

20 SCOB [2025] HCD**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)****Present:****Mr. Justice Md. Rezaul Hasan
And
Mr. Justice Biswajit Debnath.****WRIT PETITION NO. 5608 OF 2017.****Ain-O-Salish Kendra (ASK),
represented by its Executive Director,
7/17, Block-B, Lalmatia, Dhaka and
others.Petitioners.****-Versus-****Bangladesh, represented by its
Secretary, Ministry of Housing and
Public Works, Bangladesh Secretariat,
Dhaka, and others.
..... Respondents.**Mr.Md. Anisul Hassan with
Mr. Abdullah Al Mahmud,
Mr. Mohammad Sayeed Abrar,Mr. Md. Ahsan Ullah,
Mr. Hossain Mohammad Shahidul and
Mr. Md. Salequzzaman, Advocates.
..... For the Petitioners.
Mr. Hasibul Huq, Advocate.
.....For the respondent No.2.
Mr. Mohammad Arshadur Rouf,
Additional Attorney General with
Mr. Syed Ejaz Kabir, DAG with
Mr. Waliul Islam Oli, DAG and
Mr. Md. Abdul Jabbar Joel, AAG
Mr. Md. Esa, A.A.G
Mrs. Rafiza Alam Lucky, A.A.G.
Mr. Md. Joynal Hussain, A.A.G.,
Mrs. Mahbuba Tasnim Akhi, AAG
..... For other Respondents.

Date of Hearing: 02-07-2025

Date of Judgment: 08-07-2025.

Editors' Note:

In the instant writ petition, *Ain o Salish Kendra (ASK)*, acting as a public interest litigant, together with three individual residents of the Shyamoli Road No. 2 slum, impugned eviction notices dated 09.04.2017 issued under section 5(1) of the Government and Local Authority Lands and Buildings (Recovery of Possession) Ordinance, 1970. The petitioners alleged that the notices were arbitrary and violative of Articles 27, 31 and 32 of the Constitution. The respondents contended that the land in question had long since been allotted for the construction of government offices, that possession had been duly handed over to the authorities concerned, and that the petitioners were unauthorized occupants. It was further asserted that the impugned notices strictly complied with the minimum notice requirements under the Ordinance.

Upon consideration, the Court held that the claimed "right to shelter" is traceable to Article 15 of the Constitution, which forms part of the Fundamental Principles of State Policy and is therefore non-justiciable and not enforceable through writ jurisdiction. The notices in question were lawfully issued under section 5(1) of the Ordinance, and no unlawful occupation can mature into a vested right or a legitimate expectation capable of defeating lawful eviction. While recognising that eviction must be carried out in

accordance with law and with due regard to human dignity, the Court concluded that the authorities were vested with clear legal authority to proceed. Accordingly, the Rule was discharged and the earlier order of stay was vacated.

Key Words:

Right to shelter; Section 5(1), Government and Local Authority Lands and Buildings (Recover of Possession) Ordinance, 1970; Eviction notices on Unauthorized occupation; No legitimate expectation from illegality; Due-process requirement in eviction

Therefore, the right to shelter claimed by the petitioner Nos. 2-4 are coming within the purview of ‘Fundamental Principles’ of State policy, under Part II of the Constitution, not under ‘Fundamental Rights’, described under part III of the Constitution. Law, in this respect, is settled that, the ‘Fundamental Principles’ of the State policy cannot be enforced by this Court under its writ jurisdiction. Hence, we find that this Rule is liable to be discharged on maintainability point alone. ... (Para 08)

We are also of the opinion that, no length of unlawful occupation will validate the same, nor will create any legitimate expectation to get immunity from eviction under the Ordinance. Law in this respect is equal for all, slum dwellers or not. ... (Para 13)

As such, the decision of the Appellate Division, quoted above, is pertaining to the propriety of summary rejection of a writ petition by the High Court Division. We respectfully endorse the view and, indeed, it is settled law that, when a serious question of law or Constitution would arise in a writ petition that should not be summarily rejected by the High Court Division. This law has been set at rest by the then Supreme Court of Pakistan, when were part of it. ... (Para 17)

