

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

PRESENT :

Mr. Justice A.H.M. Shamsuddin Choudhury.

And

Mr. Justice Sheikh Md. Zakir Hossain.

WRIT PETITION NO. 1053 OF 2011.

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

1. Advocate Asaduzzaman Siddiqui,
Supreme Court Bar Association Building,
Hall No.2, P.S. Shahbag, Dhaka,
Bangladesh and another.

.....Petitioners.

- V E R S U S -

1. Bangladesh, represented by the Secretary, Ministry of
Law, Justice and Parliamentary Affairs, Bangladesh
Secretariat, Dhaka , Bangladesh and Others.

.....Respondents.

Md. Manzill Murshid, Advocate.

----- For the Petitioners.

Mr. Rafiq-Ul-Haque, Advocate.

----- For the Respondent No- 5.

Mr. Md. Obaidur Rahman Mostafa, Advocate

----- For the Respondent No- 10.

Heard on 14th, 15th February, 2nd March ,2011 and

Judgment on 10th March, 2011.

A.H.M. Shamsuddin Choudhury, J-

The Rule under adjudication, issued on 31st January 2011 and the supplementary Rule was issued on 6th February, 2011 in following terms:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why a direction should not be given upon the respondents to take steps to identify and demarcate the land of the Bangladesh Supreme Court through a Survey and to take steps to protect and maintain the same land through an effective manner, and/or why such other or further order or orders as to this Court may deem fit and proper, Should not be passed."

"Let a Supplementary Rule Nisi be issued calling upon the respondents to show cause as to why a declaration should not be given that the land recorded in the name of Bharat Samrat under C.S Khatian No. 16855 C.S Dag No. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 16 /162 consisting of 55.05 acre are the land of the Supreme Court of Bangladesh and why a direction should not be given upon the respondents to maintain and protect the land of Supreme Court of Bangladesh through an effective manner and/or why such other or further order or orders as to this Court may deem fit and proper, should not be passed."

The instant Writ Petition has been filed by Advocates M/S Asduzzaman Siddiqui and Aklasuddin Bhuiyan. The Petition was framed as one involving public interest as the question raised therein attracts an issue of immutable national interest, revolving round the land of the Supreme Court of Bangladesh. The Petition referred to above, succeeded to generate a Rule in following terms.

The Petitioners are human rights active's. Being informed by various sources that the entire land belonging to the Supreme Court of Bangladesh is not really under its possession, as a large part it are being illegally occupied by some other organizations, to the serious detriment and predicament to the highest seat of justice, the petitioners felt conscience bound to file this petition, involving 102 of the Constitution of the Republic.

During the British Raj, the Governor House for the then Province of East Bengal and Assam was constructed in 1910 over a specified and clearly demarcated area of land.

On the land so specified and demarcated for the Governor House, the East Pakistan High Court was subsequently established in the year 1947, which was then headed by S.M. Akram, C.J. During that period there were two kinds of Jurisdiction, one being the Appellate and the other, the Original.

The land in question that original belonged to the Governor House, was transferred to the then High Court. The C.S. record depicted the property as that of Bharat Samrat. The C.S. Map reveals that the property was bounded by a demarcated wall.

Notwithstanding that the land originally belonged to the High Court, which after liberation vested on the Supreme Court of Bangladesh, some other bodies, have been occupying part of the land illegally, as the same had unlawfully been transferred to them, wherefore it is about time that the land is demarcated in its entirety so that the same can be identified and the land that belonging to the Supreme Court can be clearly recognized.

Although the land belongs to the Supreme Court, it was not demarcated and recorded properly in the Supreme Court's name. The Supreme Court's land cannot be transferred to any other organization, nor can it be recorded in their names, and hence

it has become incumbent to locate and demarcate the land. As part of the Supreme Court's land, now under illegal occupation of some other organizations, has remained beyond the Supreme Court's de-facto control, it has become imperative to demarcate the same.

The authorities concerned failed to record the whole land in the Supreme Court's name during the preceding surveys.

An affidavit in opposition was filed by the Department of Road and Highways, whereby the said body, admitting the facts contained in the C.S Record, stated that during the State Acquisition (S.A.) survey, the entire land was recorded in the name of the Department of Construction and Building (C & B) and that as a successor to C & B, the Department of Roads and Highways had inherited part of the land. During the Revisional Survey (R.S, a total of 7.1888 acres of land was recorded in the name of Roads and Highways. During the Dhaka Metropolitan Survey and area of 7.0924 was recorded in Roads and Highway's name. That is why and how the land covering 7.0924 belong to them.

