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THE DHAKA LAW REPORTS

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Sixth Issue

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CONTENTS

Editorial and Journal	–	Bangladesh Statutes:	
Appellate Division	161-184	Acts, Ordinances, etc.	73-88
High Court Division	265-328		

DLR PUBLICATIONS :

		White Print Taka	News Print Taka
1	**Civil Reference (2005-2013) 2014**	**500**	*
2	**Transfer of Property Act** (4th Edition) 2013	**700**	*
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8	**Specific Relief Act** (5th Edition) 2007	**300**	*
9	**State Acquisition and Tenancy Act** (4th Edition) 2007	**850**	*
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13	20-Year Civil Digest 2005	700	*
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15	Evidence Act (4th Edition) 2004	500	*
16	Penal Code (1st Edition) 2003	800	*
17	Law on Bail (3rd Edition) 2003	250	*
18	Special Powers Act & Anti-Corruption Commission Act (8th Edition) 2004	650	*
19	Arbitration Act (3rd Edition) 2001	200	*

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drinking that Mostasim Billah is missing. Tofail Islam Hira on being questioned about the whereabouts of the victim said nothing. It was suspected that the accused-petitioner No.2 along with others might have kidnapped the victim with some ill motive.

4. The police took up investigation and on completion submitted charge-sheet against the accused petitioners and others under sections 302/201/34 of the Penal Code and under sections 7/30 of the Nari-o-Shishu Nirjatan Daman Ain, 2000 (the Ain 2000).

5. The Nari-o-Shishu Nirjatan Daman Tribunal (the Tribunal), Jamalpur tried the case against the accused petitioners and others for the offence under sections 7/8 and 30 of the aforesaid Ain, 2000 and convicted accused petitioner Nos.1-2 and sentenced each of them to suffer imprisonment for life and acquitted the accused petitioner No. 3.

6. The learned Sessions Judge, Jamalpur also took cognizance against them over the self-same occurrence under sections 302/201/34 of the Penal Code in Sessions Case No.35 of 2002.

7. Being aggrieved by the aforesaid proceedings of the Sessions Case No.35 of 2002 of the Court of Sessions Judge, Jamalpur the accused-petitioners filed an application under section 561A of the Code of Criminal Procedure being Criminal Miscellaneous Case No. 9813 of 2003 before the High Court Division and obtained Rule and stay. By the impugned judgment and order, the High Court Division discharged the Rule.

8. The accused-appellant herein filed Criminal Petition for Leave to Appeal No.208 of 2004 whereupon leave was granted to consider the following:

> "Whether in view of the fact that the occurrence arose out of the same transaction and that the Nari-o-Shishu Nirjatan Daman Tribunal had the power under section 27(3) of the Nari-o-Shishu Nirjatan Daman Ain, 2000 to frame charge and try all the offences together in the previous trial. Therefore, the second trial in Session Case No. 35 of 2002 of the Court of Sessions Judge, Jamalpur is barred under the aforesaid provision of law as well as under Article 35 of the Constitution and, as such, the High Court Division erred in law in not quashing the proceeding of Sessions Case No.3 of 2002 arising out of Jamalpur Case No.3 dated 1-6-2001 corresponding to GR No. 507(2)2001 pending in the Court of Sessions Judge, Jamalpur".

9. Mr Md Nawab Ali, the learned Advocate-on-Record appearing on behalf of the appellants submitted that for the selfsame occurrence the appellants were tried for offences under sections 7/8/30 of the Ain, 2000 and the appellant Nos.1 and 2 were convicted by the Tribunal by the judgment and order of conviction and sentence dated 30-4-2003 and sentenced to suffer rigorous imprisonment for life. The appellant No.3 was acquitted from the charge levelled against him. He submitted that the High Court Division, therefore, erred in allowing continuation of the proceedings under sections 302/2011/34 of the Penal Code which arose out of the self same occurrence. He also submitted that the appellants would thereby be subjected to double jeopardy if they are made to suffer the trial again for the death and disappearance of the same victim, for which they have already been tried, convicted and sentenced. He finally submitted that the Tribunal had the power to try the offences under sections 302/201/34 of the Penal Code simultaneously as provided by section 27(3) of the Ain, 2000. That having not been done, the second trial over the same occurrence by the Court of Sessions is barred under Article 35 of the Constitution.

10. Mr Sorwar Ahmed, the learned Deputy Attorney-General appearing on behalf of the State made submissions in support of the impugned judgment of the High Court Division. He submitted that the offences under the Penal Code now charged by the Court of Sessions are distinct and separate from those for which the appellants were charged and tried under the Ain, 2000. He further submitted that there is no bar in the present trial under the law. He

conceded that the trial of the offences under sections 302/201/34 of the Penal Code could have been tried by the Tribunal under the power given in section 27(3) of the Ain, 2000, but that having not been done there is no illegality in trying the appellants for the offences under the Penal Code for which they were not tried earlier

11. We have considered the submissions of the learned Advocate-on-Record for the appellants and the learned Deputy Attorney-General for the respondent and perused the impugned judgment of the High Court Division and other connected papers on record.

12. Section 7 of the Ain, 2000 concerns abduction of any woman or child for any of the purposes mentioned in section 5 of the Ain. Section 8 of the Ain, 2000 concerns the offence of confining any woman or child for the purpose of extracting ransom. Section 30 covers the instigation of such offences as mentioned above. Quite clearly the offences under sections 302/201/34 of the Penal Code alleged to have been committed by the appellants have not been considered by any Court or tribunal. It is true that section 27(3) of the Ain, 2000 empowers the Bicharak of the Tribunal to try any other related offences simultaneously if it is necessary to try them together for ends of justice. Therefore, there was apparent oversight on the pan of the Bicharak of the Tribunal at the time of framing the charge. Nevertheless, we are of the view that there is no bar for the trial to proceed against the appellants for the offences under sections 302/201/34 of the Penal Code. The appellants have not been tried for these offences, and, therefore, there is no violation, of Article 35 of the Constitution.

13. However, if the offences under the said Ain, 2000 and those under the Penal Code were tried together then at the time of sentencing certain norms would have been followed. Hence, if upon conclusion of the trial by the Court of Sessions, the appellants, who are now charged with the offences under the Penal Code, are found guilty then the trial Judge will be bound to take into account the fact that the accused persons are already undergoing their sentences awarded to them for the self same occurrence. The trial Judge is directed to keep in view the existing sentence of the appellants if and when awarding any sentence in due course. If the appellants are convicted then the trial Judge is at liberty to pass sentence in accordance with law keeping in mind the earlier sentence awarded by the Tribunal.

14. With the observations and direction made above, the appeal is dismissed.

Ed.

APPELLATE DIVISION
(Civil)

Syed Mahmud Hossain J Md Imman Ali J Md Anwarul Haque J	Lakshmi Bala Sen and others .....Appellants vs Tarun Tapan Dutta @ Tapan Kumar Dutta and others..... .....Respondents*
Judgment January 30th, 2014.	

State Acquisition & Tenancy Act (XXVIII of 1951) **Section 95A**

The condition giving right of repurchase survived when President's Order No.88 of 1972 came into effect and, as such, the sale in the case had become a complete usufructuary mortgage within the meaning of section 95A of the Act. .....(21)

Somedullah being dead his heirs: Saifa Bibi vs Mahmud Ali being dead his heirs: Munsur Ali, (1992) 44 DLR (AD) 83 and Bangladesh vs Haji Abdul Gani Biswas, (1980) 32 DLR (AD) 233 ref.

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*Civil Appeal No. 21 of 2003

(From the judgment and decree dated 23-7-2001 passed by the High Court Division in Civil Revision No.4621 of 1998).

Khan Saiful Haque, Advocate, instructed by Zainul Abedin, Advocate-on-Record—For the Appellants.

Abdul Wadud Bhuiyan, Senior Advocate, instructed by Md Nawab Ali, Advocate-on-Record—For Respondent No.1.

None represented—Respondent Nos.2-7.

Judgment

Syed Mahmud Hossain J: This appeal by leave by the defendants-appellants is directed against the judgment and order dated 23-7-2001 passed by the High Court Division in Civil Revision No.4621 of 1998 making the Rule absolute and setting aside the judgment and decree dated 29-7-1998 passed by the learned Additional District Judge, Second Court, Chittagong, in Other Appeal No.494 of 1986 reversing those dated 31-7-1986 passed by the learned Subordinate Judge (now Joint District Judge), First Commercial Court, Chittagong in Mortgage Suit No.46 of 1985 decreeing the suit for redemption.

2. The facts, leading to this appeal, are précised below:

Respondent No.1 as the plaintiff instituted Mortgage Suit No.68 of 1978 in the Third Court of Subordinate Judge, Chittagong for redemption of 1.25 acres of lands described in schedules 1 and 2 to the plaint. His case, in short, is that the disputed property described in the schedule to the plaint belonged to late Prasanna Kumar Dutta, father of the plaintiff and proforma defendants by purchase and exchange. The father of the plaintiff mortgaged the disputed property to defendant Nos.1, 2, and 3 and father of defendant Nos.4-6 for Tk.6000 (six thousand) by a mortgage deed dated 25-11-1962 registered on 13-12-1962 and delivered the possession of the mortgaged land to the mortgagee that with a view to avoiding legal complications. The deed was executed as a deed of sale but from the long period of 10 years mentioned in the deed as well as from the subsequent conducts of the parties, it would clearly appear that the intention of the parties was to make it a mortgage by conditional sale. The mortgage was to be redeemed within 10 years. The mortgagees enjoyed the mortgaged properties for over 15 years for the principal amount and maximum interest available to the mortgagees thereon. Anukul Dutta and Natun Dutta were co-sharers in the khatian of the mortgaged land. Kuntala Dutta, daughter of Anukul Dutta, instituted Partition Suit No.39 of 1964 in the Third Court of Subordinate Judge, Chittagong for partition of the suit land along with other ejmali land. The said partition suit was disposed of on 10.8.1968 on the basis of a solenama, which was made part of the decree. In the sole decree, it was provided that the suit land being in mortgage by conditional sale would be partitioned after redemption and after redemption, the heirs of Prasanna Kumar (the plaintiff and defendant Nos.7 to 13 of the said partition suit) would get $^1/_3$ rd share in the present suit land. The plaintiff filed Miscellaneous Case No.178 of 1972-73 in the Court of the then Sub-Divisional Officer, Chittagong for redemption of the suit land. The Sub-Divisional Officer by his order dated 21-2-1974 allowed the redemption and directed the defendants (appellants herein) under section 95 of the State Acquisition and Tenancy Act to restore possession to the plaintiff by 10-3-1974. Meanwhile, the High Court Division declared the relevant law as illegal and void and, as such, the plaintiff has subsequently instituted the present suit for the reliefs as stated above in the plaint. The defendants in Pre-emption Case No.106 of 1973 in the Court of Munsif, First Court, Chittagong, admitted that the suit land is mortgaged property.

3. The appellants herein who were defendant Nos.1-6 contested the suit by filing written statement denying all the material statements made in the plaint. Their case, in short, is that

defendant Nos.1-3 and father of defendant Nos.4-6 purchased the suit land from Prasanna Kumar Dutta, father of the plaintiff by registered deed of sale dated 25-11-1962 which was an out and out deed of sale with a condition of repurchase within 10 years from the date of the deed of sale. Prassana Kumar Dutta did never repay the consideration money and, as such, his heirs have no right to repay the money after the death of their father Prasanna Kumar Dutta and after expiry of 10 years. With the efflux of time, the sale became absolute.

4. The learned Subordinate Judge (now Joint District Judge) upon hearing the parties by his judgment and order dated 31-7-1986 decreed the suit.

5. Against the judgment and decree of the trial Court, defendant Nos.1-6 preferred Other Appeal No.494 of 1986 before the learned District Judge, Chittagong. On transfer, the appeal was heard and disposed of by the learned Additional District Judge, Second Court, Chittagong, who by his judgment and order dated 29-7-1998 allowed the appeal.

6. Being aggrieved by and dissatisfied with the judgment and decree passed by the appellate Court, the plaintiff filed a revisional application before the High Court Division and obtained Rule in Civil Revision No.4621 of 1998. The High Court Division by the judgment and order dated 23-7-2001 made the Rule absolute setting aside the judgment and decree passed by the appellate Court.

7. Feeling aggrieved by and dissatisfied with judgment and order dated 23-7-2001 passed by the High Court Division, the leave-petitioners moved this Division by filing Civil Petition for Leave to Appeal No.1938 of 2001, in which, leave was granted on 30-10-2002 resulting in the initiation of Civil Appeal No.21 of 2003.

8. Mr Khan Saiful Haque, learned Advocate appearing on behalf of the appellants, submits that defendant Nos.1-3 father of defendant Nos.4-6 purchased the suit land from Prassana Kumar Dutta, father of the plaintiff, by a registered deed of sale dated 25-11-1962 which was an out and out sale with a condition of repurchased within 10 years from the date of the deed of sale and that Prassana Kumar Dutta did never repay the consideration money and, as such, his heirs do not have any right to repay the money and that after expiry of 10 years, the sale became absolute and that the High Court Division without considering the above admitted facts discharged the Rule reversing the judgment and decree of the appellate Court and affirming the judgment of the trial Court and, as such, the impugned judgment should be set-aside.

9. In support of his contention, the learned Advocate relied on the case of *Somedullah being dead his heirs: Saifa Bibi vs Mahmud Ali being dead his heirs: Munsur Ali and others, (1992) 44 DLR (AD) 83.*

10. Mr Abdul Wadud Bhuiyan, learned Senior Advocate, appearing on behalf of the plaintiff-respondent, on the other hand, submits that according to section 95A of the State Acquisition and Tenancy Act, the transaction is a complete usufrutuary mortgage as the right of repurchase was up to 25-11-1972 and President's Order No.88 of 1972 came into effect on 3-8-1972 and, as such, no interference is called for.

11. We have considered the submissions of the learned Advocates, perused the impugned judgment and the materials on record.

12. To begin with, it is necessary to go through the submissions of the learned Counsel, on which, leave was granted which are as under:

> "The learned Judge of the High Court Division having misconstrued and misinterpreted the sale deed exhibit-1 dated 25-11-1962 and thereby committed error of law in

holding that the said exhibit-1 constitute a deed of mortgage and not a deed of out and out in view of the principle of law as laid down in the cases reported in *1951 PLR page 349* and in the case reported in *44 DLR (AD) page 83."*

13. Admittedly, father of the plaintiff, Prassana Kumar Dutta sold the suit property by a registered deed of sale dated 25-11-1962 with a condition of repurchase within 10 years from the date of the deed of sale to defendant Nos.1-3 and father of defendant Nos.4-6.

14. Sub-sections 4 and 5 of section 95 and section 95A of the State Acquisition and Tenancy Act were introduced by President's Order No.88 of 1972 on 30-8-1972.

15. Initially the plaintiff filed Miscellaneous Case No.178/72-73 in the Court of the then Sub-divisional Officer, Chittagong for redemption of the suit land and the then Sub-divisional Officer by his order dated 21-2-1974 allowed redemption and directed the defendants under section 95 of the State Acquisition and Tenancy Act to restore the possession of the suit land to the plaintiff on 10-3-1974. Meanwhile, the High Court Division declared the relevant law illegal and void and, as such, the plaintiff subsequently instituted the suit for the reliefs as stated in the plaint. In the case of *Bangladesh vs Haji Abdul Gani Biswas, (1980) 32 DLR (AD) 233,* the Appellate Division found that President's Order Nos.88 and 136 of 1974 and 24 of 1973 were valid legislation affecting necessary amendments in the East Bengal State Acquisition and Tenancy Act and those laws cannot be attacked on the ground of *ultra vires*. The Appellate Division further held as under:

"(2) any transfer of a holding or part thereof by a raiyat either way of out and out sale with an agreement to reconvey or where to transfer or receives from the transferee any consideration and transferee acquires the right to possess and enjoy the usufruct, shall notwithstanding anything contained in the document relating to the transfer, be deemed to be a complete usufructuary mortgage for a period of maximum 7 years and the provisions of sections 95(4) and (5) shall apply to such transfers; (3) and such transfers are not to be understood in the light of the Transfer of Property Act because those are to be understood in the light of the enactment in question: (4) those transactions which are subsisting on the date of promulgation of President's Order No.88 of 1972 are hit by section 95A including the transaction entered into by way of an out and out sale with an agreement to recovery, made whether before or after the promulgation of President's Order No.88 of 1972: and (5) as for the transactions which are not alive before the promulgation of President's Order No.88 of 1972 they are concluded by the transactions past and closed."

16. From the principle laid down in the above judgment, it appears that transactions which were subsisting on the date of promulgation of President's Order No.88 of 1972 are hit by section 95A including transactions entered into way of an out and out sale with an agreement to reconvey made whether before or after promulgation of President's Order No.88 of 1972 and that the transactions which are not alive before promulgation of President's Order No.88 of 1972 they are concluded by transactions past and closed.

17. In this connection, it is also pertinent to quote section 95A of the State Acquisition and Tenancy Act as under:

"95A. Treatment of certain transaction as usufructuary mortgage—Notwithstanding anything contained in any other law for the time being in force, any transfer of a holding or of portion or share thereof, either by way of an out and out sale with an agreement to reconvey, or where the transferor receives from the transferee any considera-

tion and the transferee acquires the right to possess, and to enjoy the usufruct of such holding or portion or share thereof for a specified period in lieu of such consideration, shall notwithstanding anything contained in the document relating to the transfer, be deemed to be a complete usufructuary mortgage for a period not exceeding seven years and the provisions of section 95 shall apply to such transfer whether made before or after the date of commencement of the State Acquisition and Tenancy (Second Amendment) Order, 1972] (President's Order No.88 of 1972)."

18. Having considered section 95A and the principle laid down in the case of *Bangladesh vs Haji Abdul Gani Biswas (ibid),* it appears that the sale of the present case having been made on 25-11-1962 with the condition of repurchase within 10 years from the date of the deed of sale and the condition giving right of repurchase having survived till introduction of section 95A of the State Acquisition and Tenancy Act, vide, President's Order No.88 of 1972 had become a complete usufructuary mortgage and the period of redemption is 60 years.

19. In the leave granting order, the case of *Somedullah being dead his heirs: Saifa Bibi vs Mahmud Ali being dead his heirs: Munsur Ali, 44 DLR (AD) 83* was mentioned wherein their Lordships were of the opinion that when a property was sold with a condition of repurchase in the same deed in that event a question may arise as to whether the transaction is a mortgage or an out and out sale has to be determined on seven tests which are as under:

> "(i) the existence of debt, (ii) the period of payment-a short period being indicative of a sale and a long period of a mortgage; (iii) possession of the property, the continuance of the grantor in possession indicating a mortgage; (iv) existence or otherwise of a stipulation for interest on repayment indicating a mortgage; (v) adequacy or inadequacy of the consideration, an inadequate price indicating a mortgage; (vi)presence or otherwise of the stipulation of reconveyance embodied in the deed being *prima facie* an indication that the transaction is a mortgage; and (vii) purchase of stamps and payment of registration costs, the same, if done by the transferee, being indicative of a sale."

20. In the above case, the property was sold on 25-10-1928 with a condition to repurchase within 10 years. Their Lordships in the light of the principles deduced in that case held that it was an out and out sale with a condition of purchase and condition of purchase having expired the sale became a past and closed transaction and the plaintiff was not entitled to get any relief on the ground that the property was a mortgaged property.

21. In the case in hand, the plaintiff's father sold the suit property on 25-5-1962 with a condition of repurchase within 10 years, i.e. till 24-11-1972 and President's Order No.88 of 1972 came into effect on 3-8-1972 and the condition giving right of repurchase survived when President's Order No.88 of 1972 came into effect and, as such, the sale in the present case had become a complete usufructuary mortgage within the meaning of section 95A of the State Acquisition and Tenancy Act. Therefore, the case of Somedullah (ibid) has no manner of application on the facts and in the circumstances of the present case.

Having gone through the impugned judgment, it appears that the High Court Division has given many unnecessary findings while making the Rule absolute. The ultimate result of the High Court Division is, however, correct. In such view of the matter, we do not find any substance in this appeal. Accordingly, the appeal is dismissed without any order as to costs.

Ed.

APPELLATE DIVISION
(Criminal)

Nazmun Ara Sultan J
Syed Mahmud Hossain J
Md Imman Ali J
Md Anwarul Haque J

Judgment
February 13th, 2014.

Sukur Mahmood and others.....Petitioners.

vs

State.....
.....Respondent*

Nari-o-Shishu Nirjatan (Bishesh Bidhan) Ain (XVIII of 1995)
Section 22

Statement of victim—The doctor as to age is belied by the fact that his report shows the taking place of menarche one year back. In context of development of girls in Bangladesh the age stated by the victim would be more commensurate with menarche having started one year previously. .....(16)

Shamsul Huq, Advocate, instructed by Md Abu Siddique, Advocate-on-Record—For the Petitioners.

None represented—Respondent.

Judgment

Syed Mahmud Hossain J: This criminal petition for leave to appeal is directed against the judgment and order dated 14-2-2010 passed by a Division Bench of the High Court Division in Criminal Appeal No.1691 of 2001 challenging the judgment and order dated 24-4-2001 passed by the Nari-o-Shishu Nirjatan (Daman) Bishesh Adalot No.3, Tangail in Nari-o-Shishu Nirjatan Daman Case No.150 of 1999 convicting the accused-appellants under section 8(1) of the Nari-o-Shishu Nirjatan (Bishesh Bidhan) Ain,1995 and sentencing each of them to suffer imprisonment for life and also to pay a fine of Taka.5,000 each, in default, to suffer imprisonment for 1 (one) year more.

2. The facts, leading to the filing of this criminal petition for leave to appeal, in a nutshell, are:

3. The prosecution case is that on 1-12-1998, Md Moslemuddin lodged a First Information Report with Shakhipur Police Station against the appellant-petitioner. The informant is a poor man and he has been earning his livelihood as a day labourer. About five months back, the accused-petitioners took his minor daughter, Nazma Khatun, to Tangail to provide her with a job at a monthly salary of Taka 300 on the assurance that his daughter would be happy in Tangail in the house of their relatives and she would be given in marriage to a good boy. Believing in the assurance of the accused-petitioners, the informant allowed his daughter to go with them. The assurance was also given that within 10/15 days, she would come back. Accordingly, the informant was eagerly waiting but meanwhile 3/4 months elapsed. Then the informant exerted pressure upon the accused-petitioners through village 'elites' but at that time they denied taking his daughter. The informant then tried to trace out his daughter in different places. After that, he came to know that the accused-petitioners very tactfully sold his daughter in the brothel and her name was changed to Dilara who kept in the room of 'Jharna', the leader of the brothel. She was compelled to lead her life as a prostitute. On getting such news, the informant along with Md Fayez Uddin Sentu, Shah Alam went to the Police Station and with the help of the police force recovered his daughter on 29-11-1998 at 7-00 o'clock from the brothel and she was taken in his custody. Hence Shakhipur Police Station Case No.1/106 dated 1-12-1998 was started against the accused-petitioners.

4. Police took up investigation of the case and on conclusion thereof, submitted charge-sheet

*Criminal Petition for Leave to Appeal No.389 of 2010.

(From the judgment and order dated 14-2-2010 passed by the High Court Division in Criminal Appeal No.1691 of 2001)

against accused petitioners under section 8(1) of the Nari-o-Shishu Nirjatan (Bishesh Bidhan) Ain,1995.

5. The case record was transmitted to the Court of the learned Judge, Nari-o-Shishu Nirjatan Daman Bishesh Adalat No.3, Tangail for trial where it was registered as Nari-o-Shishu Nirjatan Daman Case No.150 of 1999.

6. The prosecution examined thirteen witnesses in support of its case while defence examined none.

7. The defence case as could be gathered from the trend of cross-examination of the prosecution witnesses is of total denial contending, *inter-alia,* that the accused were falsely implicated in this case out of enmity inasmuch as they were not responsible for/connected with the occurrence. The alleged confessional statement is not true and voluntary and the same is the product of physical/mental torture.

8. After close of the prosecution case, the accused-petitioners in the dock were examined under section 342 of the Code of Criminal Procedure, to which, they pleaded not guilty and repeated their innocence. The defence, did not, however, examine any witness.

9. The learned Judge of Nari-o-Shishu Nirjatan Daman Bishesh Adalat No.3, Tangail, found the accused-petitioners guilty of the offence charged and by his judgment and order dated 24-4-2001 convicted the accused-petitioners under section 8(1) of the Nari-o-Shishu Nirjatan (Bishesh Bidhan) Ain,1995 and sentenced each of them to suffer imprisonment for life and also to pay a fine of Taka 5,000 each, in default, to suffer imprisonment for 1 (one) year more.

10. Being aggrieved by and dissatisfied with the judgment and order of the trial Court, the convict-petitioners moved the High Court Division by filing Criminal Appeal No.1691 2001. The learned Judges of the High Court Division upon hearing both the sides by their judgment and order dated 14-2-2010 dismissed the appeal affirming the judgment and order passed by the learned Judge of Nari-o-Shishu Nirjatan (Daman) Bishesh Adalat No.3, Tangail.

11. Feeling aggrieved by and dissatisfied with the judgment and order passed by the High Court Division, the leave petitioners preferred this criminal petition for leave to appeal before this Division.

12. Mr Md Shamsul Huq, learned Advocate appearing on behalf of the leave petitioners, submits that the High Court Division has failed to consider that the trial Court fell into serious error in law in not considering the inherent defect of the prosecution case in that there was a GD Entry being No.1347 dated 29-11-1998 which did not tally with the facts set forth in the FIR filed by the informant and in that view of the matter, the petitioners should have been acquitted by giving benefit of doubt and, as such, the impugned judgment should be set-aside. He further submits that PW 6, Abdul Baset and PW 9, Asia Begum, the brother and the mother respectively of the victim did not support the prosecution case and that without considering their evidence, the High Court Division maintained the conviction and sentence of the accused-petitioners and, as such, the impugned judgment should be set-aside.

13. We have considered the submissions of the learned Advocate, perused the impugned judgment and the materials on record.

14. The High Court Division came to a finding that the petition of complaint was lodged on 30-11-1998 and that the FIR was lodged on 01-12-1998 and that while she was recovered from the brothel on 30-11-1998, police went to the brothel on 29-11-1998 on the basis of GD No.1398 dated 30-11-1998 which was made for the security of the victim and that after recovery

of the victim, the FIR was lodged. The High Court Division further found that PW1, the informant and PW 2, the victim and PWs 4 and 5 deposed that the accused took the victim with a promise to give her job and without doing so they sold her to a brothel and that there was no contradiction in the evidence of the victim and that of her father, PW1.

15. The High Court Division noticed that PW 6 Abdul Baset is not the full brother of PW 2, Nazma and that PW 7, Asia Begum is not the mother of the victim; rather PW 7 is the step mother of the victim. With reference to the affidavit filed by the petitioners, the High Court Division found that the petitioners tried to impress upon that the victim of her own volition went to the brothel but that the said affidavit was neither properly exhibited nor was it filed in the trial Court and that the victim denied making any affidavit. The High Court Division having considered the evidence of doctor, PW 9 and the medical report, exhibit-1 found that the age of the victim was about 17 years on the date of her examination and that the victim in her evidence claimed that she was about 13 or 14 years old.

16. The finding of the doctor as to age is belied by the fact that his report shows the taking place of menarche one year back. In context of development of girls in Bangladesh the age stated by the victim would be more commensurate with menarche having started one year previously.

17. The accused-petitioners having no morality could dare to sell the victim PW 2, Nazma to a brothel. They were convicted under section 8(1) of the Nari-o-Shishu Nirjatan (Bishesh Bidhan) Ain,1995 and sentenced them to suffer imprisonment for life. The order of conviction and sentence was rightly affirmed by the High Court Division.

18. The conviction and sentence will serve as a deterrent and reminds us of Dr Martin Luther King Jr. who once stated as under:

> "Morality cannot be legislated, but behaviour can be regulated. Judicial decrees may not change the heart, but they can restrain the heartless."

The findings of the High Court Division having been made on proper appreciation on evidence of PWs and other documentary evidence do not call for interference. Accordingly, this criminal petition for leave to appeal is dismissed.

Ed.

APPELLATE DIVISION
(Civil)

Surendra Kumar Sinha J Md Abdul Wahhab Miah J Hasan Foez Siddique J	SM Redwan..... .....Appellant (In Crl A No.30of 2004) vs Md Rezaul Islam and others....Respondent* (in both the cases)
Judgment October 9th, 2013.	

Code of Criminal Procedure (V of 1898)
Section 561A

Negotiable Instruments Act (XXVI of 1881)
Section 138

Stop Payment—Since the cheques were returned by bank with the endorsement "payment stopped by the drawer" it is to be presumed that those were returned unpaid because the amount of money standing to the credit of that account was insufficient to honour of the cheque as envisaged in section 138 of the Act. Of course this is a rebuttable presumption. The defence can be considered at the time of holding trial and not in an application under section 561 A of the Code. .....(22)

*Criminal Appeal Nos. 30 and 31 of 2004.

(From the judgment and order dated 9-2-2003 passed by the High Court Division in Criminal Miscellaneous Case Nos. 2 788 of 2000 and 5752 of 1999

Arif-uz-Zaman vs State, 17 BLC (AD) 167; Electronics Trade and Technology Development Corporation Limited vs Indian Technologists and Engineers (Electronics) (P) Ltd (1996)2 SCC 739; Modi Cements Ltd. (1998) 3 SCC 249 vs Kuchil Kumer Nandi ; MMTC Ltd. vs Medical Chemicals and Pharma (P) Ltd. (2002) 1 SCC 234 and KK Sidharthan TP Praveena Chandran (1996) 6 SCC 69 ref.

Md Nawab Ali, Advocate-on-Record—For the Appellant. (In both the cases)

Ex-parte—Respondent. (In Crl A No. 30 of 2004)

ASM Khalequzzaman, Advocate-on-Record—For Respondent No. 3. (In Crl A No. 31 of 2004)

None representred—Respondent Nos. 1-2. (In Crl A No. 31 of 2004)

Judgment

Hasan Foez Siddique J: These two appeals being Criminal Appeal Nos.30 and 31 of 2004 involve a pure question of law as to the applicability of section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "Act") to a case in which a person issuing a cheque stopped its payment by issuing instruction to the drawee bank before payment.

2. In Criminal Appeal No. 30 of 2004, the complainant-appellant SM Redwan challenged the judgment and order dated 9-2-2003 passed by a Division Bench of the High Court Division in Criminal Miscellaneous Case No. 2788 of 1999 quashing the proceeding of CR Case No.4690 of 1999 started on a complaint filed by him under section 138 of the Act.

3. In Criminal Appeal No.31 of 2004 the complainant-appellant ANM Kamrul Islam challenged the legality of the judgment and order dated 9-2-2003 passed by a Division Bench of the High Court Division in Criminal Miscellaneous Case No.5752 of 1999 quashing the proceeding of CR Case No.2337 of 1999 initiated on a complaint under section 138 of the Act.

4. In Criminal Appeal No.30 of 2004, facts relevant for the disposal of the appeal are that the respondent No.1 (hereinafter referred to as the respondent) received Taka.10,00,000 as earnest money out of total consideration of Taka 29,25,000 to sell the land measuring 2.14$^{1}/_{2}$ 2.145 acres and executed a "bainanama". He issued a public notice through his lawyer in a daily newspaper on 14-11-1998 about the story of said "bainanama". Some people, responding the notice, claimed that they are the owners of the said land and the respondent and his wife Shamsun Nahar have had no title and possession therein. The complainant informed that story to the respondent who failed to answer properly. Accordingly, the complainant requested him to return the said amount. The respondent issued a cheque bearing No. NCCBB 3114709 dated 15-5-1999 for a sum of Taka 3,00,000 in favour of the complainant who presented the said cheque for encashment but the said cheque was returned to him as unpaid with an endorsement, "payment stopped by the drawer." Thereafter, the complainant issued notice in terms of section 138 of the Act demanding payment of the aforesaid amount under the cheque which was duly served upon the respondent. The respondent failed and neglected to make payment of the amount of the cheque within the stipulated period. Then the appellant filed the instant complaint. The respondent entered appearance in obedience to the process issued in connection with the CR Case No.4690 of 1999 and then filed application under section 561A of the Code of Criminal Procedure in the High Court Division and obtained Rule and the said Rule was ultimately made absolute. Then the complainant preferred this appeal getting leave.

5. In Criminal Appeal No.31 of 2004, the facts are almost identical. The respondent Rezaul

Islam issued Cheque No.3114708 on 14-3-1999 for a sum of Taka.4,00,000 in favour of appellant ANM Kamrul Islam in order to repay the amount received by him to sell some landed property. The said cheque was presented by the appellant complainant for encashment in the bank which was returned with an endorsement "payment stopped by the drawer." Then the complainant-appellant issued notice in terms of section 138 of the Act but the respondent failed to respond and, thereafter, the appellant filed the instant complaint. The Metropolitan Magistrate took cognizance of the offence and issued process. The respondent surrendered and obtained bail and, thereafter, filed application under section 561A of the Code of Criminal Procedure in the High Court Division and obtained Rule which was subsequently made absolute by the judgment and order dated 9-2-2003 in Criminal Miscellaneous Case No.5752 of 1999.

6. In both the cases, the High Court Division held that since the endorsement "payment stopped by the drawer" does not attract insufficiency of fund or exist arrangement as contemplated in section 138 of the Act, the criminal proceedings initiated against the respondent were abuse of the process of the Court.

7. Leave was granted to consider the submission of the appellants that whether the High Court Division acted illegally in making the Rule absolute holding that the cheques which were returned with the endorsements 'payment stopped by the drawer' do not and cannot anyway be interpreted that the cheques were returned un-cashed for insufficiency of fund and there is no ambiguity in the section to interprete it otherwise in view of the legal position that the main issue is the dishonour of a cheque by the bank due to fraudulent action of the drawer and if the view taken by the High Court Division that payment stopped by the drawer does not come within the scope of section 138 of the Act, is allowed to hold the field the defaulters would resort to that mode of operation after issuing the cheque to serve their designed purpose.

8. Mr Md Nawab Ali, Advocate-on- Record appearing on behalf of the appellants, in his submissions reiterated the submissions made in the leave granting orders.

9. Mr AKM Khalequzzaman, Advocate- on-Record appeared for the respondent in Criminal Appeal No.31 of 2004. In his submission he supported the Judgment and order of the High Court Division.

10. In Criminal Appeal No.30 of 2004 no one appeared for the respondent.

11. We have heard the learned Advocate- on-Record for the appellants and the learned Advocate for the respondent in Criminal Appeal No.31 of 2004, perused the judgment of the High Court Division and other materials on record.

12. The question in both the appeals is that whether the return of cheque with an endorsement "payment stopped by the drawer" gives a right to the payee or holder in due course of the cheque to initiate a proceeding against drawer under section 138 of the Act or not.

13. The Parliament, in order to restore the credibility of the cheque as a trustworthy substitute for cash payment enacted the provision of section 138 of the Act. The relevant part of the provision of section 138 of the Act reads as follow:

> "138 Dishonour of cheque for insufficiency, etc. of funds in the account—(l) Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be

paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to (thrice) the amount of the cheque or with both".

14. This shows that section 138 gets attracted in terms if cheque is dishonoured because of insufficient funds or where the amount exceeds the arrangement made with the bank.

15. The drawer of a cheque has a right to stop payment of a cheque by issuing the stop payment instruction and the bank will be held liable if it ignores such letter. The question is whether it gives a right to the payee or holder in due course to initiate a proceeding under section 138 of the Act or not. Ordinarily, stoppage of payment issuing instructions cannot be said to have direct nexus with "insufficient of funds." Such instruction can be given by the drawer although he had sufficient funds in his account. At the same time one cannot rule out the possibility that the drawer in order to avoid the penal consequences of section 138 of the Act may give instruction to his banker for stoppage of payment. All those are the questions of fact and a conclusion in either way can only be drawn on careful scrutiny of the evidence led by the parties. Issuance of stop payment instructions to the bank will not preclude an action under section 138 of the Act by the holder of cheque in due course.

16. Earlier this Division in the case of *Arif-uz-Zaman vs State* reported in *17 BLC (AD) 167* has observed:

"Whether the cheque in question was dishonoured for the 'insufficiency fund' or for the 'dissimilarity of the signature of the drawer on the cheque' as stated in the letter dated 30-8-2009 is a question of fact which can only be thrashed out during the trial. We do not see any scope of deciding such question in considering the merit of the revision application."

17. It was further observed:

"However, if a holder or the payee gets hold of a dishonoured cheque by fraudulent means or forgery, the drawer of the cheque shall have the liberty to take such defence during trial".

18. In the case of *Electronics Trade and Technology Development Corporation Limited vs Indian Technologists and Engineers (Electronics) (P) Ltd.* reported in *(1996) 2 SCC 739,* it was argued before Supreme Court of India that the stoppage of payment due to instructions does not amount to an offence under section 138 and that, therefore, the ingredients in section 138 have not been satisfied. The Supreme Court of India answered the said submission in the following manner,

19. "The object of bringing section 138 on statute appears to be to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. Despite civil remedy, section 138 intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induce the payee or holder in due course to act upon it. Section 138 draws presumption that one commits the offence if he issues the cheque dishonestly. It is seen that once the cheque has been drawn and issued to the payee and the payee has presented the cheque and thereafter, if any instructions are issued to the bank for non-payment and the cheque is returned to the payee with such an endorsement, it amounts to dishonour of cheque and it comes within the meaning of section 138. Suppose after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and

yet the payee or holder in due course presents the cheque to the bank for payment and when it is returned on instructions, section 138 does not get attracted". Identical views have been expressed by the Supreme Court of India in case of *KK Sidharthan TP Praveena Chandran and another* reported in *(1996) 6 SCC 69.*

20. *In a subsequent case* reported in *(1998) 3 SCC page-249 (Modi Cements Ltd. vs Kuchil Kumer Nandi)* Supreme Court of India held, "If we are to accept this proposition it will make section 138 a dead letter, for, by giving instructions to the bank to stop payment immediately after issuing a cheque against debt or liability the drawer can easily get rid of the penal consequences notwithstanding the fact that a deemed offence was committed". In the case of *Electronics Trade and Technology* it was further observed:

> "When a cheque is drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person out of the account for the discharge of the debt in whole or in part or other liability is returned by the bank with the endorsement like (i) in this case, "refer to the drawer" (2) "instructions for stoppage of payment" and stamped (3) "exceeds arrangement" it amounts to dishonour within the meaning of section 138 of the Act. On issuance of the demanding payment within 15 days from the date of the receipt of such a notice, if he does not pay the same, the statutory presumption of dishonest intention, subject to any other liability, stands satisfied."

21. The Supreme Court India, taking into consideration of the case of *Modi Cements Ltd.* and some other cases in the case of *MMTC Ltd. and another vs Medical Chemicals and Pharma (P) Ltd.* reported in *(2002) 1 SCC 234* has observed, "Even though the cheque is dishonoured by reason of "stop payment" instruction an offence under section 138 could still be made out. It is held that if the accused shows that in his account there were sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the bank and that the stop payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence under section 138 of the Act would not be made out. The important thing is that the burden of so proving would be on the accused. Thus a court cannot quash a complaint on this ground."

22. In the instant case the cheques were issued by the respondent which were returned with endorsement, "payment stopped by the drawer". Since the cheques were returned by bank with the endorsement "payment stopped by the drawer" it is to be presumed that those were returned unpaid because the amount of money standing to the credit of that account was insufficient to honour of the cheque as envisaged in section 138 of the Act. Of course this is a rebuttable presumption. The defence can be considered at the time of holding trial and not in an Application under section 561A of the Code of Criminal Procedure.

23. In view of our discussion in the foregoing paragraphs and on consideration of the facts and circumstances of the case and the law on the subject we are of the view that the High Court Division committed an error of law in quashing the instant proceedings before recording evidence to ascertain whether there was any dishonest intention of the respondents to defraud the appellants or not.

We find substance in both the appeals.

Accordingly, both the appeals are allowed. The Judgment and orders of the High Court Division are hereby set-aside. The concerned Courts are directed to proceed with the cases in accordance with law.

Ed.

APPELLATE DIVISION
(Criminal)

Md Muzammel Hossain CJ
Surendra Kumar Sinha J
Md Abdul Wahhab Miah J
Nazmun Ara Sultana J
Syed Mahmud Hossain J
Md Shamsul Huda J

Judgment
August 13th, 2012.

Tapan and others...
.....Petitioners
[In Crl P No.91 of 2010]

vs

State.....
.....Respondent*
[In all the cases]

Code of Criminal Procedure (V of 1898)
Section 374

As there is no conclusive evidence as regards the principal assailant, ends of justice would be met if the sentence of the petitioners is commutated to imprisonment for life. .....(7)

Khondaker Mahbub Hossain, Senior Advocate, instructed by Mohammad Ali, Advocate-on-Record—For the Petitioner. (In Crl P .Nos.91 & 195 of 2010)

Khondaker Mahbub Hossain, Senior Advocate, instructed by Syed Mahbubur Rahman, Advocate-on-Record—For the Petitioner. (In Crl P.No.145 of 2010)

None Represented—For the Respondent. (In all the cases)

Judgment

SK Sinha J: These petitions arise out of the same judgments in respect of the same case and therefore, these petitions are disposed of analogously by this order.

2. Petitioners had faced trial before the Druta Bichar Tribunal No. 4, Dhaka for the murder of Nur Mohammad Khan, father of the informant Nurul Alam Khan (PW I) on 15th August, 2001 at about 8-25 PM. It is said, the deceased a social worker and a business man formed a Samity for prevention of crimes in the locality. Petitioners demanded toll of Taka 20,000 from one Milon and on getting such information, the deceased revoked the accused persons against which they threatened him to dire consequences. On the fateful night, when the victim was returning home he was attacked by the petitioners with deadly weapons and shot him to death indiscriminately at the place of occurrence. On getting such information, the informant and other persons took the victim to the Dhaka Medical Hospital and on the way, he disclosed the names of the petitioners as his assailants. Victim died in the hospital sometimes thereafter. Besides the above dying declaration, the prosecution has also relied upon the confessional statement of the accused petitioner Sumon Kazi @ Saiful Alam Sumon. Prosecution examined 14 witnesses in support of its case.

3. The tribunal believed the dying declaration of the victim proved by PWs 1 and 2 and corroborated by PW 5, and on consideration of the fact of their absconding which is a corroborating fact to connect them in the commission of murder, found the petitioners guilty under sections 302/34 of the Penal Code and sentenced each of them to death. The High Court Division heard the death reference along with the connected jail appeals preferred by the petitioners and the criminal appeals and by the impugned judgment, accepted the death reference, maintained the conviction and sentence of the petitioners. The High Court Division held that the prosecution has been able to prove the dying declaration of the victim which is corroborated by the confessional statement of accused Sumon, and was of the opinion that the tribunal is justified in convicting and sentencing of the petitioners.

4. Mr Khandaker Mahbub Hossain, learned counsel appearing for the petitioners has taken us to the confessional statement of accused Sumon, the dying declaration of the victim proved by PWs 1, 2 and 5 and other materials on record and sub-

*Criminal Petition for Leave to Appeal Nos. 91, 195 and 145 of 2010.

(From the judgment and order dated 18-8-2009 passed by the High Court Division in Death Reference No. 74 of 2005 with Criminal Appeal Nos.2193, 2261 and 2323 of 2005 with Jail Appeal Nos. 549, 550, 551 and 552 of 2005.)

mits that the High Court Division erred in law in maintaining the conviction and sentence of the petitioners, inasmuch as, the dying declaration proved by prosecution cannot be the basis for the conviction of the petitioners. According to the learned counsel, the victim sustained five gun shot injuries and under such circumstances, it was not a believable story that the victim would be able to make a declaration as narrated by PW 1. Learned counsel further submits that according to PW 1, Milon accompanied him but the prosecution did not examine Milon and therefore, there remain doubt as to whether the victim made any dying declaration. He further submits that the confessional statement is totally exculpatory in nature which cannot be used against the petitioners as corroborative evidence and that the High Court Division has failed to consider this aspect of matter and illegally maintained the conviction and sentence.

5. The occurrence took place on 15th August, 2001 at about 8-25 PM and the FIR was lodged on the same day at about 11-45 PM within less than 3 hours of the time of occurrence and in the said FIR, the informant specifically alleged that on the way to hospital, the victim made a dying declaration disclosing the names of the petitioners as his assailants. Besides PW 1, his cousin Md Milon Khan (PW 2) corroborated the statements of PW 1 so far as it relates to the fact of making dying declaration by the victim on the way to hospital. Md Shajahan Talukdar (PW 5) corroborated the statements of PW 1. The defence thoroughly cross-examined them but failed to shake their testimony in any manner as regards the discloser of the victim about the names of his assailants. In the confessional statement also, accused Sumon disclosed the names of the petitioners which can be used as corroborative evidence.

6. The High Court Division as well as the tribunal on a thorough assessment of the evidence along with the confessional statement believed the prosecution case that the victim made a dying declaration implicating the petitioners and that the confessional statement of Sumon is true and voluntary in which Sumon had corroborated the prosecution's version of the deceased's making of a dying declaration. The defence did not deny the prosecution case of the death of the victim as a result of gun shot injuries. Though the victim sustained five gun shot injuries, of them, one is on the neck, on a close scrutiny of the autopsy report which has been admitted into evidence, we notice that the injury on the neck is on the left side and not on middle of the neck causing injury to the vocal cords. The other gun shot injuries are on the lower part of the left abdomen, the left side of the buttock and on the legs. In view of the consistent evidence of PWs 1 and 2 regarding the dying declaration which have also been mentioned in the FIR lodged immediate after the occurrence, the High Court Division has rightly believed that the victim made a dying declaration implicating the petitioners as his assailants. We cannot take a contrary view in the absence of any cogent ground to disbelieve the same. The submissions of the learned counsel in this regard are superficial in nature.

7. Though there are sufficient evidence against the petitioners in support of the charge, it is not clear from the materials on record that all the petitioners have shot at the victim or that who is responsible for the cause of death. The evidence in this connection is superficial in nature. It is stated that accused Tapan, Ranga, Mubarak shot at the victim and other persons were with them.It has not been clarified as to who shot the injuries on the neck, abdomen and legs. The death as it appears from the opinion, was due to the cumulative affect of all the injuries.The confessing accused stated that Mubarak shot him from the backside and then Tapan and Nazir shot at him. This statement is taken along with the autopsy report creates doubt as at who is responsible for causing injury on the neck. The prosecution also failed to prove on whose gun shot injury the victim had actually died. This could be ascertained if the doctor who performed autopsy was examined.

The prosecution could not produce him as he was not available. As there is no conclusive evidence as regards, the principal assailant we are of the view that the ends of justice would be met if the sentence of the petitioners is commutated to imprisonment for life.

8. The petitions are, accordingly, dismissed with the modification of sentence. Since convicts have preferred regular petitions, jail petitions have rendered infructious.

Ed.

APPELLATE DIVISION
(Civil)

Nazmun Ara Sultana J
Syed Mahmud Hossain J
Md Imman Ali J
Md Anwarul Haque J

Judgment
February 11th, 2014.

Delipjan being dead her heirs: Fazal Haque and other.....
.....Appellants

vs

Shahed Badsha and others...Respondents*

Specific Relief Act (I of 1877)
Section 42

Proviso—Where the plaintiffs are out of possession and the defendants are in possession, the "further relief" would be recovery of possession and the suit for declaration of title without prayer for recovery of possession is hit by the proviso to section 42 of the Act. .....(18)

Abdul Hamid Mollah vs Abdul Hye, 49 DLR 428, Abdur Rahman Mia vs M Saber Ali Mia, 4 BLC 429; Shahani Bibi being dead her heirs: Mohammad Azim vs Nurul Islam being dead his heirs: Doly Islam, 4 BLC 195; and Haji Yar Ali Khan Chowdhury vs Mobarak Ali Chowdhury, 7 DLR 6 ref.

*Civil Appeal No.153 of 2008.

(From the judgment and order dated 20-8-2006 passed by the High Court Division in Civil Revision No.1104 of 1993).

AQM Fazlul Huq Khan, Advocate, instructed by Sufia Khatun, Advocate-on-Record—For the Appellants.

Ziaur Rahman, Advocate, instructed by Md Nurul Islam Bhuiya, Advocate-on-Record—For Respondent Nos.1-8.

None Represented—Respondent Nos. 9-22.

Judgment

Syed Mahmud Hossain J: This appeal by leave of the defendants-appellants arises out of the judgment and order dated 20-8-2006 passed by the High Court Division in Civil Revision No.1104 of 1993 making the Rule absolute and reversing the judgment and decree dated 18-3-1993 passed by the learned Additional District Judge, Eighth Court, Dhaka in Title Appeal No.120 of 1991 receiving the judgment and decree dated 31-1-1991 passed by the learned Assistant Judge, Dhamrai, Dhaka in Title Suit No.65 of 1989 decreeing the suit.

