

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

Writ Petition No. 5532 of 2020.

In the matter of:

An application under article 102 (2) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Md. Hazrat Ali

..... Petitioner

-Versus-

Bangladesh, represented by the Secretary,
Ministry of Foreign Affairs and others.

.....Respondents

Ms. Tasmia Prodhan, Advocate

. . . . For the petitioner.

Mr. Muhammad Rafiul Islam, Advocate

. . . For the respondent No.1.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard on 18.01.2024, 24.01.2024 and
Judgment on 30.01.2024.

J. B. M. Hassan, J.

By filing an application under article 102 (2) of the Constitution of the
People's Republic of Bangladesh the petitioner, namely, Md. Hazrat Ali
obtained the Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show
cause as to why the memo No. 31.55.7700.017.51.006.16-163
dated 04.03.2020 (Annexure-E) issued under the signature of
respondent No.4 in violation of section 6(6) of the Power of
Attorney Act, 2012 should not be declared to be without any
lawful authority and of no legal effect and Why a direction
should not be given upon the respondent No. 3 to hand over the

General Power of Attorney bearing attestation serial No. 4968/2018 dated 08.11.2018 (Annexure-A to the writ petition) after completion of the necessary procedure, as per section 6(6), (7) of the Power of Attorney Act, 2012 and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Relevant facts leading to issuance of the Rule Nisi are that a General Power of Attorney (attestation serial No. 4968/18) relating to some land properties (mentioned in the schedule thereof) was executed on 29.03.2018 in the Republic of India (West Bengal) appointing the petitioner as Attorney for doing certain acts including to sell in respect of mentioned land properties. The said General Power of Attorney (shortly, GPA) was duly attested and authenticated by the Ministry of External Affairs, Kolkata, India and the office of the Bangladesh Deputy High Commission, Kolkata, India. Thereafter, the Ministry of Foreign Affairs, Government of Bangladesh, Dhaka authenticated the said Power of Attorney on 08.11.2018 and then the petitioner submitted the same before the Deputy Commissioner, Panchagarh (respondent No.3) on 27.11.2018 for impounding the document on observance of required formalities. The Revenue Deputy Collector (RDC), Panchagarh (respondent No.4) sent a letter on 31.12.2018 to the Assistant Commissioner (Land), Panchagarh Sadar, Panchagarh to verify the ownership of the properties as described in the schedule of the said GPA. In the meantime, the Foreign Ministry, Consular Branch by their memo dated 04.02.2019 confirmed the authentication of the Power of Attorney. Despite the respondent No.3 issued the impugned order under memo dated 04.03.2020 as contained in Annexure-E to the writ petition declining to

make attestation and impounding and also directing to preserve the Power of Attorney on record. In this backdrop, the petitioner filed this writ petition and obtained the present Rule Nisi.

Appearing in the Rule Nisi the respondent No.1 has filed an affidavit in opposition contending, *inter alia*, are that after submission of Power of Attorney before the office of the Deputy Commissioner, Panchagarh, an enquiry was conducted regarding the properties scheduled in the said Power of Attorney. Accordingly, concerned Union Assistant Land Officer submitted report on 23.01.2019 stating that the executants of the Power of Attorney do not have the possession and that the relevant record of rights (Khatian) of the schedule land properties does not reflect their names. Considering the aforesaid report, the respondent No. 3 declined to impound the Power of Attorney in accordance with law.

After placing the writ petition and relevant laws, Ms. Tasmia Prodhan, learned Advocate for the petitioner submits that the Power of Attorney having been executed duly by the principals and it being authenticated by the relevant authorities in accordance with law, the Deputy Commissioner is only required to impound the same affixing required stamp in accordance with section 18 of the Stamp Act and he does not have any authority to decline the impounding on plea of defect of title and possession of the Principals. She further submits that in respect of same properties earlier a Power of Attorney was executed by the same Principals appointing another Attorney which was duly accepted by the Deputy Commissioner on observance of required formalities. But due to death of the aforesaid

Attorney, the present Power of Attorney has been executed by the same persons relating to same properties and as such, denial of Deputy Commissioner to impound the same is arbitrary and malafide. She also submits that section 6(1) of the Power of Attorney Act, 2012 (the Act, 2012) requiring compliance of section 52A of the Registration Act, is not applicable in this particular case inasmuch as the provision of section 6(7) of the said Act does not require registration of document except for preserving the documents in Book No.1. She next submits that here, the Attorney shall only take legal steps on behalf of Principals to establish title in the land. As such, it does not require registration. She again submits that when the Power of Attorney is need to be registered in accordance with rule 10(5)(ga) of the of the Power of Attorney Rules, 2015 (the Rules, 2015) in that case only, the provision of Registration Act shall apply and the Deputy Commissioner can require title and mutation of land to meet the requirement of section 52A of the Registration Act.

