

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

Writ Petition No. 3148 of 2021.

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:

S. M. A. Rahim.

..... Petitioner

-Versus-

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

Mr. Tapan Kumar Bepary, Advocate

. . . For the petitioner.

Mr. Kazi Mynul Hassan, DAG with

Mr. Apurbo Kumar Biswas, AAG

. . . For the respondents

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard on 17.05.2023, 24.05.2023 and
Judgment on 30.07.2023.

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 the memo No. 31.44.4753.003.001.99.21-85
dated 03.03.2021 issued under the signature of the respondent
No. 4 inviting application for leasing out of Jalmaohals, so far
as it relates to ‘Patiakhali Jalkar’ (serial No. 17 in the circular)
(Annexure-J to the writ petition) should not be declared to have
been issued without lawful authority and is of no legal effect
and why the respondents should not be directed to dispose of
the petitioner’s representation dated 07.03.2021 for receiving

yearly rent of ‘Patiakhali Jolkar’ Chingrimohal from the petitioner for the year 1428 B. S. in pursuance of Miscellaneous Case No. 02 of 2004 (Annexure-K to the writ petition) and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Relevant facts leading to issuance of the Rule Nisi are that the petitioner is a bonafide fisherman. He has been cultivating shrimps in a Chingri Gher covering an area of about 60 acres situated at Mouza Dakkhin Deara, Bailaharania and Sreefaltala. Acrossing the said shrimps Gher, there remains a Government cannel (Khal), namely, ‘Patiakhali Jolkar’ measuring an area of 8.17 acres appertaining to plots No.64,413,326 and 247 under Khatian No.1. Being the owner of the adjacent shrimp Gher, the petitioner made an application on 10.09.2003 to the Deputy Commissioner, Khulna (respondent No. 2) for granting long term lease of ‘Patiakhali Jolkar’ Mohal for smooth enjoyment of his owned shrimp Gher. Pursuant to said representation, the respondent No. 2 by an office order dated 04.10.2003 directed the Upazila Nirbahi Officer (UNO), Koyra (respondent No.4) to provide report to him with sketch map upon holding field enquiry by taking opinion of the ‘Upazila Shrimp Management Committee’. Accordingly, the Upazila Fishery Officer submitted a report on 14.12.2003 to the UNO specifically mentioning that the “Patiakhali Khal Jolmohal” is surrounded by the shrimp Gher belong to the petitioner and hence the said Jolmohal may be given lease as ‘Chingrimohal’ in favour of the petitioner.

In the meantime, the ‘Upazila Shrimp Development and Management Committee’, Koyra, Khulna in its meeting dated 15.03.2004 decided to give

long term lease of the Jolmohals surrounded by the Shrimp Ghers as “Chringimohals” and sent the same to the respondent No.2 for approval. On 04.10.2003 the respondent No.4 declared the ‘Patiakhali Khal Jolmohal’ as ‘Chingrimohal’ and sent proposal to the respondent No.2 for giving lease of the same as ‘Chingrimohal’ in favour of the petitioner. On 19.04.2004, the District Shrimp Development and Management Committee headed by the DC (respondent No.2) took decision to give lease of 7 Chingrimohals mentioned in the schedule “Ka” in pursuance of Shrimps Management Nitimala wherein the serial No. 2 i.e. “Patiakhali Khal” was decided to be given lease to the petitioner fixing revenue at taka 12,255/-.

Soon after approval of ‘Patiakhali Khal’ as Chignrimohal, a lease case being Misc. Case No. 02/2004 was opened in respect of the said Chingrimohal and on 19.09.2004 the petitioner paid the rent for the year 1411 B.S through Chalan and got D.C.R. for the said year and was inducted in possession of “Patiakhali Khal” Chingrimohal. Since then the petitioner has been regularly paying rent of the said Chingrimohal year to year with VAT, Tax etc. uninterruptedly. Lastly on 20.07.2020 he paid the rent for the year 1427 B.S. and got D.C.R. and the said tenure is still continuing. The District Shrimp Development and Management Committee through its yearly meetings took decision from time to time to continue the lease proceedings of the Chingrimohals and to receive revenue from the lawful possessors of the same.

