

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

**Writ Petition No. 289 of 2019 with
Writ Petition No. 3824 of 2016 with
Writ Petition No. 4479 of 2019 with
Writ Petition No. 7709 of 2019 with
Writ Petition No. 7710 of 2019 with
Writ Petition No. 5060 of 2020 with
Writ Petition No. 8644 of 2021**

In the matter of:

Applications under article 102 of the Constitution of the
People's Republic of Bangladesh.

AND

In the matter of:

Md. Rezaul Karim and others

...Petitioners (In W.P. No. 289 of 2019)

Kushtia City College

...Petitioner (In W.P. No. 3824 of 2016)

Md. Saiful Alam and others

...Petitioners (In W.P. No. 4479 of 2019)

Md. Nazam Uddin and others

...Petitioners (In W.P. No. 7709 of 2019)

Md. Md. Rakibul Islam and others

...Petitioners (In W.P. No. 7710 of 2019)

Md. Shoriful Kobir Shopon and others

...Petitioners (In W.P. No. 5060 of 2020)

Md. Ziaur Rahman

...Petitioner (In W.P. No. 8644 of 2020)

-Versus-

Bangladesh, represented by the Secretary, Ministry of Land,
Bangladesh Secretariat Building, Ramna, Dhaka and others,
... Respondents (All the Writ Petitions).

Mr. M. Ashraf Ali, Advocate,

.....For the petitioners.
(In W.P. No. 289 of 2019)

Mr. Nakib Saiful Islam, Advocate,

.....For the petitioner.
(In W.P. No. 3824 of 2016)

Mr. Md. Shahadat Alam, Advocate,

.....For the petitioners.
(In W.P. No. 4479 of 2019)

Mr. Munshi Moniruzzaman, Advocate, with

Mr. Sakib Rajwan Kabir, Advocate

.....For the petitioners.
(In W.P. No. 7709 of 2019)
(In W.P. No. 7710 of 2019)

(In W.P. No. 5060 of 2020)

Mr. Mustafa Hamid Siddique, Advocate,

.....For the petitioner.

(In W.P. No. 8644 of 2020)

Mr. Md. Masud Hasan Chowdhury, Advocate

.....For the respondent No.3.

(In W.P. No. 289 of 2019)

(In W.P. No. 4479 of 2019)

(In W.P. No. 7709 of 2019)

(In W.P. No. 7710 of 2019)

(In W.P. No. 5060 of 2020)

(In W.P. No. 8644 of 2020)

Mr. S.M. Monir, Additional Attorney General with

Mr. B.M. Abdur Rafell, D.A.G

..For the respondent No.4 (All the Writ Petitions).

Mr. Md. Masud Hasan Chowdhury, Advocate

.....For the respondent No.4.

(In W.P. No. 3824 of 2016)

Judgment on: 14.12.2023

Present:

Mr. Justice Md. Khasruzzaman

and

Mr. Justice K M Zahid Sarwar

Md. Khasruzzaman, J:

In the present writ petitions, the subject matter and point of law involved are same although the parties are different. As such, the above writ petitions are taken up together for hearing and are being disposed of by this single judgment.

In Writ Petition No. 289 of 2019 the *Rule Nisi* was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the order dated 11.11.2018 passed by the respondent No.4 in Resume Case No. 1 of 2018 resuming 16.24 acres of land out of 17.27 acres, acquired

in L.A. Case No.38/62-63 and L.A. Case No. 75/62-63 (Annexure-K) so far it relates to the petitioner's land measuring 12 kathas should not be declared to have been done without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper."

In Writ Petition No. 3824 of 2016 the Rule Nisi was issued in the following terms:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned order dated 25.05.2015 passed by the respondent No.6 in Resume Case No. 3 of 2015 arising out of L.A. Case No.38/62-63 and 75/-62-63 resuming the leasehold property of the petitioner measuring 3.00 acres out of 5.00 acres of R.S. Dag No. 5931, R.S. Khatian No. 9 under District- Kushtia, Mouja-Kalishankorpor, Thana- Kotwali (Annexure-K) should not be declared to have been passed 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."