Mr. Md. Rafiul Islam, learned Advocate for the respondent No.1 contends that the Deputy Commissioner made an enquiry regarding the subject properties and gathered information that the Principals of the Power of Attorney do not have any title, possession and mutation in the record of rights relating to the schedule properties under the said Power of Attorney. He further contends that by the Power of Attorney, Principals are empowering the Attorney to sell the land properties and so it needs to be registered in accordance with section 6(1) of the Act, 2012 read with section 52A of the Registration Act. He also contends that since the present Power

of Attorney was executed abroad and the Principals do not have the latest record of rights with their names, the Deputy Commissioner rightly declined to attest the Power of Attorney and as such, there is nothing to be interfered under this Rule Nisi.

We have gone through the writ petition, affidavit in opposition filed by the respondent No. 1 and the relevant laws.

Admittedly, the subject Power of Attorney was executed on 29.03.2018 by the Principals residing in the West Bengal, India relating to certain land properties situated under the District-Panchagarh, Bangladesh. Although the document has been titled as General Power of Attorney but it has embodied a clause empowering the Attorney to sell the schedule land properties (Annexure-A to the writ petition). As such, inspite of denominating General Power of Attorney, in fact, it is an Irrevocable Power of Attorney (অপ্রত্যাহারযোগ্য আমমোক্তারনামা) in accordance with the definition clause provided in section 2(4) of the Power of Attorney Act, 2012 (the Act, 2012) which runs as follows:

“(৪) অপ্রত্যাহার-যোগ্য পাওয়ার অব অ্যাটর্নি” অর্থ স্থাবর সম্পত্তি বিক্রয়ের উদ্দেশ্যে, বিক্রয় চুক্তি সম্পাদনের বা ঋন গ্রহণের বিপরীতে স্থাবর সম্পত্তির বন্ধক প্রদান-নর জন্য প্রদত্ত কোন পাওয়ার অব অ্যাটর্নি অথবা স্থাবর সম্পত্তির বিপরীতে পণ মূল্য গ্রহ-নর বিনিময়ে ভূমি উন্নয়নসহ উক্ত দলিল সম্পাদনের ক্ষমতা প্রদান সম্পর্কিত কোন পাওয়ার অব অ্যাটর্নি।”

Section 6 of the Act, 2012 is the relevant provision for execution of Irrevocable Power of Attorney which runs as follows:

“৬। পাওয়ার অব অ্যাটর্নি সম্পাদনা- (১) রেজি-স্ট্রিশন আই-ন যাহা কিছুই থাকুক না কেন, এই আই-নর অধীন সম্পাদিত অপ্রত্যাহার-যোগ্য পাওয়ার অব অ্যাটর্নির রেজি-স্ট্রিশন বাধ্যতামূলক এবং রেজি-স্ট্রিশন আই-নর section 52A এর বিধানাবলী প্র-যাজ্য হই-ব।

(২) উপ-ধারা (১) এর অধীন সম্পাদিতব্য পাওয়ার অব অ্যাটর্নি দলি-ল অবশ্যই পাওয়ারদাতার উদ্দেশ্য এবং পাওয়ারগ্রহীতার দায়িত্ব, ক্ষমতা ও কার্যাবলীর সুস্পষ্ট বিবরণ থাকি-ত হই-ব।

(৩) উপ-ধারা (১) এর অধীন সম্পাদিতব্য পাওয়ার অব অ্যাটর্নি দলি-ল পাওয়ারদাতা ও পাওয়ারগ্রহীতার ১(এক) কপি করিয়া ছবি স্থায়ীভাবে সংযুক্ত এবং জাতীয় পরিচয়পত্রের অনুলিপি সংযুক্ত করিতে হইবে।