While the petitioner has been peacefully possessing the “Patiakhali Khal” by paying due rents to the Government from time to time, all on a

sudden, on 03.03.2021 the UNO (respondent No.4) issued a memo containing Memo No. 31.44.4753.003.001.99.21-85 dated 03.03.2021 (hereinafter referred to as the impugned memo) inviting tender for leasing out 37 canals (Khals) as Jalmohal including the 'Patiakhali Jolkar' Khal as was leased out to the petitioner as Chingrimohal and the said tender has been published in the daily newspaper, namely, "The Somoyer Khabar" on 04.03.2021. The petitioner made a representation on 07.03.2021 to the respondent No.2, the DC, Khulna to take necessary steps to cancel the lease proceedings issued by the UNO vide memo dated 03.03.2021, so far as it relates to 'Patiakhali Jolkar' Chingrimohal and requested him to receive rent from petitioner for the year 1428 B.S. for 'Patiakhali Jolkar' Chingrimohal. But the petitioner did not get any response which led him to file the writ petition.

The DC, Khulna as respondent No.2 appearing in the Rule has filed an affidavit in opposition contending, *inter alia*, are that the "Patiakhali Jolkar" is an enlisted Jalmohal. It contains all the features of Jalmohal in accordance to Jalmohal Management Policy, 2009. According to the Sairat Register (register no-6), the Jalmohal is enlisted in serial number-110. The petitioner got the lease up to Bengal year 1423 which was not renewed further. Without prior permission and/or direction of the authority, the petitioner deposited money in the Government fund through chalan. The reason behind the unsolicited deposit is to occupy Government property illegally and such deposit does not create any legal right whatsoever in his favour.

The scheduled Jalmohal described in the writ petition is completely a Government property. It was leased out as a Sairat Mohal, namely, “Patiakhali Jolkar”. But the lease holder used salty water to cultivate shrimp defying public interest. It has put a long term negative impact on environment and local community which is against the Government policy and public interest. After Bangla year 1423 no Chingrimohal was renewed considering its negative impact on environment and for public interest. It should be mentioned that no Chingrimohal was permitted in Khulna district. The mentioned “Patiakhali Jolkar” was leased earlier on a temporary basis.

The declaration as “Chingrimohal” is the absolute domain of the “National Chingrimohal Management Committee” as per clause 2 of the Nitimala dated 16.12.1998 and District Chingrimohal Committee has only authority to recommend as per clause 2(2) of the said Nitimala and there is no lawful scope to lease except for declaration as Chingrimohal and in violation of the Clause 8 (ঝ) (জ) of the চিংড়িমহাল ব্যবস্থাপনা নীতিমালা, ১৬-১২-১৯৯৮.

Mr. Tapan Kumar Bepary, learned Advocate for the petitioner submits that the schedule property was declared by the respondents as Chingrimohal and that the petitioner being adjacent land owner of the said property made application for granting lease in his favour. He further submits that on consideration of all relevant reports and materials on record as well as considering petitioners entitlement under clause 2(4)(Ja) of the “চিংড়িমহাল ব্যবস্থাপনা নীতিমালা” dated 30.03.1992 (shortly, the Chingrimohal Nitimala) the petitioner got lease and has been enjoying the same on payment of yearly lease money till 1427 BS. He also submits that although

the petitioner is entitled to have the extension of lease as adjacent land owner under the Nitimala but declining the same the UNO (respondent No.4) issued impugned lease notice inviting applications for leasing the said property as Jalmohal. He again submits that since the petitioner has been paying the regular lease money he is not a defaulter. He lastly submits that the impugned notice has been issued in violation of clause 2(3)(Gha) of the Nitimala.

On the other hand, Mr. Kazi Mynul Hassan, learned Deputy Attorney General (DAG) contends that the Nitimala itself incorporates provision that any property has to be declared as Chingrimohal by the Government itself in accordance with aforesaid Nitimala. But the schedule property was never declared by the Government as Chingrimohal. He further contends that in connivance with the local administration, the petitioner had managed to get the lease as Chingrimohal without any approval by the Government i.e Ministry of land and although the Nitimala provides for lease agreement but without executing any such agreement the petitioner enjoyed the property for the period 1411 to 1423 BS only by taking Duplicate Carbon Receipt (DCR) and thus a huge Government fund was misappropriated by the petitioner at the connivance of the local sharimp Management Committee.

