

YOUR ADVOCATE

Query
In the year 1972 75 my late grand father had purchased around 80 katha lands in the name of my father, uncles, aunts and relatives and family friends. The cost of land of my father, uncles and aunts was paid by my grand father

The owner of the land from whom my grand father purchased the land had also sold land to other persons of the same khatian. At the time of purchase the entire land was pond as a result during rainy season entire land would submerge under 5-6 feet of water.

In 1989 my grand father left this world and he could not take possession of the entire land as per purchase deed and also as the land was low there were no road and no proper demarcation of land. Since then father took the initiative to take possession of the land and also to make provision for road and demarcation etc. with other co-owners consent.

After two years of hard work with local commissioner, leaders and local influential persons; he took possession of around 95% land for which he and few of my uncles had to sit with above persons including local amin(who measures land) several times.

My father had to spent around Tk. 25,000/= for making provision for roads, fees of amin, buying pillars, labor charges, and to make a small tin shade for a caretaker of the entire land. In the year 1999-00 during Dhaka Jarip all the lands were correctly recorded as per our possession.

Lastly in the year 2003-04 he and few other owners took initiative to fill the entire land by sand and all owners agreed to pay for the sand filling of their portion after the completion of the work. On behalf of all the owners my father guaranteed to pay the contractor immediately after completion of work.

However after completion of the stated work, around 25% of the cost wasn't paid by co-owners but as per guarantee my father had to pay 100% cost to the con-

This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.



tractor in due time .Despite repeated written and verbal request, till today my father did not receive his dues from co-owners.

Since 2004 all the lands are 100% ready to build house and live with roads, electricity, gas etc. Now most of the owners have built houses on the land and getting rent.

Since 1990 except 1 or 2 person out of 18 none have paid their portion of expenses which my father paid during 1990-92.

My grand father have purchased the land @ Tk. 3000 5000/= per khata and by the year 1990-92 same land price went to around Tk. 15,000/= per katha. The present land value is around Tk. 1,000,000/= per katha.

Since all owners have taken possession of their land and built house, my father requested them to pay their long outstanding dues as detailed above in following manner:

1. As cost of earth filling was say Tk. 1/= per square feet in

2004 and the same is now Tk. 3/=. My father asked to pay their due portion of earth filling at the present rate i.e. Tk.3/= per sq. feet as despite repeated written and verbal request none of the owners paid their due portion within almost seven years.

2. To pay the amount spent in 1990-92 considering cost of land at that time. For example during 1990-92 land value per katha was Tk15,000/= and now land value per katha is Tk. 1,000,000/=.

My father spent Tk. 25,000/=(say) in 1990-92 and with this money at that time he could buy 1.66 katha of land there (Tk 25,000: Tk.15,000/ =1.66)

Now as the cost of land is Tk. 1,000,000/= (say) per khata my father demanded Tk. 16,00,000/= from all owners who did not pay their dues since 1990-92.(Tk.10,00,000.00 x 1.66 =16,00,000.00

Now would you kindly advise me whether my father's demands are justified or not.

Mr. SM Dhaka.

Response

From the given facts it appears that there was an oral agreement between your father and other co-owners as far as taking possession and filling of the land are concerned. As oral agreements are enforceable, the parties to the agreement are bound to carry out their obligations and, therefore, your father is also entitled to the amount outstanding. However, had there been a written agreement it would have been evidentially more advantageous.

Considering your query, demand of your father seems to be unreasonable. Because claiming the amount at the present rate does not sound to be fair enough. Nonetheless, your father can claim interest over the outstanding amount at present Bank rate.

I hope the aforesaid suggestion will help you to resolve your queries.