This should be made clear by this Court that, any eviction to be lawful, must be done and conducted in a lawful manner. Any lawful act, if done in an unlawful manner will violate Article 31 of the Constitution. ... (Para 22)

JUDGMENT

Md. Rezaul Hasan, J:

1. This Rule Nisi has been issued calling upon the respondents to show cause as to why the purported issuance of Memo No. D-2/ UBpro-5/ Fa-26/ 420 dated 09.04.2017, issued by respondent No.6 s evidenced by Annexure-A Series, directing the petitioner No. 2-4 and other slum dwellers of Shaymoli Road No. 2 *Bosti* to vacate their houses situated Shaymoli Kazi Office, Sher-e-Bangla Nagar, Dhaka 1207, in violation of their fundamental rights to equality before law, to be treated in accordance with law and their rights to life and livelihood guaranteed under Article 27, 31 and 32 of the Constitution of Bangladesh, shall not be declared to have been made without lawful authority and to be of no legal effect and further, as to why the attempt to evict the petitioner nos. 2-4 and about 2000 other inhabitants along with 500 houses from the area known as “Shaymoli Road No. 2 *Bosti*” situated at Road No. 2, Shaymoli Kazi Office, Sher-e-Bangla Nagar, Dhaka 1207, shall not be declared to be without lawful authority, being in violation of their fundamental rights guaranteed under Article 27, 31 and 32 of the Constitution of Bangladesh and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. The facts, relevant for disposal of this Rule, in brief, are that, the petitioner No. 1 is Ain-O-Salish Kendra (ASK), described as a human rights and legal aid organization, registered under the Registration Act, 1860, as well as with the NGO Affairs Bureau. The petitioner Nos. 2 is an inhabitant of the slum namely “Shaymoli *Bosti*” by occupation bricklayer, the petitioner No. 3 is a house wife, who took shelter in the said *Bosti* with her family due to river erosion destroying her village and the petitioner No. 4 is a tea-seller. Further case of the petitioners is that, the petitioner Nos. 2-4 along with many others have raised structures and were residing with their families in a piece of land, comprising about 3 / 4 acres, in the said *Bosti* and that they have no other property to take resort to. It has also been stated that, according to the information gathered by the Petitioner No. 1, some 40% of the male inhabitants of the slum are rickshaw pullers, 10% auto rickshaw drivers, 7% garments worker, 23% day laborers, 2% wood technicians, 1% carpenters, 5% vegetable sellers, 3% night guards, 6% involved in small businesses. Among the women, 65% works in garments sector, 5% day laborers, 2% household workers and the rest are looking after their children and homes. There is no gas supply, minimal sanitation, with many compelled to use polluted well water. Through contributions approved by the government and operated by non-governmental organizations, sanitary latrines have been made available to the majority of the inhabitants, while some minimal waste collection operations are also conducted; that, about 20% of children get access to education through NGO schools and some basic health care facilities particularly for maternal and child health. The further case of the petitioners is that, on 09.04.2017, the respondent No. 6 has issued three notices requiring the petitioner Nos. 2-4 to vacate their premises all under আৱক নং ডি-২/উবিধ-৫/ফা-২৬/৪২০ dated 09.04.2017, within 14.04.2017 and being aggrieved thereby, petitioners have moved this writ petition under Article 102 read with Article 44 of the Constitution and obtained the instant Rule.

