

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

Writ Petition No. 9506 of 2019

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Mohammed Idris, son of late Nur Ahmmad, House
No. 66/A-2 (Western side of the First Floor), Road
No. 03, Nasirabad Housing Society, Chattogram
....Petitioner

Versus

The Government of the People's Republic of
Bangladesh, represented by the Secretary, Ministry
of Housing and Public Works, Bangladesh
Secretariat, Dhaka-1000 and others
....Respondents

Mr. M.A. Hannan, Advocate with
Mr. Md. Tafsirul Islam, Advocate
....For the Petitioner

Mr. Sujad Miah, Advocate
....For the Respondent No. 1

Mr. Mohammad Arshadur Rouf, Additional Attorney
General with
Mr. Md. Abid Chowdhury, DAG with
Mr. M Mohiuddin Yousuf, DAG,
Mr. Abdullah Al Mahmud, DAG,
Mr. A.S.M. Sayem, AAG,
Mr. Monjur Elahi Porag, AAG,
Mr. Ariful Alam, AAG,
Mr. Md. Nazmul Hasan Chowdhury, AAG and
Mr. Md. Shahidul Islam, AAG
.... For the respondent No. 3

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice S M Saiful Islam

Judgment on 12.07.2026.

Md. Iqbal Kabir, J:

This Rule Nisi was issued calling upon the respondents to show cause
as to why refusal to give allotment of Reserved Abandoned House No. 66/A-2
(western side of 1st floor), Road No. 3, Nasirabad Housing Society, Chattogram,
in favour of the petitioner as a freedom fighter under Bangladesh Abandoned
Property (Buildings in the Urban Areas) Rules, 1972 in a discriminatory manner

vide Memo No. 05. 42. 0000. 031. 33. 215. 19-584 dated 22.08.2019 by the Respondent No. 7 (Annexure-M) and threat of eviction of the petitioner from the said house without prior rehabilitation or re-settlement, should not be declared to have been passed without lawful authority and unconstitutional being in violation of the fundamental rights to life and to be treated in accordance with law and as to why the respondents shall not be directed not to dispossess the petitioner and his family members from the Reserved Abandoned House No. 66(A-2) (western side of 1st floor), Road No. 03, Nasirabad Housing Society, Chattogram without alternative rehabilitation or re-settlement and/or pass such other or further order or orders as to this Court may seem fit and proper.

Short facts narrated in the petition are that one Fatema Khatun being a teacher government school was allotted a house being No. 66(A-2) (western side of 1st floor), Road No. 03, Nasirabad Housing Society, Chattogram in her name vide Memo dated 13.12.2015 from the office of the respondent No. 6. However, subsequently, respondent No. 6 vide its letter dated 13.08.2017 requested to vacate the house and handover the possession of the said house to the authority concerned. Knowing such, the petitioner who is a freedom fighter and after getting training he became a group commander during the Liberation War in 1971 under Sector No. 1 made an application dated 10.05.2017 requested the respondent No. 2 to allot a house in his name as per Rule 10(7) (d) and (e) of the Bangladesh Abandoned Property (Buildings in the Urban Areas) Rules, 1972. In his application, he stated that he is a Freedom Fighter and he or his family members have no house in any urban area of the country. Subsequently, the petitioner made another application dated 22.11.2017 to the Divisional Commissioner, Chattogram, concerning the same matter. However, the authority, in his reply dated 31.01.2018, requested to take appropriate initiative as per the rule. Having no reply, the petitioner filed another application dated 01.02.2018 to the respondent No. 6. However, the authority response the petitioner and his family would be required to vacate the house as per the order of the respondent No. 6 without informing the outcome of his repeated applications for allocation of the concerned house in his name as he claimed as a freedom fighter pursuant to the Order and Rules. According to the petitioner, he and his family members are in the dark about the fate of his application and are seriously concerned about whether they would be thrown away from the house at the eleventh hour under the open sky, as they do not have a house in the urban areas.

Being aggrieved and dissatisfied with such initiative, the petitioner filed this writ petition and obtained the instant Rule Nisi.

Mr. M.A. Hannan, learned Advocate for the petitioner submits that the respondents are trying to evict the petitioner from the allotted house without allotting any other alternative accommodation. He claims that the petitioner is a freedom fighter and his family is enjoying the privileges of an abandoned house for being a freedom fighter. However, he drew the attention of this Court by showing a memo dated 21.12.1986, which provides that eviction from its allotted government residence without first arranging suitable alternative accommodation is illegal and without lawful authority.