For detailed query contact: **omar@legalcounselbd.com**

LAW WEEK

Govt asked to explain

failure to stop fatwa

The High Court yesterday ordered district officials in Shariatpur to explain why they failed to protect 14-year-old rape victim Hena from being whipped to death as per a fatwa on Monday. The deputy commissioner, the superintendent of police of Shariatpur and the thana nirbahi officer of Naria upazila -- where the incident took place--will have to report to the HC in 15 days how it happened although the court (HC) had eight months ago declared fatwa illegal and a punishable offence. In a suo moto rule, the HC directed them also to report what steps they have taken in this regard. An HC bench comprised of Justice AHM Shamsuddin Chowdhury Manik and Justice Sheikh Md Zakir Hossain issued the rule. Meanwhile, another HC bench yesterday directed the law enforcement agencies to submit a report to it within three weeks on what steps have been taken following this incident in the light of its judgement on extra-judicial punishment. The bench comprised of Justice Syed Mahmud Hossain and Justice Nazrul Islam Talukder also ordered the information ministry to run a media campaign to create awareness among people against extra-judicial punishment. - *The Daily star February 3 2011.*

3 cases filed over

Munshiganj violence

Police early Tuesday filed three separate cases in connection with the Monday's clashes between law enforcers and people protesting the proposed Bangabandhu International Airport in Arial Beel that left one sub-inspector dead. Some 6,000 to 7,000 local people have been made accused in each case. Shajahan Badal, the convener of Arial Beel Rakkha Committee, was accused in all the cases. Inspector Farid of Sreenagar Police Station of Munshiganj filed a case with the police station for killing SI Motiur Rahman, Inspector Abdul Kuddus filed the second case for attacking police at Chhanbari and the third case was filed by SI Ataur Rahman for setting fire to Hara police outpost during the clashes. Police started drives in different areas soon after the cases were filed but none was arrested till Tuesday morning. Officer-in-charge Shakhawat Hossain told the correspondent. The SI was killed and about 100 others were injured when protesters locked in a series of clashes with police on Dhaka-Mawa highway in Munshiganj on Monday. The protesters also blocked the highway for nearly six hours, protesting the government's decision to construct Bangabandhu airport in Arial Beel area. -*The Daily Star online edition 01, February 2011.*

111 Pilkhana BGB

jawans jailed

All the 111 Border Guard Bangladesh (BGB) jawans of Pilkhana Record Wing were sentenced to jail terms up to seven years on Tuesday for their involvement in 2009 mutiny in BGB headquarters. The Special Court-9, led by BDR Dhaka sector commander Col Habibul Karim, also fined Tk 100 each of the convicts. Of the accused, 43 were jailed for highest seven years, 10 for six years and six months, nine for six years, 10 for five years and six months, four for five years, one for four years and six months, five for four years, 16 for three years and six months, six

for three years and seven for two years and six months. All the 111 alleged mutineers were produced before the court for their involvement in the February 25-26 mutiny last year that left 74 people including 57 army officers killed. -*The Daily Star online edition 01, February 2011.*

Charge framing hearing on

orphanage case adjourned

A Dhaka Court on Sunday adjourned the hearing on charge framing against BNP Chairperson Khaleda Zia, her elder son Tarique Rahman and four others till March 15 in connection with Zia Orphanage Trust graft case. Judge Muzammel Hossain of the Special Judge Court-3 passed the order following a time petition filed on behalf of Khaleda and Tarique. Khaleda could not appear before the court due to security reasons while Advocate Sanaullah Miah represented Tarique as he has been receiving treatment abroad. Two other accused Sharfuddin Ahmed and former BNP lawmaker Kazi Saleemul Haq Kamal were also absent from the court as they were busy with some other jobs. The other accused, former principal secretary Dr Kamal Uddin Siddique and late Ziaur Rahman's nephew Mominur Rahman remain absconding since the filing of the case. The Anti-Corruption Commission on August 5 last year pressed charges against Khaleda, Tarique and four others. -*The Daily star, online edition. 30 January 2011.*

Felani Killing, HC rejects plea

for govt probe

The High Court yesterday rejected a writ petition seeking its directive on the government to form a committee to investigate the killing of Felani, a Bangladeshi teenage girl of Kurigram, by Indian Border Security Force (BSF). An HC bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Sheikh Md Zakir Hossain rejected the petition, saying that the court considered the petition not submitted before it. The HC said it does not want to interfere with the government's decision regarding the incident. Deputy Attorney General ABM Altaf Hossain told the court that the government has protested Felani's killing through diplomatic channel. The Indian government has expressed sorrow at the death and informed Bangladesh that two BSF members were suspended in connection with the killing, he added. Fifteen-year-old Felani was shot dead by BSF on January 7 when she was returning home from India through Anantapur border in Kurigram. National Forum for Protection of Human Rights filed the petition as public interest litigation with the HC on January 17 seeking compensation from the government for Felani's family. It also asked to take steps against killings by BSF. -*The Daily star, online edition. 31 January 2011.*