3. The respondent No. 2, Bangladesh, represented by the Secretary, Ministry of Industries, has appeared and filed an affidavit-in-opposition, in which it has denied all material allegations made in the writ petition. It has also been stated in the affidavit-in-opposition that, the Rule has become infructuous because none of the petitioners, nor anybody else does stay in the said premises now. It has further been stated that, the office accommodations for NPO and department of Patent Design and Trademark could not be provided due to unlawful occupation of the land allotted to them. It has further been stated that, the Respondent No. 1 has allotted 0.42 acres land, lying at Plot No. F-20A, Agargaon Administrative Area, Sher-E-Bangla Nagar, Dhaka, in favour of the Respondent No. 2 for the construction of the office building with modern facilities for the Respondent Nos. 3 and 4, vide its allotment letter dated 22.09.2008 and that, after completing all legal formalities, on 18.05.2009, the said allotted plots were handed over by the Respondent No. 1, to the Respondent Nos. 3 and 4, vide a transfer Certificate (“Annexure-4”). It has further been stated that, the project for the construction of the office building of the Respondent Nos. 3 and 4 with modern facilities was approved by the Planning Division of the Respondent No. 2 on 29.12.2016 and 22.01.2016 vide its memo No. 36.00.0000.085.031.17-05 (Ka) dated 22.01.2017 (“Annexure-5 and 6”). It has also been stated that, some Government Office of the Respondent No. 1 are running in the rented buildings on payment of a huge rent. Thus the construction building of National Productively Organization and Department of Patents Designs and Trademarks is necessary for saving the public money (Annexue-15); that, the petitioner Nos. 2 to 4 and other inhabitants are illegally residing upon the allotted land of the Respondent as trespassers; that they have no right, title and interest over the said land. There arises no question of violation of fundamental rights as they are trespassers and that the eviction is lawful as per provisions of section 5(1) of the Government and Local Authority

Lands and Buildings (Recovery of Possession) Ordinance, 1970. Hence, the instant Rule has no merit and it is liable to be discharged for ends of justice.

4. Learned Advocate Mr. Md. Anisul Hassan, Mr. Abdullah Al Mahmud, Mr. Mohammad Sayeed Abrar, Mr. Md. Ahsan Ullah, Mr. Hossain Mohammad Shahidul and Mr. Md. Salequzzaman appeared on behalf of the petitioners. They, having placed the petition and the materials on record, first of all submit that, the petitioner No. 1 is an entity registered under the Societies Registration Act as well as with the NGO Bureau of the Government and they have filed this application as PIL. They proceed on that, the petitioner Nos. 2-4 are helpless people dwelling in the slum. They next submit that, these petitioners have filed this writ petition in the form of public interest litigation (PIL) in order to protect their interests along with the interest of other 2000 slum dwellers, who have been directed to vacate their houses situated in the said “*Bosti*” and that they have no other place to take shelter. They further submit that, there is a government policy to rehabilitate the slum dwellers, but without paying any heed to it, the respondent No. 6 has issued the impugned notices to vacate their houses by 14.04.2017. They also submit that, the petitioners have fundamental right to stay there in as much as their right to life and shelter are protected under the Constitution. They proceed on that, the impugned notices requiring the petitioners to vacate their shelters in the said *Bosti* are liable to be declared to have been issued without lawful authority and are of no legal effect. In support of their contention they have cited the decision reported in 19 BLD (HCD) (1999) 488: Ain-O-Salish Kendra (ASK) and others Vs. Government of Bangladesh, 21 BLD (HCD) (2001) 446: Kalam and others Vs. Bangladesh and others, and another decision reported in 60 DLR (HCD) (2008) 749: Bangladesh Legal Aid and Services Trust and others Vs. Government of the People’s Republic of Bangladesh and others. They pray for making the Rule absolute.

5. Learned Additional Attorney General Mr. Mohammad Arshadur Rouf with learned Deputy Attorney Generals Mr. Syed Ejaz Kabir and Mr. Waliul Islam Oli, learned Assistant Attorney Generals Mr. Md. Joynal Hussain, Mr. Md. Abdul Jabbar Joel, Mrs. Mahbuba Tasnim Akhi appeared on behalf of the Respondent No. 2. Learned Additional Attorney General, on the other hand, submits that, these petitioners have been illegally occupying the public property, while there is no particulars, nor any description of other alleged 1500-2000 slum dwellers. Next, referring to the impugned notices, all dated 09.04.2017, requiring the petitioner Nos. 2, 3 and 4 to vacate the premises by 14.04.2017, the learned Additional Attorney General submits that, these notices have been issued under section 5(1) of the Government and Local Authority Lands and Buildings (Recovery of Possession) Ordinance, 1970, and the petitioners have received the notices and they were given minimum 7(seven) days time as permitted by the proviso to the sub-section (1) of section 5 of the Ordinance. He proceeds on that, the law does not make any discrimination between the slum dwellers or any other persons so far as the question of eviction under the aforesaid Ordinance is concerned. He next submits that, there is no evidence supporting that, the petitioners were living in the slum or *Bosti* for 20 years, however, even if that were true, that does not create any legitimate right or expectation to perpetuate their unlawful occupation. He next submits that, a huge quantity of public properties of the Government are unlawfully occupied by the land gabbers who are getting these low income people sheltered and settled there, to earn rents from these shelters even by unauthorizedly connecting the electricity, gas and water lines. He candidly submits that, there are lots of reports that, some hardened criminals also take shelter in the slums and operate their criminal activities in the City. Referring to the statements made in the affidavit-in-opposition, the learned Additional Attorney General submits that, the land in question has been allotted to the Ministry of Industries (Respondent No. 2) for establishment

