস্ত এলাকার বিষাক্ততা অপসারণের লক্ষ্যে বিষাক্ত জীবাণু ও ময়লা-আবর্জনা পরিষ্কারের ব্যবস্থাসহ উহা হইতে উদ্ভূত পরিস্থিতি মোকাবেলার জন্য প্রয়োজনীয় ব্যবস্থা গ্রহণ করা;

(১৬) **"প্রস্তুতি"** অর্থ সম্ভাব্য আপদের প্রভাব মোকাবেলায় জন-গোষ্ঠীর মধ্যে সচেতনতা ও সক্ষমতা বৃদ্ধির লক্ষ্যে ঝুঁকি পরিস্থিতি সম্পর্কে তাহাদের জ্ঞান ও ধারণার উন্নয়ন ঘটাইতে এবং সম্ভাব্য দুর্যোগের ক্ষয়ক্ষতি হ্রাস, দুর্যোগ

পরবর্তী অনুসন্ধান, উদ্ধার ও মানবিক সহায়তা কার্যক্রম পরিচালনার জন্য গ্রহীত পদক্ষেপ;

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

(১৮) **"বিপদাপন্নতা (Vulnerability)"** অর্থ কোন জনগোষ্ঠীর আর্থ-সামাজিক, ভৌগোলিক ও পরিবেশগত বিদ্যমান এমন অবস্থা যাহা প্রাকৃতিক বা মনুষ্যসৃষ্ট আপদের প্রভাবে বা বিরূপ প্রতিক্রিয়ার সাথে জনগোষ্ঠীর খাপ খাওয়াইয়া লইবার প্রত্যাশিত ক্ষমতাকে ভঙ্গুর, দুর্বল, অদক্ষ ও সীমাবদ্ধ করে;

(১৯) **"ব্যক্তি"** অর্থে, প্রযোজ্য ক্ষেত্রে, কোন কোম্পানী, সমিতি ও সংস্থাও অন্তর্ভুক্ত হইবে;

(২০) **"সশস্ত্র বাহিনী"** অর্থ বাংলাদেশ সেনাবাহিনী, বাংলাদেশ নৌ-বাহিনী, এবং বাংলাদেশ বিমান বাহিনী;

(২১) **"সাড়াদান"** অর্থ আসন্ন দুর্যোগ কালে, দুর্যোগকালীন সময়ে এবং দুর্যোগের অব্যবহিত পরে জীবন ও সম্পদ রক্ষায়, ক্ষতিগ্রস্ত জনগোষ্ঠীর মৌলিক চাহিদা মিটাইতে বা অত্যাবশ্যকীয় সেবা প্রদানে গৃহীত কার্যক্রম; এবং

(২২) **"সেবা"** অর্থ দুর্যোগ ব্যবস্থাপনা কার্যক্রম সম্পাদনের জন্য গঠিত কোন সংস্থা, প্রতিষ্ঠান বা ব্যক্তি কর্তৃক প্রদেয় আশ্রয়, খাদ্য, বিশুদ্ধ পানীয় জল, পরিধেয় বস্ত্র, চিকিৎসা, বিদ্যুৎ ও গ্যাস সরবরাহ, টেলিযোগাযোগ, পয়ঃনিষ্কাশন, জ্বালানি ও পরিবহন সংশ্লিষ্ট সেবা, অগ্নি নির্বাপণ, নিরাপত্তা, অনুসন্ধান, উদ্ধার তৎপরতা এবং পুলিশ কর্তৃক প্রদেয় সেবাসহ সরকার কর্তৃক নির্ধারিত অন্যান্য সেবা।

৩। **আইনের প্রাধান্য।**—আপাতত বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইনের বিধানাবলী প্রাধান্য পাইবে।

দ্বিতীয় অধ্যায়

দুর্যোগ ব্যবস্থাপনার প্রাতিষ্ঠানিক কাঠামো

৪। **জাতীয় দুর্যোগ ব্যবস্থাপনা কাউন্সিল।**—(১) এই আইনের উদ্দেশ্য পূরণকল্পে, সংশ্লিষ্ট কর্তৃপক্ষ ও ব্যক্তিবর্গকে, দুর্যোগ ব্যবস্থাপনা বিষয়ে নীতিমালা ও পরিকল্পনা প্রণয়নে এবং আনুষঙ্গিক অন্যান্য বিষয়ে দিক-নির্দেশনা প্রদানের নিমিত্ত জাতীয় দুর্যোগ ব্যবস্থাপনা কাউন্সিল নামে একটি কাউন্সিল থাকিবে।

(২) কাউন্সিল নিম্নবর্ণিত সদস্যগণের সমন্বয়ে গঠিত হইবে, যথাঃ—

(১) প্রধানমন্ত্রী, যিনি ইহার সভাপতিও হইবেন;

(২) স্থানীয় সরকার, পল্লী উন্নয়ন ও সমবায় মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(৩) কৃষি মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(৪) স্বরাষ্ট্র মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(৫) যোগাযোগ মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(৬) স্বাস্থ্য ও পরিবার কল্যাণ মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(৭) খাদ্য ও দুর্যোগ ব্যবস্থাপনা মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(৮) পানিসম্পদ মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(৯) নৌ-পরিবহন মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(১০) গৃহায়ন ও গণপূর্ত মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(১১) মন্ত্রিপরিষদ সচিব, যিনি ইহার সদস্য-সচিবও হইবেন;

(১২) সেনাবাহিনী প্রধান;

(১৩) নৌ-বাহিনী প্রধান;

(১৪) বিমান বাহিনী প্রধান;

(১৫) প্রধানমন্ত্রীর কার্যালয়ের মুখ্য সচিব;

(১৬) সশস্ত্র বাহিনী বিভাগের প্রিন্সিপ্যাল স্টাফ অফিসার;

(১৭) অর্থ বিভাগের সচিব;

(১৮) কৃষি মন্ত্রণালয়ের সচিব;

(১৯) স্থানীয় সরকার বিভাগের সচিব;

(২০) স্বাস্থ্য ও পরিবার কল্যাণ মন্ত্রণালয়ের সচিব;

(২১) স্বরাষ্ট্র মন্ত্রণালয়ের সচিব;

(২২) প্রতিরক্ষা মন্ত্রণালয়ের সচিব;

(২৩) মহাপুলিশ পরিদর্শক, বাংলাদেশ পুলিশ;

(২৪) শিক্ষা মন্ত্রণালয়ের সচিব;

(২৫) প্রাথমিক ও গণশিক্ষা মন্ত্রণালয়ের সচিব;

(২৬) সড়ক বিভাগের সচিব;

(২৭) রেলপথ বিভাগের সচিব;

(২৮) পানি সম্পদ মন্ত্রণালয়ের সচিব;

(২৯) নৌ পরিবহন মন্ত্রণালয়ের সচিব;

(৩০) তথ্য মন্ত্রণালয়ের সচিব;

(৩১) সেতু বিভাগের সচিব;

(৩২) দুর্যোগ ব্যবস্থাপনা ও ত্রাণ বিভাগের সচিব;

(৩৩) খাদ্য বিভাগের সচিব;

(৩৪) ভূমি মন্ত্রণালয়ের সচিব;

(৩৫) গৃহায়ন ও গণপূর্ত মন্ত্রণালয়ের সচিব;

(৩৬) মৎস্য ও প্রাণিসম্পদ মন্ত্রণালয়ের সচিব;

(৩৭) মহাপরিচালক, বর্ডার গার্ড বাংলাদেশ;

(৩৮) মহাপরিচালক, র‍্যাপিড অ্যাকশন ব্যাটালিয়ন (র‍্যাব);

(৩৯) মহাপরিচালক আনসার ও ভিডিপি অধিদপ্তর;

(৪০) মহাপরিচালক বাংলাদেশ কোস্টগার্ড;

(৪১) জাতীয় দুর্যোগ ব্যবস্থাপনা উপদেষ্টা কমিটির সভাপতি।

(৩) উপ-ধারা (২) এ উল্লিখিত কোন মন্ত্রণালয় বা বিভাগের দায়িত্বে কোন মন্ত্রী না থাকিলে, ক্ষেত্রমত, উক্ত মন্ত্রণালয় বা বিভাগের দায়িত্বে নিয়োজিত প্রতিমন্ত্রী বা উপমন্ত্রী, যদি থাকেন,কাউন্সিলের সদস্য হইবেন।

(৪) কাউন্সিল, প্রয়োজনে, অন্য যে কোন ব্যক্তিকে কাউন্সিলের সদস্য হিসাবে কো-অপ্ট করিতে পারিবে।

(৫) সরকার প্রয়োজনে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, কাউন্সিলের সদস্য সংখ্যা হ্রাস বা বৃদ্ধি করিতে পারিবে।

৫। **কাউন্সিল এর সভা**।—(১) এই ধারার অন্যান্য বিধানাবলী সাপেক্ষে, কাউন্সিল উহার সভার কার্যপদ্ধতি নির্ধারণ করিতে পারিবে।

(২) কাউন্সিলের সভা সভাপতি কর্তৃক নির্ধারিত স্থানে ও সময়ে অনুষ্ঠিত হইবে।

(৩) প্রতিবৎসর কাউন্সিলের কমপক্ষে একটি সভা অনুষ্ঠিত হইবে।

(৪) সভাপতি কাউন্সিলের সকল সভায় সভাপতিত্ব করিবেন

(৫) সভাপতির অনুপস্থিতিতে তদকর্তৃক মনোনীত কোন সদস্য সভায় সভাপতিত্ব করিতে পারিবেন।

(৬) অন্যূন দুই-তৃতীয়াংশ সদস্যের উপস্থিতিতে কাউন্সিলের সভার কোরাম হইবে।

(৭) উপস্থিত সদস্যগণের সংখ্যাগরিষ্ঠ ভোটে কাউন্সিলের সভার সিদ্ধান্ত গৃহীত হইবে এবং ভোটের সমতার ক্ষেত্রে সভাপতিত্বকারী ব্যক্তির একটি নির্ণায়ক ভোট প্রদানের ক্ষমতা থাকিবে।

(৮) শুধু কোন সদস্যপদে শূন্যতা বা কাউন্সিল গঠনে ত্রুটি থাকিবার কারণে কাউন্সিলের কোন কার্য বা কার্যধারা অবৈধ হইবে না এবং তৎসম্পর্কে কোন প্রশ্ন আদালতে বা অন্য কোথাও উত্থাপন করা যাইবে না।

৬। **কাউন্সিলের দায়িত্ব ও কার্যাবলী**।—(১) কাউন্সিলের দায়িত্ব ও কার্যাবলী হইবে নিম্নরূপ, যথাঃ—

(ক) দুর্যোগ ব্যবস্থাপনা বিষয়ে নীতিমালা ও পরিকল্পনা সংক্রান্ত কৌশলগত দিক-নির্দেশনা প্রদান;

(খ) দুর্যোগ ব্যবস্থাপনা বিষয়ক আইন, নীতিমালা ও পরিকল্পনার বাস্তবায়ন পদ্ধতি সম্পর্কে সংশ্লিষ্ট সকলকে প্রয়োজনীয় দিক-নির্দেশনা প্রদান;

(গ) বিদ্যমান দুর্যোগ ঝুঁকিহ্রাস ও জরুরি সাড়াদান কার্যক্রম পদ্ধতি পর্যালোচনা এবং মূল্যায়নপূর্বক উহার সংশোধন, পরিমার্জন বা পরিবর্তনের জন্য কৌশলগত দিক নির্দেশনা প্রদান;

(ঘ) দুর্যোগ প্রস্তুতিমূলক কার্যক্রম মূল্যায়ন এবং এতদ্‌বিষয়ে সংশ্লিষ্ট কর্তৃপক্ষ, কমিটি ও ব্যক্তিবর্গকে কৌশলগত পরামর্শ প্রদান;

(ঙ) দুর্যোগ পরবর্তী সাড়াদান ও পুনরুদ্ধার কার্যক্রম এবং উহার পদ্ধতি ও প্রক্রিয়া উন্নয়নের লক্ষ্যে সংশ্লিষ্ট কর্তৃপক্ষ, কমিটি ও ব্যক্তিবর্গকে কৌশলগত নির্দেশনা প্রদান;

(চ) দুর্যোগ মোকাবেলা বা পুনর্বাসন বিষয়ে গৃহীত সরকারি প্রকল্প বা কর্মসূচির বাস্তবায়ন অগ্রগতি পর্যালোচনা;

(ছ) দুর্যোগ সংক্রান্ত সকল বিষয়, কার্যাদি, নির্দেশনা, কর্মসূচি আইন, বিধি, নীতিমালা, ইত্যাদি সম্পর্কে জনসচেনতা

বৃদ্ধির লক্ষ্যে সেমিনার, কর্মশালা, ইত্যাদি আয়োজনের জন্য সংশ্লিষ্ট কর্তৃপক্ষ ও ব্যক্তিবর্গকে প্রয়োজনীয় নির্দেশনা বা পরামর্শ প্রদান; এবং

(জ) এই আইনের উদ্দেশ্য পূরণকল্পে আনুষঙ্গিক অন্যান্য ব্যবস্থা গ্রহণ করা।

(২) দুর্যোগ ব্যবস্থপনা ও ত্রাণ বিভাগ, কাউন্সিলের কার্যক্রম পরিচালনার ক্ষেত্রে, কাউন্সিলের সাচিবিক দায়িত্ব পালন করিবে এবং কাউন্সিলের সিদ্ধান্ত বাস্তবায়নের জন্য দায়ী থাকিবে।

৭। **অধিদপ্তর প্রতিষ্ঠা**।—(১) এই আইনের উদ্দেশ্য পূরণকল্পে 'দুর্যোগ ব্যবস্থাপনা অধিদপ্তর' নামে একটি অধিদপ্তর থাকিবে।

