



## Conflicts between land reforms ordinance and the court of wards act: In context of Bangladesh

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### Abstract

The article focuses on the abolishment and transformation of the Zamindari system (Landlord system) into government administration, with regards to the Court of Wards as an administrator of the land acquired from the Landlord (Landlord) by the subsequent enactment of the State Acquisition and Tenancy Act, 1950. It highlights the settlement of damages, the acknowledgement of the former Projas (also referred to as Tenants) turned owners, and the execution of the act through gazetted announcements. In specific instances, which will be explored in-depth in the article, the Court of Wards has attempted to claim ownership over lands belonging to the Tenants, which contradicts the law and has led to a number of court disputes / legal disputes. The Supreme Court and High Court Division delivered judgements in favour of the Tenants and have prohibited the interference by the Court of Ward. In order to ensure that Projabili (also referred to as Tenanted) property and property owners are protected, the article will be demonstrating the necessity of respecting the laws' objective and avoiding pointless litigation.

**Keywords:** Zamindari system, court of wards, state acquisition and tenancy act, supreme court, Bangladesh

### Introduction

When considering the definition of state, one of the most important factors is land. The defined borders of state, operating under the autonomous centralised political unit, provides the people of the state resources to earn a living, but also serves as their abode and identity. The country we bravely fought for, Bangladesh, attaining the status of an independent state in 1971, has had a deep connection to the land it stands on. One of the most densely populated countries in the world with 1,48,560 square kilometres, accommodates a hefty population of more than 163 million citizens.<sup>[1]</sup> The dire reality of such an exorbitant populace within such a small-scale area leads to the obvious conclusion of landlessness for almost half of the population.<sup>[2]</sup> Predominantly an agricultural country, Bangladesh has extremely fertile lands that provides lush greenery and grows a variety of permanent pastures and crops which not only contributes to the internal food resources for consumption, but also has become a major part of the export sector, complementing the growth of the economy. Since land has been an integral part in every aspect of Bangladesh, it does not come as a surprise that the majority of the legal disputes in the country are related to land. Among 31 million people struggling in legal disputes every year, 29 % of the demographic are associated with land related issues.<sup>[3]</sup>

The post-colonial history of the country has been a contributing factor in why the land laws in Bangladesh today are quite complex and vague in many cases. The region's historical land administration backdrop demonstrates the dominance of Landlord system, which is divided into two types of properties mainly: Khas Land, also referred to as State owned land, previously owned by the Landlords (referred to as "Landowners" from here onwards) and now overseen by the government, and Projabili land, also referred to as Tenanted land, settled to the tenants in exchange for rent payments.<sup>[4]</sup> Abolition of the Landlord system was one of the most anticipated agrarian reforms after the independence from British Rule.<sup>[5]</sup> As per the

promise made by the politicians and social reformers, the Landlord system was abolished and the Tenants were elevated to the status of owners with the help of the State Acquisition and Tenancy Act, 1950. While this brought a welcome change for the tenants turned owners, it was not all smooth sailing as many changes have taken place afterwards to eradicate the flaws of the land laws, to make it more iron-clad and straightforward.

This article will examine the evolution of the Bengal Tenancy Act, 1885 and its ultimate transformation into East Bengal State Acquisition and Tenancy Act 1950, in order to understand the main variables involved in the contentions between the Landlords and the tenants and the measures taken to reach a solution to mitigate the long-drawn battle between the two classes. The importance of State Acquisition and Tenancy Act, 1950, P.O 90 of 1972 will also be discussed in elaboration, particularly in relation to limitation of land set upon ownership and the distribution of state owned land among landless poor by governmental regulations.<sup>[6]</sup> The main causes of establishing Land Reform Ordinance, 1984 and the impacts that follows will also be inspected in relation to the Court of Wards Act, 1879 which is one of the main features of this investigation.<sup>[7]</sup> The goal of the study is to take an intensive look at the incidents, legal ramifications, and outcomes of this revolutionary period in light of the historical significance of the abolition of the Landlord system and the function of the court of wards. The research aims to provide important insights on the dynamics of land reforms and their impact on land ownership and administration in the region through the examination of government gazettes, court rulings, and historical records.

