

YOUR ADVOCATE



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.

Query
I am living in Dhaka. Few days back, in my neighborhood, an untoward incident took place. One tenant's younger daughter commits suicide following brawl with House Owner's Wife. House owner's wife, daughter and son took part in beating of the tenant's daughter. Victim's mother downed the hanging body from the ceiling, breaking the door. Police visited the spot and collected the evidence and witness's voice regarding the matter. Police also arrested the three member of house owner's family i.e. wife, daughter and son and sent them to jail. All the member of the house owner now free on bail.

However, problem arises on the other issue. Now, tenant is not willing to leave the house until the matter is not quashed in the court or he is not compensated. Though the owner noticed the tenant to leave the house before the incidence took place.

My query is: Is it legal for the tenant to stay in the house? And what type of legal steps will be adopted by house owner to evict them from the house? Moreover, what legal steps should tenant do to seek justice or compensation in the above mentioned case?

Pijush Mukharee,
Pallabi, Dhaka-1216

Response
Thank you very much for your queries. I have fully understood the situations and your queries and shall answer these in turn.

Firstly, regarding the tenancy issue, I understand that the tenant in question does not want to leave unless the matter is solved, i.e. the case is decided, and you are desirous to know whether it is legal for the tenant to stay in the house. To begin with, there is no connection with a criminal case and the tenancy. If a tenant files a criminal case on a different matter against the landowner, this does not anyhow affect their tenancy relationship, and accordingly, the tenant can continue to live in the property, provided a valid tenancy agreement exists. I believe that the tenant is afraid of leaving the house in the apprehension that if the leaves, the criminal case will be weakened and the evidence will be damaged. However, unless the court instructs that the tenant cannot be moved till the disposal of the case, such apprehension will not give him any right to stay in the house. I really wonder whether the court will grant such an unusual order.

Furthermore, a murder case is not a case that can be withdrawn by amicable settlement between the parties (i.e. the complainant and the accused) and hence there is no question of receiving any compensation for the alleged murder from a legal point of view.

Consequently, the tenant cannot lawfully demand that he will not leave the house till he has been compensated for the alleged murder.

Much depends on the tenancy agreement that may

be existing between the tenant and the landowner. Considering a proper tenancy agreement exists between the parties, if the tenancy period has not expired, then it is very much legal to continue living in this house. However, if the tenancy period has expired, then it will be illegal to reside in that house, and the landowner, accordingly, acquires the right to take legal steps to remove the tenant.

Moreover, if the agreement has been otherwise terminated for any reason, then the tenant has lost the licence to live in that house, giving the landowner another basis for taking legal steps to remove him. If the agreement provides for giving of notice before terminating the agreement prior to the expiry of the tenancy period, then either or one party (as the agreement may prescribe) shall have to serve notice to the other party. When the notice period expires, the tenant has to



leave the property since the agreement, and as such the tenancy, cease to exist. Therefore, if the tenant in question has been served with a notice, which I understand is done in the instant scenario, and the notice period has expired, then the tenants should leave the property.

It all comes down to what the agreement contains; if the agreement provides for the assignment of reason for terminating the agreement whatsoever, then the parties should give reasons in their termination notice, as to why they want to terminate it. If the landowner tries to evict the tenant without maintaining the terms and conditions of the agreement (for e.g. terminating without assigning reason, or terminating without giving notice, where the agreement necessitates giving of notice and reasons therein) then such an eviction will be illegal.

Considering, on the other hand, that a written tenancy agreement does not exist, even then the landowner must give reasonable notice and time to have the property emptied. Reasonable notice period shall vary largely depending on the facts and circumstances of the parties.

As for the kinds of the legal steps that the landowner

may adopt, provided he has discharged his duties and responsibilities under the tenancy agreement and the same has been terminated according to its terms and conditions, he may send the tenant another notice asking the tenant to leave the property. However, in view of the landowner's behavioural history, I doubt whether they will be send such a notice. They could send, at their best, a legal notice, through a lawyer.

