



Enemy in my own country

KISHOR DUTTA

NOTHING traumatises a man more than the piercing agony of manifest injustice. The abhorrent apparition of the enemy property laws has been incessantly afflicting the minority community like the sword of Damocles for the last 50 years. Recent statistics shows that 43 percent of total Hindu population has been badly affected by this monster. These inherently discriminatory laws accompanied by myriad discriminatory treatments by state- apparatus have caused a massive migration of Hindu community amounting to approximately 8.1 million from 1964 to 2007 [Living With Vested Property By Abul Barkat]. The Apex court therefore has urged, "Government should act in the benefit of the citizens not as the enemy of the citizens" [MD Hossain v. ADC 31 BLD 551].

The tragic history of Machiavellian exploitation of the minority community by the enemy property laws can be traced back to the Defense of Pakistan Ordinance 1965 promulgated in the wake of military escalation between India and Pakistan on the 6th September 1965. Under the aforesaid Ordinance, Defense of Pakistan Rules 1965 was framed. When emergency proclaimed on 6th September 1965 was withdrawn in 1969, the president of Pakistan promulgated Enemy Property (Continuance of Emergency Provisions) Ordinance 1969 [Ordinance No- I of 1969] continuing certain rules of Defense of Pakistan Rules 1965. After the independence of Bangladesh the parliament enacted The Enemy Property (Continuance of Emergency Provisions) (Repeal) Act 1974 [Act No- XLV of 1974] repealing the aforesaid Ordinance No- I of 1969 and with that enactment all enemy property vested in the government. Up to this enactment government was only entitled to the custody of the enemy properties but with the promulgation of the Ordinance No-XCIII of 1976 government transgressed upon the ownership of the enemy property.

International law approves the expropriation of property owned by aliens. But this expropriation must be for overriding public purposes and there shall be non-discrimination in the treatment of the aliens. After the friendship treaty with India in 1972 India has ceased to be enemy. Therefore any such expropriation of properties owned by Indian residents for security perspective does not serve any public purpose and is connately dis-



crimatory. A question arises whether The Ordinance No-I of 1969 has ceased to operate in Bangladesh due to the proclamation of independence accompanied by The Laws Continuance Enforcement Order 1971 which provides that all laws in force in East Pakistan on 25-03-1971 shall operate in Bangladesh subject to the proclamation of independence and the sovereign status of Bangladesh. The Proclamation of Independence and Laws Continuance Enforcement Order 1971 are the guiding star in the light of which the application of all Pakistani laws in Bangladesh shall be considered [Haji Azam v. Singleton Bindu 27 DLR 583]. Therefore both legally and logically the aforesaid Ordinance No-I of 1969, off-shoot of India-Pakistan rivalry, should cease to operate in Bangladesh which is not successor of Pakistan. But the Apex court has approved the operation of this Ordinance in Bangladesh [Dulichand Omraolal v. Bangladesh 33 DLR (AD) 30].

The motto of the enemy property laws was that the control of the enemy properties should be with the government during the state of war so that the benefit out of those properties cannot enrich the enemy. Before any property is treated as enemy property, the authority must prove that the owner concerned migrated to India before the enemy property laws came into operation [Indu Moti v. ADC 50 DLR 444]. Mere claim of the custodian does

not make a property enemy one [Laxmi Kanta Roy vs. UNO 46 DLR 136]. The ownership of dedicated property goes to the Deity. Therefore the Apex court has observed that unless the Deity migrated to India during the state of war the property belonging to the Deity cannot be declared enemy property [Laxmi Janardhan Jew Thakur v. Bangladesh 50 DLR 273].

After the termination of the state of war no property can be declared enemy property. The Apex court has observed the revocation of state of war is a political question to be decided by the executive [Monsur Ali v. Ardendu Shekhar 21 DLR]. In the absence of any formal declaration terminating the state of war, mere withdrawal of emergency in 1969 does not amount to the termination of the state of war [Abdul Majid v. East Pakistan 27 DLR 355]. But in a later decision the Apex court has observed that the state of war terminated on the withdrawal of emergency in 1969 [Omraolal Case 33 DLR (AD) 30].