### Historical Background

Before enactment of State Acquisition and Tenancy Act, 1950, there was Landlord System in the land administration and Landlord had two types of property namely (a) projabili (tenanted) properties i.e, land settled to the Projas (Tenants) subject to payment of rent to the Landlord and (b) the khas

property, i.e., the property remained in possession of the Landlord like, his own house, garden, ponds etc. In the tenanted properties, the previous Landlord had only rent receiving interest. But in the name of realisation of rent from the Tenants, the servants under the Landlord (Paik Peyada) usually oppressed the projas/raiyats (Tenants) which shocked the then political leaders and social reformers for abolishing the Landlord System. In 1937, the Krishak Praja Party, led by A.K. Fazlul Hoque, aimed to abolish the Landlord system and free farmers from debts in the then undivided Indian sub-continent. However, they could not win a majority and formed a coalition government with the Muslim League. They established Debt Settlement Boards, freeing millions of farmers.<sup>[8]</sup>

In 1946, the Flood Commission suggested the elimination of the Landlord system in Bengal due to the unfavourable situation regarding land tenure. The British had already departed from India prior to the implementation of this action. The Landlord system was abolished within three years of independence by the enactment of the East Bengal State Acquisition and Tenancy Act by the Muslim League Government. The 1937 coalition administration, which had earlier been against the elimination of the Landlord system, carried out this action.<sup>[9]</sup>

When Pakistan got independence in the year 1947, then the Government of the province of East Pakistan enacted the East Bengal State Acquisition and Tenancy Act, 1950 stating therein the modes and procedure of abolishing the Landlord System.<sup>[10]</sup>

That it may be mentioned in this connection that for giving effect of the SAT Act, 1950 in respect of the tenanted properties remained under the management and custody of the Government Organization, the Court of Wards, the Government of the province of East Pakistan added a new Section 8(A) in the Court of Wards Act, 1879 by the Act No. X of 1952 stating as follows:

“If the rent-receiving interests of a ward in any estate under the charge of the Court are acquired under the provisions of the State Acquisition and Tenancy Act, 1950, then, notwithstanding anything contained elsewhere in this Act, the remaining properties of such ward including khas lands under the charge of the Court shall continue to remain under its charge and shall be managed in accordance with the provisions of this Act, as if such ward were a disqualified proprietor of an estate.”

The Government for abolishing Landlord system in the ryoti properties of the Landlords by giving effect SAT Act, 1950 firstly published a gazette notification under Section 3 of the said SAT Act, 1950 in the year 1952 describing therein the projabali property in the column No.2 and the name and addresses of the Landlord/Rent Receiver in the column No.1 after collecting the list of projabali properties from the Landlords or from their custodian Court of Wards under section 3(A) and 4 of the SAT Act, 1950.

After publishing the projabali property Gazette, the Government had done the following acts:

**Compensation Assessment:** Compensation was determined for purchasing rent-receiving interests in project properties<sup>[11]</sup>. The Compensation Assessment Roll (CA Roll) was produced in response to this assessment.

**Compensation Payment:** The Landlords received the assessed compensation. In order to confirm compensation

payment and government acquisition, a compensation payment gazette listing the names of Landlords and their respective Landlodes was published in 1956 under Section 46E of the SAT Act.

**Ownership Record:** The government entered the concerned projas (vested owners) in the State Acquisition (S.A.) khatian (land record) after taking these actions. In order to do this, the land revenue was calculated in accordance with Section 24(1) of the SAT Act, 1950. In accordance with the provisions of Section 24(1), the documented S.A. owners were required to pay land development taxes directly to the government.

After the independence of Bangladesh, Bangabandhu Sheikh Mujibur Rahman, the founding president of Bangladesh when found that the previous Landlord were yet trying to make the said SAT Act ineffective and meaningless by filing Civil Suits and other proceedings, he promulgated President Order No. 90 of 1972 prohibiting the previous Landlords/rent receivers from disturbing their respective previous projas (tenants) who become owners by operation of law.