(২) এই আইন কার্যকর হইবার সঙ্গে সঙ্গে, এই আইনের বিধান অনুযায়ী, দুর্যোগ ব্যবস্থাপনা ও ত্রাণ বিভাগের অধীনস্ত বিদ্যমান ত্রাণ ও পুনর্বাসন অধিদপ্তর, উপ-ধারা (১) এর উদ্দেশ্য পূরণকল্পে, দুর্যোগ ব্যবস্থাপনা আধিদপ্তরে রূপান্তরিত হইবে।

৮। **অধিদপ্তরের প্রধান কার্যালয়, ইত্যাদি**।—(১০) অধিদপ্তরের প্রধান কার্যালয় ঢাকায় অবস্থিত হইবে।

(২) সরকার, প্রয়োজনবোধে, ঢাকার বাহিরে যে কোন স্থানে অধিদপ্তরের অধঃস্তন বা শাখা কার্যালয় স্থাপন করিতে পারিবে।

৯। **অধিদপ্তরের দায়িত্ব ও কার্যাবলী**।—এই আইনের উদ্দেশ্য পূরণকল্পে অধিদপ্তরের দায়িত্ব ও কার্যাবলী হইবে নিম্নরূপ, যথাঃ—

(ক) দুর্যোগ ঝুঁকিহ্রাস কর্মসূচি গ্রহণের মাধ্যমে বিভিন্ন প্রকার দুর্যোগের ক্ষতিকর প্রভাব সহনীয় পর্যায়ে আনিয়া সার্বিক দুর্যোগ লাঘব করা;

(খ) দুর্যোগের কারণে ক্ষতিগ্রস্ত ও দুর্দশাগ্রস্ত জনগোষ্ঠীর জন্য জরুরি মানবিক সহায়তা, পুনরুদ্ধার ও পুনর্বাসন কর্মসূচি দক্ষতার সহিত পরিচালনা করা;

(গ) দুর্যোগ ঝুঁকিহ্রাস ও জরুরি সাড়াদান কার্যক্রমের সহিত সংশ্লিষ্ট সরকারি ও বেসরকারি সংস্থাসমূহের কার্যাক্রমসমূহকে সমন্বিত, লক্ষ্যভিত্তিক ও শক্তিশালী করা;

(ঘ) দুর্যোগ ব্যবস্থাপনা বিষয়ে সরকার কর্তৃক প্রদত্ত নির্দেশনা সুপারিশ, ইত্যাদি বাস্তবায়ন করা;

(ঙ) জাতীয় দুর্যোগ ব্যবস্থাপনা নীতিমালা ও জাতীয় দুর্যোগ ব্যবস্থাপনা পরিকল্পনা বাস্তবায়ন করা;

(চ) সকল ধরনের দুর্যোগ মোকাবেলায় কার্যকর দুর্যোগ ব্যবস্থাপনা কাঠামো গড়িয়া তুলিবার লক্ষ্যে সমীচীন ও প্রয়োজনীয় বলিয়া বিবেচিত অন্যান্য কার্যক্রম গ্রহণ করা।

১০। **মহাপরিচালক**।—(১) অধিদপ্তরের একজন মহাপরিচালক থাকিবেন, যিনি অধিদপ্তরের প্রধান নির্বাহী হইবেন।

(২) মহাপরিচালক সরকার কর্তৃক নিযুক্ত হইবেন এবং তাহার চাকুরির শর্তাদি সরকার কর্তৃক স্থিরীকৃত হইবে।

(৩) মহাপরিচালক—

(ক) অধিদপ্তরের সকল প্রশাসনিক ও আর্থিক কার্যাদি পরিচালনা করিবেন;

(খ) অধিদপ্তরের কর্মকর্তা ও কর্মচারীগণের কার্যাবলী তদারকি এবং তাহাদের দিক- নির্দেশনা প্রদান করিবেন;

(গ) এই আইনের বিধানাবলী সাপেক্ষে এবং সময় সময়, সরকার ও কাউন্সিল কর্তৃক নির্দেশিত কার্যাবলী, যদি থাকে, সম্পাদন, ক্ষমতা প্রয়োগ ও দায়িত্ব পালন করিবেন;

(ঘ) দুর্যোগ ব্যবস্থাপনা সংক্রান্ত যে কোন বিষয়ে কার্যক্রম গ্রহণের জন্য কোন ব্যক্তি কর্তৃক তদ্‌বরাবরে প্রেরিত পত্র, ফ্যাক্স, ই-মেইল, ইত্যাদির ভিত্তিতে ব্যবস্থা গ্রহণ করিবেন; এবং

(ঙ) তদ্‌কর্তৃক সমীচীন ও প্রয়োজনীয় বলিয়া বিবেচিত সকল কার্যক্রম গ্রহণ করিতে পারিবেন।

(৪) মহাপরিচালকের পদ শূন্য হইলে বা অনুপস্থিতি, অসুস্থতা বা অন্য কোন কারণে মহাপরিচালক তাহার দায়িত্ব পালনে অসমর্থ হইলে শূন্য পদে নবনিযুক্ত মহাপরিচালক কার্যভার গ্রহণ না করা পর্যন্ত বা মহাপরিচালক পুনরায় স্বীয় দায়িত্ব পালনে সমর্থ না হওয়া পর্যন্ত সরকার কর্তৃক নির্দেশিত কোন কর্মকর্তা অস্থায়ীভাবে মহাপরিচালকের দায়িত্ব পালন করিবেন।

১১। **কর্মকর্তা ও কর্মচারী নিয়োগ**।—অধিদপ্তরের কার্যাবলী সুষ্ঠভাবে সম্পাদনের উদ্দেশ্যে সরকার প্রয়োজনীয় সংখ্যক কর্মকর্তা ও কর্মচারী নিয়োগ করিতে পারিবে এবং তাহাদের চাকুরির শর্তাবলী বিধি দ্বারা নির্ধারিত হইবে।

১২। **জাতীয় দুর্যোগ ব্যবস্থাপনা গবেষণা ও প্রশিক্ষণ**

ইনস্টিটিউট প্রতিষ্ঠা।—(১) এই আইনের উদ্দেশ্য পূরণকল্পে, দুর্যোগ ও জলবায়ু পরিবর্তনের প্রভাবের উপর গবেষণা এবং দুর্যোগ ব্যবস্থাপনা পদ্ধতির সক্ষমতা বৃদ্ধিসহ আনুষাঙ্গিক কার্যক্রম গ্রহণের লক্ষ্যে সরকার, প্রয়োজনে, একটি 'জাতীয় দুর্যোগ ব্যবস্থাপনা গবেষণা ও প্রশিক্ষণ ইনস্টিটিউট' প্রতিষ্ঠা করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন প্রতিষ্ঠিত ইনস্টিটিউটের কার্যাবলী ও পরিচালনা পদ্ধতিসহ আনুষাঙ্গিক বিষয়াবলী বিধি দ্বারা নির্ধারিত হইবে।

১৩। জাতীয় দুর্যোগ স্বেচ্ছাসেবক সংগঠন গঠন।—(১) দুর্যোগপূর্ব, দুর্যোগকালীন এবং দুর্যোগ পরবর্তী পরিস্থিতিতে দ্রুত ও কার্যকর জরুরি সাড়া প্রদানের উদ্দেশ্যে সরকার জনগোষ্ঠীভিত্তিক একটি কর্মসূচি প্রণয়ন ও উহার অধীন জাতীয় দুর্যোগ ও স্বেচ্ছাসেবক নামে একটি স্বেচ্ছাসেবক সংগঠন গঠন করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন গঠিত স্বেচ্ছাসেবক সংগঠনের দায়িত্ব, প্রশিক্ষণ, পোশাক, সুবিধাদি, কার্যাবলী ও পরিচালনা পদ্ধতি বিধি দ্বারা নির্ধারিত হইবে।

(৩) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, এই আইন কার্যকর হইবার পূর্বে অনুরূপ উদ্দেশ্যে কোন স্বেচ্ছাসেবক সংগঠন গঠন করা হইলে উহা এই আইনের অধীন গঠিত হইয়াছে বলিয়া গণ্য হইবে এবং সরকার কর্তৃক প্রদত্ত নির্দেশনা অনুযায়ী দায়িত্ব পালন করিবে।

১৪। জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপ।—(১) ব্যাপক আকারের দুর্যোগের সময় সাড়াদান কার্যক্রম সুসংগঠিত ও কার্যকরভাবে পরিচালনার লক্ষ্যে নিম্নবর্ণিত সদস্যগণের সমন্বয়ে জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপ গঠিত হইবে, যথাঃ—

(১) খাদ্য ও দুর্যোগ ব্যবস্থাপনা মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী, যিনি ইহার সভাপতিও হইবেন;

(২) স্থানীয় সরকার, পল্লী উন্নয়ন ও সমবায় মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(৩) সশস্ত্র বাহিনী বিভাগের প্রিন্সিপাল স্টাফ অফিসার;

(৪) অর্থ বিভাগের সচিব;

(৫) স্বরাষ্ট্র মন্ত্রণালয়ের সচিব;

(৬) তথ্য মন্ত্রণালয়ের সচিব;

(৭) স্বাস্থ্য ও পরিবার কল্যাণ মন্ত্রণালয়ের সচিব;

(৮) ডাক ও টেলিযোগাযোগ মন্ত্রণালয়ের সচিব;

(৯) পানি সম্পদ মন্ত্রণালয়ের সচিব;

(১০) শিক্ষা মন্ত্রণালয়ের সচিব;

(১১) নৌ-পরিবহন মন্ত্রণালয়ের সচিব;

(১২) বাস্তবায়ন, পরিবীক্ষণ ও মূল্যায়ন বিভাগের সচিব;

(১৩) দুর্যোগ ব্যবস্থাপনা ও ত্রাণ বিভাগের সচিব, যিনি ইহার সদস্য-সচিবও হইবেন।

(২) জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপ, প্রয়োজনে, যে কোন ব্যক্তিকে উক্ত গ্রুপ এর সদস্য হিসাবে কো-অপ্ট করিতে পারিবে।

(৩) সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপ এর সদস্য সংখ্যা হ্রাস বা বৃদ্ধি করিতে পারিবে।

(৪) সাড়াদান কার্যক্রম সুসংগঠিত ও কার্যকরভাবে পরিচালনা ও সমন্বয়ের লক্ষ্যে জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপ উহার সভায় যে কোন ব্যক্তি বা সংস্থাকে আমন্ত্রণ জানাইতে পারিবে এবং উক্ত ব্যক্তি বা সংস্থা তদনুযায়ী উক্ত সভায় উপস্থিত থাকিতে এবং জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপকে সহায়তা করিতে বাধ্য থাকিবে।

১৫। জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপের সভা—।(১) এই ধারার অন্যান্য বিধানাবলী সাপেক্ষে, জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপ, উহার সভার কার্যপদ্ধতি নির্ধারণ করিতে পারিবে।

(২) সমন্বয় গ্রুপের সভাপতির সভাপতিত্বে, তদ্‌কর্তৃক নির্ধারিত স্থান ও সময়ে, উহার সকল সভা অনুষ্ঠিত হইবে ঃ

তবে শর্ত থাকে যে, সভাপতির অনুপসিস্থিতিতে তদ্‌কর্তৃক মনোনীত কোন সদস্য সভায় সভাপতিত্ব করিতে পারিবেন।

(৩) প্রয়োজন অনুসারে যে কোন তারিখ ও সময়ে জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপ উহার সভায় মিলিত হইতে পারিবে ঃ

তবে শর্ত থাকে যে, কোরাম গঠনের জন্য অন্যূন এক- তৃতীয়াংশ সদস্যের উপস্থিতির প্রয়োজন হইবে।

(৪) উপস্থিত সদস্যগণের সংখ্যাগরিষ্ঠ ভোটে সমন্বয় গ্রুপের সভার সিদ্ধান্ত গৃহীত হইবে এবং ভোটের সমতার ক্ষেত্রে সভাপতিত্বকারী ব্যক্তির একটি নির্ণায়ক ভোট প্রদানের ক্ষমতা থাকিবে।

(৫) শুধু কোন সদস্যপদে শূন্যতা বা গঠনে ত্রুটি থাকিবার কারণে সমন্বয় গ্রুপের কোন কার্য বা কার্যধারা অবৈধ হইবে না এবং তৎসম্পর্কে কোন প্রশ্ন আদালত বা অন্য কোথাও উত্থাপন করা যাইবে না।

(৬) দুর্যোগ ব্যবস্থাপনা ও ত্রাণ বিভাগ জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপকে সাচিবিক সহায়তা প্রদান করিবে।

১৬। জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপের দায়িত্ব ও কার্যাবলী।—জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপের দায়িত্ব ও কার্যাবলী হইবে নিম্নরূপ, যথাঃ—

(১) দুর্যোগ অবস্থা মূল্যায়ন এবং দুর্যোগ সাড়াদান ও দ্রুত পুনরুদ্ধার পদ্ধতি ও প্রক্রিয়া সচল করা;

(২) দুর্যোগ সাড়াদানের জন্য সম্পদ প্রেরণ নিশ্চিত করা;

(৩) সতর্ক সংকেতসমূহের যথাযথ প্রচার নিশ্চিত করা;

(৪) সাড়াদান ও দ্রুত পুনরুদ্ধার কার্যক্রম সমন্বয় করা;

(৫) দুর্যোগ পরবর্তী উদ্ধার ও অনুসন্ধান কার্যক্রম তদারকি করা;

(৬) দুর্যোগ পরবর্তী ত্রাণ কার্যক্রম সমন্বয় করা;

(৭) টেলিযোগাযোগ বিচ্ছিন্ন এলাকায় দ্রুত অতিরিক্ত যন্ত্রপাতি ও দ্রব্যাদি প্রেরণ নিশ্চিত করা;

(৮) ত্রাণ সামগ্রী, তহবিল ও যানবাহন বিষয়ক অগ্রাধিকার নিরূপণ ও নির্দেশনা প্রদান করা;