The Apex court has observed in the Dulichand Omraolal Case that a property becomes enemy property by the operation of law and subsequent taking over of such property is permissible. With respect their lordship has made a serious blunder in the interpretation of Rule- 182 of the Defense of Pakistan Rules 1965 which clearly states a custodian acquires the right to take over a property only if there has been a previous order of vesting by the authority. The HCD has detected the blunder committed by the AD and observed, "what their lordship wanted to imply in the Omraolal Case is that if during the continuance of state of war there had been an order of vesting of a property and actual steps to take over such property had not been taken at that time, subsequent taking over of such property is permissible" [Sunil Kumar Ghose v. State 39 DLR 377]. However the Apex court has approved the subsequent taking over of the enemy property but the whole position changed after the enactment of Act No- XLV of 1974 which abrogated the Ordinance No-I of 1969. Therefore no such enemy property can be taken over by the state after the enactment of this repealing Act No-XLV of 1974 [Saju Hossain v. Bangladesh 58 DLR (AD) 177]. The August court has clearly stated, "Enemy Property Laws died with the repeal of Ordinance No- I of 1969 on 23-03-1974 and thereafter no vested property case could be started".

THE WRITER IS A STUDENT OF LAW, UNIVERSITY OF DHAKA.



Current labour law and ILO standard

THE Bangladesh Labour Act 2006 was adopted on 15 July 2013. The amendments to the Bangladesh Labour Act 2006 will hopefully prove to be the first step towards fulfilling the Government's obligation to respect the fundamental rights to freedom of association and collective bargaining and to address the critical need to bolster occupational safety and health. Bangladesh has ratified ILO Conventions 87 and 98 on freedom of association and collective bargaining and thus is required to protect the rights contained therein. The conformity of the amended legislation with international labour standards ratified by Bangladesh will be reviewed by the ILO supervisory machinery later in the year.

An initial review suggests that the amendments did address some of the ILO's specific concerns, while falling short of several important steps called for by the ILO supervisory system to bring the law into conformity with ratified international labour standards.

Several provisions to improve workplace safety have now been included in the law. Since Bangladesh has only ratified category or sector specific Conventions on OSH not directly related to the Labour Act, the specific steps taken in this area and detailed below can only be welcomed. However the country is encouraged to ratify the key international labour standards on OSH policy, namely Promotional Framework for Occupational Safety and Health Convention, 2006 (no. 187) and Occupational Safety and Health Convention, 1981 (no.155).

Freedom of Association and Collective Bargaining
The ILO has not yet received an official version and translation of the final amendments adopted. Based on an unofficial translation, it appears that the amendments take several steps called for by the ILO. They eliminate

the previous obligation to send to employers the names of union leaders at the time of registration of a trade union at the factory or federation level. They will allow workers to call on outside experts for advice during collective bargaining. In the public industrial sector, workers will now be allowed to elect 10 percent of their enterprise officers from outside the workplace, although this right is not extended to workers in the private sector.

A number of restrictions to workers' freedom of asso-



ciation rights which have been the subject of ILO concerns were not addressed by the amendments. For example, major areas that remain to be addressed include the reduction of the 30 per cent minimum membership requirement to form a union. The amendments also do not extend freedom of association and collective bargaining rights to workers in export processing zones.

Workplace safety and health

Several provisions to improve workplace safety have now been included in the law, such as creation of safety committees in factories with 50 workers or more. The labour inspectorate will be given new responsibilities to inspect safety and health conditions of workplaces and conduct on-the-spot inspections. Personal safety equipment will now be required. Provisions now require the establishment of workplace Health Centres in workplaces with over 5000 employees and safety welfare officers in workplaces with more than 500.

Under the amendments compensation for work-related deaths will be provided after two years in employment, compared to the current three years. Workplaces of over 500 employers will be required to arrange for and cover the cost of treatment of occupational diseases.

Other fundamental rights

With regard to ratified Conventions covering other fundamental rights, the amendments did not prohibit discrimination in employment or remuneration, as called for by the ILO supervisory system. The law was not amended to prohibit debt bondage by children nor to ensure that compulsory labour cannot be used as a punishment for breaches of labour discipline or violations of provisions restricting the right to strike.