(৪) উপ-ধারা (৩) এ যাহা কিছুই থাকুক না কেন, বাংলা-দ-শর বাহি-র বসবাসরত পাওয়ার দাতার ক্ষেত্রে, উপ-ধারা (৫) এর বিধান সা-প-ক্ষ, রেজি-স্ট্রেশন আই-নর section 33 এর sub-section (1)(c) এর বিধান প্র-যাজ্য হই-ব।

(৫) পাওয়ারদাতা বাংলা-দশর বাহি-র বসবাস করি-ল, পাওয়ার অব অ্যাটর্নি দলিল সম্পাদনের সময় পাওয়ারদাতা উপ-ধারা(৩) এর অধীন সংযুক্তকৃত পাওয়ার গ্রহীতার ছবি, স্বাক্ষরপূর্বক সনাক্ত করিবেন।

(৬) বি-দ-শ সম্পাদিত অপ্রত্যাহার-যোগ্য পাওয়ার অব অ্যাটর্নি দলিল বাংলা-দ-শ প্রথম প্র-ব-শর পর পররাষ্ট্র মন্ত্রণালয় কর্তৃক প্রমাণীকরণ (Authentication) অ-ন্তঃ উহা Stamp Act, 1899 (Act II of 1899) এর section 18 অনুযায়ী সংশ্লিষ্ট কালেক্টর কর্তৃক প্রয়োজনীয়রূপে স্ট্যাম্পযুক্ত করিতে হইবে।

(৭) উপ-ধারা (৬) এর অধীন পাওয়ার অব অ্যাটর্নি স্ট্যাম্পযুক্ত হওয়ার পর উহার একটি কপি কালেক্টর কর্তৃক সংশ্লিষ্ট সাব-রেজিস্ট্রারের নিকট প্রেরণ করিতে হইবে, এবং উক্তরূপে কোন কপি প্রেরণ করা হইলে উহা, রেজিস্ট্রেশন আইনের section 89 এ যাহা কিছুই থাকুক না কেন, সংশ্লিষ্ট সাব-রেজিস্ট্রার ১ নং বহিতে নথিভুক্ত করিয়া সংরক্ষণের ব্যবস্থা গ্রহণ করিবেন। ”

(Underlined)

On perusal of the aforesaid provisions, it is clear that registration of Irrevocable Power of Attorney is mandatory and to get registration for such documents, section 52A of the Registration Act shall apply. For better understanding, section 52A of the Registration Act is quoted herein below:

“Section-52A: Registering Officer not to register unless certain particulars are included in an instrument of sale-

Upon presentation of an instrument of sale of any immovable property, the Registering Officer shall not register the instrument unless the following particulars are included in and attached with the instrument, namely-

(a) the latest khatian of the property prepared under the State Acquisition and Tenancy Act, 1950 in the name of the seller if he is owner of the property otherwise than by inheritance;

(b) the latest Khatian of the property prepared under the State Acquisition and Tenancy Act, 1950, in the name of

the seller or his predecessor he is/new of the property by inheritance;

- (c) nature of the property;
- (d) price of the property;
- (e) a map of the property together with the axes and boundaries;
- (f) a brief description of the ownership of the property for last 25 (twenty-five) years; and
- (g) an affidavit by the executant affirming that he has not transferred the property to any person before execution of this instrument and that he has lawful title thereto.”

(Underlined)

The aforesaid provisions require latest record of rights (Khatian) of properties in the name of seller relating to which document is to be registered. Therefore, the present Power of Attorney being related to sale of immovable properties, by the Attorney of the Principals who would ultimately be seller, needs to be registered and for such registration, the name of the Principals have to be reflected in the latest Khatian (record of rights).

It is admitted position that the Principals do not have the records of right and it has also been reflected in the report of Union Assistant Land Officer (Annexure-2 the affidavit in opposition) that latest Khatians have not been recorded with the names of the Principals of the present Power of Attorney. Considering which the Deputy Commissioner, Panchagarh declined to attest the Power of Attorney which led the petitioner to file this writ petition.

In this context, learned Advocate for the petitioner submits that section 6(7) of the Power of Attorney Act only requires to preserve the document in book No.1 instead of registering the document and so, the

Deputy Commissioner committed wrong requiring Principals' title, possession and records of right in the schedule properties.

We find that the Principals do not reside in the Bangladesh and so, they executed the relevant document through the Deputy High Commission of Bangladesh in Kolkata, India and after being authenticated by the Ministry of Foreign Affairs it has been placed before the concerned Deputy Commissioner who is required to affix stamp in accordance with section 18 of the Stamp Act, 1899 and then it would be sent to the concerned Sub-Registrar who preserves it in the Book No.1 under section 6(7) of the Power of Attorney Act.

