

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 14196 of 2016

IN THE MATTER OF

An application under Article 102 (2)(a)(ii) of the  
Constitution of the People's Republic of  
Bangladesh

AND

IN THE MATTER OF:

Arifur Rahman

..... Petitioner

Versus

Government of the People's Republic of  
Bangladesh and others.

.....Respondents

Mr. Md. Ozi Ullah, Senior Advocate with

Mr. M Shariful Alam, Advocate

.....For the petitioner

Mr. Zulfiqur Bulbul Chowdhury, Senior Advocate

Mr. Khondaker Enayet Hussain, Advocate

..... For the respondent Nos.6 and 9

Mr. Md. Anichur Rahman, DAG with

Mr. Md. Mizanur Rahman, DAG with

Mr. Mir Moniruzzaman, AAG with

Mr. Md. Sarwar Alam Khan, AAG with

Ms. Nargis Parvin (Alija), AAG

.....for the respondents

**Heard on 25.11.2025 and 30.11.2025**

**Judgment delivered on 08.12.2025**

Present:

**Mr Justice Md. Shohrowardi**

**And**

**Mr Justice Md. Sagir Hossain**

**Md. Shohrowardi, J:**

This Rule Nisi was issued calling upon the respondents to show cause as to why the proceedings of Miscellaneous Case No. 228 of 2015 under Rule 42A of the State Acquisition Rules, 1955 initiated in violation of the State Acquisition Rules should not be declared to have been initiated without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

Relevant facts for disposal of the Rule Nisi are that Torikun Nessa, predecessor of the petitioner and others, was the owner of 20 decimals of land of old Plot No.2678 corresponding to B.S. Plot Nos. 13503 and 13504. While she owned the said land, she died, leaving behind her daughter Nurjahan and son Abdul Khaleque. Nurjahan took possession in other plot, handing over her title and possession of said plots to her brother Abdul Khaleque, and Abdul Khaleque became the owner of the said plots. Abdul Khaleque died, leaving behind his wife, two sons, and a daughter, and his heirs inherited the said land and took possession. During the BS operation, Bujarat Khatian No. 4917 was prepared and published in the name of Arifur Rahman, son of Abdul Khaleque, his brother, mother, and sister, but wrongly, DP Khatian No. 1262, plot No. 10503 was published in the name of respondent Nos. 6 to 9 regarding 8 decimals of land. Being arrived by and dissatisfied with the publication of the DP Khatian No. 1262 in the name of respondent Nos. 6 to 9, the petitioner along with his mother, brother, sister and another Nurul Haq Hajari filed Appeal Case No. 14116 of 2008 under Rule 31 of the State Acquisition Rules,

1955 and the Assistant Settlement Officer, Hatia and the Appeal Officer, Feni Sadar, Feni after hearing the parties, allowed the appeal by judgment and order dated 28.05.2015 in favour of the appellant Nos. 2 to 5, heirs of Abdul Khaleque, regarding 8 decimals of land of plot No. 13503 and plot No. 13504, old plot No. 2678. Thereafter, separate Jamakharij Khatian No. 6789 regarding 8 decimals of land vide Namjari Jamakharij Nathi No. 1120-07/2015 was opened, and they paid the rent and obtained the DCR on 02.09.2015. After that, the respondent Nos. 6 to 8 filed an application under Rule 42A of the State Acquisition Rules, 1955, against the heirs of Abdul Khaleque and another Nurul Haque Hajari to the respondent No. 3, which was registered as Miscellaneous Case No. 228 of 2015, and the notice was issued to the petitioner and others. Thereafter, the petitioner filed this application challenging the proceedings of the said miscellaneous case and obtained the Rule.

Respondent No. 9 contested the Rule by filing an affidavit-in-opposition stating that the CS Khatian No. 269, CS plot Nos. 2678 and 2607 measuring 59 decimals of land originally belonged to Ali Azam, but due to non-payment of the land tax, the said land was sold in an auction, which was purchased by one Nazim Uddin Miah, and he took possession of the land. Nazim Uddin died, leaving behind his son Aktaruzzaman and daughter Jabeda Khatun as his heirs, and in an amicable partition between them, Akhtaruzzaman left his share in favour of Jabeda Khatun, and she became the owner of said 59 decimals of land, who subsequently died, leaving behind her sons Sirajul and Md. Enayet Miah and each of them inherited 29.50 decimals of land. Sirajul Haque was a bachelor and died, leaving behind his brother Enayet Miah, and his brother Md. Enayet Miah became the sole owner of said 59 decimals of land. Md. Enayet Miah died, leaving behind his only son Ismail Bepary, who subsequently died, leaving behind his 2 sons, Sultan Ahmed and Mokbul Ahmed,

