

M. JASHIM ALI CHOWDHURY

THE recently evacuated cantonment residence of the Honourable Leader of the Opposition was for long at the centre of political controversy. This was the house in which late President Ziaur Rahman entered in 1972 as the Deputy Chief of Army Staff. He became the Chief of Army Staff after August 1975 and later on the President of the country in 1976. Whatever post he held, Zia and his family never left the house. After the death of Zia in 1981, the present Leader of the Opposition being his wife became the recipient of his life long pension. Besides that, the Council of Ministers in its meeting held on 12.6.1981 took a decision to provide her huge financial and other benefits including a house with all modern amenities in Gulshan. Neither in that nor in any other meeting of the Council of Ministers did the Government take any decision to demise the cantonment house to Begum Zia.

It is alleged that the then (1991) Premier Begum Zia made the Cantonment, otherwise a depoliticized zone harbouring an apolitical military force, the focal point of all political influences. Coming to power in 1996 the AL government served Begum Zia a notice to leave the house which was not paid heed to. In 2009 a new notice was served to that purpose. Subsequently another notice asking her to show cause as to why she should not be directed to return the property in question within 15 days was served. The third and final notice asked her to hand over the possession of the house by another one month. This time Begum Zia challenged the notices before the High Court Division (W/P No. 2910/2009). After three successive motions of no-confidence over three different Benches, she placed her trust on the Bench comprising Nazmun Ara Sultana J. and Sheikh Hasan Arif JJ. This write-up intends to throw some ethics based academic lights on the legal points raised and answered therein. Specific references of the 40-page judgment available in the Supreme Court website are indicated within

brackets.

The Cantonment House: Class A-1 or B-4?: The million dollar question that would determine the fate of the Writ was about the Class in which the cantonment house belonged. A Class A-1 land is not readily transferable while others may be. Rule 5 of the Cantonment Land Administration Rules, 1937 (CLA Rules, 1937) defines Class A-1 lands as the lands 'actually used or occupied by the Military Authorities, for the purposes of fortifications, barracks, stores, arsenals, aerodromes, bungalows for military officers.' The Leader of the Opposition's house, an official bungalow of a high ranking military officer, was definitely under Class-A1 category. Begum Zia's pleaders, however, raised at least three curious issues.

Who was in 'active occupation'?: Br. Huq once again put a technical jargon relying on Rule 4 of the CLA Rules, 1937. It requires a Class-A land to be in 'active occupation of the army'. But at the time of the lease the house was occupied by Begum Zia and her sons who were unquestionably the civilians! Therefore there is no scope to say that the said land was in 'active occupation of the army', Br. Huq amazingly brought something out of nothing (p 12). The Court however remained passive and found it 'not acceptable at all' that since

some civilians continued living there, a bungalow no more remained in the active occupation of the army (p 20).
A wrong entry in Register: Relying on an entry in General Land

acquired by virtue of statutory rules, i.e., Rule 5 of CLA Rules, 1937 (p 19).
Building arguments for a 'Building Site': The fogginess of Classification being almost removed, the petitioner traveled another way. Now

Transferring a Class A-1 land: The land being undoubtedly in Class A-1 category, it could not be used or occupied for any purpose other than those specified in Rule 5 of CLA Rules. Given the situation, Advocate TH Khan now relies on Rule 16 and 26 of 1937 Rules which conditionally allow lease of any land irrespective of its class to any private individual (p 11). The Court in its turn relies on Rule 14 which permits use or occupation of a Class A-1 land with previous sanction of the government. The sanction being only for 'use or occupation', Mr. Khan's argument could not save the transfer of 165 Khata cantonment house for Tk.1/ (p 22). Taking the chance of a linguistic vacuum in Rule 26, Br. Huq argued that it never required a 'public interest' purpose for the lease. Begum Zia's case being very 'exceptional', the requirement was duly satisfied (p 27)! The Court pin pointed the Supplemental Notes to Rule 26 where the 'exceptional reason' is explained as 'reason of a public nature' (p 26). And Begum Zia's lease, a gesture of goodwill, involved no reason at all of a public nature (p 28).

A Presidential Supremacy Approach: To defend the 1981 bounty to Begum Zia her Advocates didn't left any avenue of arguments unexplored. Mr. TH Khan was of the view



Register prepared by the Military Estate Officer (MEO), Mr. Khan forcefully argued that the land was actually a Class B-4 land (p 11). The Attorney General offered the 'most probable' explanation as to the mistaken entry in General Land Register. Though the Court accepted the explanation, it based its decision on another point - a mere entry in the General Land Register would not change the actual class of a land which it

her advocate argues that the house in question is 'Building Site' as per Rule 2(c) of the CLA Rules, 1937. The *majeja* of a 'building site' is that as per Rule 26 of CLA Rules 1937 it can be leased out for any period with the sanction of the government! The court however put the question in the alternative, 'Can it be argued that any building site cannot be treated as Class A-1 land?' So there is no escaping from the Class A-1 insignia (p 24).