2. The facts, leading to this appeal, in brief, are as follows:

The appellants herein as the plaintiffs instituted Title Suit No.65 of 1989 in the Court of Assistant Judge, Dhamrai, Dhaka for declaration of title in respect of "Kha" schedule land of the plaint. The case of the plaintiffs, in short, is that Sheikh Jaku, the predecessor of the plaintiffs, being in need of money gave the suit land in mortgage to Zamindar Sachindra Mohan Roy and others of Royal. Money borrowed was repaid. Yet Zamindar Sachindra Mohan Roy and other did not release possession of the suit land. The matter was complained to the Debts Settlement Board. The Board directed Sachindra Mohan and others to return the land by an award. The Zamindar preferred an appeal to the High Court Division and the award was cancelled. After that, the mortgagor filed revision case before the learned District Judge, which was dismissed. But the learned District Judge made certain comments in favour

of title of the mortgage of Sheikh Jaku. On the basis of those comments, the heirs of Sheikh Jaku had filed a Partition Suit No.76 of 1951 in the First of the then Subordinate Judge, Dhaka. Defendant Nos.13-16 and 18 contested the suit, which was decreed for declaration of title as well as for partition. On the basis of that decree, the plaintiffs and defendants Nos.19 and 20 had effected an amicable partition amongst themselves. A solenama was prepared incorporating the said amicable partition. The solenama was filed and a final decree was passed on the basis of that solenama. The plaintiffs are now owners and possessors of the suit land on the basis of that decree. Nazimuddin, the predecessor of the defendants, who was impleaded as defendant No.14 in that partition suit contested the suit. But Nazimuddin by suppressing the fact of the decree, at the time of SA operation, in collusion with surveyors got 'Ka' scheduled land recorded along with other lands in his name though he had no right, title or possession over the suit land and such erroneous record created clouds over the title of the plaintiffs. The plaintiffs are still in possession of the suit land. The plaintiffs got their names mutated in respect of the suit land along with some other lands and have been paying taxes regularly. After that, the defendants started disturbing over the peaceful possession of the plaintiffs by adopting various techniques and they also threatened the plaintiffs to dispossess them from the suit land forcibly. Hence, the plaintiffs were constrained to file the suit against the defendants seeking declaration of title over the suit land.

3. Defendant Nos.1-7 contested the suit by filing a joint written statement denying all the material statements made in the plaint. The case of these defendants, in short, is that the suit is not maintainable without the prayer for recovery of khas possession. Their further case is that one Bendu Bepari was the owner of the land of khatian No.379 who died leaving behind four sons, namely, Kunduly, Barkat, Jaku and Asman and CS khatian record was correctly recorded in their names. After that, Kunduly died leaving behind two sons, namely, Kazimuddin and Nazimuddin and Asman died leaving behind one daughter Habiba, who sold $9^1/_2$ decimals of land in plot No.502 on 13-1-1951 to the defendant and delivered possession thereof. Barkat died leaving wife Sabjan and three sons, namely, Sonaruddin, Yazuddin and Megu and three daughters. Sabjan sold 12 decimals of land in plot No. 492 on 25-8-1956 to the father of the defendant. Nazimuddin owned and possessed 18 decimals of land in plot No. 502 by purchase and inheritance from his father. Badsha, son of Azimuddin possessed 24 decimals of land in plot No. 487 by inheritance from his father and Sheikh Jaku mortgaged 74 decimals of land of plot No.487 and 6 decimals in plot No. 497 for want of money to Zaminder Sachindra Mohan Roy but failed to repay the borrowed money, as a result, the said mortgaged land was sold in auction and the Zaminder purchased the same in auction. After that, Zaminder Sachindra gave pattan of the suit land to Nazimuddin, the predecessor of the defendants on 23rd Aswin of 1352 BS. The SA khatian was recorded in the name of Nazimuddin correctly. After the death of Nazimuddin, defendant Nos.1-7 inherited the suit land. Therefore, the plaintiffs are not entitled to get any relief according to law. And as such, the suit is liable to be dismissed.

4. The trial Court upon hearing the parties by its judgment and order dated 31-1-1991 decreed the suit.

5. Against the judgment and decree passed by the trial Court, defendant Nos.1-7 preferred Title Appeal No.120 of 1991 before the learned District Judge, Dhaka. On transfer, the appeal was heard and disposed of by the learned Additional District Judge, Eighth Court, Dhaka, who by his judgment and order dated 18-3-1993 allowed the appeal setting aside the judgment and decree passed by the trial Court.

6. Being aggrieved by and dissatisfied with the judgment and decree of the appellate Court, the plaintiffs filed a revisional application before the High Court Division and obtained Rule in Civil Revision No.1104 of 1993. The High Court Division by its judgment and order dated 20-8-2006 made the Rule absolute.

7. Feeling aggrieved by and dissatisfied with judgment and order dated 20-8-2006 passed by the High Court Division, the defendant-leave-petitioners moved this Division by filing Civil Petition for Leave to Appeal No.939 of 2007 in which leave was granted on 14-5-2008 resulting in Civil Appeal No.153 of 2008.

8. Mr AQM Fazlul Huq Khan, learned Advocate appearing on behalf of the defendant-appellants, submits that the High Court Division erred in law in failing to consider the exhibits filed on behalf of defendants-appellants in respect of the suit land by which, the defendants-appellants claimed title over the suit land and, as such, the impugned judgment should be set-aside. He further submits that the suit filed by the plaintiffs-respondents is hit by the proviso to section 42 of the Specific Relief Act as the plaintiff-respondent Nos.1-8 are admittedly out of possession of the suit land as is evident from the deposition of PWs 2 and 3 and that the High Court Division committed an error in not taking into consideration the point and that the suit being instituted long 28 years from the date of recording SA khatian in the name of Nazimuddin, the predecessor-in-interest of the defendants-appellants, is hopelessly barred by limitation.

9. Mr Ziaur Rahman, learned Advocate, appearing on behalf of respondent Nos.1-8, on the other hand, submits that the High Court Division came to a finding that Nazimuddin, the predecessor-in-interest of defendant-respondent Nos.1-8, was defendant No.14 in Partition Suit No.36 of 1956, which was decreed on compromise and that the plaintiffs obtained possession in the suit land through Court as per the saham prepared by the Advocate Commissioner and had been possessing the suit land peacefully and as such, the heirs of Nazimuddin cannot dispute the title of the plaintiffs-respondents and as such, the impugned judgment does not call for any interference. He further submits that lower appellate Court erroneously came to a finding that PWs 2 and 3 admitted that defendant Nos.1-8 had been in possession of the suit land and that if the evidence of PWs 2 and 3 is considered as a whole, it will transpire that they, in fact, supported the possession of the plaintiffs in the suit land.

10. Before addressing the contentious submissions made by the learned Advocates of both the sides, let us go through the grounds, on which, leave was granted, which are as under:

> "The High Court Division erred in law in failing to consider exhibits-1-1(kha), Ka, Gha, Ja, Uma, Cha and Chha in respect of the title of the respondent over the suit land and also failed to consider that the suit is hit by the proviso to section 42 of the Specific Relief Act as the plaintiff-respondent Nos.1-8 were admittedly out of possession of the suit land as is evident from the deposition of PW 2 in his examination-in-chief as well as in his cross-examination and further the High Court Division also fell in error in not taking into consideration the point that the suit being instituted after long 28 years from the time of recording of SA khatian in the name of Nazimuddin, their predecessor is hopelessly barred by limitation."

11. Admittedly, the plaintiffs' predecessor filed Partition Suit No.36 of 1956 against the predecessor of defendant-appellant Nos.1-7 and all other co-sharers in respect of the suit land and other lands and the suit was decreed in terms of a solenama. The plaintiffs-respondents contended that the suit land fell in the saham of the predecessor-in-interest of the plaintiffs-respondents according to the saham prepared by the Advocate

Commissioner. It is not disputed that Nizamuddin, the predecessor-in-interest of the defendants-appellants was defendant No.14 in that partition suit. If we start from filing of Partition Suit No.36 of 1956 there is no necessity of considering the conflicting claim of title of the respective parties over the suit land. The lower appellate Court, however, found that the plaintiffs could not prove their title and possession in the suit land and that the suit is hopelessly barred by limitation.

12. In a suit for declaration of title, the plaintiffs are not only required to prove their title in the suit land but also their possession therein.

13. PW 2, Md Momtaz Uddin Sheikh in examination-in-chief stated that—

> বিবাদীরা এক কোটা জমিতে দখলে আছে। সবটাতে যায় না। এ মোকদ্দমা করার আগেই বিবাদীরা নালিশী এক কোটাতে দখলে আছে। সেই কোটা জমির পরিমাণ ৩০/৪০ ডিং হবে। বর্তমান বিবাদীরা নাজিম উদ্দিনের ওয়ারিশ। এই নাজিম উদ্দিন আগের সেই মোকদ্দমায় পক্ষ ছিল। In cross-examination this witness further stated that নালিশী জমিতে ৬ ডিং বাড়ি কোন দিকে আছে বলতে পারব না। বাড়িতে কিছু অংশে বিবাদী বসবাস করে।

14. PW 3, Md A Alim stated in his cross-examination that—

> বর্তমানে এই ৭৪ ডিং নিয়া পক্ষগণ (মধ্যে) গন্ডগুল আছে। আর কি পরিমান নিয়া মামলা বলতে পারব না। এই মামলার পর এই ৭৪ ডিং এর মধ্যে বিবাদীরা দখলে যায়। আবার বাদীরা দখল নেয়। এই ভজঘট চলছে। বর্তমানে এই জমি পতিত। মাসখানেক আগে এই জমিতে বিবাদীরা ধান বুনে ছিল। ধান কাটিয়া অর্ধেক বিবাদীরা নিয়া গিয়াছে। বাকী অর্ধেক গ্রামের তৃতীয় ব্যাক্তির কাছে আছে।

15. Having considered the evidence of PWs 2 and 3, it appears that the plaintiffs could not prove their exclusive possession in the suit land. When the witnesses of the plaintiffs could not prove possession of the plaintiffs in the suit land, they are not entitled to have a decree in respect of the suit land.

16. The High Court Division, however, found that the plaintiffs have been in possession of the suit land pursuant to the decree passed in Partition Suit No.36 of 1956 without at all considering of evidence of the plaintiffs' witnesses, in particular, PWs 2 and 3.

17. Admittedly, the SA khatian in respect of the suit land was prepared in the name of Nizamuddin, the predecessor-in-interest of the defendants and that the suit land has been filed after 28 years of the preparation of the alleged khatian. Mere preparation of khatian is of no avail till the plaintiffs are affected by the preparation thereof and, as such, it cannot be said that the suit is barred by limitation.

18. We have already found that the plaintiffs could not prove their exclusive possession in the suit land. Where the plaintiffs are out of possession and the defendants are in possession, the "further relief" would be recovery of possession and the suit for declaration of title without prayer for recovery of possession is hit by the proviso to section 42 of the Specific Relief Act.

19. We notice with approval similar view taken in the cases of *Abdul Hamid Mollah vs Abdul Hye 49 DLR 428, Abdur Rahman Mia vs M Saber Ali Mia, 4 BLC 429; Shahani Bibi being dead her heirs: Mohammad Azim vs Nurul Islam being dead his heirs: Doly Islam, 4 BLC 195; and Haji Yar Ali Khan Chowdhury vs Mobarak Ali Chowdhury, 7 DLR 6.*

20. In the light of the findings, we find that the impugned judgment delivered by the High Court Division cannot sustain in law.

Accordingly, the appeal is allowed and the impugned judgment delivered by the High Court Division is set-aside without any order as to costs.

Ed.

APPELLATE DIVISION
(Criminal)

Md Muzammel Hossain CJ
Surendra Kumar Sinha J
Md. Abdul Wahhab Miah J
Syed Mahmud Hossain J
AHM Shamsuddin Chowdhury J

Judgment
July 23rd, 2013.

Zahidul Islam (Md) .....Appellant

vs

Md Kamal Hossain and another..... .....Respondents*

Code of Criminal Procedure (V of 1898)
Section 561A
Negotiable Instruments Act (XXVI of 1881)
Section 138(b)(c)

Legislature has not created any absolute bar in filing a petition of complaint before expiry of thirty days of the receipt of the notice issued under clause (b) of the proviso to section 138 as created in case of filing a petition of complaint after expiry of one month of the date on which the cause of action arises under clause (c) of the proviso to section 138. Prematurity shall be cured the moment the period of thirty days expires and the payment of the dishonoured cheque is not made within the said period. .....(11)

Bivash Chandra Biswas, Advocate-on-Record—For the Appellant.

Taufique Hossain, Advocate-on-Record—For Respondent No. 1.

Mahmuda Begum, Advocate-on-Record—For Respondent No.2.

*Criminal Appeal No. 2 of 2011

(From the judgment and order dated the 25th day of March, 2009 passed by the High Court Division in Criminal Miscellaneous Case No.6908 of 2008)

Judgment

Md Abdul Wahhab Miah J: This appeal, by leave, has arisen out of the judgment and order dated the 25th day of March, 2009 passed by a Division Bench of the High Court Division in Criminal Miscellaneous Case No.6908 of 2008 making the Rule absolute.

2. Facts giving rise to this appeal are that the appellant as complainant (hereinafter referred to as the complainant) filed a petition of complaint before the Chief Magistrate, Rajshahi being CR Case No.218 of 2007 against respondent No.l, Md Kamal Hossain (hereinafter referred to as the respondent), alleging the commission of an offence by him punishable under section 138 of the Negotiable Instruments Act, 1881 (the Act, 1881). In the petition of complaint, it was alleged, *inter alia,* that the respondent issued a cheque bearing No.0823202 dated 15-4-2007 drawn on Mercantile Bank Limited, Rajshahi for Taka 3,30,00,000 in favour of the complainant towards repayment of his (the respondent's) outstanding dues. The complainant, on the same date of the issuance of the cheque, deposited the same in his account being No.010-7729-0000-1899 of the same bank, but the cheque was returned on the ground of insufficiency of fund. Then the complainant by a legal notice dated 22-4-2007 demanded from the respondent the payment of the amount of the said dishonoured cheque and though the respondent received the notice on 24-4-2007, he did not pay the money to the complainant within thirty days from the date of receipt of the notice for which the complainant was compelled to file the petition of complaint.

3. The Chief Metropolitan Magistrate, Rajshahi took cognizance of the offence against the respondent under section 138 of the Act, 1881 by issuing summons. On receipt of the summons, the respondent surrendered before the Chief Metropolitan Magistrate, Rajshahi on 21-6-2007 and he was enlarged on bail. The case being triable by a Court of Sessions, the case records were transmitted to the Court of Sessions Judge,

Rajshahi. The case was registered as Sessions Case No.416 of 2007. The learned Sessions judge, by order dated 20-7-2007, took cognizance of the offence against the respondent under section 138 of the Act, 1881 and by order dated 8-8-2007 framed charge against him under the said section of the Act, 1881 and fixed the next date on 9-9-2007 for examination of the witnesses. On 9-9-2007, on the prayer of the prosecution, the hearing of the case was adjourned to 8-10-2007 and by the same order, the case was transferred to the Court of Assistant Sessions Judge (now Joint Sessions Judge), Additional Court for disposal. The respondent filed an application before the High Court Division under section 561A of the Code of Criminal Procedure (the Code) for quashing the proceedings of the Sessions case in question, mainly, on the ground that statutory notice demanding from the respondent the payment of the amount of the dishonoured cheque, was received by him on 24-4-2007, but the petition of complaint giving rise to the Sessions case was filed on 23-5-2000, i.e. l(one) day before the cause of action to file the petition of complaint arose as provided in clause (c) of the proviso to section 138(1) of the Act, 1881 and, as such, the impugned sessions case was nothing but an abuse of the process of the Court and the same was liable to be quashed.

4. The application gave rise to Criminal Miscellaneous Case No.6908 of 2008. The criminal miscellaneous was contested by the complainant opposite party by filing a counter affidavit.

5. A Division Bench of the High Court Division on hearing the Rule issued in the miscellaneous case by the impugned judgment and order made the same absolute and quashed the proceedings of the Sessions case in question (Sessions Case No.416 of 2007) accepting the ground of the respondent taken in the application filed under section 561A of the Code.

6. Being aggrieved by and dissatisfied with the impugned judgment and order of the High Court Division, the complainant appellant files Criminal Petition for Leave to Appeal No.179 of 2009 before this Division and leave was granted on 16-11-2009 to consider the submission of his learned Counsel to the effect:

> "The learned counsel for the petitioner submitted that the institution of the aforesaid CR Case before the expiry of 30(thirty) days from the receipt of the legal notice by the accused respondent is nothing but a premature institution and before the High Court Division it was argued that if the cause of action matured during pendency of the proceedings, the defect of prematurity of the cause of action could be cured and inspite of that the High Court Division erroneously made the Rule absolute."

7. Mr Bivash Chandra Biswas, learned Advocate-on-Record, appearing for the appellant has reiterated the submission recorded in the leave granting order.

8. Mr Taufique Hossain, learned Advocate-on-Record, appearing for the respondent, on the other hand, supported the impugned judgment and order passed by the High Court Division

9. The only point to be decided in this appeal is as to whether the sessions case in question which arose out of a petition of complaint filed by the appellant as complainant alleging the commission of an offence by the respondent punishable under section 138 of the Act, 1881, could be quashed on the ground that the same was filed before expiry of the period of thirty days from the date of the receipt of the notice issued under clause (b) of the proviso to section 138 of the Act, 1881 by which demand was made from the respondent to pay the amount of the dishonoured cheque.

10. From the facts stated in the petition of complaint as well as in the impugned judgment and order, it appears that after the cheque was dishonoured the notice mandated in clause (b) of the proviso to sub-section (1) of section 138 of the

Act, 1881 was given to the respondent on 24-4-2007 demanding from him the payment of the amount of the dishonoured cheque to the complainant and it was received by him on that very date, but the complainant filed the petition of complaint on 23-5-2007, i.e. l(one) day before expiry of the period of thirty days as stipulated in clause (c) of the proviso to the section.

11. From a reading of clauses (b) and (c) of the proviso to sub-section (1) of section 138 of the Act, 1881, it appears to us that the purpose of the notice is to give chance to the drawer of a dishonoured cheque to make the payment of the amount of such cheque to the payee or, as the case may be, to the holder in due course of the cheque within thirty days from the date of receipt of the notice issued under clause (b) thereof. Section 141 of the Act, 1881 has detailed the procedure as to how cognizance shall be taken by a Court in respect of an offence punishable under section 138 thereof and which Court shall try such offence. Clause (b) of section 141 of the Act, 1881 has clearly mandated that a complaint alleging an offence punishable under section 138 thereof has to be filed within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138. In other words, no complaint alleging an offence punishable under section 138 of the Act, 1881 shall be entertained if such complaint is not made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138. And definitely, the cause of action to file such a complaint would arise after the failure of the drawer of the cheque to make payment of the amount of the dishonoured cheque to the payee or, as the case may be, to the holder in due course of the cheque within thirty days of the receipt of the notice given under clause (b) of the proviso to section 138. But the legislature has not created any absolute bar in filing a petition of complaint before expiry of thirty days of the receipt of the notice issued under clause (b) of the proviso to section 138 as created in case of filing a petition of complaint after expiry of one month of the date on which the cause of action arises under clause (c) of the proviso to section 138. Filing of a petition of complaint alleging the commission of an offence punishable under section 138 of the Act, 1881 before expiry of thirty days from the date of receipt of the notice as stipulated in clause (c) of the proviso to the section as it happened in the instant case, at best, can be said premature and that prematurity shall be cured the moment the period of thirty days expire and the payment of the dishonoured cheque is not made within the said period. And in spite of the filing of the petition of complaint prematurely, there would be no bar on the part of the drawer of the dishonoured cheque to make the payment of the amount of such cheque to the payee or, as the case may be, to the holder in due course of cheque within thirty days as stipulated in clause (c) of the proviso to section 138 and filing of a petition of complaint prematurely, in no way, can be a ground to oust a payee or, as the case may be, to the holder in due course of the cheque from proceeding with his case to haul up a person here the respondent who commits an offence punishable under the section and to quash a criminal proceeding arising out of such petition of complaint. In quashing the proceedings of the sessions case in question, the learned Judges failed to consider that when the criminal miscellaneous case was heard by them, the prematurity in filing the petition of complaint alleging the commission of offence punishable under section 138 of the Act, 1881, stood cured as the period of thirty days mandated in clause (c) to the proviso thereof had expired on 24-5-2000.

12. It is also a fact that till the date of hearing of the criminal miscellaneous case, the respondent did not make payment of the amount of the dishonoured cheque to the complainant, the payee although from the date of receipt of the notice on 24-4-2007 till that date almost two years elapsed. Had the respondent paid the amount of the dishonoured cheque within the period as stipulated in clause (c) of the proviso to sub-section (1) of section 138, i.e. within 24-5-2007, the sessions case in question could not be proceeded with although the same was filed before the expiry of thirty

days, i.e. on 29th day, because of such payment, no cause of action to proceed with the case would have subsisted.

13. For the discussions made above, we find merit in the appeal and accordingly, the same is allowed. The impugned judgment and order of the High Court Division quashing Sessions Case No.416 of 2007 arising out of CR Case No.218 of 2007 is set-aside. The concerned Joint Sessions Judge, Rajshahi is directed to proceed with the trial of the Sessions case in accordance with law and dispose of the same expeditiously.

Ed.

APPELLATE DIVISION
(Criminal)

Md Muzammel Hossain CJ Md Abdul Wahhab Miah J Nazmun Ara Sultana J Syed Mahmud Hossain J Md Imman Ali J	State.....Appellant vs Romana Begum alias Noma..... .....Respondent*
Judgment March 5th, 2013.	

Code of Criminal Procedure (V of 1898)
Sections 374 and 376

Condemned-prisoner spent about 4 years in the condemned cell, and 13 years have elapsed since the judgment of the High Court Division, which commuted her sentence of death to imprisonment for life. .....(17)

Momtazuddin Fakir, Additional Attorney-General, instructed by Sufia Khatun, Advocate-on-Record—For the Appellant.

Ex-parte—For Respondent.

*Criminal Appeal No. 32 of 2002

(From the judgment and order dated 10th April, 2000 passed by the High Court Division in Death Reference Case No. 9 of 1996 with Criminal Appeal No. 839 of 1996)

Judgment

Muhammad Imman Ali J: This criminal appeal, by leave, is directed against the judgment and order dated 10-4-2000 passed by a Division Bench of the High Court Division in Death Reference No.9 of 1996, heard along with Criminal Appeal No.839 of 1996 rejecting the death reference and dismissing the criminal appeal with the modification of sentence of death to that of imprisonment for life.

2. The relevant facts are as follows:

3. The father of the informant (PW 1) was residing as tenant in the house at 5/5, Block-A, Lalmatia, 2nd Floor with his family members consisting of his wife, deceased Nilufar Amatun Mowla, son, PW 1, Salauddin Noman, his daughter, deceased Mahjabin Chowdhury alias Suma and a maid servant Romana Begum alias Nomi. On the day of occurrence on 2-10-1994 PW 1 was asked to return home immediately. On his return he saw the dead bodies of his mother and sister Suma. The maid servant, Romana Begum, respondent herein, was found missing. Salahuddin Chowdhury (PW 1) as informant lodged the First Information Report (FIR) with Mohammadpur PS narrating the occurrence of murder of his mother and sister, without naming anyone as accused, but stating that the maid servant Romana was not found in the house. Accordingly, Mohammadpur PS Case No.7 dated 2-10-1994 corresponding to GR No.2934/94(f) was started.

4. The police after investigation submit- ted Charge-sheet No. 9 dated 26-1-1995 under sections 302/381/411 of the Penal Code against the lone accused-person, Romana Begum.

5. During trial the case record was transferred to the Court of Additional Sessions Judge, fifth Court, Dhaka for trial where it was registered as Sessions Case No. 140 of 1995. Charge was framed against the respondent under section 302

of the Penal Code. When the said charge was read over, the accused present pleaded not guilty and claimed to be tried. During the course of trial the prosecution examined as many as 19 PWs and they were cross-examined by the defence, but the defence examined none. The accused-person was examined under section 342 of the Code of Criminal Procedure in which again she pleaded her innocence.

6. The defence case, as it appears from the trend of cross-examination, was that the accused-person had been falsely implicated in the instant case and she had not committed the offence.

7. The Additional Sessions Judge, Fifth Court, Dhaka after considering the facts and circumstances of the case and evidence and materials on record found the accused-person guilty of the charge under section 302 of the Penal Code and upon conviction sentenced her to death.

8. The Additional Sessions Judge, Fifth Court, Dhaka forwarded the Reference to the Registrar of the Supreme Court of Bangladesh under section 374 of the Code of Criminal Procedure for confirmation of death sentence. The said Reference was numbered as Death Reference No.9 of 1996.

9. The condemned prisoner-respondent filed Criminal Appeal No.839 of 1996 before the High Court Division.

10. The aforesaid criminal appeal was heard along with the Death Reference. By the impugned judgment and order, the High Court Division rejected the death reference and dismissed the criminal appeal with the modification of sentence of death to that of imprisonment for life. Hence, the State filed the Criminal Petition for Leave to Appeal No.24 of 2001 before this Division.

11. Leave was granted to consider the following:—

"Whether the judgment and order of the High Court Division clearly shows non-application of judicial mind for imposing a lesser sentence though it was a case of gruesome double murder of two inmates of a house by the maid servant, where one victim was a prospective doctor and the other was a Government College teacher and if the lesser sentence was given it may encourage repetition of crimes of the same nature and would be a threat to the society at large".

12. Mr Momtazuddin Fakir, the learned Additional Attorney-General appearing on behalf of the State-appellant submits that the High Court Division having found the confessional statement of the convict-respondent to be voluntary and true seriously erred in commuting the sentence of death to one of imprisonment for life. He further submits that the circumstantial evidence and evidence of prosecution witnesses having been believed by the trial Court as well as the High Court Division, and this being a case of gruesome double murder, there was no occasion for the High Court Division to show any leniency. He next submits that the judgment and order of the High Court Division shows non-application of judicial mind in imposing a lesser sentence when the evidence of the witnesses supports the prosecution case and the confession of the accused is accepted as voluntary and true. He submits that the imposition of a lesser sentence would encourage repetition of such heinous crimes.

13. We have considered the submissions of the learned Additional Attorney-General for the appellant and perused the impugned judgment of the High Court Division and other connected papers on record.

14. We note from the judgment of the High Court Division that the confessional statement (Exhibit-6) was found to be voluntary and true. The circumstantial evidence was found to be incompatible with the innocence of the convict respondent. The High Court Division observed

ফিস প্রদান করিতে হইবে না।

(৩) শ্রম আদালত জারীকারক অথবা বিশেষ বাহক মারফত অথবা রেজিস্ট্রি ডাকযোগে অথবা উভয়বিধভাবে কোন মামলার প্রতিপক্ষকে মামলা দায়ের করার অনধিক দশ দিনের মধ্যে তাহার লিখিত জবাব বা আপত্তি পেশ করিবার জন্য নির্দেশ দিবে।

(৪) শ্রম আদালত, যুক্তি লিপিবদ্ধ করিয়া, উক্ত সময় অনধিক সর্বমোট সাতদিন পর্যন্ত বৃদ্ধি করিতে পারিবে।

(৫) যদি প্রতিপক্ষ নোটিশ উল্লিখিত অথবা বর্ধিত সময়ের মধ্যে কোন লিখিত জবাব বা আপত্তি পেশ করিতে ব্যর্থ হয়, তাহা হইলে মামলাটি একতরফা শুনানীক্রমে নিস্পত্তি করা হইবে।

(৬) কোন পক্ষের আবেদনক্রমে শ্রম আদালত সর্বমোট সাত দিনের অধিক সময় মামলার শুনানী স্থগিত রাখিতে পারিবে না। তবে শর্ত থাকে যে, যদি মামলার উভয় পক্ষ স্থগিতাদেশ প্রার্থানা করে, তাহা হইলে সর্বমোট অনদিক দশ দিন পর্যন্ত মামলার শুনানী স্থগিত রাখা যাইবে।

(৭) যদি মামলার দরখাস্তকারী মামলা শুনানী তারিখে অনুপস্থিত থাকে,তাহা হইলে মামলা খারিজ হইয়া যাইবে।

(৮) যদি মামলার প্রতিপক্ষ শুনানীর তারিখে অনুপস্থিত থাকে, তাহা হইলে মামলাটি একতরফা শুনানীক্রমে নিস্পত্তি করা হইবে।

(৯) কোন মামলা খারিজ হওয়ার কারণে মামলাটি দায়ের করা হইয়াছিল উক্ত একই কারণে, নতুন মামলা দায়ের করা বারিত হইবে না যদি না ইহা অন্য কোন কারণে বারিত হয় এবং খারিজ হওয়ার তিন মাস পর দায়ের করা হয়।

(১০) যদি কোন মামলার সকল পক্ষ মামলাটি প্রত্যাহার করিবার জন্য শ্রম আদালতে দরখাস্ত করে, তাহা হইলে আদালত উভয় পক্ষকে শুনানী প্রদান করিয়া, মামলার যে কোন পর্যায়ে উহা প্রত্যাহার করার অনুমতি দিতে পারিবে যদি আদালত এই মর্মে সন্তুস্ট হয় যে, সংশ্লিষ্ট বিরোধটি আপোষে নিস্পত্তি হইয়াছে।

(১১) শ্রম আদালতের কোন রায়, সিদ্ধান্ত বা রোয়েদাদ, লিখিতভাবে প্রকাশ্য আদালতে প্রদান করিতে হইবে, এবং উহার একটি কপি সংশ্লিষ্ট প্রত্যেক পক্ষকে দেওয়া হইবে।

(১২) শ্রম আদালতের রায়, সিদ্ধান্ত বা রোয়েদাদ, প্রত্যেক ক্ষেত্রে মামলা দায়ের করার তারিখ হইতে ষাট দিনের মধ্যে প্রদান করিতে হইবে, যদি না পক্ষগণ লিখিতভাবে উক্ত সময়সীমা বৃদ্ধি করিতে রাজীহয়। তবে শর্ত থাকে যে, উক্তরুপ কোন রায়, সিদ্ধান্ত বা রোয়েদাদ, কেবলমাত্র বিলম্বে প্রদানের কারণে অবৈধ হইবে না।

২৮৩। কোন ব্যক্তি ধারা ৩৩ এর অধীন প্রদত্ত শ্রম আদালতের কোন আদেশ পালন করিতে অস্বীকার করিলে অথবা ব্যর্থ হইলে, তিনি তিন মাস পর্যন্ত বিনা শ্রম কারাদন্ডে, অথবা পাঁচ হাজার টাকা পর্যন্ত অর্থদন্ডে, অথবা উভয় দন্ডে দন্ডনীয় হইবেন।

২৮৯(১) কোন মালিক একাদশ অধ্যায়ের অধীন ঘোষিত নিম্নতম মজুরী হারের কম হারে কোন শ্রমিককে মজুরী প্রদান করিলে, তিনি এক বছর পর্যন্ত কারাদন্ডে, অথবা পাঁচ হাজার টাকা পর্যন্ত অথদন্ডে, অথবা উভয় দন্ডে দন্ডনীয় হইবেন।

৩০৭। কোন ব্যক্তি এই আইন বা কোন বিধি, প্রবিধান বা স্কীমের কোন বিধান লঙ্ঘন করিলে বা মানিতে ব্যর্থ হইলে, এবং ইহার জন্য উহাতে অন্য কোন দন্ডের বিধান না থাকিলে, তিনি তিন মাস পর্যন্ত কারাদন্ডে, অথবা এক হাজার টাকা পর্যন্ত অর্থদন্ডে, অথবা উভয় দন্ডে দন্ডনীয় হইবেন।

৩১০(১) এই আইন বা কোন বিধি, প্রবিধান বা স্কীমের অধীন কোন অপরাধের জন্য কোন প্রতিষ্ঠানের মালিকের দন্ড হইলে, আদালত লিখিত আদেশ দ্বারা, দন্ডের অতিরিক্ত হিসাবে, যে কারণে অপরাধ সংঘটিত হইয়াছে সে কারণ দূরীভূত করিবার জন্য, আদেশে উল্লিখিত নির্দিস্ট সময়ের মধ্যে, যাহা কোন দরখাস্তের ভিত্তিতে বর্ধিত করা যাইবে, উহাতে উল্লিখিত ব্যবস্থা গ্রহণ করিবার জন্য তাহাকে নির্দেশ দিতে পারিবে।

30. He then submitted that if an employer follows these sections properly and offers the worker to take the benefits properly calculated by him, and after that the worker claims furthermore, then the dispute may be settled by the concerned Court. In that respect there is no requirement for proceedings under section 307 of the Act. If the settlement of the claim is not obeyed by the employer, or the management fails to give the benefits only then the worker may go to the Court to claim redress under section 307 of the Act. The Court may direct the employee to settle the dispute as arrived at by him within certain time and then under the provision of section 310 of the Code, the Court can direct the employer to act on the basis of that direction and in case he violates that then action may be taken against the management.

31. He further submits that section 33 of the Act provided for the grievance procedure but there is a time limit mentioned therein, which may not be required, if the employer acts according to section 123(1) and (2), however, for violation of the Court's direction, the worker may directly go to the Labour Court under section 132 of the Act.

32. He then submitted that section 132 of the Act has been brought in only for the purpose of the heirs after the death of a worker in question and for that reason the Labour Court can dispose of the matter in accordance with law. In such situation the section 307 may not be available until such direction is not complied with by the employers.

33. He again submitted that section 215 describes for trial of offences, procedures of criminal procedure to be applied, as nearly as possible, with the power of a Magistrate; and section 216 states that all proceedings in a Labour Court shall be civil proceedings within the penal category. Sections 283, 289 and 307 provides for the punishment procedures. Mr AKM Nasim, thereafter submitted that it is not the intention of the legislature to harass the employers or anybody else but to which a proper justice in all the cases be maintained and referred to the well acclaimed customary norm that শ্রমিকের মজুরী তার ঘাম শুকানোর আগে দেয়াই হল ধর্মীয় বিধান ৭ দিনের মধ্যে পাওনা পরিশোধের কথা তারই সমর্থক।

34. We have heard the learned advocates for all the sides. It appears that the Division Bench presided by Mr. Justice Bazlur Rahman could not agree with the judgments passed in the two reported jurisdiction on prosecution and punishment under sections 307 and 310 of the Labour Act, 2006, *Sayeed Ahmed Chowdhury vs SM Zahidul Islam (Zahid), 63 DLR 212* and *Kazi Rokanuddin Ahmed vs Labour Court, 63 DLR 382*. In those matters sections 307 and 310 of the Labour Act or under any other provisions for their alleged violation or non-compliance of the provisions of said Act or Rules or Regulations before exhaustion of legal avenues as provided by section 33 and/or section 132 of the said Act were addressed. The Act does not say that before exhaustion of section 307 of the Act, sections 33 and 132 are to be exhausted. It is not stated anywhere in the Act that sections 307 and 310 of the Act, are only applicable as and when other provisions are not complied with. As such, I am in total agreement with Mr Justice Bazlur Rahman that the reported judgment does not reflect the same. Upon hearing the learned advocates and also perusing the unreported decisions passed in writ petition Nos. 2100-2111 of 1999, I am of the view that the said provisions of sections 307 and 310 of the Labour Act, 2006 can be availed by the parties in dispute on certain conditions. It should not be open to all to come to the Court with the case under those sections but in certain cases a party may prefer to come to the Court to avail the provisions as mentioned above, if he thinks to get an effective order within a short span of time. Once the employment of a worker has ended for any reason, the appointing authority is obliged to pay his entire dues within 30 working days under section 30 of the Act. It is the duty of the employer to comply with the provisions of this section 30 of the Act. If the employee fails or does not show any sign to respect the law. Then the employee can invoke the jurisdiction of the Labour Court under sections 307 and 310 of the Act and there should not be any hinderance for that.

35. On the other hand, section 123 makes it obligatory for the employer to pay the entire wages of the worker within 7 working days from the date of ending of employment of the employee. Section 148 made it mandatory for the employers to comply with the decision of the Wage Board and section 149 prohibits the employers to pay wages below the rate determined by the Wage Board. This obligation to pay as mentioned in the above sections have got meaningful purpose with legal force. If we accept submissions of the learned advocates for the petitioners then the said sections mentioned above

becomes meaningless and that cannot be the intention of the legislature. Sections 33 and 132 of the Act provides for civil remedies in accordance with certain procedure and limitation and in those cases the Labour Court can direct the employer to pay the entire dues or entire wages as the case may be and penalties for non-compliance of any such direction have also been mentioned in the relevant provisions. In case of violation, the worker may move the Labour Court under sections 307 and 310 of the Act, which have been brought in the statute for earlier disposal of the case. As regards claim of the parties, if any, bonafide dispute be raised by the employers that can also be taken care in a criminal proceeding and for that reason we cannot hold that the provision of sections 307 and 310 of the Act is *ultra vires* to the constitution.

36. Upon perusal of the petition of complaints annexed with the aforesaid writ petitions, it appears that the basic allegation of the concerned worker is this that the employers either violated the provisions of the said Act or did not comply with the specific provisions of law. In Writ Petition No. 4308 and Writ Petition No. 4309 of 2010, the petition of complaint alleges violation of sections 148 and 149 and specific penalty for such violation is provided under section 149 of the Act, this non-mention of section 289 or section 307 should not in any way vitiate the proceedings initiated against any employer. If it is found that the allegations made in the complaints disclose the offence punishable under the act. My conscious opinion upon consideration of or the facts and circumstances of the cases is clear that the criminal proceedings concerned in these cases should not be quashed and they should be allowed to proceed. The Labour Court is to determine the exact liability of the employers in those cases it will go into merit of the liability just to determine the culpability as to whether there was any violation or non-compliance of any provisions of the Act on the part of the employer. Of course upon consideration of any *bonafide* dispute raised by the employers and everything shall be determined by the Labour Court in disposing of the matter. And if it is found that *bona fide* dispute raised by the employer is true that can also be taken care of in a criminal proceeding. And he may also be directed to comply and settle the dispute but if it is found that his action tantamounts to violation of or non-compliance with the provision of the Act then appropriate action mentioned in the act can be taken against him. In these cases it appears that the employee have claimed their due claims in the court and the employers without making the claims have come to this Court and in this way the employees are being deprived of their due claims. As the case may be, the employers should also look into the matter of the disputes and setting them. For that reason, sections 307 or 310 of the Act cannot be declared *ultra vires*. With this observation and findings 1 am of the view that the rules issued in all this 4(four) petitions have got no merit in the eye of law and those are liable to be discharged.

Quazi Reza-ul Hoque J : I have gone through the judgment of my learned brother, with whom I cannot agree, as such, without repeating the facts and submissions of the learned Advocates, I am perusing my own opinion.

38. On perusal of the submissions of the learned Advocates of both the sides and the learned Advocates of the interveners, the petitions and the documents annexed thereto, the issues crystallizes to the point that whether an aggrieved workers can resort to the criminal provisions of the Labour Court, 2006 without invoking the civil provisions of the law.

39. The instant four writ petitions, practically two sets, one set being at the instance of two media workers; and the other two are garment workers. The claim of media workers has also been refuted by submitting papers with regard to 'full and final payments' having been made by the employer, however, those are denied by the employees, which are absolutely disputed ques-

tions of facts. The other two workers of the garments factories claim as not having been paid since they were thrown out of work. And all the cases were filed under sections 307 and 310 of the Labour Code,

40. The allegations involves non-payment of wages and benefits accrued after having been thrown out of work. Section 307, clearly stipulates that—

> 307. Whoever contravenes, or fails to comply with, any of the provisions of this Code or any rules or scheme made thereunder, shall, if no other penalty is provided for such failure, be punished with a penalty of up to twenty five thousand Taka.

41. Section 310 stipulates that, if any employer is penalized under any provisions of this Code, for mitigating that grievance, he may be ordered further to mitigate the grievance and default, may be imprisoned for upto six months.

42. Section 30 of the Code provides that—The appointing authority shall pay off all dues of a worker within thirty working days of his retirement, discharge,dismissal, retrenchment or termination of service.

43. Section 33 of the Code also stipulates similar kind of provisions for discharge, dismissal, retrenchment or otherwise removed from service or for any other provision falling within the provisions of Chapter II, shall not be treated as a criminal offence [33(8)] Punishment for non-compliance of the Court's order is stipulated in section 283.

44. Section 123 also provides that, if a worker is discharge, dismissal, retrenchment or removed from service, the wages and benefits be given within 7 days of his discharge, dismissal, retrenchment or otherwise removal.

45. In the instant petitions, the opposite-parties, those who were aggrieved and have brought the cases against their employers have invoked section 307, which clearly stipulates that the jurisdiction of the section is limited only when there is no punishment procedure is available. These workers did not at all specify, as to which provision of the Code, their employers have violated and thereby they ought to have stated that there is no provision of punishment under that provision, i.e. section of the Code, only then they could invoke section 307. Apart from that it is to be noted very carefully that under the provisions of section 307, the Labour Court straightaway issues warrant against the employers without even providing them with any opportunity to defend and that may lead to misusing of this provisions, as such, it should be used strictly in accordance with law as provided in the Code.

46. So, I am of the view that the Rules be made absolute, however, the Court may convert the cases to civil claims instead of criminal and proceed accordingly.

47. In the result the Rules are made absolute with the above observations.

ABM Altaf Hossain J : I have had the privilege to going through the judgment written by my learned brother Md. Nizamul Huq, J and as well - as the judgment made thereto Quazi Reza-ul-Hoque, J. I agree with the decision concurring with the views expressed by Quazi Reza-ul-Hoque, J.

Order of the Court

By majority view all the rules issued in Writ Petition Nos. 8959 of 2010, 8960 of 2010 and 4308 of 2010 and 4309 of 2010 are made absolute without any order as to cost. The Criminal Case No. 432 of 2010, Criminal Case No. 423 of 2010, Criminal Case No. 121 of 2009 and Criminal Case No. 533 of 2008 of the 1st Labour Court, Dhaka are quashed.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Md Nizamul Huq J
Md Moinul Islam Chowdhury J

Judgment
November,18th 2013.

Rana Awan .....Petitioner

vs

Bangladesh and others....
.....Respondent*

Constitution of Bangladesh, 1972
Article 102(2)

Without availing the appropriate forum and adopting a shortcut way of seeking remedy from the ADC (Rev) cannot be an appropriate forum and thereafter invoking Article 102 instead of a court which has jurisdiction and can ascertain document and entitlement and even the possession on the disputed land, the individual ought to have sought her entitlement before claiming a mutation and demarcation of the land by filing writ petition to settle some disputed question of facts. This court cannot adjudicate disputed facts, the writ petition is not maintainable. .....(26)

Government of Bangladesh vs Mirza Shahab Ispahani, 40 DLR (AD) 116 ref.

TH Khan with MI Faruqui, Advocates—For the Petitioner.

Mahbubey Alam, Attorney-General with Rajik-al-Jalil, DAG and Karuna Moya Chakma, DAG— For the Respondent.

Judgment

Md Moinul Islam Chowdhury J: This Writ Petition has been sent to this court by the Hon'ble Appellate Division by passing the order dated 2-5-2013 for hearing and disposal of the Rule afresh.

*Writ Petition No. 770 of 2004,

2. Due to some unavoidable circumstances the judgment of this writ petition could not be delivered on 11-11-2013, as such, this writ petition is taken up today for delivery of judgment.

3. At the instance of the writ petitioner, Mrs Rana Awan, this Rule has been issued on 29-2-2004 calling upon the respondents to show cause as to why should not be directed to demarcate and mutate lands as described in the schedule mentioned at paragraph 2 of the petition in the name of the petitioner and/or pass such other or further order or orders as to this court may seem fit and proper.

4. The relevant facts for disposal of this rule, *inter alia,* are that Alhaj Sheikh Mohammed Noor, the father of the present petitioner, purchased 30.50 acres of land from the SA Recorded owner comprising in Mouza-Kouchakuri, Police Station Kaliakoir, District-Gazipur as mentioned in the writ petition. The present petitioner's father purchased the aforementioned lands during the period between 1962 to 1966 through different deeds annexed as Annexures. The said Sheikh Mohammad Noor being an owner and possessor of the aforesaid land mutated his name in the concerned office of the Assistant Commissioner (Land) and paid rent after obtaining Duplicate Carbon Receipt (DCR). The name of the said Sheikh Mohammad Noor was recorded in the RS Khatian in the right of record. The Petitioner claimed that she has been paying rent in the name of her predecessor.

5. It is further stated that the petitioner is the owner and possessor of the aforementioned land by way of gift from her father Al-haj Sheikh Mohammad Noor. The petitioner had been residing abroad temporarily. Her residential house situated in Gulshan Model Town was treated as an abandoned property but pursuant to the Writ Petition No. 287 of 1975 the property was declared as not being an abandoned property and she became owner of the property thereby.

6. The petitioner's further claim is that the land measuring 30.50 acres is the land surrounded by the government land. The petitioner had been residing outside the country for a long time. The petitioner's application for mutation as to the record of right made to the office of the Assistant Commissioner (Land), Kaliakoir was refused. The petitioner thereafter filed application before the Additional Deputy Commissioner (Revenue) (the respondent No.4) for mutation and demarcation of the aforementioned land by the government surveyor. The respondent No. 4, the Additional Deputy Commissioner (Revenue), Gazipur, after perusal of the papers and documents and also after physical verification passed an order on 4-12-2002 for mutation and demarcation of the said land and the Additional Deputy Commissioner (Revenue) sent the said order to the Senior Assistant Secretary, Ministry of Land for approval of the same but the petitioner did not receive any response therefrom for a long time hence filed this writ petition and obtained the Rule in the said writ petition.

7. Mr TH Khan, the learned Senior Counsel appearing along with the learned Senior Counsel Mr MI Faruque submitted in support of the rule. Mr TH Khan the learned Counsel submits that the respondent No. 4 passed the said order on 4-12-2002 for mutation and demarcation of the land in favour of the petitioner and submitted the same before respondents Nos. 1-2 for approval, but the respondents have been keeping mysterious silence for a long period of time after passing the order by the respondent No. 4.

8. The learned counsel further submits that admittedly the aforesaid lands were not declared as the abandoned properties and, as such, the respondents are liable to be directed to enforce the fundamental right of the petitioner by mutating the name of the petitioner in the record of right as to the aforesaid land in the concerned office of the Assistant Commissioner (land).

9. The learned Senior Counsel specifically submitted before us that the petitioner only claimed mutation and demarcation of the land not a title or possession thereof before the Additional Deputy Commissioner (Revenue), Gazipur under Rules 42 and 45 of the State Acquisition Rules and the Additional Deputy Commissioner (Revenue) has got all Civil Court power to adjudicate the right as to the mutation of the land. He also submits that the claim implies necessity to measure the land in front of the witnesses and, accordingly, the Additional Deputy Commissioner passed the order on 4-12-2002 with certain findings in favour of the petitioner but sent the matter for approval of the concerned Ministry. The concerned Ministry abstained themselves from passing any order for a long time which has infringed the petitioner's fundamental right.

10. Mr MI Faruque, the learned Senior Counsel also submits on behalf of the petitioner that the Additional Deputy Commissioner (Revenue), Gazipur is the prescribed authority for mutation as well as for findings whether the property is an abandoned property or not and the Additional Deputy Commissioner (Revenue), Gazipur passed the order in favour of the petitioner but intentionally sent the matter for approval of the concerned Ministry which was not required under section 15 of the Bangladesh Abandoned Property Order 1972 and the petitioner has been deprived of her right due to the silence on the part of the concerned Ministry for an unreasonable period of time thus the Rule should be made absolute.

11. Mr MI Faruqui also submitted that the order passed by the Additional Deputy Commissioner (Revenue) in favour of the petitioner had never been challenged by the respondents by way of appeal in the appropriate forum as the said order contained that the land in question cannot be treated as an abandoned property as the husband of the petitioner is a Bangladeshi National and the

petitioner got a property in Gulshan which was declared not an abandoned property through the judgment and order passed by this court. He also submits that before declaring a property as an abandoned property the relevant government authority must form an opinion thereabout. In support of his submission he had drawn our attention to paragraph-14 of the judgment and order in the case of *Government of Bangladesh vs Mirza Shahab Ispahani* reported in *40 DLR (AD) (1998) 116.* He also submits that the Bangladesh Abandoned (Control, Management and Disposal) Order 1972, Article 2(1) provides an exclusion clause as to the abandoned property. In support of his submission the learned Advocate referred *28 DLR (AD) 1976.* The learned Counsel submits that the petitioner has no prejudicial activities at the time of liberation war against Bangladesh which is one of the requirements for including a property as an abandoned property but in the present case the petitioner does not have such activities, as such, there is no scope to include the property as an abandoned property as it is beyond the ambit or frame work laid down under the PO 16 of 1972, hence, this Rule should be made absolute directing the present respondents in the form of *mandamus* for mutation and demarcation of the land.

12. The rule has been opposed by the Respondent No. 3, the Deputy Commissioner, Gazipur by filing an Affidavit-in-Opposition contending, *inter alia*, that the statements made in the writ petition either are incorrect or inappropriate therefore denied by the respondents. However, it is admitted that RS Record of the disputed land was prepared in 1967 before the liberation war in the name of one Sheikh Mohammad Noor a Pakistani National who left before liberation war by leaving the property behind in Bangladesh. The disputed land was thereafter included as an abandoned property by the order of the then President Sheikh Mojibur Rahman vide Memo No. 75/72 dated 3-7-1972 and accordingly the Sub-divisional Officer, Gazipur (North), Dhaka by the letter dated 15-7-1972 and also by the Circle Officer (Revenue) PS Khaliakoir, Dhaka acquired the property and thereafter alloted the same in favour of the Ministry of Agricultural for agricultural management through the abandoned property Case No. 1 of 1980 and leasing the property to the different government Corporations. It is also contended that the property is an abandoned property as per the operation of the PO 16 of 1972 and the same property has never been released by anybody neither by the order of the concerned court, nor by the government's relevant authorities in favour of the petitioner or anybody else.

13. The Affidavit-in-Opposition further contains the actual facts of this land in the following terms:—

(a) Sheikh Mohammad Noor was owner of the land which is admitted by the petitioner; RS record was done in 1967 in the name of Sheikh Mohammad Noor before the liberation war in 1971, Sheikh Mohammad Noor left Bangladesh and went to Pakistan.

(b) According to the President Order No. 16/1972, 34.25 acres and 4.64 acres land of Mr Noor was declared as abandoned property. The President of the Peoples' Republic of Bangladesh ordered the concerned authority to handover the aforesaid land to the different Ministries.