We have gone through the writ petition, affidavit in opposition filed by the DC (respondent No.2) and other materials on record.

It appears that by opening miscellaneous case bearing No. 2 of 2004 Chingrimohal, Koyra the petitioner enjoyed the schedule property as Chingrimohal from 1411-1423 on payment of certain rent by way of DCR.

In the meantime the impugned tender notice having been published for leasing out the said property as Jalmohal, the petitioner filed this writ petition and claims his entitlement to continue the lease as adjacent land owner in exercise of clause 2(4)(Ja) of the Chingrimohal Nitimala under the circular dated 30.03.1992 (16.12.1998 BS).

We have gone through the relevant clauses of the said Chingrimohal Nitimala, in particular, the clause 2(4)(Ja) which runs as follows:

“(জ) ব্যক্তি মালিকানাধীন ঘের/ঘোনা এর মধ্যবর্তী খাসজমি খাল বা জমি ইজারা দেওয়ার ক্ষেত্রে ঘের/ঘোনা মালিক-দর অগ্রাধিকার দেওয়া হই-বা।”

The aforesaid clause although creates entitlement of preference to get lease by the adjacent land owner of the Chingrimohal but learned DAG has raised question about the nature of the property itself submitting that this property was never declared as Chingrimohal and as such, the clause of Chingrimohal Nitimala is not applicable regarding this particular property. In the above context, the question is whether the property has been declared as Chingrimohal.

To answer this question, we have gone through relevant clauses of the Chingrimohal Nitimala, in particular, clause 2 which runs as follows:

“২। সরকার চিংড়ি চাষের এলাকাসমূহকে চিংড়িমহাল হিসাবে ঘোষণার মাধ্যমে চিংড়িমহালের যথোপযুক্ত ব্যবস্থাপনা এবং চিংড়ি উৎপাদন বিষয়ে ভূমি সম্পৃক্ততা সম্পর্কিত সুষ্ঠু ও ন্যায্যভিত্তিক নীতিমালা প্রণয়ন ও উহা বাস্তবায়নে নিম্নোক্ত ব্যবস্থাাদি গ্রহণের সিদ্ধান্ত নিয়াছেনঃ-

(১) চিংড়িমহাল ব্যবস্থাপনা সংক্রান্ত যাবতীয় কার্যাদি নির্ধারণের জন্য জাতীয় পর্যায়ে একটি কমিটি থাকিবে। কমিটির গঠন ও কার্যাবলী নিম্নরূপ হইবেঃ-

(ক) জাতীয় চিংড়িমহাল ব্যবস্থাপনা কমিটিঃ

১। মন্ত্রী, ভূমি মন্ত্রণালয়	সভাপতি
২। চিংড়িমহাল এলাকা হইতে সরকার	
মনোনীত ৩(তিন) জন সংসদ সদস্য/সদস্যা	সদস্য
৩। সচিব ভূমি মন্ত্রণালয়	সদস্য
৪। সচিব, মৎস্য ও পশুসম্পদ মন্ত্রণালয়	সদস্য

