

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

WRIT PETITION NO. 5207 OF 2021
IN THE MATTER OF:

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

IN THE MATTER OF:

Md. Shamsul Haque alias Samsul Hoque alias
Liton and others

.... Petitioners

-Versus-

Government of Bangladesh and others

.... Respondents

Mr. Md. Khurshid Alam Khan, Advocate with
Mr. Titus Hillol Rema, Advocate

.... For the Petitioners

Mr. Mohammed Mutahar Hossain, Advocate
with

Mr. Mohammad Taslim Uddin Bhuiyan, Adv.

.... For the Respondent Nos. 16, 20-
22, 24-28 and 32-38

Judgment on 11th June, 2023

Present:

Mr. Justice Mahmudul Hoque

and

Mr. Justice Md. Mahmud Hassan Talukder

Mahmudul Hoque, J:

In this application under Article 102(2)(a)(i)(ii) of the Constitution Rule Nisi was issued calling upon the respondent Nos. 1-7 to show cause as to why a direction should not be given for executing a "Lease Deed" in favour of the petitioners who are the legal heirs and lawful successors of the deceased Monowara Begum, wife of the original allottee Late Haji Hafizuddin in respect of Plot No. B-379, Rehabilitation Zone, Khilgaon,

Police Station-Rampura, DMP, Dhaka-1219 and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts of the case in short are that one Haji Hafizuddin was allotted the plot in question being Plot No. B-379, Rehabilitation Zone, Khilgaon, Police Station-Rampura, DMP, Dhaka-1219 by allotment letter dated 24.04.1962 by Railway Diversion (Building) Division, Dhaka and he was delivered with the possession of the plot on 09.03.1963. Before execution and registration of the lease deed he died leaving the present petitioners as heirs by his third wife and also he had other two wives. After the death of Hafizuddin the petitioners applied to the Housing and Public Works for execution and registration of lease deed in their favour claiming that their father at the time of remarriage of their mother in the year 1976 transferred the plot in question in her favour in exchange of dower money as mentioned in clause No. 16 of the kabinnama dated 12.03.1976. Other heirs of Hafizuddin by other wives also applied for execution of lease deed and registration of the same in their favour according to their share. Housing and Public Works department repeatedly asked the petitioners to submit all original documents to substantiate their claim and to appear before the authority with relevant documents. Though they appeared before the authority, without disposing the claim of the petitioners, the authority kept the matter abeyance and on the following day of issuing this Rule, the authority executed and registered a lease deed in favour of respondents as heirs of Hafizuddin.

Respondent Nos. 16, 20-22, 24-28 and 32-38 contested the rule by filing joint affidavit-in-opposition contending that their predecessor Hafizuddin was allotted with the plot in question in the year 1962 and before execution and registration of the lease deed he died leaving heirs, the petitioners and the respondents. The Respondents being heirs of Hafizuddin along with the petitioners applied to the Housing and Public Works Authority to execute lease deed and register the same in their favour according to their share. The authority asked all the heirs to appear before it with relevant papers and documents. The respondents complied with the direction of the authority and the authority finding everything in order executed and registered lease deed to the extent of share of the respondents and delivered possession of the same, but the petitioners for the reason best known to them avoiding the authority have filed a suit being Title Suit No. 131 of 2021 before the 5th Joint District Judge, Dhaka for declaration of title and also filed this writ petition by suppressing the fact of filing a suit before the civil court, as such, the present writ petition is not maintainable in law.

Mr. Md. Khurshid Alam Khan with Mr. Titus Hillol Rema, learned Advocate appearing for the petitioners candidly submit that they were not aware of filing of the Title Suit No. 131 of 2021 before the 5th Joint District Judge, Dhaka for the selfsame subject matter. However, Mr. Khan submits that in the instant writ petition, the petitioners only challenged notice dated 02.06.2021 issued by the respondent No. 3 and also a direction to execute the lease deed, as such, the prayer to the plaint in title

suit and the writ petition is basically different in nature. However, he submits that since a title suit is pending before the civil court the question whatever raised in this petition can be decided on evidence before the civil court.

Mr. Mohammed Mutahar Hossain with Mr. Mohammad Taslim Uddin Bhuiyan, learned Advocates appearing for the respondent Nos. 16, 20-22, 24-28 and 32-38 submit that the petitioners intentionally suppressed the fact of filing civil suit before the civil court and keeping the said proceeding pending with ulterior motive by suppressing the fact filed this writ petition for the same relief, as such, the writ petition is liable to be rejected outright. He further submits that the respondents got their lease deed executed and registered from Housing and Public Works authority as heirs of Hafizuddin. Without seeking any relief against the registered lease deed before civil court, the instant Rule is liable to be discharged.

He finally submits that the petitioners also admitted that the respondents are legal heirs of late Hafizuddin along with them, but the question and claim raised by the petitioner is a matter to be decided by the civil court in Title Suit No. 131 of 2021, as such, the rule cannot proceed in accordance with law.

We have heard the learned Advocates for the parties, have gone through the writ petition and grounds setforth therein, affidavit-in-opposition along with all the annexures annexed thereto.

Both the parties admitted that the plot in question was allotted to their predecessor Hazi Hafizuddin in the year 1962 and delivered possession of the same to him. It is also admitted that Hafizuddin had three wives and many children by all the three wives. At a point of time he divorced his third wife, mother of the present petitioners, but subsequently, he got her remarried on 12.03.1976 and in the kabinnama at clause 16 it has been mentioned that he transferred the plot in question in favour of his third wife, mother of the petitioner in lieu of mohorana, but on the basis of such statement neither he executed any deed of gift or deed of transfer in favour of his third wife, Monowara Begum.

Whether only by a writing in kabinnama any immovable property can be construed to be transferred in her favour is a question of law and it requires evidence to establish title of the petitioners before the court of law. The Housing and Public Works Authority is under no obligation to entertain claim of the petitioners to be owner of the entire plot in question, as such, the authority rightly urged upon all the heirs of Hafizuddin to come before the authority to have the lease deed executed and registered as per their share in accordance with law. Accordingly, the respondents in response to the request and direction of the authority supplied all the necessary papers in support of their claim as heirs of Hafizuddin and got the lease deed executed and registered in their favour according to their share leaving the share of the petitioners. If the petitioners are willing to get their lease deed executed and registered from the authority they can do it as per their share in accordance with law of inheritance. Since the

petitioners claim of title in entire plot in question on the basis of a writing in kabinnama of the year 1976 and on that claim they already filed Title Suit No. 131 of 2021 in the court of 5th Joint District Judge, Dhaka for declaration of title, their claim whatever have had to be decided by the court below in Title Suit No. 131 of 2021, but the petitioners unfortunately by suppressing the fact of filing title suit for the self same relief before the civil court, moved this petition and obtained the present Rule. The petitioner ought not to have adopted such a tactics only to increase litigation by suppressing the fact to their lawyer. On that count this petition is palpably incompetent calling for discharging the Rule. The petitioners are hereby warned not to repeat the same in future.

Since, the matter already waiting for decision before the civil court on evidence, the Rule in this petition is liable to be discharged.

In view of the above, we find no merit in the Rule Nisi as well as in the submissions of the learned Advocate for the petitioner.

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

The order of status quo granted at the time of issuance of the Rule Nisi stands vacated.

Communicate a copy of this judgment to the parties concerned.

Md. Mahmud Hassan Talukder, J:

I agree.