(c) That the aforesaid land, 4.64 acres were allowed to Forest Industries Development Corporation by abandoned Property Case No. 1 of 1980, 30.50 acres to the Ministry of Agriculture and rest to the Ministry of Housing and Public Works.

(d) Sheikh Mujibur Rahman, the President of the People's Republic of Bangladesh and his office Memo No. 75/72 dated 3-7-

1972 allotted 30.50 acres of land to the Ministry of Agriculture. It is also mentionable that (14.27 + 9.24) acres abandoned property of Saver Upazilla allotted to the Ministry of Agriculture for horticulture and mushroom production which was not Gazetted i.e. abandoned land handover to for agricultural purposes to the Ministry of Agriculture was not Gazetted. So, the publication of Gazette is not only the factor for abandoned property.

(e) SDO (North) Dhaka handed over the abandoned land to the Ministry of Agriculture.

(f) The disputed land has been used for horticultural production since 1972 in peaceful manner. In that Horticulture Centre qualitative seedlings production, distribution, farmers training and different agricultural production technologies are disseminated to the people, BCS Cadre officers including 19 employee work there for service to the People.

(g) Since Department of Agricultural Extension (DAE) under the Control of MOA passed the land, DAE paid the land development taxes upto 1408 BS who are only possessor of the land, not respondent. The petitioner submitted to the court false land development tax dakhila. After long lapse of time, one Mrs. Rana Awan demanding the daughter of Pakistani National Sheikh Mohammad Noor, gathering the knowledge that this land was recorded RS in Sheikh Mohammad Noor. The petitioner wanted to take the illegal chance to be owner of the land by illegal oral gift paper in 1970 and, as such, she applied to the ADC (Rev), Gazipur for Demarcation of boundary and to mutate in her name. But ADC (Rev) Mr Rafiqul Islam illegally passed an order by miscellaneous Case No. 12 of 2002 dated 4-12-2002 and forwarded to the Ministry of land for further action, but the Ministry of land did not approve the Miscellaneous Case No. 32 of 2002. After enquiry report legal action against said Rafiqul Islam ADC (Rev) is continued."

14. Mr Mahbubey Alam, the learned Attorney General appearing, along with the learned Deputy Attorney General Rajik-al-Jalil and Deputy Attorney-General Mr Karuna Moya Chakma, for the respondent No. 3 submits that the disputed property admittedly originally belonged to one Sheikh Mohammad Noor as the RS recorded owner who was a Pakistani National and left the Bangladesh before the Liberation War in 1971 but the present-petitioner approached the Assistant Commissioner (Land) Kaliakoir for the first time at least after 30 years from the liberation war who rejected her prayer for mutation. He further submits that the petitioner thereafter approached the Additional Deputy Commissioner (Rev) Gazipur for the first time on 21-4-2002 for seeking remedy regarding "বিষয় ঃ জোতভুক্ত সম্পত্তির মালিকানা নির্ধারণ পূর্বক সরেজমিনে সীমানা চিহ্নিত করে প্রকৃত মালিকের দখল বুঝিয়ে দেয়া প্রসঙ্গে", as such, the learned Attorney General submits that the remedy sought by the petitioner in the office of the Additional Deputy Commissioner (Revenue), Gazipur is beyond the jurisdiction of the Additional Deputy Commissioner as he does not have any authority or power or jurisdiction to settle any dispute regarding the title and possession of land. He also submits that such a jurisdiction is only available under the Code of Civil Procedure in a civil court, as such; this Writ Petition is not maintainable as there is an efficacious remedy available for the petitioner to agitate her grievance.

15. The learned Attorney General further submits that the petitioner has claimed her entitle-

ment and right to be mutated in relation to the disputed land through oral gift dated 31-12-1970 which was subsequently sworn in the form of Affidavit on 14-1-1971. The petitioner thereafter filed the aforementioned application on 21-4-2002 (Annexure-E to the Writ Petition) but such a document can only be declared valid or invalid by a competent court as to the genuineness of the said document which is absolutely a disputed question of fact thus such question can only be resolved and be adjudicated on evidence adduced or produced in a competent civil court, as such, this Rule is liable to discharged as being not maintainable.

16. Mr Rajik-al-Jalil, the learned Deputy Attorney also supported the submissions made by the learned Attorney-General by submitting that the petitioner has never been in possession of the disputed land and the claim of the oral gift is an invalid document as the petitioner was only a girl of 7 years old at the time of the said purported deed of gift, therefore, the learned Additional Deputy Commissioner (Rev) or this writ jurisdiction under Article 102 of the Constitution cannot ascertain as to the validity of the said document, after a long 30 years elapsed for execution of such deed, as such, the Rule is liable to be discharged.

17. The learned Deputy Attorney-General also submits that section 2 of the Bangladesh Abandoned Property (Control Management and Disposal) Order 1972 provides the definition of an abandoned property stating that any property owned by any person who is not present in Bangladesh or whose where about is not known or who has ceased to occupy, supervise or manage any person of his property.

18. The learned Deputy Attorney-General further submits that the disputed land was vacant land during and before the liberation war, as such, this property was not listed at any stage of time as abandoned property under the provision of rule 2 of the Bangladesh Abandoned Property (Land, Building and any other Property) Rules 1972. Under section 2(a) of the Abandoned Buildings (Supplementary Provisions) Ordinance, 1985 a vacant land does not appear in the list of the abandoned property, as such, this property was not also listed at any stage of time as an abandoned property but the present petitioner by misleading the ADC (Rev), Gazipur obtained the order dated 4-12-2004 which was an illegal and unlawful order and the same eventually forwarded to the Ministry for approval but the present writ petition has been filed for inaction on the part of the Ministry of Land for withholding the discretion to accord approval, as such, the instant writ petition is premature and thus the Rule is liable to be discharged with costs.

19. Considering the above submissions made by the learned Senior Counsel appearing on behalf of the respective parties and also considering the writ petition along with the Annexures therein and the Affidavit-in-Opposition as well as the Supplementary Affidavit and Replies thereof, it appears to us that the present petitioner filed the writ petition in the year of 2004 for a direction in the form of *mandamus* upon the respondents for demarcation and mutation of the disputed land described in the paragraph-2 of the writ petition. We have been enlightened by the submissions made by both the parties on different points of facts and law.

20. The admitted position for both the parties are that the disputed land was owned and possessed by one Sheikh Mohammad Noor after obtaining record of right in the RS Khatian in his name. The land measuring 30.50 acres is the disputed land situated in Mouza Kouchakuri, Police Station-Kaliakoir and District-Gazipur which was purchased by the said Mohammad Noor through deeds of purchase which have been annexed in the writ petition.

21. Another admitted position is that the said Sheikh Mohammad Noor was a Pakistani

National and who did not accept allegiance to Bangladesh and left before the liberation war in 1971. However neither of the parties provided any information whether the Sheikh Mohammad Noor is still alive or not.

22. The petitioner claimed to mutate and demarcate the disputed land on the basis of an oral gift executed on 31-12-1970 which was subsequently sworn in on 14-1-1971 but only a photocopy has been annexed as Annexure-"D" in the writ petition. From the said document it appears that the donee Mosammat Rana Noor had obtained the scheduled property by way of oral gift from her father and the said gift was executed in the presence of Haji Golam Mohammad (2) and Naziruddin but the deed was executed under Sunni Muslim Law. In this regard if a document is executed under the Sunni Muslim Sunee Law, it is known a Heba Deed (Heba-bil-ewaz) but under the Transfer of Property Act a property cannot be gifted as per provision of the said Act. In case of Heba it was not required to be registered in the year of 1971 but a deed of gift under the Transfer of Property Act must be executed by way of registration. In the instant case the deed looks like a deed of gift but the content appears to be as a Heba under the Sunni Muslim Law. This aspect should have been settled by a competent civil court on obtaining evidence as to the executants of the alleged deed of gift or Heba or any kind of transfer of such a huge measurement of land. In such circumstances a competent civil court is the only authority to decide on the validity or invalidity of the said document before getting the land recorded by way of mutation but the petitioner instead of taking such recourse approached first the AC (Land) and then ADC (Land) without ascertaining aforementioned aspects thus this writ petitioner has to satisfy a serious question as to the maintainability of this writ petition.

23. The next is to be decided whether ADC (Rev) Gazipur had any jurisdiction to dissolve the remedy sought by the present petitioner in the year of 2002. From Annexure-E it appears that that the petitioner filed an application without any date to the ADC(Rev), Gazipur (revived in April, 2002) as to some matters and the most significant matter in the application reads as follows:

"বরাবর,

অতিরিক্ত জেলা প্রশাসক (রাজস্ব)

গাজীপুর।

বিষয়ঃ জোতভুক্ত মালিকানা নির্ধারণ পূর্বক সরেজমিনে সীমানা চিহ্নিত করে প্রকৃত মালিকের দখল বুঝিয়ে দেয়া প্রসঙ্গে।

দরখাস্তকারী পক্ষঃ মিসেস রানা আওয়ান।

পতিঃ কায়সার আহমেদ আওয়ান।

সাং- ৭নং ওয়াটার ওয়াকস রোড, ঢাকা।

মহোদয়,

যথাযথ সম্মানপূর্বক সবিনয় নিবেদন এই যে, নিম্ন তফশীলভুক্ত ভূমি আমার স্বত্ব দখলীয় সম্পত্তি। দানপত্র দলিলে মালিকানা লাভের পর থেকে খাজনা খারিজের মাধ্যমে অদ্যাবধি শান্তিপূর্ণভাবে ভোগ দখল করে নিয়ত আছি। বাংলা ১৪০৮ সাল পর্যন্ত খাজনা পরিশোধ আছে। কিন্তু সুদীর্ঘকাল বিদেশে অবস্থানের কারনে তফশীলভুক্ত ভূমির মালিকানা সংক্রান্ত আদেশ ও সরেজমিনে সীমানা চিহ্নিত করণের বিষয়টি এখন আবশ্যক হয়ে পড়েছে। এমতাবস্থায় সরকারী সার্ভেয়ার দ্বারা পার্শ্ববর্তী জোতদারদের সাথে তফশীলভুক্ত ভূমির সরেজমিনে সীমানা চিহ্নিত করণের দাবী জানাচ্ছি।

অতএব মহোদয়, বর্ণিত অবস্থায় নিম্ন তফশীলভুক্ত ভূমির সরেজমিনে সীমানা চিহ্নিত করণ পূর্বক দরখাস্তকারী পক্ষকে যথারীতি বুঝিয়ে দেয়ার মাধ্যমে চিহ্নিতাদেশ দানে মর্জি হয়।"

24. From the above part of the application it appears that the petitioner sought title, demarcation and possession of the disputed land which can only be adjudicated by a competent civil court

on the basis of the existing laws of the country but there is an illegality committed by the ADC (Rev) by entertaining the application and by passing the order on 4-12-2002 in the above matters of title and possession. We also consider that the order passed by the ADC (Rev) describing that the government institution like Agricultural Division, Horticultural Division of government and other institution established on the disputed land and running there government businesses for more than 30 years without any interruption or intervention from any person including the present petitioner.

25. We have examined the said order passed by the ADC (Rev), Gazipur who purportedly applied his jurisdiction by passing the order to its finality but eventually sending the matter for obtaining an approval from the concerned Ministry which is a purported cause for this writ petition. We have also considered that the ADC (Rev) acted without any jurisdiction in passing the order including sending the matter to the Ministry, as such, we do not find any legality as to the contents of the order as well as order to send the matter for disposal by the concerned Ministry, as such, we consider that this rule does not merit my consideration as sought for in the form of *mandamus.*

26. Finally regarding the inclusion or exclusion of the disputed land from being an abandoned property we have examined carefully about the given the facts in this writ petition as well as the relevant laws thereabout. The present petitioner had been fully aware that the land originally belonged to her father who was a Pakistani National and left the country before the liberation war. She also was aware that a deed of gift was executed by her father as claimed, in the year of 1970 and subsequently by swearing affidavit in 1971. The petitioner ought to have knowledge in the year of 2002 the property was occupied and possessed by the government institutions for more than 30 years when she approached the ADC (Rev), Gazipur for the property belonged to government by operation of PO 16 of 1972 and the other relevant laws therefrom. It was also her duty to file an application in the appropriate forum for claiming back the property instead of claiming mutation and demarcation from the ADC (Rev). We also consider that she could have better opportunity to adduce and produce sufficient witnesses in support of her claim regarding the deed of gift and any other documents. She also failed to do so for such long period of time when she remained out of possession of the disputed land but without availing the appropriate forum she adopted a shortcut way of seeking remedy from the ADC (Rev) which cannot be an appropriate forum and thereafter invoking Article 102 of the Constitution instead of a court which has jurisdiction and can ascertain her document and entitlement and even the possession on the disputed land, as such, we consider that she ought to have sought her entitlement before claiming a mutation and demarcation of the land by filing this writ petition to settle some disputed question of facts. This court cannot adjudicate such disputed facts, thus the writ petition is not maintainable under Article 102 of the Constitution, therefore, we do not find any merit on the submissions made by the learned Advocates appearing for the petitioner.

27. Accordingly, we do not find any merit in this Rule.

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

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Tariq-ul-Hakim J
ATM Saifur Rahman J

Judgment
February 6th, 2013.

WDS Naushad Ali Khan...
.....Petitioner in Writ Petition No. 8063 of 2012

vs

Government of Bangladesh and others.....Respondents*

Public Servant (Retirement) Act (XII of 1974)
Section 4

Bangladesh Biman Corporation Employees (Service) Regulations, 1979
Regulation 11

Since the employees of Biman are public servants within the meaning of the Act, therefore the provisions of the Act will be applicable from the date of its amendment i.e. since the petitioners were in service of Biman and did not reach the age of 59 years when the amended was made, therefore they will be entitled to get advantage of the amended statutory provision. .....(22)

Ajay Hasia vs Khalid Mujib Sehravardi (1981) 1 SCC 722; Ramana Dayram Shetty vs International Airport Authority (1979) 3 SCC 489 and Bangladesh Biman Corporation vs Let Col (Retd) Md Zainul Abedin, 5 BLC (AD) 169 ref.

Abdul Matin Khasru, Senior Advocate—For the Petitioner

Mahbubey Alam, Senior Advocate with Md. Ekramul Haque—For the Respondents Nos. 2 and 3.

Judgment

ATM Saifur Rahman J : These two Rules concern of facts akin to each other and involve common question of law and, as such, were taken up together for hearing and are being disposed of by this single judgment.

2. In writ petition No. 8063 of 2012 Rule was issued on an application calling upon the respondents to show cause as to why the impugned Memo No. DHAKGF/P-31095/2012/285 dated 30-1-2012 issued by the respondent No. 4, informing the petitioner that he will retire from his service in Biman on 20-6-2012 at the age of 57 (Annexure-A), should not be declared to have been made without lawful authority and is of no legal effect and/or such other or further order or orders passed to this Court may seem fit and proper.

3. Similarly in writ petition No. 9864 of 2012 Rule was issued calling upon the respondents to show cause as to why the impugned Memo No. DHAKGF/P-32126/2012/475 dated 29-2-2012 (Annexure-D) issued under signature of the Personal Officer, Biman Bangladesh Airlines Limited (respondent No.4) asking the petitioner to retire from the service of Biman on 27-7-2012 at the 57th year of his age, shall not be declared to have been made without lawful authority and is of no legal effect and why the Respondents shall not be directed to allow the petitioner to remain in the service of Biman till the 59th year of age according to the provisions of section 4 of the Public Servants (Retirement) Act, 1974 (as amended by the Act No. 2 of 2012 with effect from 26-12-2011); and /or pass such other or further order or orders as to this Court may seem fit and proper.

4. For the purpose of disposal of these Rules the relevant facts in short are as follows:

5. In writ petition No. 8063 of 2012, the petitioner joined the service of Biman Bangladesh Airlines Limited as junior Traffic Assistant on 15-5-1978. On successive promotions he rose up to the post of Manager (Ground service) on 24-12-2001. While the petitioner was carrying out his

*Writ Petition Nos. 8063 and 9864 of 2012.

services and discharging his duties all on a sudden he received the impugned order of his retirement being Memo No. DHAKGF/P- 31095/2012/285 dated 30-1-2012 issued by the respondent No.4 to the effect that he will retire from his service in Biman on 20-6-2012 at the age of 57 as per Bangladesh Biman Corporation Employees (Pension and Gratuity) Regulations 1988. The Government has increased the retirement age of public servants from 57 years to 59 years vide Public Servants (Retirement) (Amendment) Act 2012 which has come into force with effect from 26-12-2011. Since the petitioner is a public servant, his retirement age should be 59 instead of 57.

6. Being aggrieved with the aforesaid impugned order dated 30-1-2012 thereafter the petitioner has preferred this application before this Court under Article 102 of the Constitution and obtained the instant Rule.

7. In writ petition No. 9864 of 2012, the petitioner joined the service of Biman Bangladesh Airlines as Junior Cargo Assistant on 23-5-1981. On successive promotions he rose up to the post of Assistant Manager Commercial on 12-12-2011. While the petitioner was carrying out his services and discharging his duties all on a sudden he received the impugned notice of his retirement being Memo No. DHAKGF/P-32126 /2012/475 dated 29-2-2012 issued by the respondent No.4 to the effect that he would retire from the service of Biman on 27-7-2012 at the age of 57 years of his age, as per Bangladesh Biman Corporation Employees (Pension and Gratuity) Regulations 1988.The Government has increased the retirement age of public servants from 57 years to 59 years vide Public Servants (Retirement) (Amendment) Act 2012 which has come into effect from 26-12-2011. Since the petitioner is a public servant, his retirement age should be 59 instead of 57. Being aggrieved with the aforesaid impugned letter dated 29-2-2012 (Annexure-D) the petitioner has preferred this application before this Court under Article 102 of the constitution and obtained the instant Rule.

8. Affidavit in opposition has been filed on behalf of the respondent Biman Bangladesh Airlines Limited where it has been stated that Biman Bangladesh Airlines Limited is now a Public Limited Company under the Companies Act 1994 as per Gazette Notification dated 2-8-2007. After incorporation of the Company the Board of Directors shall be entitled to make the final decision as to the retirement age of its employees and other matters and that the provisions of Public Servants Retirement Act will not be applicable to the employees of Biman Bangladesh Airlines Limited.

9. In support of the Rules Mr Abdul Matin Khasru the learned Advocate appearing on behalf of the petitioners led us through the petition and the Annexure enclosed therewith. The learned Advocate submits that both the petitioners have long and unblemished career and served Biman Bangladesh Airlines Limited with full satisfaction of their authorities. In this connection he referred to (Annexure-B) series of his two writ petitions.

10. He further submits that while both the petitioners were carrying out their services and discharging their duties all on a sudden they received the impugned notice being Memo No DHAKGF/P-31095/2012 /285 dated 30-1-2012 and Memo No. DHAKGF/P-32126/2012/475 dated 29-2-2012 respectively issued by the respondent No.4 informing them that they will retire from their service in Biman on 20-6-2012 and 27-7-2012 at the age of 57 years as per provisions of Bangladesh Biman Corporation Regulation 1988 which are absolutely illegal and void. In order to substantiate his arguments he pointed out that the Government has increased the retirement age of public servants from 57 years to 59 years vide Public Servants (Retirement) (Amendment) Act 2012 which has come into

force with effect from 26-12-2011. Since the petitioners are public servant, their retirement age would be 59 instead of 57 and, as such, both the impugned order issued by the respondent No. 4 are illegal and void and have no legal effect.

11. Mr Mahbubey Alam the learned senior counsel appearing on behalf of the respondents submits that Bangladesh Biman Corporation has now been converted into Biman Bangladesh Airlines Limited by way of Gazette notification dated 2-8-2007. Now it is a public limited company and not a statutory body. Accordingly the petitioners are not public servants within the meaning of section 2(d) of the Public Servants (Retirement) Act, 1974 and their tenure of office was governed by Bangladesh Biman Corporation (Pension and Gratuity) Rules 1988. Both the impugned notices of their retirement were issued in accordance with the provision of Bangladesh Biman Corporation (pension and Gratuity) Rules 1988 and, as such, these Rules are liable to be discharged.

12. The learned Advocate further submitted that Biman Bangladesh Airlines Limited being a limited Company, its Board of Directors are the final authority to take decisions regarding retirement of its employees and in the instant case the Board of Directors of Biman in its 98th and 101st meeting held on 4th September 2012 and 9th October 2012 enhanced the retirement age of Biman employees to 59 years with effect from 9th October 2012. Since the petitioners has already reached the age of 57 before 9th October 2012 therefore they could not take advantage of this amendment and, as such, these Rules have no merit and liable to be discharged.

13. The submissions on behalf of both sides have received our careful scrutiny in the light of the relevant laws. In the instant case the pertinent question to decide is whether the writ petitioners are entitled to get the benefits of Public Servants (Retirement) (Amendment) Act 2012. They will get the benefits of the said statute only if they are public servants within the meaning of the Public Servants (Retirement) Act, 1974.

14. A public servant has been defined in section 2(d) of the Act as follows:

> "Public servant" includes any person who is for the time being, in the service of the Republic or of any Corporation, nationalized enterprise or local authority or who, on the basis of having at any time been in the service of Pakistan, purports to claim any right to employment in the service of the Republic, but does not include any persons who—
>
> ◊ is a member of any defence service ,
>
> ◊ is a teacher or employee of any University,
>
> ◊ is employed in or under a Commission, Committee or board set up for a temporary period for specified purposes,
>
> ◊ is a contingent or work charged employee- or a worker as defined in the State-owned Manufacturing Industries Workers (Terms and Conditions of service) Ordinance 1973
>
> (v) holds any office which is filled by election or nomination under any law, or
>
> ◊ holds any office the tenure of which is determined by or under any law."

15. Biman Bangladesh Airlines Limited is a public Limited Company. Now we have to decide whether the Biman Bangladesh Airlines Limited is a Corporation or Nationalized Enterprise or Local Authority. If the organisation is an instrumentality or agency of the Government it may come within the meaning of the expression of local authority. The concept of instrumentality of agency of the Government is not limited to a corporation created by a statute but is equally applicable to a Company. In the case of *Ajay Hasia vs Khalid Mujib Sehravardi (1981) 1 SCC 722* the Indian Supreme Court enumerated six factors

which would regulate whether or not an organisation is to be regarded as an instrumentality or agency of the Government by legal fiction. Such principal was approved in the case of *Ramana Dayram Shetty vs International Airport Authority (1979) 3 SCC 489.* We may now summarise the relevant test gathered from the decision in the International Airport Authority's case for determining the Corporation or entity as instrumentality or agency of Government which are as follows:

◊ "One thing is clear that if the entire share capital of the Corporation is held by Government it would go a long way towards indicating that the Corporation is an instrumentality or agency of Government."

◊ "Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character".

◊ "It may also be a relevant factor whether the corporation enjoys monopoly status which is the State conferred or State protected."

◊ "Existence of deep and pervasive State control may afford an indication that at the Corporation is a State agency or instrumentality."

5. "If the function of the corporation of public importance and closely related to governmental functions, it would be a relevant factor in classifying the Corporation as an instrumentality or agency of Government."

6. "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government"

16. All the tests must match with the case in hand to ascertain whether the subject matter of the case in hand is just a local authority/company /corporation or it is indeed an agency of the State, carrying on functions of public nature.

17. On perusal of the Memorandum of Association and Articles of Association of Biman Bangladesh Airlines Limited it appears to us that the 100% share is owned by the Government and all the Board of Directors are public servants and they are also appointed by the Government which indicates that the exclusive control and management of Biman Bangladesh Airlines Limited is governed by the State and carrying on functions of public nature.

18. After considering the aforesaid tests we are of the view that Biman Bangladesh Airlines Gazette Notification dated 2-8-2007 is a local authority. Its employees including the petitioners therefore are public servants with the meaning of Public Servants (Retiremen) Act, 1974.

19. Every statutory body or agency of the government has their own regulations or bye laws which govern the terms and conditions of their service. Regulations and bye laws which are contrary or repugnant to the laws or statute of the realm are void and of no effect. This view finds support in the case of *Bangladesh Biman Corporation vs Let Col (Retd) Md Zainul Abedin* reported in *5 BLC (AD) 2000 page 169,* wherein it has been held: "The Bangladesh Biman Corporation Ordinance 1977 has not given authority to override other laws by the service Regulations. Biman Service Regulations would have been void if a tenure different from the tenure prescribed by the Act would have been prescribed."

20. The Government has enhanced the retirement age of the Public Servants from 57 years to 59 years vide section 4 of the Public Servants (Retirement) Act 1974 as amended on 26-12-2011. After conversion into a Public Limited Company Biman Bangladesh Airlines Limited is still governed by the Bangladesh Biman Corporation employees (service) Regulations 1979.

21. As per Regulation 11 of Biman Corporation Employees (service) Regulations 1979 the retirement age of its employees is 57 years.

22. Though Biman Bangladesh Airlines Limited subsequently incorporated the provision regarding the age of retirement of its employees as prescribed by the Act, by its Board of Directors vide its administrative order No. 25 of 2012 dated 29-10-2012 but this order comes into force with effect from 9-10-2012. So there is a clear conflict between these two provisions so far as the date of its commencement is concerned. Section 4 of the Public Servants (Retirement) Act as amended came into came force on 26-12-2011. Since the employees of Biman are Public servants within the meaning of the said Act therefore the provisions of the Act will be applicable from the date of its amendment i.e. 26-12-2011. Since the petitioners were in service of Biman as on 26-12-2011 and did not reach the age of 59 years up to 26-12-2011 they will be entitled to get advantage of the amended statutory provision. Thus Biman administrative Order No. 25 dated 29-10-2012 (Annexure-Q) will be void as regards its date of coming into force in view of the clear provisions of amended section 4 of the statute, which categorically states that it will be effective from 26-12-2011.

23. Having given our best consideration to the submission of the learned Advocate for the petitioners as well as materials on record, we are of the view that there is a substance in the application filed by the petitioners under Article 102 of the constitution.

24. In the result the Rules are made absolute. The impugned notices of retirement of the petitioners at the age of 57 years being Memo No. DHAKGF/P-31095/2012/285 dated 30-1-2012 (Annexure-A) in the writ petition No. 8063 of 2012 and Memo No. DHAKGF/P- 32126/2012/475 dated 29-2-2012 (Annexure-D) in writ petition No. 9864 of 2012 are hereby declared to have been passed illegally and without lawful authority. The respondents are hereby directed to reinstate the petitioners in their previously held respective posts in Biman with all back salaries, seniority and other benefits within 10(ten) days of receipt of a copy of this judgment and allow them to continue their service till they reach the age of 59 years. There will be no order as to costs.

Ed.

HIGH COURT DIVISION
(Criminal Revisional Jurisdiction)

Abdul Awal J
Md Faruque
(M. Faruque) J

Judgment
June 2nd, 2013.

Mafruza Sultana.....
.....Accused Petitioner

vs

State and another.....
.....Opposite-Party*

Code of Criminal Procedure (V of 1898)
Section 188

There is no scope to hold that the sanction of the Government is mandatory to make inquiry of the offence of the case as per section 188 of the Code. *(Per Enayetur Rahim J)* .....(70)

Section 5(2)

Section 5(2) of the Code itself expressly has ousted jurisdiction when special procedure has been prescribed in the special law itself. *(Per M Enayetur Rahim J)* .....(78)

Money Laundering Protirodh Ain (VIII of 2009)
Section 9

Offence under Money Laundering Protirodh Ain, 2002 or Ain, 2009 is deemed to be

*Criminal Revision No. 357 of 2013.

(অপরাধ গন্য) in the schedule of Anti-Corruption Commission Act, 2004 and the offence will be tried under the Criminal Law Amendment Act, 1958. *(Per M Enayetur Rahim J)* .....(81)

Code of Criminal Procedure (V of 1898)
Section 188

The provisions of section 188 of the Code is not at all applicable in this particular case; rather it is inconsistent with the provisions of section 20(1) and 32 of the Anti-Corruption Act, 2004 and section 4(4) and 6(1) of the Criminal Law Amendment Act, 1958. *(Per M Enayetur Rahim J)* .....(85)

Code of Criminal Procedure (V of 1898)
Section 188

Neither in the Anti-Corruption Act, 2004 nor in the Criminal Law Amendment Act, 1958, has any provision been made requiring the sanction of the Government to take cognizance or enquire into the offences under these Acts by a Special Judge. As per sub-section 4 of section 4 of the Criminal Law Amendment Act, 1958 offences being committed outside Bangladesh, shall be deemed to have been committed within the territorial limits of the jurisdiction of the Special Judge in Bangladesh in which the person, committing the offence is found or was ordinarily residing before he left Bangladesh. *(Per M Faruque J)* .....(24)

Tarique Rahman vs Bangladesh, 63 DLR (AD) 18; Tarique Rahman vs Bangladesh, 63 DLR (AD) 162 and Giasuddin-al-Mamun vs State 64 DLR 41 ref.

AM Mahbub Uddin—For the Petitioner.

Monjur Kader, DAG—For Opposite-Party No. 1.

Judgment

Abdul Awal J: Mr AM Mahbub Uddin, learned Advocate for the petitioner, drawing our attention to paragraph Nos. 17 and 18 of the revision application, submits that there is no evidence or statement or any implication against the petitioner in the Case CR No. 08-369-RJL in the Columbia District Court in USA filed by the US Government against Siemens Bangladesh Limited. Whereas, the involvement of the petitioner mentioned in the charge-sheet referring the above case in USA is without any basis. He further submits that in case of schedule offence under the Anti-Corruption Commission Act, 2004 committed outside of Bangladesh two sanctions are necessary i.e. one from the Government under section 188 of the Code of Criminal Procedure to investigate into the case and another from the Anti-Corruption Commission under section 32 of the Anti-Corruption Commission Act, 2004 for submission of the charge-sheet. Only one sanction is necessary under section 188 of the Code of Criminal Procedure to investigate into the case in case of non-schedule offence of the Anti-Corruption Commission Act, 2004, as section 6 of the Criminal Law Amendment Act remains silent as to such sanction of the Government. He submits that due to silence of the other procedural matter in the Criminal Law Amendment Act, how far the Code of Criminal Procedure will be applicable to proceed with the Special Case. He lastly submits that there is no *prima-facie* reason to lodge the instant case against the petitioner after the judgment and order dated 27-8-2003 passed by the High Court Division in Writ Petition No. 4965 of 2003. No other authority raise any question regarding obtaining the work order from BTTB after aforesaid judgment.

2. In the aforesaid backdrop of the case and to arrive at a conclusive decision with regard to the submissions mentioned above, I am of the opinion that a thorough scrutiny of the relevant laws are required for which I am inclined to issue

this Rule.

3. Hence,

Let a Rule be issued calling, upon the opposite-parties to show cause as to why the impugned order dated 4-9-2012 passed by the learned Metropolitan Senior Special Judge, Dhaka, in Metro Special Case No. 138 of 2012 arising out of GR No. 88 of 2011 corresponding to Gulshan PS Case No. 45 dated 16-8-2011 taking cognizance against the accused-petitioner under section 13 of the Money Laundering Prevention Act, 2002, should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

4. This Rule is made returnable within 6 (six) weeks from date.

5. In the meantime, let all further proceedings of the aforesaid Metro Special Case No. 138 of 2012 be stayed for a period of six months from date.

6. Record of the case need not be called for.

7. Supplementary-affidavits filed on behalf of the petitioner in court do form part of the revision application.

Md Faruque (M. Faruque) J: In this revisional application under section 10(1A) of the Criminal Law Amendment Act, 1958, accused-petitioner Mrs. Mafruza Sultana challenged the order dated 4-9-2012 rejecting the application under section 13 of the Money Laundering Prevention Act, 2002 in Metro Special Case No. 138 of 2012 corresponding to GR Case No. of 2011 arising out of Gulshan Police Station Case No. 45 dated 16-8-2011, now pending before the learned Metropolitan Senior Special Judge, Dhaka.

9. The prosecution case, brief, is that on 16-8-2011 one Golam Shahariar Chowdhury, Deputy Director Anti-Corruption Commission, Head Office, 1 Segunbagicha. Dhaka lodged an FIR with the Gulshan Police Station under sections 2 (ঠ)(অ)(আ) and 13 of the Money Laundering Prevention Act 2002 read with the Money Laundering Prevention Ordinance 2008 and under sections 2(ট)(অ) and 4(2) of the Money Laundering Prevention Act, 2009 implicating the accused petitioner alleging, *inter alia,* that the FIR named accused No. 1 namely Md Hafiz Ibrahim, who was an influential parliament member elected from Bhola-2 constituency in 8th National Parliament. He also was member of the Parliamentary Standing Committee for Ministry of Planning and Ministry of Information. After examination of documents belonging to the ACC it is revealed that US$ 1,75,000 was deposited in between 19-12-2005 to 16-1-2008 in their joint bank account at Singapore from the account of Mr Zulfiqur Ali who was then a consultant of Siemens Bangladesh Ltd. It was also revealed from the documents that the aforesaid US$ was deposited for conducting a lobbying for helping Siemens to get a work tender illegally invited by the BTCL, therefore committed an offence under sections 2(ঠ)(অ)(আ) and 13 of the Money Laundering Prevention Act, 2002 read with the Money Laundering Prevention Ordinance 2008 and under sections 2(ট)(আ) and 4(2) of the Money Laundering Prevention Act, 2009. That the allegation of money laundering against the accused petitioner for sending money from Bangladesh to Singapore has been proved *prima facie* and thereafter the informant lodged the FIR.

10. The Deputy Director, Special Enquiry and Investigation, Anti-Corruption Commission, Dhaka after completion of investigation submitted charge sheet No. 280 dated 12-6-2012 against the accused petitioner along with her husband under section 13 of the Money Laundering Protirodh Ain, 2002 read with section 4(2) of the Money Laundering Protirodh Ain, 2009 and under section 4 of the Money Laundering Protirodh Ain, 2012. Thereafter, the case was transferred to the learned

Metropolitan Special Judge, Dhaka and registered as Metro Special Case No. 138 of 2012.

11. The learned Advocate Mr A M Mahbub Uddin appearing on behalf of the accused-petitioner submits that the accused-petitioner on 4-9-2012 filed an application before the learned Metropolitan Special Judge, Dhaka praying for not to take cognizance against the accused-petitioner which has been rejected and learned Special Judge has taken cognizance against the accused-petitioner under section 13 of the Money Laundering Protirodh Ain, 2002. It has been stated in the application that according to the FIR and charge-sheet it is evident that the offence was committed since money was deposited in the bank account of the petitioner being Account No. 017-416270 of the Standard Chartered Bank, Singapore from Bank Account No. 0174053746 of Standard Chartered Bank, Singapore and that the place of occurrence is outside of Bangladesh and, as such, the order of cognizance is liable to be set-aside.

12. It has been further stated that the prosecution have to follow the procedure laid down in section 188 of the Code of Criminal Procedure for the offence committed outside of Bangladesh and that a sanction from the government was necessary to enquire to the offence as per provision of the section 188 of the Code of Criminal Procedure and that the offence committed cannot be tried in Bangladesh and that it has not been mentioned in the FIR or charge-sheet under which law the alleged offence is an offence in Singapore.

13. Heard the learned Advocate for the petitioner and perused the supplementary affidavits filed by the accused-petitioner dated 10-12-2012 and 8-1-2013. It has been stated in the supplementary affidavits that section 28(2) of the Anti-Corruption Commission Act, 2004, the provision of the Criminal Law amendment Act, 1958 except the provision of sub-section 6 of section 6 of the Criminal law Amendment Act, 1958 shall be applicable for trial and disposal of the appeal in respect of the offence under this Act, and the schedule of the Act. Section 28(3) of the Anti-Corruption Commission Act, 2004 in case of any conflict between any provision of Criminal Law Amendment Act, 1958 and provision of this Act, the provisions of this Act shall prevail. Further it has been stated that section 6(1) of the Criminal Law Amendment Act, 1958, the provisions of the Code of Criminal Procedure, 1898 shall in so far as they are not inconsistent with this Act, apply to the proceeding of the Court of Special Judge. However, the case against the accused-petitioner is under the schedule of the Anti-Corruption Commission Act and therefore, the case shall be triable by the Special Judge. It has been stated that prosecution has to follow the procedure laid down in section 188 of the Code of Criminal Procedure for the offence committed outside Bangladesh in accordance with the Amendment Act, 1958 and that the prosecution must obtain the sanction of the government for making any enquiry or trial if any offence committed in Singapore. It has been further stated that the legality or illegality regarding the declaration of responsive or non responsive of any participants of the tender was decided by the judgment and order dated 27-8-2003 in Writ Petition No. 4965 of 2003. Nobody can raise any question regarding obtaining the work order from BTTB after the aforesaid judgment and order.

14. Mr Monjur Kader, learned Deputy Attorney-General submits that legality of a similar case has been decided by the High Court Division as well us by the Hon'ble Appellate Division in the case of *"Tarique Rahman vs Bangladesh"*, reported in *63 DLR (AD) 18.* He submits that in Criminal Miscellaneous Case No. 1 of 2013 in the case of *Giasuddin-al-Mamun vs State.* In such a matter learned Senior Judge issued Rule while learned Second Judge and Third Judge rejected the application summarily. He submits that there is no substance and merit in

the instant application and urge that Rule may not be issued in this matter.

15. It is admitted by the petitioner in paragraph No. 6 of the revisional application that in a similar case where alleged offence was committed before the enactment of Money Laundering Prevention Act, 2009, Hon'ble Appellate Division held that the offence has been committed as alleged against the accused-petitioner should be tried under the Money Laundering Prevention Act, 2002 under sections 2(ট)(আ)(ই) and section 13 of the Money Laundering Protirodh Ain, 2002 as per judgment reported in *63 DLR (AD) 18.*

16. I have gone through the decision of the referred case reported in *63 DLR (AD) 18* wherein co-accused Tarique Rahman preferred Writ Petition No. 6286 of 2010 before the High Court Division challenging the constitutional validity of the Money Laundering Protirodh Ain, 2009 and the legality of the initiation and continuation of the Anti-Corruption Commission GR Case No. 83 of 2009 arising out of Cantonment Police Station Case No. 8 dated 26-10-2009 under section 2 and 4(2) of the Money Laundering Protirodh Ain, 2009.

17. Hon'ble Appellate Division in the aforesaid decision decided that legislature has consciously included the Money Laundering Protirodh Ain, 2002 in the schedule to the Anti-Corruption Commission Act, 2004 and also included the offences under the Ain, 2002 in the schedule to the Criminal Law Amendment Act, 1958, whereby any enquiry investigation, lodging of the complaint, conducting of prosecution before the Special Judge and holding of trial exclusively by the Special Judge have been mandatorily required under the provisions of Anti-Corruption Commission Act, 2004 and the same provision is equally applicable in the case of the offences under the Money Laundering Protirodh Ain, 2009. Furthermore, their Lordships decided that since the alleged offences were committed during the operation of the Money Laundering Ain, 2002, punishment for the said offence as provided under Chapter IV of the said Ain be applicable and there is no bar to hold the trial of the case under the provisions of the Anti-Corruption Commission Act, 2004 for the commission of the offence alleged to have been committed under the Ain of 2002 treating the case as one instituted under the Ain of 2002 and that from a clear reading of the FIR, Investigation Report and materials on record, a *prima-facie* case under section 2(ট)(আ)(ই) and section 13 of the Money Laundering Protirodh Ain, 2002 has been disclosed and the prosecution may proceed under Anti-Corruption Commission Ordinance in accordance with law.

18. The very sanction accorded by the Anti-Corruption Commission has been annexed with the charge-sheet as Annexure-B in the revisional application which has been reproduced below:

"বিশেষ জজ আদালত নং-৩, ঢাকা।
বিশেষ মামলা নং-১৭/১১।
দুর্নীতি দমন কমিশন
প্রধান কার্যালয়
ঢাকা।

স্মারক নং-দুদক/বিঃ অনুঃ ও তদন্ত-২/ সি--৪৯/২০০৯/ ১২৭৩০, তারিখ ৫-৭-২০১০ খ্রিঃ। বিষয় চার্জশিট দাখিলের অনুমোদন (Sanction) জ্ঞাপন।

সূত্রঃ ক্যান্টনমেন্ট থানা (ডি এম পি) মামলা নং ৮, তারিখঃ২৬-১০-২০০৯ খ্রিঃ

তদন্তকারী কর্মকর্তা কর্তৃক দাখিলকৃত সাক্ষ্য-স্মারক ও অন্যান্য রেকর্ডপত্র পর্যালোচনা করিয়া দুর্নীতি দমন কমিশন পরিতুষ্ট হইয়া দুর্নীতি দমন কমিশন আইন, ২০০৪ এর ৩২ ধারা এবং দুর্নীতি দমন কমিশন বিধিমালা, ২০০৭- এর বিধি ১৫- এর উপ-বিধি ১-এ প্রদত্ত ক্ষমতা বলে নিম্নোক্ত ব্যক্তিদের বিরুদ্ধে নিম্নোক্ত ধারায় চার্জশীট দাখিলের অনুমোদন (Sanction) জ্ঞাপন করা হইলঃ–

ক্রমিক নং	নাম, পদবী ও ঠিকানা	অপরাধের ধারা
১।	জনাব মোঃ গিয়াস উদ্দিন আল মানুন পিতা : মৃত জয়নাল আবেদীন, বর্তমান ঠিকানাঃ বাড়ী নং-৭৮, রোড নং ৬, পুরাতন ডিওএইচএস বনানী, ঢাকা। স্থায়ী ঠিকানাঃ গ্রাম কুড়ালিয়া, উপজেলা বোরহান উদ্দিন, জেলা ভোলা।	মানি লন্ডারিং প্রতিরোধ আইন ২০০২ এর ধারা ২(ঠ) এর (অ) (আ) এর অপরাধ, যা মানি লন্ডারিং প্রতিরোধ আইন, ২০০৯ এর ধারা ২(ট) এর (আ) (ই) এর অন্তর্ভূক্ত এবং ৪(২) ধারায় শাস্তি যোগ্য।
২।	জনাব তারেক রহমান, পিতা শহীদ লেঃ জেঃ (অবঃ) জিয়াউর রহমান, রহমান গ্রুপ অব ইন্ডাষ্ট্রিজ ঠিকানাঃ হাউজ নং ১৬, রোড নং ১৯/এ, বনানী, ঢাকা। বর্তমানে ১ দি মল, সাউল গেট, লন্ডন এন ১৪ ও এল, আর, যুক্তরাজ্য।	

স্বা-অস্পষ্ট ৫-৭-১০
(মোঃ হাবিবুর রহমান)
কমিশনার (তদন্ত)

জনাব মোহাম্মদ ইব্রাহিম
সহকারী পরিচালক
দূর্নীতি দমন কমিশন
প্রধান কার্যালয়, ঢাকা।

19. Sections 4(4), 6(1) and the Schedule of The Criminal Law Amendment Act, 1958 read as follows:

"4(4) When an offence triable under this Act is committed outside Bangladesh, it shall, for the purpose of this Act, be deemed to have been committed within the territorial limits of the jurisdiction of the Special Judge in which the Person [committing the offence is found or was ordinarily residing before he left Bangladesh]"

6(1) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), shall, in so far as they are not inconsistent with this Act, apply to the proceedings of the Court of a Special Judge and for the purposes of the said provisions the Court of a Special Judge shall he deemed to be-

(a) a Court of Sessions, if the Special Judge is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge

"The Criminal Law Amendment Act, 1958.

SCHEDULE
(See Section 5)

(a) Offences 'Punishable under "দূর্নীতি দমন কমিশন আইন, ২০০৪ (২০০৪ সনের ৫নং আইন);

(b) Offences Punishable under the Prevention Corruption Act, 1947 (II of 1947);

(c) Offences Punishable under sections 161-169, 217, 218, 408, 409 and 477A of the Penal Code (XLV of 1860);

(d) Abetment described in section 109 including other abetments, conspiracies described in 120B, and attempts described in section 511 of the Penal Code, 1860 (XLV of 1860) related to or connected with the offences mentioned in clause (a) to (c) above."

20. Schedule of the Anti-Corruption Commission Act, 2004 is reproduced below:

"দূর্নীতি দমন কমিশন আইন, ২০০৪

তফসিল

[ধারা ১৭(ক) দ্রষ্টব্য]

(ক) এই আইনের অধীন অপরাধসমূহ;

(খ) The Prevention of Corruption Act, 1947

(Act II of1947) এর অধীন শাস্তিযোগ্য অপরাধসমূহ;

[(খখ মানিলন্ডারিং প্রতিরোধ আইন, ২০০২ (২০০২ সালের ৭ নং আইন)।]

(গ) The Penal Code, 1860 (Act XLV of I860) এর sections 161-169, 217, 218, 408, 409 and 477A এর অধীন শাস্তিযোগ্য অপরাধসমূহ:

(ঘ) অনুচ্ছেদ (ক) হইতে (গ) তে বর্ণিত অপরাধসমূহের সহিত সংশ্লিষ্ট বা সম্পৃক্ত The Penal Code, 1860 (Act XLV of 1860) এর section109 এ বর্ণিত সহায়তাসহ অন্যান্য সহায়তা, এ বর্ণিত ষড়যন্ত্র এবং section120B এ বর্ণিত ষড়যন্ত্র এবং section 511 এ বর্ণিত প্রচেষ্টার অপরাধসমূহ।"

Section 188 of the Code of Criminal Procedure 1898 runs as follows:

188. [Liability for offence committed outside Bangladesh]—When a [citizen of Bangladesh] commits an offence at any place without and beyond the limits of [Bangladesh], or

when any person commits an offence on any ship or aircraft registered in [Bangladesh] wherever it may be],

he may he dealt with in respect of such offence as if it had been committed at any place within [Bangladesh] at which he may be found;

Political Agents to certify fitness of inquiry in to charge.

Provided that [notwithstanding anything in any of the proceeding sections of this Chapter no charge as to any such offence shall he inquired into in [Bangladesh] [except with the sanction of the Government]:

Provided, also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in [Bangladesh] shall be a bar to further proceedings against him under [the Extradition Act, 1974] in respect of the same offence "in any territory beyond the limits of [Bangladesh]

21. Learned Special Judge finds lawful and convincing reason to hold the proceedings of the case. He found no manner of application of the provision of the section 188 of the Code of Criminal Procedure in the present case and rejected the application of the accused petitioner and framed charges against the accused-petitioner and another under section 13 of the Money Laundering Protirodh Ain, 2002.

22. In the revisional application virtually the legality of the proceeding of the case has been challenged before us. Hon'ble Appellate Division in a similar case of *"Tarique Rahman vs Bangladesh"* reported in *63 DLR (AD) 18* decided that legislature has consciously included the Money Laundering Protirodh Ain, 2002 in the schedule to the Anti-Corruption Commission Act, 2004 as well as in the schedule to the Criminal Law Amendment Act, 1958 and that any enquiry, investigation, lodging of the complaint, conducting of the prosecution before the Special Judge and holding of trial of the case exclusively by the Special Judge have been made required under the provisions of the Anti-Corruption Commission Act, 2004 and the same provision is equally applicable in the case of the offences under the Money Laundering Protirodh Ain. Furthermore, I have already discussed that their Lordships found the disclosure of the *prima-facie* case in the FIR, Investigation Report and other materials on record under sections 2(ট)(আ)(ই) and section 13 of the Money Laundering Protirodh Ain against the accused-persons of the said case and the prosecution can proceed, with the case in accordance with law under the Money Laundering Ain, 2002 since the alleged offence were committed during the operation of the Ain, 2002.

23. Sections 28, 28(ক) and 32 of the Anti-Corruption Act, 2004 may be reproduced below:

"২৮। অপরাধের বিচার, ইত্যাদি।-(১) আপাতত বলবৎ অন্য কোন আইনের ভিন্নরূপ যাহা কিছুই থাকুক না কেন, এই আইনের অধীন ও উহার তফসিলে বর্ণিত অপরাধসমূহ কেবলমাত্র স্পেশাল জজ কর্তৃক বিচারযোগ্য হইবে।

(২) এই আইনের অধীন ও উহার তফসিলে বর্ণিত অপরাধসমূহের বিচার ও আপীল নিষ্পত্তির ক্ষেত্রে The Criminal Law Amendment Act, 1958 এর section 6 এর sub-section (5) এবং sub-section (6) এর বিধান ব্যতীত অন্যান্য বিধানাবলি প্রযোজ্য হইবে।

(৩) The Criminal Law Amendment Act, 1958 এর কোন বিধান এই আইনের কোন বিধানের সহিত অসঙ্গতিপূর্ণ হইলে এই আইনের বিধান কার্যকর হইবে।

[২৮ক। অপরাধের আমলযোগ্যতা ও জামিন অযোগ্যতা।-এই আইনের অধীন অপরাধসমূহ আমলযোগ্য (Cognizance) এবং জামিন অযোগ্য (Non bailable) হইবে।]

৩২। কমিশনের অনুমোদনের অপরিহার্যতা।-(১) ফৌজদারি কার্যবিধি বা আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, কমিশনের অনুমোদন (Sanction) ব্যতিরেকে কোন আদালত এই আইনের অধীন কোন অপরাধ বিচারার্থ আমলে গ্রহণ (Cognizance) করিবে না।

(২) এই আইনের অধীন কোন অপরাধের তদন্ত পরিসমাপ্ত হইবার পর তদন্তকারী কর্মকর্তা আদালতে প্রতিবেদন দাখিল করিবার পূর্বে কমিশনের পূর্বানুমোদন গ্রহণ করিবে এবং কমিশন কর্তৃক প্রদত্ত অনুমোদন পত্রের একটি কপি প্রতিবেদনের সহিত আদালতে দাখিল করিবে।"

24. According to section 32(1) of the Anti-Corruption Commission Act, 2004, notwithstanding anything contained in the Code of Criminal Procedure, 1898 or in subsisting any other law, a Special Judge will not take cognizance of any offence under this Act, 2004 without the sanction of the Anti-Corruption Commission and in this case admittedly the Investigating Officer submitted the investigation report along with the sanction of the Anti-Corruption Commission. Neither in the Anti-Corruption Act, 2004 nor in the Criminal Law Amendment Act, 1958, has any provision been made requiring the sanction of the Government to take cognizance or enquire into the offences under these Acts by a Special Judge. As per sub-section 4 of section 4 of the Criminal Law Amendment Act, 1958 offences being committed outside Bangladesh, shall be deemed to have been committed within the territorial limits of the jurisdiction of the Special Judge in Bangladesh in which the person, committing the offence is found or was ordinarily residing before he left Bangladesh.