In Writ Petition No. 4479 of 2019 the Rule Nisi was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause why the order dated 11.11.2018 passed by the respondent No.4 in Resume Case No. 1/2018 resuming 16.24 acres of land acquired in L.A. Case No.38/62-63 and L.A. Case No. 75/62-63 (Annexure-O) so far it relates to the land of the petitioner’s land measuring 20.5 kathas should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

In Writ Petition No. 7709 of 2019 the Rule Nisi was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the Order No. 03 dated 11.11.2018 passed by the respondent No.4 in Resume Case No. 1/2018 resuming 16.24 acres of land out of 17.2769 acres of land which was acquired in L.A. Case No.38/62-63 and L.A. Case No. 75/62-63 (Annexure-O) so far it relates to the land of the petitioners measuring 20.50 (twenty point five zero) kathas should not be declared to have been passed without lawful authority and of no legal effect and why the respondents should not be directed to complete the process of lease pursuant to the respective lease order of the petitioners and/or pass such other or

further order or orders as to this Court may seem fit and proper.”

In Writ Petition No. 7710 of 2019 the *Rule Nisi* was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause why the Order No. 03 dated 11.11.2018 passed by the respondent No.4 in Resume Case No. 1/2018 resuming 16.24 acres of land out of 17.2769 acres which was acquired in L.A. Case No.38/62-63 and L.A. Case No. 75/62-63 [Annexure-Z(21)] so far it relates to the land of the petitioners measuring 58 (fifty eight) kathas should not be declared to have been passed without lawful authority and is of no legal effect and why the respondents should not be directed to complete the process of lease pursuant to the respective lease order of the petitioners and/or pass such other or further order or orders as to this Court may seem fit and proper.”

In Writ Petition No. 5060 of 2020 the *Rule Nisi* was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the Order No. 03 dated 11.11.2018 passed by the respondent No.4 in Resume Case No. 01/2018 resuming 16.24 acres of land which was

acquired in L.A. Case No.38/62-63 and L.A. Case No. 75/-62-63 (Annexure-N) so far as it relates to the land of the petitioners measuring 17 (seventeen) kathas should not be declared to have been passed without lawful authority and is of no legal effect and as to why a direction should not be given upon the respondents to complete the process of lease pursuant to the respective lease order of the petitioners and/or such other or further order or orders passed as to this Court may seem fit and proper.”

In Writ Petition No. 8644 of 2021 the Rule Nisi was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the Order No. 03 dated 11.11.2018 passed by the respondent No.4 in Resume Case No. 01 of 2018 resumed 16.24 acres of land out of 17.2769 acres of land which was acquired in L.A. Case No.38/62-63 and L.A. Case No. 75/62-63 (Annexure-I) so far it relates to the land of the petitioner measuring 5 (five) kathas shall not be declared to have been passed without lawful authority and is of no legal effect and as to why a direction shall not be given upon the respondents to complete the process of lease pursuant to the respect lease order of the petitioner and/or such other or further order or orders passed as to this court may seem fit and proper.”

At the time of issuance of the aforesaid *Rules Nisi*, operation of the order dated 11.11.2018 passed by the respondent No.4 in Resume Case No. 1 of 2018 resuming 16.24 acres of land out of 17.27 acres acquired in L.A. Case No.38/62-63 and L.A. Case No. 75/62-63 (Annexure-K) so far it relates to the petitioner's land measuring 12 kathas was stayed for a period of 04(four) months and the respondents were directed not to disturb the peaceful possession of the petitioner for a period of 04(four) months. Subsequently, the interim order of stay and direction were extended.

Facts relevant for disposal of the Rule, in short, are that the land measuring 46.5425 acres of different C.S. Plots appertaining to J.L. No.21, Mouza-Kalishankarpur, District-Kushtia were acquired under L.A. Case Nos. 38/62-63 and 75/62-63 by the government through the Deputy Commissioner, Kushtia on the requisition of the National Housing Authority (in short, the NHA) for implementing a brick field construction project (Annexure-A). Afterwards, the acquired land was handed over to the National Housing Authority. Out of the total lands, 29.2656 acres were recorded in R.S. Plot No. 5931, and 17.2769 acres were recorded in R.S. Plot No. 6540. The land in question remained unutilized for long which was acquired for the project. However, the government handed over 20 (twenty) acres of land to Kushtia

Medical College and the rest of the land i.e. 26.5425 acres of the land was kept under the control and possession of the National Housing Authority. In 2015, respondent No.4, Deputy Commissioner, Kushtia, initiated Resume Case No.03 of 2015 vide his order No.3 dated 25.05.2015 re-acquired the remaining 26.5425 acres of land kept in the NHA and put it in the khas possession of the government. In this regard, gazette notification was published (Annexures- B and B-1 respectively in Writ Petition No. 289 of 2019). Thereafter, the respondent No.1 vide Memo No.31.00.0000.048.68.072.16-244 dated 01.09.2016 set aside the order dated 25.05.2015 passed by the respondent No. 4, Deputy Commissioner, Kushtia in Resume Case No. 03 of 2015. In compliance of the aforesaid Memo dated 01.09.2016, the respondent No.4, Deputy Commissioner, Kushtia vide his order No.4 dated 17.11.2016 has cancelled his earlier order of resuming the aforesaid remaining 26.5425 acres of land (Annexures-C and C-1 respectively to Writ Petition No. 289 of 2019).