The Registrar, Supreme Court of Bangladesh also filed an affidavit, virtually supporting the petitioners claim. That deponent further averred that a body known as the " Shishu Academy" is occupying 2.108 acre of land. It has been stated that the said land was demised on lease to the said academy by the Ministry of Works on 30th December 1989 for a period of 30 years, i.e., up to 29th December 2019.

As the Rule matured for hearing, Mr Manzil Murshid, appearing for the petitioners, argued that as the entire land was recorded in the name of Bharat Samrat, in C.S. Khatian No. 16855, Dag Nos. 12, 13, ,14, 15, 16, 17, 18, 19, 20, 21, 22 and 16/162 and that the entire land recorded in the name of the Bharat Samrat for the East Bengal's Governor House, stood transmitted to the then East Pakistan High Court and, of course, to the Supreme Court of Bangladesh after liberation. In fact the then East Pakistan High Court was established on the land of the Governor House in it's entirety. The same stood transmitted to the Supreme Court of Bangladesh in the natural way after liberation. Exclusive possession of the entire Chunk of land was first granted for the Governor House and then to the East Pakistan High Court, and then, to the Supreme Court of Bangladesh by way of succession. In consequence, the transferred possession of well bounded 55.05 acres of land is indeed the land of the Supreme Court.

Mr. Obaidur Rahman Mostafa, appearing for the respondent no. 10, the Roads and Highways Department, echoed the averments, his client figured in it's pleading.

Although Mr. Rafiq-Ul-Haque submitted pleading for the respondent no. 5, the Registrar of the Supreme Court, he made no submission.

The only question we are to address is whether the petitioner are entitled to the relief they asked for.

Before embarking upon a discussion on the issue, we must express how dismaying it appeared to us to feel that the Institute, the Apex Court of the Republic, which is vested with the Guardianship of the Constitution, and has the ultimate and the sacrosanct duty of nurturing the rights of the people, became so helpless to protect it's own property, at a time when it itself is an the verge of facing acute paucity of accommodation, that some human rights activists, being propelled by the dictates of conscience, had to come forward to protect it's property.

As Mr. Manzill Murshid submitted, it stands beyond qualm that during the Cadastral Survey (C.S) operation, the subject land was recorded in the name of the Bharat Samrat alone-None else was depicted in the C.S record. During the S.A as well R.S. operation, however, the names of the Department of Roads and Highways, some how permeated into those records, although there exists no record whatsoever to show as to how acquired title over any part of the said land or acquired possession over it. It goes without saying that mere presence of their names in the C.S subsequent records, without evidence as to how they could have had acquired any title, goes nowhere to divulge any rights or title in their favour.

On the contrary, it remains beyond dispute that the then East Pakistan High Court's building was erected on the Bharat Samrat's land. In 1947 the then East Pakistan High Court was the only entity that alone stood over the subject land for a good period of time until the Department of Roads and Highways and the Shishu Academy made encroachment over the part of the land after our liberation in 1971. So exclusive possession and control by the then East Pakistan High Court creates irrefutable presumption to establish the fact that it was the East Pakistan High Court that was vested with the Bharat Samrat's said property which stood for the East Bengal's Governor House, in it's entirety. Nothing has been done to rebut this presumption. Indeed no attempt has been made to adduce any evidence in rebuttal, we believe, for the obvious reason that the said fact is so well recognized that none thought of taking any step in that direction.

These lead us to the inevitable synthesis that the land now occupied by the Department of Roads and Highways, as well by the Shishu Academy, are actually tae land of the Supreme Court of Bangladesh, which inherited the same by operation of law, from the then East Pakistan High Court.

It is, thus, obvious that these two bodies possess the land without lawful authority.

That being the case, there stands nothing to stop the Rule from traveling to a successful destination.

Having perused all the documents in the file and having considered the submission made by the learned Advocates, we are satisfied that the land recorded in the name of Bharat Samrat under C.S Khatian No. 16855 C.S. Dag No. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 16/162 consisting a total of 55.05 acres are the land of the Bangladesh Supreme Court.

The supplementary Rule, which superseded the original Rule, is, hence, made absolute. There is however, no order on cost.

The respondents are directed to maintain the land of the Supreme Court of Bangladesh in effective manner and to take steps in that regard in accordance with law.