25. According to section 6(1) of the Criminal Law Amendment Act, 1958, the provisions of the Code of Criminal Procedure, 1898, shall, in so far as they are not inconsistent with this Act 1958, apply to the proceedings of the Court of a Special Judge. From the above made discussions it is found that the provision of section 188 of the Code of Criminal Procedure, 1898 is inconsistent with the provision of section (4) of the Criminal Law Amendment Act, 1958 inasmuch as with the provision of section 32 of the Anti-Corruption Commission Act, 2004.

26. For explaining the proviso of section 188 of the Code of Criminal Procedure, 1898 that no charge as to any such offence shall be enquired into in Bangladesh except with the sanction of the Government, I searched from the *Maxwell's and NS Bindra's Interpretation of Statutes,* it may he discussed that the aforesaid provision has been made without expressly declaring about what shall be the consequence of non-compliance of the proviso, it has not been said that for non-compliance, that is for want of sanction of the Government, the proceeding will be invalid or null and void and in absence of the declaration of any consequence for non-compliance, the very proviso is not mandatory. It is merely directory.

> "The use of the word, 'shall' in a statute, though generally taken in a mandatory sense, does not necessarily' mean that in every case it shall have, that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid."

"The word "shall", though *prima-facie* gives impression of being of mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the scope of the statute, its nature and design and the consequences that would follow from the construction thereof one way or the other."

27. Considering the above mentioned interpretations it is found that the proviso of section 188 of the Code of Criminal Procedure is not mandatory. For the reasons, discussed above and in terms of sections 4(4) and 6(1) of the Criminal Law Amendment Act, 1958 and section 32 of the Anti-Corruption Commission Act, 2004, this provision has got no manner of application in the present case.

28. Anti-Corruption Commission has already accorded the sanction to proceed with the case as required under section 32 of the Anti-Corruption Commission Act, 2004.

29. Accordingly, in my view sanction of the Government is not required to proceed with the present case. The proceeding is being dealt with in accordance with law.

30. Under the circumstances, I find nothing to interfere with the impugned order, passed by the learned Metropolitan Senior Special Judge, Dhaka. I find no substance and merit in the application.

31. I differ with the order of the issuance of Rule, passed by my learned senior brother.

In the result, the application is summarily rejected.

Order of the Court

A dissenting order is passed, in the matter since we could not agree on the point of law with regard to issuance of the Rule. In this view of the matter let it be placed before the learned Chief Justice of necessary order.

Editor's Note

The Hon'ble Judges of the Division Bench having delivered dissening orders, the matter was reffered, as per rule of practice to a third judge M Enayetur Rahim, J for disposal. Mr Rahim, J delivered the following Order.

HIGH COURT DIVISION
(Criminal Revisional Jurisdiction)

M Enayetur Rahim J

Judgment
February 20th, 2014.

Mafruza Sultana.....
.....Accused Petitioner

vs

State & Anti-Corruption Commission.....
.....Opposite-Party*

AM Mahbub Uddin, Advocate with Md Nazmul Huda, Advocate and Shabbir Hamza, Advocate—For the Petitioner.

Mahbubey Alam, Attorney General Mosharrof Hossain Sarder, DAG Gazi Md Mamunur Rashid, AAG Md Asaduzzaman, AAG—For the State Opposite-Party No.1)

Khurshid Alam Khan, Advocate—For the Anti-Corruption Commission (Opposite-Party No.2).

Judgment

M Enayetur Rahim J : This mater has been sent to this Bench by the Hon'ble Chief Justice.

34. The accused petitioner has filed this replication under section 10(1A) of the Criminal Law Amendment Act,1958 challenging the order dated 4-9-2012 passed by the Metropolitan Senior Special Judge, Dhaka in Metro Special Case No.138 of 2012 arising out of GR Case No. 88 of 2011 corresponding to Gulshan Police Station

*Criminal Revision No. 357 of 2013.

Case No.45 dated 16-8-2011 taking cognizance against the accused petitioner under section 13 of the Money Laundering Protirodh Ain, 2002.

35. On 16-8-2011 one Golam Shahariar Chowdhury, Deputy Director, Anti-Corruption Commission, Head Office, Dhaka lodged a First Information Report with the Gulshan Police Station implicating the accused petitioner and her husband for committing offence under the Money Laundering Protirodh Ordinance, 2008 and which is also within the preview of section 2(ট)(অ) and 4(2) of the Money Laundering Prevention Act, 2009.

36. In the FIR, allegations have been made *inter alia* that accused Md Hafiz Ibrahim was an influential parliament member elected from Bhola-2 constituency in 8th National Parliament. He was also a member of the Parliamentary Standing Committee of Ministry of Planning and Ministry of Information. The accused Md Hafiz Ibrahim and his wife, the present accused petitioner, on 19-12-2005 in their joint name had opened a bank account in Standard Chartered Bank, Battery Road Branch, Singapore being US$ account No.017-416-270. On an enquiry the Anti-Corruption Commission found that US$ 1,75,000 was transferred between 19-12-2005 to 16-1-2008 in their joint bank account at Singapore from the joint account of Mr Zulfiqur Ali, who was then a consultant of Siemens Bangladesh Ltd, and his wife Rahima Ali. It was also revealed from the documents that the aforesaid US$ was transferred to the account of the accused as a bribe to Hafiz Ibrahim for conducting a lobbying for helping siemens to get a tender illegally invited by the BTCL. Siemens admitted the said fact of giving money to many persons in Bangladesh in a criminal case, held in the District Court of Columbia, USA. Accused Hafiz Ibrahim did not disclose anything about the said money in his wealth statement submitted before the Commission. Therefore, the accused persons have committed an offence of Money Laundering.

37. On the basis of the said FIR, Gulshan Police Station Case No.45 dated 16-8-2011 under sections 2(ট)(অ) and 4(2) of the Money Laundering Protirodh Ordinance, 2008 read with Money Laundering Protirodh Ain, 2009 was started.

38. The investigation officer after completing investigation and obtaining sanction from the Commission submitted the charge-sheet being the charge-sheet No. 280 dated 13-6-2012 under section 13 of the Money Laundering Protirodh Ain, 2002 read with section 4(2) of the Money Laundering Ain, 2009 against the accused petitioner along with her husband.

39. Thereafter, the case record was transferred to learned Metropolitan Senior Special Judge, Dhaka and registered as Metro Special Case No. 138 of 2012.

40. The accused petitioner on 4-9-2012 filed an application for not to take cognizance against him. The learned Metropolitan Special Judge, Dhaka after hearing the respective parties on the said application by the impugned order dated 4-9-2012 rejected the said application and had taken cognizance against the accused petitioner and another under section 13 of the Money Laundering Protirodh Ain, 2002.

41. Being aggrieved by the said order taking cognizance into the case the accused petitioner has preferred application.

42. Earlier the matter was heard by a Division Bench of this Court. But, because of conflicting view of the learned Judges on the point of law with regard to issuance of the Rule, the matter was placed before the Hon'ble Chief Justice, and his lordship has been pleased to send this matter to this Bench.

43. AM Mahbub Uddin, the learned Advocate for the accused petitioner, submits that

the prosecution has not complied with the conditions as laid down in section 188 of the Code of Criminal Procedure before initiating the instant case. The prosecution should have obtained the sanction of the Government before making any enquiry or trial as the offence alleged to have been committed outside the Bangladesh i.e. in Singapore. In the instant case no Government; sanction as required in section 188 of the Code of Criminal Procedure was obtained to proceed with the case. The Court in taking cognizance wrongly came to a finding that only the sanction of Anti-Corruption Commission is enough to proceed with the case and failed to appreciate that the said sanction under section 188 of the Code of Criminal Procedure is not alike the sanction under section 12 of the Anti-Corruption Commission Act, 2004. The alleged offence has not been committed in Bangladesh and therefore, a sanction from the Government is necessary to inquire into the present case as per provision of section 188 of the Code of Criminal Procedure; but no sanction was accorded by the Government to inquire in to the said matter.

44. Mr Mahbubuddin further submits that it is alleged in the FIR that one Zulfiqur Ali and his wife Mrs Rahima from their joint bank account being US$ No. 017-4053-746 Standard Chartered Bank, Singapore had transferred US$ 1,00,000 on 19-12-2005 and US$ 75,0000 on 25-7-2006 to the joint Account of the petitioner and her husband being US$ account No.017-4162-707 Standard Chartered Bank, Singapore. The aforesaid banking transaction in no way has violated the law of Singapore. The informant did not mention in the FIR as to under which law the alleged offence is considered to be an offence in Singapore and, as such, the order of taking cognizance is illegal and liable to be set-aside.

45. Mr Mahbub Uddin referring to the case of *Tarique Rahman vs Government of Bangladesh,* reported in *63 DLR (AD) 18* further submits that in the said case the Appellate Division having found *prima-facie* case under section 2 (উ)(আ)(ই) and section 13 of the Money Laundering Ain, 2002 against the accused of the said case held that prosecution may proceed with the case against the accused persons in accordance with law, if so advised; but in the instant case from the plain reading of the FIR and the charge-sheet it does not appear that any *prima-facie* case has been disclosed under the Money Laundering Ain, 2002 or Ain, 2009 and, as such, taking cognizance into the case is absolutely illegal. He also submits that in the FIR it has been mentioned that in a Criminal Case held in District Court of Columbia, USA Siemens was found guilty as they admitted to have bribed various persons of Bangladesh in order to get a contract of BTCL but the present accused petitioner was not a party to the said case; even no finding has been given against the present accused petitioner. In this connection he has drawn my attention to paragraph 17 of the application, where the relevant portion of the judgment passed by the District Court of Columbia, USA has been quoted.

46. Mr Mahbubuddin referring to annexure-C to the application also submits that before lodging the FIR of the present case, tender proceeding and decision taking process resorted to by BTTB was challenged before the High Court Division vide Writ Petition No. 4965 of 2003, filed by a bidder company. Eventually, the Rule was discharged on merit holding, that we do not find that the tender proceeding and decision taking process resorted to by BTTB, respondent No.l suffer from any illegality on procedural impropriety or irrationality or there is any *malafide* calling for interference by this Court So, the question of giving bribe to any one in the above tender process does not arise at all. He also has drawn my attention that said writ petition was disposed of on 27-8-2003 but the alleged occurrence took place in 2005-2006; and then submits that this fact clearly shows the falsity of the present case.

47. Mr Mahbubey Alam, the learned Attorney General has appeared on behalf of the State to resist the application under section 561A of the Code of Criminal Procedure. Mr Alam submits that, the Court below on considering the materials on record having found *prima-facie* case within the mischief of Money Laundering Ain, 2002 against the accused petitioner and another took cognizance of the offence in the case. He further submits that it is well settled proposition of law that at the time of taking cognizance and framing charge, there is no scope to consider the defence materials, if any and thus, there is no scope to consider the judgments passed in writ petition No.4965 of 2003 and by the District Court of Columbia, USA at this stage and said judgments deserve no consideration to initiate a Criminal Proceeding on the basis of particular and specific allegations.

48. Mr Khurshid Alam Khan also appears on behalf of the opposite party No. 2 Anti-Corruption Commission to resist the application. Mr Khan submits that the issues raised by the accused petitioner have already been settled in the cases of *Tarique Rahman vs The State, reported in 63 DLR (AD) Page 18* and *page-162* and *Giasuddin-al-Mamun vs State,* reported in *65 DLR 41.*

49. Mr Khan further submits that the present application is absolutely misconceived one and thus liable to be rejected summarily.

50. Heard the learned Advocates for the respective parties and perused the materials on record and considered the relevant provision of laws.

51. On perusal of the impugned order it appears to us that the learned Metropolitan Senior Special Judge considering the FIR and the charge-sheet took cognizance into the case under section 13 of the Money Laundering Protirodh Ain, 2002. With regard to the validity of sanction, the learned judge opined that said issue might be decided at the time of framing charge.

52. I have perused the FIR and the charge-sheet. It reveals from the FIR that the present accused petitioner and her husband on 19 December, 2005 had opened a joint bank account in Singapore and after opening such account on 19-12-2005 and 25-7-2006 US$ 1,00,000 and 75,000 in total 1,75,000 was transferred from the joint account of Zulfiqur Ali and his wife Rahima Ali who had also been maintaining an account in Singapore. Thereafter, present accused petitioner and his husband, the accused Md Hafiz Ibrahim, withdrew the money from their said account on different occasions. From the charge-sheet it also transpires that Md Zulfiqur Ali, the consultants of Siemens Bangladesh made a statement under section 164 of the Code of Criminal Procedure to the effect that he transferred the said amount of money from his account to the account of the accused persons in Singapore in order to get work order with regard to Teletalk mobile phone from BTTB now BTCL in favour of Siemens.

53. In the charge-sheet it is clearly mentioned that;

"মোঃ জুলফিকার আলী, পিতা-মরহুম ডঃ মোঃ খুরশীদ আলী, বাড়ী নং-৩৬/৩ (দ্বিতীয় তলা), রোড নং-৪, ধানমন্ডি আবাসিক এলাকা, ঢাকা ফৌঃ কাঃ বিঃর ১৬১ ধারায় প্রদত্ত জবানবন্দিতে জানান যে, ১৯৮৬-২০০০ ইং সাল পর্যন্ত বাংলাদেশ সিমেন্সের কনসালটেন্ট ছিলেন এবং ২০০১-২০০৯ সাল পর্যন্ত সিমেন্সের সেন্ট্রাল প্যানেলের কনসালটেন্ট ছিলেন। বিটিটিবির আওতায় টেলিটক ফোনের ১ম দরপত্র ১৯৯৭ ইং সালে জমা হওয়ার পর ১৯৯৮-১৯৯৯ সালে পুনঃ ২য় দরপত্র আহ্বান করা হয়। ২য় দরপত্র নিস্পত্তি হওয়ার আগেই সরকার পরিবর্তন হয়ে যায় এবং বিএনপি সরকার ২০০২ সালে ৩য় বারের জন্য দরপত্র আহ্বান করে। ৩য় দরপত্র জমা দেয়ার আগেই তিনি জানতে পারেন কর্তৃপক্ষের সাথে বোঝাপড়া ছাড়া ও কাজ পাওয়ার সম্ভাবনা নাই। বিধায় সিমেন্স কেম্পানির এ্যাডভাইজ মতে সাবেক এমপি হাফিজ ইব্রাহিম (গিয়াস উদ্দিন আল-মামুনের বড় ভাই) এর কাছে যান এবং তার সহযোগিতা চান যাতে ৩য় দরপত্রে নির্বিঘ্নে কাজটি সিমেন্স পায়। ২০০৩ সালে সাবেক এমপি হাফিজ ইব্রাহিম (পরিকল্পনা ও তথ্য মন্ত্রনাল সংক্রান্ত সংসদীয় স্থায়ী কমিটির

সদস্য ছিলেন) তাকে সাবেক প্রয়াত অর্থমন্ত্রী এম সাইফুর রহমানের নিকট নিয়ে যান। জনাব সাইফুর রহমান তৎকালীন কেবিনেট পারচেজ কমিটির চেয়ারপারসন ছিলেন। এম সাইফুর রহমান বিস্তারিত শোনার পর বলেন যে, তার কোম্পানী সিমেন্সকে তিনি সম্পূর্ণ সহযোগিতা করবেন। ২০০৩ সালেই হাফিজ ইব্রাহিমের সাথে টেলিটকের কাজের ব্যাপারে অর্থ প্রদান সংক্রান্ত সমঝোতা হয়। সাবেক এম পি হাফিজ ইব্রাহিম জানান যে, এ অর্থ তিনি হাওয়া ভবনের সাথে ভাগা ভাগি করবেন। তবে তিনি শর্ত দেন যে, (ক) কারিগরি ভাবে সিমেন্সকে রেসপনসিভ হতে হবে, (খ) আর্থিক দরপত্র সিমেন্সকে সর্বনিম্ন হতে হবে। তিনি তার চাহিদা মোতাবেক অর্থ প্রদান ও অন্যান্য শর্ত পূরণ করবেন বলে আশ্বাস দেন। পরবর্তীতে দরপত্রের ২(দুই) টি প্যাকেজেই সর্বনিম্ন হয়। কিন্তু দুর্ভাগ্যবশত সিমেন্সকে একটি প্যাকেজ দেয়া হয়। অন্যটি হুয়াউ নামে একটি চাইনিজ কোম্পানীকে দেয়া হয়। তখন তিনি (জুলফিকার আলী) জানতে পারেন যে, সবচেয়ে উচ্চ পর্যায়ে ক্ষমতায় আসীন লোকদের প্রভাবে এ কাজটি হুয়াউ পেয়েছে। পরবর্তীতে ২০০৪ সালে সিমেন্স কোম্পানীর কাজ থেকে অর্থ পাওয়া শুরু করেন। পরবর্তীতে স্টান্ডার্ড ব্যাংক সিংগাপুরস্থ হিসাব নম্বর ০১৭৪০৫৩৭৪৬ থেকে জনাব হাফিজ ইব্রাহিমকে পূর্বের দাবী মোতাবেক ১৯-১২-২০০৫ইং তারিখে ১,০০,০০০ ইউ এস ডলার হাফিজ ইব্রাহিম ও তার স্ত্রী মাফরুজা সুলতানা নামীয় স্ট্যান্ডার্ড চাটার্ড ব্যাংক সিংগাপুরস্থ হিসাব নম্বর ০১৭৪১৬২৭০৭ ট্রান্সফার করেন। জনাব মোঃ জুলফিকার আলী বিজ্ঞ আদালতে অনুরুপভাবে ফৌঃ কাঃ বিঃ ১৬৪ ধারায় ও জবানবন্দি দেন। স্ট্যান্ডার্ড চাটার্ড ব্যাংক, সিংগাপুরে মোট ৩(তিন) টি একাউন্ট যথাক্রমে ০১৩২৭৬৫৬৪০, ০১০৯৮৩৫০৮৫ এবং ০১৭৪১৬২৭০৭ পাওয়া যায়। স্ট্যান্ডার্ড চাটার্ড ব্যাংক সিংগাপুর হতে হাফিজ ইব্রাহিম ও মাফরুজা সুলতানা নামীয় উক্ত ৩(তিন) টি হিসাব নম্বর বন্ধ করতঃ গত ১৩-১-২০০৮ ইং তারিখে অবৈধভাবে অর্জিত ৩,৩৮,৫৮৭.০৮ মার্কিন ডলার বা, SGD ৪৮৭৫৩১.৫৪ অর্থের ড্রাফট তাদের পুত্র মারুফ ইব্রাহিমের নামে প্রদান করেন।"

And "মিসেস মাফরুজা সুলতানা ১৬-৪-২০১২ইং তারিখ তার বক্তব্যে জানান যে, তিনি ১৭(সতের) বৎসর ডিসেম্বর ১৯৭৯ থেকে ১৯৯৭ইং Biman Bangladesh Airlines এর Flight Service Dept. (P-31422) Flight Stewardess হিসাবে কর্মরত ছিলেন এবং ১৯৯৭ ইং সালে সেচ্ছায় চাকুরী হতে পদত্যাগ করেন। সংসারের পাশাপাশি তিনি একজন কর্মজীবি মহিলা এবং আয়কর দাতা। তিনি জাতীয় দৈনিক খবরপত্র পত্রিকার ভারপ্রাপ্ত সম্পাদক। তিনি কোন প্রকার সরকারী ঠিকাদারী, ক্রয়, বিক্রয় তদবীর কাজে জড়িত নেই বা ছিলেন না। তিনি আরো জানান যে, বিমানে চাকুরীকালীন এই দীর্ঘ সময়ে কর্মের প্রয়োজনে পৃথিবীর বহুদেশে অসংখ্য বার যাতায়াত করেছেন। দেশের বাহিরে বিদেশে ফ্লাইটে গেলে বিমানের নিয়ম মোতাবেক এলাউনস্ বৈদেশিক মুদ্রার বৈধভাবে প্রাপ্ত হয়েছে। তার কর্মজীবনের অর্জিত বৈদেশিক মুদ্রা, তার মা ও মামা (উভয় মার্কিণ নাগরিক) হতে প্রাপ্ত ৩,০০,০০০ মার্কিন ডলার হতে বিদেশে যৌথ হিসাব খোলেন। দুর্নীতি দমন কমিশনের স্মারক নং-১৪৫৫৩, তারিখ ৬-৬-২০১২ ইং মূলে পরিচালক, প্রশাসন, বাংলাদেশ বিমান, ঢাকাকে মিসেস মাফরুজা সুলতানার চাকুরীর মেয়াদ কাল ও বিদেশী ব্যাংকে হিসাব খুলে লেন-দেন করতে পারেন কিনা জানতে আইলে তার জবাবে বিমান বাংলাদেশে এয়ারলাইনস্ এর তাহেরা খন্দকার, ব্যবস্থাপক, প্রশাসন (তদন্ত) তার কার্যালয়ের স্মারক নং ঢাকা/জি,এক্স/৪৬/২০১২/৭৪৯, তারিখ ৭-৬-২০১২ ইং মুলে জানান যে, বিমান কর্মকর্তা কর্মচারী কর্তৃক বিদেশের কোন ব্যাংকে একক বা যৌথ নামে হিসাব খুলে লেন-দেন করার বিষয়ে অত্র সংস্থার বিধিতে কোন উল্লেখ নেই। সুতরাং বিমান বাংলাদেশ এয়ারলাইন্স এর পরিচালক প্রশাসন জনাব রাজপতি সরকার ও উপরোক্ত বিষয়ে একমত পোষন করেন। দেশের প্রচলিত আইন যথা Foreign Exchange Regulation Act, 1947 বিমানের সকল কর্মকর্তা ও কর্মচারীর জন্য প্রযোজ্য। বিমান কর্মকর্তাদের বক্তব্যের প্রেক্ষিতে প্রতিয়মান হয় যে, মিসেস মাফরুজা সুলতানার বক্তব্য সর্বোবই মিথ্যা এবং অপরাধ ঢাকার অপচেষ্টায় ২০০৮ ইং সালে স্ট্যাডার্ড চাটার্ড ব্যাংক সিংগাপুরে জমাকৃত অর্থ গোপন করার উদ্দেশ্যেই পে-অর্ডার করে পুত্র মারুফ ইব্রাহিমকে প্রদান করেন।"

54. Now let us consider whether the above allegations would come within the definition of Money Laundering as defined in Money Laundering Protirodh Ain, 2002.

55. Section 2(ঠ) of the Money Laundering Protirodh Ain, 2002 defined 'মানিলন্ডারিং'; which runs as follows:

(ঠ) মানিলন্ডারিং অর্থ–

(অ) অবৈধ পন্থায় প্রত্যক্ষ বা পরোক্ষভাবে আহরিত বা অর্জিত সম্পদ;

(আ) বৈধ বা অবৈধ পন্থায় প্রত্যক্ষ বা পরোক্ষভাবে আহরিত বা অর্জিত সম্পদে অবৈধ পন্থায় হস্তান্তর, রুপান্তর, অবস্থানের গোপন

করন বা উক্ত কাজে সহায়তা করা;

56. If we consider the allegations made in the FIR and charge-sheet, I have no hesitation to hold that a *prima facie* case for committing offence under section 2 (ঠ)(অ)(আ) of the Money Laundering Protirodh Ain, 2002 has been disclosed against the accused persons which is punishable under section 13 of the said Ain.

57. From the charge sheet it appears that Mr Zulfiqur Ali made a statement under section 164 of the Code of Criminal Procedure before the concerned Magistrate during investigation of the case and he admitted that the above transaction was made in order to get a contract of Teletalk mobile phone from BTTB (BTCL).

58. In view or the above, I am of the view that against the present accused petitioner there is a *prima-facie* case within the mischief of Money Laundering Protirodh Ain, 2002. As such the learned Metropolitan Senior Special Judge did not commit any error of law in passing the impugned order taking cognizance into the case. Thus, the said order deserves no interference.

59. Mr Mahbub Uddin, the learned Advocate for the accused petitioner has tried to impress me that the facts of the present case is quite distinguishable from the of case of *Tarique Rahman vs Bangladesh,* reported in *63 DLR (AD) 18.*

60. I am unable to accept the above submission of Mr Mahbub Uddin as I have already observed that a *prima-facie* case against the accused petitioner within the mischief of Money Laundering Protirodh Ain, 2002 has been disclosed in the FIR and charge-sheet. Mr Mahbub Uddin has also tried to convince me by submitting that offence as alleged to have been committed in the year 2005-2006 when the Money Laundering Ain, 2002 was in operation and section 9 of the said Ain has clearly provided that the procedure in respect of enquiry, investigation and trial shall be governed by the Code of Criminal Procedure and, as such, in the instant case compliance of section 188 of the Code of Criminal Procedure is mandatory.

61. Relying on section 6 of the General Clauses Act of 1897 our Appellate division has observed in Civil Review Petition No. 32 of 2011 *(Tarique Rahman vs Bangladesh, 63 DLR (AD) 162* to the effect that;

> "Finally, on perusal of the FIR, Investigation Report and other materials on record it appears that a *prima-facie* case of money laundering has already been disclosed against the accused-petitioner under section 2 (ট)(আ) and (ই) and section 13 of the Ain of 2002. The offence was alleged to have been committed by the accused petitioner from 1-1-2003 to 31-5-2007 when the Ain of 2002 was in operation. Admittedly the case was instituted long after the repeal of the said Ain of 2002 and the Ordinance of 2008 and after the enactment of the Ain of 2009. It has already been noticed that the savings clause contained in section 31(2) of the Ain of 2009 has no manner of application in saving the instant case which was not in existence on the date of enactment of the Ain of 2009. But in view of the above discussion sub-section (b), (c), (d) and (e) of section 6 of the General Clauses Act are applicable in the case of repeal of the Ain of 2002 followed a fresh legislation on the same subject "unless the new legislation manifests and intention incompatible with or contrary to the provisions of the section and such incompatibility would have to be ascertained from consideration of all the relevant provisions of the new law". Accordingly, the Ain of 2002 is applicable in the instant case since the new legislation does not manifest an intention contrary to the provisions of section 6. The offence was alleged to have been committed within the validity period of the Ain of 2002 in pursuance of which the procedure in respect of lodging

complaint, holding investigation, trial and other related matters shall be initiated and continued under the ACC Act of 2004 and the rules trained thereunder. Furthermore, we are of the view that if the *actus reus* of an offence is committed with necessary *mens rea,* it remains an offence for all time to come, even if the provisions of law creating the said offence is repealed, without declaring the said law as *ultra vires* to the constitution. There is no doubt that, after the repeal of the relevant provision of law, the subsequent *actus reus* even, if committed, ceases to be an offence. But if the offence committed during the period when the said provision of law was in force, any offence committed during tne subsistence of the said law but, detected/revealed later on, even after its repeal would still come under the mischief of the said repealed law as if the said law has not been repealed."

The Appellate Division further held that;

"The question is whether an offence committed within the validity period of Ain 2002 be prosecuted under the provision of the Ain of 2009 when the Ain of 2002 had already been repealed by the Ordinance of 2009 of 15-4-2008 with a provision of saving clause of pending cases and proceeding which will be disposed of in such a manner as if the said Ain had not been repealed and subsequently the said Ordinance was also repealed by Ain of 2009 with another saving clause of section 31(2) of the Ain whereby pending cases and proceeding have been saved as if those were filed or initiated under the provision of Ain of 2009. There is no doubt that the alleged offence was committed when the Ain of 2002 was in force. But subsequently the FIR was lodged on 26-10-2009 under the Ain of 2009. Having considered the FIR, charge-sheet and other materials on record we have found that the allegation lodged against the petitioner discloses the *prima-facie* cases under section 2 (ট)(আ)(ই) and section 13 of the said Ain."

62. In the said judgment it has also been held to the effect that;

"But the offence as well as its punishment would be dealt with under provision of Ain, 2002."

63. Mr Mahbub Uddin has raised another issue to the effect that the Ordinance No. VII of 2007 and Ordinance No. VIII of 2007 by which the Money Laundering Protirodh Ain, 2002 was incorporated in the schedule of the Anti-Corruption Commission Act, 1958 were not placed before the parliament as per the provision of Article 93 of the Constitution of the Peoples Republic of Bangladesh and those Ordinance were not approved by the parliament and, as such, the said Ordinance died their natural death upon expire of 30 days of the first meeting of the 9th parliament. As such it cannot be said that Money Laundering Protirodh Ain, 2002 is no more in the schedule of Anti-Corruption Commission Act, 2004 and thus, the proceeding under the Ain of 2002 is absolutely illegal and without jurisdiction by the Special Judge.

64. The above issue raised by Mr Mahbub Uddin has already been decided by this Bench in the case of *Giasuddin-al-Mamun vs State,* reported in *64 DLR 41.*

65. This Bench in the said case has observed that;

"1t is to be noticed that Money Laundering Protirodh Ain, 2009 has given effect on and from 15th April, 2008 corresponding to 2nd Baishak, 1413 BS that is before the election of 9th Parliament and its 1st meeting. Money Laundering Protirodh Ain, 2009 had been repealed by Money Laundering Protirodh Ordinance, 2008 on 15-4-2003 with a provision of saving clause; Money Laundering Protirodh Ordinance 2008 was also repealed by the Money Laundering

Protirodh Ain, 2009 with another saving clause in section 31 (2) of the Ain and there is a continuity of legislation in between the Ain of 2002 and Ain of 2009 and thus, the Ordinances in question have got no manner of application after enactment of Money Laundering Protirodh Ain, 2009 which has come into force before the constitution of the 9th Parliament and its first meeting and, as such, the question whether the Ordinance Nos. VII and VIII 2007, by which the Money Laundering Protirodh Ain, 2002 was incorporated in the schedule of Anti-Corruption Commission Act, 2004 and Criminal Law Amendment Act, 1958 respectively, were not placed before the first meeting of 9th Parliament and was not approved by the Parliament as per provision of Article 93 (2) and (4) of the Constitution thus it is deemed that Money Laundering Protirodh Ain, 2002 is no more in the schedule of Anti-Corruption Commission Act of 2004 and Criminal Law Amendment Act of 1958 has also become irrelevant which has got no substance. It is also a redundant issue."

66. The Appellate Division in the case of *Tarique Rahman vs Bangladesh,* reported in *63 DLR (AD) 163* having considered the facts and circumstances of said case had termed it 'very unique in its nature' and categorically and consistently held that;

"Accordingly, inquiry, investigation lodging of complaint and conduct of prosecution of the cases and holding of the trial in respect of those case under the Ain of 2002 shall proceed under the Provision of Anti-Corruption Commission Act, 2004 and that in the case of any conflict with the provision of Ain, 2002 the provision of Anti-Corruption Commission Act, 2004 and the Criminal Law Amendment Act, 1958 shall prevail though the Ain of 2002 was repealed by the Ordinance, 2008 keeping similar provision as of section 3(ক) in section 9 of the Ordinance, 2008 and also in section 9 of the Ain, 2009."

67. In the judgment of Civil Petition for leave to Appeal No. 10 of 2011 the Appellate Division also held that;

".....and, as such, the procedure in respect of inquiry, investigation, conducting prosecution and holding trial shall be governed under the provision of the ACC, 2004."

68. Keeping in mind the above decisions and observation of the Appellate Division let us now consider the submission of Mr Mahbubuddin whether section 188 of the Code of Criminal Procedure will be applicable in this particular case that is whether sanction of Government is mandatory for inquiry into this case and to hold trial; though the learned Special Judge has kept the matter open.

69. In the above cases it is the consistent view of the Appellate Division that since the alleged offence have been committed during the operation of Money Laundering Protirodh Ain, 2002, its punishment would be dealt with under the provision of the said Ain of 2002; but the procedure in respect of the inquiry, investigation, conducting prosecution and holding trial shall be governed under the provision of Anti-Corruption Commission Act of 2004 and Criminal Law Amendment Act of 1958.

70. In view of the above decisions and observation of the Appellate Division there is no scope to hold that the sanction of the Government is mandatory to make inquiry of the offence of the present case as per provision of section 183 of the Code of Criminal Procedure.

71. Section 32(1) of the Anti-Corruption Commission Act of 2004 has empowered the Anti-Corruption Commission only to give sanction for prosecution.

72. This section clearly speaks;

"ফৌজদারী কার্যবিধি বা আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, কমিশনের অনুমোদন (Sanction) ব্যতিরেকে কোন আদালত এই আইনের অধীন কোন অপরাধ বিচারার্থ আমলে গ্রহন (cognizance) করিবেন না।"

73. This provision of law clearly and consciously ousted the power of sanction of the Government keeping the spirit that Anti-Corruption Commission being a statutory body, it should be free from any interference by the Government section 20 (1) of the Anti-Corruption Act, 2004 is as under:

"ফৌজদারী কার্য বিধিতে যাহা কিছুই থাকুক না কেন, এই আইনের অধীন ও উহার তফসিলে বর্ণিত অপরাধ সমূহ কেবল মাত্র কমিশন কর্তৃক তদন্তযোগ্য হইবে।"

74. In this connection it would also be pertinent to see the provision of section 5 of the Code of Criminal Procedure which is as under;

"5. Trial of offence under Penal Code. (1) All offences under the Penal Code shall be investigated, inquired into, tried and other wise dealt with according to the provision thereinafter contained.

(2) Trial of offences against other laws. All offences under any other law shall be investigated inquired into, tried and otherwise dealt with according to the same provision, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

75. In view of the above provision of the Code of Criminal Procedure it is clear that when a complete procedure is provided in Special enactment for the purpose of inquiry, investigation and trial of such offence, that procedure must be followed and not the one prescribed in the Code of Criminal Procedure, in other words if a Special Procedure is prescribed under any Special enactment, it is the foremost duty of all concerned to follow it too.

76. It is well settled proposition of law that special provision must prevail over general.

77. Appellate Division also held in the case of *Tarique Rahman vs Bangladesh 162* that;

".....and that in case of conflict with the provisions of the Ain 2002, the provision of the Anti-Corruption Commission Act, 2004 and the Criminal Law Amendment Art, 1958 shall prevail though the Ain of 2002 was repealed by the ordinance of 2008 keeping similar provision as of section 3(ক) of the Ain of 2002 in the section 9 of the Ordinance of 2008 and also in section 9 of the Ain of 2009"

78. Moreso, section 5(2) of the Code of Criminal Procedure itself expressly has ousted its jurisdiction when special procedure has been prescribed in the Special law itself.

79. In this connection another aspect of the case is required to be considered. Section 9 of the repealed Money Laundering Protirodh Ordinance of 2008 which substituted the Ain of 2002 was as follows:

"(৯) অপরাধের তদন্ত ও বিচারঃ- এই অধ্যাদেশের অধীন অপরাধসমূহ দূর্নীতি দমন কমিশন আইন, ২০০৪ (২০০৪ সনের ৫নং আইন) এর অধীন তফসিলভূক্ত অপরাধ গণ্যে দূর্নীতি দমন কমিশন বা কমিশন হইতে তদুদ্দেশ্যে ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা কর্তৃক তদন্তযোগ্য হইবে।

(২) এই আইনের অধীন অপরাধসমূহ Criminal Law Amendment Act, 1958 (Act XL of 1958) এর section 3 এর অধীন নিযুক্ত স্পেশাল জজ কর্তৃক বিচার্য হইবে।

(৩) এই আইনের অধীন অপরাধসমূহের তদন্ত বিচার ও সংশ্লিষ্ট অন্যান্য বিষয়ে এই আইনেরর বিধানাবলীর সহিত বিরোধের ক্ষেত্রে দূর্নীতি দমন কমিশন আইন ২০০৪ এবং Criminal Law Amendment Act 1958 এর বিধানাবলী প্রধান্য পাইবে।"

80. Section 9 of Money Laundering Protirodh Ain of 2009 which has substituted the ordinance

of 2006 is same as section 9 of the Ordinance, 2008. Similar provision was also made in section 3(ক) of the Money Laundering Protirodh Ain, 2002. Mr Mahbubuddin by passing the provision of section 3(ক) of Ain, 2002 has tried to convince me that provision of section 9 of the said Ain will be applicable in the instant case.

81. All the provisions of law mentioned above speak that the offence of the Money Laundering Protirodh Ain, 2002, Ordinance of 2008 and Ain of 2009 deemed to be (অপরাধ গন্য) the schedule offence of the Anti-Corruption Commission Act, 2004 and triable by the Special Judge under the Criminal Law Amendment Act, 1958. As such the question whether Money Laundering Protirodh Ain 2002 or 2009 has been included in the schedule has got no substance and it is irrelevant. Law clearly provides that the offence under Money Laundering Protirodh Ain, 2002 or Ain, 2009 is deemed to be (অপরাধ গন্য) in the schedule of Anti-Corruption Commission Act, 2004 and the offence will be tried by the Special Judge under the Criminal Law Amendment Act, 1958. As such the provision of section 20(1) and 32 of the Anti-Corruption Commission Act, 2004 and sections 4(4) and 6(1) of the Criminal Law Amendment Act, 1958 will come in to play in this particular case.

82. I have already quoted the provision of section 20(1) of the Anti -Corruption Commission Act, 2004. And section 32 of the said Act, is as follows:

"৩২। মামলা দায়েরে কমিশনের অনুমোদনের অপরিহার্যতা।-(১) ফৌজদারি কার্যবিধিতে বা আপাতত বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, এই আইনের অধীনে মামলা দায়েরের ক্ষেত্রে কমিশনের পূর্বানুমোদন গ্রহণের প্রয়োজন হইবে এবং এই আইনের অধীন মামলা দায়েরের ক্ষেত্রে কমিশন কর্তৃক প্রদত্ত অনুমোদন পত্রের একটি কপি মামলা দায়েরের সময় আদালতে দাখিল করিতে হইবে।

(১) অনুমোদন প্রদান পদ্ধতি বিধি দ্বারা নির্ধারিত হইবে। (Sanction) ব্যতিরেকে কোন আদালত এই আইনের অধীন কোন অপরাধ বিচারার্থ আমলে গ্রহণ (cognizance) করিবে না।

(২) এই আইনের অধীন কোন অপরাধের তদন্ত পরিসমাপ্ত হইবার পর তদন্তকারী কর্মকর্তা আদালতে প্রতিবেদন দাখিল করিবার পূর্বে কমিশনের পূর্বানোমদন গ্রহণ করিবে এবং কমিশন কর্তৃক প্রদত্ত অনুমোদন পত্রের একটি কপি প্রতিবেদনের সহিত আদালতে দাখিল করিবে।"

83. And section 4(4) of the Criminal Law Amendment 1958 is as follows:

"(4) When an offence triable under this Act, is committed outside "[Bangladesh], it shall for the purposes of this Act, be deemed to have been committed within the territorial limits of the jurisdiction of the Special Judge in which the persons [committing the offence is found or was ordinarily residing before he left Bangladesh]."

84. And section 6(1) of the above law is as under:

"Procedure in trial of the cases and powers of special Judges. (1) The provisions of the Code of Criminal Procedure 1898 shall in so far as they are not inconsistent with this Act, apply to the proceedings of the court of a Special Judge and for the purposes of the said provisions, the Court of a Special Judge shall be deemed to be—

(a) a Court of Sessions, if the Special Judge is or has been a Sessions Judge or an Additional Sessions or Assistant Sessions Judge."

85. In view of the above provisions of law section 188 of the Code of Criminal Procedure is not at all applicable in this particular case; rather it is inconsistent with the provisions of sections 20(1) and 32 of the Anti-Corruption Act, 2004 and sections 4(4) and 6(1) of the Criminal Law Amendment Act, 1958.

86. Having discussed and considered as above I am of the opinion that the submissions of the learned Advocate for the accused petitioner is

absolutely misconceived and misappreciation of the above reported case.

87. In view of the above I am not inclined to issue any Rule.

88. Thus, the application is rejected summarily.

89. However, on perusal of the FIR and the charge-sheet it appears that the alleged money was transferred from the joint account of Mr Zulfiqur Ali and his wife Rahima Ali to the account of the present accused petitioner and the husband accused Md Hafiz Ibrahim in Singapore for illegal purpose but said Mr Zulfiqur Ali and his wife were not made accused in the case, though Zulfiqur Ali has been cited as a witness in the charge-sheet.

90. It is surprising to me that why said Md Zulfiqur Ali and his wife were not made an accused in the case.

91. From the materials on record, *prima-facie* it seems to me that they have also committed offence of Money Laundering as defined in section 2 (ঠ)(অ)(আ) of the Money Laundering Protirodh Ain, 2002.

92. Thus, I am inclined to direct the Anti-Corruption Commission to look into the matter and to take appropriate steps in accordance with the law.

93. However, the above observation will not preclude the trial Court to proceed with the trial of present case.

94. Thus, the trial Court is directed to proceed with the trial in accordance with law.

Communicate the judgment and order at once to the trial Court as well as the Anti-Corruption Commission.

Ed.

HIGH COURT DIVISION
(Criminal Appellate Jurisdiction)

Syed Md Ziaul Karim J
Ashish Ranjan Das J

Judgment
January 26th, 2014.

Hasina Akhtar.....
....Informant-Appellant

vs

Md Raihan & another
.....Respondents*

Cancellation of Bail

There are five cases where a person granted bail may have the bail cancelled and recommitted to jail

- ◊ **Where the person on bail during the period of bail commits the very same offence for which he is being tried or has been convicted.**
- ◊ **If he hampers the investigation.**
- ◊ **If he tempers with the evidence.**
- ◊ **If he runs away to a foreign country or goes underground or beyond the control of his sureties and**
- ◊ **If he commits acts of violence or revenge.** .....(11)

No one Appears—For the Informant-Appellant.

No one Appears—For the Accused-Respondent No. 1.

Sakila Rowshan, DAG with Sharmina Haque, AAG and Md Sarwardhi, AAG—For the State Respondent No. 2.

Judgment

Syed Md Ziaul Karim J: By this appeal the Informant-Appellant has challenged the legality and propriety of the order dated 7-4-1997 passed by the learned Judge of Special Tribunal No. 2, Chittagong (briefly as Tribunal), in Special Tribunal Case No. 11 of 1995, rejecting an application for cancellation of bail filed by the appel-

*Criminal Appeal No. 747 of 1997

lant.

2. Facts in brief are that, on 8-3-1993 appellant as informant lodged a First information Report with the Pahartali Police Station against the accused alleging that on 4-3-1993 all the accused in joint collaboration with each other abducted her minor daughter named Suraiya Nasrin Runa aged about 14 years. Subsequently, the victim was locomoted from one place to another and the accused No. 1 Raihan consecutively committed rape upon her. The case was recorded as Pahartali Police Station Case No. 03(3)1993 corresponding to GR No. 373 of 1993 under sections 4 and 9 of the cruelty to women's (detterent punishment) ordinance, 1983 (briefly as Ordinance).

3. During investigation victim was recovered by the police and subsequently she was examined by the doctor.

4. Police after investigation submitted Charge-Sheet accusing accused Raihan and others.

5. Eventually, the case was taken up for trial by the Tribunal. Meanwhile, some witnesses were examined. Thereafter, accused Raihan was granted bail.

6. Subsequently, the mother of the victim herein appellant filed an application for cancellation of bail of the accused Raihan stating that after being enlarged on bail he is threatening the victim and other witnesses not to depose against them before the court, which was rejected by the tribunal by the impugned order.

7. Feeling aggrieved the informant as appellant filed the instant appeal.

8. No one appears on behalf of the appellant to support the appeal. In view of the facts this is an old appeal of 1997, we are inclined to take it up to disposal on merit considering the materials on record.

9. The learned Deputy Attorney-General appearing for the State Respondent No. 2 opposes the appeal and submits that after considering the entire materials on record the learned Judge of the Court below rightly passed the impugned order which calls for no interference by this Court.

10. In order to appreciate her submissions we have gone through the record and given our anxious consideration to her submissions.

11. On going to the materials on record it transpires that, earlier accused Raman was enlarged on bail by the Tribunal, we should hear in mind that there are five cases where person granted bail may have the bail cancelled and recommitted to jail :—

i) Where the person on bail during the period of bail commits the very same offence for which he is being tried or has been convicted.

ii) If he hampers the investigation.

iii) If he tempers with the evidence.

iv) If he runs away to a foreign country or goes underground or beyond the control of his sureties and

v) If he commits acts of violence or revenge.

12. It is pertinent to point out that in the appellation for cancellation of bail any of such ingredient is absent. Therefore, the court below rightly rejected the prayer for cancellation of bail of the accused. We also hold the same view. Thus the appeal having no merit fails.

13. In view of foregoing narrative the appeal is dismissed.

Office is directed to communicate the order at once.

Ed.

HIGH COURT DIVISION
(Civil Appellate Jurisdiction)

Md Nuruzzaman J Quazi Reza-ul-Haque J	Abdul Hakim Miah..... .....Appellant vs Agrani Bank, Purana Paltan Branch, Dhaka and others... .....Respondents*
Judgment February 7th, 2012.	

Evidence Act (I of 1872)
Section 73

Section 73 of the Act permits the Court to make a comparison of signature or writings and so adoption of such a method cannot be termed as hazardous or dangerous and therefore the finding as to the genuineness of Exhibit 14 cannot be questioned only on this account.

.....(15)

Ishaque vs Ekramul Haque Chowdhury, 54 DLR (AD) 26 ref.

Abdus Salam Khan with Md Shahed Razmul Bari, Advocates—For the Appellant.

Md Abdus Samad, Advocate—For the Respondent No. 1.

Judgment

Quazi Reza- ul-Hoque J: The instant appeal was preferred by the defendant-appellant against the judgment and decree dated 23-2-1998 (decree signed on 2-8-1998) passed by the learned Subordinate Judge, Commercial Court No. 2, Dhaka in Money Suit No. 99 of 1999 decreeing the suit.

2. The facts, in short, as has been stated in the plaint is that the Defendant No. 1 opened an account with the plaintiff Bank being Current Account No. 1362 and approached the defendant No. 2, the then Manager of the plaintiff Bank to provide him with some loan facilities. The Defendant No. 2 most illegally and unauthorisedly allowed temporary overdraft facilities to the Defendant No. 1, without obtaining any sanction from the head office of the Bank and also without obtaining necessary papers and documents from the defendant No. 1 as a pre-requisite to secure the repayment.

3. The defendant No. 1 utilized the said overdraft facilities from time to time, the first being on 7-2-78 and the last being on 31-5-78. The Defendant No. 1 deposited different amounts on different dates in the said account towards liquidating its dues to the plaintiff bank and the last deposit being an amount of Taka 1,00,000 on 9-11-79 and since then he did not deposit any amount with the plaintiff bank towards liquidating the outstanding dues. A Legal Notice was issued to the Defendant No. 1 on 24-8-81 requesting him to adjust the outstanding liabilities in the said account but he did not pay any amount towards adjusting the outstanding dues of the plaintiff bank until filing of the case, as such, the said account showed a debit balance of Taka 2,33,692 as on 24-10-82 (interest charged upto 23-10-82) against his account. As the Defendant abstained from paying the outstanding dues against the said account, so, the plaintiff bank instituted the suit.

4. The defendant appellant contested the suit by filing written statement contending that he availed the first over-draft facility on 7-2-1978 and through subsequent withdrawals lastly on 31-5-1978 he withdrew Taka 4,75,000 through 5 cheques and paid back Taka 3,44,500 through 16 deposit slips, the last one on 9-11-1979, which this defendant-appellant disputed having not been signed and deposited by him and thereby raised the plea of limitation that the suit is not maintainable as being barred by limitation. The calculation of the un-paid amount has been miscalculated and he also contended that he did not receive any legal

*First Appeal No. 213 of 1999

notice as had been claimed by the plaintiff opposite party to have been sent on 24-8-1991. The defendant-appellant further contended that the last amount he paid against the over-draft default was for an amount of Taka 500, which was on 13-10-1975.

5. Both the parties adduced one witness each in support of their respective claims.

6. The PW 1, Abdul Karim, the branch Manager of the respondent petitioner bank exhibited all the cheques through which the defendant-appellant withdrew the said amount of OD benefits and the deposit slips through which he paid Taka 3,45,000 having been signed by the petitioner himself. The outstanding amount until 23-10-1982 with interest stood at Taka 2,33,609, payable by the petitioner defendant.

7. The DW 1, the petitioner defendant himself conceeded to have availed the over draft facilities and did not controvert any of the cheques of deposit except the deposit slip dated 9-7-1999 and also have conceeded as defaulter of payment amounting to Taka 2,33,692.

8. Mr Abdus Salam Khan with Mr Md Shahed Razmul Bari, the learned Advocates appearing for the appellant submitted that the defendant No. 1 made the last payment to the Bank on 13-10-1979 and the suit was filed on 4-11-1982 and since then the defendant No. 1 have specifically stated it in his deposition, which remained unchallenged and thus the suit was barred by limitation but the learned Sub-ordinate Judge, Commercial Court No. 2 disregarding this material evidence erroneously held that the suit was not barred by limitation and arbitrarily decreed the suit, as such, his decision was not in accordance with law.

9. He further submitted that the defendant No. 1 denied that he did not deposit Taka. 1,000 on 9-11-1979 and the learned Judge of the Commercial Court No. 2 also found that the word "Md" before the name of the defendant No. 1 was penned through and thus it was deposited by the bank itself to save limitation, yet he opined that it was deposited by the defendant No. 1 and on such wrong findings, illegally decreed the suit, and as such, the decision is contrary to law.

10. Mr Khan further submitted that without arriving at a definite conclusion by comparing the available signature of the defendant No. 1 available in other documents, i.e, deposit slip with the deposit slip dated 9-11-1979, the Court below abruptly held that it was the handwriting of the defendant No. 1 very hastily and without applying his judicious mind illegally decreed the suit.

11. He again submitted that the Court below should have held that the deposit of Taka 1,000 dated 9-11-1979 was fraudulently deposited by the plaintiff Bank to save limitation and for not doing so his decision is not done according to law.

12. He again submitted that the Court below without referring to the balance amount and the principal loan amount and the interest accrued thereon for the specific period arbitrarily decreed the suit for Taka 2,33,692 as such, the decision is arbitrary and not done according to law and thus it is liable to be set-aside.

13. Mr Md Abdus Samad, the learned Advocate appearing for the respondent submitted that the learned judge of the trial Court sifted through all the material evidence, both oral and documentary and reached its conclusion finding the accused guilty of the offence complained of in the plaint. There is no room to shift away from the verdict of the trial Court as no stone remained unturned and therefore the impugned judgment calls for no interference by this Court.

14. On perusal of the petition, the impugned judgment, L/C record containing the plaint, written statements, witnesses and on perusal of submissions of the learned Advocates of both the par-

ties, it is found that the sole contention of the defendant is the date of deposit of the last amount dated 13-11-1979, which took us on scrutiny of the original deposit slips and the cheques having been signed by the petitioner-defendant himself, looks very flimsy. The defendant petitioner claimed not to have signed the deposit slip dated 13-11-1979, which on its scrutiny with the cheques through which he withdraw the money and the other deposit slips found different and clearly reflects his own accord of using different signatures. He himself claimed to have made last deposit slips, which in fact were un-signed and all other 15 deposit slips were found by the trial Judge as being signed by the same person.

15. In, *Ishaque vs Ekramul Haque Chowdhury, 54 DLR (AD) 26,* it was observed *inter alia* that:

> It is well-settled that section 73 of the Evidence Act permits the Court to make comparison of signature or writings and so adoption of such a method cannot be termed as hazardous or dangerous and therefore the finding as to the genuineness of Exhibit 14 cannot be questioned only on this account.

16. So, the genuiness of signature may be scrutinised by the trial Judge himself and we also fel that unless the signatures in bare eyes in normal scrutiny are found different or anomalous, or the contender claims for an expert for the same, the opinion and conclusion drawn by the trial Judge is conclusive. Since the basis of contention was limitation, as such once the falsity of the deposit slip dated 9-11-1979 stood against the defendant, as such the ground of limitation also falls through. And as regards to the calculation of the payable amount of the over-draft facility, it has also been found that the petitioner-defendant himself mis-calculated without taking the payables with interest in account, and as such, we do not find any merit in the appeal.

17. In the result, the appeal is dismissed. The judgment and decree dated 23-2-1998 (decree signed on 2-8-1998) passed by Sub-Ordinate Judge, Commercial Court No. 2 Dhaka, in Money Suit No. 99 of 1990 is affirmed.

The order of stay granted earlier stands vacated. Office is directed to send a copy of this judgment to the concerned Court below along with the LCR immediately.

Ed.

HIGH COURT DIVISION
(Statutory Original Jurisdiction)

Zinat Ara J
JBM Hassan J

Judgment
February 11th, 2013

Standard Chartered Bank....
.....Applicant

vs

Commissioner of Taxes.....
.....Respondents*

Income Tax Ordinance (XXXVI of 1984)
Section 29(1) (xviiiaa)

The intention of legislature is to allow 3% of total outstanding loan including interest thereon or the amount of actual provision for such classified bad and doubtful debts and the interest thereon in the books of the assessee, which ever is less and the proviso is meant for the later part of clause (xviiiaa) and any other interpretation of the proviso would not proper.

.....(24)

Rafiq-ul-Huq with Magrib Kabir—For the Applicant.

S Rashed Jahangir, DAG—For the Respondent.

*Income Tax Reference Application No. 229 of 2003 with Rule No.09 (Ref) of 2003.

Judgment

Zinat Ara J: This reference application under section 160(1) of the Income Tax Ordinance, 1984 arises out of an order dated 24-2-2003 passed by the Taxes Appellate Tribunal, Division Bench-1, Dhaka in Income Tax Appeal No.4837 of 2001-2002. This is relating to the assessment year 2000-2001.

2. The questions posed in this reference application for opinion of this court are as under:

"(1) Whether in the facts and circumstances of the case, the Tribunal was justified in disallowing the expenditure in respect of provision on account of bad and doubtful debts @ 3% on the total outstanding loan including interest thereon under section 29(l)(xviiiaa) of the Income Tax Ordinance, 1984.

(2) Whether in the facts and circumstances of case the Tribunal was justified in computing 3% deduction on classified loan and interest thereon out of provision for bad and doubtful debt.

(3) Whether in the facts and circumstances of the case, the Tribunal was justified in not taking into cognizance of the clarification given by the National Board of Revenue (Annexure-E) and holding that 3% should be on classified loan instead of total outstanding loan and interest thereon?"

3. To avoid any confusion question (1) is reformulated by us in the following manner:

Whether in the facts and circumstances of the case, the Tribunal was justified in not allowing the expenditure in respect of the provision on account of bad and doubtful debts @ 3% on the total outstanding loan including interest thereon or the actual provision of classified bad and doubtful debt with interest thereon, whichever is less under section 29(l) (xviiiaa) of the Income Tax Ordinance, 1984.

4. The assessee-applicant, Standard Chartered Grindlays Bank Limited formerly ANZ Grindlays Bank plc (hereinafter stated as the assessee) is a banking company and it carries on banking business in Bangladesh. The assessee filed its income tax return for the assessment year 2001-2002 before the Deputy Commissioner of Taxes, Companies Circle-7, Taxes Zone-3, Dhaka (briefly stated as the DCT) showing total income at Taka 105,26,70,813. Whereupon, the DCT issued notices under sections 83(2) and 79 of the Income Tax Ordinance, 1984 (the Ordinance, in short) upon the assessee. In response to the notices, the authorized representative of the assessee appeared with the books of accounts and other evidences. The assessee for the assessment year 2000-2001 made provision of Taka 10,05,32,483 on account of bad and doubtful debts. But upon hearing, the DCT disallowed an amount of Taka.93,55,103 from the claimed provision of Taka 10,05,32,483 stating that as per proviso to section 29(l)(xviiiaa) of the Ordinance, provision for bad and doubtful debt is allowable at the rate of 3% on the amount of loan classified by Bangladesh Bank as bad and doubtful debts. In view of such findings, the DCT allowed Taka 69,82,380 as 3% on the classified loan and disallowed Taka 93,55,103 out of claimed provision of Taka 10,05,32,483 for bad and doubtful debts.

5. Against the said order of assessment, the assessee preferred an appeal being No. আয়কর আপীলপত্র ১৬৫৪/ কোং ৭/ কঃ অ ৩/২০০০-২০০১ before the Commissioner of Taxes (Appeals), Taxes Appeal Zone-3, Dhaka (in short, the Commissioner of Appeal) on the ground that the DCT acted illegally in not allowing deduction @ 3% on the total outstanding loan of the assessee including interest in respect of provision of bad and doubtful debt and interest thereon under clause (xviiiaa) of section 29(1) of the Ordinance. After hearing, the

Commissioner of Appeal, dismissed the appeal with the observation that 3% should be calculated on the amount of loan classified as bad and doubtful debts by Bangladesh Bank and not on the total outstanding loan including interest accrued thereon in view of the proviso to clause (xviiiaa) of section 29(1) of the Ordinance.

6. Against the said appellate order, the assessee preferred a second appeal being Income Tax Appeal No.4837 of 2001-2002 before the Taxes Appellate Tribunal, Division Bench-1, Dhaka (the Tribunal, in brief) stating that the Commissioner of Appeal acted illegally in upholding the decision of the DCT in disallowing Taka 93,55,103 out of the provision for bad and doubtful debts by misinterpreting the provision of bad and doubtful debts as provided under section 29(1) (xviiiaa) of the Ordinance. The Tribunal after hearing both parties, by order dated 24-3-2003 dismissed the appeal upholding the order of the Commissioner of Appeal.

7. This resulted in the instant reference application by the assessee.

8. The respondent, Commissioner of Taxes opposed this reference application by filing an affidavit-in-reply controverting the statements made in the reference application and stating that the orders of the DCT, the Commissioner of Appeal and the Tribunal are lawful inasmuch as under the proviso to clause (xviiiaa) of section 29(1) of the Ordinance, 3% of the classified loan is admissible as deduction for bad and doubtful debts. This has been done in assessee's case and therefore, the Tribunal was fully justified in upholding the order of the Commissioner of Appeal.

9. Mr Rafique-ul-Huq, the learned Advocate for the petitioner appearing with Mr Magrib Kabir has taken us through the reference application, the assessment order, first appellate order and the second appellate order as well as the provision of section 29(1) (xviiiaa) of the Ordinance and submits that from the whole reading of section 29(1) (xviiiaa) of the Ordinance it is clear that proviso to section 29(1) (xviiiaa) of the Ordinance is only for the later part of this clause i.e. "about bad and doubtful debts and the interest thereon," otherwise the provision of this clause would be meaningless. He next submits that the DCT, the Commissioner of Appeal as well as the Tribunal has erred in law in interpreting that 3% of bad and doubtful debts and interest thereon as classified by Bangladesh Bank is only allowable as deduction from income from business of the assessee. He further submits that subsequently, the National Board of Revenue (the NBR) also gave such clarification about section 29(1) (xviiiaa) of the Ordinance by order dated 27-2-2003. He lastly submits that in such view of the matter, the questions (1) and (2) of this reference application are liable to be answered in favour of the assessee and against the department.

10. However, Mr Huq does not press question (3) to this reference application inasmuch as the clarification given by the NBR through annexure-E was subsequent to the order passed by the Tribunal and so, the Tribunal had no scope to apply it.

11. In support of his submissions, Mr Huq places before us an unreported judgment dated 20-3-2005 passed by this Division in Income Tax Reference Application No. 55 of 2003 *(Sonali Bank, Head Office, Motijheel CA, Dhaka vs The Deputy Commissioner of Taxes,* Companies Circle -4, Tax Zone-2, Dhaka and another).

12. In reply, Mr S Rashed Jahangir, the learned Deputy Attorney-General appearing for the respondent-department with the leave of the court takes us through the provision of section 29(1) (xviiiaa) of the Ordinance and inviting our special attention to the proviso to clause (xviiiaa) contends that it is evident from the proviso that

3% deduction is to be allowed only on classified bad and doubtful debts and the interest thereon and not on the total outstanding loan. He further contends that the proviso is to control the provision of clause (xviiiaa) of section 29(1) of the Ordinance and, as such, the DCT, the Commissioner of Appeal as well as the Tribunal was fully justified in allowing 3% of the classified bad and doubtful debts and interest thereon as deductible allowance of the assessee. He lastly contends that in such view of the matter, the questions formulated in this reference application are liable to be answered in the affirmative and in favour of the department.

13. However, on perusal of the judgment dated 20-3-2005 passed by this Division in Income Tax Reference Application No.55 of 2003 *(Sonali Bank, Head office, Motijheel CA, Dhaka vs The Deputy Commissioner of Taxes,* Companies Circle-4, Tax Zone-2, Dhaka and another), the learned Deputy Attorney-General finds it difficult to support the order passed by the Tribunal.

14. We have examined the reference application, the assessment order passed by the Deputy Commissioner of Taxes, (Annexure-A to the reference application), the first appellate order passed by the Commissioner of Appeal (Annexure-B to the reference application) and the second appellate order passed by the Tribunal (Annexure-C to the reference application). We have also carefully studied the relevant provision of section 29(l) (xviiiaa) of the Ordinance as well as the judgment dated 20-3-2005 passed by this Division in Income Tax Reference Application No.55 of 2003.

15. From the assessment order, it transpires that, "as per Auditor's certificate the classified loan balance of the assessee for the assessment year comes at Taka (3,06,89,000 + 8,60,55,000 + 11,60,02,000) = Taka 23,27,46,000. As per proviso along with clause (xviiiaa) of sub-section (1) of section 29 of the IT Ordinance, 1984 the provision for bad and doubtful debts is allowance @ 3% of classified loan balance. Accordingly, the allowable expenses as provision for bad and doubtful debts income at Taka 69,82,380 which is allowed hereby Taka 69,82,3807".

16. The Commissioner of Appeal by his order dated 29-11-2011 has affirmed the disallowance of the DCT in view of the provision of section 29(l) (xviiiaa) of the Ordinance and clarification of the NBR dated 2-9-1998 with detail reasonings.

17. The Tribunal by his order dated 24-2-2003 also decided as under:

"The Tribunal differs with the argument put forward by the learned authorized representative of the appellant on four issues:

Firstly, if the benchmark could have been 3 percent of total outstanding loan as perceived by the learned Authorized Representative such loan would have included loans which remain to be categorized as bad and doubtful debts.

Secondly, when a section encompasses a proviso or provisos it cannot be read independently as done by the learned Authorized Representative. For a clear meaning of the section it has to be read with the proviso or provisos.

Thirdly, if it were the intention of the legislatures to provide for at the rate of 3 percent on total outstanding loans perceived by the learned Authorized Representative the aforesaid proviso should not have been inserted by them.

And Fourthly, the expression outstanding loan means and unrealized or unpaid loan whose payment time has not expired. Therefore, provisioned of 3 percent on outstanding loan as argued by the learned Authorized Representative cannot be the

intention of the legislature.

The Commissioner of Appeals order upholding the Deputy Commissioner of Taxes order restricting deduction of provision for bad and doubtful debts from income at 3 percent on classified loans is confirmed by the Tribunal as factual, proper and in accordance with law."

18. Thus, it is evident from the aforesaid orders that the assessee was allowed 3% deduction on classified bad and doubtful debts and interest thereon.

19. To decide the question of law as raised in this reference application, it is necessary to undevstand the relevant provision of section 29(l) (xviiiaa) of the Ordinance. For better understanding, the said provision as was prevalent for the relevant assessment year is quoted below;

"29. Deductions from income from business or professions:—

(1) In computing the income under the head "Income from business or profession", the following allowances and deductions shall be allowed, namely:—

(i) .....

(ii) .....

"(xviiiaa) in respect of provision for bad and doubtful debts and interest thereon made by a commercial bank including the Bangladesh Krishi Bank and the Rajshahi Krishi Unnayan Bank, a sum equal to three percent of the total outstanding loan including interest thereon or the amount of actual provision for such bad or doubtful debts and interest thereon in the books of the assessee, whichever is less:

Provided that the provisions of this clause shall apply only in respect of such loan as the Bangladesh Bank may, from time to time, classify as bad or doubtful debts:

Provided further that the deduction shall be allowed only in respect of the assessment years 1990-91, 1991-92, 1992-93, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98, 1998-99, 1999-2000, 2000-2001 and 2001-2002 :

Provided further that if any amount out of the amount so allowed is ultimately recovered, the same shall be deemed to be a profit of the year in which it is recovered:

Provided further that no deduction under this clause shall be allowed in respect of-

(a) any amount representing grant allowed by the Government in the form of 15 years Special Treasury Bonds;

(b) any loan advanced to any government organization, body corporate, local authority, autonomous body, or any other loan guaranteed by the Government; and

(c) any debt representing loans advanced to any director of the bank, his nominees or dependent;

....." *(Emphasis supplied)*

20. Thus, from the above quoted provision it appears that in computing income from business, deduction shall be allowed in respect of bad and doubtful debts and the interest thereon made by a Commercial Bank including the Bangladesh Krishi Bank and the Rajshahi Krishi Unnayan Bank, a sum equal to three percent of the total outstanding loan including interest thereon or the amount of actual provision for such bad or doubtful debt and interest thereon in the books of the assessee, whichever is less.

21. But in the proviso to this clause, it has been provided that the provision of this clause shall apply in respect of said loan as Bangladesh Bank may, from time to time, classify as bad or doubtful debts. Thus, it appears that the DCT, the

Commissioner of Appeal as well as the Tribunal decided that 3% of bad and doubtful debts and interest thereon is allowable to the assessee, perhaps due to ambiguity in tne language used in the proviso.

22. On careful scrutiny of this section our considered view is that had it been the intention of the legislature to allow deduction of 3% on the classified bad and doubtful debts and interest thereon, it was not at all necessary to insert the words "in respect of provision of bad and doubtful debts and interest thereon made by commercial bank a sum of 3% of total outstanding loan interest thereon or the amount of actual provision for such bad and doubtful debt and interest thereon in the books of assessee which ever is less."

23. There is no dispute that total outstanding loan due to the assessee bank is inclusive of bad and doubtful debts as classified.

24. Thus, we are of the view that the intention of legislature is to allow 3% of total outstanding loan including interest thereon or the amount of actual provision for such classified bad and doubtful debts and the interest thereon in the books of the assessee, which ever is less and the proviso is meant for the later part of this clause (xviiiaa) and any other interpretation of the proviso would not proper.

25. Therefore, the taxes authority is to allow 3% of the total outstanding loan including the interest thereon or the amount of actual provision for such bad and doubtful debts and interest thereon as classified, whichever is less.

26. The above view of ours is also supported by the judgment dated 20-3-2005 passed by this Division in Income Tax Reference Application No.55 of 2003, wherein on similar questions of law their lordships have decided as under:

> "perusing the aforesaid provision of law it appears that a sum equal to 3% of the total outstanding loan including interest thereon or the amount of actual provision for such bad and doubtful debts and interest thereon in the books of the assessee applicant whichever is less shall be allowed to be deducted. The bank is illegible to commute income upon allowances deduction of the aforesaid. That means outstanding loan including interest is classified as the accumulative amount of advance and loan, no matter the same is good or bad. A loan is always bad unless the same is repaid within the stipulated time. Section 29(1) (xviiiaa) has given the criteria for making deduction on the cumulative amount of advance irrespective of the good and bad loan to the extent of 3% of the sum of the cumulative amount can be deducted under the provision of law or in the alternative the law provided that the amount of actual provision for such bad and doubtful debts with interest accrued thereon as contemplated in the books of the applicant. This alternative incorporated in the statute providing the applicant to make an actual provision for such bad and doubtful debts which the proviso classified in the manner that the provision of this clause shall apply only in such loan, the Bangladesh Bank from time to time classify as bad and doubtful debts. The key word in the section is actually "whichever is less." That means the bank is either to show a sum to 3% of the cumulative amount including interest as bad loan or the amount of actual provision made by the bank in accordance with the guideline given by the Bangladesh Bank for such bad and doubtful debt "whichever is less". In case the actual provision is more than the 3% of the cumulative advance therein 3% of the cumulative advance should be deducted under the proviso. But where the actual provision is less than the sum equal to 3% of the outstanding loan or cumulative advance then actual provision furnished by the bank in accordance with

the guideline given by the Bangladesh Bank will be the amount which should be deducted under the proviso. In the present case it has been submitted that the actual provision furnished by revised return of the application Bank at Taka 55 crore which is less than the amount of cumulative advance of 3% outstanding liability. So, the actual provision being less would be allowed to be deducted."

(Emphasis given)

27. In the above view of the matter, we find merit and force in the submissions of the learned Advocate for applicant and we find no merit in the submissions of the learned Deputy Attorney-General.

28. Thus, considering the facts and circumstances of the case as discussed in the forgoing paragraphs vis-a-vis the law, we are of the view that interpretation of the Tribunal on section 29(1)(xviiiaa) of the Ordinance is not the proper interpretation of this clause and it is liable to be interfered by us. The taxes authorities are to allow deduction @ 3% on the entire outstanding loan and the interest accrued thereon or the provision for classified bad and doubtful 7debts with interest accrued thereon, whichever in less.

29. Accordingly, question (1) as reformulated by us and question (2) are answered in the negative in favour of the assessee and no answer to question (3).

30. The connected Rule being Rule No. 9(Ref) of 2003 is also disposed of accordingly.

31. No costs.

The Registrar, Supreme Court of Bangladesh is directed to take steps under section 161(2) of the Income Tax Ordinance, 1984.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

AHM Shamsuddin Chowdhury J SM Zakir Hossain J	SM Abdur Rouf..... .....Petitioner vs Government of the People's Republic of Bangladesh & ors..Respondents*
Judgment January 27th, 2011.	

Land Appeal Board Act (XXIV of 1989)
Sections 2 and 4

Original appeal was purportedly heard in *coram non-judice,* considering the subsequent application as a review petition was void equally well.

The appeal the petitioner preferred could only be heard and adjudicated upon by the Land Appeal Board, which, according to section 2, read with section 4 of the Land Appeal Board Act 1989, is composed of the chair thereof, plus, no less than two other members. So, the purported initial decision, taken by a single member, was in *coram non-judice,* as he, on his own, not being the Full Board, was incompetent to dispose of the appeal. The fact that the initial appeal was heard by an incompetent person, necessarily follows that there could, in law, be no review, simply because, review presupposes review of an earlier decision taken by a properly constituted body, the Board in the instant case. In so far as the original appeal was purportedly heard in *coram non-judice,* considering the subsequent application as a review petition was void equally well. .....(12)

Humayun Kabir, Advocate—For the Petitioner

ABM Altaf Hossain, DAG—For the Respondents.

Judgment

AHM Shamsuddin Chowdhury J: The Rule under adjudication, issued on 27th July, 2009, was in following terms: Let a Rule Nisi be issued calling upon the respondents to show as to why the

*Writ Petition No. 4117 of 2009.

order dated 3-5-2009 passed by the Full Board of Appeal Board, Segunbagicha, Dhaka in Case No. 5-19/2009 (VP) Full Board, Satkhira rejecting the review petition filed by the petitioner and thereby upholding the order dated 30-12-2008 passed by the Member of the Land Appeal Board, Segunbagicha, Dhaka in Case No. 5-105/2006(VP) Appeal, Satkhira (Annexure-F) should not be declared to have been passed without any lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper."

2. The averments figured by the petitioner are, briefly, as follows:

> Plot No. 1228 of Khatian No. 374 of Mouza Patakhali under Shyamnagor police station within Satkhira District, measuring an area of 2.00 acres of land, is government khas land and the petitioner after paying due consideration (salami) procured leasehold interest over the said land from the government in VP Lease Case No. 505/81-82 (Shyam) and brought it under his possession. He has, since then, been cultivating prawn thereon. The respondent No. 9 filed an application to the respondent No. 8, praying for lease of the land. The petitioner is always ready to pay the salami for the same for all the years as per rules of the government.

3. The respondent No. 9 afterwards, filed an application in VP lease case No. 505/81-82 (Shyam) before the Assistant Commissioner (Land), Shyamnagor, Satkhira, praying for lease of the land in question in his favour and upon hearing the said application, the Assistant Commissioner (Land), Shyamnagor; Satkhira rejected the application on 19-10-2004.

4. The respondent No. 9 then preferred a Miscellaneous Appeal before Additional Deputy Commissioner (Revenue), Satkhira, challenging the aforementioned rejection order, and the latter, upon perusal of the same allowed the said Appeal on 23-1-2006, and thereby set-aside the aforementioned order, dated 19-10-2004, passed by the Assistant Commissioner (Land).

5. The petitioner preferred Appeal before the Additional Divisional Commissioner (Revenue), Khulna, challenging the Additional Deputy Commissioner's order, stated above, and the earlier allowed appeal on 8-8-2006, setting aside the order passed by the latter.

6. The respondent No, 9 in turn, preferred an appeal before a member of the Land Appeal Board, Dhaka who, on 30-12-2008, allowed the appeal and set-aside the order dated 8-8-2006, passed by the Additional Divisional Commissioner (Revenue), Khulna vide his order dated 30-12-2008.

7. The petitioner then preferred a review petition to the Full Board of the Land Appeal Board, Dhaka, and the Board on 3-5-2009, rejected the said review petition and upheld the order, stated above, the single Member of the Land Appeal Board, Dhaka, passed.

8. None of the respondents had filed any affidavit to rebut the petitioner's averments.

9. As the rule attained maturity for disposal, Mr Humayun Kabir, submitted for the petitioner that Mr Nepal Chandra Sarkar, who, as the single Member of the Board, initially rejected the appeal, was one of the members of the Board, who heard the review petition and hence, this Board was incompetent to hear the matter as the rule against bias precludes him from doing so.

10. Mr ABM Altaf Hossain was without instruction.

11. We do, however, look at the matter a bit differently and reckon that for us the question is whether the order on review application was passed in accordance with the law. To address this question, we are required to peruse the law by which the Land Appeal Board has been created

and its power been specified. We located the enactment by which Bhumi Appeal Board was set. It is the Bhumi Appeal Board Act 1989. Section 4 of this Act envisages the Board as comprising a chair and no less than two other members. Section 2 says that the Board means Bhumi Appeal Board. Clause-3 of the rule (named Land Appeal Board rules), framed pursuant to the power conferred by section 7A of the aforestated Act, named Land Appeal Board rules, stipulates that the Board shall decide appeals and revision in respect to all matters arising out of all laws relating to land under control of the Ministry of Land.

12. So it is overwhelmingly clear that the appeal the petitioner preferred could only be heard and adjudicated upon by the Land Appeal Board, which, according to section 2, read with section 4 of the Land Appeal Board Act 1989, is composed of the chair thereof, plus, no less than two other members. So, the purported initial decision, taken by a single member, was in *coram non-judice,* as he, on his own, not being the Full Board, was incompetent to dispose of the appeal. The fact that the initial appeal was heard by an incompetent person, necessarily follows that there could, in law, be no review, simply because, review presupposes review of an earlier decision taken by a properly constituted body, the Board in the instant case. In so far as the original appeal was purportedly heard in *coram non-judice,* considering the subsequent application as a review petition was void equally well.

13. The Rule is, as it is entitled to be met with success, made absolute, without any order as to cost.

14. Both the decisions namely the decision taken by the single Member on 30-12-2008 and the decision taken by the Full Board on 3-5-2009 are hereby set-aside with a direction that the Full Board will hear the appeal *de-novo,* without any reference to the decisions dated 30-12-2008 or 3-5-2009. Since the Board is now manned by different people, there should be no question of bias.

Fate of the interlocutory order shall be determined by the Land Appeal Board.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Md Bazlur Rahman J
Md Ruhul Quddus J

Judgment
May 16th 2013.

Saiful Islam (Md).....
.....Petitioner
vs
Bangladesh and others....
.....Respondents*

Muslim Marriages and Divorce (Registration) Act (LII of 1974)
Section 4

Section 4 of the Act gives the Government discretionary power to extend, curtail or otherwise to alter the limits of an area for which a Nikah Registrar has been licensed. But such power has legal limitation by restrictive principles of reasonableness and fair play, and in some cases by that of natural justice. *The power is, therefore, not absolute.* .....(21)

Muslim Marriages and Divorce (Registration) Act (LII of 1974)
Section 4

A Nikah Registrar is known as a Kazi by profession, he commands respect and enjoys social status in his locality because of holding the licence. Presumably he maintains his livelihood from the earning of marriage and divorce registration fees left with him after payment of a fixed amount therefrom to the Government. This aspect should be considered in curtailment of an area, for which a Nikah Registrar has already been licensed. .....(23)

*Writ Petition No. 114 of 2012.

Muslim Marriages and Divorce (Registration) Rules, 2009
Rule 13

Area mentioned in rule 13 of the newly framed Rules, 2009 cannot be curtailed every now and then at the sweet will of the licensing authority. There must be some valid reasons for such curtailment, and in that case the incumbent Nikah Registrar should be given prior intimation and option as to which area he would choose to keep under his license subject to fulfilment of the other conditions provided in the Rules. .....(24)

Muslim Marriages and Divorce (Registration) Act (LII of 1974)
Section 4

Curtailment, extension or change of territorial jurisdiction—Any decision of the Government regarding curtailment, extension or change of territorial jurisdiction of a Nikah Registrar must be justified with the test of reasonableness and fair play. .....(24)

Raisuddin vs Bangladesh, 51 DLR (AD) 152 and Kazi Imamuddin Bhuiya vs Government of Bangladesh, 10 BLC (AD) 134 ref

Md Oziullah, Advocate—For the Petitioner

Md Helal Uddin Mollah, Advocate—For Added Respondent 10.

Judgment

Md Ruhul Quddus J: This Rule Nisi at the instance of a Nikah Registrar was issued to examine the legality of an order of the Ministry of Law, Justice and Parliamentary Affairs, Law and Justice Division as contained in Memo No. Bichar-7/2N-65/76 (Angsho)-1017 dated 12-12-2011 under the signature of its Senior Assistant Secretary (herein respondent 2) creating a new area comprising of ward Nos.1-5 of Shah Mahmudpur Union, Chandpur Sadar bifurcating the existing area of the entire union covered by the petitioner's licence (Annex-C). By the same order, the Ministry also asked the District Registrar, Chandpur (herein respondent 7) to send a panel towards appointment of a Nikah Registrar for the newly created area and forwarded an application filed by one AHM Helal Uddin Siddiqui (added respondent 10) presumably to include his name therein.

2. Petitioner's case, in short, is that he obtained his Kamel degree in 2001 and became competent to be a Nikah Registrar. His father Moulana Mohammad Nurul Islam, deceased now was his predecessor. Thereafter, the District Registrar, Chandpur under memo No.260 dated 22-4-2002 (annex:A-1) appointed him as Nikah Registrar for entire Shah Mahmudpur Union against the vacancy caused by the death of his father with prior approval of the Ministry vide its Memo No.314-Bichar-7/2N-65/76 dated 11-4-2002 (annex-A). Since then he has been performing his duty on payment of all fees and charges to the Government and to the satisfaction of all concerned. The added respondent filed an application to the Hon'ble State Minister for Law, Justice and Parliamentary Affairs for creating a new area curtailing the existing area of the petitioner and appointing him as Nikah Registrar therein (annex-B). The Ministry acted on the said application and issued the impugned order, in which event the petitioner moved in this Court with the present writ petition.

3. The respondent-government does not appear to contest the Rule. However, the added respondent contests it by filing an affidavit-in-opposition denying the material allegations of the writ petition contending, *inter alia,* that the peti-

tioner obtained his license on false statement. One ABM Moudud Ahmed was in fact appointed as Nikah Registrar of the union in question. Subsequently his appointment was cancelled and the added respondent was appointed there in accordance with law. According to section 4 of the Muslim Marriage and Divorce Registration Act, 1974 (LII of 1974) the Government can extend, curtail and alter the area or territorial jurisdiction of a Nikah Registrar at any point of time. Since the petitioner obtained his license on furnishing false statement regarding appointment in place of his deceased father, he cannot get any relief in writ jurisdiction.

4. During pendency of the Rule, the added respondent was appointed as Nikah Register for the newly created area, for which the petitioner filed a supplementary affidavit incorporating the development of facts, and two separate applications one for issuance of a supplementary Rule and another for an order of injunction. The said applications were kept in record to be considered and disposed of at the time of hearing of the Rule.

5. We have given our thought on the said applications. Since the basis of the appointment of the added respondent is under challenge, his fate may well be decided in the instant Rule without any prejudice to him and, as such, no supplementary Rule is necessary. The applications are accordingly disposed of.

6. Mr Md Oziullah, learned Advocate for the petitioner submits that under the newly framed Muslim Marriage and Divorce Registration Rules, 2009 (in short 'the Rules, 2009') the scope of curtailment of an area has been limited. Under rule 13 of the Rules, 2009 the minimum limit has been fixed at one union in case of the area of Union Parishad. Now a Nikah Registrar of a union is entitled to hold the entire union under his licence. In the present case, the licensing authority in arbitrary exercise of power curtailed the territorial limit of the petitioner without serving any notice on him even without assigning any reason and appointed the added respondent without following the rules, which were beyond the scope of law and, as such, without lawful authority.

7. Mr Oziullah further submits that the petitioner obtained the licence on payment of certain amount of money to the Government and maintains his livelihood with the statutory fees he receives for marriage and divorce registration. The impugned action of reducing his area will adversely affect his livelihood and, as such, his right to life and right to profession guaranteed under the Constitution have also been infringed by the impugned order for no fault of his own.

8. Mr Oziullah draws our attention to the top of the application filed by the added respondent (annex-B), where the Hon'ble Minister for Foreign Affairs and the Member of Parliament of the area in question made a recommendation using his official seal. He then submits that the impugned order of curtailment of the petitioner's territorial jurisdiction at the instance of a Cabinet Minister without assigning any reason is an example of unauthorized and arbitrary exercise of power by the licensing authority. The law has given the power of curtailment of area/territorial jurisdiction of a particular Nikah Registrar, does not mean that the authority will curtail it violating the minimum limit fixed by law and without showing any reason. In support of his contention, Mr Oziullah refers to an unreported decision of the High Court Division passed on 12-12-2012 in Writ Petition No. 9833 of 2011 *(Md Mobarak Hossen Farazi vs Bangladesh).*

9. Mr Md Helal Uddin Mollah, learned Advocate appearing for the added respondent submits that under section 4 of the Act LII of 1974 the Government has ample power to extend, curtail or alter the area of a Nikah Registrar at any point of time. This principle has already been decided by the Appellate Division in so many cases including that of *Raisuddin vs Bangladesh, 51 DLR (AD)*

152 and Kazi Imamuddin Bhuiya vs Government of Bangladesh, 10 BLC (AD) 134. He further submits that even if there is any inconsistency or contradiction between section 4 of the Act LII of 1974 and rule 13 of the Rules, 2009 it is needless to say that the Act will prevail. Mr Mollah lastly submits that the word "minimum" should not be added to interpret a union to be an area of a Nikah Registrar. The preferential rule of appointment in place of father having not been incorporated in the present Rules, the petitioner cannot claim to continue with his licence under the previous Rules. The licence given to any Nikah Registrar does not create any vested right in his favour and, as such, no compliance of natural justice is required to curtail the area under such licence.

10. It appears that the District Registrar, Chandpur with prior approval of the Ministry appointed the petitioner as Nikah Registrar for the entire Shah Mahmudpur Union against the vacancy caused by the death of his father under rule 5 (1) and 5 (3Ka) of the Muslim Marriage and Divorce Registration Rules, 1975 (vide annexes A and A-l to the writ petition). Authenticity of the said documents is not denied by the respondents. It further appears that the added respondent had filed a complaint against the petitioner to the Ministry bringing allegations that his (petitioner's) father was not the Nikah Registrar of Shah Mahmudpur Union and that he obtained the licence on false statement about his father's appointment as Nikah Registrar thereof (annex-E). The District Registrar, Chandpur under instruction of the Ministry inquired into the matter and submitted a report on 14-8-2003 [annex-E (l)] to the Ministry with observation and findings as follows:

> "অত্র কার্যালয়ের প্রেরিত রেকর্ড পত্র পর্যালোচনা করিয়া দেখা যায় যে, জেলা রিজিষ্ট্রার অফিস কুমিল্লা হইতে প্রাপ্ত নিকাহ রেজিষ্ট্রারগণের তালিকায় জনাব এ, কে, এম, নুরুল ইসলাম সাহেবকে ৪নং শাহমাহমুদপুর ইউনিয়ন ও ২নং রাজারগাঁও (দঃ) ইউনিয়নের নিকাহ রেজিষ্ট্রার হিসাবে উল্লেখ রহিয়াছে। অত্র কার্যালয় হইতে প্রেরিত পত্রাদি জনাব এ,কে,এম, নুরুল ইসলামের মহামায়া বাজারস্থ অফিসের ঠিকানায় প্রেরণ করা হইয়াছে এবং নিকাহ রেজিষ্ট্রারদের নাম ও তথ্য সম্বলিত বিবরনীতে জনাব এ,কে,এম, নুরুল ইসলামকে ৪নং শাহমাহমুদপুর ইউনিয়ন ও ২নং রাজারগাঁও ইউনিয়নের নিকাহ রেজিষ্ট্রার হিসাবে উল্লেখ করা হইয়াছে। মন্ত্রণালয়ে প্রেরিত তাহার মৃত্যু সংক্রান্ত প্রতিবেদনেও তাহাকে ৪নং শাহমাহমুদপুর ইউনিয়ন ও ২নং রাজারগাঁও ইউনিয়নের নিকাহ রেজিষ্ট্রার হিসাবে উল্লেখ করা হইয়াছে (কপি সংযুক্ত)।
>
> .....
>
> "অভিযোগকারী জনাব হেলালউদ্দিন, অভিযুক্ত নিকাহ রেজিষ্ট্রার জনাব সাইফুল ইসলাম এর জবানবন্দী ও অত্র কার্যালয়ের রেকর্ড পত্র পর্যালোচনায় দেখা যায় যে, ৪নং শাহমাহমুদপুর ইউনিয়নের বর্তমান নিকাহ রেজিষ্ট্রার জনাব সাইফুল ইসলামের পিতা জনাব এ,কে,এম, নুরুল ইসলাম সাহেব উক্ত ইউনিয়নের নিকাহ রেজিষ্ট্রার হিসাবে নিয়োগ প্রাপ্ত ছিলেন এবং কর্মরত ছিলেন। তিনি উক্ত ইউনিয়নের নিকাহ রেজিষ্ট্রার ছিলেন না মর্মে জনাব এ,এইচ,এম, হেলালউদ্দিন এর আনীত অভিযোগ সত্য নহে।"

11. From the passages of the report quoted above it appears that the allegations made by the added respondent were not correct. We are, therefore, unable to accept his contention that the petitioner obtained the Rule on false statement regarding his appointment in place of his deceased father. Since the petitioner is fully qualified to be a Nikah Registrar and his appointment was made long before framing of the Rules, 2009, the subsequent omission of the preferential rule in the newly formed Rules will not adversely affect his right or invalidate the licence issued in his favour.

12. The area of the union in question was bifurcated but no reason whatsoever for such bifurcation was assigned. The added respondent filed an application (annex-B) directly to the Hon'ble State Minister, Ministry of Law, Justice and Parliamentary Affairs for his appointment as Marriage Registrar by creating a new area curtailing the area licenced to the petitioner. The Hon'ble Minister, Ministry of Foreign Affairs

made recommendation on the said application on 6-10-2011, upon which the Ministry of Law acted and passed the impugned order on 12-12-2011. It clearly indicates that the existing area was bifurcated and the new area was created for the purpose of accommodating the added respondent, not for any valid reasons like increase of population, incapacity of the sitting Nikah Registrar to render the service needed etc. For better understanding about the area/territorial jurisdiction of a Marriage Registrar section 4 of the Act LII of 1974; rule 10 of the Rules, 1975 and rule 13 of the Rules, 2009 are quoted in seriatim below:

Section 4 of the Act LII of 1974;

"4. For the purpose of registration of marriages under this Act, the Government shall grant licenses to such number of persons, to be called Nikah Registrars, as it may deem necessary for such areas as it may specify: Provided that not more than one Nikah Registrar shall be licenced for any one area

(emphasis supplied)

Provided further that the Government may, whenever it deems fit so to do, extend, curtail or otherwise alter the limits of any area for which a Nikah Registrar has been licence."

" Rule 10 of the Rules, 1975:

"10. Jurisdiction—Notwithstanding anything contained in these Rules or in any licence granted under these Rules, an area for which a Nikah Registrar may be licenced shall be—

(a) In the case of a City Corporation, not more than one ward;

(b) In the case of a municipality of-

(i) Category 'A', not more than two wards;

(ii) Category 'B', not more than three wards; and

(iii) Category 'C' , whole municipality:

provided that this provision shall not affect a licence already issued for any ward; and]

(c) in other cases, not more than one union.

(emphasis supplied)

Rule 13 of the Rules, 2009 :

"১৩। আধরে এ।–এই বিধিমালার অধীন প্রদত্ত নিকাহ রেজিস্ট্রারের লাইসেন্সে যাহা কিছুই থাকুক না কেন, একজন নিকাহ রেজিস্ট্রারকে নিম্নবর্ণিত এলাকার জন্য লাইসেন্স প্রদান করা যাইবে, যথাঃ–

(ক) সিটি কর্পোরেশনের ক্ষেত্রে, একটি ওয়ার্ড;

(খ) 'ক' শ্রেণীর পৌরসভার ক্ষেত্রে, দুইটি ওয়ার্ড;

(গ) 'খ' শ্রেণীর পৌরসভার ক্ষেত্রে, তিনটি ওয়ার্ড;

(ঘ) 'গ' শ্রেণীর পৌরসভার ক্ষেত্রে সমগ্র এলাকা;

(ঙ) ইউনিয়ন পরিষদ এলাকার ক্ষেত্রে একটি ইউনিয়ন।"

(emphasis supplied)

13. From a careful reading of the above quoted provisions of law it appears that in the newly framed Rules the words "not more than" are omitted. This omission has got a definite meaning. It does mean that earlier in the Rules, 1975 the area of a Nikah Registrar was "not more than one union", but in the newly framed Rules, 2009 it has been fixed at only "one union".

14. In the two cases of the Appellate Division cited by the learned Advocate for the added respondent, power of the Government to curtail, extend and alter an area of a Nikah Registrar as conferred by the second proviso to section 4 of the Act LII of 1974 was interpreted in the light of rule 10 of the Rules, 1975. But in the light of rule 13 of the newly framed Rules, 2009, the interpretation may be otherwise because of omission of the words "not more than".

15. Moreso, in the case of *Raisuddin vs Bangladesh, 51 DLR (AD) 152* the Nikah Registrar was appointed in 1971 for an area of Dhaka

City which was subsequently curtailed in 1998. It is presumed that in between the periods, population of the area was increased many times. In the case of *Kazi Imamuddin Bhuiya vs Government of Bangladesh, 10 BLC (AD) 134* the petitioner was appointed as Nikah Registrar for four unions under Chittagong District, namely, Syedpur Union, Baroairudhala Union, Sitakundu Union and Muradpur Union, which was subsequently amalgamated with Wahedpur union. This huge territory was beyond the maximum limit prescribed by the Rules, 1975. However, subsequently Wahedpur Union was shown vacant and approval for issuance of licence to another person was given, which was challenged. In the present case the petitioner's licence was issued for one union of Chandpur in 2002, which fell well within the definition of 'one area' provided in rule 13 of the Rules, 2009. This area was curtailed in 2011 without assigning any reason. So, the facts of the cases cited by the added respondent are distinguishable.

16. Section 14 of the Act LII of 1974 confers authority on the Government to make Rules to carry into effect the purposes of the Act. After framing and notification of such Rules with clear description of an area as provided in rule 13 of the Rules, 2009, if the functionaries of the Government are allowed to curtail the minimum area by an executive order, the very purpose of the law stands defeated. Where the minimum territorial limit/area of a license for marriage registration has been fixed by a legislation, may be subordinate or delegated, the Government's authority to curtail, extend and alter the limit of an area should not be exercised beyond that limit.

17. In the unreported decision passed in Writ Petition No. 9833 of 2011, bifurcation of one union and thereby creation of two areas in that union, and subsequent appointment of a new Nikah Registrar on a demi official letter issued by the Hon'ble Minister for Home Affairs was challenged by the existing Nikah Registrar. A Division Bench of this Court declared the said actions illegal taking the view that the process of bifurcation having been initiated at the instance of the concerned Member of Parliament and Minister of a particular Ministry, was *malafide*. Facts of the case are identical to that of the present one.

18. There are some other aspects to be considered. Section 11 of the Act LII of 1974 says that any license of a Nikah Registrar cannot be revoked unless he is found guilty of misconduct in the discharge of his duties or has become unfit or physically incapable. In that case also the Nikah Registrar is to be given a reasonable opportunity to show cause why that order should not be passed. Rule 12 of the Rules, 2009 provides that a licence shall stand annulled on the date, on which the licence attains the age of sixty-five years. The licence granted under the Act LII of 1974 is thus exclusive and perpetual in nature subject to attainment of sixty-five years age by the incumbent Nikah Registrar. Curtailment of an area is also a sort of revocation of license for the area curtailed and if it is done without assigning any valid reason and without any intimation or option to the licence, it will be violative of law and will also open an avenue of arbitrary exercise of power on the part of the licensing authority.

19. Rule 8 of the Rules, 2009 speaks of the age limit, residential status and educational qualification of a Nikah Registrar. An aspiring Nikah Registrar is to go through a process of selection by an Advisory Committee constituted under rules 3 and 4, while rules 5 and 6 prescribe the procedure of granting licence to a Nikah Registrar. According to sub-rules (7) and (8) of rule 6 the selected person has to pay licence fee before obtaining the licence, and he has to pay yearly fee and a fixed portion of marriage and divorce registration fee according to rules 7 and 21 after obtaining the licence. Rules 15 and 16 speak of the procedure of resignation and handing over the

charge of office by a Nikah Registrar, while rule 17 speaks of his leave. Rule 20 imposes restriction on a Nikah Registrar from pursuing any profession except in any mosque, school or madrasha only in his area.

20. So, the Act LII of 1974 and the Rules made thereunder stipulate some terms and conditions regarding the eligibility, procedure of selection and function of a Nikah Registrar, and impose some restriction on him and also bind him with some liabilities. When a licence is granted under a statute, and is obtained and maintained on payment of fees, and the guiding rules restrict some fundamental rights of the licensee and fix some responsibilities and liabilities on him, it gives him some rights too. Such a licence cannot be termed as a grace and the area covered by it or a part thereof cannot be curtailed to the detriment of his interest without assigning any valid reason, intimating him to that effect and giving him option to choose the area he wants to keep under his licence.

21. It has already been mentioned that in issuing the impugned order, the licensing authority acted at the behest of a Minister having no business with marriage registration. There was no other consideration. This is true that section 4 of the Act LII of 1974 gives the Government discretionary power to extend, curtail or otherwise to alter the limits of an area for which a Nikah Registrar has been licensed. But such power has legal limitation by restrictive principles of reasonableness and fair play, and in some cases by that of natural justice. The power is, therefore, not absolute.

22. In support of the view we are tempted to quote a passage from Wade's Administrative Law (Seventh Edition) p. 379:

> "The first requirement is the recognition that all power has legal limits. The next requirement, no less vital, is that the courts should draw those limits in a way which strikes the most suitable balance between executive efficiency and legal protection of the citizen. Parliament constantly confers upon public authorities powers which on their face might seem absolute and arbitrary. But arbitrary power and unfettered discretion are what the courts refuse to countenance. They have woven a network of restrictive principles which require statutory powers to be exercised reasonably and in good faith, for proper purposes only, and in accordance with the spirit as well as the letter of the empowering Act. They have also, as explained elsewhere, imposed stringent procedural requirements. Here we are concerned with the substance of administrative discretion,"

23. Generally a Nikah Registrar is known as a Kazi by profession, he commands respect and enjoys social status in his locality because of holding the licence. Presumably he maintains his livelihood from the earning of marriage and divorce registration fees left with him after payment of a fixed amount therefrom to the Government. This aspect should also be considered in curtailment of an area, for which a Nikah Registrar has already been licensed.

24. For all the reasons, we hold that the area mentioned in rule 13 of the newly framed Rules, 2009 cannot be curtailed every now and then at the sweet will of the licensing authority. There must be some valid reasons for such curtailment, and in that case the incumbent Nikah Registrar should be given prior intimation and option as to which area he would choose to keep under his license subject to fulfilment of the other conditions provided in the Rules. Any decision of the Government regarding curtailment, extension or change of territorial jurisdiction of a Nikah Registrar must be justified with the test of reasonableness and fair play.

25. In view of the above, we find substance in the submissions of the learned Advocate for the

petitioner. Accordingly, the Rule is made absolute. The impugned order of the Ministry of Law, Justice and Parliamentary Affairs as contained in Memo No. Bichar-7/2N-65/76 (Angsho)-1017 dated 12-12-2011 issued by its senior. Assistant Secretary (herein respondent 2) as well as the appointment of the added respondent AHM Helaluddin Siddiqui as contained in Memo No.Bichar-7/ 2N-65/76 (Angsho)-244 dated 22-3-2012 signed by its Senior Assistant Secretary, Bichar Shakha are declared to have been made without lawful authority and are of no legal effect.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Zinat Ara J
JBM Hassan J

Judgment
October 7, 2013.

Pubali Bank Ltd.....
.....Petitioner

vs

Bangladesh and others.....
.....Respondents*

Artha Rin Adalat Ain (VIII of 2003)
Section 19(2)

Section 19(2) of the Ain does not expressly prescribe for issuance of any notice upon the decree-holder to show cause in determining the correctness of the date of knowledge but it is the established principle of law that even when a statute is silent, notice has to be given if any person is sought to be affected in his right, interest, property or character.

Sections 19(2) and 19(3)

The Adalat has to be satisfied that the application has been filed properly within the limitation as prescribed in section 19(2) of the Ain and also in compliance with section 19(3) of the Ain (deposit of 10% of the decretal dues) and that in determining such limitation period particularly the correctness of the date of knowledge as per requirement of section 19(2) of the Ain, notice has to be served upon the plaintiff.

Section 19(2)

Unless the other requirement as to limitation under section 19(2) of the Ain is complied with, the Adalat has no scope to allow the application, irrespective of the fact that the defendant deposited 10% of the decretal dues.

.....(20, 24 & 26)

Abul A'la Moudoodi vs West Pakistan, 17 DLR (SC) 209; Maneka Gandhi vs Union of India, AIR 1978 (SC) 597 and Secretary, Ministry of Housing and Public Works Department, Government of the People's Republic of Bangladesh, 49 DLR 108 ref.

Mrinal Kanti Biswas, Advocate—For the Petitioners

Mahbubey Alam, Attorney-General. with Kazi Zinat Hoque, Deputy Attorney-General—For the Respondent No 4.

Judgment

JBM Hassan J : By filing an application under Article 102 of the Constitution of the People's Republic of Bangladesh, the petitioner obtained this Rule on the following terms:

> "Let a Rule Nisi be issued calling upon the respondent Nos.1-7 to show cause as to why the provision of section 19(4) empowering the Judge, Artha Rin Adalat to set-aside the ex-parte decree at once only on deposit of 10% money of the decretal dues without issuing a notice to the decree holder and without giving the decree-holder an opportunity to explain its/his position and without enquiring about the actual date of knowledge of the judgment-debtor about the decree should not

*Writ Petition No. 2258 of 2009.

be declared to be arbitrary, discriminatory, inconsistent with the principle of natural justice, and *ultra vires* to the provisions of the Constitution and why the impugned order dated 4-3-2009 passed in pursuance of that provision by the learned Judge of the Artha Rin Adalat No.3, Dhaka in Artha Rin Suit No. 174 of 2006 should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper."

2. Subsequently, on the basis of an application filed by the petitioner a supplementary Rule was issued on 6-6-2012 in the following manner:

"Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why the order No.30 dated 15-7-2008 allowing the Miscellaneous Case No. 668 of 2008 setting aside the *ex-parte* judgment and decree dated 5-3-2008 passed by the Artha Rin Adalat No.3, Dhaka in Artha Rin Suit No. 174 of 2006 should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper."

3. Relevant facts necessary for disposal of the Rule are that the petitioner, Pubali Bank Limited, Principal Branch, 26, Dilkusha Commercial Area, Dhaka (shortly, the Bank) as plaintiff instituted Artha Rin Suit No. 174 of 2006 on 20-8-2006 before the Artha Rin Adalat No.3, Dhaka (shortly, the Adalat) against the respondent Nos. 3-7 for recovery of loan money amounting to Taka 52,84,652.86. Summons were duly served upon the defendants in all manner as per provisions of law including paper publication. The defendant Nos. 1-3 and 5 appeared in the suit and filed written statements on 15-2-2007 and 12-3-2007 respectively. Subsequently, they did not pursue the suit and as a result the suit was decreed *ex-parte* on 5-3-2008 (decree signed on 10-3-2008). The Bank put the decree into execution on 22-5-2008 through Artha Jari Case No. 430 of 2008 in the Adalat for realization of Taka 60,46,670.86 including interest and costs of the suit as per decree. Notices in the name of judgment-debtors were published in the daily news-papers except the judgment-debtor No.5 who had already received the notice of execution case.

4. On 4-6-2008 the defendant No.4 filed Miscellaneous Case No. 668 of 2008 under section 19 of the Artha Rin Adalat Ain, 2003 (shortly, the Ain) for setting aside the *ex-parte* decree dated 5-3-2008 and also prayed for restoration of the suit to its original file and number stating, *inter alia,* that summons was not served upon this defendant and that this defendant was not aware about the suit as well as the decree; from the letter dated 13-5-2008 issued by the Food department, the defendant, for the first time, came to know about the suit as well as the decree; the defendant ascertained the fact of decree by an information slip obtained on 14-5-2008 and thereafter by depositing 10% of the decretal dues, the defendant filed the miscellaneous case.

5. Without issuing any notice upon the plaintiff (decree holder), the Adalat by order dated 15-7-2008 allowed the miscellaneous case setting-aside the *ex-parte* decree dated 5-3-2008 and thereby restored the Artha Rin Suit No.174 of 2006. On 31-8-2008 the defendant No.4 when served the copy of the written statement upon the plaintiff Bank, for the first time it came to know about the impugned order dated 15-7-2008 by which miscellaneous case was allowed and suit was restored to its original file and number.

6. On 18-11-2008 the Bank filed an application before the Adalat under section 57 of the Ain for recalling the order dated 15-7-2008 and that the said application was rejected on 4-3-2009.

7. In the aforesaid circumstances, the plain-

tiff-Bank filed this writ petition challenging the order dated 4-3-2009 as well as the *vires* of section 19(4) of the Ain and obtained the Rule. Subsequently, by a supplementary Rule the order dated 15-7-2008 setting-aside the *ex-partè* decree has also been challenged.

8. Respondent No.4 has filed affidavit-in-opposition controverting the statements made in the writ petition. This respondent contends that there is no provision in section 19 of the Ain to serve notice upon the plaintiff-decree holder before setting aside the *ex-parte* decree; that as per requirement of section 19(3) of the Ain the defendant deposited 10% of the decretal dues and that the legal requirement having been complied with, the Adalat allowed the miscellaneous case as per sanction of section 19(4) of the Ain; that no summons was served upon the defendant No.4 and that being unaware about the suit, this defendant could not contest the suit and as a result the suit was decreed *ex-parte;* that the defendant No.4 could not know about the *ex-parte* decree in time and as a result the application for setting aside the decree was filed beyond 30 days of the *ex-parte* decree but as soon as the defendant came to know about the said decree, he filed this miscellaneous case within 30 days from date of his knowledge and therefore, the miscellaneous case being filed as per requirement of section 19(2) of the Ain, the Adalat allowed the miscellaneous case finding deposit of 10% of the decretal dues. Therefore, the Rule does not have any merit and, as such, it is liable to be discharged.

9. Mr Mrinal Kanti Biswas, the learned Advocate appearing for the writ petitioner (the Bank) submits that by passing the *ex-parte* decree, a legal right has been accrued in favour of the plaintiff but section 19(4) of the Ain empowers the Adalat to set-aside the said *ex-parte* decree curtailing the legal right of the plaintiff without issuing any notice upon the decree holder (plaintiff) and only on deposit of 10% of the decretal dues. Therefore, the said provision is arbitrary, against the principle of natural justice and thus, *ultra vires* the Constitution. He also submits that the application for setting aside the *ex-parte* decree was filed beyond 30 days of the decree. Therefore, the defendant was required to satisfy the Adalat about the date of knowledge as per requirement of section 19(2) of the Ain but without complying with the said provision of law, the Adalat allowed the miscellaneous case setting aside the *ex-parte* decree and, as such, the impugned order dated 15-7-2008 is liable to be declared to have been passed without lawful authority.

10. Mr Mahbubey Alam, the learned Attorney-General appearing for the respondent No.4 submits that the Artha Rin Adalat Ain is a special law enacted by the legislature for recovery of the loan money by a speedy trial and that to effect the object of law, section 19(4) of the Ain has been provided by the legislature to have an effectual adjudication by setting aside exparte decree directly in order to avoid delay and for expedite disposal of the suits and that the legislature has put an extra condition in this provision requiring the defendant (judgment-debtor) to deposit 10% of the decretal amount. Therefore, this section itself is not arbitrary. He further submits that when the judgment debtor deposits 10% of the decretal dues as per section 19(3) of the Ain, the Adalat applies the section 19(4) allowing the same setting aside the *ex-parte* decree and, as such, it has no relation to the service of notice upon the plaintiff. However, the learned Attorney-General frankly concedes that when the application for setting aside *ex-parte* decree is filed beyond 30 days of passing the decree by introducing the fact as to date of knowledge, the defendant is required to prove it by a fair procedure and the plaintiff deserves a notice in such adjudication like the provisions as provided in Order IX Rule 13 of the Code of Civil Procedure (the Code) for setting aside the *ex-parte* decree. Since section 19

has not provided any such provision to serve notice upon the plaintiff decree holder, this Court may suggest the legislature to provide such provision of service of notice to enable the plaintiff decree holder to know about the miscellaneous case. But for want of the provision as to non-service of notice, it cannot be said that section 19(4) of the Ain contradicts the Constitution or it violates the principle of natural justice.

11. We have gone through the writ petition as well as annexed papers and affidavit-in-opposition filed by the respondent No. 4.

12. Admittedly, the Artha Rin Suit filed by the petitioner plaintiff was decreed *ex-parte* on 5-3-2008.

13. Section 19 of the Ain enunciates the provisions relating to *ex-parte* decree and also for setting aside the same. For our better understanding the said provisions are quoted herein below:

"১৯। (১) মামলার শুনানীর জন্য ধার্য কোন তারিখে বিবাদী আদালতে অনুপস্থিত থাকিলে, কিংবা মামলা শুনানীর জন্য গৃহীত হইবার পর ডাকিয়া বিবাদীকে উপস্থিত পাওয়া না গেলে, আদালত মামলা একতরফা সূত্রে নিস্পত্তি করিবে।

(২) কোন মামলা একতরফা সূত্রে ডিক্রী হইলে, বিবাদী উক্ত একতরফা ডিক্রীর তারিখের অথবা উক্ত একতরফা ডিক্রী সম্পর্কে অবগত হইবার ৩০(ত্রিশ) দিবসের মধ্যে, উপ-ধারা (৩) এর বিধান সাপেক্ষে, উক্ত একতরফা ডিক্রী রদের জন্য দরখাস্ত করিতে পারিবেন।

(৩) উপ-ধারা (২) এর বিধান অনুযায়ী দরখাস্ত দাখিলের ক্ষেত্রে বিবাদীকে উক্ত দরখাস্ত দাখিলের তারিখের পরবর্তী ১৫(পনের) দিবসের মধ্যে ডিক্রীকৃত অর্থের ১০% এর সমপরিমান টাকা বাদীর দাবীর সেই পরিমানের জন্য স্বীকৃতিস্বরূপ নগদ সংশ্লিষ্ট আর্থিক প্রতিষ্ঠানে, অথবা জামানতস্বরূপ ব্যাংক ড্রাফট, পে-অর্ডার বা অন্য কোন প্রকার নগদায়নযোগ্য বিনিময় দলিল (Negotiable Instrument) আকারে জামানত হিসাব আদালতে জমাদান করিতে হইবে।

(৪) উপ-ধারা (৩) এর বিধানমতে ডিক্রীকৃত অর্থের ১০% এর সমপরিমান টাকা জমাদানের সংগে সংগে দরখাস্তটি মঞ্জুর হইবে, একতরফা ডিক্রী রদ হইবে এবং মূল মামলা উহার পূর্বের নম্বর ও নথিতে পুনরুজ্জীবিত হইবে, এবং আদালত ঐ মর্মে একটি আদেশ লিপিবদ্ধ করিবে; এবং অতঃপর মামলাটি যে পর্যায়ে এক তরফা নিস্পত্তি হইয়াছিল, ঐ পর্যায়ের অব্যবহিত পূর্ববর্তী পর্যায় হইতে পরিচালিত হইবে।

(৫) বিবাদী উপ-ধারা (৩) বিধানমতে ডিক্রীকৃত অর্থের ১০% এর সমপরিমান টাকা বাদীর দাবীর সেই পরিমানের জন্য স্বীকৃতিস্বরূপ নগদ সংশ্লিষ্ট আর্থিক প্রতিষ্ঠানে, অথবা জামানতস্বরূপ ব্যাংক ড্রাফট, পে-অর্ডার বা অন্য কোন প্রকার নগদায়নযোগ্য বিনিময় দলিল (Negotiable Instrument) আকারে জামানত হিসাব আদালতে জমাদান করিতে ব্যর্থ হইলে, উক্ত দরখাস্তটি সরাসরি খারিজ হইবে; এবং আদালত ঐ মর্মে একটি আদেশ লিপিবদ্ধ করিবে।

(৬) অর্থ ঋন আদালতে বিচারাধীন কোন মামলা, বাদীর অনুপস্থিতির বা ব্যর্থতা হেতু খারিজ করা যাইবে না, এবং এইরূপ ক্ষেত্রে আদালত, নথিতে উপস্থাপিত কাগজাদি পরীক্ষা করিয়া গুনাগুন বিশ্লেষণে মামলা নিস্পত্তি করিবে।"

(underlined, emphasis supplied)

14. On perusal of the aforesaid provisions, it appears that in the absence of defendant, the Adalat can pass *ex-parte* decree under section 19(1) of the Ain and that the defendant can also file application under section 19(2) of the Ain to set-aside the said *ex-parte* decree within 30 days, from the date of passing the said *ex-parte* decree or from the date of knowledge about the *ex-parte* decree. Moreover, the application has to be filed subject to provision of section 19(3) of the Ain, which requires the defendant to deposit 10% of the decretal dues, within 15 days after filing the aforesaid application. Therefore, it is clear that section 19(2) and 19(3) of the Ain are complementary to each other and has to be read together. As such, to file an application for setting aside *ex-parte* decree the required conditions as provided in both the provisions i.e. (sections 19(2) and 19(3) of the Ain), must be complied with. In other words, to file such application the defendant has to satisfy the Adalat about limitation period as per requirement of section 19(2) of the Ain and he is also required to comply with the provision of sec-

tion 19(3) of the Ain i.e. deposit of 10% of the decretal dues (উপধারা (২) এর বিধান অনুযায়ী দরখাস্ত দাখিলের ক্ষেত্রে বিবাদীকে উক্ত দরখাস্ত দাখিলের তারিখের পরবর্তী ১৫ (পনের) দিবসের মধ্যে ডিক্রীকৃত অর্থের ১০% এর সমপরিমান টাকা..... আদালতে জমাদান করিতে হইবে।) and that the Adalat has no scope to consider such application if any of the aforesaid conditions is left in filing the application.

15. Section 19(4) of the Ain, though empowers the Adalat to allow the application instantly if the condition provided in section 19(3) of the Ain as to deposit of 10% of the decretal dues is complied with but that application has to be filed within the limitation period as provided under section 19(2) of the Ain and subject to section 19(3) of the Ain. Thus, section 19(4) of the Ain comes into operation if the application is filed in compliance with both the conditions as prescribed in sections 19(2) and 19(3) of the Ain i.e. limitation period and deposit of 10% of the decretal dues.

16. According to section 19(2) of the Ain the limitation period to file such application has been prescribed in two ways i.e. either 30 days from the date of passing *ex-parte* decree or 30 days from the date of knowledge about the *ex-parte* decree.

17. As statutory right under section 19(2) of the Ain, the defendant can file the application to set-aside *ex-parte* decree within 30 days from the date of said decree and the Adalat can satisfy itself by reckoning the days about the said limitation period. Thus, when the application is filed within 30 days by depositing 10% of the decretal dues, in such circumstances, the Adalat can directly allow the application under section 19(4) of the Ain. Yet, as soon as an order is made setting aside *ex-parte* decree, the Adalat shall cause a notice thereof to be served upon the plaintiff at the cost of the defendant so that the revived suit does not proceed unrepresented.

18. Under section 19(2) of the Ain, the defendant can also file application for setting aside *ex-parte* decree within 30 days from the date of knowledge (অবগত হইবার ৩০ দিবসের মধ্যে) about the said decree. But, to exercise such statutory right, the defendant introduces a particular fact as to date of his knowledge about the *ex-parte* decree. Question arises, whether in such circumstances, the Adalat can allow the application directly on deposit of 10% of the decretal dues.

19. As this right of the defendant is subject to a limitation period of 30 days from the date of his knowledge about the said decree, therefore, it is to be exercised subject to proof about the date of knowledge. Moreover, on pronouncement of *ex-parte* decree a legal right has been accrued in favour of the plaintiff (decree holder) and allowing of an application for setting aside the said decree, is curtailing the accrued right of the decree-holder (plaintiff) and, as such, natural justice demands that decree holder (plaintiff) should be heard in disposing of the said application so as to fair adjudication of the fact about the correctness of the date of knowledge as alleged by the defendant.

20. Though, section 19(2) of the Ain does not expressly prescribe for issuance of any notice upon the decree-holder plaintiff to show cause in determining the correctness of the date of knowledge but it is the established principle of law that even when a statute is silent, notice has to be given if any person is sought to be affected in his right, interest, property or character and to lay this principle the leading cases are *Abul A'la Moudoodi vs West Pakistan* reported in *17 DLR (SC) 209* and the case of *Maneka Gandhi vs Union of India reported in AIR 1978 (SC) 597.*

21. The *ratio decidendi* as laid down in the aforementioned cases has been reflected in the case of Jobon *Nahar and others vs Bangladesh,* through the *Secretary, Ministry of Housing and Public Works Department, Government of the People's Republic of Bangladesh and others* reported in *49 DLR 108* wherein their Lordships

held as under:

> "The principle of natural justice not only applies to Courts but, nowadays more and more it is being applied to administrative process to ensure procedural fairness. In many occasions it has been held by this Court that violation of the principle results in jurisdictional error. The principle of natural justice now extends to any person or body deciding matters affecting the rights and interests of an individual. Following some English decisions, the Courts of this sub-continent have held that the principle of natural justice should be read to have been incorporated in every statute unless it is excluded expressly or by necessary implication by statute. (Abul Ala Moudoodi vs West Pakistan 17DLR (SC) 209)". *(Underlined, emphasis supplied)*

22. Therefore, when an application for setting aside the *ex-parte* decree is filed beyond 30 days from the date of passing the decree and the defendant alleges that he has come within 30 days from the date of his knowledge within the purview of section 19(2) of the Ain, in such situation, the plaintiff has got a right to be informed about hearing of the said application by proper notice and the Adalat on hearing both the parties, shall decide the issue as to correctness of the defendant's alleged date of knowledge in order to satisfy itself towards compliance of the section 19(2) of the Ain. Thus, in addition to compliance of section 19(3) by depositing 10% of the decretal dues the defendant shall have to satisfy the Adalat that the application has been filed within the limitation period inasmuch as filing of an application under section 19(2) of the Ain is subject to compliance of limitation and the section 19(3) of the Ain. Therefore, on receipt of an application in pursuance of section 19(2) of the Ain, if the Adalat is satisfied that both the conditions of section 19(2) and 19(3) of the Ain, is complied with, it shall allow the said application as per section 19(4) of the Ain.

23. Section-19(4) of the Ain provides that on deposit of 10% of the decretal dues the Adalat shall allow the application setting aside the *ex-parte* decree and the suit shall be restored to its previous file and number. But before that the defendant has to satisfy the Adalat about requirement of section 19(2) of the Ain in the manner as discussed above i.e. whether the defendant filed the application within the limitation period has to be proved and that since section 19(2) of the Ain is subject to section 19(3) of the Ain, therefore, requirement of deposit of 10% of the decretal dues under section 19(3) of the Ain shall also have to be complied with before deciding the limitation period. Thus, it is apparent that unless both the requirements of section 19(2) and 19(3) of the Ain are complied with, the Adalat has no scope to allow the application under section 19(4) of the Ain setting-aside the *ex-parte* decree even if the defendant deposits 10% of the decretal dues.

24. In view of above discussions as well as the legal position, we are led to hold that section 19(4) of the Ain is a mere operating provision prescribed by the legislature to allow the application for setting aside the *ex-parte* decree and to restore the suit to its previous file and number but the said application has to be filed in compliance with the sections 19(2) and 19(3) of the Ain. Therefore, to apply section 19(4) of the Ain, the Adalat has to be satisfied that the application has been filed properly within the limitation period as prescribed in section 19(2) of the Ain and also in compliance with section 19(3) of the Ain (deposit of 10% of the decretal dues) and that in determining such limitation period particularly the correctness of the date of knowledge as per requirement of section 19(2) of the Ain, notice has to be served upon the plaintiff. This requirement as to service of notice is silent in section 19(2) of the Ain and not in section 19(4) of the Ain. In view of legal position, we are not inclined to interfere with the provision of section 19(4) of the Ain because, such interference shall, rather, frustrate the pur-

pose of section 19 of the Ain as a whole to restore a suit decreed *ex-parte* to its previous file and number. However, respondent No.1 shall take steps to remove such ambiguity by making necessary amendment of section 19 of the Ain relating to service of notice upon the plaintiff in the light of the observations as made in the body of this judgment. Therefore, the Rule so far as it relates to the *vires* of section 19(4) of the Ain does not call for any interference.

25. In the present case *ex-parte* decree was passed on 5-3-2008. Section 19(2) of the Ain requires the defendant to file an application for setting aside *ex-parte* decree either within 30 days from the date of passing of the said decree or within 30 days from the date of knowledge about the said *ex-parte* decree. Admittedly, here in this case the defendant filed the miscellaneous case on 4-6-2008 i.e. beyond 30 days of passing the *ex-parte* decree and the defendant claims that the miscellaneous case has been filed within 30 days from the date of its knowledge. To establish such claim as to date of knowledge, the defendant has introduced the fact that the defendant was not aware about the *ex-parte* decree and for the first time it came to know about the said decree on 13-5-2008 and from the said date of knowledge within 30 days the defendant filed the miscellaneous case (application) for setting aside the *ex-parte* decree as per sanction of second part of section 19(2) of the Ain. Since the defendant claims that the application has been filed within 30 days from the date of knowledge, therefore, the Adalat has to be satisfied about the said date of knowledge by a proper and fair adjudication, giving an opportunity of being heard to both the plaintiff and the defendant so as to determine the correctness/genuineness of alleged date of knowledge.

26. But from the impugned order dated 15-7-2008, it appears that without being satisfied about correctness/genuineness of the alleged date of knowledge, the Adalat allowed the miscellaneous case finding deposit of 10% of the decretal dues which is one of the requirements to file and consider the application for setting-aside the *ex-parte* decree as per section 19 of the Ain inasmuch as, unless the other requirement as to limitation under section 19(2) of the Ain is complied with, the Adalat has no scope to allow the said application, irrespective of the fact that the defendant deposited 10% of the decretal dues.

27. In view of the above discussions, we have no hesitation to hold that the Adalat passed the impugned order dated 15-7-2008 without satisfying itself as to requirement of section 19(2) of the Ain and, as such, it warrants interference of this Court. Thus, we find merit in part of the Rule.

28. By the order dated 4-3-2009 passed in Artha Rin Suit No. 174 of 2006, the Adalat rejected petitioner's misconceived application on point of maintainability as it was filed under section 57 of the Ain for setting aside the order dated 15-7-2008. This order dated 4-3-2009 being rejected on maintainability, has no effect over the main issue of this Rule and, as such, it is not necessary to give any decision on this issue.

29. In the result, the Rule is made absolute in part without any order as to costs. The impugned order dated 15-7-2008 passed by the Artha Rin Adalat No.3, Dhaka in Miscellaneous Case No. 668 of 2008 is hereby declared to have been passed without lawful authority and is of no legal effect. The Adalat is directed to dispose of the Miscellaneous Case No. 668 of 2008 in the light of the observation as made above.

Communicate the judgment and order to the respondent Nos. 1 and 2 expeditiously for taking necessary steps as per observations of the judgment.

Ed.

HIGH COURT DIVISION
(Criminal Miscellaneous Jurisdiction)

Syed Md Ziaul Karim J
ANM Bashirullah J

Judgment
June 20th, 2012

State.....Respondent

vs

Sujon Deb.....
...Condemned-Prisoners*

Evidence Act (I of 1872)
Section 134

Evidence of close relations of the victim cannot be discarded more particularly when close relations does not impair the same. Straight forward evidence given by witness who is related to deceased cannot be rejected on sole ground that they are interested in prosecution. Ordinarily close relation will be last person to screen real culprit and falsely implicate a person. .....(70)

Islam Uddin (Md) alias Din Islam vs State, 13 BLC (AD) 81; Abdur Rashid vs State, 3 BLD 206; Amir Hossain vs State, 6 BLD (AD) 193; Gouranga Chandra Paul vs State, 59 DLR 17, 29 DLR (SC) 27; Shajahan Ali (Md) alias Md Shahjahan vs State, 59 DLR 396; Hazrat Ali vs State, 44 DLR (AD) 51 and State vs Abul Kalam Azad, 8 BLC 464 ref.

MA Mannan Mohan, DAG with Md Mahbub-ul-Alam, AAG and Md Osman Goni Khan, AAG—For the State.

Ayesha Flora, Advocate—For the State Defence.

MA Shahid Chowdhury, Advocate—For the Convict-Appellant.

Baharuddin-Al-Razi, Advocate—For the Convict-Appellant.

No one appears—For the Convict-Appellant.

Aftabuddin, Advocate—For the Convict-Appellant.

*Death Reference No. 63 of 2006 with Criminal Appeal No. 3341 & 3462 of 2006 and Jail appeal No.663 of 2006.

Judgment

Syed Md Ziaul Karim J: This reference under section 374 of the Code of Criminal Procedure (briefly as the Code) has been made by learned Judge of Druto Bichar Tribunal, Sylhet (briefly as Tribunal), for confirmation of death sentences of condemned-prisoners.

2. By the above appeals the appellants have challenged the legality and propriety of the judgment and order of conviction and sentence dated 13-7-2006 passed by learned Judge of Tribunal in Druto Bichar (Sessions) Case No. 15 of 2006.

(i) Convicting appellant Sujon Deb under sections 302, 34 of the Penal Code and sentencing him to death by hanging and also to pay a fine of Taka 5,000.

(ii) Convicting appellants Sohel Khan and Borhanuddin under sections 411, 34 of the Penal Code and sentencing each of them to suffer rigorous imprisonment for three years and also to pay a fine of Taka 500 each in default to suffer rigorous imprisonment for one month more. However, acquitted the accused Alam Ahamed. Condemned prisoners Salam and Kalam remained absconding since beginning, they were defended by the State defence lawyer. Accused Sani Ahamed Sentu being enlarged on bail remained absconding.

3. This death reference and the above appeals having arisen out of a common judgment, these have been heard together and are being disposed of by this judgment.

4. The prosecution case put in a nutshell are that on 3-1-2005 at 9-25 AM. SI Khandaker Halim of Bahubal Police Station (PW 1) made an

inquiry on an information recorded in GDE No. 76 dated 3-1-2005 and found that two unknown male dead-bodies were lying at the eastern side of Dhaka-Sylhet high-way in between Daulatpur and Jashpal village (briefly as PO). The bodies bore ligature marks on the neck. It was suspected that the death was caused by strangulation. Meanwhile at 10-25 AM Advocate Bashir Ahmed Dulal (PW3) of Hobigonj Court happened to be at the scene and identified the dead-bodies as Babul and Ashraf Ali, driver and helper respectively of his micro-bus No. Dhaka-Metro-গ-১২-১৫৯০. He (PW3) informed that on 2-1-2005 at 2-30 PM driver and helper went to Chunarughat from his village Nizgaon with a passenger trip but they did not return in time. He unsuccessfully searched them. On 3-1-2005 at 9-00 AM he received an information of dead-bodies lying at the PO. The locals were whispering that they found Sujon at 4-30 PM of village Nizgaon with his accomplice was roaming about who were suspected to commit the crime of murder. With these allegations the prosecution was launched by lodging first information report (briefly as FIR) by SI Khandaker Halim (PW1) as informant which was recorded as Bahubal PS Case No. 3 date 3-1-2005 corresponding to GR No. 3 of 2005.

5. During investigation accused Sujon Deb, Borhanuddin, Afsaruddin alias Afsu, Sohel Khan, and Sani Ahamed Sentu made confessions before the learned Magistrate implicating their selves along with accused Salam and Kalam.

6. The Police after investigation submitted charge-sheet under sections 302, 379, 34, 411 of the Penal Code accusing the accused.

7. Eventually accused were called upon to answer the charge under sections 302, 34, 379 and 411 of the Penal Code to which the accused on dock pleaded not guilty and claimed to be tried.

8. In course of trial the prosecution in all examined twenty witnesses out of twenty nine charge-sheeted witnesses. Two witnesses were tendered by the prosecution. The defence examined none.

9. After closure of prosecution case, the accused were examined under section 342 of the Code, again they repeated their innocence and led no evidence in defence.

10. The defence case as it appears from the trend of cross-examination of the prosecution witnesses are that of innocence and false implication. It was divulged in defence that confession of Sujon Deb was extracted by putting him in torture.

11. After trial the accused were convicted as aforesaid holding that:

(a) The confession of accused Sujon Deb is true and voluntary who disclosed the names of accused Salam, Kalam and also the others accused;

(b) The stolen micro-bus was recovered from the possession of accused;

(c) There are corroborative evidence against the accused.

12. The learned Deputy Attorney-General appearing for the State supports the reference and submits that soon after the occurrence arrestees Sujon Deb and four others made confessions. He adds that confessions are true and voluntary and there are corroborative evidence against the accused. He submits that PWs 8 and 19 stated that accused Sujon Deb disclosed the names of accused Kalam and Salam before them. So the Court below after considering the materials on record rightly convicted the accused which calls for no interference by this Court.

13. The learned Counsels appearing for the condemned-prisoners and appellants by their common contention seek to impeach the impugned judgment and order of conviction and sentence on five fold arguments:

Firstly: The confession of Sujon Deb was extracted by torture and the same is exculpatory in nature.

Secondly: The deceaseds were killed by their negligence and fault. In support of their contention they refer the case of *State vs Lalu Mia and others 39 DLR (AD) 117* held:

"Confession-Exculpatory and inculpatory confessions-Extent to which exculpatory confession can be taken into consideration in judging truth or otherwise of the whole confession.

Where there is no other evidence to show affirmatively that any portion of the exculpatory element in the confession is false, the Court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible."

Thirdly: The condemned-prisoners had no intention to murder the deceased.

Fourthly: The Court below convicted the accused relying on the confessions of co-accused which cannot be sustained in law

Fifthly: The Judgment and order of conviction and sentence based on misreading and non-consideration of the evidence on record which cannot be sustained in the eye of law.

14. In order to appreciate their submissions we have gone through the record and given our anxious consideration to their submissions.

15. Let us now weigh and sift the evidence on record as adduced by the prosecution to prove the charge.

16. PW 1, SI Khandaker Halim he is the informant. He deposed that on 3-1-2005 he was attached with Bahubal Police Station. On an information recorded in GD Entry No.76 dated 3-1-2005 that two unknown dead-bodies were lying at Dhaka-Sylhet high-way in Daulatpur-Jashpal village, he along with other Police personnel rushed to the scene and found two male dead-bodies which bore ligature marks on the neck. It was suspected they were strangulated to death. Meanwhile Advocate Bashir Ahmed Dulal rushed to the spot and identified the dead-bodies as driver Babul and helper Ashraf Ali of his micro-bus bearing No. Dhaka-metro-গ-১২-১৫৯০, who informed that on 2-1-2005 at 2-30 PM driver and helper went to Chunarughat from the village Nizghaon on trip but they did not return in time. Then on the following day he came to learn that two dead-bodies were lying in Dhaka-Sylhet high-way. The locals were whispering that accused Sujon Deb along with his accomplice hired the micro-bus at 4-30 AM. With these allegations he lodged ejahar. He proved the same as Exhibit. 1 and his signature on it as Exhibit. 1/1. He held inquest upon the cadavers and sent it to the morgue for autopsy.

17. As investigating officer he deposed that Md Sekender Ali O/C recorded the case and filled up the form of FIR. He proved the same as Exhibit. 1(ক) and signature of Sekander Ali as 1(ক)/১. The case was entrusted to him for investigation. He visited the place of occurrence (briefly as PO) and prepared sketch map and index (Exhibits. 5, 6). On 3-1-2005 at 12-10 PM he seized some blood stained clothes (Exhibit. 3). He identified the alamats in the Court. On 4-1-2005 he arrested the accused Sujon Deb from in-law's house and recorded his statement under section 161 of the Code. According to his confessions on 5-1-2005 at 4-15 PM he seized one Audio Cassette Player from the house of accused Sohel tenant of Abdus Salam of Fatullah Police Station and prepared seizure list (Exhibit. 3 (ক)). It was given to the jimma of Dulal (Exhibit. 2). On interrogation arrestee accused Sohel and informed that on 3-1-2005 at 5-30 PM the accused Salam and Kalam came to him to sell the micro-bus. He sold

it to accused Sani Ahamed Sentu with the assistance of accused Borhanuddin and Afsar. According to his confession he arrested accused Borhanuddin who informed that on 3-1-2005 at 6-00 AM accused Sohel came to sell the micro-bus. Then Borhanuddin went to the house of Sohel and fixed the price of the micro-bus at Taka 44,000. Accordingly Sohel, Afsaruddin, Sujon, Salam, Kalam handed over the micro-bus to Sani Ahamed Sentu at 19-00 hours in Sine-board area. He arrested Sani Ahamed Sentu from that area and according to his confession on 5-1-2005 at 9-55 AM the said micro-bus was recovered from the house of Mafizuddin shown by Sentu. He prepared seizure list (Exhibit. 3(খ) and his signature on it 3(খ)/১. Then it was given to the jimma of Bashir Ahamed Dulal. On 5-1-2005 at 20-30 hours he seized two nylon rope near the PO shown by accused Sujon and prepared seizure list (Exhibit. 3(খ) and his signature on it 3(খ)/৩. He identified the alamats on dock. He arranged for recording confessions of accused Sujon Deb, Sohel, Borhanuddin, Afsaruddin, and Sani Ahamed Sentu under section 164 of the Code before the Magistrate on 6-1-2005. On 8-1-2005 at 13-25 AM he seized some wearing apparels and prepared seizure list 3(গ) and his signature on it as Exhibit. 3(গ)/৩. He took photograph of deceased Babul and Ashraf Ali and kept it in the case docked. He recorded the statements of the witnesses under section 161 of the Code of eight witnesses. On 8-1-2005 he handed over the case to his successor.

18. In cross-examination he stated that Sujon was arrested from Chitlachhara which is about 8/9 km away from Bahubal. The accused Sujon was arrested from that village and brought to the Kamaichara Police camp. He denied the suggestion that no rope was seized at the instance of Sujon and recorded the confession by alluring him and did not investigate the case properly.

19. PW 2 Md Abid, President of Hobigonj micro-bus samity he deposed that the deceased Babul Mia and Ashraf were driver and helper of a micro-bus belonged to Advocate Bashir Ahamed Dulal. On 2-1-2005 at 3-00 PM he went to Chunarughat with passengers but did not return in the night. On the following day he heard that they were murdered and micro-bus was stolen away. He saw the dead-bodies which bore ligature marks on the neck. In his presence inquest was held and he signed in the inquest report.

20. In cross-examination he denied the suggestion that he was deposing falsely.

21. PW 3 Advocate Bashir Ahamed Dulal. He deposed that he is the owner of micro-bus bearing No. Dhaka-metro গ-১২-১৫৯০, deceaseds Babul and Afsar Ali were driver and helper respectively of his micro-bus. On 2-1-2005 at 2-30 PM they went to Chunarughat but did not return on the same night. On 3-1-2005 at 9-00 AM he came to learn that two dead-bodies were lying at Daulatpur. He rushed there and identified them as his driver and helper. He also found the ligature marks on neck. Police came and the dead-bodies were sent to the morgue for autopsy. On 4-1-2005 accused Sujon was arrested and according to his statement accused Afsu, Sani, Salam, Alam were arrested and the micro-bus was recovered from their possession. Those accused confessed before the Magistrate. He took the micro-bus in his own jimma. He proved his jimma-nama as Exhibit. 2 and his signature on it as Exhibit.2/1.

22. In cross-examination he stated that deceased Babul was appointed as driver a one month ago. He denied the suggestion that he was deposing falsely.

23. PW 4 Abdul Hasim, Chairman he deposed that on 3-1-2005 at 9/9-30 AM he came to know that two dead-bodies were lying at Dhaka-Sylhet high-way. He rushed there and found the bodies which bore ligature marks on neck. After sometime Police came. Advocate

Bashir Ahmed Dulal identified them as his driver and helper. Police held inquest and he stood as witness. On 3-1-2005 at 12-10 AM Police seized some wearing apparels (Exhibits. 3, 3/1) and he identified alamats as material Exhibits. i-iv.

24. In cross-examination he stated that since 9-00 AM to 12-00 AM he was staying at the PO but nobody disclosed the name of any accused.

25. PW 5 Ramiz Ali, Chairman he deposed that on 3-1-2005 at 10/10-30 AM he found two dead-bodies in between Daulatpur and Jashpal village. The locals were whispering that the dead-bodies were the driver and helper of a micro-bus which belonged to Advocate Bashir Ahamed Dulal. He stood as one of the witness in inquest.

26. In cross-examination he stated that he had no knowledge about the murder.

27. PW 6 Khorshed Alam he deposed that accused Sohel was his tenant. On 5-1-2005 at 4-15 AM Police seized one Audio Cassette Player from the house of Sohel and prepared seizure list and proved the same as Exhibit. 3(ক) and his signature on it 3(ক)/১.

28. In cross-examination he denied the suggestion that nothing was recovered from the house of Sohel in his presence.

29. PW 7 Raju Miah and PW 10 Abdul Jalil were tendered by the prosecution and the defence declined to cross-examine them.

30. PW 8 Bulbul Chowdhury, a local witness. He deposed that on 5-1-2005 at 8-30 PM Police seized two pieces of nylon rope shown by accused Sujon deb and prepared seizure list 3(খ) and his signature on it Exhibit 3(খ)/১. Accused Sujon deb stated that driver Babul and helper Ashraf Ali were strangulated to death by nylon rope and accused Kalam and Salam sold the micro-bus in Dhaka. He identified accused Sujon on dock.

31. In cross-examination he denied the suggestion that in his presence no alamats were seized and Sujon did not admit his guilt.

32. PW 9 C-Musabbir Hossain he deposed that on 3-1-2005 he carried the dead-bodies of the deceaseds to the morgue and identified it to the doctor. On 8-1-2005 SI Khandaker Halim seized some wearing apparels (Exhibit. 3 ক) and his signature on it Exhibit. 3(গ)১।

33. The defence declined to cross-examine him.

34. PW 11 Dr. Md Abdullah he deposed that on 3-1-2005 he was attached with Habigonj Modern sadar hospital as RMO. He held autopsy upon the cadaver of Babul and found the following injuries:

"1. One large ligature mark transversely around the middle of neck.

2. Multiple black spot on neck.

On dissection muscle layers of neck contained clotted blood, trachea found fractured and congested. Both lungs highly congested. Liver, spleen, kidney also congested.

In our opinion death was due to asphyxia resulting from strangulation which were ante mortem and homicidal in nature."

On the same day he also held inquest upon the cadaver of Ashab Ali and found the following injuries:

"3. Multiple ligature mark around the neck transversely in middle part.

On dissection clotted blood found in muscle layers of neck. Trachea depressed and its lumen contained clotted blood. Both lungs highly congested. Liver spleen, kidney congested.

In our opinion death was due to asphyxia resulting from strangulation which was antemortem and homicidal in nature."

35. In cross-examination he stated that he did not mention the age of injuries.

(খ) উপ-ধারা (৬) এর "ধারা ৫৪" শব্দ ও সংখ্যার পরিবর্তে "ধারা ৫২" শব্দ ও সংখ্যা প্রতিস্থাপিত হইবে;

(গ) উপ-ধারা (৭) এর "যে কোন ব্যক্তি বা সরকারি কর্মকর্তাদের সমন্বয়ে ৯০ (নব্বই) দিনের জন্য" শব্দগুলি, সংখ্যা ও বন্ধনীর পরিবর্তে "ধারা ১৯ এর বিধান অনুযায়ী যোগ্য কোন সদস্য বা সরকারি কর্মকর্তাদের সমন্বয়ে ১২০ (একশত বিশ) দিনের জন্য" শব্দগুলি, সংখ্যা ও বন্ধনী প্রতিস্থাপিত হইবে;

(ঘ) উপ-ধারা (৮) এর পরিবর্তে নিম্নরূপ উপ-ধারা (৮) প্রতিস্থাপিত হইবে, যথা ঃ—

"(৮) উপ-ধারা (৭) এর অধীন গঠিত অন্তর্বর্তী ব্যবস্থাপনা কমিটি দায়িত্ব গ্রহণের ১২০ (একশত বিশ) দিনের মধ্যে নির্ধারিত পদ্ধতিতে ব্যবস্থাপনা কমিটির নির্বাচন অনুষ্ঠানের ব্যবস্থা করিবে এবং নির্বাচিত কমিটির নিকট অবিলম্বে দায়িত্ব হস্তান্তর করিবে।";

(ঙ) উপ-ধারা (৯) এর "নতুন" শব্দের পর "১২০ (একশত বিশ) দিনের জন্য" সংখ্যা, বন্ধনী ও শব্দগুলি সন্নিবেশিত হইবে।

১৭। ২০০১ সনের ৪৭ নং আইনের ধারা ২৩ এর সংশোধন।—উক্ত আইনের ধারা ২৩ এর পরিবর্তে নিম্নরূপ ধারা ২৩ প্রতিস্থাপিত হইবে, যথা ঃ—

"**২৩। সমবায় সমিতির ঠিকানা।**—উপ-আইনে পূর্ণ ঠিকানা উল্লেখসহ প্রত্যেক সমবায় সমিতির একটি কার্যালয় থাকিবে এবং উক্ত ঠিকানায় সকল নোটিশ প্রেরণসহ সব ধরনের যোগাযোগ রক্ষা করা হইবে।"।

১৮। ২০০১ সনের ৪৭ নং আইনের নূতন ধারা ২৩ক ও ২৩খ এর সন্নিবেশ।—উক্ত আইনের ধারা ২৩ এর পর নিম্নরূপ নূতন ধারা ২৩ক ও ২৩খ সন্নিবেশিত হইবে, যথা ঃ—

"**২৩ক। সমবায় সমিতির শাখা অফিস খোলা এবং উহার নামের সহিত ব্যাংক শব্দ ব্যবহারের উপর বাধা নিষেধ।**—(১) কোন সমবায় সমিতি উহার কার্যক্রম পরিচালনার জন্য কোন শাখা অফিস খুলিতে পারিবে না, তবে এই বিধান কার্যকর হইবার পূর্বে কোন অনুমোদিত শাখা অফিস থাকিলে, উহা এই বিধান কার্যকর হইবার ৬ (ছয়) মাসের মধ্যে স্বয়ংক্রিয়ভাবে মূল সমিতির সাথে একীভূত হইবে অথবা সংশ্লিষ্ট সমবায় সমিতির আবেদনক্রমে উক্ত শাখা অফিস প্রাথমিক সমবায় সমিতি হিসাবে নিবন্ধিত হইতে পারিবে।

(২) এই আইনের অধীন নিবন্ধিত সমবায় ভূমি উন্নয়ন ব্যাংক, কেন্দ্রীয় সমবায় ভূমি উন্নয়ন ব্যাংক, কেন্দ্রীয় সমবায় ব্যাংক এবং বাংলাদেশ সমবায় ব্যাংক ব্যতীত কোন প্রাথমিক সমবায় সমিতি, কেন্দ্রীয় সমবায় সমিতি বা জাতীয় সমবায় সমিতি উহার নামের সহিত ব্যাংক শব্দ ব্যবহার করিতে পারিবে না, তবে কোন সমবায় সমিতি এইরূপ শব্দযুক্ত নামে নিবন্ধিত হইয়া থাকিলে এই বিধান কার্যকর হইবার ৩ (তিন) মাসের মধ্যে উহার নাম সংশোধন করিয়া নিবন্ধককে অবহিত করিতে হইবে।

(৩) কোন ব্যক্তি এই ধারার কোন বিধান লঙ্ঘন করিলে অনধিক ৭ (সাত) বৎসর কারাদণ্ড বা অন্যূন ১০ (দশ) লক্ষ টাকা অর্থদণ্ড বা উভয়দণ্ডে দণ্ডনীয় হইবেন।

"**২৩খ। বাংলাদেশ ব্যাংকের অনুমোদন ব্যতীত সমবায় সমিতি কর্তৃক ব্যাংকিং ব্যবসা পরিচালনার উপর বাধা নিষেধ।**—(১) কোন সমবায় সমিতি বাংলাদেশ ব্যাংকের পূর্বানুমোদন ব্যতিরেকে ব্যাংকিং ব্যবসা পরিচালনা করিতে পারিবে না।

(২) কোন ব্যক্তি এই ধারার কোন বিধান লঙ্ঘন করিলে অনধিক ৭ (সাত) বৎসর কারাদণ্ড বা অন্যূন ১০ (দশ) লক্ষ টাকা অর্থদণ্ড বা উভয়দণ্ডে দণ্ডনীয় হইবেন।"।

১৯। ২০০১ সনের ৪৭ নং আইনের ধারা ২৬ এর সংশোধন।—উক্ত আইনের ধারা ২৬ এর—

(ক) উপ-ধারা (১) এর পরিবর্তে নিম্নরূপ উপ-ধারা (১) প্রতিস্থাপিত হইবে, যথা ঃ—

"(১) বাংলাদেশ সমবায় ব্যাংক ব্যতীত কোন সমবায় সমিতি উহার সদস্য ছাড়া অন্য কোন ব্যক্তি বা প্রতিষ্ঠানের নিকট হইতে আমানত গ্রহণ বা ঋণ প্রদান করিতে পারিবে না।";

(খ) উপ-ধারা (২) এর "উপ-ধারা (৩) এর বিধান সাপেক্ষে," শব্দগুলি, চিহ্ন, বন্ধনী ও সংখ্যা বিলুপ্ত হইবে;

(গ) উপ-ধারা (৩) বিলুপ্ত হইবে।

২০। ২০০১ সনের ৪৭ নং আইনের নূতন ধারা ২৬খ এর সন্নিবেশ।—উক্ত আইনের ধারা ২৬ক এর পর নিম্নরূপ ধারা ২৬খ সন্নিবেশিত হইবে, যথা ঃ—

"**২৬খ। আমানত সুরক্ষা তহবিল।**—(১) আমানতকারী কর্তৃক প্রদত্ত অর্থের সুরক্ষার জন্য নিবন্ধক, নির্ধারিত পদ্ধতিতে, আমানত সুরক্ষা তহবিল গঠন করিতে পারিবে এবং সঞ্চয় আমানত গ্রহণকারী সমিতি নির্ধারিত পরিমাণ অর্থ উক্ত তহবিলে জমা রাখিতে বাধ্য থাকিবে।

(২) আমানত সুরক্ষা তহবিলের অর্থ নিবন্ধক ও সংশ্লিষ্ট সমিতির যৌথ স্বাক্ষরে উত্তোলন করা যাইবে।"।

২১। ২০০১ সনের ৪৭ নং আইনের ধারা ২৯ এর সংশোধন। —উক্ত আইনের ধারা ২৯ এর পরিবর্তে নিম্নরূপ ধারা ২৯ প্রতিস্থাপিত হইবে, যথা ঃ—

"২৯। **Act IX of 1908 এর সীমিত প্রয়োগ।**— Limitation Act, 1908 (Act No. IX of 1908) এ ভিন্নতর যাহা কিছুই থাকুক না কেন,—

(ক) কোন সদস্য বা সাবেক সদস্য বা বহিষ্কৃত সদস্যের নিকট সমিতির কোন পাওনা থাকিলে উহা আদায়ের জন্য সংশ্লিষ্ট ব্যক্তির জীবদ্দশায় তাহার বিরুদ্ধে বা তাহার মৃত্যুর পর তাহার মনোনীত ব্যক্তি বা উত্তরাধিকারের বিরুদ্ধে যে কোন সময় মামলা রুজু করা যাইবে, এবং

(খ) সংশ্লিষ্ট সদস্যের মনোনীত ব্যক্তি বা তাহার উত্তরাধিকার না থাকিলে তাহার মৃত্যুর তারিখ হইতে বা বহিষ্কার আদেশের তারিখ হইতে উক্ত Act এ বর্ণিত তামাদি মেয়াদ গণনা করিতে হইবে।"।

২২। ২০০১ সনের ৪৭ নং আইনের ধারা ৩৩ এর সংশোধন। —উক্ত আইনের ধারা ৩৩ এর—

(ক) দফা (ক) এর "আর্থিক প্রতিষ্ঠানে" শব্দগুলির পর "বা নির্ধারিত অন্য কোন সমবায় ব্যাংকে" শব্দগুলি সন্নিবেশিত হইবে;

(খ) দফা (খ) এর "উদ্বৃত্ত থাকিলে" শব্দগুলির পর "সাধারণ সভার অনুমোদনক্রমে," কমাগুলি ও শব্দগুলি সন্নিবেশিত হইবে।

২৩। ২০০১ সনের ৪৭ নং আইনের ধারা ৩৪ এর সংশোধন। —উক্ত আইনের ধারা ৩৪ এর—

(ক) উপ-ধারা (১) এর—

(অ) দ্বিতীয় লাইনে উল্লিখিত "বা সুদ" শব্দগুলি বিলুপ্ত হইবে;

(আ) দফা (খ) এ উল্লিখিত "জমি বন্ধকী ব্যাংকের" শব্দগুলির পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংক" শব্দগুলি প্রতিস্থাপিত হইবে;

(ই) দফা (গ) এ উল্লিখিত "১%" সংখ্যা ও চিহ্নের পরিবর্তে "২%" সংখ্যা ও চিহ্ন প্রতিস্থাপিত হইবে;

(ঈ) দফা (ঙ) এ উল্লিখিত "বা সুদ" শব্দগুলি বিলুপ্ত হইবে;

(খ) উপ-ধারা (৩) এর দফা (খ) এর "তফসিলী ব্যাংকে" শব্দগুলির পর "বা নির্ধারিত অন্য কোন ব্যাংকে" শব্দগুলি সন্নিবেশিত হইবে।

২৪। ২০০১ সনের ৪৭ নং আইনের ধারা ৩৮ এর সংশোধন। —উক্ত আইনের ধারা ৩৮ এর উপান্তটীকাসহ তিন স্থানে উল্লিখিত "সুদ" শব্দটির পরিবর্তে প্রত্যেক স্থানে "মুনাফা" শব্দটি প্রতিস্থাপিত হইবে।

২৫। ২০০১ সনের ৪৭ নং আইনের ধারা ৪১ এর সংশোধন। —উক্ত আইনের ধারা ৪১ এ উল্লিখিত "বা সুদ" শব্দগুলি বিলুপ্ত হইবে এবং "নিকট" শব্দটির পর "পরিশোধ" শব্দটি সন্নিবেশিত হইবে।

২৬। ২০০১ সনের ৪৭ নং আইনের ধারা ৪২ এর সংশোধন। —উক্ত আইনের ধারা ৪২ এর দফা (খ) এর উপ-দফা (অ) এর পরিবর্তে নিম্নরূপ উপ-দফা (অ) প্রতিস্থাপিত হইবে, যথা ঃ—