All these procedures are tantamount to registration of documents in accordance with Registration Act, 1908 inasmuch as section 32 requires the executants to place the documents for registration to the Sub-Registrar and section 33 (1) (c) of the Registration Act exempts to executants when the document is executed outside Bangladesh in front of representative of Government (Deputy Commissioner of Kolkata) which has been done in respect of present Power of Attorney. For our better understanding relevant portions of section 33 of the Registration Act are quoted herein below:

“33. (1) For the purposes of section 32, the following powers-of- attorney shall alone be recognized, namely:-

(a)

(b)

(c) if the principal at the time aforesaid does not reside in Bangladesh a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Bangladesh Consul or Vice-Consul or representative of the Government.

.”

Finally, section 51 of the Registration Act provides that the documents to be registered shall be kept in book No.1 and thus section 6(7) of the Power of Attorney Act by its language preserving the document in Book No.1, practically, registering the document as per requirement of section 6(1) of the said Act and to complete these formalities, name of executants has to be available in the record of rights pursuant to section 52A of the Registration Act.

It further appears that regarding execution of Power of Attorney the Power of Attorney Rules, 2015 (the Rules, 2015) incorporates the following provision which runs as follows:

“১০। বাংলা-দ-শর বাহি-র সম্পাদিত পাওয়ার অব অ্যাটর্নি।-(১) বাংলা-দ-শর বাহি-র বি-শষ, সাধারণ বা অপ্রত্যাহার-যোগ্য প্র-ত্যক পাওয়ার অব অ্যাটর্নি দলিল, এই বিধিমালার তফসিল ক এর ফরম-৩ অনুসরণক্রমে, দুই প্রস্থে, মূল ও প্রতিলিপি আকারে, প্রস্তুত করি-ত হই-ব।”

On perusal of section 6 of the Act, 2012 and the Rule 10 of the Rules, 2015, we find that there are three categories of Power of Attorney to be executed outside the country relating to do any act on behalf of the Principal by his Attorney residing in Bangladesh. The categories are General Power of Attorney, Special Power of Attorney and Irrevocable Power of Attorney. Rule 10(1) of the Rules, 2015 provides that all these categories of Power of Attorney to be executed abroad, shall be prepared in accordance with Form-3 of the Schedule-Ka under the said Rules, In the Form-3 clause-7 requires the following information to be incorporated regarding the immovable property which runs as follows:

“৭। স্থাবর সম্পত্তি বিক্রয়, বিক্রয়ের চুক্তি বা ঋন গ্রহণের বিনিময়ে বন্ধক প্রদান সংক্রান্ত ক্ষমতা প্রদত্ত হইলে উহার বিবরণসহ সম্পত্তির তফসিল বর্ণনা ; অথবা ভূমি উন্নয়ন সংক্রান্ত কোন ক্ষমতা প্রদত্ত হইলে, উহার বিবরণ ও উহাতে সৃজিতব্য প্লটের বা নির্মিতব্য

ভব-নর বিস্তারিত বিবরণসহ সম্পত্তির তফসিল বর্ণনা ; অথবা ভূমি উন্নয়ন ব্যতীত স্থাবর সম্পত্তি ব্যবস্থাপনা সংক্রান্ত কোন ক্ষমতা প্রদত্ত হইলে উহার বিবরণসহ সম্পত্তির তফসিল বর্ণনা ; (প্রত্যেক ক্ষেত্রেই রেজিস্ট্রেশন আইনের section 52A তে বিধৃত বিষয়াদি সন্নি-বশ করি-ত হই-ব); অথবা প্রযোজ্য ক্ষেত্রে সম্পত্তির তফসিল বর্ণনা: ”

On a plain reading of the aforesaid requirement, it appears that if the Principal empowers the Attorney to sell or enter into an agreement to sell of immovable property, in that case the deed of Power of Attorney shall contain the information of seller in accordance with section 52 A of the Registration Act.

We find that, section 52A of the Registration Act (supra) requires to furnish the seller's information with the record of latest Khatian in the name of seller if acquired by purchase or his predecessor, if acquired by inheritance. Thus, as per requirement of Rule 10(1) read with clause (7) of Form-3 of the Schedule-Ka of the Rules, 2015 and section 52A of the Registration Act, the name of Principal of the Power of Attorney shall be incorporated in the latest Khatian in case of giving Power of Attorney for selling the Schedule Property.