(৯) দুর্যোগকালীন এলাকায় অতিরিক্ত জনবল ও সম্পদ প্রেরণ করা এবং যোগাযোগ সুবিধাদি প্রদানের সুনির্দিষ্ট দায়িত্বসহ সশস্ত্র বাহিনী প্রেরণের বিষয় সমন্বয় করা;

(১০) দুর্যোগকালীন জরুরি অবস্থায় তথ্য প্রবাহ সচল রাখা;

(১১) কাউন্সিল এর সিদ্ধান্ত বাস্তবায়ন করা এবং কাউন্সিলকে দুর্যোগ অবস্থা সম্পর্কে অবহিত করা;

(১২) বহু সংগঠনভিত্তিক দুর্যোগ ব্যবস্থাপনা পদ্ধতি (Multi-agency Disaster Incident Management System) বাস্তবায়নের লক্ষ্যে নির্দেশিকা প্রণয়ন ও হালনাগাদ করা;

(১৩) দুর্যোগের প্রস্তুতি ও ঝুঁকিহ্রাস পদক্ষেপের বিষয়ে সুপারিশ করা;

(১৪) সম্পদ, সেবা, জরুরি আশ্রয়স্থল হিসাবে চিহ্নিত ভবন, যানবাহন বা অন্যান্য সুবিধাদি হুকুমদখল বা রিক্যুইজিশন এর বিষয়ে নির্দেশনা প্রদান করা;

(১৫) মারাত্মক ধরনের দুর্যোগ পূর্ণ অবস্থায় বা মারাত্মক ধরনের দুর্যোগ ঘটিতে পারে এইরূপ অবস্থার অবনতির প্রেক্ষিতে সশস্ত্র বাহিনীর সহযোগিতা গ্রহণে সরকারের নিকট সুপারিশ প্রেরণ;

(১৬) দুর্যোগকালীন বা দুর্যোগ পরবর্তী পরিস্থিতিতে জরুরি ভিত্তিতে প্রয়োজনীয় দ্রব্যাদি বা সম্পদের যোগান, সরবরাহ বা ব্যবহার নিশ্চিত করিবার লক্ষ্যে অর্থনৈতিক বিষয় সংক্রান্ত মন্ত্রিসভা কমিটির নিকট হইতে একসংগে এক বা একাধিক বৎসরের জন্য দুর্যোগ-পূর্ব সময়ে আগাম ক্রয়ের বিষয়ে সম্মতি গ্রহণের নিমিত্ত সুপারিশ করা।

১৭। জাতীয় পর্যায়ে দুর্যোগ ব্যবস্থাপনা কমিটি, ইত্যাদি।—(১) এই আইনের উদ্দেশ্য পূরণকল্পে জাতীয় পর্যায়ে নিম্নবর্ণিত কমিটি, বোর্ড ও প্লাটফরম থাকিবে, যথাঃ—

(ক) আন্তঃমন্ত্রণালয় দুর্যোগ ব্যবস্থাপনা সমন্বয় কমিটি;

(খ) জাতীয় দুর্যোগ ব্যবস্থাপনা উপদেষ্টা কমিটি;

(গ) ঘূর্ণিঝড় প্রস্তুতি কর্মসূচির পলিসি কমিটি;

(ঘ) ঘূর্ণিঝড় প্রস্তুতি কর্মসূচি বাস্তবায়ন বোর্ড;

(ঙ) ভূমিকম্প প্রস্তুতি ও সচেতনতাবৃদ্ধি কমিটি;

(চ) ন্যাশনাল প্লাটফর্ম ফর ডিজাস্টার রিস্ক রিডাকশন;

(ছ) দুর্যোগ সতর্ক বার্তা দ্রুত প্রচার, কৌশল নির্ধারণ ও বাস্তবায়ন সংক্রান্ত কমিটি।

(২) উপ-ধারা (১) এ উল্লিখিত কমিটি, বোর্ড বা প্লাটফরম এর গঠন এবং দায়িত্ব ও কার্যাবলী বিধি দ্বারা নির্ধারিত হইবে।

(৩) উপ-ধারা (১) এ উল্লিখিত কমিটি, বোর্ড বা প্লাটফরম ছাড়াও সরকার, প্রয়োজনে সরকারি গেজেটে প্রজ্ঞাপন দ্বারা এক বা একাধিক কমিটি, বোর্ড, প্লাটফরম, গ্রুপ বা টাস্কফোর্স গঠন করিতে এবং উহাদের কার্যাবলী নির্ধারণ করিতে পারিবে।

(৪) এই ধারায় যাহা কিছুই থাকুক না কেন, উপ-ধারা (২) এর উদ্দেশ্য পূরণকল্পে বিধি প্রণীত না হওয়া পর্যন্ত বা, ক্ষেত্রমত, উপ-ধারা (৩) এর উদ্দেশ্য পূরণকল্পে প্রজ্ঞাপন জারি না হওয়া পর্যন্ত একই উদ্দেশ্যে দুর্যোগ বিষয়ক স্থায়ী আদেশাবলীর অধীন গঠিত কমিটি, বোর্ড প্লাটফরম, গ্রুপ বা টাস্কফোর্স, যদি থাকে, এই আইনের অধীন গঠিত হইয়াছে বলিয়া গণ্য হইবে এবং এই আইনের সহিত সামঞ্জস্যপূর্ণ হওয়া সাপেক্ষে, উক্ত আদেশাবলীতে বর্ণিত দায়িত্ব ও কার্যাবলী সম্পাদন করিতে পারিবে।

১৮। স্থানীয় পর্যায়ে দুর্যোগ ব্যবস্থাপনা কমিটি ও গ্রুপ।—(১) এই আইনের উদ্দেশ্য পূরণকল্পে স্থানীয় পর্যায়ে নিম্নবর্ণিত দুর্যোগ ব্যবস্থাপনা কমিটি বা ক্ষেত্রমত, স্বাস্থ্য ব্যবস্থাপনা কমিটি গঠিত হইবে, যথাঃ—

(ক) সিটি কর্পোরেশন দুর্যোগ ব্যবস্থাপনা কমিটি;

(খ) জেলা দুর্যোগ ব্যবস্থাপনা কমিটি;

(গ) উপজেলা দুর্যোগ ব্যবস্থাপনা কমিটি;

(ঘ) পৌরসভা দুর্যোগ ব্যবস্থাপনা কমিটি;

(ঙ) ইউনিয়ন দুর্যোগ ব্যবস্থাপনা কমিটি; এবং

(চ) প্রয়োজনে, দুর্যোগকালীন জেলা বা উপজেলা স্বাস্থ্য ব্যবস্থাপনা কমিট।

(২) এই আইনের উদ্দেশ্য পূরণকল্পে স্থানীয় পর্যায়ে নিম্নবর্ণিত দুর্যোগ সাড়াদান সমন্বয় গ্রুপ গঠিত হইবে, যথাঃ—

(ক) সিটি কর্পোরেশন দুর্যোগ সাড়াদান সমন্বয় গ্রুপ;

(খ) জেলা দুর্যোগ সাড়াদান সমন্বয় গ্রুপ;

(গ) উপজেলা দুর্যোগ সাড়াদান সমন্বয় গ্রুপ;

(ঘ) পৌরসভা দুর্যোগ সাড়াদান সমন্বয় গ্রুপ।

(৩) উপ-ধারা (১) ও (২) এ উল্লিখিত কমিটি ও গ্রুপের গঠন এবং উহাদের দায়িত্ব ও কার্যাবলী বিধি দ্বারা নির্ধারিত হইবে।

(৪) উপ-ধারা (১) ও (২) এ উল্লিখিত কমিটি ও গ্রুপ ছাড়াও, সরকার, প্রয়োজনে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, স্থানীয় পর্যায়ে এক বা একাধিক কমিটি বা গ্রুপ গঠন করিতে এবং উহাদের দায়িত্ব ও কার্যাবলী নির্ধারণ করিতে পারিবে।

(৫) এই ধারায় যাহা কিছুই থাকুক না কেন, উপ-ধারা (৩) এর উদ্দেশ্য পূরণকল্পে বিধি প্রণীত না হওয়া পর্যন্ত বা, ক্ষেত্রমত, উপ-ধারা (৪)এর উদ্দেশ্য পূরণকল্পে প্রজ্ঞাপন জারি না হওয়া পর্যন্ত, একই উদ্দেশ্যে দুর্যোগ বিষয়ক স্থায়ী আদেশাবলীর অধীন গঠিত কমিটি বা গ্রুপ, যদি থাকে, এই আইনের অধীন গঠিত হইয়াছে বলিয়া গণ্য হইবে এবং, এই আইনের সহিত সামঞ্জস্যপূর্ণ হওয়া সাপেক্ষে, উক্ত আদেশাবলীতে বর্ণিত দায়িত্ব ও কার্যাবলী সম্পাদন করিতে পারিবে।

১৯। **জাতীয় দুর্যোগ ব্যবস্থাপনা নীতিমালা প্রণয়ন।**—এই আইনের উদ্দেশ্য পূরণকল্পে সরকার আন্তর্জাতিক ও আঞ্চলিক দুর্যোগ ব্যবস্থাপনা সংক্রান্ত কর্মকাঠামোর সহিত সঙ্গতি রাখিয়া বিভিন্ন জনগোষ্ঠী, ভৌগোলিক অঞ্চল, আপদ ও সেক্টর বিবেচনায় লইয়া জাতীয় দুর্যোগ ব্যবস্থাপনা নীতিমালা প্রণয়ন করিতে পারিবে।

২০। **জাতীয় ও স্থানীয় দুর্যোগ ব্যবস্থাপনা পরিকল্পনা প্রণয়ন।**—(১) এই আইনের উদ্দেশ্য পূরণকল্পে সরকার জাতীয় দুর্যোগ ব্যবস্থাপনা পরিকল্পনা প্রণয়ন করিতে পারিবে।

(২) উপ-ধারা (১) এ বর্ণিত পরিকল্পনার সহিত সামঞ্জস্য রাখিয়া স্থানীয় দুর্যোগ ব্যবস্থাপনা কমিটিসমূহ স্ব স্ব এলাকা ও স্থানীয় আপদভিত্তিক স্থানীয় দুর্যোগ ব্যবস্থাপনা পরিকল্পনা প্রণয়ন করিবে।

(৩) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, উক্ত উপ-ধারার অধীন, জাতীয় দুর্যোগ ব্যবস্থাপনা পরিকল্পনা প্রণীত না হওয়া পর্যন্ত, একই উদ্দেশ্যে খাদ্য ও দুর্যোগ ব্যবস্থাপনা মন্ত্রণালয় কর্তৃক প্রণীত National plan for Disaster Management 2010-2015, এই আইনের সহিত সামঞ্জস্যপূর্ণ হওয়া সাপেক্ষে, প্রয়োজনীয় অভিযোজনসহ,বহাল থাকিবে।

২১। **বিভিন্ন মন্ত্রণালয়, বিভাগ, সংস্থার দায়-দায়িত্ব ও কর্তব্য।**—সরকার, আদেশ দ্বারা, দুর্যোগ ব্যবস্থাপনা বিষয়ে বিভিন্ন মন্ত্রণালয়, বিভাগ, অধিদপ্তর, দপ্তর, এবং সরকারি ও বেসরকারি সংস্থার দায়-দায়িত্ব ও কর্তব্য নির্ধারণ করিতে পারিবে ঃ

তবে শর্ত থাকে যে, উক্তরূপ, আদেশ জারি না হওয়া পর্যন্ত দুর্যোগ বিষয়ক স্থায়ী আদেশাবলীতে বর্ণিত বিভিন্ন মন্ত্রণালয়, বিভাগ, অধিদপ্তর, দপ্তর এবং সরকারি ও বেসরকারি সংস্থার দায়-দায়িত্ব ও কর্তব্য একইরূপে এমনভাবে চলমানও অব্যাহত থাকিবে যেন উহা এই আইনের অধীনেই নির্ধারিত হইয়াছে।

[ব্যাখ্যা ঃ এই অধ্যায়ের উদ্দেশ্য পূরণকল্পে "সম্পদ" বলিতে যে কোন দুর্যোগ ব্যবস্থাপনা কার্যক্রম দক্ষতার সহিত পরিচালনার জন্য বা ক্ষতিগ্রস্ত জনগোষ্ঠীর জীবন জীবিকা কার্যকরভাবে নির্বাহের জন্য প্রদেয় বা ব্যবহারযোগ্য, অন্যান্যের মধ্যে; ত্রাণ সামগ্রী, জনবল, যানবাহন, জলযান, যন্ত্রপাতি, ভূমি ও স্থাপনা অথবা অনুসন্ধান,উদ্ধার, ধ্বংসাবশেষ ও আবর্জনা অপসারণের কাজে ব্যবহারযোগ্য সরঞ্জাম, আকাশযান এবং চিকিৎসা ও নির্মাণ যন্ত্রপাতিসহ আশ্রয়, বাসস্থান এবং অন্যান্য আনুষাঙ্গিক দ্রব্য, উপকরণ, সেবা ও কারিগরি দক্ষতাকে বুঝাইবে।]

তৃতীয় অধ্যায়

দুর্গত এলাকা ঘোষণা, বিভিন্ন বাহিনীর অংশগ্রহণ ইত্যাদি

২২। **দুর্গত এলাকা ঘোষণা।**—(১) রাষ্ট্রপতি, স্বীয় বিবেচনায় বা ক্ষেত্রমত, উপ- ধারা (৩) এর অধীন সুপারিশ প্রাপ্তির পর যদি এই মর্মে সন্তুষ্ট হন যে, দেশের কোন অঞ্চলে দুর্যোগের কোন ঘটনা ঘটিয়াছে যাহা মোকাবেলায় অতিরিক্ত ব্যবস্থা গ্রহণ করা এবং অধিকতর ক্ষয়ক্ষতি ও বিপর্যয় রোধে বিশেষ ক্ষমতা প্রয়োগ করা জরুরি ও আবশ্যক, তাহা হইলে সরকারি গেজেটে বিজ্ঞপ্তি জারির মাধ্যমে,সংশ্লিষ্ট অঞ্চলকে দুর্গত

