

Present:
Mr. Justice Mohammad Bazlur Rahman
and
Mr. Justice Md. Ruhul Quddus

Writ Petition No.11128 of 2006

Md. Fazlul Haque and others
...Petitioners
-Versus-
Government of Bangladesh and others
...Respondents

Mr. Kazi Rezaul Hossain, Advocate
... for the petitioners
Mr. S.M. Quamrul Hasan, A. A. G.
... for respondent No.3
Mr. Muntasir Uddin Ahmed, Advocate
... for respondent Nos.7(a)-(e)

Judgment on 25.7.2012

Md. Ruhul Quddus, J:

This Rule *nisi* was issued challenging a letter as contained in Memo No. এম. পি-১০৬১/৯৩/১১৮০/ক. সে dated 1.2.1994 (annex-G to the writ petition) allotting a rehabilitation plot in favour of deceased respondent No.7 Kofiluddin.

Facts leading to issuance of the Rule, in brief, are that the petitionersq predecessor-in-interest Abeda Khatun and her co-sharers were the lawful owners in possession of a piece of land measuring .6343 acres at Mouza Ibrahimpur, Dhaka Cantonment, Dhaka which was acquired by the Government in L.A. Case No.159/61-62. The said Abeda Khatun being an affected person filed an application in

prescribed form to the Assistant Commissioner of Housing and Settlement (now National Housing Authority) on 16.2.1985 for allotment of a rehabilitation plot in her favour. On enquiry into her application, she was found to be an affected person and was given allotment of rehabilitation plot No.4, Road No.1, Block-Ka, Section-6, Mirpur, Dhaka measuring 200 square yards of land or thereabout by a letter of allotment dated 17.2.1994. On receipt of the said letter of allotment, she deposited the full premium amounting to Taka 9,000/- (nine thousand) only on 20.2.1994 by treasury chalan No. ১/১-৪. Thereafter, she wrote a letter to the concerned authority for handing over possession of the plot in her favour. In response thereto the Executive Engineer, Housing and Settlement (herein respondent No.6) took initiative for handing over the possession, in course of which he came to know that another letter of allotment as contained in Memo No. এম. পি-১০৬১/৯৩/১১৮০/ক. সে dated 1.2.1994 was issued in favour of respondent No. 7 Kofiluddin in respect of the same plot. Thereafter, several correspondences were made between the said Abeda Khatun and the Housing and Settlement authority. At one stage they (Abeda Khatun and Kofiluddin) were asked to appear before the Assistant Commissioner of Housing and Settlement by a letter as contained in Memo No.168/83/7436/Ka.Sha dated 23.8.1994. Subsequently the

authority stopped all further proceedings till they would arrive at a final decision on the matter.

The petitioners contended that respondent No.7 Kofiluddin was not an affected person to get allotment of a rehabilitation plot. His father Sader Uddin was an affected person and accordingly he got allotment of rehabilitation plot No.7, Road No.2, Block-Kha, Section-6, Mirpur by a letter as contained in Memo No.326/DES dated 12.4.1979. Possession of the plot was also handed over to him and a lease deed for 99 years was executed and registered in his (Sader Uddin's) favour. Respondent No.7 Kofiluddin obtained allotment of the plot in question practicing fraud upon the Housing and Settlement authority by showing himself as an affected person, which he was not.

The aforesaid Abeda Khatun died on 3.10.2003 leaving the petitioners as her legal heirs and heiresses. After her death, they made an enquiry and came to know that respondent No.7 Kofiluddin himself was not an affected person, but when his father Sader Uddin died in 1993 he made an entry of his name along with other successors of his father in the award book.

The petitioners further contended that the Government in its cabinet meeting held in May, 1976 had decided to give allotment of rehabilitation plots to those whose land was acquired by the Government in a particular area and who had not received any plot in any of the residential area in

Dhaka city. Since Abeda Khatun was an affected person, the allotment letter dated 17.2.1994 in her favour was a valid one and the impugned allotment order dated 1.2.1994 in the name of respondent No.7 Kofiluddin was illegal and without lawful authority.

