

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 4537 OF 2019

In the matter of:

Application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

And

In the matter of:

S M Iqbal Hussain Pir and others.

... Petitioners

-Versus-

The People's Republic of Bangladesh
represented by the Secretary, Ministry of Land,
Bangladesh Secretariat, Ramna, Dhaka and
others.

... Respondents

Mr. Sudipta Arjun with
Mr. Syed Fazla Elahi, Advocates

...For the petitioners

Mr. Md. Shamsul Huq, Advocate

...For the respondent no. 5

Heard on 18.08.2025.

Judgment on 19.08.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a 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 notice dated 19.03.2019 issued under signature of the Zonal Settlement Officer, Sylhet Zone (respondent no. 2) directing the petitioners to appear before the office of the respondent no. 2 with all relevant documents in connection with Miscellaneous Case No. 915 of 2019 filed under Rule 42A of the Tenancy Rules, 1955 (Annexure-‘E’ to the writ petition) and also the proceeding of Miscellaneous Case No. 915 of 2019 pending before the Zonal Settlement Officer, Sylhet Zone 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.”

At the time of issuance of the rule, this court also stayed all further proceedings of Miscellaneous Case No. 915 of 2019 filed under Rule 42A of the Tenancy Rules, 1955 pending before the respondent no. 2 for a period of 1(one) year which was lastly extended on 16.07.2025 for another 1(one) year.

The short facts leading to issuance of the rule are:

The land in question was originally belonged to one, Awlad Ali. Then one, Monfor Ullah by a registered *Kabuliot* took settlement of the same from that Awlad Ali and subsequently by registered deed dated 14.11.1944 Monfor Ullah transferred the land to one, Tera Chand Ali and handed over possession in his favour. Thereafter, Tera Chand Ali by registered sale deed dated 10.02.1945 transferred the land to the predecessor of the present petitioners and handed over possession to him and since then the predecessor of the petitioners and then the petitioners have been possessing the suit land building a dwelling house and residing therein. During S.A operation, the concerned settlement officer without perusing the title deeds of the petitioners and also without conducting any field survey abruptly prepared S.A record and it was wrongly prepared in S.A khatian no. 1382 corresponding to Plot Nos. 811 and 830 for an area of 45 decimals of land in the name of the predecessor of the petitioners along with his brother and cousin yet no one raised any question regarding possession of the petitioners or ever claimed title of the said land. However, during revisional survey prepared under section 144 of the State Acquisition and Tenancy Act, 30 decimals of land from S.A khatian no. 1382 appertaining to plot nos. 811 and 830 was rightly recorded in the name of the petitioners up to preparation of DP khatian being no. 1481 when 15 decimals of land was recorded in the name of one, Ali Hossain as DP khatian no. 13149 but in possession column, petitioners and one, Zahura Najnin Beauty were shown to have been in possession. After getting DP khatian in the revisional survey, the present petitioners then filed objection case under rule 30 of the Tenancy Rules, 1955 being

Objection Case No. 3787 of 2015 when respondent no. 5 also filed Objection Case being No. 529 of 2015 for correction of DP khatian no. 13149. However, during pendency of the case, the concerned settlement officer appointed one, Mr. Eson Nobi as *Bador Amin* (বদর আমীন) to determine actual possession of the land in question. However, the *Bador Amin* inspected the land and submitted his report and after getting the survey report, and hearing the parties, the objection officer then allowed Objection Case No. 3787 of 2015 so filed by the petitioners and rejected other two objection cases so initiated by the respondent no. 5. It needs to be noted here that, the petitioners also filed a suit being Title Suit No. 193 of 2015 before the learned Joint District Judge, Sunamganj for declaration of title in respect of the suit land which is pending.

However, being aggrieved, with the order in the objection cases so passed by the objection officer rejecting two objection cases, the preset respondent no. 5 filed two separate appeals being Appeal No. 4097 of 2016 and Appeal No. 5074 of 2016 under rule 31 of the Tenancy Rules, 1955 before the Appeal Officer, Sunamganj and after hearing the parties, the appeal officer by order dated 12.04.2017 also dismissed both the appeals and affirmed the order passed by the objection officer.

After disposing of the objection case as well as appeals preferred under rule 30 and 31 of the Tenancy Rules, 1955 respectively, the concerned authority while was taking steps in implementing the order passed by the appeal officer by sending the DP khatian for publishing in the gazette for notification and the petitioners were waiting for final publication of the revisionsal survey, they all of a sudden on 15.04.2019

got a notice from the Zonal Settlement Officer, Sylhet who directed the petitioners to appear before him for conducting hearing in Miscellaneous Case No. 915 of 2015 which was filed by the respondent no. 5 under rule 42A of the Tenancy Rules, 1955.