of the office building with modern facilities for the Respondent No. 3 and 4, vide its allotment letter dated 22.09.2008 and the possession was handed over to them, by the Respondent No. 1, on 18.05.2009 (Annexure-4). But, the government could not construct the buildings, which were very much urgent, particularly to facilitate the development of trade, industries and foreign investment in the country. He has referred to the impugned notices and submits that, in the previous notice dated 03.304.2017, the petitioners were asked for vacating the premises, but they did not, thereby causing serious prejudice to the national interest and have impeded the development program of the Government. He next submits that, the decisions cited by the learned Advocate for the petitioner has no relevance in the facts and circumstances of the present case. He continues that, the premises are now vacant, vide the colored photographs annexed to the supplementary affidavit. He concludes that, this Rule has no merit and the same may kindly be discharged.

6. We have heard the learned Advocates for the petitioners, the learned Additional Attorney General and Deputy Attorney Generals, perused the petition, the supplementary affidavits, affidavit-in-oppositions and other materials on record.

7. In the facts and circumstances of this case, when the right to shelter is sought to be protected under the writ jurisdiction of this Court, we are constraint to consider the Article 15 of the Constitution, that reads as follows:-

“15. It shall be a fundamental responsibility of the State to attain, through planned economic growth, a consistent increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizen-

(a) the provision of the basic necessities of life, including food, clothing, **shelter**, education and medical care;

(b)

(c)

(d)”. (Emphasis supplied).

8. Therefore, the right to shelter claimed by the petitioner Nos. 2-4 are coming within the purview of ‘Fundamental Principles’ of State policy, under Part II of the Constitution, not under ‘Fundamental Rights’, described under part III of the Constitution. Law, in this respect, is settled that, the ‘Fundamental Principles’ of the State policy cannot be enforced by this Court under its writ jurisdiction. Hence, we find that this Rule is liable to be discharged on maintainability point alone.

9. We have next adverted our attention to the impugned notices and we find that, the petitioners have received these notices, all dated 09.04.2017, issued by the Respondent No. 6, requiring them to vacate the premises occupied by them. The petitioners also did not deny that they were unlawfully occupying the premises in question, which is owned by the Government.

10. It is also not disputed that, the notices issued on 09.04.2017 are all sent as reminders or “তগিদপত্র”, whereby the petitioner Nos. 2-4 were required to vacate the premises by 14.04.2017. We also find that, in all the notices it has been mentioned that, the petitioners were earlier issued notices dated 28.03.207, requiring them to vacate the premises by 03.04.2017, but they did not.

11. We further find that, the impugned notices have been issued, in the circumstances, pursuant to the provisions of section 5(1) of the Government and Local Authority Lands and Buildings (Recovery of possession) Ordinance, 1970. Section 5(1) of the Ordinance, 1970 reads as follows:-

“5(1) If the Deputy Commissioner, on his own motion or on the complaint of or upon information received from anybody or a Local Authority, is satisfied after making such inquiry as he thinks fit, that a person is an unauthorized occupant, he may issue, in the prescribed manner, a notice directing such person to vacate the land, building or part thereof in his occupation within a period of thirty days from the date of service of the notice.

Provided that, the Deputy Commissioner may, where he is satisfied that thirty days' notice will not be in public interest, reduce the period of such notice to not less than seven days.”