Respondent No.4, Deputy Commissioner, Kushtia again initiated Resume Case No.01 of 2016 for re-acquisition of the aforesaid 26.5425 acres of land from the National Housing Authority. Ultimately, the respondent No.1 vide its Memo dated 09.01.2017 directed the respondent No.4, Deputy Commissioner, Kushtia to stay further proceeding of the

aforesaid Resume Case No.01 of 2016 (Annexure-D to Writ Petition No. 289 of 2019). Thereafter, the order of cancellation of the resume order dated 25.05.2015 passed in Resume Case No. 03 of 2015 was published in the official gazette on 30.03.2017 (Annexure-E to Writ Petition No. 289 of 2019). It is stated that the National Housing Authority meanwhile has undertaken a housing project namely- “Sight and Services Residential Plot Development Project (4th Phase)” on the aforesaid 26.5425 acres of land and invited applications from the aspirants for allotment of plots in the said housing project (Annexure-F series to Writ Petition No. 289 of 2019).

Accordingly, the petitioners in all writ petitions applied for allotment of plots in the said housing project and got lease by respective allotment letters from the National Housing Authority.

After that, in writ petition No. 289 of 2019 the petitioner Nos. 1 and 2 paid entire consideration money and as such, on 15.05.2018 and 06.06.2018 lease deeds were executed and registered in favour of the petitioner Nos.1 and 2 and possession of the land was handed over to them (Annexures-H, H-1, I, and I-1 respectively). The petitioner No.3 deposited the first installment of the consideration money on 04.12.2018 (Annexure-J to Writ Petition No. 289 of 2019).

In writ petition No. 3824 of 2016 the petitioner, Kushtia City College, got allotment of 5 acres of land from the National Housing Authority and the petitioner paid entire lease money and thereafter lease deed was executed and registered in favour of the petitioner vide lease deed No. 7326 dated 21.12.1999.

In Writ Petition No. 4479 of 2019 all the petitioners got allotment of land from the National Housing Authority and they paid entire lease money. But lease deed No. 7943/2018 dated 27.09.2018 was executed and registered in favour of the petitioner No. 1.

In Writ Petition Nos. 7709 of 2019, 7710 of 2019, 5060 of 2020 and 8644 of 2021 all the petitioners got allotment of land from the National Housing Authority and they paid entire lease money to the government. But no lease deed was executed and registered in favour of these petitioners.

But all of a sudden the petitioners came to know that respondent No.4, Deputy Commissioner, Kushtia again initiated Resume Case No.01 of 2018 for re-acquisition of the aforesaid 26.5425 acres of land from the National Housing Authority. On search, the petitioners found that respondent No.4 Deputy Commissioner, Kushtia vide his Order No.3 dated 11.11.2018 re-acquired 16.24 acres of land and put the same

in the khas possession of the government (Annexure-K to Writ Petition No. 289 of 2019).

Under such circumstances, all the petitioners have challenged the said resume order dated 11.11.2018 passed by the respondent No.4 in Resume Case No. 01 of 2018 with regard to 16.24 acres of acquired land in the instant writ petitions and obtained the above *Rules Nisi*.

These matters were sent by the Hon'ble Chief Justice of Bangladesh for early hearing and disposal.

In the midst of hearing of the *Rules Nisi*, Mr. B.M.Abdur Rafell, the learned Deputy Attorney General appearing on behalf of respondent No.4, Deputy Commissioner, Kushtia has filed an application for disposing of the *Rules Nisi* in the light of recommendations given in the enquiry report being Memo No.জাগৃক/ভূসব্য/পরি:/পরিদর্শন নথি-০১/৬৮৭২ dated 22.08.2023. Referring to the application and the enquiry report vide Annexure-II to the application, the learned Deputy Attorney General submits that by challenging the impugned order of resuming 16.24 acres of acquired land of the National Housing Authority passed in Resume Case No.01 of 2018, the allottees of the residential project filed above mentioned writ petitions. Consequently, the works of several development projects i.e. Kushtia Medical College, IT Training Centre, Model Mosque, District Council

Auditorium and Lahini School could not be completed. He further submits that considering the interest of the public at large based on the aforesaid development projects, the respondent No.4 sat in a meeting held in his office in presence of the representative of Kushtia Medical College and Executive Engineer of the Public Works Department wherein the issues were discussed and public interest was considered and ultimately, it was agreed with the enquiry report dated 17.08.2023 and thereby canceled Resume Case No.01 of 2018 so that the respondent No.3, National Housing Authority can complete its housing project on the land in question.

Mr. M. Ashraf Ali, the learned Advocate appearing on behalf of the petitioners in Writ Petition No. 289 of 2019 submits that since the respondent No.4 who the impugned order passed in Resume Case No. 01 of 2018 has accepted the recommendations made in the enquiry report with undertaking to co-operate the respondent No.3 to complete the housing project, on that count the *Rule Nisi* is required to be made absolute.

However, he further submits that admittedly the land in question is the acquired land of the respondent No.3, National Housing Authority, and before passing the impugned order of resuming the land, the respondent-National Housing Authority in order to establish a residential project leased out the plots

to the aspirant candidates including the petitioners and executed and registered lease deeds for 99 years in favour of the petitioner Nos.1 and 2, and as such, the action of the respondent No.4, Deputy Commissioner, Kushtia in resuming the land is out and out illegal and without lawful authority. Referring to the office order under Memo dated 02.10.1990 (Annexure-L to Writ Petition No. 289 of 2019) he also submits that the acquired land cannot be resumed if the same is required for the requiring body in future and as such, there is no scope to resume the case land by the respondent No.4 on the ground of being unutilized by the requiring body. He also pointed out that the instant land was acquired under the Act of 1948 wherein there is no provision with regard to resume of any acquired land which vests absolutely upon the requiring body i.e. the National Housing Authority as in the instant case through the government. By placing the aforesaid submissions, the learned Advocate prays for making the *Rule Nisi* absolute.

Mr. Nakib Saiful Islam, the learned Advocate, Mr. Md. Shahadat Alam, the learned Advocate, Mr. Munshi Moniruzzaman, the learned Advocate along with Mr. Sakib Rajwan Kabir, the learned Advocate Mr. Md. Masud Hasan Chowdhury, the learned Advocate, Mr. Mustafa Hamid Siddique, the learned Advocates adopted the submissions of

Mr Mr. M. Ashraf Ali, the learned Advocate in Writ Petition No. 289 of 2019.

Mr. Md. Masud Hasan Chowdhury, the learned Advocate appearing on behalf of the respondent No.3, National Housing Authority, by referring to the affidavit of facts and supplementary affidavit of facts, submits that since the respondent No.4 who passed the impugned order in Resume Case No. 01 of 2018 has accepted the recommendations made in the enquiry report with undertaking to co-operate the respondent No.3 to complete the housing project, the *Rule Nisi* is required to be made absolute.

We have considered the submissions of the learned Deputy Attorney General and the learned Advocates of the respective parties and perused the writ petition and the application for disposing the Rule and other papers annexed thereto as well as the relevant laws.

Admittedly, respondent No. 4, Deputy Commissioner, Kushtia acquired 46.5425 acres of land for the respondent No.3 i.e. National Housing Authority for implementation of its Brick Field Construction Project vide two L.A. Case Nos. 38/62-63 and 75/62-63. Acquired lands were rightly recorded in the name of the National Housing Authority in R.S. Plot Nos.5931 and 6540. Out of the acquired land in question, 20.00 acres of land were given to Kushtia Medical College and

as such, the remaining 26.5425 acres of acquired land were left under the control of the National Housing Authority. Consequently, the National Housing Authority has undertaken a project namely- এস্টেটে স্বল্প ও মধ্যম আয়ের লোকদের জন্য সাইট এন্ড সার্ভিসেস আবাসিক প্লট উন্নয়ন(৪র্থ পর্ব) প্রকল্প' on the said land and created a total 280 plots in the said project. In this regard, the National Housing Authority prepared a layout plan of the housing project approved by the respondent No.1 on 21.25 acres of land. It further appears that the housing project has reserved 0.9 acre for its IT Park, 2.81 acres for its Mosque, Eidgah and Playground.

Despite of the housing project being undertaken by the National Housing Authority, respondent No.4, Deputy Commissioner, Kushtia initiated two Resume Cases being Nos. 03 of 2015 and 01 of 2016 for 26.5425 acres of acquired land. Respondent No.4, Deputy Commissioner, Kushtia again in 2018 initiated Resume Case no. 01 of 2018 and by the impugned order took 16.24 acres of acquired land of the respondent No.3 in khas possession of the government. In such circumstances, the petitioners being the allottees of the housing project have challenged the resume order by filing the writ petitions and obtained the above Rules.