Moreover, there are laws on eviction of tenants. Section 18 of the Premises Rent Control Act, 1991 (hereinafter referred to as the 'Act'), which otherwise is a protection, against eviction by landowner, for the tenant who pays rent to the full extent allowable by this act and performs the conditions of the tenancy, gives the landowner grounds on which he can file a case to evict the tenant. According to Section 18 of the Act, in essence, the circumstances under which the landowner can do so are as follows:

1. the tenant fails to keep, and on the termination of the lease, fails to restore, the property in as good condition as it was at the time when he was put in possession, subject only to reasonable wear and tear or irresistible force, and fails to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof, and the tenant fails to make a defect, caused by the tenant or its agents, good within three months after notice of defect has been given or left; or
2. if the tenant fails to pay the rent reserved by the lease and to perform the agreement according to its terms and conditions; or
3. tenant, without the lessor's consent, erects on the property any permanent structure, except for agricultural purposes; or
4. in the absence of any contract to the contrary, the tenant has, without the consent of the landlord in writing, sublet the premises in whole or in part; or
5. the tenant has been guilty of any such conduct as is a nuisance or an annoyance to occupiers of adjoining or neighbouring premises; or
6. the tenant has been using the premises or part thereof or allowing the premises or part thereof to be used for economic purposes; or
7. the premises are bona fide required by the landlord either for purposes of building or rebuilding the premises or for his own occupation or for the occupation of any person for whose benefit the premises are held, or where the landlord can show any cause which may be deemed satisfactory by the Court.

However, Section 18(2) of the Act provides that the fact that the period of the lease has expired, or that the interest of the landlord has been transferred shall not of itself be deemed to be a satisfactory cause which the landlord can show to the Court, if the tenant is ready and willing to pay rent to the full extent allowable by this Act.

For detailed query contact: omar@legalcounselbd.com.



LAW NEWS

UN launches initiative to end violence against women



THE United Nations agency tasked with advancing gender equality on November 20 announced a new initiative that will spotlight countries' commitments to end violence against women and girls, seeking bold action and leadership to galvanize efforts to end the pandemic.

"We all must do better to protect women and prevent this pervasive human rights violation," said the Executive Director of the UN Entity for Gender Equity and the Empowerment of Women (UN Women), Michelle Bachelet.

According to UN women, currently, there are 125 countries which have laws that penalize domestic violence. However, up to seven in 10 women continue to be targeted for physical and/or sexual violence in their lifetime, and 603 million women live in countries where domestic violence is still not a crime. The new initiative, COMMIT, asks governments to

make national commitments that will be showcased globally, encouraging countries to come up with new policies to protect victims.

"We hope to see new and improved laws and national action plans that provide for safe houses, free hotline services and free health and legal aid to survivors," Ms. Bachelet said. "We count on education programmes that teach human rights, equality and mutual respect, and inspire young people to take leadership on ending violence against women and girls."

"We need increasing numbers of women in politics, law enforcement, and peacekeeping forces. We need equal economic opportunities and decent jobs for women," she added.

There are high expectations that governments will agree on framework to tackle violence against women and girls in March at the next session of the UN Commission on the Status of Women, which is expected focus on this issue, UN Women noted in a news release.

Source: <http://www.un.org/News/>.



LAW EVENT

Judicial activism as a tool for the protection of human rights

MAHDY HASSAN

THE Human Rights Law Clinic (HRLC) at UNESCO Madanjeet Singh South Asian Institute of Advanced Legal and Human Rights Studies (UMSAILS) organised a lecture session on "Judicial Activism: A Tool for the Protection of Human Rights" on 10th November 2012 at its conference Room at Dhanmondi, Dhaka. Dr. Ridwanul Hoque, Associate Professor of the Department of Law, University of Dhaka was the keynote speaker at that lecture session. Among others, Mr. Anisur Rahman, Assistant Professor and Head of the Department of Law, Eastern University and Mr. Shankor Paul, Head of Human Rights at Concern Universal, Bangladesh spoke at the session. Dr. Uttam Kumar Das, Human Rights Lawyer, moderated it. The speakers and discussants observed that there is a requirement for a pro-active role of judges and relevant legal professionals for the strategic utilization of judicial activism for ensuring the people's access to justice.

There is a lack of understanding and scholarship in Bangladesh on the concept and application of judicial activism said Dr. Ridwanul Hoque while giving his lecture. He claimed that the Judges cannot act arbitrarily rather they should act judicially. When the judges approach the law

going beyond the two persons or two parties of the case or suit effectively, then it is called 'Judicial Activism'. Judicial Activism can be the best tool for the protection of human rights but the State is the main culprit for the violation of human rights. Existing poor mechanism of the protection of Human Rights in Bangladesh and breaking down of the 'Rule of Law' are great problems for a sound judicial activism. Disappearance, cross-fire are regularly being traditionalised



and girls are being victimized in the safe custody which are the gross violation of human rights. Sometimes someone is detained unlawfully and at last the court says that 'you are free now' which cannot be a good practice of judicial activism. However, Judges are in better place to be an activist of human rights.

He went on to say that, now the Public Interest Litigation (PIL) is well established in Bangladesh. It should not be confined only in the fundamental rights -- part three of the Constitution of the People's Republic of Bangladesh. The scope of judicial activism should be practiced in each organ of human rights.

