

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. \_\_\_\_\_ OF 2014.

IN THE MATTER OF:

An application under Article 102 read with Article 44 of the Constitution of People's Republic of Bangladesh.

AND

IN THE MATTER OF:

Public Interest Litigation (PIL)

AND

IN THE MATTER OF:

1. Human Rights and Peace for Bangladesh (HRPB) represented by its secretary, Advocate Asaduzzaman Siddiqui, Hall No. 2, Supreme Court Bar Association Building, Ramna, Dhaka, Bangladesh.

2. Advocate Aklasuddin Bhuiyan, Advocate, Supreme Court of Bangladesh, Hall No. 2, Supreme Court Bar Association Bhaban, Dhaka, Bangladesh.

.....Petitioner.

-V E R S U S-

1. Bangladesh, represented by the Senior Secretary, Ministry of Land, Bangladesh Secretariat, P.S.-Shahbag, Dhaka, Bangladesh.

2. The Additional Secretary (Law), Ministry of Land, Bangladesh Secretariat, Police Station- Shahbag, Dhaka, Bangladesh.

3. The Joint Secretary (Law), Ministry of Land, Bangladesh Secretariat, Police Station- Shahbag, Dhaka, Bangladesh.

4. The Deputy Secretary, Ministry of Land, Bangladesh Secretariat, Police Station- Shahbag, Dhaka, Bangladesh

5. The Deputy Commissioner, Gazipur, Office of the Deputy Commissioner, Post and District: Gazipur.

6. The Revenue Deputy Collector (RDC), Office of the Deputy Commissioner, Post and District: Gazipur.

7. The Thana Nirbahi Officer (UNO), Kaligonj, Post and District- Gazipur.

8. The Assistant Commissioner (Land), Kaligonj, Post and District- Gazipur.

....Respondents.

AND

IN THE MATTER OF:

Illegal, Arbitrary and malafide circular dated 14.07.14 deleting the provision of protection of right/title/interest of the government in the property which is listed in the Kha List and which was issued against the provision of Section 28(K)(4) of Act 46 of 2013 published in official gazette on 10.10.13 as well as issued against the public interest.(as of annexure-D)

## GROUNDS

- I. For that with a malafide intention the Respondents issued the said Circular dated 14.07.14 canceling/repealing the earlier Circular dated 21.11.13 which was published as regards repealed Kha Listed property for an explanation for public interest keeping the provision of protecting right/title/ interest of the government in the Kha Scheduled property. The said protection over the Kha Listed Property was inserted in the said Vested Property *Protarpon* (Second Amendment) *Ain*, 2013. Hence the said Circular dated 14.07.14 is liable to be declared void and illegal and without lawful authority.
- II. For that it is a cardinal principle of legal jurisprudence that a circular/notice/order issued by an Executive Body can not cancel/repeal any provision of any legislation passed by the Parliament, which is beyond the authority of any Executive Authority or Delegated Authority. That despite of that legal jurisprudence, the respondents have cancelled/repealed the provision of legislation as passed by the National Parliament. For that the supremacy of a Circular/Notification/Order can not prevail over that of the Legislation as passed by the Parliament.

Hence, it may be declared illegal and without lawful authority and ultra vires.

- III. For that canceling the said circular dated 21.11.13 and having not kept any provision of protecting and/or recovering the government's right/title or interest in the Kha Scheduled property by the said subsequent Circular dated 14.07.14, the respondents have gone beyond the scope of legal jurisprudence and are therefore their actions are ultra virus.
- IV. For that some 2.1664 acres of land including one Halipad situated at R. S. Khatian Nos: 146, 680 and 664 and R.S. Plot Nos. 1591, 1592, 1597, 1598, 1599, 1632 and 1633 at Mouja-Baligonj, Upazila-Kaligonj, Gazipur was listed in Kha List wherein the government has vested interest and right and title over the property. For that due to the said circular dated 14.07.14, the government's title /rights/interest in the said Kha Listed property above, have been affected severely making the path to let the government's title /rights/interest in the said Kha Listed property above go into the hands of others.
- V. For that as per the report prepared by the Land Assistant Officer, Kaligonj Poura Land Office, Kaligonj, Gazipur, on the said land that the government has vested interest over the said Kha Listed land including the said Halipad.

Wherefore it is most humbly prayed that your Lordships would graciously be pleased to -

- a) Issue a Rule Nisi calling upon the Respondents to show cause as to why the circular dated 14.07.14 under Memo No. 31.00.0000.045.53.065.12(part)-334 (as of Annexure-D) which was issued against the provision of Section 28(K)(4) of Act 46 of 2013 (Vested Property *Protarpon* (Second Amendment) *Ain*, 2013, published in official gazette on 10.10.13, deleting the provision of protection of right/title/interest of the government in the property which is listed in the Kha List and taking recourse of legal actions for getting remedy on that behalf, should not be declared to be void and illegal and without lawful authority.
- b) Pending hearing of the rule direct the respondents No. 5-8 to maintain statuesque in respect of any mutation/khajna or any kinds of transfer of 2.1664 acres of land

situated at R. S. Khatian Nos: 146, 680 and 664 and R.S. Plot Nos. 1591, 1592, 1597, 1598, 1599, 1632 and 1633 at Mouja-Kaligonj, Upazila-Kaligonj, District-Gazipur.

c) After perusing the cause shown, if any and after hearing the parties make the Rule absolute;

d) Pass such other and further order and/or orders as your Lordships may deem fit and proper.

### **Present Status**

The case was filed and moved by Advocate Manzill Murshid, President, HRPB. After hearing the parties the Hon'ble Court issued Rule Nisi upon the respondents and granted ad-interim order. The matter is pending before the Hon'ble High Court Division.

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