and daughter Tarikun Nessa as heirs. Sultan Ahmed and Mokbul Ahmed each inherited 23.60 decimals of land, and Tarikun Nessa inherited 11.80 decimals of land from their father Ismail Bepary. Mokbul Ahmed sold 13 decimals of land of plot No. 2678 by deed No. 234 dated 16.01.1963 to Tuku Mia, and 7 decimals of land of plot No. 2678 vide deed No. 235 dated 16.01.1963 to Saleha Begum. Tuku Mia exchanged 10 decimals of land with the respondent No. 6 by registered deed of exchange No. 5460 dated 18.07.1988. Tuku Mia also sold 3 decimals of land to respondent No. 6 by deed No. 4796 dated 22.07.1991. Thus, the respondent No. 6 acquired title and possession in 30 decimals of land of plot No. 2678, Saleha Begum sold 6 decimals of land vide deed Nos. 4797, 4798, and 4799 dated 22.07.1991 to respondent No. 7 and others. Thus, the respondent No. 6 and others acquired title and possession of 90 decimals of land of plot No. 2678. Accordingly, DP Khatian No. 12362 was published in the name of respondent No. 6 and others comprising the plot Nos. 13503 and 135071 measuring an area of 1936 decimals of land corresponding to SA plot No. 2678. Sultan Ahmed sold 27 decimals of land to Sam Mia by deed No. 146 dated 13.04.1944, and Trikun Nessa and Sultan Ahmed also sold 11.80 decimals of land to Saydur Rahman by deed No. 2292 dated 09.04.1947. Sultan Ahmed was the owner of 27 decimals of land, but he, along with his sister Tarikun Nessa, sold 23.06 decimals of land, and Tarikun Nessa transferred 11 decimals of land by sale deed No. 2292 dated 09.04.1947. Tarikun Nessa, the predecessor of the petitioner, and others sold her entire share of Plot Nos. 2678 and 2607 in 1944 and 1947. Accordingly, the DP Khatian No. 1262 was correctly published in the name of respondent No. 6 and others. In Objection Apple No. 14116 of 2008, no notice was served upon the respondents and others, and the appellate authority, without any enquiry regarding the possession of the land, illegally passed the order in favour of the petitioner.

The petitioner filed supplementary affidavits on 05.11.2020 and 30.11.2025 stating that the BS Khatian No. 4917, plot No. 13503 measuring an area of 8 decimals of land, was finally published in the name of the petitioner and others, and they paid the land development tax on 05.11.2025. After that, the respondent No. 6 filed Land Survey Suit No. 1300 of 2022 in the Land Survey Tribunal, Feni, against the petitioner and others. On 01.12.2022, the petitioners and others also filed a written statement, on 01.12.2022 and the said suit is now pending.

The respondent No. 9 filed a supplementary affidavit-in-opposition on 12.11.2025 stating that in gazette No. 7 of 2023 dated 16.02.2023, it has been clearly stated that DP Khatian No. 1262, Mouza-Barahipur, JL No. 43, Feni Sadar, was not finalized due to pendency of the Writ Petition No. 14196 of 2016. Thereafter, the Deputy Secretary of the Zonal Settlement Office, Noakhali, forwarded a letter on 03.07.2025 for staying the operation of the published Khatian No. 4917 of Barahipur Mouza, and the concerned authority blocked the said Khatian on the online.

Learned Senior Advocate Mr. Ozi Ullah, appearing along with learned Advocate Mr. M. Shaiful Alam on behalf of the petitioner, submits that in the Appeal No. 14116 of 2008, Ibrahim Khalilullah, father of the respondent Nos. 7 to 9, entered appearance by filing objection, and the appeal authority, after hearing the parties, passed the judgment and order on 28.05.2015. Thereafter, the said judgment and order was sent to the concerned authority for final publication of the name of the petitioner in the gazette. He further submits that no allegation has been made by the respondent Nos. 7 to 9 that the petitioner fraudulently or suppressing any fact obtained the order under Rule 31 of the State Acquisition and Tenancy Rules, and in the meantime, the gazette has been finally published in favour of the

petitioner by the authority, and the respondent Nos. 7 to 9 filed Land Survey Case No. 1300 of 2022, impleading the petitioner and others as defendants who filed a written statement in the said case, which is now pending before the Land Survey Tribunal, Feni. Therefore, the respondent No. 3, Zonal Settlement Office, Noakhali, has become functus officio and the Miscellaneous Case No. 228 of 2015 has become infructuous. He prayed for making the Rule absolute.

Learned Senior Advocate Mr. Julfikur Bulbul, appearing on behalf of the respondent No. 9, submits that the petitioner appeared in the Miscellaneous Case No. 228 of 2015 and considering the application of the respondent No. 9, the Zonal Settlement Officer, Noakhali made an enquiry and submitted the report against the petitioner and thereafter, he malafide filed the instant writ petition suppressing the inquiry report dated 24.12.2023 submitted against him. He further submits that the operation of the final publication of the gazette in favour of the petitioner was subsequently stayed by the authority and published a gazette to that effect on 16.02.2023, staying the operation of the earlier gazette published in favour of the petitioner. Therefore, the settlement proceedings of the Miscellaneous Case No. 228 of 2015 are continuing, and the respondent No. 3 is competent to pass any order in the said proceeding. The writ petition has become infructuous in view of the publication of the gazette dated 16.02.2023 (Annexure-23). He prayed for the discharging the Rule.