The writer is a student of law, University of Dhaka.



LAW WEEK

Govt asked to ban import of chemical treated foods

The High Court on November 21 directed the government to ban import of foodstuffs treated with formalin and other poisonous chemicals. Responding to a writ petition, the court also directed the government to provide testing kits to all the sea and land ports and markets across the country in a month to ensure that adulterated food items are not imported and sold. The court also ordered the authorities concerned to submit a report by January 7 next year before it, after complying with the order. It also issued a rule upon the government to explain why the import, distribution and sale of food items treated with formalin and other poisonous chemicals should not be declared illegal. The HC bench of Justice Mirza Hussain Haider and Justice Kazi Md Ejarul Haque Akondo came up with the order and rule after hearing the writ petition filed by M Helal Uddin, a director of Federation of Bangladesh Chambers of Commerce and Industry (FBCCI), on November 19. - *The Daily Star online edition November 24 2012.*

Court summons Ramna carnage case 10

A Dhaka court on November 20 summoned an investigation officer of Ramna Batamul carnage case to appear before it on January 3, 2013 to narrate what he found in his probe into the killing case. Abu Hena Mohammad Yusuf, also an inspector of Criminal Investigation Department (CID), on November 30, 2008, submitted the charge sheets in two cases against 14 top leaders of the banned militant outfit of Harkatul-Jihad-al-Islami (HuJI), for their alleged involvement in the carnage. During the traditional celebrations of Bangla New Year 1408 (April 1, 2001) at the Ramna Batamul, a blast killed 10 people and injured 50 others. One of the cases was filed for killing the people and the other was filed under the Explosives Substances Act in this regard. Judge Mohammad Anisur Rahman of the Second Additional Metropolitan Sessions Judge's Court passed the order after completion of the cross-examination of Mohammad Fazlul Kabir, an assistant superintendent of Criminal Investigation Department (CID). - *The Daily Star November 21 2012.*

Court to use body for research

A Dhaka court on November 19 asked Dhaka Medical College Hospital authorities to use the body of a schoolteacher for research as his two wives failed to prove whether he was a Hindu or a Muslim. Chandan Chakrabarty alias Sajjad Hossain, 45, teacher of Khilgaon Ideal School and College, was knifed to death by a gang of miscreants on December 25, 2009 while returning to his Khilgaon residence in the capital. Another Dhaka court had passed the same order on January 26, 2010 but the wives filed petitions for handing over the body for funeral as per their own religious rituals. One wife, Tithi Chakrabarty, wanted a cremation as per Hindu rites while the other, Aklima Akhter Polly, wanted a burial as per Islamic rituals, stating that Chandan had converted to Islam before marrying her. On November 19, Second Additional Chief Metropolitan Magistrate Mohammad Shahidul Islam scrutinised documents placed by the two and said a question of religious sentiment has arisen over the handover of the body to the two wives. Moreover, the two wives had failed to prove whether the man converted to Islam from Hinduism. So, neither Tithi nor Aklima would get the body, he said. The two wives said they would go to the higher courts challenging the order's legality. *The Daily Star November 20 2012.*

SC stays cases against Moudud,

Mosharraf

The Supreme Court on November 19 stayed the trial proceedings of two separate corruption cases filed against former BNP ministers Moudud Ahmed and Khandker Mosharraf Hossain till further orders. The apex court also permitted the BNP leaders to move separate appeals before it against High Court verdicts that had cleared the way for continuing the trial proceedings of the cases. The Anti-Corruption Commission filed the case against Moudud on charge of amassing wealth over Tk 7.38 crore illegally and concealing information about his wealth of over Tk 4.4 crore from the commission. The ACC filed the case against Mosharraf on charge of amassing illegal wealth worth Tk 12.51 crore and concealing information about Tk 3.11 crore. Earlier, the HC rejected petitions filed by the two for quashing the proceedings of the cases. - *The Daily Star November 20 2012.*

HC asks govt, why not admission tests under univs?

The High Court on November 18 asked the government to explain in three weeks why it should not be directed to transfer the authority of holding admission tests for medical and dental colleges to the universities concerned. It came up with the rule in response to a writ petition which claimed that the government illegally controls admission tests for medical and dental colleges as Education Policy, 2010 states that public universities are the authority to hold such tests. Supreme Court lawyer Eunos Ali Akond filed the petition with the HC, seeking its directive on the authorities concerned of government to transfer the power to hold admission tests for medical and dental colleges to the respective universities. The HC bench of Justice Syed Refaat Ahmed and Justice Sheikh Hassan Arif issued the rule after holding a hearing on the petition. - *The Daily*

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, 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel: