

Case study

BANGLADESH

Indigenous women take the lead in mediating disputing claims to ancestral land

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Kalyani Munda and her two sisters, Shukkuri and Swarasati, live in the village of Vetkhali, in Shyamnagar Upazila, Sathkira District, on land that was owned by their father Himchand and their uncle Phulchand. Himchand had co-owned with Phulchand two hectares of agricultural land and a 0.28-hectare homestead land. In 1970, Phulchand left Shyamnagar and never returned to their paternal estate. The three sisters and their husbands took up residence on the homestead land. In May 2020, Himchand died. Six months after, Arshad Ghazi, his brother Ali Ghazi, and their relative, Mizanur Rahman, showed up to claim the homestead land, saying that they had bought the property from Himchand in 1973. Subsequently, Ali Ghazi's group began to take possession of most of the land except the area currently occupied by Kalyani, her sisters, and their husbands. It was at this time that Kalyani together with her husband Kamalesh Munda sought assistance from the Sundarban Adivasi Munda Sangstha (SAMS).¹

The long road to peaceful resolution of a land dispute

Following the application by Kalyani for SAMS' mediation, the process of dispute resolution began in stages.

¹ Sundarban Adivasi Munda Sangstha (SAMS) is non-government organization formed by indigenous Munda people and located in Munshiganj village at the edge of Sundarban mangrove forest area in Shyamnagar sub-district of Sathkira district in Bangladesh. Its main objective is to develop the Indigenous communities and implementing their rights, to promote and protect their human rights, land rights, and their language and cultural integrity. See details: <https://www.samsbd.org/about-sams/>

Parties Take a Hard Line

In initial talks between SAMS and Arshad and Ali Ghaza, the two brothers declared that they would not concede their claim because they had documents showing that Himchand had sold 0.28 of a hectare of homestead land to them while he was still alive. On the other hand, Kalyani and her sisters accused Arshad and Ali of trying to grab their land using forged documents.

SAMS first organized a meeting between the parties in the home of Himchand Munda, and later at a neutral place. No solution was discussed at both meetings. Arshad and Ali refused to give ground and instead pressured Kalyani and her husband to stop pursuing their case and to leave the area.

Kalyani and her sisters approached SAMS for help, whereupon SAMS brought the case to the government's attention. With the assistance of SAMS, the three sisters submitted an application to the Upazila Nirbahi [Executive] Officer (UNO) on 6 September 2021, seeking protection of their paternal homestead against land grabbing.

The UNO called both parties to present relevant land documents on 23 September 2021 in the presence of SAMS executive director Krishnapada Munda and field officer Tarapada Munda. After listening to both sides, the UNO told Arshad and Ali that notwithstanding their land title, their acquisition of Himchand's land was considered as illegal because they did not comply with the procedure for buying ancestral land. A letter authorizing such a purchase should have been requested and secured from the Deputy Commissioner of Satkhira district.

The UNO acknowledged the payment made by Arshad and Ali but enjoined them to settle the matter with the three sisters.

Mutual Desire for a Peaceful Solution

Finding themselves cornered, Arshad and his relatives contacted SAMS president, Gopal Chandra Munda, requesting his help to facilitate an amicable settlement with the sisters. On 2 October 2021, SAMS organized a mediation between the two parties at SAMS office. The mediation panel included SAMS Chairman Gopal Chandra Munda, SAMS executive director Krishnapada Munda, local civil society representatives Manindra Nath Mistri and Suraj Chakrabarti, and Abdul Bari, a former member of the Union Parishad. Tarapada Munda, the field facilitator of SAMS, documented the proceedings of the mediation which was held at Kalyani's home.

The panel led by Gopal Munda started the proceedings and asked the parties to express their position and the solution they hoped for. He thanked them for their willingness to meet and to find a peaceful solution to the dispute.

Kalyani and her sister Shukkari said that Arshad and his relatives had taken more land than what they paid for, and demanded the return of their homestead land. They further said that they intended to use lawful means to take back their ancestral property.

The representative of the other party, Md. Hazrat Ali, admitted that they were unaware of the rules concerning the purchase of tribal land when they bought the land from Hilmand. Nevertheless, he said that they had the deed to the land, which made them the lawful landowner. In conclusion, however, he said, *“Today we have come here for a solution. And we want a peaceful solution.”*

After hearing both sides and having discussions with the members of the mediation panel, Gopal Munda declared that while it was true that Arshad and his relatives had paid for Himchand’s land, their ownership was in question because they did not get the permission of the Deputy Commissioner at the time. Furthermore, Gopal Munda said that if the land were taken away from Kalyani and her sisters, they would be landless and homeless, whereas Arshad and his relatives already had a lot of land of their own. Gopal Munda gave the parties two choices: *first*, to settle the issue in court, which would be time-consuming and expensive; or *second*, to allow Kalyani and her sisters to buy back their father’s land at a mutually agreed price.

The Negotiation

The two parties agreed that they did not want to go to court to resolve the dispute and that they were willing to work for a peaceful solution. The members of the mediation panel assessed the price of the land at 345,000 Bangladeshi Taka (about 3,137 US Dollars in 2024 prices) in accordance with the prevailing market price. Gopal Munda proposed that Arshad and his relatives would transfer ownership of the land to Kalyani and her sisters through the registration process.