এলাকা হিসাবে ঘোষণা করিতে পারিবেন।

(২) কোন অঞ্চলে সংঘটিত মারাত্মক ধরনের কোন দুর্যোগ মোকাবেলায় অতিরিক্ত ব্যবস্থা গ্রহণসহ উক্ত দুর্যোগের অধিকতর ক্ষয়ক্ষতি ও বিপর্যয় রোধে বিশেষ ক্ষমতা প্রয়োগ করা জরুরি ও আবশ্যক হইলে স্থানীয় পর্যায়ের কোন দুর্যোগ ব্যবস্থাপনা কমিটি, গ্রুপ বা সংস্থা অবিলম্বে সংশ্লিষ্ট অঞ্চলকে দুর্গত এলাকা ঘোষণার নিমিত্ত প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য জেলা প্রশাসকের মাধ্যমে সরকারের নিকট সুপারিশ পেশ করিতে পারিবে।

(৩) উপ-ধারা (২) এর অধীন কোন সুপারিশ প্রাপ্ত হইলে জেলা প্রশাসক অনতিবিলম্বে বিষয়টির যথার্থতা যাচাইপূর্বক উহার মতামতসহ সংশ্লিষ্ট সুপারিশ সরকারের নিকট প্রেরণ করিবেন এবং সরকার সংশ্লিষ্ট বিষয়ে জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপের সুপারিশ গ্রহণ করতঃ বিবেচ্য অঞ্চলকে দুর্গত এলাকা ঘোষণার জন্য রাষ্ট্রপতির নিকট সুপারিশ পেশ করিতে পারিবে।

(৪) এরই ধারার অধীন দুর্গত এলাকা ঘোষণার বিজ্ঞপ্তি জারি করা হইলে উহার মেয়াদ অনধিক ২(দুই) মাস পর্যন্ত বলবৎ থাকিবে যদি না উক্ত মেয়াদ অতিবাহিত হইবার পূর্বেই রাষ্ট্রপতি কর্তৃক উহা হ্রাস, বৃদ্ধি বা প্রত্যাহার করা হয়।

২৩। দুর্গত এলাকা সংক্রান্ত বিশেষ করণীয় কার্যাবলী।—(১) ধারা ২২ এর উপ-ধারা (১) এর অধীন কোন অঞ্চলকে দুর্গত এলাকা ঘোষণা করা হইলে সরকার, প্রয়োজনে, সংশ্লিষ্ট মন্ত্রণালয়, বিভাগ, অধিদপ্তর, দপ্তর, সরকারি ও আধা- সরকারি সংস্থা এবং এই আইনের অধীন গঠিত কমিটিসমূহকে জরুরি ভিত্তিতে নিম্নবর্ণিত বিশেষ করণীয় কার্যাবলী সম্পাদনের জন্য নির্দেশ প্রদান করিতে পারিবে যথাঃ—

(ক) দুর্যোগ অবস্থা মোকাবেলায় দুর্গত এলাকায় সরকারি ও বেসরকারি মজুদে থাকা সম্পদের প্রাপ্যতা নিশ্চিতকরণ;

(খ) প্রয়োজনে অতিরিক্ত সম্পদের প্রাপ্যতা নিশ্চিতকরণ;

(গ) জননিরাপত্তা এবং আইন শৃঙ্খলা পরিস্থিতির নিয়ন্ত্রণ নিশ্চিতকরণ;

(ঘ) জানমাল ও পরিবেশের ক্ষয়ক্ষতি হ্রাসকরণের লক্ষ্যে যথাযথ পদক্ষেপ গ্রহণ; এবং

(ঙ) স্থানীয় দুর্যোগ ব্যবস্থাপনা পরিকল্পনা অনুযায়ী সকল প্রয়োজনীয় ব্যবস্থা গ্রহণ।

(২) উপ-ধারা (১) এর অধীন নির্দেশপ্রাপ্ত হইলে সংশ্লিষ্ট মন্ত্রণালয়, বিভাগ, অধিদপ্তর, দপ্তরসহ সরকারি ও বেসরকারি সংস্থার সংশ্লিষ্ট সকল কর্মকর্তা ও কর্মচারী উহা পালনে বাধ্য থাকিবে।

২৪। দুর্গত এলাকা সংক্রান্ত বিশেষ করণীয়সমূহ বাস্তবায়নে ক্ষমতার্পণ।—সরকার কোন দুর্গত এলাকায় ধারা ২৩ উল্লিখিত বিশেষ করণীয় কার্যাবলী বাস্তবায়ন এবং সরেজমিনে তদারকির লক্ষ্যে সংশ্লিষ্ট জেলা প্রশাসককে লিখিতভাবে বা তাৎক্ষণিক প্রয়োজনে, ফ্যাক্স, ই-মেইল, টেলিফোন, মোবাইল ফোন বা অন্য যে কোন ইলেকট্রনিক মাধ্যমে ক্ষমতা ও কর্তৃত্ব প্রদান করিতে পারিবে।

২৫। দুর্গত এলাকা ব্যবস্থাপনা সংক্রান্ত কর্মকাণ্ডে বেসরকারি প্রতিষ্ঠান ও ব্যক্তিকে সম্পৃক্তকরণ।—(১) সরকার প্রয়োজনে, দুর্গত এলাকা ব্যবস্থাপনা সংক্রান্ত কর্মকাণ্ডে যে কোন বেসরকারি প্রতিষ্ঠান ও ব্যক্তিকে সম্পৃক্ত করিতে প্রয়োজনীয় নির্দেশনা প্রদান করিতে পারিবে।

(২) সরকার, দুর্যোগ ব্যবস্থাপনা কার্যক্রমে, যে কোন স্বায়ত্বশাসিত, বেসরকারিভাবে পরিচালিত এবং বেসরকারি সাহায্য সংস্থার (Non Government Organization) অধীনে পরিচালিত হাসপাতাল, ক্লিনিক বা চিকিৎসা কেন্দ্রের চিকিৎসাজনিত সুবিধাদি গ্রহণ করিতে পারিবে এবং উক্ত হাসপাতাল, ক্লিনিক বা কেন্দ্রে চাকুরিরত সকল চিকিৎসক, নার্স এবং অন্যান্য কর্মী ও স্বাস্থ্যকর্মী দুর্যোগকালীন সময়ে সরকার বা স্থানীয় কমিটির চাহিদামতে প্রয়োজনীয় চিকিৎসাসেবা প্রদান করিতে বাধ্য থাকিবেন।

(৩) উপ-ধারা (২) এর অধীন চিকিৎসা সেবা প্রদানের ক্ষেত্রে আনুষাঙ্গিক ব্যয় বিধি দ্বারা নির্ধারিত পদ্ধতিতে সরকার কর্তৃক প্রদত্ত হইবে।

২৬। হুকুমদখল।—(১) জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপ এর নির্দেশনার আলোকে জেলা প্রশাসক যে কোন কর্তৃপক্ষ বা ব্যক্তির নিকট হইতে সম্পদ, সেবা, জরুরি আশ্রয়স্থল হিসাবে চিহ্নিত ভবন যানবাহন ও অন্যান্য সুবিধাদি হুকুমদখল বা রিকুইজিশন করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন কোন হুকুমদখল বা রিকুইজশন এর আদেশ প্রদান করা হইলে সংশ্লিষ্ট কর্তৃপক্ষ বা ব্যক্তি উহা মান্য করিতে বাধ্য থাকিবেন।

(৩) সরকার, উপ-ধারা (১) এর উদ্দেশ্য পূরণকল্পে, হুকুমদখল বা রিকুইজিশনের পদ্ধতিসহ আনুষাঙ্গিক বিষয়াদি বিধি দ্বারা নির্ধারণ করিবে।

২৭। দুর্যোগে ক্ষতিগ্রস্ত ও বিপাদাপন্ন ব্যক্তিকে সহায়তা।—(১) সরকার, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, দুর্যোগের কারণে ক্ষতিগ্রস্ত বা

বিপদাপন্ন জনগোষ্ঠীকে উপযুক্ত পুনর্বাসনের জন্য বা ঝুঁকি হ্রাসের জন্য প্রয়োজনীয় সহায়তা প্রদান কার্যক্রম গ্রহণ করিতে পারিবে ঃ

তবে শর্ত থাকে যে, উক্ত সহায়তা প্রদান কার্যক্রমে অতিদরিদ্র ও সুবিধাবঞ্চিত জনগোষ্ঠী বিশেষতঃ বয়োবৃদ্ধ, মহিলা, শিশু ও প্রতিবন্ধীদের সুরক্ষা ও ঝুঁকিহ্রাসকে অগ্রাধিকার প্রদান করিতে হইবে।

(২) দুর্যোগ মোকাবেলায় জরুরি সাড়া প্রদান বা মানবিক সহায়তা কার্যক্রমে দায়িত্বপ্রাপ্ত কোন কর্মকর্তা,কর্মচারী বা ব্যক্তি ক্ষতিগ্রস্ত বা বিপদাপন্ন হইলে, তাহাদের উপযুক্ত পুনর্বাসন বা ঝুঁকিহ্রাসের জন্য সরকার, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, প্রয়োজনীয় সহায়তা প্রদান কার্যক্রম গ্রহণ করিতে পারিবে।

[ব্যাখ্যাঃ এই ধারার উদ্দেশ্য পূরণকল্পে সুবিধাবঞ্চিত জনগোষ্ঠী অর্থে আর্থ-সামাজিক ও নানাবিধ সুবিধা হইতে বঞ্চিত জনগোষ্ঠী, উপ-জাতি, ক্ষুদ্র জাতিসত্তা ও নৃ-গোষ্ঠী অন্তর্ভুক্ত হইবে]

২৮। দুর্যোগ পরিস্থিতির তথ্য সম্পর্কে করণীয়।—জাতীয় বা স্থানীয় পর্যায়ের কোন কমিটির সভাপতি বা কোন সদস্য যদি স্বয়ং বা কোন ব্যক্তি বা সংগঠন কর্তৃক অবহিত হইয়া এই মর্মে সন্তুষ্ট হন যে, কোন এলাকায় দুর্যোগ পরিস্থিতি আসন্ন, তাহা হইলে প্রয়োজনীয় পদক্ষেপ গ্রহণের জন্য তিনি বিষয়টি তাৎক্ষণিকভাবে সংশ্লিষ্ট কমিটিকে অবহিত করিবেন।

২৯। অনিয়ম, গাফিলতি বা অব্যবস্থাপনা সংক্রান্ত অভিযোগ, আপীল, ইত্যাদি।—(১) দুর্যোগ আক্রান্ত কোন ব্যক্তি, পরিবার বা জনগোষ্ঠীর নিকট দুর্যোগ ব্যবস্থাপনার বিষয়ে কোন অনিয়ম, গাফিলতি বা অব্যবস্থাপনা পরিলক্ষিত হইলে তিনি বা তাহারা সংশ্লিষ্ট বিষয়ে জাতীয় বা স্থানীয় পর্যায়ের কোন কমিটির নিকট অভিযোগ উত্থাপন করিতে পারিবেন এবং উক্ত কমিটি সংশ্লিষ্ট আবেদন প্রাপ্তির অনধিক ৩০ (ত্রিশ) দিনের মধ্যে প্রয়োজনে তদন্তপূর্বক, সংশ্লিষ্ট অভিযোগ নিষ্পত্তি করিবে।

(২) উপ-ধারা (১) এর অধীন কোন কমিটির কোন সিদ্ধান্ত দ্বারা কোন ব্যক্তি সংক্ষুব্ধ হইলে, তিনি জাতীয় পর্যায়ের কোন কমিটির সিদ্ধান্তের ক্ষেত্রে, সরকারের নিকট এবং স্থানীয় পর্যায়ের কমিটির সিদ্ধান্তের ক্ষেত্রে, প্রযোজ্য ক্ষেত্রে, বিভাগীয় কমিশনার বা জেলা প্রশাসকের নিকট আপীল করিতে পারিবেন এবং উক্ত ক্ষেত্রে সরকার বা ক্ষেত্রমত, বিভাগীয় কমিশনার বা জেলা প্রশাসকের সিদ্ধান্ত চূড়ান্ত বলিয়া গণ্য হইবে।

৩০। জরুরি সাড়া প্রদান কার্যক্রমে সশস্ত্র বাহিনীর অংশগ্রহণ।— (১) মারাত্মক ধরনের দুর্যোগপূর্ণ অবস্থায় অথবা মারাত্মক ধরনের দুর্যোগ ঘটিবার আশংকার প্রেক্ষিতে সশস্ত্র বাহিনীর সহযোগিতা গ্রহণের আবশ্যকতা দেখা দিলে উক্ত ক্ষেত্রে জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপ সশস্ত্র বাহিনীর সহযোগিতা গ্রহণের জন্য সরকারের নিকট সুপারিশ পেশ করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপ এর নিকট হইতে কোন সুপারিশ প্রাপ্ত হইলে সরকার সে মোতাবেক দুর্যোগপূর্ব বা দুর্যোগকালীন জরুরি সাড়াদান কার্যক্রমে বেসামরিক প্রশাসনকে প্রয়োজনীয় সহায়তা প্রদানের জন্য সশস্ত্র বাহিনী বিভাগকে নির্দেশনা প্রদান করিতে পারিবে।

(৩) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, স্থানীয় পর্যায়ে মারাত্মক ধরনের দুর্যোগপূর্ণ অবস্থায় অথবা মারাত্মক ধরনের দুর্যোগ ঘটিবার আশঙ্কা দেখা দিলে সংশ্লিষ্ট দুর্যোগ কার্যকরভাবে মোকাবেলায় সশস্ত্র বাহিনীর সহযোগিতা গ্রহণের আবশ্যকতা দেখা দিলে, জেলা দুর্যোগ সাড়াদান সমন্বয় গ্রুপ সশস্ত্র বাহিনীর সহযোগিতা গ্রহণের জন্য জেলা প্রশাসকের নিকট সুপারিশ পেশ করিতে পারিবে ঃ