It is at that stage, the petitioners filed this writ petition and obtained instant rule and order of stay.

Mr. Sudipta Arjun along with Mr. Syed Fazla Elahi, the learned counsels appearing for the petitioners upon taking us to the writ petition and all the documents appended therewith, at the very outset submits that under rule 42A of the Tenancy Rules, 1955, there has been no scope to entertain any application other than making out a complete case of committing fraud in procuring record-of-rights before final publication thereof but it is not there in the application filed by the respondent no. 5 under section 42A of the Rules, 1955.

The learned counsel by taking us to the application filed by the respondent no. 5 under rule 42A of the Tenancy Rules, 1955 further submits that, it is the allegation that the petitioners obtained the survey report conducted by the *Bador Amin* during the proceeding of the objection case initiated under rule 30 of the Tenancy Rules, 1955 which is without any basis.

The learned counsel next contends that though in the subsequent appeal, the order was said to have passed in favour of the respondent no. 5 but eventually upon obtaining certified copy of the appeals, he found that his appeals have been dismissed and therefore, fraud has been committed on the part of the said appeal officer for which he compelled to file

petition under rule 42A of the Tenancy Rules, 1955 which is totally unfounded on the face of the record.

The learned counsel further contends that since there has been no fraud ever committed in the process of the proceeding proceeded under rule 30 and 31 of the Tenancy Rules, 1955 so initiation of the proceedings under section 42A of the Tenancy Rules, 1955 cannot be sustained in law.

To supplement the said submission, the learned counsel also contends that since the respondent no. 5 raised alleged objection with regard to obtaining survey report by the petitioner during the proceeding of the objection case he should have raised such point to the objection officer as well as before the appeal officer initiated under rule 30 and 31 of the Rules, 1955 but without raising that very objection, the respondent no. 5 for the first time alleged that fraud in the application under rule 42A of the said Rules, 1955 which simply cannot be tenable in law.

The learned counsel lastly contends that the nature of allegation so have been alleged in the application under rule 42A of the Rules, 1955 does not come within the mischief of “fraud” as has been enshrined in rule 42A of the Rules, 1955 and therefore, the rule is liable to be made absolute.

However, in support of his submission, the learned counsel has placed his reliance to the decision reported in 58 DLR (HCD) 397 and takes us through paragraph no. 13 thereof and submits that similar proposition has been established in that decision and finally prays for making the rule absolute.

On the contrary, Mr. Md. Shamsul Huq, the learned counsel appearing for the respondent no. 5 very candidly submits that he has got no objection if the rule is made absolute.

Be that as it may, we have considered the submission so advanced by the learned counsels for the petitioners and that of the respondent no. 5. We have also carefully gone through the writ petition and all the documents appended therewith in particular, the application so filed by the respondent no. 5 under rule 42A of the Tenancy Rules, 1955 which has been annexed as of Annexure-‘F’ to the writ petition. We have also taken into account of the legal submission so canvassed by the learned counsel for the petitioner as has been discussed hereinabove.

On going through the allegation so have been levelled by the respondent no. 5 in the application, we find that the allegation with regard to obtaining survey report by the petitioner conducted by the *Bador Amin* during the proceedings of objection case as well as about the judgment passed by the appeal officer while disposing of the appeal both under rules 30 and 31 of the Rules, 1955 respectively simply cannot come within the mischief of “fraud” so have been set out in rule 42A of the Tenancy Rules, 1955.

Furthermore, we also got ample substance to the submission so placed by the learned counsel for the petitioner that if there has been any allegation with regard to ‘survey report’ conducted at the instance of objection officer, the respondent no. 5 could raise that objection either before the objection officer before disposal of the objection case under rule 30 or in the appeal which was disposed of under rule 31 of the Rules,

1955 but without taking resort, to the said two forums, the respondent no. 5 for the first time raised the allegation by filing the application under rule 42A of the Rules, 1955 which clearly does not come within the purview of fraud so have been provided in rule 42A of the Rules, 1955.

Regard being had to the above facts and circumstances, we don't find any iota of substance in the application so initiated by the respondent no. 5 under rule 42A of the Tenancy Rules, 1955 and therefore, the proceedings so initiated cannot be sustained and the instant rule thus bears substance.

In the result, the rule is made absolute however without any order as to costs.

The initiation and proceedings of the Miscellaneous Case No. 915 of 2019 filed under rule 42A of the Tenancy Rules, 1955 is hereby struck down.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment be communicated to the respondents forthwith.

Md. Bashir Ullah, J.

I agree.