JUDGMENT REVIEW



LAW AND POLITICS

Some observations in cantonment house case

that the laws and rules regulating the administration of Cantonment properties did not take away the 'sovereign authority' of the government to execute such a lease (p 10). For this purpose, Barrister Moudud Ahmed found the classification of the land immaterial (p 14). Naturally the Court would not accept such an 'absolute or open-ended discretion' in the Government, a trustee of the people, to dispose of public property to whomsoever, at any price and in any manner he likes (p 33). As to the involvement of the Army Chief, Mr. Khan declared a sort of independence for the Army. He argued that the proposal being initiated from the Ministry of Defense, the President need not consult the Council of Ministers (p 11)! For obvious reasons, the Court could not consume such an Austinian assertion that the Chief of Army Staff could demise any government property defying even a democratically elected government (p 30).
The 'Political' Science of Law: The lease deed being void ab initio failed to create any tenancy at all. Yet the Court allowed the Leader of the Opposition at least 30 days to vacate the house (p 40). Counting the time from the final notice of 24.5.2009, the Leader of the Opposition got almost a one and half year to evacuate a house she was gifted unlawfully. Unfortunately the court sanctioned deadline was not cared for. A Leave to Appeal was made but consciously no stay on the High Court Division's order was sought. The field was created for a political victory from a clearly lost legal battle. Instead of arguing on the Leave Petition, a no-confidence on the Appellate Division itself was ready to be placed! Passing the deadline, Begum Zia was 'evicted' by the government and the 'tears of an ex-Prime Minister' overshadowed a sheer illegality behind an unethical bounty. The 'bereaved nation' observed a day-long hartal in protest of political oppression! Now we realize why our teachers tell us in classes, "There is politics in law."

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LAW ANALYSIS



Whether preference share is a liability or not?

MD. NAHID ABSAR

THE Companies Act, 1994 (for short "the Act") permits a company limited by shares, if so authorised by its articles, issue preference shares which are liable to be redeemed i.e. in light of the Act, a company cannot issue irredeemable preference share.

Under the Act, the share capital of the company can consist of only two types, namely, equity and preference share capital. It may be that redeemable

As observed by the learned author in Pennigston's Company Law, 4th Edn. at page 195, if redemption would make the company insolvent, the company may not be allowed to redeem preference shares because repayment of preference capital would be a fraud upon its creditors. This would clearly indicate that the holder of preference shares is not in the same position as that of a creditor.

Besides, it must be remembered that a preference shareholder is only a shareholder and

the position of creditors. An unredeemed preference shareholder does not become a creditor.

But IAS 32 termed those preference shares as liability on the part of the issuer company when the issuer company pays a fixed rate of dividend against the preference shares having mandatory redemption feature. In light of the Act all preference shares used to be treated as share capital of the company and not as liability on the part of the company.

In addition, IAS 32 termed some preference shares as equity when there is option on the part of the issuer company not to make any payment against those. But the Act, make all the preference shares liable to be redeemed out of the proceeds of the company which would otherwise be available for dividend or out of proceeds of a fresh issue of shares or out of the sale proceeds of any property of the company. However, there exists no provision in the Act for the preference shares issuing company not to make any payment against the preference shares which are liable to be redeemed.

Therefore, it can be said that IAS 32, which principally deals with accounting approaches, is differing with the spirit of the Act. And which is why the legislature needs to address the issue immediately.

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preference shares have some features which are common with debentures, but legally, they are shares.

cannot as a matter of course claim to exercise the rights of a creditor. Preference shareholders are only shareholders and not in

RIGHTS CORNER



Lack of paid leave harms workers and children

MILLIONS of US workers - including parents of infants - are harmed by weak or nonexistent laws on paid leave, breastfeeding accommodation, and discrimination against workers with family responsibilities. Workers face grave health, financial, and career repercussions as a result. US employers miss productivity gains and turnover savings that these cost-effective policies generate in other countries. Based on interviews with 64 parents across the country, it documents the health and financial impact on American workers of having little or no paid family leave after childbirth or adoption. Employer reticence to offer breastfeeding support or flexible schedules, and workplace discrimination against new parents, especially mothers. Parents said that having scarce or no paid leave contributed to delaying babies' immunizations, postpartum depression and other health problems, and caused mothers to give up breastfeeding early. Many who took unpaid leave went into debt and some were forced to seek public assistance. Some women said employer bias against working mothers derailed their careers.



Same-sex parents were often denied even unpaid leave. "We can't afford not to guarantee paid family leave under law - especially in these tough economic times," said Janet Walsh, deputy women's rights director at Human Rights Watch and author of the report. "The US is actually missing out by failing to ensure that all workers have access to paid family leave. Countries that have these programs show productivity gains, reduced turnover costs, and health care savings."

One woman interviewed by Human Rights Watch said her manager was unhappy about her pregnancy and forced her to clean up the floor and do tasks normally assigned to other staff in the last months of her pregnancy, and refused to let her use accrued paid sick leave after her baby was born. When she returned to

work after a six-week unpaid leave, her manager denied her a space to pump breast milk, forced her to work night shifts, and threatened to fire her if she took time off for medical appointments for her ailing baby. Lacking health insurance, she received no treatment for severe post-partum depression.

The federal Family and Medical Leave Act (FMLA) enables US workers with new children or family members with serious medical conditions to take unpaid job-protected

leave, but it covers only about half the workforce. According to the Bureau of Labor Statistics, only 11 percent of civilian workers (and 3 percent of the lowest-income workers) have paid family leave benefits. Roughly two-thirds of civilian workers have some paid sick leave, but only about a fifth of low-income workers do. Several studies have found that the number of employers voluntarily offering paid family leave is declining. Moreover, research on the impact of paid maternity leave on health has found that paid and sufficiently long leaves are associated with increased breastfeeding, lower infant mortality, higher rates of immunizations and health visits for babies, and lower risk of

Source: Human Rights Watch.