(৪) উপ-ধারা (৩) এর অধীন জেলা দুর্যোগ সাড়াদান সমন্বয় গ্রুপ এর নিকট হইতে কোন সুপারিশপ্রাপ্ত হইলে জেলা প্রশাসক তদ্‌ভিত্তিতে সশস্ত্র বাহিনীর সহযোগিতা চাহিয়া দুর্যোগ ব্যবস্থাপনা ও ত্রাণ বিভাগের মাধ্যমে সশস্ত্রবাহিনী বিভাগের নিকট চাহিদাপত্র প্রেরণ করিতে পারিবে:

তবে শর্ত থাকে যে, জেলা প্রশাসক, জরুরি প্রয়োজনে, স্থানীয় সশস্ত্র বাহিনী কর্তৃপক্ষের নিকট সরাসরি সহযোগিতা চাহিতে পারিবেন এবং উক্তক্ষেত্রে যথাশীঘ্র সম্ভব বিষয়টি দুর্যোগ ব্যবস্থাপনা ও ত্রাণ বিভাগ এবং সশস্ত্র বাহিনী বিভাগকে লিখিতভাবে, ফ্যাক্স বা ই-মেইল মারফত অবহিত করিবেন।

(৫) এই ধারার অধীন কোন নির্দেশনা বা, ক্ষেত্রমত, চাহিদাপত্র প্রাপ্ত হইলে সশস্ত্র বাহিনী বিভাগ বা ক্ষেত্রমত, স্থানীয় সশস্ত্র বাহিনী কর্তৃপক্ষ অগ্রাধিকারভিত্তিতে দুর্যোগ ব্যবস্থাপনায় সংশ্লিষ্ট কর্তৃপক্ষকে প্রয়োজনীয় সহযোগিতা প্রদান করিবে।

৩১। জরুরি সাড়াদান কার্যক্রমে আইন-শৃঙ্খলা রক্ষাকারী বাহিনীর অংশগ্রহণ।—যদি দুর্যোগপূর্ণ অবস্থা এবং দুর্যোগ ঘটিতে পারে এমন অবস্থার অবনতির পরিপ্রেক্ষিতে আইন-শৃঙ্খলা রক্ষাকারী বাহিনীর সহযোগিতার প্রয়োজন অনুভূত হয়, তাহা হইলে সংশ্লিষ্ট জেলা প্রশাসক সরাসরি স্থানীয় আইন-শৃঙ্খলা রক্ষাকারী বাহিনীর সহযোগিতা চাহিতে পারিবেন এবং স্থানীয় আইন-শৃঙ্খলা রক্ষাকারী বাহিনী অগ্রাধিকার ভিত্তিতে অনুরূপ সহযোগিতা প্রদান করিতে বাধ্য থাকিবে।

[ব্যাখ্যা:—এই ধারার উদ্দেশ্য পূরণকল্পে 'আইন-শৃঙ্খলা

রক্ষাকারী বাহিনী' বলিতে র‍্যাপিড অ্যাকশন ব্যাটালিয়ন (র‍্যাব) সহ বাংলাদেশ পুলিশ, কোস্টগার্ড, বর্ডার গার্ড বাংলাদেশ এবং আনসার ও গ্রাম প্রতিরক্ষা বাহিনী (ভিডিপি) সহ অনুরূপ আধা-সামরিক ও অ অসামরিক বাহিনীকে বুঝাইবে।

চতুর্থ অধ্যায়

দুর্যোগ ব্যবস্থাপনা তহবিল, ত্রাণভান্ডার, ইত্যাদি

৩২। দুর্যোগ ব্যবস্থাপনা তহবিল, ত্রাণভান্ডার গঠন—(১) এই আইনের উদ্দেশ্য পূরণকল্পে সরকার, 'জাতীয় দুর্যোগ ব্যবস্থাপনা তহবিল' এবং 'জেলা দুর্যোগ ব্যবস্থাপনা তহবিল' নামে দুইটি পৃথক তহবিল গঠন করিবে।

(২) নিম্নবর্ণিত উৎসসমূহ হইতে প্রাপ্ত অর্থ উক্ত তহবিলে জমা হইবে, যথা:—

(ক) সরকার কর্তৃক প্রদত্ত অনুদান;

(খ) সরকারের অনুমোদনক্রমে কোন বিদেশী সরকার, সংস্থা বা কোন আন্তর্জাতিক সংস্থা কর্তৃক প্রদত্ত অনুদান;

(গ) কোন স্থানীয় কর্তৃপক্ষ কর্তৃক প্রদত্ত অনুদান;

(ঘ) স্থানীয় পর্যায়ের কোন গণ্যমান্য ব্যক্তি কর্তৃক প্রদত্ত দান;

(ঙ) অন্য কোন বৈধ উৎস হইতে প্রাপ্ত অর্থ।

(৩) জাতীয় দুর্যোগ ব্যবস্থাপনা তহবিল এবং জেলা দুর্যোগ ব্যবস্থাপনা তহবিলে জমাকৃত অর্থ সরকার কর্তৃক অনুমোদিত কোন রাষ্ট্রায়ত্ত তফসিলী ব্যাংকে জমা রাখিতে হইবে।

(৪) দুর্যোগ ব্যবস্থাপনা ও ত্রাণ বিভাগের তত্ত্বাবধানে 'জাতীয় দুর্যোগ ব্যবস্থাপনা তহবিল' পরিচালিত হইবে এবং উক্ত বিভাগের সচিব ও যুগ্ম-সচিব (ত্রাণ) এর যৌথ স্বাক্ষরে উহার ব্যাংক হিসাব পরিচালিত হইবে।

(৫) জেলা দুর্যোগ ব্যবস্থাপনা কমিটির তত্ত্বাবধানে 'জেলা দুর্যোগ ব্যবস্থাপনা তহবিল' পরিচালিত হইবে এবং জেলা প্রশাসক ও জেলা ত্রাণ ও পুনর্বাসন কর্মকর্তার যৌথ স্বাক্ষরে উহার ব্যাংক হিসাব পরিচালিত হইবে।

(৬) 'জাতীয় দুর্যোগ ব্যবস্থাপনা তহবিল' এবং 'জেলা দুর্যোগ ব্যবস্থাপনা তহবিল' এর পরিচালনা পদ্ধতি বিধি দ্বারা নির্ধারিত হইবে ঃ

তবে শর্ত থাকে যে, এতদুদ্দেশ্যে বিধি প্রণীত না হওয়া পর্যন্ত সরকারি আর্থিক বিধি-বিধানের আলোকে উক্ত তহবিলসমূহ পরিচালনা এবং উহাদের অর্থ ব্যয় করা যাইবে।

(৭) দুর্যোগকালে বা দুর্যোগের অব্যবহিত পরে দুর্যোগ ব্যবস্থাপনা ও ত্রাণ বিভাগ সরাসরি বৈদেশিক ত্রাণ বা অন্যান্য সহায়তা গ্রহণ করিতে পারিবে ঃ

তবে শর্ত থাকে যে, বিষয়টি, প্রয়োজন অনুযায়ী, পরবর্তীতে সংশ্লিষ্ট মন্ত্রণালয়, বিভাগ বা কার্যালয়কে অবহিত করিতে হইবে।

(৮) এই আইনের উদ্দেশ্য পূরণকল্পে সরকার, উপ-ধারা (১) এর অধীন তহবিল গঠন ছাড়াও কেন্দ্রীয় ত্রাণ ভাণ্ডার ও জেলা ত্রাণ ভাণ্ডার স্থাপন ও পরিচালনা করিতে পারিবে।

(৯) উপ-ধারা (৮) এ যাহা কিছুই থাকুক না কেন, উক্ত উপ-ধারার অধীন কেন্দ্রীয় ত্রাণ ভাণ্ডার স্থাপিত না হওয়া পর্যন্ত, বিদ্যমান কেন্দ্রীয় ত্রাণ ভাণ্ডার এবং উহার জেলা পর্যায়ের গুদামসমূহের পরিচালনা অধিদপ্তর কর্তৃক এমনভাবে অব্যাহত রাখা যাইবে যেন উহা এই আইনের অধীন স্থাপিত ও পরিচালিত হইতেছে।

৩৩। দুর্যোগ সাড়াদানের লক্ষ্যে জরুরি ক্রয়।—(১) দুর্যোগকালীন বা দুর্যোগ পরবর্তী পরিস্থিতিতে জরুরি ভিত্তিতে প্রয়োজনীয় দ্রব্যাদি বা সম্পদের যোগান, সরবরাহ বা ব্যবহার নিশ্চিত করিবার লক্ষ্যে একসংগে এক বা একাধিক বৎসরের জন্য আগাম ক্রয়ের প্রয়োজনীয়তা দেখা দিলে জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপ উক্ত বিষয়ে অর্থনৈতিক বিষয় সংক্রান্ত মন্ত্রিসভা কমিটির নিকট হইতে সম্মতি গ্রহণের জন্য দুর্যোগ ব্যবস্থাপনা ও ত্রাণ বিভাগের নিকট সুপারিশ করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন অনুযায়ী, এক বা একাধিক বৎসরের জন্য আগাম ক্রয়ের বিষয়ে অর্থনৈতিক বিষয় সংক্রান্ত মন্ত্রিসভা কমিটির অনুমোদন সাপেক্ষে, প্রযোজ্য ক্ষেত্রে, মহাপরিচালক, জেলা প্রশাসক এবং উপজেলা নির্বাহী কর্মকর্তা পাবলিক প্রকিউরমেন্ট আইন,২০০৬ এবং পাবলিক প্রকিউরমেন্ট বিধিমালা, ২০০৮ এর বিধান অনুযায়ী প্রয়োজনীয় ক্রয় কার্যক্রম সম্পন্ন করিতে পারিবেন।

৩৪। গণমাধ্যম ও সম্প্রচার কেন্দ্রের প্রতি নির্দেশনা।—এই আইনের উদ্দেশ্য পূরণকল্পে সরকার, যে কোন রেডিও বা বেতার, টেলিভিশন, স্যাটেলাইট টেলিভিশন চ্যানেল, মুদ্রণ মাধ্যম, টেলিযোগাযোগ নেটওয়ার্ক বা ইলেকট্রনিক বা কেবল নেটওয়ার্ক অথবা এইরূপ তথ্য ও প্রযুক্তি নির্ভর সম্প্রচার মাধ্যমের নিয়ন্ত্রণকারী কর্তৃপক্ষ বা ব্যক্তিকে আসন্ন দুর্যোগাবস্থা, দুর্যোগ সংশ্লিষ্ট আগাম সতর্ক সংকেত বা দুর্যোগ প্রস্তুতি বিষয়ক বা জনসচেতনতামূলক তথ্য, চিত্র বা সংবাদ ইত্যাদি প্রচার, প্রকাশ ও প্রদর্শনের জন্য নির্দেশনা প্রদান করিতে পারিবে এবং সংশ্লিষ্ট কর্তৃপক্ষ বা ব্যক্তি উক্তরূপ নির্দেশনা মানিয়া চলিতে বাধ্য

থাকিবে।

৩৫। দুর্যোগ ব্যবস্থাপনায় জরুরি করণীয়।—(১) তফসিলে উল্লিখিত দুর্যোগ ব্যবস্থাপনায় জরুরি করণীয় সংক্রান্ত নির্দেশাবলী সংশ্লিষ্ট সকলকে মানিয়া চলিতে হইবে এবং প্রযোজ্য ক্ষেত্রে,উহাতে উল্লিখিত নির্দেশনা অনুযায়ী প্রয়োজনীয় ব্যবস্থা গ্রহণ করিতে হইবে ঃ

তবে শর্ত থাকে যে, উক্ত নির্দেশাবলী সম্পর্কে সংশ্লিষ্ট সকলকে অবহিত করিবার লক্ষ্যে সরকারকে গণবিজ্ঞপ্তি জারি করিতে হইবে।

(২) তফসিলে উল্লিখিত দুর্যোগ ব্যবস্থাপনায় জরুরি করণীয় সংক্রান্ত নির্দেশাবলী যাহাতে সংশ্লিষ্ট সকল ব্যক্তি, প্রতিষ্ঠান, সংস্থা, স্থাপনার মালিক বা কর্তৃপক্ষ মানিয়া চলে তদ্‌লক্ষ্যে সরকার ও স্থানীয় প্রশাসন উদ্বুদ্ধকরণসহ প্রচারণামূলক ব্যবস্থা গ্রহণ করিবে এবং সংশ্লিষ্ট সকলে যাহাতে উক্ত নির্দেশাবলী বাস্তবায়ন করে এবং মানিয়া চলে তাহা নিয়মিতভাবে পর্যবেক্ষণ ও তদারকি করিবার লক্ষ্যে সংস্থা ও স্থাপনায় প্রবেশ ও তল্লাশি করিতে পারিবে।

পঞ্চম অধ্যায়

অপরাধ, দণ্ড, ইত্যাদি

৩৬। দায়িত্ব পালনে বাধা প্রদান বা বাধা প্রদানের প্রচেষ্টার দণ্ড।—(১) কোন ব্যক্তি যদি দুর্যোগ ব্যবস্থাপনার দায়িত্ব পালনরত বা ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা বা ব্যক্তিকে অন্যায়ভাবে আঘাত, ভীতি প্রদর্শন, অপমান, অপদস্ত করেন বা দুর্যোগ ব্যবস্থাপনার কাজে বাধা প্রদান করেন, তাহা হইলে তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনূর্ধ্ব ১ (এক) বৎসর সশ্রম কারাদণ্ড অথবা অনধিক ১(এক) লক্ষ টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

