

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

**Writ Petition No. 1770 of 2019.**

In the matter of:

An application under article 102 (2) of the  
Constitution of the People's Republic of  
Bangladesh.

-And-

**In the matter of:**

Dewan Samsul Huda

..... Petitioner

-Versus-

The Government of Bangladesh represented  
by the Secretary, Ministry of Defence and  
others.

.... Respondents

Mr. Syed Nazmul Karim, Advocate

... For the petitioner.

Mr. Lokman Karim, Advocate

... For the respondent No.10.

Ms. Nahid Sultana Jenny, Advocate

... For the respondent No. 8.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard on 21.04.2024, 25.04.2024 and  
Judgment on 30.04.2024.

**J. B. M. Hassan, J.**

The petitioner obtained the Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show  
cause as to why illegal and arbitrary action pursuant to the order  
of eviction dated 06.12.2018 issued by the respondent No.2  
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 respondent Nos. 2 and 5 to restore  
the possession of the petitioner of the case flat as it is and to

return the movable household items which have been seized by the respondent No.2 and/or such other or further order or orders passed as to this Court may seem fit and proper. ”

In the writ petition, the petitioner states that he entered into an agreement on 05.09.2016 with the respondents No. 9 and 10 to purchase a flat being flat No. 3A, Plot No. 423, Road No. 7, Mirpur DOHS, (Defence Officers Housing Society), Pallabi, Dhaka (the schedule flat) fixing consideration money at Tk. 1.40 crore and initially paid Tk. 38 lac. The respondent sellers handed over possession in favour of the petitioner and accordingly he has been residing therein since 18.10.2016. Although, the petitioner arranged a credit facilities from the Trust Bank but the respondent sellers with an ulterior motive did not receive the loan money. Thereafter, the petitioner paid entire balance consideration money and receiving the same, the respondent No.9 issued a cheque for Tk. 1.40 crore in favour of the petitioner to secure the payment. Subsequently, in connivance with the other respondents, the respondents evicted the petitioner on 06.12.2018. The petitioner also filed a criminal case against the respondent No.9 for dishonouring the cheque. In this context, the petitioner filed this writ petition and obtained the present Rule Nisi.

Appearing in the Rule Nisi respondent No.10 has filed an affidavit in opposition and supplementary affidavit in opposition contending, *inter alia*, are that DOHS authority arranged several meetings with the petitioner and the respondents No. 9 & 10 and by a resolution dated 23.11.2017 asked the petitioner to submit all relevant documents in respect of purchase of flat in question. But he did not comply with the decision. The present writ

petitioner also filed Other Class Suit No. 364 of 2018 before the Court of learned Senior Assistant Judge, Dhaka with a prayer for permanent injunction against the present writ respondents No. 9 & 10. After maintainability hearing, the suit was summarily dismissed on 28.11.2018 as not maintainable being barred by section 17(A)(1)(2) & 17(B) of the Registration Act on the ground that the alleged agreement for sale (Boina Nama) was unregistered. Thereafter, the petitioner was evicted by the respondents No. 2 & 3 through memo dated 06.12.2018

On the other hand, the case of respondents No. 9 and 10 are that in order to sell the said flat, respondents No. 9 & 10 jointly entered into an unregistered agreement (Boina Nama) on 05.09.2016 with the petitioner. Pursuant to said agreement (Boina Nama), the petitioner paid Tk.08 lac in advance. The petitioner obtained some blank signed cheques against payment of Tk. 08 lac as money receipt. Thereafter, the petitioner created 2 unregistered Boina Nama deeds dated 05.09.2016 in order to create fake title and claim against the respondent No.9. Those fake documents show the value of the flat at TK. 1,10,00,000/-and in another shows the value of the flat at Tk. 1,40,00,000/-. The petitioner created forged documents in the name of the Chairman, Home Solution Limited (respondent No. 11) and issued Allotment Letter dated 18.10.2016 in his favour. The respondent no. 11, being aware of the said forged document, issued certification dated 04.12.2018 stating that the respondent no. 9 is the allottee and possession holder of the said flat. Thereafter, the respondent No. 11 issued notary certificate dated 07.12.2018 declaring that the petitioner with illegal motive

had forged his signature. In order to take control of the said flat, the respondent no. 9 put lock in the main gate and later the petitioner most illegally broke the said lock. One Md. Shamim, caretaker of the said plot, observing the same, has provided written statement about the said occurrence.

Mr. Syed Nazmul Karim, learned Advocate for the petitioner submits that on the basis of an agreement for sale, the petitioner took possession of the schedule flat and has been residing therein on payment of entire consideration money. But the respondents without serving any notice and having no authority, suddenly evicted the petitioner arbitrarily and in a unlawful manner.

Mr. Lokman Karim, learned Advocate for the respondent No.10 contends that the agreement was for Tk. 1.40 crore and the petitioner paid only Tk. 08(eight) lac and that the possession of the flat was never handed over to the petitioner officially or mutually. He further contends that while the petitioner failed to make the payment of consideration money and several sittings and arbitration were going on, the petitioner collusively entered into the schedule flat forcefully due to which the DOHS authority in a lawful manner evicted the petitioner. He again contends that the petitioner did not disclose all the facts in this writ petition including filing a civil suit and by furnishing an unregistered contract showing payment Tk. 1.40 crore, the writ petition has been filed.

We have gone through the writ petition and other materials on record.

It appears that the petitioner has shown an unregistered contract to purchase the schedule flat showing payment of Tk. 1.40 crore. On the other hand, the respondent No.10 is claiming that the contract was executed fixing consideration money at Tk. 1.10 crore and she claims that only Tk. 8 lac was paid but possession was not handed over.

Thus, the issue involved in the matter are purely disputed questions of facts. Secondly, it further appears that the petitioner entered into the contract for purchasing the property from respondents No. 9 and 10. But there is no paper showing that the respondents No. 9 and 10 handed over possession of the flat to the petitioner. However, it also requires to be proved by evidence. Considering the above, there is no scope to provide any remedy on the basis of this disputed question of facts under judicial review of this Court.

Thus, we do not find any merit in this Rule Nisi.

In the result, the Rule Nisi is discharged without any order as to cost.

Communicate a copy of this judgment and order to the respondents at once.

**Razik Al Jalil, J**

I agree.