Admittedly, in this particular case the Principals have executed the Power Attorney to sell the schedule property alongwith other acts. But it is also on record and admitted position that the Principals do not have their names in the latest khatian regarding the schedule property. As such, this Power of Attorney has not been prepared in accordance with the required Rules, 2015.

Again, Ms. Prodhan has drawn our attention to rule 10(5) of the Rules, 2015 which runs as follows:

“১০। (৫) পাওয়ারগ্রহীতা, উক্তরূপ প্রমাণীকৃত পাওয়ার অব অ্যাটর্নি ও উহার প্রতিলিপি বাংলাদেশে প্রথম প্রবেশের পর,

(ক) ২ (দুই) মাসের মধ্যে পররাষ্ট্র মন্ত্রণালয় বা সরকার কর্তৃক এতদুদ্দেশ্যে নিযুক্ত কোন উপযুক্ত কর্মকর্তার নিকট দাখিলপূর্বক উক্ত কর্মকর্তা দ্বারা উল্লিখিত পাওয়ার অব অ্যাটর্নি ও উহার প্রতিলিপির সত্যায়ন কার্য সম্পন্ন করাইয়া লইবেন;

(খ) ৩ (তিন) মাসের মধ্যে স্ট্যাম্প আইনের বিধান অনুসারে স্ট্যাম্পযুক্তকরণের, বা ঙ্গেত্রমত, Stamp Duties (Additional Modes of payment) Act, 1974 (Act No. LXXI of 1974) অনুসারে স্ট্যাম্পশুল্ক পরিশোধের যথাযথ পদক্ষেপ গহণ করিবেন এবং উক্তঙ্গেত্রে স্ট্যাম্প আইনের বিধানাবলী প্রযোজ্য হইবে;

(গ) ৪ (চার) মাসের মধ্যে উক্ত মূল পাওয়ার অব অ্যাটর্নি, প্রযোজ্য ঙ্গেত্রে, নিবন্ধনের উদ্দেশ্যে যথাযথ ফিসহ সংশ্লিষ্ট সাব-রেজিস্ট্রার এর নিকট দাখিল করিবেন এবং উক্তঙ্গেত্রে রেজিস্ট্রেশন আইনের বিধানাবলী প্রযোজ্য হইবে।”

Referring to above, she submits that the petitioner shall only pursue the litigation on behalf of Principals and so sub rule (5) (ক) and (5) (খ) shall be followed and that Registration Act will follow when it needs sale of property by the Power of Attorney. Section 6(6) of the Act, 2012 and Rule 10(5)(Kha) of the Rules, 2015 provides that the Deputy Commissioner (DC) shall impound the document upon placing the same before him after authentication by the Ministry of Foreign Affairs. Ms. Prodhan further submits that the DC is not empowered to see title and mutation of the Principals.

We are unable to accept these submissions, because, firstly, the document in question incorporates power to sell the property and so, it is an Irrevocable Power of Attorney as per definition incorporated in section 2(4) of the Act, 2012. Therefore, we are of the view that since rule 10(1) of the Rules, 2015 requires to prepare the document in a particular manner (Form 3 of schedule 3 and para 7 there of) incorporating information of latest Khatian with the principals' names and since the present document has not been prepared as per the said Rule, the Deputy Commissioner (DC) can see

at the time of impounding the same whether it is a Power of Attorney prepared in accordance with the relevant Act, 2012 and the Rules, 2015. Thus, we find that the present Power of Attorney executed by the Principals who do not have the latest khatian with their names and the Power of Attorney containing a power to sell the immovable property, has not been prepared in accordance with law.

Therefore, we do not find any impropriety in the action of the Deputy Commissioner by the impugned order declining to impound the Power of Attorney.

In view of above discussions, we are led to hold that the name of the Principals of the Power of Attorney having not been reflected in the latest record of rights, the Deputy Commissioner rightly declined to impound the Power of Attorney as per section 18 of the Stamp Act.

Regard being had to the above, we do not find any merit in this Rule Nisi.

Hence, the Rule Nisi fails.

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

Communicate a copy of this judgment and order to the respondents at once.

Razik Al Jalil, J

I agree.