(২) কোন ব্যক্তি যদি দুর্যোগ ব্যবস্থাপনার দায়িত্ব পালনরত বা ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা বা ব্যক্তিকে অন্যায়ভাবে আঘাত, ভীতি প্রদর্শন, অপমান, অপদস্ত করার বা দুর্যোগ ব্যবস্থাপনার কাজে বাধা প্রদান করার চেষ্টা করেন, তাহা হইলে তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনূর্ধ্ব ৬ (ছয়) মাস সশ্রম কারাদণ্ড অথবা অনধিক ৫০ (পঞ্চাশ) হাজার টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

৩৭। নির্দেশাবলী অমান্য করা বা পালনে ব্যর্থতার দণ্ড।—কোন ব্যক্তি যদি সরকার, জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপ বা জেলা দুর্যোগ সাড়াদান সমন্বয় গ্রুপ কর্তৃক প্রদত্ত নির্দেশাবলী ইচ্ছাকৃতভাবে অমান্য করেন বা ইচ্ছাকৃতভাবে পালন না করেন, তাহা হইলে তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনূর্ধ্ব ১ (এক) বৎসর সশ্রম কারাদণ্ড অথবা অনধিক ১ (এক) লক্ষ টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

৩৮। মিথ্যা, অসত্য বা ভিত্তিহীন দাবি উত্থাপনের দণ্ড।—কোন ব্যক্তি বা সংস্থা যদি এই আইনের অধীন পরিচালিত দুর্যোগ ব্যবস্থাপনা কার্যক্রম হইতে সহায়তা বা সুবিধা প্রাপ্তির নিমিত্ত মিথ্যা, অসত্য বা ভিত্তিহীন দাবি উত্থাপন করেন, তাহা হইলে তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনূর্ধ্ব ১ (এক) বৎসর সশ্রম কারাদণ্ড অথবা অনধিক ১ (এক) লক্ষ টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

৩৯। সম্পদের অপব্যবহার বা নিজ স্বার্থে ব্যবহারের দণ্ড।—দুর্যোগ ব্যবস্থাপনার কাজে ব্যবহৃতব্য সম্পদের ব্যবস্থাপনা বা নিয়ন্ত্রণে রাখিবার জন্য দায়িত্বপ্রাপ্ত ব্যক্তি যদি উক্ত সম্পদের অপব্যবহার করেন বা নিজ স্বার্থে ব্যবহার করেন অথবা অপব্যবহার বা নিজ স্বার্থে ব্যবহার করিবার জন্য অন্যকে প্ররোচনা দেন, তাহা হইলে তিনি এই আইনের অধীনে অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনূর্ধ্ব ১ (এক) বৎসর সশ্রম কারাদণ্ড অথবা অনধিক ১ (এক) লক্ষ টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

৪০। দুর্গত এলাকায় নিত্য প্রয়োজনীয় দ্রব্যের মূল্য বৃদ্ধির দণ্ড।—দুর্গত এলাকায় যদি কোন ব্যক্তি অবৈধভাবে মুনাফা লাভের উদ্দেশ্যে নিত্য প্রয়োজনীয় দ্রব্যের মূল্য বৃদ্ধি করেন বা বৃদ্ধির কারণ সৃষ্টি করেন, তাহা হইলে তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনূর্ধ্ব ১ (এক) বৎসর সশ্রম কারাদণ্ড অথবা অনধিক ১(এক) লক্ষ টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

৪১। লবণাক্ততা বা প্লাবন সৃষ্টি করা বা চলমান পানি প্রবাহে প্রতিবন্ধকতার সৃষ্টি করা বা বাঁধের ক্ষতিসাধন, ইত্যাদি দণ্ড।—কোন ব্যক্তি যদি ইচ্ছাকৃতভাবে নিজস্ব স্বার্থসিদ্ধির জন্য বা অবহেলায় কোন এলাকায় লবণাক্ততা বা প্লাবন সৃষ্টি করেন অথবা স্লুইচ গেটের চলমান কার্যক্রম বাধাগ্রস্ত করেন বা ক্ষতি সাধন করেন অথবা পানি প্রবাহে প্রতিবন্ধকতা সৃষ্টি করেন অথবা বাঁধের ক্ষতি করিয়া বা বাঁধ কাটিয়া দুর্যোগ অবস্থা সৃষ্টির মাধ্যমে জানমালের ক্ষতি করেন বা অনুরূপ কার্য সংঘটনে প্রচেষ্টা করেন বা সহায়তা করেন, তাহা হইলে তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনূর্ধ্ব ৩ (তিন) বৎসর কিন্তু অন্যূন ১(এক) বৎসর সশ্রম কারাদণ্ড অথবা অনূর্ধ্ব ২ (দুই) লক্ষ টাকা অর্থদণ্ড বা উভয় দণ্ডে দণ্ডিত হইবেন।

৪২। গণমাধ্যম বা সম্প্রচার কেন্দ্র কর্তৃক ধারা ৩৪ এ আদেশ অমান্য করিবার দণ্ড।—কোন ব্যক্তি যদি ধারা ৩৪এর অধীন প্রদত্ত আদেশ অমান্য করেন বা অমান্য করিতে সহায়তা করেন, তাহা হইলে তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনূর্ধ্ব ৫ (পাঁচ) লক্ষ টাকা অর্থদণ্ডে দণ্ডিত হইবেন।

৪৩। দুর্যোগ ব্যবস্থাপনা সংক্রান্ত জরুরি নির্দেশাবলী অমান্যের দণ্ড।—কোন ব্যক্তি যদি তফসিলে উল্লিখিত দুর্যোগ ব্যবস্থাপনা সংক্রান্ত জরুরি নির্দেশাবলী, ধারা ৩৫ এর সহিত পঠিতব্য, অমান্য করেন বা উক্ত নির্দেশনা অনুযায়ী প্রয়োজনীয় ব্যবস্থা গ্রহণ না করেন, তাহা হইলে তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনূর্ধ্ব ৫ (পাঁচ) লক্ষ টাকা অর্থদণ্ড এবং অনাদায়ে অনূর্ধ্ব ৩ (তিন) মাসের বিনাশ্রম কারাদণ্ডে দণ্ডিত হইবেন।

৪৪। সরকারি কর্মকর্তা ও কর্মচারী কর্তৃক দায়িত্ব পালনে ব্যর্থতা।—(১) কোন সরকারি কর্মচারী এই আইন ও তদধীন প্রণীত বিধির অধীন কোন দায়িত্ব পালনে ব্যর্থ হইলে বা কোন বিধান লংঘন করিলে অনুরূপ ব্যর্থতা বা লংঘনের জন্য তিনি দায়ী হইবেন, যদি না প্রমাণ করিতে পারেন যে, অনুরূপ ব্যর্থতা বা, ক্ষেত্রমত, লঙ্ঘন তাহার অজ্ঞাতসারে ঘটিয়াছে বা উক্ত ব্যর্থতা বা লঙ্ঘন রোধ করিবার জন্য তিনি যথাসাধ্য চেষ্টা করিয়া অকৃতকার্য হইয়াছেন।

(২) উপ-ধারা (১) এ উল্লিখিত কোন ব্যর্থতা বা লংঘনের অভিযোগে কোন সরকারি কর্মচারী দায়ী হইলে তিনি সরকারি কর্মকর্তা ও কর্মচারীদের ক্ষেত্রে প্রযোজ্য আচরণ ও শৃঙ্খলা সংক্রান্ত অপরাধে অভিযুক্ত হইবেন এবং উক্ত কারণে তাহার বিরুদ্ধে বিভাগীয় শৃঙ্খলামূলক কার্যক্রম গ্রহণ করিতে হইবে।

৪৫। অপরাধ বিচারার্থে গ্রহণ।—জেলা প্রশাসক বা তাহার পক্ষে ক্ষমতাপ্রাপ্ত প্রতিনিধি কর্তৃক লিখিত অভিযোগ ব্যতীত কোন আদালত এই আইনের অধীন কোন ব্যক্তির বিরুদ্ধে কোন মামলা বিচারার্থে আমলে গ্রহণ করিবে না।

৪৬। অপরাধের অ-আমলযোগ্যতা, জামিনযোগ্যতা এবং অ-আপোষযোগ্যতা।—এই আইনের অধীন সকল অপরাধ অ-আমলযোগ্য, জামিনযোগ্য এবং অ-আপোষযোগ্য হইবে।

৪৭। Act V of 1898 এর প্রয়োগ।—এই আইনের অধীন কোন অপরাধের অভিযোগ দায়ের, তদন্ত, বিচার এবং আপীল নিষ্পত্তির ক্ষেত্রে Code of Criminal procedure,1898 (Act V of 1898) এর বিধানাবলী প্রযোজ্য হইবে।

৪৮। ২০০৯ সনের ৫৯ নং আইন এর প্রয়োগ।—এই আইনে ভিন্নরূপ যাহা কিছুই থাকুক না কেন, ধারা ৪৩ এর অধীন সংঘটিত অপরাধসমূহ মোবাইল কোর্ট আইন, ২০০৯ (২০০৯ সনের ৫৯ নং আইন) অনুসারে বিচার্য হইবে।

৪৯। মনুষ্যসৃষ্ট দুর্যোগে ক্ষতিপূরণ সংক্রান্ত দাবি।—(১) কোন ব্যক্তি যদি ইচ্ছাকৃত অবহেলাক্রমে যথাযথ প্রতিরোধমূলক ব্যবস্থা গ্রহণ ব্যতিরেকে কোন কার্য দ্বারা পরিবেশের এইরূপ বিপর্যয় ঘটান যাহা কোন দুর্যোগের কারণ সৃষ্টি করে এবং ফলশ্রুতিতে অন্য কোন ব্যক্তি বা প্রতিষ্ঠানের জান, মাল, সম্পদ, স্থাপনা বা ব্যবসা-বাণিজ্যের ক্ষতি সাধিত হয়, তাহা হইলে ক্ষতিগ্রস্ত ব্যক্তি বা প্রতিষ্ঠান উক্ত ব্যক্তি বা প্রতিষ্ঠানের নিকট হইতে ক্ষতিপূরণ আদায়ের জন্য উপযুক্ত আদালতে মামলা দায়ের করিতে পারিবে।

(২) এই ধারার অধীন ক্ষতিপূরণ আদায়ের মামলা পরিচালনায় Code of Civil procedure 1908 (Act No.V of 1908) এর বিধানাবলী প্রযোজ্য হইবে।

(৩) উপ-ধারা (১) এর অধীন কোন ক্ষতিপূরণের মামলা দায়ের করা হইলে আদালত সাক্ষ্য প্রমাণ বিবেচনা করিয়া প্রকৃত ক্ষতির সমপরিমাণ বা আদালতের বিবেচনায় উপযুক্ত অর্থ ক্ষতিপূরণ হিসাবে পরিশোধের জন্য আদেশ প্রদান করিতে পারিবে।

৫০। ক্যামেরায় গৃহীত ছবি, রেকর্ডকৃত কথাবার্তা ইত্যাদির সাক্ষ্য মূল্য।—Evidence Act 1872 (Act No. I of 1872) তে যাহা কিছুই থাকুক না কেন, দুর্যোগ ব্যবস্থাপনার সহিত জড়িত কোন ব্যক্তি বা আইন প্রয়োগকারী সংস্থার কোন সদস্য বা অন্য কোন ব্যক্তি এই আইনে বর্ণিত কোন অপরাধ বা ক্ষতি সংঘটন বা সংঘটনের প্রস্তুতি গ্রহণ বা উহা সংঘটনে সহায়তা সংক্রান্ত কোন ঘটনার ভিডিও বা স্থিরচিত্র ধারণ বা গ্রহণ করিলে বা কোন কথাবার্তা বা আলাপ- আলোচনা টেপ রেকর্ড বা ডিস্কে ধারণ করিলে উক্ত ভিডিও, স্থিরচিত্র, টেপ বা ডিস্ক উক্ত অপরাধ বা ক্ষতি সংশ্লিষ্ট মামলা বিচারের সময় সাক্ষ্য হিসাবে গ্রহণযোগ্য হইবে।

৫১। কোম্পানী কর্তৃক অপরাধ সংঘটন।—কোন কোম্পানী বা প্রতিষ্ঠান কর্তৃক এই আইন বা তদধীন প্রণীত বিধির অধীন কোন অপরাধ সংঘটিত হইলে বা কোন বিধান লঙ্ঘিত হইলে উক্ত অপরাধ বা লঙ্ঘনের সহিত প্রত্যক্ষ সংশ্লিষ্টতা রহিয়াছে উক্ত কোম্পানী বা প্রতিষ্ঠানের এমন প্রত্যেক পরিচালক, অংশীদার, নির্বাহী, ম্যানেজার, সচিব বা অন্য কোন কর্মকর্তা বা কর্মচারী বা প্রতিনিধি উক্ত অপরাধ বা লংঘন করিয়াছেন বলিয়া গণ্য হইবে, যদি না তিনি প্রমাণ করিতে পারেন যে, উক্ত অপরাধ বা লংঘন তাহার অজ্ঞাতসারে সংঘটিত হইয়াছে অথবা উক্ত অপরাধ বা

লঙ্ঘন রোধ করিবার জন্য তিনি যথাসাধ্য চেষ্টা করিয়া অকৃতকার্য হইয়াছেন।

[ব্যাখ্যাঃ এই ধারায়।—

(ক) "কোম্পানী বা প্রতিষ্ঠান" বলিতে কোন কোম্পানী সংস্থা প্রতিষ্ঠান, অংশীদারী কারবার, সমিতি বা একাধিক ব্যক্তি সমন্বয়ে গঠিত সংগঠন বা সংস্থাকে বুঝাইবে; এবং

(খ) "পরিচালক" অর্থে অংশীদার বা পরিচালনা বোর্ডের সদস্যও অন্তর্ভুক্ত হইবে।]

ষষ্ঠ অধ্যায়

বিবিধ

৫২। পুরস্কার, সম্মাননা ও ভাতা প্রদান, ইত্যাদি।—(১) সরকার দুর্যোগ ব্যবস্থাপনায় অসামান্য অবদানের স্বীকৃতি স্বরূপ কোন ব্যক্তি বা সংস্থাকে বিশেষ পুরস্কার ও সম্মাননা প্রদান করিতে পারিবে।