Stop earth filling, construc-

tion in Nikunja Lake: HC

The High Court on Sunday directed the authorities concerned to stop earth filling and construction of structures in Nikunja Lake of the capital for next three months. The HC bench of Justice Shamsuddin Chowdhury Manik and Justice Sheikh Md Zakir Hossain also directed the authorities to maintain status quo on the structures during the period. In response to a writ petition, the court also issued a rule upon the government to explain within four weeks why it should not be directed to demolish the structures in the lake to protect the area. Golam Haider, a leader of Nikunja Abashik Elaka Kolyan Somiti (Nikunja Residential Area Welfare Association) filed the petition earlier in the day, seeking direction on the government to take steps for protecting the lake at Joar Sahara. The petitioner said in the petition that the earth filling and construction of structures are damaging the environment of the lake. Moreover, the lake is situated in the zero-height area and as per the law no structures can be built

CRIME & PUNISHMENT

Offence against property: Extortion

Section 383. Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion". Illustrations

A threatens to publish a defamatory libel concerning A unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

Section 384. Punishment for extortion whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

Section 385. Putting person in fear of injury in order to commit extortion

Whoever, in order to the committing of extortion, puts any person in fear, or attempts

to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Applicability of these sections

For the application of the section 383 few elements must be fulfilled like dishonesty, delivery by the person put in fear. The offence is carried out by overpowering the will of the owner. The essence of the offence of extortion is in the actual delivery of possession of property by the person put in fear and the offence is not complete before such delivery. Section 385 provides for punishment of an extortion which remained at the stage of threat, the offence not being committed. In order to attract the provision of this section it is necessary that the accused should have put some person in fear of injury as defined in the code in order to extort some property from him.

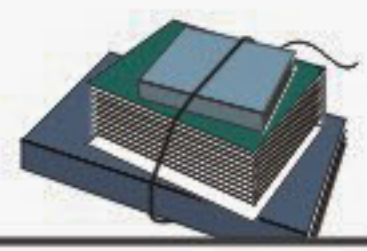
Classification of offence

The offences under these sections are Cognizable Non-bailable-Triable by any Magistrate Non-compoundable.

SOURCE: ZAHIRUL HUQ'S PENAL CODE.



LAW LEXICON



Inadmissible - That which, under the rules of evidence, cannot be admitted or received as evidence.

Incapacity - Lack of legal ability to act; disability, incompetence; lack of adequate power.

Incarceration - Imprisonment in a jail or penitentiary.

Incompetent - One who lacks ability, legal qualification, or fitness to manage his own affairs.

Independent executor - A special kind of executor, permitted by the laws of certain states, who performs the duties of an executor without intervention by the court.

Indigent - Needy or impoverished. A defendant who can demonstrate his or her indigence to the court may be assigned a court-appointed attorney at public expense.

Source: Jurist International.

LEGAL MAXIM



DE JURE JUDICIES, DE FACTO JURATORES RESPONDENT- The Judges answer to the law, the Jury to the facts.

DEBITA SEQUUNTUR PERSONAM DEBITORIS- Debts follow the person of the debtor.

DELEGATA POTESTAS NON POTEST DELEGARI- A delegated authority cannot be again delegated.

DELEGATUS NON POTEST DELEGARE- A delegate or deputy cannot appoint another.

DIES DOMINICUS NON EST JURIDICUS- Sunday is not a day for judicial or legal proceeding.

DOLOSUS VERSATUR GENERALIBUS- A deceiver deals in generals.

DOLUS CIRCUITU NON PURGATOR- Fraud is not purged by circuity.

Source: Broom's Legal Maxim.

Dear reader,

You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: Law Desk, The Daily Star 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax 8125155; email: dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net