Mr. Hannan, learned Advocate, in his submission, states that the eviction notice is illegal and arbitrary, without serving any prior notice and without affording the petitioner any opportunity of showing any cause as to why the allotment of the petitioner should not be cancelled. The respondent issued an impugned notice, which is a violation of the principles of natural justice. In support of his submission cited a decision (56 D.L.R. (AD) 24-25 and 19 MLR (AD) 97.

He also submits that Rule 7 of the Bangladesh Abandoned Property (Buildings in the Urban Areas) Rules, 1972 gives priority to Shaheed families in the allotment of abandoned properties. However, the respondents have denied the petitioner this statutory benefit, making the impugned notice illegal and without lawful authority. He further submits that Rule 5 of the বাংলাদেশ মুক্তিযোদ্ধা কল্যাণ ট্রাস্ট প্রবিধান, ২০২২ provides for allotment of flats to Shaheed Bir Muktijoddha families. The petitioner, being an aged freedom fighter, has instead been directed to vacate the allotted house, which is contrary to the law, and therefore the impugned notice is liable to be declared illegal and of no legal effect.

Mr. Abdullah Al Mahmud, the learned DAG appearing for the respondent No. 3 bring notice of this Court that the respondent refused to accept the application submitted that the house is a reserved abandoned house, and the petitioner is not entitled to get such property. He claims the government decided to implement a project, namely 'Government Residential Flat and Dormitory'. The petitioner filed an application for allotment of the case house in his name as a freedom fighter, but the department does not have the power to give the petitioner the case house as a freedom fighter. He informed that the petitioner's wife, Fatema Khatun, went on retirement on 31.08.2017, but without handing over the possession of the case house, she applied to reside in that house for more than 6(six) months, and the authority allowed her. But after the lapse of that 6(six) months without handing over the case property, the petitioner's wife Fatema Khatun filed a writ petition and tried to get relief from the order of this Court. Subsequently, the petitioner filed another writ petition, which was

disposed of by this Court and directed to dispose of the representation filed by the petitioner. The learned DAG submits that since the government has taken a project to construct a multi-storied building in the aforesaid plot and this particular land has been earmarked for the government employee, there is no scope to allow this particular plot to the petitioner or his wife.

Mr. Sujad Miah, the learned Advocate for the respondent No. 1, adopted the submissions made herein before by the DAG.

We have heard the Advocates appearing for their respective parties, also perused the application, affidavit-in-opposition, and other material on record annexed hereto, and considered the submissions advanced by the parties.

On perusal, it appears that there is no scope to deny that the petitioner's wife entered into possession of the case house in her capacity as a teacher of a government school. Subsequently, the petitioner, being a freedom fighter and asserting that he owns no house in any urban area, applied for allotment of an abandoned property. In support of his claim, the learned Advocate for the petitioner referred to several Government notifications to contend that the Government is under an obligation to allot an abandoned house to a freedom fighter.

The record, however, shows that after the petitioner's wife ceased to be entitled to occupy the case house, both the petitioner and his wife submitted several applications seeking allotment of an abandoned property. It further appears that the petitioner specifically sought allotment of the present property. Since the case house is earmarked for Government employees and consists of a substantial area of land, there is no scope to allot this particular property to the petitioner. Although the Government notifications provide for consideration of freedom fighters for allotment of abandoned properties, those do not impose a mandatory obligation upon the Government to allot any particular property to every eligible freedom fighter.

It is evident from the record that the petitioner is presently occupying the case house without any lawful authority and did not deposit any rent since 01.03.2018 for the house in question where he resides, which is unexpected and undesirable. Nevertheless, this court considered that the petitioner is a freedom fighter and has stated on oath that he owns no residential house in any urban area; it is expected that the State, consistent with its policy and moral obligation, will consider providing him with suitable alternative accommodation, though not in the present house.

In the circumstances, the Respondents are directed to allot a suitable abandoned property to the petitioner for accommodation, in accordance with

the relevant notifications and applicable policy, within 4 (four) months from the date of receipt of this judgment and order. Further, we hold that the petitioner shall vacate the case house in question and, before vacating, deposit all arrear dues related to rent and all other utilities, if any, within such period.

With the above observation and direction, the Rule is disposed of.

There will be no order as to cost.

Communicate the order.

S M Saiful Islam, J:

I agree.