(২) দুর্যোগ পর্যবেক্ষণ ও আগাম সতর্কতা জারির কার্যক্রম হইতে শুরু করিয়া দুর্যোগ পরবর্তী কার্যক্রম পরিচালনায় সার্বক্ষণিকভাবে দায়িত্বপালনকারী কোন কর্মকর্তা বা কর্মচারীকে সরকার বিশেষ ভাতা প্রদান করিতে পারিবে।

(৩) উপ-ধারা (১)ও (২) এ উল্লিখিত পুরস্কার, সম্মাননা ও ভাতা প্রদানের পদ্ধতি ও পরিমাণ বিধি দ্বারা নির্ধারিত হইবে।

৫৩। আন্তর্জাতিক ও আঞ্চলিক চুক্তি প্রণয়নের ক্ষমতা।—(১) এই আইনের উদ্দেশ্য পূরণকল্পে সরকার দুর্যোগ ব্যবস্থাপনা সম্পর্কিত তথ্য উপাত্ত বিনিময়, বিশ্লেষণ ও গবেষণা এবং ভূ-উপগ্রহ ব্যবহারসহ দুর্যোগকালীন সময়ে ত্রাণ কার্য পরিচালনার জন্য যে কোন বিদেশী রাষ্ট্র, সরকার এবং আন্তর্জাতিক ও আঞ্চলিক সংস্থার সহযোগিতা গ্রহণ ও উহাদিগকে সহযোগিতা প্রদান করিতে পারিবে।

(২) উপ-ধারা (১) এর উদ্দেশ্য পূরণকল্পে সরকার যে কোন বিদেশী রাষ্ট্র, সরকার এবং আন্তর্জাতিক ও আঞ্চলিক সংস্থার সহিত প্রয়োজনীয় সমঝোতা স্মারক, চুক্তি, কনভেনশন, ট্রিটি বা অন্য যে কোন আইনগত দলিল সম্পাদন করিতে পারিবে।

৫৪। সরল বিশ্বাসে কৃত কাজকর্ম রক্ষণ।—এই আইন বা তদধীন প্রণীত বিধির অধীন সরল বিশ্বাসে, অবহেলা ব্যতিরেকে, কৃত কোন কার্যের জন্য বা কোন কার্য সম্পাদন করিবার উদ্যোগ গ্রহণের জন্য সরকার বা কোন সরকারি কর্মচারী বা এই আইনের অধীন গঠিত কোন কাউন্সিল, কমিটি বা গ্রুপ বা প্লাটফরমের কোন সদস্যদের বিরুদ্ধে কোন দেওয়ানী বা ফৌজদারি মামলা বা অন্য কোন আইনগত কার্যধারা রুজু করা যাইবে না।

৫৫। দুর্যোগ বিষয়ক স্থায়ী আদেশাবলীর প্রয়োগ, ইত্যাদি।—(১) এই আইনের অধীন বিধি প্রণীত না হওয়া পর্যন্ত, সরকার কর্তৃক প্রকাশিত দুর্যোগ বিষয়ক স্থায়ী আদেশাবলী, এই আইনের উদ্দেশ্য পূরণকল্পে, প্রয়োজনীয় অভিযোজনসহ, প্রযোজ্য হইবে।

(২) এই আইনের অধীন কাউন্সিল, জাতীয় স্বেচ্ছাসেবক সংগঠন, জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপ, কমিটি, প্লাটফরম, গ্রুপ বা টাস্কফোর্স, যে নামেই অভিহিত হউক না কেন, গঠিত না হওয়া পর্যন্ত, দুর্যোগ বিষয়ক স্থায়ী আদেশাবলীর অধীন গঠিত কাউন্সিল, জাতীয় স্বেচ্ছাসেবক সংগঠন জাতীয় দুর্যোগ সাড়াদান সমন্বয় গ্রুপ, কমিটি, প্লাটফরম, গ্রুপ বা টাস্কফোর্স, যদি থাকে, এই আইনের সহিত সামঞ্জস্যপূর্ণ হওয়া সাপেক্ষে, এমনভাবে কার্যকর থাকিবে যেন উহারা এই আইনের অধীনই গঠিত হইয়াছে।

৫৬। জটিলতা নিরসনে সরকারের ক্ষমতা।—এই আইনের কোন বিধানের অস্পষ্টতার কারণে উহা কার্যকর করিবার ক্ষেত্রে কোন জটিলতা বা অসুবিধা দেখা দিলে সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের বিধানাবলীর সহিত সঙ্গতিপূর্ণ হওয়া সাপেক্ষে, উক্ত বিধানের স্পষ্টীকরণ বা ব্যাখ্যা প্রদানপূর্বক উক্ত বিষয়ে করণীয় সম্পর্কে দিক-নির্দেশনা প্রদান করিতে পারিবে।

৫৭। আইনের কার্যকর বাস্তবায়নে সরকারের দায়িত্ব।—সরকার এই আইনের কার্যকর বাস্তবায়নের নিমিত্ত প্রয়োজনীয় সকল ব্যবস্থা গ্রহণ করিবে এবং এতদ্‌বিষয়ে, প্রয়োজনে, নির্দেশনা জারি করিতে পারিবে।

৫৮। বিধিমালা প্রণয়নের ক্ষমতা।—এই আইনের উদ্দেশ্য পূরণকল্পে সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, বিধিমালা প্রণয়ন করিতে পারিবে।

৫৯। ইংরেজিতে অনূদিত পাঠ প্রকাশ।—(১) এই আইন প্রবর্তনের পর সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের বাংলা পাঠের ইংরেজিতে অনূদিত একটি নির্ভরযোগ্য পাঠ (Authentic English Text) প্রকাশ করিতে পারিবে।

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

৬০। ত্রাণ ও পুনর্বাসন অধিদপ্তর এবং দুর্যোগ ব্যবস্থাপনা ব্যুরো এর বিলোপ, রূপান্তর, হেফাজত, ইত্যাদি।—(১) এই আইন কার্যকর

হইবার সংগে সংগে তদানীন্তন ত্রাণ ও পুনর্বাসন বিভাগের ৯-১-১৯৮৩ ও ২৯-১-১৯৮৪ খ্রিস্টাব্দ তারিখের, যথাক্রমে, RRD-Sec-Admin-I/67/82/35 ও Sec-Admin-II/5/84-30 সংখ্যক নির্বাহী আদেশ রহিত হইবে এবং উক্ত আদেশ দ্বারা গঠিত ও পুনঃগঠিত বিদ্যমান ত্রাণ ও পুনর্বাসন অধিদপ্তর, অতঃপর বিলুপ্ত অধিদপ্তর বলিয়া উল্লিখিত, বিলুপ্ত হইবে।

(২) উপ-ধারা (১) এর অধীন রহিত ও বিলুপ্ত হইবার সংগে সংগে বিলুপ্ত অধিদপ্তর, ধারা ৭ এর বিধান অনুসারে দুর্যোগ ব্যবস্থাপনা অধিদপ্তরে রূপান্তরিত হইবে এবং উক্ত বিলুপ্ত অধিদপ্তরের—

(ক) সকল সম্পদ, ক্ষমতা, কর্তৃত্ব, সুবিধাদি এবং স্থাবর ও অস্থাবর সম্পত্তি, নগদ ও ব্যাংকে গচ্ছিত অর্থ, প্রকল্প এবং অন্য সকল প্রকার দাবি ও অধিকার অধিদপ্তরে হস্তান্তরিত হইবে এবং অধিদপ্তর উহার স্বত্বাধিকারী হইবে;

(খ) বিরুদ্ধে বা তদ্‌কর্তৃক দায়েরকৃত সকল মামলা -মোকদ্দমা অধিদপ্তরের বিরুদ্ধে বা তদ্‌কর্তৃক দায়েরকৃত মামলা-মোকদ্দমা বলিয়া গণ্য হইবে;

(গ) সকল ঋণ দায় ও দায়িত্ব এবং উহার দ্বারা, উহার পক্ষে বা উহার সহিত সম্পাদিত সকল চুক্তি যথাক্রমে অধিদপ্তরের ঋণ, দায় ও দায়িত্ব এবং উহার দ্বারা, পক্ষে বা সহিত সম্পাদিত চুক্তি বলিয়া গণ্য হইবে;

(ঘ) সকল রেকর্ড,নথিপত্র, দলিল-দস্তাবেজ ও তথ্য-উপাত্ত অধিদপ্তরে স্থানান্তরিত হইবে এবং অধিদপ্তর উক্ত স্থানান্তরিত রেকর্ড, নথিপত্র, দলিল-দস্তাবেজ ও তথ্য-উপাত্ত সরকারি বিধি-বিধান অনুযায়ী সংরক্ষণ করিবে;

(ঙ) অধীন প্রতিষ্ঠিত বা স্থাপিত অধঃস্তন বা শাখা কার্যালয়ের, যে নামে ও স্থানেই প্রতিষ্ঠিত বা স্থাপিত হউক না কেন, কার্যক্রম এই আইনের অধীন অধিদপ্তরের অধঃস্তন বা শাখা কার্যালয় স্থাপিত না হওয়া পর্যন্ত বা, ক্ষেত্রমত, বিলুপ্ত না করা পর্যন্ত, এমনভাবে কার্যকর ও অব্যাহত থাকিবে যেন উহারা এই আইনের অধীন প্রতিষ্ঠিত বা স্থাপিত হইয়াছে;

(চ) প্রণীত ও জারিকৃত সকল আদেশ, নির্দেশ, নীতিমালা বা ইনস্ট্রুমেন্ট, এই আইনের সহিত সামঞ্জস্যপূর্ণ হওয়া সাপেক্ষে, একই বিষয় ও উদ্দেশ্যে অধিদপ্তর কর্তৃক প্রণীত ও জারি না হওয়া পর্যন্ত বা, ক্ষেত্রমত, বিলুপ্ত না করা পর্যন্ত, প্রয়োজনীয় অভিযোজনসহ, পূর্বের ন্যায় এমনভাবে চলমান, অব্যাহত ও কার্যকর থাকিবে যেন উহারা অধিদপ্তর কর্তৃক প্রণীত ও জারি হইয়াছে;

(ছ) গৃহীত কার্যক্রম, প্রদত্ত সিদ্ধান্ত, প্রশিক্ষণ বা অন্য কোন কর্মসূচি চলমান, অনিষ্পন্ন বা অবাস্তবায়িত থাকিলে উহা অধিদপ্তরের অধীনে এমনভাবে নিষ্পন্ন বা বাস্তবায়ন করা যাইবে যেন উক্ত কার্যক্রম, সিদ্ধান্ত, প্রশিক্ষণ বা কর্মসূচি অধিদপ্তর কর্তৃক গৃহীত হইয়াছে;

(জ) কর্মকর্তা ও কর্মচারীগণ যে নিয়ম ও শর্তে বিলুপ্ত অধিদপ্তরে কর্মরত ছিলেন, পরিবর্তিত বা পুনরাদেশ প্রদান না করা পর্যন্ত, সেই একই নিয়ম ও শর্তে অধিদপ্তরে বদলী হইয়া, অধিদপ্তরের নিয়ন্ত্রণাধীনে উহার কর্মকর্তা ও কর্মচারী হিসাবে কর্মরত থাকিবেন এবং পূর্বের নিয়মে বেতন, ভাতা ও সুবিধাদি প্রাপ্ত হইবেন;এবং

(ঝ) কর্মকর্তা ও কর্মচারীগণের জন্য প্রযোজ্য বিদ্যমান চাকুরি বিধিমালা, নিয়োগ বিধিমালা বা অন্য কোন লিগ্যাল ইনস্ট্রুমেন্ট, পরিবর্তিত বা পুনরাদেশ প্রদান না করা পর্যন্ত বা,ক্ষেত্রমত, বিলুপ্ত না করা পর্যন্ত, প্রয়োজনীয় অভিযোজনসহ, সেই একই নিয়ম ও শর্তে এমনভাবে অধিদপ্তরে বদলীকৃত বিলুপ্ত অধিদপ্তরের কর্মকর্তা ও কর্মচারীগণের ক্ষেত্রে বলবৎ থাকিবে যেন উক্ত চাকুরি বিধিমালা, নিয়োগ বিধিমালা বা লিগ্যাল ইনস্ট্রুমেন্ট এই আইনের অধীন প্রণীত হইয়াছে।

(৩) এই আইন কার্যকর হইবার সংগে সংগে তদানীন্তন ত্রাণ মন্ত্রণালয়ের ৮-৫-১৯৯৩ খ্রিস্টাব্দ তারিখের ত্রাণ/প্রশাসন-১/২৭/১৩/২৬০(৬৫) সংখ্যক অফিস স্মারক রহিত হইবে এবং উক্ত স্মারক দ্বারা গঠিত দুর্যোগ ব্যবস্থাপনা ব্যুরো, অতঃপর ব্যুরো বলিয়া উল্লিখিত,বিলুপ্ত হইবে।

(৪) উপ-ধারা (৩) এর অধীন রহিত ও বিলুপ্ত হইবার সংগে সংগে বিলুপ্ত ব্যুরোর—

(ক) সকল সম্পদ, ক্ষমতা, কর্তৃত্ব, সুবিধাদি এবং স্থাবর ও অস্থাবর সম্পত্তি, নগদ ও ব্যাংকে গচ্ছিত অর্থ, প্রকল্প এবং অন্য সকল প্রকার দাবি ও অধিকার অধিদপ্তরে হস্তান্তরিত হইবে এবং অধিদপ্তর উহার স্বত্বাধিকারী হইবে;

(খ) বিরুদ্ধে বা তদ্‌কর্তৃক দায়েরকৃত সকল মামলা-মোকদ্দমা অধিদপ্তরের বিরুদ্ধে বা তদ্‌কর্তৃক দায়েরকৃত মামলা-মোকদ্দমা বলিয়া গণ্য হইবে;

