

**2 SCOB [2015] HCD 70****HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)**

...Respondents.

WRIT PETITION NO. 8152 OF 2009.

**Msaharaf Hossain**Son of Sadek Dewan, Of 31/8. Block-C,  
Tajmohal Road, Mohammadpur Road,  
Mohammadpur, Dhaka .....Petitioner.

Mr. Md. Abdul Malek, Advocate

... For the Petitioner.

Mrs. Sufia Ahmed with

Mrs. Afsana Rashid, Advocates

...For the Respondent No.2.

-Versus-

**Dhaka City Corporation**, represented by the  
Mayor, Nagar Bhaban, Fulbaria, Ramna,  
Dhaka and othersHeard on the 3<sup>rd</sup> September,2015.

&amp;

Judgment on the 6<sup>th</sup> September,2015.**Present:****Mr. Justice Zubayer Rahman Chowdhury****With****Mr. Justice Mahmudul Hoque****Article 102 of the Constitution:**

Now it is well settled that the power of the High Court to issue an appropriate writ under Article 102 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent of the acquiescent and lethargic. If there is inordinate delay on the part of the Petitioner in filing a Writ Petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustice. ... (Para 8)

**JUDGMENT****Mahmudul Hoque,J.**

1. In this application under Article 102 of the Constitution of Bangladesh this Rule Nisi has been issued on 24.11.2009 at the instance of the petitioner calling upon the respondents to show cause as to why they shall not be directed to issue final allotment letter in favour of the petitioner in respect of the shop Room No. 190, 2<sup>nd</sup> floor, at Bonalata Kacha Bazar of Dhaka New Market Complex or any shop in the 2<sup>nd</sup> floor of the said Bonalata Kacha Bazar of Dhaka New Market Complex which is lying vacant and waiting for allotment and/or such other or further order or orders as to this Court may seem fit and proper.

2. Facts relevant for the disposal of this Rule is, in brief, are that the Respondent No. 1 Dhaka City Corporation published an advertisement on 14.8.1984 in the Daily "Janata" on 20.8.1984 and 21.9.1984 in the "Daily Ittefaq" respectively inviting application for allotment of shops in the Dhaka New Market Complex. The Petitioner as an evictee and affected person in response to the advertisement published in the dailies mentioned above applied for allotment of a shop by depositing an amount of Tk.20,000/- on 09.09.1984 in the account of Respondent No. 1 by a Pay Order dated 05.09.1984. Thereafter the Petitioner on a number of occasions requested the Respondent No.1 for allotment of a shop in favour of the petitioner but in vain. Subsequently the Petitioner by applications dated 15.7.2008 and 18.08.2009 requested the Respondent No.1 for allotment of shop No. 190 lying

vacant in the 2<sup>nd</sup> floor of the same market but the Respondent No.1 paid no heed to the request of the Petitioner. At this stage the Petitioner moved this Court by filing this writ petition and obtained the present Rule and Order of Stay.

3. The Respondent Nos. 1-3 contested the Rule by filing Affidavit-in-Opposition denying all the material allegations made in the writ petition contending, inter alia, that the Petitioner in response to the advertisement of 1984 applied for allotment of a shop in the New Market Complex by depositing a Pay Order for Tk= 20,000/- but after submission of the application there arise series of litigation including contempt petition against the Respondent No.1 and in a Suit the Respondent No.1 was restrained by an order of injunction from allotting the shops of the market. For that reason the process of allotment of shops could not be materialized. Consequently, the allotment committee of the corporation has decided to return back the Pay Order to the applicants. Accordingly, all the Pay Orders were returned back to the applicants including the Petitioner. The Petitioner received back the Pay Order on 22.11.1989. Subsequently, Respondent No.1 after disposal of the cases again published notification in the Daily in the year 2000 inviting fresh application from the interested persons for allotment of shops in the New Market Complex. But in response to that advertisement the Petitioner did not submit any application seeking allotment of shop in the said market complex. Pursuant to the advertisement published in the year 2000 the persons who applied for the allotment of shops, the allotment committee by its decision dated 17.10.2006 allotted the shops in their names. In this situation since the Petitioner has taken back the money deposited in the year 1984 by Pay Order and having failed to apply for allotment of shop in the year 2000 afresh is not entitled to get any allotment. In the absence of any application for allotment of a shop afresh and acceptance of the same by the corporation the Petitioner cannot claim any right of allotment and as such the Rule is liable to be discharged.