#### The observation of the court

In spite of abolishing the Landlord system by giving effect SAT Act and amended Section 8(A) of the Court of Wards Act, 1879 promulgations P.O. 90 of 1972, when the previous Landlords were yet found to be engaged in oppressing the previous projas/tenants who became owners by operation of law, some of the S.A. and R.S. recorded owners come to the Supreme Court in writ jurisdiction and the Hon'ble Supreme Court as Apex Court of the Country gave observations and directions to the previous Landlords/rent receivers not to claim any right, title and interest in their previous projabali properties. Amongst those cases, the case of People's Republic of Bangladesh v Sri Sri Madan Gopal Jew Bigraha and others<sup>[12]</sup>, and Promode Ranjan Saha and others v Govt. of Bangladesh and other<sup>[13]</sup>, Bhawal Raj Court of Wards Estate, represented by its Manager, Dhaka v Rasheda Begum and others<sup>[14]</sup> are very relevant for the verdict below.

The Appellate Division in a case reported in Bhawal Raj Court of Wards Estate, represented by its Manager, Dhaka v Rasheda Begum and others<sup>[15]</sup> after discussing the above mentioned relevant laws decided amongst others as follows: “Court of Wards can manage and administer only the choiced retainable khas land and cannot manage and administer the projabali cited in the projabali property Gazette and also the non-retainable khas property vested to the Government as cited in non-retainable property Gazette, 1952.”

The relevant portion of the judgment in the case Sagufta M.N. Housing and others v Government of Bangladesh<sup>[16]</sup> and others 16, is hereby produced as follows:

- i. Before withdrawing our pen, we would like to note that, now a days time and again we are confronted with unnecessary and uncalled for litigations like the present one in spite of settling the self same issue connecting with “projabali property” by the Apex Court in its different decisions.<sup>[17]</sup>
- ii. It has already been settled earlier in the aforesaid cases holding that the “projabali property” can never be claimed by the previous Zamindars represented by the

Court of Wards. The Court of Wards though legally bound to follow the said decision according to the constitution<sup>[18]</sup> but time and again they are harassing the people claiming title over the "projabili property" either by issuing Memorandum or by other ways and means and thereby also wasting the courts valuable time. So, it is high time to caution the Court of Wards, Bhawal Raj Estate and also the land Reform Board to abstain from creating such situation on frivolous issues and thereby pushing the public to the Court."<sup>[19]</sup>

- iii. Thus, they are cautioned not to harass anybody specifically the previous "projas" or their successors in interests any more, claiming title over the "projabili property" as cited in the "projabili property" Gazette published on 24.03.1952. If in future, any such illegal and uncalled for claim is sought for by the Court of Wards or if any litigation is continuing or started afresh because of Court of Wards action by claiming title over the said "projabili property" by the Court of Wards and the Land Reform Board, then they would be liable to be dealt with for Contempt of Court, apart from such litigations be in abated under P.O. 90 of 1972."<sup>[20]</sup>
- iv. Let a copy of the judgment and order be communicated to the Hon'ble Ministry, Ministry of Land, Hon'ble Ministry, Ministry of Law for issuing guidelines to the concerned officers for the purpose of dealing with such property of the public in accordance with law so that the Government officials do not create any impediment in general peoples, enjoyment of property right freely or harass the people upon taking undue advantage of being a Government official."<sup>[21]</sup>

Finally the court gave observations and directions in the above mentioned case as follows:

"The Court of Wards and Land Reform Board, cannot, under any circumstances, claim ownership over the projabili property of the previous Landlord, Kumar Rabindra Narayan Ray Chowdhury and as such cannot issue the impugned two Memorandum, specifically when they were parties in the aforesaid cases before the Appellate Division. It has already been settled earlier in the aforesaid cases holding that the "projabili property" can never be claimed by the previous zamindars represented by the Court of Wards. The Court of Wards though legally bound to follow the said decision according to Article 112 of the constitution but time and again they are harassing the people claiming title over the "projabili property" either by issuing Memorandum or by other ways and means and thereby also wasting the courts valuable time. If in future, any such illegal uncalled for claim is sought for by the court of wards or if any litigation is continuing or started afresh because of court of ward's action by claiming title over the said projabili property, then they would be liable to be dealt with for contempt of court, apart from such litigations be abated under P.O. 90 of 1972."