(গ) সকল ঋণ, দায় ও দায়িত্ব এবং উহার দ্বারা, উহার পক্ষে বা উহার সহিত সম্পাদিত সকল চুক্তি যথাক্রমে অধিদপ্তরের ঋণ, দায় ও দায়িত্ব এবং উহার দ্বারা,পক্ষে বা সহিত সম্পাদিত চুক্তি বলিয়া গণ্য হইবে;

(ঘ) সকল রেকর্ড. নথিপত্র. দলিল-দস্তাবেজ ও তথ্য-উপাত্ত অধিদপ্তরে স্থানান্তরিত হইবে এবং অধিদপ্তর উক্ত স্থানান্তরিত রেকর্ড, নথিপত্র, দলিল-দস্তাবেজ ও তথ্য-উপাত্ত সরকারি বিধি-বিধান অনুযায়ী সংরক্ষণ করিবে;

(ঙ) অধীন প্রতিষ্ঠিত বা স্থাপিত অধঃস্তন বা শাখা কার্যালয়ের, যে নামে ও স্থানেই প্রতিষ্ঠিত বা স্থাপিত হউক না কেন, কার্যক্রম এই আইনের অধীন অধিদপ্তরের অধঃস্তন বা শাখা কার্যালয় স্থাপিত না হওয়া পর্যন্ত বা, ক্ষেত্রমত, বিলুপ্ত না করা পর্যন্ত এমনভাবে কার্যকর ও অব্যাহত থাকিবে যেন উহারা এই আইনের অধীন প্রতিষ্ঠিত বা স্থাপিত হইয়াছে;

(চ) প্রণীত ও জারিকৃত সকল আদেশ, নির্দেশ, নীতিমালা বা ইনস্ট্রুমেন্ট, এই আইনের সহিত সামঞ্জস্যপূর্ণ হওয়া সাপেক্ষে, একই বিষয় ও উদ্দেশ্যে অধিদপ্তর কর্তৃক প্রণীত ও জারি না হওয়া পর্যন্ত বা ক্ষেত্রমত, বিলুপ্ত না করা পর্যন্ত, প্রয়োজনীয় অভিযোজনসহ, পূর্বের ন্যায় এমনভাবে চলমান, অব্যাহত ও কার্যকর থাকিবে যেন উহারা অধিদপ্তর কর্তৃক প্রণীত ও জারী হইয়াছে;

(ছ) গৃহীত কার্যক্রম, প্রদত্ত সিদ্ধান্ত, প্রশিক্ষণ বা অন্য কোন কর্মসূচি চলমান, অনিষ্পন্ন বা অবাস্তবায়িত থাকিলে উহা অধিদপ্তরের অধীনে এমনভাবে নিষ্পন্ন বা বাস্তবায়ন করা যাইবে যেন উক্ত কার্যক্রম, সিদ্ধান্ত, প্রশিক্ষণ বা কর্মসূচি অধিদপ্তর কর্তৃক গৃহীত হইয়াছে;

(জ) কর্মকর্তা ও কর্মচারীগণ যে নিয়ম ও শর্তে বিলুপ্ত ব্যুরোতে কর্মরত ছিলেন, পরিবর্তিত বা পুনরাদেশ প্রদান না করা পর্যন্ত, সেই একই নিয়ম ও শর্তে অধিদপ্তরের বদলী হওয়া, অধিদপ্তরের নিয়ন্ত্রণাধীনে উহার কর্মকর্তা ও কর্মচারী হিসাবে কর্মরত থাকিবেন এবং পূর্বের নিয়মে বেতন, ভাতা ও সুবিধাদি প্রাপ্ত হইবেন; এবং

(ঝ) কর্মকর্তা ও কর্মচারীগণের জন্য প্রযোজ্য বিদ্যমান চাকুরি বিধিমালা, নিয়োগ বিধিমালা বা অন্য কোন লিগ্যাল ইনস্ট্রুমেন্ট, পরিবর্তিত বা পুনরাদেশ প্রদান না করা পর্যন্ত বা, ক্ষেত্রমত, বিলুপ্ত না করা পর্যন্ত, প্রয়োজনীয় অভিযোজনসহ, সেই একই নিয়ম ও শর্তে এমনভাবে অধিদপ্তরে বদলীকৃত বিলুপ্ত ব্যুরোর কর্মকর্তা ও কর্মচারীগণের ক্ষেত্রে বলবৎ থাকিবে যেন উক্ত চাকুরি বিধিমালা, নিয়োগ বিধিমালা বা লিগ্যাল ইনস্ট্রুমেন্ট এই আইনের অধীন প্রণীত হইয়াছে।

(৫) অধিদপ্তর উপ-ধারা (১) এর অধীন বিলুপ্তি অধিদপ্তর এবং উপ-ধারা (৩) এর অধীন বিলুপ্ত ব্যুরো হইতে বদলীকৃত কর্মকর্তা ও কর্মচারীগণের জন্য, যথাশীঘ্র সম্ভব, নিম্নবর্ণিত বিষয়সমূহ বিবেচনায় লইয়া পারস্পরিক জ্যেষ্ঠতা নির্ধারণপূর্বক, সমন্বিত জ্যেষ্ঠতা তালিকা প্রস্তুত করিবে এবং উক্ত তালিকা সংরক্ষণ করিবে, যথা:—

(ক) সংশ্লিষ্ট পদে যোগদানের তারিখ হইতে জ্যেষ্ঠতা গণনা করিতে হইবে;

(খ) একই সময়ে একাধিক কর্মকর্তা বা কর্মচারী নিয়োগপ্রাপ্ত হইলে, সংশ্লিষ্ট বাছাই কমিটি বা নিয়োগকারী কর্তৃপক্ষ কর্তৃক প্রস্তুতকৃত মেধা তালিকা অনুসারে উক্ত কর্মকর্তা বা কর্মচারীগণের পারস্পরিক জ্যেষ্ঠতা নির্ধারণ করিতে হইবে;

(গ) পদোন্নতির ক্ষেত্রে পদোন্নতির আদেশ জারীর তারিখ হইতে অথবা উক্ত আদেশে যে তারিখ উল্লেখ থাকিবে সেই তারিখ হইতে পদোন্নতিপ্রাপ্ত কর্মকর্তা বা কর্মচারীর জ্যেষ্ঠতা গণনা করিতে হইবে;

(ঘ) একই সময়ে একাধিক কর্মকর্তা বা কর্মচারীকে পদোন্নতি প্রদান করা হইলে, যে পদ হইতে পদোন্নতি প্রদান করা হইয়াছে, সেই পদে তাহাদের পারস্পরিক জ্যেষ্ঠতার ভিত্তিতে পদোন্নতি প্রদত্ত পদে পারস্পরিক জ্যেষ্ঠতা নির্ধারণ করিতে হইবে;

(ঙ) একই তারিখে যোগদানকারী সরাসরি নিয়োগপ্রাপ্ত এবং পদোন্নতিপ্রাপ্ত কর্মকর্তা বা কর্মচারীর মধ্যে পদোন্নতিপ্রাপ্ত কর্মকর্তা বা কর্মচারীকে জ্যেষ্ঠতা প্রদান করিতে হইবে;

(চ) উপরি-উক্ত দফাসমূহে উল্লিখিতভাবে জ্যেষ্ঠতা গণনার ক্ষেত্রে একই তারিখের একাধিক কর্মকর্তা বা কর্মচারী বিবেচনাধীন থাকিলে, তাহাদের মধ্যে জন্ম তারিখ অনুযায়ী যিনি জ্যেষ্ঠ থাকিবেন, তাহাকে জ্যেষ্ঠতা প্রদান করিতে হইবে।

তফসিল

[ধারা ৩৫ ও ৪৩ দ্রষ্টব্য]

দুর্যোগ ব্যবস্থাপনায় জীবন ও সম্পদ রক্ষার জন্য জরুরি করণীয় ও দায়-দায়িত্ব

নং	জরুরি করণীয় ও দায়-দায়িত্বসমূহ
১.	সকল হাসপাতাল, ক্লিনিক, কমিউনিটি সেন্টার, শপিং মল, সিনেমা হল, রেস্তোরাঁ, কলকারখানা, ফ্যাক্টরি ও গুদামে আগ্নি ঝুঁকি অনুযায়ী যথাযথ অগ্নি প্রতিরোধ, অগ্নিনির্বাপন, অনুসন্ধান, উদ্ধার ও প্রাথমিক চিকিৎসা বিষয়ক সাজ-সরঞ্জামাদি স্থাপন ও সচল অবস্থায় মজুদ রাখিতে হইবে।
২.	সকল হাসপাতাল, ক্লিনিক, কমিউনিটি সেন্টার, শপিং মল, সিনেমা হল, রেস্তোরাঁ,কলকারখানা বা ফ্যাক্টরিতে আপদকালীন সময়ে নিরাপদ বহির্গমনের সুবিধার্থে অকুপেন্ট লোড (Occupant Load) অনুযায়ী জরুরি নির্গমন পথসহ একাধিক নির্গমন পথ রাখিতে হইবে এবং জরুরি নির্গমন পথ কোনদিকে তাহা ফ্লোর মার্কিং (Floor Marking) দ্বারা চিহ্নিত করিতে হইবে।
৩.	অগ্নিকাণ্ড, ভূমিকম্প, ভবনধস বা অন্যান্য দুর্যোগের সময় অগ্নি নির্বাপক ও উদ্ধারকারী যানবাহন চলাচলে প্রতিবন্ধকতা সৃষ্টি করা যাইবে না।
৪.	নদীপথে চলাচলকারী যাত্রীবাহী নৌযানে এবং সমুদ্রগামী মাছ ধরার নৌকা বা ট্রলারে পর্যাপ্ত সংখ্যক লাইফবয় (Lifebuoy), একটি ট্রানজিস্টার, বাঁশি, টর্চলাইট এবং দুর্যোগ প্রস্তুতিমূলক সরঞ্জামাদি রাখিতে হইবে।
৫.	আবহাওয়া অধিদপ্তর হইতে ৪ নম্বর স্থানীয় হুঁশিয়ারি সংকেত প্রদর্শনের জন্য বলা হইলে ১৫০ ফুট এবং ইহার কম দৈর্ঘ্যবিশিষ্ট নৌযানকে, যাহা ঘণ্টায় ৬১ কিলোমিটার বেগে প্রবাহিত ঝড়ো হাওয়া প্রতিরোধে সক্ষম নয়, অনতিবিলম্বে নিরাপদ আশ্রয়ে ফিরিয়া আসিতে হইবে।
৬.	পানির আগমন ও নির্গমন পথে এমন কোনরূপ বাধা সৃষ্টি করা যাইবে এমন কোন উন্নয়ন কাজ করা যাইবে না, যাহা জলাবদ্ধতার কারণ ঘটাইতে পারে কিংবা জনগণের দুর্ভোগ সৃষ্টি করিতে পারে।
৭.	বিদ্যুৎ খুঁটি এবং অন্যান্য বিপদজনক স্থাপনাসমূহে, যাহা আপদ ও দুর্যোগ সৃষ্টি করিতে পারে, 'বিপদ সংকেত চিহ্ন' স্থাপন করিতে হইবে।
৮.	আবাসিক এলাকা কিংবা কোন সাধারণ বিপনী বিতান বা মার্কেটে উচ্চ দাহ্যশীল কেমিক্যাল বা বিপদজনক কেমিক্যাল জাতীয় পর্দার্থ পর্যাপ্ত সুরক্ষা ব্যবস্থা ব্যতিরেকে মজুদ ও বিপণন করা যাইবে না।
৯.	সমুদ্র উপকূলের বালু ও বৃক্ষ অপসারণ বা কর্তন করা যাইবে না।
১০.	যুক্তিসঙ্গতভাবে কোন অস্বাভাবিক ঘটনা, যাহা দুর্যোগে পরিণত হইতে পারে, দৃষ্টিগোচর হইলে উহা তাৎক্ষণিকভাবে স্থানীয় দুর্যোগ ব্যবস্থাপনা সংক্রান্ত কোন কমিটির সভাপতি বা কোন সদস্য বা নিকটস্থ থানায় অবহিত করিতে হইবে।
১১.	পাহাড়ের ঢালে বা পাদদেশে পূর্বে স্থাপিত ঘর-বাড়ি, দোকান বা ব্যবসা প্রতিষ্ঠানে অবস্থানকারীদেরকে দুর্যোগপূর্ব, দুর্যোগকালীন বা দুর্যোগ পরবর্তী সময়ে অন্য কোন নিরাপদ স্থানে স্থানান্তরের নির্দেশনা বাস্তবায়নে প্রতিবন্ধকতা সৃষ্টি করা যাইবে না।

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Powers-of-Attorney Act, 1882 রহিতক্রমে একটি নূতন পাওয়ার অব অ্যাটর্নি আইন প্রণয়নের উদ্দেশ্যে প্রণীত আইন

যেহেতু Powers-of-Attorney Act, 1882 রহিতক্রমে, পাওয়ার অব অ্যাটর্নির মাধ্যমে কার্য-সম্পাদনের জন্য ক্ষমতা অর্পণ, উহার রেজিস্ট্রেশন এবং অবসানসহ অন্যান্য আনুষঙ্গিক বিধান সম্বলিত, একটি নূতন আইন প্রণয়ন করা সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইল ঃ—

১। **সংক্ষিপ্ত শিরোনাম ও প্রবর্তন**।—(১) এই আইন পাওয়ার অব অ্যাটর্নি আইন, ২০১২ নামে অভিহিত হইবে।

(২) সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, যে তারিখ নির্ধারণ করিবে সেই তারিখে এই আইন কার্যকর হইবে।

২। **সংজ্ঞা**।—বিষয় বা প্রসংগের পরিপন্থী কোন কিছু না থাকিলে, এই আইনে,—

(১) "পাওয়ার অব অ্যাটর্নি" অর্থ এমন কোন দলিল