During pendency of the Rule respondent No.7 Kofiluddin died on 11.5.2011 and his heiresses were substituted as respondent Nos. 7(a)-(e), who have contested the Rule by filing a joint affidavit-in-opposition affirmed on 18.1.2012 supported by a supplementary affidavit-in-opposition affirmed on 25.7.2012 contending, *inter alia*, that the writ petitioners obtained the Rule and order of stay suppressing the material facts that earlier respondent No.7 Kofiluddin as petitioner moved Writ Petition No.480 of 1997 before the High Court Division on the self same subject matter. In the said writ petition the petitioners predecessor-in-interest Abeda Khatun was made respondent No.5, who contested the Rule by filing an affidavit-in-opposition. A Division Bench of this Court heard the Rule and made it absolute by judgment and order dated 28.2.1999. Against the said judgment of the High Court Division Abeda Khatun moved Civil Petition for Leave to Appeal No.2523 of 2009 before the Appellate Division, which was dismissed on 16.8.2011. She had also instituted Title Suit No.307 of 1999, plaint of which was rejected under Order VII rule 11 of the Code of Civil Procedure at the instance of Kofiluddin, who

was made a defendant therein. An appeal being Title Appeal No.507 of 2000 preferred against the said order of rejection of plaint was also dismissed.

The petitioners filed an affidavit-in-reply affirmed on 14.5.2012 to the affidavit-in-opposition filed by respondent Nos.7(a)-(e) stating, *inter alia*, that in the earlier writ petition the High Court Division found Abeda Khatun as well to be an affected person and expected that the Government-respondents would in all fairness give her an alternative plot expeditiously; that she did not file any Civil Petition for Leave to Appeal against the judgment of the High Court Division passed in Writ Petition No. 480 of 1997; that in the instant writ petition the allotment letter dated 1.2.1994 (annex-G) has been challenged, but in the earlier writ petition filed by Kofiluddin, a Memo dated 19.12.1996, by which the settlement authority had cancelled his allotment, was challenged. Therefore, the subject matter in the two writ petitions is not exactly same.

Mr. Kazi Rezaul Hossain, learned Advocate submits that when the writ petitioners by obtaining an information slip (annex. L to the writ petition) for the first time came to know on 22.8.2006 about the real status of Kofiluddin that he was not an affected person and had obtained the allotment order practicing fraud upon the Housing and Settlement authority, the cause of action for filing the present writ petition arose. Mr. Hossain with reference to the annexes of the writ petition

further submits that the petitioners have been possessing the plot in question for a long period since before the allotment in favour of Abeda Khatun. She was an affected person and was rightly allotted the plot in question. On the other hand, it is apparent on the face of record that respondent No.7 Kofiluddin was not an affected person and obtained the allotment order by practicing fraud upon the settlement authority and as such the allotment order is vitiated. In response to our query as to why Abeda Khatun applied for possession of the plot in question if she was already in possession, learned Advocate replies that actually she applied for symbolic possession of the plot in her favour for procurement of documents of possession.

On the other hand Mr. Muntasir Uddin Ahmed, learned Advocate appearing for respondent Nos. 7(a)-(e) submits that the allotment order dated 1.2.1994 in favour of Kofiluddin was subsequently cancelled by the Memo dated 19.12.1996 and therefore, issues in both the writ petitions are virtually same and as such the instant writ petition is hit by the principle of *res judicata*. Mr. Ahmed further submits that the writ petitioners obtained Rule in the present writ petition by suppressing the facts of earlier writ petition and civil suit. Mr. Ahmed finally submits that the order of allotment in question was passed on 1.2.1994 whereas the instant writ petition challenging the same was moved in 2006. There is no explanation whatsoever for such

inordinate delay on the part of the petitioners and for all the reasons the Rule is liable to be discharged.

In reply, Mr. Hossain submits that although the petitioners predecessor-in-interest Abeda Khatun was made respondent No.5 in the earlier writ petition, they were not aware of the same as she had not disclosed to them anything about the writ petition. Moreover, the legality of Memo dated 19.12.1996 was questioned in that writ petition, while allotment letter dated 1.2.1994 in favour of Kofiluddin has been challenged in the present writ petition on disclosure of new facts and documents. So the cause of action for filing the present writ petition and the subject matter is different.