4. Mr. Md. Abdul Malek, the learned Advocate appearing for the Petitioner submits that the Petitioner is an affected person and he is a member of the shop owners Samity and as an affected shop owner he is entitled to get allotment of a shop in the New Market Complex. He also submits that the Petitioner applied in response to a notification published in the Daily "Janata" dated 14.8.1984, Daily "Ittefaq" dated 20.8.1984 and 21.9.1984 and deposited Tk.20,000/-with the Respondent No.1 as per said advertisement. It is also argued that the Petitioner did not take back the Pay Order for the said amount deposited with the Respondent No.1 till today and as such the Petitioner is entitled to get allotment of a shop as prayed for.

5. Mrs. Sufia Ahmed, the learned Advocate appearing for the Respondent Nos. 1-3 submits that the Petitioner has come with the present writ petition after a long period of 25 years to enforce his right under writ jurisdiction, as such he is not entitled to get any relief. She also argued that from the annexures as annexed to the petition, it would be evident that the Petitioner submitted an application with deposit of an amount of Tk.20,000/- in the year 1984 in response to the notification dated 14.08.1984 and 20.08.1984. Subsequently, the process of allotment was abandoned due to various legal impediment. Consequently, all the applicants including the Petitioner took back the Pay Orders deposited with the Respondent No. 1. As such the petitioner acquired no right entitling him to get allotment of the shop for which he applied for. She also submits that the Corporation has not accepted the offer of the Petitioner in writing and as such the Petitioner acquired no right in law to get allotment of a shop in the market complex. Moreover, the Petitioner submitted no application seeking allotment of a shop afresh in response to the notification published in the year 2000 and as such the Respondent No. 1 is under no legal obligation to allot a shop in favour of the Petitioner in the absence of any application and deposit of earnest money like others. In support of her submissions she referred to the cases of Bangladesh Vs. Chairman, Court of Settlement of Bangladesh and another reported in 48 DLR (HC) 502, Jagannathpur Matshajibi Samabaya Samity Ltd. Vs. Lakshmanpur Fisherman Co-operative Society Ltd. and others reported in 1986 BLD(AD) 326, Mizan Howlader Vs. Bangladesh and another reported in 48 DLR (1996) 91 and Sahana Chowdhury (widow) and others Vs. Md. Ibrahim Khan and another reported in 21 BLD (AD) 79.

6. Heard the learned Advocates for the parties, perused the Application, Affidavit-in-Opposition and annexures annexed thereto.

7. In the instant Rule we may first consider the question of lachs or delay in filing the Writ Pertition because that is the question which is required to be decided in the instant Rule. Admittedly, the Petitioner applied for allotment of a shop in the year 1984. Said process of aucion subsequently abandoned for the reason of various litigation and order of injuncion against the Respondent. The Petitioner for a long period remained silent and even not applied afresh when the Respondent published notice in the dailies in the year 2000 inviting application from the interested persons for allotment of shops.

8. Now it is well settled that the power of the High Court to issue an appropriate writ under Article 102 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent of the acquiescent and lethargic. If there is inordinate delay on the part of the Petitioner in filing a Writ Petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustice.

9. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay the Court would decline to interfere even if the Petitioner has a good case. Accordingly, this Court refused to grant relief to the Petitioner on the ground that the Writ Petition had been filed by the Petitioner after 25 years.

10. On a consideration of the matter we think that apart altogether from the merits of the other grounds for rejection. The inordinate delay in preferring the calim before the Respondents as also the delay in filing the Writ Petition before this Court should, by themselves persuade us to decline to interfere.

11. Apart from this, we find that the Petitioner merely submitted an application in response to an advertisement published in the dailies by the Respondent No.1 in the year 1984 inviting application from the interested persons for allotment of shop. It is now well settled that mere submission of application does not entitle the Petitioner to claim allotment of a shop as of right unless the application of the Petitioner is accepted by the authority and communicated such acceptance in writing to him. But in the present case no such communication was made by the Respondent No. 1 to the Petitioner and as such no right in favour of the Petitioner has accrued entitling him to get allotment of the shop.

12. In view of the above observations we do not find any merit in this Rule as well as in the application of the Petitioner.

13. In the result, the Rule Nisi is discharged. However, without any order as to costs.

14. The Order of stay granted at the time of issuance of the Rule is hereby recalled and stand vacated.

15. Communicate this Order at once.