Due to pendency of the Rules, some other development projects of the government have been unimplemented. In the

meantime, to resolve the dispute, the National Housing Authority constituted an enquiry committee. The enquiry committee ultimately submitted their physical inspection report with 07 recommendations. In the first and foremost recommendation the Committee recommended to cancel the order dated 11.11.2018 passed in Resume Case No.01 of 2018 finding that the residential project was approved by the authority and that allotment letters were already issued in favour of 173 allottees out of 212 plots keeping aside the quota of the Ministry and the allottees already deposited their lease money against their plots.

Amongst other recommendations, it has been stated that some areas should be kept under preservation for Kushtia Medical College, IT Training Centre, Model Mosque, District Council Auditorium and Lahini School in order to continue the development projects of other government organizations of which they shall receive allotment and actual possession upon payment of the usual value. It also recommended that the land illegally possessed must be dispossessed in favour of the authority, and the Deputy Commissioner and local representatives of the National Housing Authority shall conduct joint survey and eviction programme if required to demarcate and build boundaries. Following the eviction of the illegal possessors, the recovered land shall be allotted as a

rehabilitation plot to the persons affected by the development projects.

These being the recommendations of the enquiry report and the respondent No.4, Deputy Commissioner, Kushtia who passed the impugned order under adjudication in the instant Rules have accepted the enquiry report containing the recommendations as evident from the application for disposing of the Rules filed by the learned Deputy Attorney General.

In Writ Petition No. 3824 of 2014, it appears that the petitioner challenged the impugned order dated 25.05.2015 passed by respondent No. 6 in Resume Case No. 3 of 2015 resuming 3 acres of land of the petitioner. But on 01.09.2016 respondent No. 1 set aside the order dated 25.05.2015 in Resume Case No. 3 of 2015. Subsequently, on 17.11.2016 the Deputy Commissioner, Kushtia cancelled his earlier resuming order of 26.4525 acres of land. Since the order dated 25.06.2015 in Resume Case No. 3 of 2015 has been cancelled, the *Rule Nisi* has become infructuous and thus, the same should be discharged as being infructuous.

It is noted that the learned Advocate for the National Housing Authority submits that a portion of the acquired land has been in illegal possession by the local influential persons

and as such he has prayed for a direction upon the respondents to evict the illegal possessors.

Considering the submissions of the learned Advocate, the Deputy Commissioner, Kushtia and the National Housing Authority are directed to conduct a joint survey and evict the illegal possessors, if any, from the acquired land by following the provision of law.

Considering the facts of the case, we are inclined to make the *Rules* of Writ Petition Nos. 289 of 2019, 4479 of 2019, 7709 of 2019, 7710 of 2019, 5060 of 2020 and 8644 of 2021 absolute except the Rule in Writ Petition No. 3824 of 2016 so that the government development projects might not be hampered any more.

In the result, the *Rules* except the *Rule* in Writ Petition No. 3824 of 2016 are made absolute with the above directions and the following observations:

The impugned order dated 11.11.2018 passed by the respondent No. 4 in Resume Case No. 1 of 2018 resuming 16.24 acres of land out of 17.27 acres, which was acquired in L.A. Case No.38/62-63 and L.A. Case No. 75/62-63 so far it relates to 12 kathas of land the subject matter in W.P. No. 289 of 2019, 3.00 acres of land the subject matter in W.P. No. 3824 of 2016, 20.5 kathas of land the subject matter in W.P.

No. 4479 of 2019, 20.50 kathas of land the subject matter in W.P. No. 7709 of 2019, 58 kathas of land the subject matter in W.P. No. 7710 of 2019, 17 kathas of land the subject matter in W.P. No. 5060 of 2020 and 5 kathas of land the subject matter in W.P. No. 8644 of 2021 is declared to have been done without lawful authority and is of no legal effect and set aside.

The *Rule Nisi* in Writ Petition No. 3824 of 2016 is discharged as being infructuous.

Since the resuming order dated 11.11.2018 passed by respondent No. 4 in Resume Case No. 1 of 2018 has already been declared to have been passed without lawful authority, the other allottees of the project who are not the petitioners but on the same footing would get same benefit as like as the petitioners.

There will be no order as to costs.

Communicate the order.

K M Zahid Sarwar, J.

I agree.