12. Therefore, we find and hold that, issuance of the aforesaid notices upon the petitioner Nos. 2-4 are permitted by law and the petitioners have been treated in accordance with law and that there was no violation of any fundamental rights of theirs.

13. We are also of the opinion that, no length of unlawful occupation will validate the same, nor will create any legitimate expectation to get immunity from eviction under the Ordinance. Law in this respect is equal for all, slum dwellers or not.

14. Besides, having considered the statements made in the affidavit-in-opposition, we find that, the Respondent No. 1 has allotted the land measuring 0.42 acres of land lying at Plot No. F-20A of Agargaon Administrative Area of Sher-E-Bangla Nagar in favour of the Respondent No. 2 for the construction of the office building with modern facilities for the Respondent Nos. 3 and 4, vide its allotment letter dated 22.09.2008 and that, after completing all legal formalities, on 18.05.2009 said allotted plot was handed over by the Respondent No. 1 to the Respondent Nos. 3 and 4, vide a transfer Certificate (“Annexure-4”).

15. We also find that, the properties in question are most valuable properties situated at the prime location of the capital city, and has been earmarked for very important public offices, who are expending from public exchequer, in the form of rents, for housing their respective offices. Hence, the balance on the issue of public interest should weigh in favour of recovering the public properties and to make it available to the allottees.

16. We have carefully examined the decision, reported in 59 DLR (AD) 176: Rabia Bhuiyan MP Vs. Ministry of LGRD and others, and find that, the Appellate Division has held in that case, that “the High Court Division fell in error in rejecting the writ petition summarily without at all considering the responsibilities of the respondents under the above law and Rules and their inaction. Directions from the Court would provide a necessary catalyst to ensuring due compliance of such bodies with their statutory obligations and policy commitments”. (emphasis added).

17. As such, the decision of the Appellate Division, quoted above, is pertaining to the propriety of summary rejection of a writ petition by the High Court Division. We respectfully endorse the view and, indeed, it is settled law that, when a serious question of law or Constitution would arise in a writ petition that should not be summarily rejected by the High Court Division. This law has been set at rest by the then Supreme Court of Pakistan, when were part of it.

18. We shall not ignore taking judicial notice of the facts that, reportedly in many *Bosti* in Dhaka City or near the Dhaka City, (namely, Shonpara Bosti), have become safe-shelters or dens for habitual criminals, arms and drug dealers and other serious miscreants. However, for that reason, the agony, safety, security and protection of the helpless or displaced poor people should not be overlooked by the administration. Their actions and scheme should be in consonance with the letters and spirit of Article 15 of the Constitution

19. Hence, the petitioner No. 1, Ain-O-Salish Kendra, should have given authentic and clear identity of the slum dwellers along with all relevant particulars (namely- their occupation, age, gender etc.) in a separate schedule attached to the petitioner (if not to be named as petitioners). If interference under Article 102 is genuinely desired, the petitions should be drafted and presented in proper manner, so that the court can find the relevant facts and circumstances of the case presented before it and can apply its mind for a just and proper decision. A writ petition should not be based on unverified facts or on assumptions.

20. However, the State functionaries cannot disown their responsibility to extend protection to all its citizen including the slum dwellers, so far as their life, properties and dignity are concerned. Particularly, the children, single mothers and elderly people must be treated with dignity as required by Article 11 of the Constitution. No unnecessary pressure or fear should be created in their mind. However, the administration and police shall be strict in dealing with the goons, miscreants and terrorists, disregard of their identity.

21. We have seen many reports saying that, the helpless slum dwellers were not given minimum time to wrap up their small belongings. This will be an instance of doing a lawful act in an unlawful manner.

22. This should be made clear by this Court that, any eviction to be lawful, must be done and conducted in a lawful manner. Any lawful act, if done in an unlawful manner will violate Article 31 of the Constitution.

23. However, in the facts and circumstances of this case, we find clear authority in the respondents to issue the impugned notices and in initiating the eviction process.

24. Before parting of, we should record our discontent for keeping this petition unheard for such a long time.

25. We find no merit in this Rule and the same should be discharged.

26. In the result, the Rule is discharged.

27. The order of stay granted earlier by this Court is hereby vacated.

28. Communicate this judgment and order at once.