### **Roles of Court of Wards and Legislative Amendments**

After the enactment of State Acquisition and Tenancy Act, 1950 the khas property of the previous Landlords were divided into retainable khas land which cited in the choiced list and non-retainable khas land which cited in the non-retainable khas property Gazette published under the State Acquisition and Tenancy Act, 1950<sup>[22]</sup>. The projabili property which cited in the projabili property Gazette, 1952

published under the State Acquisition and Tenancy Act, 1950,<sup>[23]</sup> vested to each Tenant as per his possession as owner and the non-retainable khas property which cited in the non-retainable khas property Gazette were vested to the Government as owner and retainable khas land were vested to the previous Landlord as owner, represented by Court of Wards. For giving effect the State Acquisition and Tenancy Act, 1950 to the properties of previous Landlord remained in the management of Court of Wards the concerned Court of Wards Act, 1879 was amended and a new section was added in the said Court of Wards Act by Act No. 10 of 1952 stating that Court of Wards can only manage and administer the retainable khas land of the previous Landlords as of his statutory attorney<sup>[24]</sup>. So, the property being cited in the projabili property Gazette and having not been found in the non –retainable property Gazette and also in the retainable choiced list, the Court of Wards in no circumstances can claim the suit property as of the property of Court of Wards. But the Court of Wards on the basis of the circular No. Khatian naksha 45/2002/817 dated 10.11.2002 issued by the Secretary of the Ministry of Land when claimed the projabili property as of its own property affected ryoti owners filed several writ petitions which were allowed on contest against the Court of Wards declaring that the circular No. Khatian naksha 45/2002/817 dated 10.11.2002 issued by the Secretary of the Ministry of Land is of illegal and of no legal effect with further findings that the Court of Wards as representative of the previous Landlords can manage and administer only the retainable khas land of previous Landlords and not of his previous projabili and non-retainable properties. Accordingly, the retainable khas property were recorded in the name of previous rent receiver/Landlord as owner in the S.A. khatian<sup>[25]</sup>. The properties cited in the projabili property Gazette were recorded in the S.A. khatian in the name of each proja/ryot as owner<sup>[26]</sup>. The properties cited in the non-retainable property Gazette were recorded in the S.A. khatian in the name of the Government as owner<sup>[27]</sup> stating the Government acquired estate as of its basis. The aforesaid Judgement of the Hon'ble High Court Division was reported<sup>[28]</sup>. In the CPLA preferred by Court of Wards the judgement of the Hon'ble High Court Division was upheld stating further that the Court of Wards can manage and administer only the retainable khas properties of previous Landlord and in no circumstances can manage and administer the projabili properties of the previous Landlords as their rent receiving interest therein were acquired by publishing Projabili Property Gazette, 1952 and Compensation Payment Gazette, 1956. It is also held that without cancelling the previous S.A and R.S. khatian, the Court of Wards cannot record its name in the subsequent Dhaka City Jorip khatian mainly on the basis of C.S. khatian. The said judgement of Appellate Division was reported<sup>[29]</sup>.

Following the decision reported in Bhawal Raj Court of Wards Estate, represented by its Manager, Dhaka v Rasheda Begum and others<sup>[30]</sup> the High Court Division in its judgement reported in Sagufta M.N. Housing and others v Government of Bangladesh and others<sup>[31]</sup> gave direction to the Court of Wards as well as to the Minister of the Ministry of Land to issue a circular debarring the Court of Wards to claim title over the projabili property cited in the Projabili Property Gazette. Accordingly the Court of Wards issued Memorandum No. BR. Dhaka- 81/2003/324 dated 10.07.2014 and the Ministry of Land issued Memorandum

No. 31.00.0000.042.67.032.15-987 dated 27.10.2015 and Memorandum No. 31.00.0000.046.58.019.12-70 dated 02.02.2016 directing the Government officers served in the Court of Wards not to claim any right, title, interest in the projabali properties cited in the said projabali property Gazette, 1952 and thereby not to harass any person in possession of the projabali property.