"(অ) বাজার মূল্য নির্ধারণের ক্ষেত্রে ব্যবস্থাপনা কমিটি প্রচলিত বিধান মোতাবেক সিদ্ধান্ত গ্রহণ করিবে এবং উহা নিবন্ধককে অবহিত করিবে, ব্যবস্থাপনা কমিটি কর্তৃক বাজার মূল্য নির্ধারণের ক্ষেত্রে কোন প্রশ্ন উপস্থাপিত হইলে নিবন্ধক কর্তৃক উহা নিষ্পত্তি হইবে এবং নিবন্ধকের সিদ্ধান্তই চূড়ান্ত হিসাবে গণ্য হইবে।"।

২৭। ২০০১ সনের ৪৭ নং আইনের ধারা ৪৭ এর প্রতিস্থাপন। —উক্ত আইনের ধারা ৪৭ এর পরিবর্তে নিম্নরূপ ধারা ৪৭ প্রতিস্থাপিত হইবে, যথা ঃ—

"৪৭। **দোষত্রুটি সংশোধন।**—(১) নিরীক্ষা প্রতিবেদন প্রাপ্তির পর প্রাথমিক সমবায় সমিতি ৬০ (ষাট) দিন এবং অন্যান্য সমবায় সমিতি ১২০ (একশত বিশ) দিনের মধ্যে উক্ত প্রতিবেদনে উল্লিখিত দোষত্রুটি ও অনিয়মসমূহ সংশোধন করিবে এবং গৃহীত ব্যবস্থা সম্পর্কে নিবন্ধককে অবহিত করিবে।

(২) উপ-ধারা (১) এ উল্লিখিত সময়ের মধ্যে ব্যবস্থাপনা কমিটি নিরীক্ষা প্রতিবেদনে উল্লিখিত দোষত্রুটি ও অনিয়মসমূহ সংশোধন না করিলে নিবন্ধক ধারা ২২ অনুযায়ী ব্যবস্থা গ্রহণ করিতে পারিবেন।"।

২৮। ২০০১ সনের ৪৭ নং আইনের ধারা ৫০ এর সংশোধন। —উক্ত আইনের ধারা ৫০ এর—

(ক) উপ-ধারা (১) এর দফা (ঙ) এর পরিবর্তে নিম্নরূপ দফা (ঙ) ও (চ) প্রতিস্থাপিত হইবে, যথা ঃ—

"(ঙ) নির্বাচন অনুষ্ঠানের পূর্বে প্রার্থীতা বাতিলের বিষয়ে সংক্ষুব্ধ কোনো সদস্য এবং নির্বাচন অনুষ্ঠানের পরে নির্বাচনের ফলাফলে সংক্ষুব্ধ কোনো প্রার্থী;

(চ) কোনো সমবায় সমিতির কার্যক্রম সম্পর্কে সমিতির কোনো আদেশের বিরুদ্ধে সংক্ষুব্ধ কোনো সদস্য।";

(গ) উপ-ধারা (২) এর দফা (খ) এর "১ (এক) বৎসরের" সংখ্যা, বন্ধনী ও শব্দগুলির পরিবর্তে "১৮০ (একশত আশি) দিনের" সংখ্যা, বন্ধনী ও শব্দগুলি প্রতিস্থাপিত হইবে;

(ঘ) উপ-ধারা (৪) এর "নিবন্ধক কর্তৃক" শব্দগুলি বিলুপ্ত হইবে।

২৯। ২০০১ সনের ৪৭ নং আইনের ধারা ৫৩ এর সংশোধন। —উক্ত আইনের ধারা ৫৩ এর—

(ক) দফা (গ) এর পরিবর্তে নিম্নরূপ দফা (গ) প্রতিস্থাপিত হইবে, যথা ঃ—

"(গ) উক্ত সমিতির পর পর দুটি সাধারণ সভা অনুষ্ঠিত না হয় বা পর পর দুটি সাধারণ সভায় কোরাম না হয়";

(খ) দফা (চ) এর পরিবর্তে নিম্নরূপ দফা (চ) প্রতিস্থাপিত হইবে, যথা ঃ—

"(চ) সমিতির পরিশোধিত শেয়ার মূলধন বা সঞ্চয় আমানত নির্ধারিত পরিমাণের কম হইয়া যায়;";

(গ) দফা (ছ) এর শর্তাংশের "সমিতির নিবন্ধন সরাসরি বাতিল করিতে পারেন" শব্দগুলির পরিবর্তে "সমিতিকে কারণ দর্শানোর সুযোগ প্রদানপূর্বক নিবন্ধন বাতিল করিতে পারিবেন" শব্দগুলি প্রতিস্থাপিত হইবে।

৩০। ২০০১ সনের ৪৭ নং আইনের ধারা ৫৫ এর সংশোধন। —উক্ত আইনের ধারা ৫৫ এর—

(ক) উপ-ধারা (১) এর পর নিম্নরূপ উপ-ধারা (১ক) সন্নিবেশিত হইবে, যথা ঃ—

"(১ক) উপ-ধারা (১) এ উল্লিখিত সমবায় সমিতির দায়-দেনা সংক্রান্ত তথ্য পাওয়া না গেলে উহা কোন কেন্দ্রীয় সমবায় সমিতি বা জাতীয় সমবায় সমিতির সদস্য হইলে, অবসায়ক সংশ্লিষ্ট কেন্দ্রীয় সমবায় সমিতি বা জাতীয় সমবায় সমিতি হইতে উহার সম্পদ ও দায়-দেনা এর তথ্য সংগ্রহ করিতে পারিবেন।"।

(খ) উপ-ধারা (২) এর দফা (জ) এর শেষে অবস্থিত "এবং" শব্দটি বিলুপ্ত হইবে, দফা (ঝ) এর প্রান্তস্থিত "।" দাঁড়ি এর পরিবর্তে ";" সেমিকোলন প্রতিস্থাপিত হইবে এবং অতঃপর নিম্নরূপ দফা (ঞ), (ট), (ঠ), (ড), (ঢ), (ণ) ও (ত) সংযোজিত হইবে; যথা ঃ—

"(ঞ) সমবায় সমিতির দখলে থাকা কোন সম্পদ অথবা সম্পত্তি, নিবন্ধকের অনুমোদনক্রমে, বিক্রয় করিতে পারিবেন;

(ট) সমিতির সংশ্লিষ্ট ঋণ বিতরণকারী কেন্দ্রীয় সমবায় সমিতির অথবা জাতীয় সমবায় সমিতিতে উক্ত সমিতির জমাকৃত শেয়ার, সঞ্চয়, বন্ধকী সম্পত্তি বা অন্য কোন আমানত হইতে পাওনা ঋণ সমন্বয় করার পরও যদি ঋণ পাওনা থাকে সেক্ষেত্রে অবসায়ক উক্ত ঋণ আদায়পূর্বক সংশ্লিষ্ট কেন্দ্রীয় অথবা জাতীয় সমবায় সমিতিকে পরিশোধ করিবেন;

(ঠ) ঋণ আদায় না হইলে অনাদায়ী ঋণকে কুঋণ হিসাবে চিহ্নিত করিয়া উহা সংশ্লিষ্ট কেন্দ্রীয় সমবায় সমিতি অথবা জাতীয় সমবায় সমিতির কুঋণ তহবিলের সাথে সমন্বয় করিতে হইবে এবং এইরূপ সমন্বয়ের পরও ঋণ পাওনা থাকিলে অবসায়ক পাওনা ঋণের তারিলকা চূড়ান্ত করিবে;

(ড) অবসায়ক কর্তৃক পাওনা ঋণের চূড়ান্ত তালিকা পাওয়ার পর নিবন্ধক পাওনা ঋণের তালিকা মোতাবেক সংশ্লিষ্ট কেন্দ্রীয় সমবায় সমিতি অথবা জাতীয় সমবায় সমিতিকে ঋণ আদায়ের নির্দেশ প্রদান করিবেন এবং উক্ত আদেশ পালন ব্যতীত সংশ্লিষ্ট সমিতির অন্যান্য কার্যাদি বন্ধ থাকিবে এবং এই ক্ষেত্রে নিবন্ধক পাওনা ঋণের চূড়ান্ত তালিকা মোতাবেক সমুদয় ঋণ আদায়ের পর সমবায় সমিতির নিবন্ধন বাতিল করিতে পারিবেন;

(ঢ) কেন্দ্রীয় সমবায় সমিতি ও জাতীয় সমবায় সমিতের কোন সদস্য সমবায় সমিতির অবসায়নে ন্যস্ত হইলে সংশ্লিষ্ট সমবায় সমিতির সকল পাওনা অবসায়কের নিকট প্রদান করার জন্য কেন্দ্রীয় সমবায় সমিতি ও জাতীয় সমবায় সমিতির দায়িত্বে নিয়োজিত সচিব এবং সভাপতি বাধ্য থাকিবেন এবং এইরূপ ক্ষেত্রে যে কোন

অসহযোগিতার জন্য সংশ্লিষ্টদের বিরুদ্ধে অবসায়কের সুপারিশের প্রেক্ষিতে নিবন্ধক মামলা দায়েরসহ প্রয়োজনীয় আইনানুগ ব্যবস্থা গ্রহণ করার নির্দেশ দিতে পারিবেন, তবে অবসায়কের যে কোন ধরনের অসহযোগিতা সরকারি কাজে বিঘ্ন সৃষ্টি হিসেবে গণ্য করা হইবে;

(ণ) অবসায়নে ন্যস্ত সমবায় সমিতির সদস্যদের দায় এর তালিকা অবসায়ক চূড়ান্ত করার পর নিবন্ধক উহা অনুমোদন করিবেন এবং উক্ত তালিকা মোতাবেক ঋণ আদায়ে কেন্দ্রীয় সমবায় সমিতি বা জাতীয় সমবায় সমিতি বাধ্য থাকিবে, তবে নিবন্ধক এক্ষেত্রে কেন্দ্রীয় বা জাতীয় সমিতিকে ঋণ আদায় করার নির্দেশ প্রদান করিবেন এবং উক্ত আদেশ পালন ব্যতীত সমিতির অন্যান্য কার্যাদি বন্ধ থাকিবে এবং এই ক্ষেত্রে ৬ (ছয়) বৎসর অতিক্রান্ত হওয়ার পর সমিতির নিবন্ধন স্বয়ংক্রিয়ভাবে বাতিল হইয়া যাইবে;

(ত) অবসায়ন কার্যে কেন্দ্রীয় সমবায় সমিতি বা জাতীয় সমবায় সমিতির ব্যবস্থাপনা কমিটি কিংবা নির্বাহী কর্তৃপক্ষ অবসায়ককে অসহযোগিতা করিলে, নিবন্ধক ধারা ৮৪ মোতাবেক সংশ্লিষ্ট ব্যবস্থাপনা কমিটি কিংবা নির্বাহী কর্তৃপক্ষের বিরুদ্ধে ব্যবস্থা গ্রহণ করিতে পারিবে।"।

৩১। ২০০১ সনের ৪৭ নং আইনের ধারা ৫৮ এর সংশোধন।—উক্ত আইনের ধারা ৫৮ এর বিদ্যমান বিধান উপ-ধারা (১) হিসাবে সংজ্ঞায়িত হইবে এবং উক্তরূপ সংজ্ঞায়িত উপ-ধারা (১) এর পর নিম্নরূপ নূতন উপ-ধারা (২) সংযোজিত হইবে, যথাঃ—

"(২) উপ-ধারা (১) এর অধীন কোন সমবায় সমিতির নিবন্ধন বাতিল হইলেও বাতিলকৃত সমবায় সমিতির সদস্যের নিকট সরকারি পাওনা থাকিলে ঋণ প্রদানকারী সংস্থার কর্তৃপক্ষ অবসায়কের প্রতিবেদন মোতাবেক সরকারি পাওনা হিসাবে আদায় করিতে পারিবে।"।

৩২। ২০০১ সনের ৪৭ নং আইনের একাদশ অধ্যায় এর শিরোনাম এর সংশোধন।—উক্ত আইনের একাদশ অধ্যায় এর শিরোনামে উল্লিখিত "জমি বন্ধকী ব্যাংক, কেন্দ্রীয় জমি বন্ধকী ব্যাংক" শব্দগুলি ও কমার পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংক, কেন্দ্রীয় ভূমি উন্নয়ন ব্যাংক" শব্দগুলি ও কমা প্রতিস্থাপিত হইবে।

৩৩। ২০০১ সনের ৪৭ নং আইনের ধারা ৫৯ এর সংশোধন।—উক্ত আইনের ধারা ৫৯ এর—

(ক) উপান্তটীকায় উল্লিখিত "জমি বন্ধকী ব্যাংকের" শব্দগুলির পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংকের" শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (১) এ উল্লিখিত "কোন জমি বন্ধকী ব্যাংক বা কেন্দ্রীয় জমি বন্ধকী ব্যাংকের" শব্দগুলির পরিবর্তে "কোন সমবায় ভূমি উন্নয়ন ব্যাংক বা কেন্দ্রীয় ভূমি উন্নয়ন ব্যাংকের" শব্দগুলি প্রতিস্থাপিত হইবে;

(গ) উপ-ধারা (৪) এ উল্লিখিত "সুদ" শব্দটির পরিবর্তে "মুনাফা" শব্দটি প্রতিস্থাপিত হইবে।

৩৪। ২০০১ সনের ৪৭ নং আইনের ধারা ৬০ এর সংশোধন।—উক্ত আইনের ধারা ৬০ এর—

(ক) উপ-ধারা (১) এর দ্বিতীয় লাইনে উল্লিখিত "জমি বন্ধকী ব্যাংক বা কেন্দ্রীয় জমি বন্ধকী ব্যাংকের" শব্দগুলির পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংক বা কেন্দ্রীয় সমবায় ভূমি উন্নয়ন ব্যাংকের" শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (২) এর পরিবর্তে নিম্নরূপ উপ-ধারা (২) প্রতিস্থাপিত হইবে, যথা ঃ—

"(২) উপ-ধারা (১) এর অধীনে কোন সমবায় ভূমি উন্নয়ন ব্যাংক অনুমতি দিতে ইচ্ছুক হইলে উক্ত ব্যাংক যে কেন্দ্রীয় সমবায় ব্যাংকের সদস্য উহার অনুমতি বা যে অর্থ সরবরাহকারী সংস্থার নিকট প্রথমোক্ত ব্যাংকের দেনা আছে উহার পূর্বানুমতি গ্রহণ করিবে।"।

৩৫। ২০০১ সনের ৪৭ নং আইনের ধারা ৬১ এর সংশোধন।—উক্ত আইনের ধারা ৬১ এর দ্বিতীয় ও তৃতীয় লাইনে উল্লিখিত "জমি বন্ধকী ব্যাংক বা কেন্দ্রীয় জমি বন্ধকী ব্যাংকের" শব্দগুলির পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংক বা কেন্দ্রীয় সমবায় ভূমি উন্নয়ন ব্যাংকের" শব্দগুলি প্রতিস্থাপিত হইবে।

৩৬। ২০০১ সনের ৪৭ নং আইনের ধারা ৬২ এর সংশোধন।—উক্ত আইনের ধারা ৬২ এর তৃতীয় লাইনে উল্লিখিত "সমবায় জমি বন্ধকী ব্যাংক, কেন্দ্রীয় জমি বন্ধকী ব্যাংক" শব্দগুলি ও কমার পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংক, কেন্দ্রীয় সমবায় ভূমি উন্নয়ন ব্যাংক" শব্দগুলি ও কমা প্রতিস্থাপিত হইবে।

৩৭। ২০০১ সনের ৪৭ নং আইনের ধারা ৬৪ এর সংশোধন। —উক্ত আইনের ধারা ৬৪ এর প্রথম ও দ্বিতীয় লাইনে উল্লিখিত "জমি বন্ধকী ব্যাংক, কেন্দ্রীয় জমি বন্ধকী ব্যাংক" শব্দগুলি ও কমার পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংক, কেন্দ্রীয় সমবায় ভূমি উন্নয়ন ব্যাংক" শব্দগুলি ও কমা প্রতিস্থাপিত হইবে।

৩৮। ২০০১ সনের ৪৭নং আইনের ধারা ৬৬ এর সংশোধন। —উক্ত আইনের ধারা ৬৬ এর উপ-ধারা (১) এর—

(ক) দ্বিতীয় লাইনে উল্লিখিত "সমবায় জমি বন্ধকী ব্যাংক, কেন্দ্রীয় জমি বন্ধকী ব্যাংক" শব্দগুলি ও কমার পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংক, কেন্দ্রীয় সমবায় ভূমি উন্নয়ন ব্যাংক" শব্দগুলি ও কমা প্রতিস্থাপিত হইবে;

(খ) দফা (গ) এর শেষে উল্লিখিত "সুদ" শব্দটির পরিবর্তে "মুনাফা" শব্দটি প্রতিস্থাপিত হইবে।

৩৯। ২০০১ সনের ৪৭ নং আইনের ধারা ৬৮ এর সংশোধন। —উক্ত আইনের ধারা ৬৮ এর প্রথমতঃ প্যারার প্রথম লাইনে উল্লিখিত "জমি বন্ধকী ব্যাংক" শব্দগুলির পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংক" শব্দগুলি প্রতিস্থাপিত হইবে।

৪০। ২০০১ সনের ৪৭ নং আইনের ধারা ৭১ এর সংশোধন। —উক্ত আইনের ধারা ৭১ এর উপান্তটীকাসহ দ্বিতীয় লাইনে দুইবার উল্লিখিত "জমি বন্ধকী ব্যাংক" শব্দগুলির পরিবর্তে উভয় স্থানে "সমবায় ভূমি উন্নয়ন ব্যাংক" শব্দগুলি প্রতিস্থাপিত হইবে।

৪১। ২০০১ সনের ৪৭ নং আইনের ধারা ৭৩ এর সংশোধন। —উক্ত আইনের ধারা ৭৩ এর উপ-ধারা (১) এর দফা (ক) এ উল্লিখিত "জমি বন্ধকী ব্যাংকের" শব্দগুলির পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংকের" শব্দগুলি প্রতিস্থাপিত হইবে।

৪২। ২০০১ সনের ৪৭ নং আইনের ধারা ৭৪ এর সংশোধন। —উক্ত আইনের ধারা ৭৪ এর উপ-ধারা (১) এর দ্বিতীয় লাইনে উল্লিখিত "জমি বন্ধকী ব্যাংক" শব্দগুলির পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংক" শব্দগুলি প্রতিস্থাপিত হইবে।

৪৩। ২০০১ সনের ৪৭ নং আইনের ধারা ৭৫ এর সংশোধন। —উক্ত আইনের ধারা ৭৫ এর উপান্তটীকায় উল্লিখিত "জমি বন্ধকী ব্যাংকের" শব্দগুলির পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংকের" শব্দগুলি, দ্বিতীয় লাইনে উল্লিখিত "জমি বন্ধকী ব্যাংক" শব্দগুলির পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংক" শব্দগুলি প্রতিস্থাপিত হইবে।

৪৪। ২০০১ সনের ৪৭ নং আইনের ধারা ৭৬ এর সংশোধন। —উক্ত আইনের ধারা ৭৬ এর উপান্তটীকাসহ দ্বিতীয় ও তৃতীয় লাইনে দুইবার উল্লিখিত "জমি বন্ধকী ব্যাংক" শব্দগুলির পরিবর্তে উভয় স্থানে "সমবায় ভূমি উন্নয়ন ব্যাংক" শব্দগুলি প্রতিস্থাপিত হইবে।

৪৫। ২০০১ সনের ৪৭ নং আইনের ধারা ৭৭ এর সংশোধন। —উক্ত আইনের ধারা ৭৭ এর তৃতীয় লাইনে উল্লিখিত "জমি বন্ধকী ব্যাংক" শব্দগুলির পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংক" শব্দগুলি প্রতিস্থাপিত হইবে।

৪৬। ২০০১ সনের ৪৭ নং আইনের ধারা ৭৮ এর সংশোধন। —উক্ত আইনের ধারা ৭৮ এর উপান্তটীকায় উল্লিখিত "জমি বন্ধকী ব্যাংকের" শব্দগুলির পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংকের" শব্দগুলি ও দ্বিতীয় লাইনে উল্লিখিত "জমি বন্ধকী ব্যাংক" শব্দগুলির পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংক" শব্দগুলি প্রতিস্থাপিত হইবে।

৪৭। ২০০১ সনের ৪৭ নং আইনের ধারা ৮৩ এর সংশোধন। —উক্ত আইনের ধারা ৮৩ এর—

(ক) উপ-ধারা (২) এর "ক্ষতিপূরণ" শব্দের পর "১২০ (একশত বিশ) দিনের মধ্যে" সংখ্যা, শব্দগুলি ও বন্ধনী সন্নিবেশিত হইবে;

(খ) উপ-ধারা (৩) এর "৩ (তিন) বৎসর" সংখ্যা, শব্দগুলি ও বন্ধনীর পরিবর্তে "৭ (সাত) বৎসর" সংখ্যা, শব্দগুলি ও বন্ধনী সন্নিবেশিত হইবে।

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বাংলাদেশ শ্রমিক কল্যাণ ফাউন্ডেশন আইন, ২০০৬ (২০০৬ সনের ২৫ নং আইন) এর সংশোধনকল্পে প্রণীত আইন

যেহেতু নিম্নবর্ণিত উদ্দেশ্যসমূহ পূরণকল্পে বাংলাদেশ শ্রমিক কল্যাণ ফাউন্ডেশন আইন, ২০০৬ (২০০৬ সনের ২৫ নং আইন) এর সংশোধন সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইল ঃ—

১। সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।—(১) এই আইন বাংলাদেশ শ্রমিক কল্যাণ ফাউন্ডেশন (সংশোধন) আইন, ২০১৩ নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। ২০০৬ সনের ২৫ নং আইনের ধারা ২ এর সংশোধন।— বাংলাদেশ শ্রমিক কল্যাণ ফাউন্ডেশন আইন, ২০০৬ (২০০৬ সনের ২৫ নং আইন), অতঃপর উক্ত আইন বলিয়া উল্লিখিত, এর ধারা ২ এর—

(ক) দফা (ঞ) এর পর নিম্নরূপ নূতন দফা (ঞঞ) সন্নিবেশিত হইবে, যথাঃ—

"(ঞঞ) "শ্রম আইন" অর্থ বাংলাদেশ শ্রম আইন, ২০০৬ (২০০৬ সনের ৪২ নং আইন);";

(খ) দফা (ট) এর চতুর্থ লাইনের প্রান্তস্থিত ";" কোলন এর পূর্বে "এবং শ্রম আইনের ধারা ১৭৫ এ সংজ্ঞায়িত শ্রমিকও ইহার অন্তর্ভুক্ত হইবে" শব্দগুলি ও সংখ্যা সন্নিবেশিত হইবে।

৩। ২০০৬ সনের ২৫ নং আইনের ধারা ১৪ এর সংশোধন।— উক্ত আইনের ধারা ১৪ এর—

(ক) উপ-ধারা (২) এর দফা (খ) এর পর নিম্নরূপ একটি নূতন দফা (খখ) সন্নিবেশিত হইবে, যথা ঃ—

"(খখ) শ্রম আইনের ধারা ২৩৪ এর উপ-ধারা (১) এর দফা (খ) এর অধীন স্থাপিত শ্রমিক কল্যাণ তহবিলে প্রতি বৎসর জমাকৃত অর্থের শতকরা ৫০ (পঞ্চাশ) ভাগ অর্থ;

(খ) উপ-ধারা (৩) এর পরিবর্তে নিম্নরূপ উপ-ধারা (৩) প্রতিস্থাপিত হইবে, যথা ঃ—

"(৩) উপ-ধারা (২) এর দফা (খখ) তে উল্লিখিত অর্থ, শ্রম আইনের ধারা ২৪৩ এর উপ-ধারা (২) এর উদ্দেশ্যেপূরণকল্পে, উক্ত শ্রমিক কল্যাণ তহবিলে জমা হইবার তারিখ হইতে পরবর্তী ৩০ (ত্রিশ) দিনের মধ্যে উপ-ধারা (১) এ উল্লিখিত তহবিলে জমা প্রদান করিতে হইবে;

তবে শর্ত থাকে যে, শ্রম আইন দ্বারা বিলুপ্ত Companies Profits (Workers Participation) Act, 1968 (Act No. XII of 1968) এর আওতাধীন প্রতিষ্ঠানে পরিচালিত তহবিল এবং শ্রম আইনের অধীন স্থাপিত শ্রমিক কল্যাণ তহবিল হইতে ইতোমধ্যে জমাকৃত অর্থ উপ-ধারা (১) এ উল্লিখিত তহবিলে এমনভাবে জমা থাকিবে যেন উহা এই উপ-ধারার অধীন জমা হইয়াছে।"।

৪। ২০০৬ সনের ২৫ নং আইনের ধারা ১৪ক এর সন্নিবেশ।— উক্ত আইনের ধারা ১৪ এর পর নিম্নরূপ একটি নূতন ধারা ১৪ক সন্নিবেশিত হইবে, যথা ঃ—

"১৪ক। জরিমানা, অর্থ আদায়, ইত্যাদি।—(১) শ্রম আইনের ধারা ২৩৫ এর অধীন গঠিত ট্রাস্টি বোর্ড এই আইনের ধারা ১৪ এর উপ-ধারা (৩) এর বিধান লংঘন করিলে অথবা উহাতে উল্লিখিত সময়সীমার মধ্যে উক্তরূপ অর্থ জমা প্রদান করিতে ব্যর্থ হইলে সরকার, আদেশ দ্বারা উক্ত আদেশের উল্লিখিত সময়ের মধ্যে, উক্ত ট্রাস্টি বোর্ডকে উক্ত অপরিশোধিত অর্থ প্রদানের আদেশসহ সংশ্লিষ্ট কাজের সহিত প্রত্যক্ষ সংশ্লিষ্টতা রহিয়াছে উক্ত ট্রাস্টি বোর্ডের এমন চেয়ারম্যান, সদস্য বা উহার ব্যবস্থাপনার দায়িত্বে নিয়োজিত ব্যক্তি বা ব্যক্তিবর্গের অনধিক ১ (এক) লক্ষ টাকা এবং অব্যাহত ব্যর্থতার ক্ষেত্রে, ব্যর্থতার প্রথম তারিখের পর হইতে প্রত্যেক দিনের জন্য আরও ৫ (পাঁচ) হাজার টাকা করিয়া জরিমানা আরোপ করিবেঃ

তবে শর্ত থাকে যে, কোন ব্যক্তি উল্লিখিত বিধান পুনরায় লংঘন করিলে বা প্রতিপালনে ব্যর্থ হইলে তাহার বিরুদ্ধে দ্বিগুণ জরিমানা আরোপিত হইবে।

(২) ধারা ১৪ এর উপ-ধারা (৩) এর অধীন প্রদেয় কোন অর্থ অপরিশোধিত থাকিলে এবং এই ধারার অধীন আরোপিত জরিমানা, সংশ্লিষ্ট আদেশে উল্লিখিত তারিখের মধ্যে পরিশোধ করা না হইলে, উক্ত অপরিশোধিত অর্থ ও জরিমানা সরকারি দাবী হিসাবে গণ্য হইবে এবং Public Demands Recovery Act, 1913 (Act No. IX of 1913) এর বিধান অনুযায়ী আদায়যোগ্য হইবে।

(৩) উপ-ধারা (১) এর অধীন প্রদত্ত কোন আদেশ দ্বারা কোন ব্যক্তি সংক্ষুব্ধ হইলে উক্ত আদেশ প্রদানের তারিখ হইতে ৩০ (ত্রিশ) দিনের মধ্যে আদেশটি পুনর্বিবেচনার জন্য সরকারের নিকট দরখাস্ত পেশ করিতে পারিবেন এবং উক্তরূপ দরখাস্ত প্রাপ্তির পর সরকার অনধিক ৪৫ (পঁয়তাল্লিশ) কার্যদিবসের মধ্যে বিষয়টি পুনর্বিবেচনাকরতঃ যথাযথ আদেশ প্রদান করিবে এবং বিষয়টি সংশ্লিষ্ট ব্যক্তি, কোম্পানী ও বোর্ডকে অবহিত করিবে।

(৪) উপ-ধারা (৩) এর অধীন সরকার কর্তৃক প্রদত্ত আদেশ চূড়ান্ত বলিয়া গণ্য হইবে।"।

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International Crimes (Tribunals) Act, 1973 এর অধিকতর সংশোধনকল্পে প্রণীত আইন

যেহেতু নিম্নবর্ণিত উদ্দেশ্যসমূহ পূরণকল্পে International Crimes (Tribunals) Act, 1973 (Act No. XIX of 1973) এর অধিকতর সংশোধন সমীচীন ও প্রয়োজন;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইল ঃ—

১। **সংক্ষিপ্ত শিরোনাম ও প্রবর্তন**।—(১) এই আইন International Crimes (Tribunals) (Amendment) Act, 2013 নামে অভিহিত হইবে।

(২) ইহা ৩০ আষাঢ়, ১৪১৬ মোতাবেক ১৪ জুলাই, ২০০৯ তারিখে কার্যকর হইয়াছে বলিয়া গণ্য হইবে।

২। **Act No. XIX of 1973 এর section 3 এর সংশোধন**।—International Crimes (Tribunal) Act, 1973 (Act No. XIX of 1973), অতঃপর উক্ত Act বলিয়া উল্লিখিত, এর section 3 এর sub-section (1) এর "individuals," শব্দ ও কমার পর "or organisation," শব্দগুলি ও কমা সন্নিবেশিত হইবে।

৩। **Act No. XIX of 1973 এর section 21 এর প্রতিস্থাপন**।—উক্ত Act এর section 21 এর পরিবর্তে নিম্নরূপ section 21 প্রতিস্থাপিত হইবে, যথা ঃ—

"21. Right of Appeal.—(1) A person convicted of any crime specified in section 3 and sentenced by a Tribunal may appeal, as of right, to the Appellate Division of the Supreme Court of Bangladesh against such conviction and sentence.

(2) The Government or the complainant or the informant, as the case may be, may appeal, as of right, to the Appellate Division of the Supreme Court of Bangladesh against an order of acquittal or an order of sentence.

(3) An appeal under sub-section (1) or (2) shall be preferred within 30 (thirty) days from the date of conviction and sentence, or acquittal or any sentence, and no appeal shall lie after the expiry of the aforesaid period.

(4) The appeal shall be disposed of within 60 (sixty) days from the date of its filing.

(5) At the time of filing the appeal, the appellant shall submit all documents as may be relied upon by him."।

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Act No. 4 of 2013

Contempt of Courts Act, 1926 রহিতক্রমে উহা পুনঃপ্রণয়নকল্পে প্রণীত আইন

যেহেতু Contempt of Courts Act, 1926 (Act No. XII of 1926) রহিতক্রমে উহা পুনঃপ্রণয়ন করা সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইল ঃ—

১। **সংক্ষিপ্ত শিরোনাম ও প্রবর্তন**।—(১) এই আইন আদালত অবমাননা আইন, ২০১৩ নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

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

(১) "অধস্তন আদালত" অর্থ সুপ্রীমকোর্টের অধস্তন যে কোন আদালত বা ট্রাইব্যুনাল;

(২) "আদালত" অর্থ সুপ্রীমকোর্টসহ অধস্তন যে কোন আদালত বা ট্রাইব্যুনাল;

(৩) "আদালত অবমাননা" অর্থ দেওয়ানী বা ফৌজদারী অবমাননা;

(৪) "আপীল বিভাগ" অর্থ সুপ্রীমকোর্টের আপীল বিভাগ;

(৫) "হাইকোর্ট বিভাগ" অর্থ সুপ্রীমকোর্টের হাইকোর্ট বিভাগ;

(৬) "দেওয়ানী অবমাননা" অর্থ ইচ্ছাকৃতভাবে কোন আদালতের রায়, ডিক্রী, নির্দেশনা, আদেশ, রীট, বা কার্যক্রম অবমাননা অথবা আদালতের নিকট প্রদত্ত কোন অঙ্গীকারনামা ভঙ্গ করা;

(৭) "প্রজাতন্ত্রের কর্ম" অর্থ গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের ১৫২ অনুচ্ছেদে উল্লিখিত প্রজাতন্ত্রের কর্ম;

(৮) "ফৌজদারী অবমাননা" অর্থ মৌখিক বা লিখিত কোন শব্দ বা চিহ্ন দ্বারা, বা প্রদর্শনযোগ্য কোন কিছুর মাধ্যমে এমন কোন কিছু প্রকাশ করা অথবা এমন কোন কার্য করা যাহাতে—

(ক) কোন আদালতের কর্তৃত্বকে হেয় প্রতিপন্ন করা হয় বা হেয় প্রতিপন্ন করিবার অভিপ্রায় থাকে অথবা উহার কর্তৃত্ব সম্পর্কে অপপ্রচার করা হয় বা অপপ্রচার করা হইয়াছে বা অপপ্রচারের অভিপ্রায় থাকে; বা

(খ) কোন বিচারিক কার্যধারা ক্ষুণ্ন করা হয় অথবা উহাতে হস্তক্ষেপ করা হয় বা হস্তক্ষেপের অভিপ্রায় থাকে; বা

(গ) অন্য কোনভাবে চলমান বিচারিক কার্যধারার স্বাভাবিক গতিধারাকে বাধাগ্রস্ত করে বা হস্তক্ষেপ করে বা বাধাগ্রস্ত করিবার বা হস্তক্ষেপ করিবার অভিপ্রায় থাকে;

(৯) "বিচারিক কার্যধারা (Judicial proceeding)" অর্থ আদালতে রুজুকৃত এমন কোন আইনগত কার্যধারা যাহা অনিষ্পন্ন রহিয়াছে বা যাহার বিরুদ্ধে কোন আইনের অধীন দায়েরকৃত আপীল, রিভিশন বা রিভিউ চূড়ান্তভাবে নিষ্পত্তি হয় নাই বা যাহার বিরুদ্ধে উক্তরূপ কার্যাধারা গ্রহণের জন্য কোন আইন দ্বারা নির্ধারিত সময়সীমা অতিক্রান্ত হয় নাই; এবং উহা হইতে উদ্ভূত জারী কার্যক্রমও অনুরূপ কার্যধারার অংশ বলিয়া গণ্য হইবে।

৩। **এই আইনের বিধানাবলীর অতিরিক্ততা**।—এই আইনের বিধানাবলী আদালত অবমাননা সম্পর্কিত অন্য কোন আইনের কোন বিধানের ব্যত্যয় না ঘটাইয়া উহার অতিরিক্ত হইবে।

৪। **নির্দোষ প্রকাশনা বা বিতরণ অবমাননা নয়**।—(১) কোন ব্যক্তি আদালত অবমাননার দায়ে দোষী হইবেন না এই কারণে যে, তিনি মৌখিক বা লিখিত কোন শব্দ বা চিত্র দ্বারা বা প্রদর্শনযোগ্য কোন কিছুর মাধ্যমে, বা অন্যকোনভাবে এমন কোন কিছু প্রকাশ করিয়াছেন যাহা উক্তরূপ প্রকাশনার সময় আদালতে বিচারাধীন দেওয়ানী বা ফৌজদারী বিচার প্রক্রিয়ায় হস্তক্ষেপ বা বাধা প্রদান করে বা উহা দ্বারা উক্তরূপ বিচার প্রক্রিয়া হস্তক্ষেপ বা বাধা প্রদান করে বা উহা দ্বারা উক্তরূপ বিচার প্রক্রিয়া হস্তক্ষেপ বা বাধা সৃষ্টির সম্ভাবনা থাকে, যদি না উক্ত সময় তাহার এই মর্মে বিশ্বাস করিবার যুক্তিসঙ্গত কারণ থাকে যে, বিষয়টি বিচারাধীন রহিয়াছে।

(২) আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, প্রকাশনার সময় নিষ্পন্নাধীন ছিল না এইরূপ কোন দেওয়ানী বা ফৌজদারী কার্যধারা সম্পর্কে উপ-ধারা (১) এ উল্লিখিত কোন বিষয়ের প্রকাশ আদালত অবমাননা হিসাবে গণ্য হইবে না।

(৩) কোন ব্যক্তি উপ-ধারা (১) এ উল্লিখিত কোন বিষয় সম্বলিত কোন প্রকাশনা বিতরণ করিবার কারণে আদালত অবমাননার দায়ে দোষী হইবেন না, যদি বিতরণ করিবার সময় উক্ত প্রকাশনায় অনুরূপ কোন বিষয় রহিয়াছে বা থাকিবার সম্ভাবনা রহিয়াছে মর্মে তাহার বিশ্বাস করিবার কোন যুক্তিসঙ্গত কারণ না থাকে ঃ

তবে শর্ত থাকে যে, বই, প্রকাশনা বা মুদ্রণ সম্পর্কিত আপাততঃ বলবৎ অন্য কোন আইনের বিধান লঙ্ঘন করিয়া বিতরণ করিবার ক্ষেত্রে এই উপ-ধারার বিধান প্রযোজ্য হইবে না।

৫। **পক্ষপাতহীন ও বস্তুনিষ্ঠ সংবাদ প্রকাশ আদালত অবমাননা নহে**।—কোন ব্যক্তির নিম্নবর্ণিত কার্য আদালত অবমাননা হিসাবে গণ্য হইবে না, যদি তিনি—

(ক) ধারা ৬ এর বিধান সাপেক্ষে, আদালতের কোন বিচারিক কার্যধারা বা উহার কোন অংশ বিশেষের পক্ষপাতহীন ও বস্তুনিষ্ঠ সংবাদ প্রকাশ করেন; বা

(খ) শুনানীঅন্তে চূড়ান্ত সিদ্ধান্ত গৃহীত হইয়াছে এইরূপ কোন মামলার গুণাগুণ সম্পর্কে পক্ষপাতহীন ও বস্তুনিষ্ঠ মন্তব্য প্রকাশ করেন।

৬। **অধস্তন আদালতের সভাপতিত্বকারী বিচারকের বিরুদ্ধে অভিযোগ যখন আদালত অবমাননা নয়**।—কোন ব্যক্তি কোন অধস্তন আদালতের সভাপতিত্বকারী বিচারক সম্পর্কে সরল বিশ্বাসে যদি–

(ক) অন্য কোন অধস্তন আদালতের নিকট, বা

(খ) সুপ্রীম কোর্টের নিকট,

কোন বিবৃতি বা মন্তব্য প্রদান করেন, তাহা হইলে তিনি আদালত অবমাননার দায়ে দোষী হইবেন না।

৭। **কতিপয় ক্ষেত্র ব্যতীত খাস কামরায় বা রুদ্ধদ্বার কক্ষে অনুষ্ঠিত প্রক্রিয়া সংক্রান্ত তথ্য প্রকাশ আদালত অবমাননা নহে**।—(১) এই আইনের অন্যান্য বিধানে যাহা কিছুই থাকুক না কেন, আদালতের খাস কামরায় বা রুদ্ধদ্বার কক্ষে অনুষ্ঠিত বিচারিক কার্যধারা সম্পর্কে কোন ব্যক্তির পক্ষপাতহীন ও বস্তুনিষ্ঠ আকারে তথ্য প্রকাশ আদালত অবমাননা হইবে না যদি না—

(ক) এইরূপ প্রকাশনা আপাতত বলবৎ অন্য কোন আইনের লঙ্ঘন হয়;

(খ) আদালত, জনস্বার্থে বা উহার উপর অর্পিত ক্ষমতাবলে, উহার কার্যধারা বা উহার অংশ বিশেষের তথ্য প্রকাশের বিষয়ে সুস্পষ্টভাবে নিষেধাজ্ঞা জারী করে;

(গ) জন-শৃঙ্খলা বা রাষ্ট্রীয় নিরাপত্তার কারণে আদালতের খাস কামরায় বা রুদ্ধদ্বার কক্ষে আদালতের কার্যধারা অনুষ্ঠিত হইলে উক্ত কার্যধারা সম্পর্কিত তথ্য প্রকাশ করে;

(ঘ) উক্ত তথ্য উক্ত বিচারিক কার্যধারার গোপনীয় কোন বিষয় বা কোন আবিষ্কার বা উদ্ভাবন সংক্রান্ত হয়।

(২) উপ-ধারা (১) এর বিধান ক্ষুণ্ন না করিয়া, খাস কামরায় বা রুদ্ধদ্বার কক্ষে অনুষ্ঠিত কোন আদালতের কার্যক্রমের বা উহার আদেশের সকল বা কোন অংশের বিবরণ বা উহার পক্ষপাতহীন ও বস্তুনিষ্ঠ সার-সংক্ষেপ প্রকাশের জন্য কোন ব্যক্তি আদালত অবমাননার দায়ে দোষী সাব্যস্ত হইবেন না, যদি না আদালত জনস্বার্থে বা জন-শৃঙ্খলা বা রাষ্ট্রীয় নিরাপত্তার কারণে, অথবা উক্ত তথ্য কোন গোপনীয় বিষয় সংক্রান্ত অথবা কোন আবিষ্কার বা উদ্ভাবন সংক্রান্ত হইবার কারণে, অথবা আদালতের উপর অর্পিত ক্ষমতাবলে, উক্তরূপ তথ্য প্রকাশে নিষেধাজ্ঞা জারী করে।

৮। **আত্মপক্ষ সমর্থনে অন্য কোন যুক্তি প্রদানের ক্ষেত্রে এই আইন বাধা হইবে না।**—এই আইনের কোন কিছুই কোন আদালতে আদালত অবমাননা সংক্রান্ত মামলায় আত্মপক্ষ সমর্থনের জন্য অন্য কোন আইন অনুসারে যে যুক্তি বা জবাব প্রদান করা যাইতো তাহা প্রদানের ক্ষেত্রে বাধা হইবে না।

৯। **আদালত অবমাননার পরিধি বিস্তৃত না হওয়া।**—এই আইনের অধীন শাস্তিযোগ্য নহে এইরূপ কোন লংঘন, প্রকাশনা বা অন্য কোন কার্য এই আইনের পরিধিভুক্ত গণ্যে আদালত অবমাননার দায়ে শাস্তিযোগ্য হইবে না।

১০। **কতিপয় কর্ম আদালত অবমাননা নহে।**—আপাতত বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন—

(১) প্রজাতন্ত্রের কর্মে নিয়োজিত কোন ব্যক্তি কর্তৃক রাষ্ট্রের প্রচলিত আইন, বিধিমালা, সরকারী নীতিমালা, যথাযথ কর্তৃপক্ষ কর্তৃক জারীকৃত পরিপত্র, প্রজ্ঞাপন, স্মারক ইত্যাদি যথাযথভাবে অনুসরণপূর্বক জনস্বার্থে ও সরল বিশ্বাসে কৃত বা সম্পাদিত কর্ম আদালত অবমাননা হিসাবে গণ্য হইবে না।

(২) উপ-ধারা (১) এর অধীন কৃত কর্মের বিষয়ে কোন ব্যক্তি আদালতে শরণাপন্ন হইলে এবং সেই ক্ষেত্রে আদালতের কোন রায়, আদেশ বা নির্দেশ প্রজাতন্ত্রের কর্মে নিয়োজিত কোন ব্যক্তির পক্ষে যথাযথ প্রচেষ্টা সত্ত্বেও বাস্তবায়ন বা প্রতিপালন করা অসম্ভব হইলে, অনুরূপ কারণে বাস্তবায়ন বা প্রতিপালন করিতে ব্যর্থতার কারণে তাহার বিরুদ্ধে আদালত অবমাননার অভিযোগ উত্থাপন করা যাইবে না।

১১। **আদালত অবমাননার অভিযোগ দায়ের ও নিষ্পত্তির বিধান।**—(১) কোন ব্যক্তির বিরুদ্ধে আদালত অবমাননার অভিযোগ উত্থাপিত বা কার্যধারা রুজু করা হইলে, অভিযোগের বিষয়ে তাহাকে কারণ দর্শাইবার সুযোগ প্রদান করিতে হইবে এবং আদালতের নিকট কারণ দর্শাইবার জবাব সন্তোষজনক হইলে, তাহাকে আদালত অবমাননার অভিযোগ হইতে অব্যাহতি প্রদান করিতে হইবে, এবং জবাব সন্তোষজনক না হইলে তাহাকে উক্ত ব্যক্তির নিয়োজিত আইনজীবীর মাধ্যমে উপস্থিত হইবার এবং বক্তব্য প্রদানের সুযোগ প্রদান করিতে হইবে, এবং কার্যধারার কোন পর্যায়ে যদি আদালত মনে করে যে, ন্যায় বিচারের স্বার্থে অবমাননাকারীর ব্যক্তিগত উপস্থিতি আবশ্যক, তাহা হইলে আদালত তাহাকে ব্যক্তিগতভাবে আদালতে হাজির হইয়া বক্তব্য প্রদানের জন্য নির্দেশ প্রদান করিতে পারিবে।

(২) উপ-ধারা (১) এর বিধান সত্ত্বেও, যদি কোন ব্যক্তি আইনজীবী নিয়োগ না করিয়া স্বেচ্ছায় ব্যক্তিগতভাবে আদালতে উপস্থিত হইয়া বক্তব্য প্রদান করিতে বা মামলা পরিচালনা করিতে ইচ্ছা প্রকাশ করেন, তাহা হইলে আদালত তাহাকে অনুরূপ সুযোগ প্রদান করিবে।

(৩) আদালত অভিযুক্ত ব্যক্তির উপস্থিতির অভিযোগের সমর্থনে সাক্ষ্য গ্রহণ করিবে এবং তাহাকে শুনানি ও সাক্ষ্যদানের সুযোগ প্রদান করিয়া আদালত অবমাননার অভিযোগের বিষয় নির্ধারণ করিবে এবং অভিযুক্ত ব্যক্তিকে যথাযথ শাস্তির আদেশ অথবা অভিযোগ হইতে অব্যাহতির আদেশ প্রদান করিবে।

(৪) প্রজাতন্ত্রের কর্মে নিয়োজিত কোন ব্যক্তির বিরুদ্ধে আদালত অবমাননার অভিযোগ উত্থাপিত বা কার্যধারা রুজু করা হইলে, উক্ত ব্যক্তি তাহার নিয়োজিত আইনজীবী দ্বারা মামলা পরিচালনা করিতে পারিবেন।

(৫) প্রজাতন্ত্রের কর্মে নিয়োজিত আদালত অবমাননার অভিযোগে অভিযুক্ত কোন ব্যক্তি আইনজীবী নিয়োগসহ আদালত অবমাননা মামলা পরিচালনার জন্য বিধি দ্বারা নির্ধারিত পরিমাণ অর্থ সরকারী খাত হইতে অগ্রীম গ্রহণ করিতে পারিবেন এবং উক্ত ব্যক্তি আদালত অবমাননার অভিযোগ হইতে অব্যাহতি লাভ করিলে অগ্রীম হিসেবে গৃহীত অর্থ সরকারকে ফেরত প্রদান করিতে হইবে না:

তবে শর্ত থাকে যে, উক্ত ব্যক্তি আদালত অবমাননার দায়ে দোষী সাব্যস্ত ও দণ্ডপ্রাপ্ত হইলে তাহাকে অগ্রীম হিসেবে গৃহীত সমুদয় অর্থ ফেরত প্রদান করিতে হইবে এবং উক্ত ব্যক্তি অগ্রীম হিসেবে গৃহীত সমুদয় অর্থ ফেরত প্রদান না করিলে উহা তাহার প্রাপ্য গ্রাচ্যুইটি হইতে এককালীন আদায় করা হইবে এবং গ্রাচ্যুইটি হইতে আদায়ের পরও গৃহীত অগ্রীম বকেয়া থাকিলে উহা তাহার পেনশন বা পারিবারিক পেনশন হইতে সমন্বয়যোগ্য হইবে।

(৬) প্রজাতন্ত্রের কর্মে নিয়োজিত কোন ব্যক্তি প্রজাতন্ত্রের কর্মের সহিত সংশ্লিষ্ট কোন কার্য বা দায়িত্ব পালন কালে আদালত অবমাননার মামলায় জড়িত থাকা অবস্থায় প্রজাতন্ত্রের কর্ম হইতে অপসারিত, অবসরপ্রাপ্ত বা অন্য কোনভাবে প্রজাতন্ত্রের কর্মে তাহার স্থায়ীভাবে কর্মাবসান হইলে, আদালত উক্ত ব্যক্তিকে আদালত অবমাননার দায় হইতে অব্যাহতি প্রদান করিতে পারিবে।

(৭) উপ-ধারা (৬) এ বর্ণিত পদে পরবর্তীতে স্থলাভিষিক্ত কোন ব্যক্তিকে (successor-in-office) পুনরায় কারণ দর্শানোর সুযোগ প্রদান না করিয়া তাহার বিরুদ্ধে আদালত অবমাননার অভিযোগ উত্থাপন বা কার্যধারা রুজু করা যাইবে না অথবা পূর্বসুরীর (predecessor-in-office) বিরুদ্ধে চলমান আদালত অবমাননার কার্যধারা বা দায় সরাসরি আরোপ করা যাইবে না।

১২। হাইকোর্ট বিভাগের এখতিয়ার।—(১) উপ-ধারা (২) এর বিধান সাপেক্ষে, কোন অধস্তন আদালতের অবমাননা সংক্রান্ত কোন অভিযোগের বিচার ও শাস্তি প্রদানের ক্ষমতা হাইকোর্ট বিভাগের থাকিবে।

(২) Penal Code (XLV of 1860) এর অধীন শাস্তিযোগ্য আদালত অবমাননা কোন অধস্তন আদালত কর্তৃক বিচার্য হইলে হাই-কোর্ট বিভাগ উক্ত আদালত অবমাননা বিচারার্থ আমলে গ্রহণ করিবে না।