We have considered the submission of the learned Senior Advocate Mr. Ozi Ullah, who appeared along with learned Advocate Mr. M. Shaiful Alam on behalf of the petitioner, and the learned Senior Advocate Mr. Zulfikur Bulbul Chowdhury, who appeared along with learned Advocate Mr. Khondaker Enayet Hussain on behalf of the respondent Nos. 6 and 9, perused the writ petition and

the affidavit- in-opposition filed by the respondent No. 6 and 9, and the records.

On perusal of the orders passed in Appeal No. 14116 of 2008 it reveals that Ibrahim Khalilullah, father of the respondent Nos. 7 to 9, entered appearance in said appeal and the appeal authority after hearing the parties, passed the order dated 28.05.2015 holding that the appellant Nos. 2 to 5 are the heirs of Tarikun Nessa and they inherited 8 decimals of land of Tarikun Nessa. The appeal authority, after considering the case of the appellant and the contesting respondent Ibrahim Khalilullah, father of the respondent Nos. 7 to 9, passed the order dated 28.05.2015.

At this stage, it is relevant here to quote Rule 42A of the State Acquisition and Tenancy Rules, 1955, which runs as follows;

“Correction of fraudulent entry before final Publication of record-of-rights:- The Revenue-officer, with the additional designation of “Settlement Officer” shall, on receipt of an application or on receipt of an official report for the correction of an entry that has been procured by fraud in record-of-rights before final publication thereof, after consulting relevant records and making such other enquiries as he deems necessary, direct excision of the fraudulent entry and his act in doing so shall not be open to appeal. At the same time, the Revenue officer shall make the correct entry after giving the parties concerned a hearing and recording his finding in a formal proceeding for future reference.”

On a bare reading of the said Rule reveals that the Revenue Officer with the additional designation of the Settlement Officer on receipt on an application or on receipt of an official report for correction of any entry obtained or procured by fraud in records of

right before final publication thereof, is empowered to pass an order correcting the order passed under Rule 31 of the State Acquisition and Tenancy Rule, 1955. The application under Rule 42A of the Bengal Tenancy Rule, 1955, has been filed for correction of the order dated 28.05.2015 passed in Appeal No. 14116 of 2008 on the ground that a fraud was committed in the said order. On meticulous examination of the application under 42A of the said Rule reveals that no allegation has been made against the petitioner that he obtained the order dated 28.09.2015 in Appeal No. 14116 of 2008 by practicing fraud or suppressing any fact. It has been alleged that the appeal authority erroneously passed the order in favour of the petitioner, and fraud was committed in the said order dated 28.05.2015. It is found that the statements made in the application under Rule 42A of the said Rules have been considered by the appeal authority in the order dated 28.09.2015 passed in Appeal No. 14116 of 2008. In fact allegation has been made against the appeal authority. The revenue officer with the additional designation of Settlement Officer is not empowered under Rule 42A of the said Rules to rehear an appeal.

In the case of Secretary, Bangladesh Textile Mills Corporation and others vs Nasrin Sultana and others, reported in 21 ADC(2024) 184, judgment dated 06.06.2023, our Apex Court, considering Rule 42A of the State Acquisition and Tenancy Rules, 1955, has held that:

“Rule 42A does not vest any authority to rehear an appeal under Rule 31 of the Tenancy Rules, 1955 by the concerned Settlement Officer after publication of the final record-of-right, as such publication is conclusive evidence(rule 35) and thus, in the instant cases, the Settlement Officer has acted illegally and without jurisdiction in re-hearing the appeals repeatedly.”

On perusal of the records, reveals that the final gazette has been published on 16.10.2022 regarding 08 decimals of the land of Dag No. 13503, Mouza Baharipur in favour of the petitioner and challenging the said gazette, the respondent No. 9 along with heirs of the Ibrahim Khalilullah filed Land Survey Case No. 1300 of 2022 in the Land Survey Tribunal, Feni impleading the petitioner and other heirs of Abdul Khaleque as defendants and the dependants filed the written statement in the Land Survey Case No. 1300 of 2022. Therefore, we are of the view that the respondent No. 9 availed the jurisdiction of the Land Survey Tribunal, Feni, against the final publication of the records of right in favour of the petitioner, and the Miscellaneous Case No. 228 of 2015 has become infructuous. There is nothing to be decided by the respondent No. 3 in the Miscellaneous Case No. 228 of 2015.

Since the Land Survey Case No. 1300 of 2022 has been filed by the respondent No. 9 and other heirs of Ibrahim Khalilullah before the Land Survey Tribunal, Feni, the said Tribunal is legally empowered to pass any order as to the legality of the final publication of the records of right of the petitioner in the gazette dated 16.10.2022.

We find substance in the Rule.

With the above findings, observation, and proposition, the Rule is made absolute.

The proceedings of Miscellaneous Case No. 228 of 2015 initiated under Rule 42A of the State Acquisition and Tenancy Rule, 1955 is hereby declared to have been initiated without lawful authority and is of no legal effect.

The Land Survey Tribunal, Feni, is directed to dispose of the Land Survey Case No. 1300 of 2022 expeditiously.

However, there will be no order as to costs.

**Md. Sagir Hossain, J.**

I agree.