The Chairman of National Housing Authority being respondent No.3 appeared in the writ petition by filing a power, but did not file any affidavit-in-opposition and as such learned Assistant Attorney General Mr. Kamrul Hasan though is present before the Court, cannot make any submission.

We have considered the submissions of the learned Advocates and gone through the records including the affidavits filed by the substituted respondents. It is not clear how the predecessor-in-interest to respondent Nos. 7(a)-(e) was an affected person although an information slip has been annexed with their supplementary affidavit-in-opposition as annex-Z to create an impression to that effect.

On careful reading of the same it appears that Kofiluddin himself was the applicant in that information slip and he sought for information amongst others that what quantity of land of his father was acquired. In the extreme right column of the information slip it is mentioned that a demand of Taka 67.09 was issued in favour of Kofiluddin as compensation of a room erected and trees planted on C.S Plot No.561. It is also mentioned in same column that entire compensation for the acquired land was given to Sadar Uddin i.e father of Kofiluddin. Thus it appears that Kofiluddin was offered compensation for room and tress, not for land and his father Sadar Uddin got the entire compensation for land. So this document does not help the substituted respondents to show their predecessor Kofiluddin to be an affected person, it rather supports the writ petitionersq contention. It is also pertinent to mention that in course of hearing Mr. Ahmed took adjournment to file another supplementary affidavit with documents in support of his contention that Kofiluddin was an affected person, but ultimately failed.

On the other hand the petitionersq claim of possession lends support from municipal tax receipts (annex-B to the writ petition), a certificate issued by the Regional Officer of Dhaka City Corporation (annex:B-1), a treasury *chalan* showing deposit of Taka 9,000/= by Abeda Khatun and a receipt in acknowledgment thereof (annexes: E and E-1 respectively), a *warisan* certificate issued in favour of the

petitioners by local Ward Commissioner (annex:A-1). All these documents show the plot in question as common address of the writ petitioners. Respondent Nos.7 (a)-(e) though denied authenticity of these documents, failed to produce any documents in support of their possession over the plot except annex-Z(4) to the supplementary affidavit-in-opposition, which are minutes of land allotment committee's meeting held on 11.3.1995 in the Ministry of Housing. In the last portion of clause 8 of the said minutes it has been mentioned with reference to an inquiry that Abeda Khatun was in possession at the northern side of the plot in question. In the said meeting the land allotment committee of the Ministry had decided to maintain the allotment letter dated 17.2.1994 in favour of Abeda Khatun and recommended Kofiluddin to give an alternative plot. Therefore, because of mere denial by the substituted respondents it cannot be said that the petitioners are not in possession over the plot in question or in any part thereof, especially when their (substituted respondents') own document supports the claim of possession of the writ petitioners.

It further appears that after issuance of allotment letter dated 1.2.1994 in favour of deceased respondent No.7 Kofiluddin, the settlement authority had cancelled the same by another Memo being No.M.P-168/83/6419/1(4) dated 19.12.1996, which was challenged in the earlier writ petition

and ultimately was declared without lawful authority. Therefore, the legality of the impugned allotment letter dated 1.2.1994 in favour of Kofiluddin was impliedly upheld by this Court and therefore, this Court cannot decide its legality again in another writ petition. The petitioners, however, could have filed an application for review of the judgment and order in that writ petition on disclosure of new facts and documents.

In the earlier writ petition, the petitioners' predecessor-in-interest Abeda Khatun was found to be an affected person and this Court desired that the authority concerned would expeditiously allot her another plot. Since no such plot was allotted in her favour or after her death in favour of the petitioners, we are of the view that justice would be met if the instant Rule is disposed of with necessary direction to that effect upon the respondents.

Accordingly the Rule is disposed of. Respondent Nos.1-6 are directed to allot an alternative rehabilitation plot in joint names of the petitioners and handover the same in their favour within six months from receipt of this judgment. Respondents are also directed not to evict the petitioners from the plot in question until a new plot is allotted and handed over in their favour.

Mohammad Bazlur Rahman.J.



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