### **Legal Battles and Compensation in Projabali Property Disputes**

**Judicial Decisions:** That the Government when found that the previous Landlords including the Landlords remained under the custody of Court of Wards, were harassing the tenant, who became owners by operation of State Acquisition and Tenancy Act, 1950 claiming illegally title therein, promulgated P.O. 90 of 1972 prohibiting them from claiming any sorts of rights, title interest and possession in their previous projabali properties cited in the Projabali Property Gazette 1952.

The Apex Court categorically prohibited the previous Landlords including the Landlord who remained under the custody of Court of Wards from claiming their previous projabali properties, which vested to the previous projas as owners by operation of The State Acquisition and Tenancy Act, 1950<sup>[32]</sup>.

### **Compensation and Relief**

**Violation of Constitutional Duties:** The Constitution of Bangladesh, bestows a duty upon government servants, including Court of wards, to perform their official duties strictly according to the law.<sup>[33]</sup> However, the interference of the court of wards with the individual's private property rights, violating the constitution and other laws related to projabali properties, as well as directions from the Apex Court and the Ministry of Land.<sup>[34]</sup> According to legal rulings, any action taken by a public official with the intent to harass the public and inflict financial loss by going beyond their authority or breaking the law makes them responsible for compensating the harmed person.<sup>[35]</sup>

**Harassment through Legal Proceedings:** The Court of Wards initiated unfair legal proceedings against the writ petitioners in violation of earlier rulings, which distressed them. According to the legal notification dated 3.08.2017 (Annexure-J), the petitioners are asking the respondent to pay them for the unwarranted harassment they experienced.

**Misuse of Official Position:** The current Court of Wards, abused his authority by claiming ownership of the petitioners' ryoti property listed in the Projabali Property Gazette, 1952, in order to benefit himself.

### **Conclusion**

Legal proceedings concerning land disputes, especially related to the distribution of state-owned land (Khas land) among the tenants, has been fraught with difficulties. The Court of Wards was established to overthrow the Zamindari system and manage the properties acquired from the Landlords, so that the tenants were no longer victims of systemic oppression of elevated rent and were secure in their ownership of the land, legally theirs by the powers vested by the Land Reform Ordinance. However, as the cases and their verdicts discussed above illustrate, the Court of Wards, on specific occasions, had attempted to breach its

boundaries and claimed ownership of "Tenanted" (Projabali) properties, leading to legal disputes.

Fortunately for the Tenants, the Supreme Court and High Court Division intervened, delivering judgements in favour of the Tenants. In these instances, the Court of Wards was prohibited from interfering in the rights of the Tenants. The judgement passed clearly underlined the Court of Wards' extent of rights when it comes to managing and administering retainable State-owned properties. It is made evident that Tenanted properties are not within their scope of administration, as their rent receiving interests were acquired through gazetted announcements. However, it has also been abundantly clear that there are still many loopholes in the land laws of Bangladesh, pertaining to State-owned properties and Tenanted Properties. The ambiguity of the laws, combined with the lack of awareness in the common people, lead to unnecessary legal hassles that must be dealt with effectively and in a structured manner. To protect the rights of the Tenanted property owners, the article emphasises importance of awareness among common people, as well as condones proper training to the government officials involved in executing the Court of Wards Act, so that no miscommunication or corruption can lead to any unnecessary litigations and harassment. In order to prevent any future interferences with the Tenanted properties and Tenants, the several circulars issued by the Court of Wards and the Ministry of Land must be followed strictly.

Given the vital role land plays in the lives of the people of our country, combined with the historical oppression they had to endure, under the farce of generating revenue, the Land Laws and Land administration System of Bangladesh has come a long way. Although there are still a significant number of systematic errors hindering the progress that has been made so far, it is the responsibility of both the citizens and the government to eradicate these flaws.

With the goal of fostering clarity and cooperation, the enforcement of the judgments and circulars will play a crucial role in maintaining the integrity of the land administration system and protecting the rights of property owners under every circumstance. Thus, creating a balanced legal system that thrives in justice and righteousness.

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30. *Ibid.*
31. *Ibid.*
32. 33 DLR (SC) 13, 61 DLR (A/D) 18 and 14 MLR (A/D) 401.
33. The Constitution of the People's Republic of Bangladesh,(1972) article 21, 31.
34. *Ibid.* article 42.
35. *Ibid.* p.1.