- ৫। সচিব, পরিবেশ ও বন মন্ত্রণালয় সদস্য
- ৬। সচিব, সেচ, পানি সম্পদ ও বন্যা নিয়ন্ত্রণ মন্ত্রণালয়। সদস্য
- ৭। কমিশনার, চট্টগ্রাম/খুলনা বিভাগ সদস্য
- ৮। সরকার কর্তৃক মনোনীত ২(দুই) জন চিংড়ি চাষী। সদস্য
- ৯। যুগ্ম-সচিব (চিংড়িমহালের দায়িত্বে নিয়োজিত), ভূমি মন্ত্রণালয়। সদস্য-সচিব
- (খ) কমিটির কার্য পরিধিঃ
- ১। চিংড়িমহাল ব্যবস্থাপনা সংক্রান্ত জাতীয় নীতি নির্ধারণ।
- ২। চিংড়ি চাষ সম্প্রসারণ ও উৎপাদন বৃদ্ধির জন্য সহায়ক ব্যবস্থাাদি গ্রহণ।
- ৩। আন্তঃমন্ত্রণালয়/বিভাগের কাজের সমন্বয় সাধন।
- ৪। চিংড়িমহাল ব্যবস্থাপনা কমিটির কার্যাদি পর্যবেক্ষণ ও পর্যালোচনা।
- ৫। চিংড়িমহাল ব্যবস্থাপনা এবং ভূমি বরাদ্দ নিয়ন্ত্রণের জন্য প্রয়োজনীয় আইন প্রণয়নের সুপারিশ।
- ৬। সরকার কর্তৃক অর্পিত অন্য যে কোন দায়িত্ব।
- (গ) উক্ত কমিটি প্রতি ৬(ছয়) মাসে কমপক্ষে একবার এবং প্রয়োজনানুযায়ী সভায় মিলিত হইবে।
- (২) চিংড়ি চাষের জন্য জমি চিহ্নিতকরণ এবং চিংড়ি চাষ নিয়ন্ত্রণের উদ্দেশ্যে জমি বরাদ্দের সুপারিশ প্রণয়নের জন্য সংশ্লিষ্ট জেলাসমূহে একটি করিয়া কমিটি থাকিবে। কমিটির গঠন ও কার্যাবলী নিম্নরূপ হইবেঃ-
- (ক) জেলা চিংড়িমহাল কমিটিঃ-
- ১। জেলা প্রশাসক সভাপতি
- ২। বিভাগীয় বন কর্মকর্তা/প্রতিনিধি সদস্য
- ৩। নির্বাহী প্রকৌশলী, ও এন্ড এম/ডিভিশন পানি উন্নয়ন বোর্ড/প্রতিনিধি। সদস্য
- ৪। জেলা মৎস্য কর্মকর্তা/প্রতিনিধি সদস্য
- ৫। সরকার কর্তৃক মনোনীত ২(দুই) জন চিংড়ি চাষী সদস্য
- ৬। অতিরিক্ত জেলা প্রশাসক (রাজস্ব) সদস্য-সচিব
- এতদ্ব্যতীত, মন্ত্রণালয় কর্তৃক মনোনীত স্থানীয় অন্ততঃ দুইজন সদস্য/সদস্যা ও প্রযোজ্য ক্ষেত্রে স্থানীয় সিটি কর্পোরেশনের মেয়র কমিটির উপদেষ্টা থাকিবেন।
- (খ) কমিটির কার্য পরিধিঃ
- ১। সংশ্লিষ্ট জেলায় চিংড়ি চাষ উপযোগী নতুন জমি চিহ্নিত করা ও চিংড়িমহাল ঘোষণার ব্যাপারে সুপারিশ এবং সুনির্দিষ্ট সুপারিশনামাসহ বিভাগীয় কমিশনারের মাধ্যমে ভূমি মন্ত্রণালয়ের নিকট প্রেরণ।”

(Underlined)

Drawing our attention to Annexure-G to the writ petition, learned Advocate for the petitioner submits that by the minutes of the meeting of the “-জেলা চিংড়ি সম্পদ উন্নয়ন ও ব্যবস্থাপনা কমিটি” the schedule property was declared as

Chingrimohal and by their decision the property was given to the petitioner at a rent of Tk. 9,126/- which was subsequently enhanced from time to time.

On the other hand, from the Nitimala, it is apparent that any particular property can only be declared as Chingrimohal by the Ministry of land or the “জাতীয় চিংড়িমহল ব্যবস্থাপনা কমিটি” subject to government instruction. From the materials on record, we do not find such declaration regarding the schedule property as “চিংড়িমহল”. Therefore, the claim of petitioner to get the lease of the said property in exercise of clause 2(4) (Ja) of the Chingrimohal Nitimala is not acceptable.

Hence, the Rule Nisi fails.

In the result, the Rule is discharged without any order as to cost. The respondents are directed to take possession of the schedule property from the petitioner and to proceed for realization of arrear rent, if any.

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

Razik Al Jalil, J

I agree.