Next steps on cooperation

The Government of Bangladesh should take further steps necessary to fulfill its obligations under ratified conventions. The government should start to work with urgency on the regulations required to implement the amendments and to build the capacity of the labour inspectorate to assume its new responsibilities.

SOURCE: WWW.HREA.ORG.



This week your Advocate is Barrister Tasnuva Shelley, Advocate, Supreme Court of Bangladesh. Ms. Shelley is a Senior Associate of a renowned law firm named Syed Ishtiaq Ahmed & Associates. The partners and associates of the firm are highly experienced in litigation and have a sizeable legal practice having expertise in various branches of law mainly in commercial law, corporate law and in conducting litigations before courts of different hierarchies.

Query
My deceased father bought a few flats 10 years back but two of them are adversely possessed by two men for which there is a pending civil suits. One of the possessors have been harassing me by lodging false cases against me every now and then plus he threatens the guards I have employed every other day and a few days back he even slapped the guards, I sought help from the nearest police station but could not get enough assistance to stop him from disturbing my peace. Please advice me as to what possible steps I can take.

Noor e Huda
Mirpur

Response
Thank you for your query. The definition of "Adverse Possession" is the process by which a person who is not the legal owner of land (flat in your case) can become its owner after having occupied it for a specified period of time. In Bangladesh, as per the Limitation Act, 1908 that period is 12 years but it appears from your query that the flat in question was purchased 10 years ago therefore, it is

unlikely for the nature of civil suits pending as mentioned are with regard to adverse possession. Generally, any person who is entitled to any legal character, or to any right as to any property (such as land, flat etc), may institute a suit against any person denying such character or right and the Court may in its discretion make therein a declaration that he is so entitled. I am unable to comment any further as the nature of the civil suits have not been disclosed on the presumption that you are contesting the same upon appointing a learned lawyer(s) but inform him about the situation with your guard and the response from the police station which will enable him to prepare his submission before the civil court and eventually benefit your case.

However, to establish any legal right it is assumed that you have all the documents of the said flats in your name as the successor-in-interest and have complied with the cumbersome and expensive registration requirements. In addition, the present ownership document, the mutation documents and the land development tax (khazna) are all up to date.

The current problems you are facing is inevitable in a

country where the wealthy and influential people have always encroached on others' lands with false documents and obtained court decrees to confirm their ownership, often with help of officials in land-administration and management departments. Among other examples, hundreds of housing companies in urban areas have started to demarcate their project area using pillars and signboard before receiving titles. They use local muscle-men with guns and occupy them with assistance from the local administrations, including the police. Most of the time, land owners feel obliged to sell their productive resources to the companies at a price inferior to market value. Civil servants within the government support these companies and receive some plot of land in exchange.

Therefore, the most practical advice is that you buckle up and get ready to tackle the administrative dispute resolution system and the civil court system, which may take 15-20 years to resolve, provided you can afford the time and money to enforce your rights.

FOR DETAILED QUERY CONTACT: TASNUGA.SHELLEY@GMAIL.COM



Strengthening ADR to help poor litigants

MOSTAQUE AHAMMAD

THIS is an undeniable fact that the judiciary of Bangladesh is facing huge backlogs and the delay disposal of cases. The poor litigants are the main sufferer for the delay and excessive expenses in the disposal of cases. So it is the demand of time to take some initiatives for the helpless, poor litigants. In this connection, it can be mentioned that Alternative Dispute Resolution (ADR) is the best process. To perceive the example of Family Court a few Acts were passed and ADR mechanism got legal acknowledgment in Bangladesh. But question arises as, has the government yet able to fulfill the ADR target?

Most importantly effective process of ADR is not recognised in our country. In most of the cases traditional Shalish system govern the process of ADR which is a major form of community based ADR. The pragmatic situation is that people cannot trust the community leadership. Because sometimes biased decisions are given by the community juries. Powerful people interfere in the community based ADR procedures. As a result, common people feel themselves helpless and consequently insecurity and uncertainty is increasing day by day. So time has come to think about ADR differently and how this mechanism can be more effective.