১৩। আদালত অবমাননার শাস্তি, ইত্যাদি।—(১) এই আইনের অধীন আদালত অবমাননার জন্য কোন ব্যক্তি দোষী সাব্যস্ত হইলে তিনি অনূর্ধ্ব ছয় মাসের বিনাশ্রম কারাদণ্ড বা অনধিক দুই হাজার টাকা অর্থদণ্ড বা উভয় দণ্ডে দণ্ডিত হইবেন:

তবে শর্ত থাকে যে, আদালত অবমাননা সম্পর্কিত চলমান কার্যধারা যে কোন পর্যায়ে অভিযুক্ত আদালত অবমাননাকারী আদালতের নিকট নিঃশর্ত ক্ষমা প্রার্থনা করিলে এবং আদালত যদি এইমর্মে সন্তুষ্ট হয় যে, উক্ত অভিযুক্ত আদালত অবমাননাকারী নিঃশর্তভাবে ক্ষমা প্রার্থনা করিয়াছেন, তাহা হইলে আদালত উক্ত ব্যক্তিকে সংশ্লিষ্ট অভিযোগ হইতে অব্যাহতি প্রদান করিতে পারিবে।

(২) আদালত অবমাননার অভিযোগে দোষী সাব্যস্ত হইয়া শাস্তিপ্রাপ্ত হইবার পর কোন ব্যক্তি তৎকর্তৃক দায়েরকৃত আপীলে নিঃশর্ত ক্ষমা প্রার্থনা করিলে, আদালত যদি এই মর্মে সন্তুষ্ট হয় যে, তিনি অনুতপ্ত হইয়া আন্তরিকভাবে উক্তরূপ ক্ষমা প্রার্থনা করিয়াছেন, তাহা হইলে আদালত তাহাকে ক্ষমা করিয়া তাহার উপর আরোপিত দণ্ড মওকুফ বা হ্রাস করিতে পারিবে।

(৩) আপাতত বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন,

(ক) কোন আদালত উহার নিজের বা উহার অধস্তন কোন আদালতের অবমাননার জন্য উপ-ধারা (১) এ উল্লিখিত শাস্তির অতিরিক্ত শাস্তি প্রদান করিতে পারিবে না।

(খ) যেক্ষেত্রে কোন ব্যক্তি দেওয়ানী অবমাননার দায়ে দোষী সাব্যস্ত হয়, সেইক্ষেত্রে আদালত যদি মনে করে যে, কেবল অর্থদণ্ড প্রদানের মাধ্যমে ন্যায় বিচার প্রতিষ্ঠা হইবে না বরং উহার সহিত কারাদণ্ড প্রদান করা আবশ্যক, তাহা হইলে আদালত বিনাশ্রম কারাদণ্ড প্রদানের পরিবর্তে তাহাকে অনূর্ধ্ব ছয় মাস দেওয়ানী কারাগারে আটকের নির্দেশ প্রদান করিবে।

১৪। কোম্পানী কর্তৃক অপরাধ সংঘটন।—(১) কোন কোম্পানী কর্তৃক যদি আদালত অবমাননার অপরাধ সংঘটিত হয়, তাহা হইলে উক্ত কোম্পানীর সহিত সংশ্লিষ্ট যে ব্যক্তি বা ব্যক্তিগণ দ্বারা উক্ত অপরাধটি সংঘটিত হইয়াছে কেবল তিনি বা তাহারাই উক্ত অপরাধ করিয়াছেন বলিয়া গণ্য হইবেন।

ব্যাখ্যা ঃ এই ধারায়—

(ক) "কোম্পানী" বলিতে কোন সংবিধিবদ্ধ সরকারি কর্তৃপক্ষ, নিবন্ধিত কোম্পানী, অংশীদারী কারবার, বাণিজ্য প্রতিষ্ঠান, সংঘ, সমিতি বা সংগঠনকে বুঝাইবে;

(খ) বাণিজ্য প্রতিষ্ঠানের ক্ষেত্রে "পরিচালক" বলিতে কোন অংশীদার বা পরিচালনা বোর্ডের সদস্যকেও বুঝাইবে।

১৫। সুপ্রীম কোর্টে সংঘটিত আদালত অবমাননার ক্ষেত্রে কার্যপদ্ধতি।—(১) যেক্ষেত্রে আপীল বিভাগ বা হাইকোর্ট বিভাগের নিকট প্রতীয়মান হয় বা উহার নিকট অভিযোগ করা হয় যে, কোন ব্যক্তি আদালত কক্ষে কোন মামলার শুনানিকালে আদালত অবমাননা করিয়াছে, সেইক্ষেত্রে উক্ত আদালত সংশ্লিষ্ট ব্যক্তিকে আটক করিতে পারিবে, এবং আদালতের উক্ত দিনের বৈঠক শেষ হইবার পূর্বে বা যত শীঘ্র সম্ভব তৎপরবর্তীতে—

(ক) আদালত অবমাননার যে অভিযোগে তাহাকে অভিযুক্ত করা হইয়াছে তাহা লিখিতভাবে তাহাকে জানাইবে;

(খ) তাহাকে আত্মপক্ষ সমর্থনের সুযোগ প্রদান করিতে হইবে;

(গ) উক্ত ক্ষেত্রে, যথাসম্ভব, ধারা ১১ এর উপ-ধারা (৩) এর বিধান অনুসরণ করিতে হইবে।

(২) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, উক্ত উপ-ধারার অধীন আদালত অবমাননার অভিযোগে অভিযুক্ত ব্যক্তি যদি, যে বিচারক বা বিচারকগণের সম্মুখে বা শুনানিকালে উক্ত আদালত অবমাননার

অভিযোগে অভিযুক্ত হইয়াছেন তাঁহারা ব্যতীত, অন্য কোন বিচারক কর্তৃক বিচার কার্য পরিচালনার জন্য মৌখিক বা লিখিতভাবে আবেদন করেন, তাহা হইলে উক্ত আদালত ঘটনার প্রকৃত বিবরণসহ সামগ্রিক বিষয়টি বিবেচনা এবং যথোপযুক্ত আদেশ প্রদানের জন্য প্রধান বিচারপতির নিকট লিখিত বিবৃতি আকারে উপস্থাপন করিবে।

(৩) অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, উপ-ধারা (১) এর অধীন আদালত অবমাননার জন্য অভিযুক্ত ব্যক্তির বিচার চলাকালে, উপ-ধারা (২) এর অধীন প্রদত্ত নির্দেশনা অনুসারে, যে বিচারক বা বিচারকগণের সম্মুখে অপরাধ সংঘটিত হইয়াছে উক্ত বিচারক বা বিচারকগণ ব্যতীত, অন্য কোন বিচারকের আদালতে শুনানী অনুষ্ঠানের ক্ষেত্রে উপ-ধারা (২) এর অধীন প্রধান বিচারপতির নিকট প্রদত্ত বিবৃত্তি সাক্ষ্য হিসাবে গণ্য হইবে এবং উক্ত বিচারকের ব্যক্তিগতভাবে আদালতে উপস্থিত হইবার প্রয়োজন হইবে না।

১৬। বিচারক, ম্যাজিস্ট্রেট বা বিচারকার্য সম্পাদনকারী অন্য কোন ব্যক্তি কর্তৃক আদালত অবমাননা।—(১) আপাতত বলবৎ অন্য কোন আইনের বিধানাবলী সাপেক্ষে, কোন বিচারক, ম্যাজিস্ট্রেট বা বিচারকার্য সম্পাদনকারী অন্য কোন ব্যক্তি তাহার নিজ আদালত বা অন্য কোন আদালত অবমাননার জন্য সেইরূপে দায়ী হইবেন, যেইরূপে অন্য কোন ব্যক্তি আদালত অবমাননার জন্য দায়ী হইতে পারেন, এবং উক্তক্ষেত্রে এই আইনের বিধানাবলী যতদূর সম্ভব একইরূপে প্রযোজ্য হইবে।

(২) এই ধারার কোন কিছুই কোন বিচারক, ম্যাজিস্ট্রেট বা বিচারকার্য সম্পাদনকারী অন্য কোন ব্যক্তি কর্তৃক তাহার নিকট বিচারাধীন অধস্তন আদালতের কোন আদেশ বা রায়ের বিরুদ্ধে দায়েরকৃত আপীল বা রিভিশন নিষ্পত্তিকালে উক্ত অধস্তন আদালত সম্পর্কে কৃত কোন পর্যবেক্ষণ বা মন্তব্যের ক্ষেত্রে প্রযোজ্য হইবে না।

১৭। আপীল।—(১) এই আইনের অধীন আদালত অবমাননার কার্যধারায় হাইকোর্ট বিভাগ কর্তৃক প্রদত্ত কোন আদেশের বিরুদ্ধে আপীল বিভাগে আপীল করা যাইবে।

(২) আপীল বিভাগ উক্ত আপীল নিষ্পন্ন না হওয়া পর্যন্ত—

(ক) তর্কিত আদেশের কার্যকারিতা স্থগিত করিতে পারিবে; এবং

(খ) আপীলকারী আটক থাকিলে তাহাকে জামিনে বা তাহার নিজের মুচলেকায় মুক্ত করিবার আদেশ প্রদান করিতে পারিবে।

(৩) যেইক্ষেত্রে কোন ব্যক্তি হাইকোর্ট বিভাগ কর্তৃক প্রদত্ত কোন আদেশের বিরুদ্ধে আপীল করিতে ইচ্ছুক মর্মে আদালতের সন্তুষ্টি বিধান করিতে পারেন, সেইক্ষেত্রে হাইকোর্ট বিভাগ উপযুক্ত মনে করিলে তৎকর্তৃক প্রদত্ত দণ্ড বা আদেশ স্থগিত করিতে এবং দণ্ডিত ব্যক্তিকে জামিনে মুক্তি প্রদান করিতে পারিবে।

১৮। আপীল দায়েরের সময়সীমা।—এই আইনের অধীন হাইকোর্ট বিভাগ কর্তৃক প্রদত্ত কোন আদেশের বিরুদ্ধে সংক্ষুব্ধ ব্যক্তি আদেশ প্রদানের তারিখ হইতে ষাট দিনের মধ্যে আপীল দায়ের করিতে পারিবে।

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

২০। রহিতকরণ ও হেফাজত।—(১) Contempt of Courts Act, 1926 (Act No. XII of 1926) এতদ্দ্বারা রহিত করা হইল।

(২) উক্তরূপ রহিত সত্ত্বেও, উহার অধীন দায়েরকৃত কোন অভিযোগ বা মামলা বা কোন কার্যধারা অনিষ্পন্ন থাকিলে উক্ত অনিষ্পন্ন অংশ, যতদূর সম্ভব, এই আইনের সংশ্লিষ্ট বিধানাবলী অনুসারে, এইরূপে নিষ্পন্ন করা হইবে যেন উক্ত অভিযোগ, মামলা বা কার্যধারা এই আইনের অধীনেই দায়ের করা হইয়াছিল।

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ওয়াক্‌ফ সম্পত্তির হস্তান্তর ও উন্নয়ন নিয়ন্ত্রণকল্পে বিশেষ বিধান করিবার লক্ষ্যে প্রণীত আইন

যেহেতু ওয়াক্‌ফ সম্পত্তির হস্তান্তর ও উন্নয়ন নিয়ন্ত্রণকল্পে বিশেষ বিধান করা সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্বারা নিম্নরূপ আইন করা হইল ঃ—

১। সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।—(১) এই আইন ওয়াক্‌ফ (সম্পত্তি হস্তান্তর ও উন্নয়ন) বিশেষ বিধান আইন, ২০১৩ নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

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

(১) "অধ্যাদেশ" অর্থ ওয়াক্‌ফ অধ্যাদেশ,১৯৬২;

(২) "অধ্যাদেশের ধারা" অর্থ ওয়াক্‌ফ অধ্যাদেশ, ১৯৬২ এর ধারা;

(৩) "ডেভেলপার"অর্থ রিয়েল এস্টেট উন্নয়ন ও ব্যবস্থাপনা আইন, ২০১০ এর ধারা ২(১৫) এ সংজ্ঞায়িত ডেভেলপার;

(৪) "দণ্ডবিধি" অর্থ Penal Code, 1860;

(৫) "ধারা" অর্থ এই আইনের ধারা;

(৬) "তফসিল" অর্থ এই আইনের তফসিল;

(৭) "ফৌজদারী কার্যবিধি" অর্থ Code of Criminal Procedure, 1898;

(৮) "বিশেষ কমিটি" বা "কমিটি" অর্থ ধারা ৮ এর অধীন গঠিত ওয়াক্‌ফ সম্পত্তি হস্তান্তর বিশেষ কমিটি বা কমিটি;

(৯) "মন্ত্রণালয়" অর্থ ধর্ম বিষয়ক মন্ত্রনালয়;

(১০) "রিয়েল এস্টেট" অর্থ রিয়েল এস্টেট উন্নয়ন ও ব্যবস্থাপনা আইন, ২০১০ এর ধারা ২(১২) এ সংজ্ঞায়িত রিয়েল এস্টেট; এবং

(১১) "সম্পত্তি" অর্থ সম্পত্তি হস্তান্তর আইন, ১৮৮২ এর অধীন সংজ্ঞায়িত স্থাবর সম্পত্তি।

৩। **আইনের প্রাধান্য**।—আপাততঃ বলবৎ অন্য কোন আইন, বিধি, প্রবিধান, ওয়াক্‌ফ দলিল বা চুক্তিপত্রে ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইনের বিধানাবলী প্রাধান্য পাইবে।

৪। **হস্তান্তর পদ্ধতি**।—(১) এই আইনের অধীন নিম্নরূপ পদ্ধতিতে সম্পত্তি হস্তান্তর করা যাইবে, যথাঃ—

(ক) বিক্রয়ের মাধ্যমে;

(খ) দানের মাধ্যমে;

(গ) বন্ধকের মাধ্যমে;

(ঘ) বিনিময়ের মাধ্যমে;

(ঙ) ইজারা প্রদানের মাধ্যমে;এবং

(চ) অংশীদারিত্বের ভিত্তিতে উন্নয়নের জন্য হস্তান্তরের মাধ্যমে।

(২) উপ-ধারা (১) এর অধীন ওয়াক্‌ফ সম্পত্তি হস্তান্তরের ক্ষেত্রে সম্পত্তি হস্তান্তর আইন, ১৮৮২ এর বিধানাবলী প্রযোজ্য হইবে।

৫। **সম্পত্তি হস্তান্তরে সাধারণ সীমাবদ্ধতা**।—(১) ওয়াক্‌ফ সম্পত্তি কেবল সংশ্লিষ্ট ওয়াক্‌ফ কিংবা উক্ত ওয়াক্‌ফের স্বত্বভোগীদের (beneficiary) প্রয়োজনে, কল্যাণে ও স্বার্থে হস্তান্তর করা যাইবে; এবং অনুরূপ হস্তান্তর ওয়াক্‌ফের উদ্দেশ্যের সহিত সংগতিপূর্ণ হইতে হইবে।

(২) অধ্যাদেশ এর ধারা ২(৯) মতে ওয়াক্‌ফে আগন্তুক **(stranger)** এমন কোন ব্যক্তির আবেদনের প্রেক্ষিতে এবং তাহার স্বার্থে বা প্রয়োজনে ওয়াক্‌ফ সম্পত্তি হস্তান্তর করা যাইবে না।

(৩) ওয়াক্‌ফ কিংবা উহার স্বত্বভোগীদের (beneficiary) প্রয়োজন, কল্যাণ ও স্বার্থে অনিবার্যভাবে আবশ্যক বিবেচিত না হইলে, কোন ওয়াক্‌ফ সম্পত্তি বিক্রয় বা চিরস্থায়ী ইজারামূলে হস্তান্তর করা যাইবে না।

(৪) এই আইনের অধীন হস্তান্তরের জন্য বিবেচ্য কোন ওয়াক্‌ফ সম্পত্তি, যদি ওয়াক্‌ফি তাহার ওয়ারিশগণ, পরিবারের সদস্যগণ বা নির্ধারিত ব্যক্তিগণের উপকারার্থে করিয়া থাকেন, তাহা হইলে সংশ্লিষ্ট ব্যক্তিগণের সংখ্যাগরিষ্ঠের লিখিত সম্মতি ব্যতিরেকে উক্ত সম্পত্তি হস্তান্তর করা যাইবে না।

৬। **হস্তান্তরলব্ধ অর্থ ব্যবহারে সীমাবদ্ধতা**।—ওয়াক্‌ফ সম্পত্তি সংশ্লিষ্ট ওয়াক্‌ফ এর যেরূপ প্রয়োজনে, কল্যাণে ও স্বার্থে হস্তান্তর করা হইবে, হস্তান্তরলব্ধ অর্থ কেবল অনুরূপ প্রয়োজনে, কল্যাণে ও স্বার্থে ব্যবহার করিতে হইবে।

৭। **মোতাওয়াল্লী বা ওয়াক্‌ফ প্রশাসক কর্তৃক হস্তান্তর**।—(১) অধ্যাদেশের ধারা ৩৪ এর অধীন ওয়াকফ প্রশাসক নিজ নিয়ন্ত্রণে গ্রহণ করিয়াছেন এইরূপ ওয়াক্‌ফ সম্পত্তি ব্যতিরেকে অন্য সকল ওয়াক্‌ফ সম্পত্তি কেবল সংশ্লিষ্ট মোতাওয়াল্লীর লিখিত আবেদনের ভিত্তিতে, ওয়াকফের প্রয়োজন, কল্যাণ ও স্বার্থে এবং ওয়াক্‌ফের উদ্দেশ্যের সহিত সংগতিপূর্ণ হওয়া সাপেক্ষে, ধারা ৪ এ বর্ণিত পদ্ধতিতে হস্তান্তর করা যাইবে।

(২) অধ্যাদেশের ধারা ৩৪ এর অধীন ওয়াক্‌ফ প্রশাসক নিজ নিয়ন্ত্রণে গ্রহণ করিয়াছেন এইরূপ ওয়াক্‌ফ সম্পত্তি, ওয়াক্‌ফ প্রশাসকের লিখিত আবেদনের ভিত্তিতে, ওয়াক্‌ফের প্রয়োজন, কল্যাণ ও স্বার্থে এবং ওয়াক্‌ফের উদ্দেশ্যের সহিত সংগতিপূর্ণ হওয়া সাপেক্ষে, ধারা ৪ এ বর্ণিত পদ্ধতিতে হস্তান্তর করা যাইবে।

(৩) উপ-ধারা (১) ও (২) এ যাহা কিছুই থাকুক না কেন, মোতাওয়াল্লী বা ওয়াক্‌ফ প্রশাসক, বিশেষ কমিটির সুপারিশ এবং সরকারের অনুমোদন ব্যতিরেকে কোন ওয়াক্‌ফ সম্পত্তি বিক্রয়, দান বিনিময়, বন্ধক বা ৫(পাঁচ) বছরের অধিক মেয়াদের জন্য ইজারা এবং অংশিদারিত্বের ভিত্তিতে উন্নয়নের জন্য হস্তান্তর করিতে পারিবেন না, উক্তরূপ সুপারিশ ও অনুমোদন ব্যতিরেকে হস্তান্তর করা হইলে অনুরূপ হস্তান্তর অবৈধ ও অকার্যকর হইবে।

(৪) এই ধারার অধীন ওয়াক্‌ফ সম্পত্তি হস্তান্তরের লক্ষ্যে বিশেষ কমিটির সুপারিশ যুক্তিসংগত ও প্রয়োজনীয় বিবেচনা করিলেই কেবল সরকার অনুমোদন প্রদান করিবে।

(৫) এই ধারার অধীন ৫ (পাঁচ) বছরের কম মেয়াদের জন্য

ইজারামূলে হস্তান্তরিত সম্পত্তিতে কোনরূপ স্থায়ী কাঠামো নির্মাণ করা যাইবে না।

৮। **হস্তান্তরের উদ্দেশ্যে বিশেষ কমিটি**।—(১) এই আইনের অধীন ওয়াক্‌ফ সম্পত্তি হস্তান্তরের বিষয়ে সুপারিশ প্রদানের লক্ষ্যে নিম্নবর্ণিত সদস্য সমন্বয়ে বিশেষ কমিটি গঠিত হইবে, যথাঃ—

(ক) ওয়াক্‌ফ প্রশাসক, যিনি পদাধিকারবলে উহার সভাপতিও হইবেন;

(খ) সরকারি মাদ্রাসা-ই-আলীয়া, ঢাকা এর অধ্যক্ষ বা তাহার মনোনীত উক্ত মাদ্রাসার একজন অধ্যাপক;

(গ) গণপূর্ত অধিদপ্তরের প্রধান প্রকৌশলী কর্তৃক মনোনীত উক্ত অধিদপ্তরের একজন তত্ত্বাবধায়ক প্রকৌশলী বা নির্বাহী প্রকৌশলী;

(ঘ) মহাপরিদর্শক নিবন্ধন কিংবা তৎকর্তৃক মনোনীত একজন প্রতিনিধি;

(ঙ) ধর্ম বিষয়ক মন্ত্রণালয় কর্তৃক মনোনীত অনূর্ধ্ব উপ-সচিব পদমর্যাদার দুইজন কর্মকর্তা;

(চ) আইন ও বিচার বিভাগ কর্তৃক মনোনীত উপ-সচিব পদমর্যাদার একজন কর্মকর্তা;

(ছ) সমাজ কল্যাণ মন্ত্রণালয় কর্তৃক মনোনীত উপ-সচিব পদমর্যাদার একজন কর্মকর্তা;

(জ) ভূমি মন্ত্রণালয় কর্তৃক মনোনীত উপ-সচিব পদমর্যাদার একজন কর্মকর্তা;

(ঝ) ইসলামী ফাউন্ডেশনের মহাপরিচালক কর্তৃক মনোনীত উক্ত ফাউন্ডেশনের একজন মুফতি;

(ঞ) উপ-ধারা (২) অনুসারে নির্বাচিত ৩ (তিন) জন মোতাওয়াল্লী;

(ট) বাংলাদেশ মোতাওয়াল্লী সমিতির (যদি জাতীয়ভাবে স্বীকৃত অনুরূপ কোন সমিতি থাকে) সভাপতি বা তাহার মনোনীত উক্ত সমিতির একজন প্রতিনিধি, অথবা মোতাওয়াল্লী সমিতি না থাকিলে ওয়াক্‌ফ প্রশাসক কর্তৃক মনোনীত কোনো ওয়াক্‌ফ এর একজন মোতাওয়াল্লী;

(ঠ) ওয়াক্‌ফ প্রশাসক কর্তৃক মনোনীত তাহার কার্যালয়ের একজন কর্মকর্তা, যিনি কমিটির সদস্য-সচিব হিসাবেও দায়িত্ব পালন করিবেন।

(২) ওয়াক্‌ফ প্রশাসনকে জাতীয়ভাবে পর পর সর্বশেষ তিন বছর গড়ে সর্বোচ্চ চাঁদা প্রদানকারী ২০(বিশ) টি ওয়াক্‌ফের মোতাওয়াল্লীগণ যৌথভাবে তাঁহাদের পছন্দনীয় ৩(তিন) জন মোতাওয়াল্লীকে বিশেষ কমিটির সদস্য হিসাবে নির্বাচন করিবেন।

(৩) উপ-ধারা (১) এর অধীন গঠিত বিশেষ কমিটির মেয়াদ হইবে গঠিত হইবার তারিখ হইতে ৩(তিন) বছর, তবে নতুন কমিটি পুনর্গঠিত না হওয়া পর্যন্ত বিদ্যমান বিশেষ কমিটি দায়িত্ব পালন করিয়া যাইবে।

(৪) বিশেষ কমিটির কোন সদস্য, উপযুক্ত কারণ ব্যতিরেকে, কমিটির পর পর তিনটি সভায় অনুপস্থিত থাকিলে, তাহার সদস্য পদ শূন্য হইবে।

(৫) বিশেষ কমিটির মেয়াদকালে কমিটির কোনো সদস্য পদ সাময়িক বা স্থায়ীভাবে শূন্য হইলে, উক্ত শূন্য পদ সাময়িক বা, ক্ষেত্রমতে, অবশিষ্ট মেয়াদের জন্য স্থায়ীভাবে পূরণ করা যাইবে।

৯। **বিশেষ কমিটির কার্যাবলী ও ক্ষমতা**।—(১) কোনো ওয়াক্‌ফ সম্পত্তির বিক্রয়, দান, বন্ধক বিনিময়, ৫(পাঁচ) বছরের অধিক মেয়াদের জন্য ইজারা প্রদান এবং অংশীদারিত্বের ভিত্তিতে উন্নয়নের জন্য হস্তান্তর করিবার ক্ষেত্রে বিশেষ কমিটি এই আইন ও তদ্‌ধীন প্রণীত বিধি-বিধানের আলোকে সুপারিশ করিবে।

(২) উপ-ধারা (১) এর অধীন প্রদত্ত যে কোন সুপারিশ মন্ত্রণালয় কর্তৃক অনুমোদিত হইতে হইবে।

(৩) বিশেষ কমিটির কোন সদস্য, ওয়াক্‌ফ প্রশাসক ব্যতীত, নিজেই প্রত্যক্ষ বা পরোক্ষভাবে সম্পত্তি হস্তান্তরের জন্য আবেদনকারী হইয়া থাকিলে, তিনি বিশেষ কমিটির সংশ্লিষ্ট সভায় অংশগ্রহণ করিবেন না।

১০। **বিশেষ কমিটির সভা**।—(১) অন্যূন ৯ (নয়) জন সদস্যের উপস্থিতিতে বিশেষ কমিটির সভার কোরাম হইবে।

(২) কমিটির সভায় উপস্থিত সদস্যদের সংখ্যাগরিষ্ঠের মতামতের ভিত্তিতে সিদ্ধান্ত গৃহীত হইবে;এবং মতামতের সমতার ক্ষেত্রে সভাপতির দ্বিতীয় বা নির্ণায়ক ভোট প্রদানের ক্ষমতা থাকিবে।

১১। **দানের মাধ্যমে হস্তান্তর**।—(১) ধারা ৫ এ ভিন্নতর যাহা কিছুই থাকুক না কেন, কোন ওয়াক্‌ফ সম্পত্তির অন্য কোন ওয়াক্‌ফ এস্টেট বা, মুনাফার ভিত্তিতে পরিচালিত নয়, এমন কোন ধর্মীয়, শিক্ষা বা জনকল্যাণমূলক প্রতিষ্ঠানকে দান করা যাইবে।

(২) এই ধারার অধীন দান এর প্রস্তাব কমিটি কর্তৃক সুপারিশকৃত ও মন্ত্রণালয় কর্তৃক অনুমোদিত হইতে হইবে।

(৩) কোন বিশেষ উদ্দেশ্যে এই ধারার অধীন কোন সম্পত্তি দান এর মাধ্যমে প্রদত্ত ও গৃহীত হইয়া থাকিলে উক্ত উদ্দেশ্য বহির্ভূত অন্য কোন উদ্দেশ্যে উক্ত সম্পত্তি ব্যবহার করা যাইবে না।

(৪) উপ-ধারা (৩) এর বিধান লঙ্ঘন করিয়া কোন সম্পত্তি নির্ধারিত উদ্দেশ্য বহির্ভূত অন্য কোন উদ্দেশ্যে ব্যবহার করা হইলে, বা ব্যবহারের উদ্যোগ গ্রহণ করা হইলে, ওয়াক্‌ফ প্রশাসক অধ্যাদেশ এর ধারা ৩৪ এর অধীন উক্ত সম্পত্তি নিজ নিয়ন্ত্রণে গ্রহণ করিতে পারিবেন।

১২। অংশীদারিত্বের ভিত্তিতে উন্নয়নের জন্য হস্তান্তর।—(১) কোন ওয়াক্‌ফ সম্পত্তি অংশীদারিত্বের ভিত্তেতে উন্নয়নের জন্য হস্তান্তর করা যাইবে।

(২) এই আইনের অধীন ওয়াক্‌ফ সম্পত্তির হস্তান্তর বিশেষ কমিটির সুপারিশ ও সরকারের অনুমোদনের ভিত্তিতে করিতে হইবে।

(৩) এই আইনের অধীন ওয়াক্‌ফ সম্পত্তির উন্নয়নের ক্ষেত্রে রিয়েল এস্টেট উন্নয়ন ও ব্যবস্থাপনা আইন, ২০১০ এর ধারা ১০ এর বিধান অনুযায়ী ভূমি-মালিক ও ডেভেলপার এর মধ্যে চুক্তি সম্পাদন করিতে হইবে; এবং এতদুদ্দেশ্যে ওয়াক্‌ফ সম্পত্তির ব্যবস্থাপনার দায়িত্বে নিয়োজিত মোতাওয়াল্লী বা, ক্ষেত্রমত, ওয়াক্‌ফ প্রশাসক ভূমি-মালিক হিসাবে গণ্য হইবেন।

(৪) একজন ভূমি-মালিক নিজ ভূমির ক্ষেত্রে নিজ স্বার্থ রক্ষা করিয়া যেরূপ শর্তে ডেভেলপারের সহিত চুক্তি করেন, এই ধারার অধীন ওয়াক্‌ফ সম্পত্তি অংশীদারিত্বের ভিত্তিতে উন্নয়নের জন্য হস্তান্তর করিবার ক্ষেত্রে মোতাওয়াল্লী বা, ক্ষেত্রমত, ওয়াক্‌ফ প্রশাসক সেরূপ শর্তে ওয়াক্‌ফ সম্পত্তি বা উহার স্বত্বভোগীদের (beneficiary) স্বার্থ রক্ষা করিয়া ডেভেলপারের সহিত চুক্তি সম্পাদন করিবেন।

(৫) এই ধারার অধীন ওয়াক্‌ফ সম্পত্তি হস্তান্তর করিবার ক্ষেত্রে উন্নয়ন কার্যক্রমের সকল পর্যায়ে ওয়াক্‌ফ প্রশাসকের তত্ত্বাবধান ও নিয়ন্ত্রণ থাকিবে এবং চুক্তিতে তাহা উল্লিখিত থাকিবে; এবং সংশ্লিষ্ট চুক্তির শর্ত অনুযায়ী সম্পত্তির উন্নয়ন হইতেছে কিনা এবং ওয়াক্‌ফ সম্পত্তি বা উহার স্বত্বভোগীদের (beneficiary) প্রয়োজন, কল্যাণ ও স্বার্থ যথাযথভাবে সংরক্ষিত হইতেছে কিনা ওয়াক্‌ফ প্রশাসক তাহা নিশ্চিত করিবেন।

(৬) এই ধারার অধীন রিয়েল এস্টেট ডেভেলপারের মাধ্যমে ওয়াক্‌ফ সম্পত্তির উন্নয়নের ক্ষেত্রে রিয়েল এস্টেট উন্নয়ন ও ব্যবস্থাপনা আইন, ২০১০ এর অন্যান্য বিধানাবলী, যতদূর সম্ভব, প্রযোজ্য হইবে।

(৭) এই ধারার অধীন অংশীদারিত্বের ভিত্তিতে উন্নয়নের জন্য হস্তান্তর কেবল তফসিলে বর্ণিত কোন এলাকায় অবস্থিত ওয়াক্‌ফ সম্পত্তির ক্ষেত্রে প্রযোজ্য হইবে।

১৩। হস্তান্তরের ক্ষেত্রে দরপত্র আহ্বানের বাধ্যবাধকতা।—(১) কোন ওয়াক্‌ফ সম্পত্তির বিক্রয় বা ৫(পাঁচ) বছরের অধিক মেয়াদের জন্য ইজারা প্রদান বা অংশীদারিত্বের ভিত্তিতে উন্নয়নের জন্য হস্তান্তর করিবার ক্ষেত্রে উন্মুক্ত দরপত্র আহ্বান করিতে হইবে।

(২) কোন ওয়াক্‌ফ সম্পত্তির বিক্রয় বা ৫(পাঁচ) বছরের অধিক মেয়াদের জন্য ইজারা প্রদানের প্রস্তাব সরকার কর্তৃক অনুমোদিত হইবার পর, হস্তান্তরের জন্য নির্ধারিত উক্ত সম্পত্তির স্থানীয় মূল্য, সরকার নির্ধারিত প্রচলিত বাজার দর অনুযায়ী ১০(দশ) লক্ষ টাকার অধিক হইলে, জাতীয়ভাবে উন্মুক্ত দরপত্র আহ্বানের মাধ্যমে উক্ত বিক্রয় বা ইজারা সম্পাদন করিতে হইবে, অন্যথায় স্থানীয়ভাবে দরপত্র আহ্বান বা উন্মুক্ত নিলাম অনুষ্ঠানের মাধ্যমে হস্তান্তর সম্পাদন করা যাইবে।

(৩) উপ-ধারা (১) এর অধীন অংশীদারিত্বের ভিত্তিতে উন্নয়নের জন্য ওয়াক্‌ফ সম্পত্তি হস্তান্তরের ক্ষেত্রে রিয়েল এস্টেট উন্নয়ন ও ব্যবস্থাপনা আইন, ২০১০ এর ধারা ৫ এর অধীন নিবন্ধিত রিয়েল এস্টেট ডেভেলপারের মধ্য হইতে অন্যূন ১০(দশ) এবং অনূর্ধ্ব ১৫(পনের) টি প্রাক-উপযুক্ত (prequalified) ডেভেলপারের একটি প্যানেল নির্বাচন করিয়া নির্ধারিত সময়ের জন্য সংরক্ষণ করিতে হইবে।

(৪) এই ধারার অধীন কোন দরপত্র বা নিলামে উদ্ধৃত বা প্রস্তাবিত দর যোগসাজসী বা অস্বাভাবিকভাবে কম প্রতীয়মান হইলে ওয়াক্‌ফ প্রশাসক, বা ক্ষেত্রমত, সংশ্লিষ্ট কর্তৃপক্ষ, ওয়াক্‌ফের স্বার্থে, উক্ত নিলাম বা দরপত্র বাতিল করিতে পারিবে।

১৪। উন্নয়নের জন্য অর্থায়নের পদ্ধতি।—ওয়াক্‌ফ সম্পত্তি উন্নয়নের লক্ষ্যে নিম্নবর্ণিত পদ্ধতিতে অর্থায়ন করা যাইবে, যথাঃ—

(ক) ওয়াক্‌ফ প্রশাসনের নিজস্ব তহবিলের অর্থ বিনিয়োগ দ্বারা;

(খ) ওয়াক্‌ফের নিজস্ব তহবিলের অর্থ বিনিয়োগের মাধ্যমে;

(গ) সরকার কর্তৃক প্রদত্ত অনুদানের মাধ্যমে;

(ঘ) ব্যাংক বা আর্থিক প্রতিষ্ঠানের নিকট হইতে ঋণ গ্রহণের মাধ্যমে;

(ঙ) দোকানদার বা ভাড়াটিয়াদের নিকট হইতে জামানত বা সালামীর অর্থ অথবা অগ্রিম ভাড়ার টাকা গ্রহণের মাধ্যমে;

(চ) দোকানঘর, আবাসিক ফ্ল্যাট বা বাণিজ্যিক স্পেস এর পজেশন বিক্রয়ের মাধ্যমে;

(ছ) ডেভেলপারের অর্থ বিনিয়োগের মাধ্যমে; এবং

(জ) কোন বিদেশী রাষ্ট্র বা সংস্থার অর্থ, সরকারের পূর্বানুমোদনক্রমে, বিনিয়োগের মাধ্যমে।

১৫। স্বীয় উদ্যোগে ওয়াক্‌ফ সম্পত্তির উন্নয়ন।—কোন ওয়াক্‌ফ সম্পত্তি অংশীদারিত্বের ভিত্তিতে উন্নয়নের জন্য কোন রিয়েল এস্টেট ডেভেলপার এ সাথে কোন চুক্তি না করিয়া, উহার নিজস্ব অর্থে বা অনুমোদিত কোন উৎস হইতে সংগৃহীত পুঁজি বা গৃহীত ঋণ লগ্নি করিয়া

এবং ওয়াক্ফ সম্পত্তি মালিকানা অক্ষুণ্ন রাখিয়া উক্ত ওয়াক্ফ সম্পত্তি বা উহার অংশ উন্নয়ন করিলে এই আইনের কোন বিধান প্রযোজ্য হইবে না।

১৬। ওয়াক্ফ প্রশাসকের সার্বিক নিয়ন্ত্রণ।—(১) ওয়াক্ফ সম্পত্তির হস্তান্তর সংশ্লিষ্ট ওয়াক্ফের বা উহার স্বত্বভোগীদের (beneficiary) প্রয়োজনে, কল্যাণে ও স্বার্থে এবং সংশ্লিষ্ট ওয়াক্ফের উদ্দেশ্যের সহিত সংগতিপূর্ণ কিনা, এবং বিশেষ করিয়া কোনো ওয়াক্ফ সম্পত্তি বন্ধক রাখিয়া কোন ব্যাংক বা আর্থিক প্রতিষ্ঠান হইতে গৃহীত ঋণ সঠিকভাবে ব্যবহৃত হইতেছে কিনা ওয়াক্ফ প্রশাসক তাহা কঠোরভাবে পরিবীক্ষণ ও নিয়ন্ত্রণ করিবেন।

(২) কোন ওয়াক্ফ সম্পত্তি বন্ধক রাখিয়া ঋণ গ্রহণ করিবার ক্ষেত্রে বিশেষ কমিটি বন্ধক প্রস্তাব সুপারিশ করিবার পূর্বে কঠোরভাবে পরীক্ষা-নিরীক্ষা ও পর্যালোচনা করিয়া নিশ্চিত হইবে যে, গৃহিতব্য ঋণ সিডিউল অনুযায়ী পরিশোধ করা সম্ভব হইবে।

১৭। অপরাধ।—(১) এই আইনের অধীন দায়িত্ব পালন করিবার ক্ষেত্রে—

(ক) বিশেষ কমিটির কোন সদস্য ইচ্ছাকৃতভাবে নিজে অবৈধভাবে লাভবান হইবার বা অন্য কাহাকেও অবৈধভাবে লাভবান করাইবার উদ্দেশ্যে কোন ওয়াক্ফ সম্পত্তি বা উহার স্বত্বভোগীদের (beneficiary) স্বার্থের পরিপন্থী কার্য করিয়া থাকিলে; বা

(খ) কোন ওয়াক্ফ সম্পত্তির ব্যবস্থাপনার দায়িত্বে নিয়োজিত মোতাওয়াল্লী, রিসিভার বা সরকারি কর্মকর্তা এই আইনের অধীন বিশেষ কমিটির সুপারিশ ও সরকারের অনুমোদন গ্রহণ ব্যতিরেকে কোন ওয়াক্ফ সম্পত্তি হস্তান্তর করিলে; বা

(গ) কোন ওয়াক্ফ সম্পত্তির ব্যবস্থাপনার দায়িত্বে নিয়োজিত কোন ব্যক্তি ওয়াক্ফ সম্পত্তির হস্তান্তরলব্ধ অর্থ ওয়াক্ফ সম্পত্তি বা উহার স্বত্বভোগীদের (beneficiary) যেরূপ প্রয়োজনে, কল্যাণে ও স্বার্থে সম্পাদন করা হইয়াছে, অনুরূপ প্রয়োজনে, কল্যাণে ও স্বার্থে ব্যবহার না করিয়া ধারা ৬ এর বিধান লঙ্ঘন করিয়া অন্য কোন উদ্দেশ্যে ব্যবহার করিলে,

তিনি এই আইনের অধীন অপরাধ করিয়াছেন বলিয়া গণ্য হইবেন।

(২) কোন ব্যক্তি উপ-ধারা(১) এ বর্ণিত অপরাধ করিলে তিনি অনূর্ধ্ব ৩ (তিন) বৎসর পর্যন্ত কারাদণ্ড বা অর্থদণ্ড বা উভয় দণ্ডে দণ্ডিত হইবেন।

১৮। তদন্ত ও বিচার পদ্ধতি।—এই আইনের অধীন তদন্ত, বিচার ও আপীল ফৌজদারী কার্যবিধিতে বর্ণিত পদ্ধতি অনুযায়ী হইবে।

১৯। অপরাধের অ-আমলযোগ্যতা ও জামিনযোগ্যতা।—ফৌজদারী কার্যবিধিতে ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইনের অধীন অপরাধসমূহ অ-আমলযোগ্য (non-cognizable) এবং জামিনযোগ্য (bailable) হইবে।

২০। অপরাধ বিচারার্থ গ্রহণ ও বিচার।—(১) ওয়াক্ফ প্রশাসক কিংবা তাহার নিকট হইতে ক্ষমতাপ্রাপ্ত কোন কর্মকর্তার লিখিত অভিযোগ ব্যতিরেকে কোন আদালত এই আইনের অধীন কোন অপরাধ বিচারার্থ আমলে গ্রহণ করিবে না।

(২) সরকারের পূর্বানুমোদন ব্যতিরেকে ওয়াক্ফ প্রশাসক এর বিরুদ্ধে কোন আদালত এই আইনের অধীন কোন অপরাধ বিচারার্থ আমলে গ্রহণ করিবে না।

২১। বার্ষিক প্রতিবেদন।—(১) ওয়াক্ফ প্রশাসক, প্রতি ইংরেজি বৎসরে এই আইনের অধীন ওয়াক্ফ সম্পত্তির হস্তান্তরের একটি পরিপূর্ণ প্রতিবেদন পরবর্তী ইংরেজি বৎসরের ৩১ মার্চ তারিখের মধ্যে সরকারের নিকট প্রেরণ করিবেন।

(২) উপ-ধারা (১) এর অধীন প্রতিবেদনে,অন্যান্য বিষয়ের মধ্যে, হস্তান্তরিত সম্পত্তির বিবরণ ও পরিমাণ, হস্তান্তর মূল্য, হস্তান্তরের উদ্দেশ্য, হস্তান্তরের তারিখ, হস্তান্তরের সুপারিশ ও অনুমোদনের তারিখ, ইত্যাদি উল্লেখ থাকিবে।

২২। অস্পষ্টতা দূরীকরণ।—এই আইনের কোন বিধান কার্যকর করিবার ক্ষেত্রে কোন অস্পষ্টতা দেখা দিলে সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের বিধানাবলীর সহিত সঙ্গতিপূর্ণ হওয়া সাপেক্ষে, উক্তরূপ অস্পষ্টতা দূর করিতে পারিবে।

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

২৪। প্রবিধান প্রণয়নের ক্ষমতা।—এই আইনের উদ্দেশ্য পূরণকল্পে ওয়াক্ফ প্রশাসক, সরকারের পূর্বানুমোদনক্রমে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইন বা তদ্‌ধীন প্রণীত কোন বিধির সাথে অসামঞ্জস্যপূর্ণ না হওয়া সাপেক্ষে, প্রবিধান প্রণয়ন করিতে পারিবেন।

২৫। তফসিল সংশোধনের ক্ষমতা।—সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, তফসিল সংশোধন করিতে পারিবে।

২৬। আইনের ইংরেজি পাঠ।—(১) এই আইন কার্যকর হইবার পর সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের বাংলা পাঠের ইংরেজিতে অনূদিত একটি নির্ভরযোগ্য পাঠ (Authentic English Text) প্রকাশ করিবে।

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

তফসিল

[ধারা ১২(৭) দ্রষ্টব্য]

ঢাকা, চট্টগ্রাম, রাজশাহী, খুলনা, বরিশাল, সিলেট, রংপুর, ময়মনসিংহ, কুমিল্লা, নারায়ণগঞ্জ, কক্সবাজার, টংগী ও গাজীপুর সিটি করপোরেশন এলাকা বা, ক্ষেত্রমত, পৌর এলাকা।

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১৯৭৫ সালের ১৫ আগস্ট হইতে ১৯৭৯ সালের ৯ এপ্রিল তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকর করিবার লক্ষ্যে প্রণীত আইন।

যেহেতু সংবিধান (পঞ্চদশ সংশোধন) আইন,২০১১ (২০১১ সনের ১৪ নং আইন) দ্বারা ১৯৭৫ সালের ১৫ আগস্ট হইতে ১৯৭৯ সালের ৯ এপ্রিল তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত অধ্যাদেশসমূহ অনুমোদন ও সমর্থন (ratification and confirmation) সংক্রান্ত গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের চতুর্থ তফসিলের ৩ক ও ১৮ অনুচ্ছেদ বিলুপ্ত হওয়ায় উক্ত অধ্যাদেশসমূহ কার্যকারিতা হারাইয়াছে; এবং

যেহেতু সিভিল পিটিশন ফর লীভ টু আপীল নং ১০৪৪-১০৪৫/২০০৯ এ সুপ্রীমকোর্টের আপীল বিভাগ কর্তৃক প্রদত্ত রায়ে সংবিধান (পঞ্চম সংশোধন) আইন, ১৯৭৯ (১৯৭৯ সনের ১ নং আইন) বাতিল ঘোষিত হওয়ায় উক্ত সময়ের মধ্যে জারীকৃত উক্ত অধ্যাদেশসমূহ কার্যকারিতা হারাইয়াছে; এবং

যেহেতু উক্ত অধ্যাদেশসমূহ ও উহাদের অধীন প্রণীত বিধি, প্রবিধান বা আদেশবলে কৃত কাজ-কর্ম, গৃহীত ব্যবস্থা বা কার্যধারাসমূহ, অথবা প্রণীত, কৃত, গৃহীত বা সূচীত বলিয়া বিবেচিত কাজ-কর্ম, ব্যবস্থা বা কার্যধারাসমূহ আইনের শাসন, জনগণের অর্জিত অধিকার সংরক্ষণ এবং প্রজাতন্ত্রের কর্মের ধারাবাহিকতা বহাল ও অক্ষুণ্ন রাখিবার নিমিত্তে, জনস্বার্থে, উহাদের কার্যকারিতা প্রদান আবশ্যক; এবং

যেহেতু উক্ত সময়ে জারীকৃত কতিপয় সংশোধনী অধ্যাদেশসমূহ (amending Ordinances) দ্বারা প্রচলিত আইন সংশোধন করা হইয়াছে বিধায় আইনের শাসন, জনগণের অর্জিত অধিকার সংরক্ষণ এবং প্রজাতন্ত্রের কর্মের ধারাবাহিকতা বহাল ও অক্ষুণ্ন রাখিবার নিমিত্ত, জনস্বার্থে, উহাদের কার্যকর রাখা আবশ্যক; এবং

যেহেতু উক্ত অধ্যাদেশসমূহের অধীন সূচীত কার্যধারাসমূহ বা গৃহীত ব্যবস্থা বা কাজ-কর্ম বর্তমানে অনিষ্পন্ন বা চলমান থাকিলে, জনস্বার্থে, উক্ত কার্যধারাসমূহ বা গৃহীত ব্যবস্থা বা কাজ-কর্ম চলমান রাখা আবশ্যক; এবং

যেহেতু উক্ত অধ্যাদেশ কার্যকারিতা হারাইবার ফলে সৃষ্ট আইনী শূন্যতা পূরণ করিবার লক্ষ্যে আশু ব্যবস্থা গ্রহণের প্রয়োজনীয় পরিস্থিতি বিদ্যমান রহিয়াছে মর্মে রাষ্ট্রপতির নিকট সন্তোষজনকভাবে প্রতীয়মান হওয়ায় এবং সংসদ অধিবেশনে না থাকিবার কারণে বিগত ২১ জানুয়ারি ২০১৩ তারিখে রাষ্ট্রপতি গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধানের ৯৩(১) অনুচ্ছেদে প্রদত্ত ক্ষমতাবলে উক্ত অধ্যাদেশসমূহকে তফসিলভুক্ত করিয়া ২০১৩ সালের ১ নম্বর অধ্যাদেশ জারী করেন; এবং

যেহেতু সংবিধানের ৯৩(২) অনুচ্ছেদের নির্দেশনা পূরণকল্পে, নবম জাতীয় সংসদের ১৬ তম অধিবেশনের ২৭ জানুয়ারি ২০১৩ তারিখে অনুষ্ঠিত প্রথম বৈঠকে ২০১৩ সালের ১ নং অধ্যাদেশ উপস্থাপিত হইয়াছে এবং উহার পরবর্তী ৩০ দিন অতিবাহিত হইলে অধ্যাদেশটির কার্যকারিতা লোপ পাইবে; এবং

যেহেতু দীর্ঘসময় পূর্বে জারীকৃত অধ্যাদেশসমূহ যাচাই-বাছাইপূর্বক বাংলায় নূতনভাবে আইন প্রণয়ন করা সময় সাপেক্ষ; এবং

যেহেতু উপরি-বর্ণিত প্রেক্ষাপট বিবেচনায় ১৯৭৫ সালের ১৫ আগস্ট হইতে ১৯৭৯ সালের ৯ এপ্রিল তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত অধ্যাদেশসমূহের মধ্যে কতিপয় অধ্যাদেশ কার্যকর করা সমীচীন ও প্রয়োজন;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইলঃ—

১। **সংক্ষিপ্ত শিরোনাম ও প্রবর্তন**।—(১) এই আইন ১৯৭৫ সালের ১৫ আগস্ট হইতে ১৯৭৯ সালের ৯ এপ্রিল তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত কতিপয় অধ্যাদেশ কার্যকরকরণ (বিশেষ বিধান) আইন, ২০১৩ নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

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

(ক) "অধ্যাদেশ" অর্থ ১৯৭৫ সালের ১৫ আগস্ট হইতে ১৯৭৯ সালের ৯ এপ্রিল তারিখ পর্যন্ত সময়ের মধ্যে জারীকৃত ধারা ৪ এ উল্লিখিত অধ্যাদেশসমূহ; এবং

(খ) "তফসিল" অর্থ এই আইনের তফসিল।