However, Kalyani said that they could only afford to pay 50,000 Bangladeshi Taka (about 455 US Dollars) and that they needed two years to do so. Arshad and his relatives countered by asking for 80,000 Bangladeshi Taka (about 727 US Dollars), and promising upon receipt of payment to transfer the deed through registration to the three sisters.

The Resolution

Gopal Munda said that while Arshad’s ownership of the land was in dispute, he and his family could sell the property to another party on the strength of the registered deed that they possessed. This would make the dispute more complicated. He added that it was time for Kalyani and her sisters to settle the matter in order to get secure ownership of the land. He conceded that paying 80,000 Taka would not be easy for the three sisters, but he reminded them that it would be even harder to live in a hostile relationship with their neighbors because of adverse land claims.

Kalyani and Shukri agreed to pay the amount claimed by Hazrat Ghazi.

***Shalish* — Bangladesh’s unique alternative dispute resolution process**

The *Shalish* is an age-old, traditional system of mediation and dispute resolution in rural Bangladesh in which parties involved in a conflict, along with community members and village elders, gather locally to mediate the dispute with a view towards arriving at a resolution that was agreeable to the parties. Traditionally, experienced village leaders (often called *Matobbor* or *Morol*), village elders or elites, along with men of high standing in the community served as voluntary third-party mediators of local disputes. Over time, the authority to conduct the *shalish* was transferred to local government bodies, such as the Union Council or Union Parishad.

Gopal Munda thanked and appreciated both parties and reiterated the terms of the agreement, i.e., that Arshad and his relatives would transfer the property to Kalyani and Shukkari through a registered deed upon receipt of 80,000 Taka. He also reminded both parties that until such transfer was made, Kalyani and her sisters would not be harmed, and that SAMS would be following up on the negotiation.

Today, Kalyani and her sisters have not received the transfer deed because they have not made full payment yet. Nevertheless, they continue to live in their homes free from intimidation from Arshad or his brothers.

SAMS continues to follow up on the case. It has also been updating the UNO on developments in the case. The UNO has assured the sisters of the government’s support. Meanwhile, civil society members in the locality have visited the area and offered any assistance that they could provide.

Learnings and insights

- NGOs can facilitate a successful mediation if they have commitment, communication and networking capacity, and mediation skills.
- If the government supports the mediation process, the complex work becomes much easier for NGOs. The sensitivity of the UNO to the plight of the indigenous community helped to solve the case within a short period of time.
- Balancing power is very important in mediation. The parties to a mediation have different types and levels of power which could result in an agreement that has been coerced on one of the parties. In this case, the adverse claimants were initially unwilling to come to a compromise because they held the deed to the land. However, when they realized that their title deed lacked legality and that the Munda sisters could raise the issue before the government and the court with the help of SAMS, they agreed to a compromise and accepted a nominal payment for their claimed property.

The traditional *Shalish* system is dominated by male *Shalishkars* (lit. mediators). As a result, there is bias in favor of men in how it operates. The statements and particularly the opinions of female members of the parties are not given as much weight. At the same time, women in rural communities are not viewed as suitable candidates for the *Shalish* committee. This accounts for the slow progress in women's participation and leadership in the mediation process.

Nonetheless, the government of Bangladesh is encouraging women to serve as *Shalish* committee members in rural areas. There are also some efforts by various government agencies and NGOs to train and build women's capacity to serve in the *Shalish* committee at the highest level. The role of elected women Union Parishad members in the village courts is gradually becoming visible and women *shalishkars* are a common feature of NGO led *shalish*.

In the recent Justice Audit (2015) for Rangpur (Justice Audit, 2015), rural respondents were asked, "Where would you go to get justice?" Only 15.8 percent said they would go to the courts, while 32.7 percent said they would go to the Upazila Parishad Chair. This reflects a general desire to resolve disputes within the community. However, it also indicates that the village courts and NGO-facilitated *shalish* are rarely the first point of contact in the justice system when a grievance is raised (Jahan, et al., 2009).

SAMS' mediation has been contributing to the process of changing social norms and behavior. In the current case, SAMS faced difficulties in including women panelists or women members in the *Shalish* committee. Nevertheless, SAMS provided the Munda sisters with the space and opportunity to be involved in the mediation process while their subsequent actions have empowered them to lead from their end. Otherwise, the husbands would have ended up dealing with the dispute and leading the mediation on behalf of the Munda family.

Conclusion

Legal pluralism is a fact of life in Bangladesh, with many different forms of justice institutions apparent in rural areas. There is a formal court system, whose lowest body is the village courts, and with district-level courts and the Supreme Court above them. The district courts are backlogged and corrupt, and tend to have limited relevance for rural people (Harrold, 2007).

One of the major barriers for the impoverished groups to get access to justice is the high cost of filing and running a suit in the formal courts. Such things as pleader's remuneration, court fees, travel cost, and other miscellaneous expenses make the formal justice system quite expensive and burdensome for underprivileged people. On the contrary, cost effectiveness is one of the prime features of community-based mediation. In most cases, NGOs do not take any fees for mediation and legal assistance. Moreover, since mediation sessions are usually held in the locality of the disputants, the latter save on transportation costs. Thus, community-based mediation has become quite

popular at the grassroots level. However, the biggest challenge is that the mutual agreement of resolution is not legally binding on the parties. But if the parties remain committed to the agreed resolution, community-based mediation can be a sustainable solution to land disputes. ■

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