All of the ADR issues are compromising. ADR is a method which is formed in a compromising way with a sacrificing mood. The success of ADR depends upon parties' consensus to compromise besides their faith in the fairness and objectivity of the neutral third-party. So each party has to set up their mind from the beginning that the ADR process is to be concluded or settled in a compromising way with a friendly environment. All the parties have to realise that it is better than the formal litigation. The matter of realisation of the party is depend on 'how and who will offer and make them understand to accept ADR by saying the advantages of ADR'. If they understand that they will be benefited in such affairs as the minimum time with less expenditure, they will accept the offer. Generally a person or disputant party comes to know or is offered to take an ADR in three stages;

1. At the Pre-trial Stage: After filing a case, the Court or Judge examines the complaint, the written statement and documents. Then



the Judge or Court may give an offer to the parties to accept an ADR procedure like mediation, conciliation, settlement conference etc. in a compromising way. This offer may be given to the parties by the court of its own motion. Sometimes, one party is offered by opposite party and then finally, court is offered by both the parties mutually to initiate an ADR procedure. See the Section 89A of the Code of Civil Procedure, 1898 or the Section 10 of the Family court ordinance, 1985.

2. At the Trial Stage: At the trial stage, the court may make another effort to effect a compromise or reconciliation between the parties after the close of evidence of all parties. See to the section 13 of Family court ordinance, 1985.

3. At the stage without trial: Any person (either disputant or not) can be informed that there are some ADR methods to resolve the dispute outside the courtroom. Information may be given by Government initiative or by NGO initiative or by any individual weather any dispute is made or not.

In regard of formal ADR, all of the court-annexed ADR is organized by the court or judge himself at the pre-trial stage or at the trial stage. Court may offer the parties to accept ADR procedure or parties may request to the court to organize ADR procedure. On the other hand, in regard of informal ADR, if the parties know at the stage without trial that ADR is more fruitful and beneficiary than formal litigation, they will be mentally set up from the beginning of getting information or pursue other to accept ADR for resolving a dispute. So, the informal ADR is more effective to decrease the backlogs of cases.

We know that ADR methods are informal in nature, but all offers (to the parties) of ADR are not informal. At present it is more important to offer an ADR procedure informally than formally. For these reasons, to create awareness in the society should be increased. For making known this matter to the common people, besides electronic and print media Government should organize workshop among the member and Chairman of the Union Parishad. It will be the effective and vital role. Because, they are directly communicated with the common people. Most of the disputant parties go to them for suggestion before going to the court. If they suggest any or both of the parties not to go to the court, or, if they pursue to take an ADR method, party or parties feel discourage to go to the court. At the same time, Maximum community juries including chairman and member of Union Parishad do not know what ADR is? Person involved in ADR are not so much trained and experienced. In this connection, in my point of view, if ADR Center would be made in every Union Parishad, it would be more effective. We know that already there is an Arbitration Council in every Union Parishad led by the Union Chairman. So it will not be so difficult to make. Government can experiment by doing that in an Upozila. Seven years have already passed after introducing ADR in Bangladesh. So there should be a specialised institution or ADR Center in the capital city to supervise the mechanism all over the country.

It is impossible to make or increase the awareness at every sector of the society by only government initiatives. NGOs and Social welfare Organisation can play their instrumental role here. At the community based ADR any private individual or NGO may offer easily to take the benefit of ADR. Therefore, NGOs and private individual including lawyers can not overtake these social responsibilities.

Final word is that nobody is interested to go to the court to resolve a dispute. In fact, poor people really fear to the court proceedings. Sometimes they are financially unable or, court is so far from the rural area. Notwithstanding they have to go to the court if they are bound as a victim of circumstances, or sometimes they fall under by the broker. So ADR procedure should be applicable not only for the decrease of backlogs of cases and delay disposal of cases but also to protect the indigent from such kind of sufferings. Through this process, we can protect and promote human rights particularly for those who are kept beyond notion of justice only because of their poor economic status.

THE WRITER IS A SENIOR LECTURER, DEPARTMENT OF LAW & JUSTICE, THE PEOPLES UNIVERSITY OF BANGLADESH.