

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

**WRIT PETITION NO. 35 OF 2022**

**IN THE MATTER OF:**

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

**AND**

**IN THE MATTER OF:**

Syed Alam and others

.....Petitioners.

-Versus-

Bangladesh and others.

.....Respondents.

Mr. Manzill Murshid, Advocate with

Mr. Ripon Baroi, Advocate

.....For the Petitioners.

Mr. Ashraful Alam, Advocate

.....For the Respondent No. 1.

Mr. Mizan Sayeed, Advocate with

Mr. Humayun Kabir Ahsan and

Mr. Mohammad Shajahan, Advocates

.....For the Respondent No. 17.

**Judgment dated 01.06.2023**

**Present:**

**Mr. Justice Md. Khasruzzaman**

**And**

**Mr. Justice Md. Khairul Alam**

**Md. Khasruzzaman, J:**

In this application under article 102 of the Constitution a *Rule Nisi* was issued calling upon the respondents to show cause as to why

the impugned letter No. 46.00.0000.046.18.068.19.589 dated 02.11.2021 issued by the respondent No. 11 giving permission for acquisition of land for proposed Eidgaon Upazila Complex at B.S. Plot Nos. 5345-5352, 5356-5367, 7968 and 7659 under Eidgaon Mouja of Islamabad Union, Cox's Bazar in violation of the provision of clause 1(Ca) and 3 of the “নতুন উপজেলা, থানা এবং তদন্তকেন্দ্র সংস্থাপনের সংশোধিত নীতিমালা” (24/10/2004) and in violation of the decision of 117<sup>th</sup> meeting of the National Implementation Committee for Administrative Reforms (NICAR) (Annexure- F) should not be declared to have been issued without lawful authority and is of no legal effect and why a direction should not be given upon the respondents for administrative approval afresh giving permission for acquisition of land for proposed Eidgaon Upazila Complex at Eidgaon Mouja of Islamabad Union, Cox's Bazar in line with provisions of clause 1(Ca) and 3 of the “নতুন উপজেলা, থানা এবং তদন্তকেন্দ্র সংস্থাপনের সংশোধিত নীতিমালা” (24/10/2004) and in violation of the decision of 117<sup>th</sup> meeting of the National Implementation Committee for Administrative Reforms (NICAR) to give effect the proposal of the Divisional Commissioner, Chittagong and/or to pass such other or further order or orders as to this Court may seem fit and proper.

2. Facts necessary for disposal of the Rule, in brief, are that earlier Cox's Bazar Sadar Upazila had 10 Unions, some of which are in

remote areas from Sadar. The common people of those remote area had a long-time desire to have their own Upazila. In consideration of such desire and demand of common people, the District Administration of Cox's Bazar prepared a proposal for forming a new Upazila under the name and style "Eidgaon Upazila" consisting five Unions namely- Eidgaon Union, Islamabad Union, Jalalabad Union, Islampur Union and Pokkhali Union bifurcating its Sadar Upazila. Local member of Parliament (respondent No. 14) also issued a letter on 15.06.2019 for establishment of a new Upazila. In view of the above, the Local Government Division of the Ministry of Local Government, Rural Development and Co-operatives (respondent No. 1) issued a letter on 24.06.2019 requesting Divisional Commissioner, Chattogram (respondent No. 5) to send formal proposal to that effect in line with a policy dated 24.10.2004 for establishment of new Upazila. Thereafter, the respondent No. 5 having received such proposal from the respondent No. 6 sent a proposal to the respondent No. 1 along with all supporting informations, documents logistic requirements and necessary maps of the proposed Upazila. It has been stated by the petitioners in the writ petition that the said proposal clearly mentioned that the name of proposed Upazila would be 'Eidgaon Upazila' and its Head Quarter would be established at Eidgaon under Eidgaon Mouja. Accordingly, the respondent No. 1 sent it to the Cabinet Division (respondent No.

2) for consideration. Subsequently, upon completion of other necessary procedural formalities, the proposal was placed before the National Implementation Committee for Administrative Reforms (in short, the NICAR) for consideration and necessary approval. The NICAR in its 117<sup>th</sup> meeting approved the formation of a new Upazila in Cox's Bazar district in the name and style "Eidgaon" Upazila vide resolution dated 26.07.2021 which was published in the Bangladesh Gazette on 10.08.2021. Subsequently, further gazette notification in this regard was published in Bangladesh Gazette on 24.08.2021 pursuant to the decision of the NICAR.

3. Further case of the petitioners is that in the meantime the Senior Secretary, Local Government Division exercised his power in an improper and abusive way by passing the decision of the NICAR to shift the establishment proposed Eidgaon Upazila Complex Bhaban from Eidgaon, under Eidgaon Mouja to Islamabad Union on the pretext that Islamabad shares a minor part of Eidgaon Mouja. Due to such personal influence from the said high official whose village homestead is at Islamabad Union, Cox's Bazar, the Deputy Director, LGED, Cox's Bazar submitted a Site Inspection Report in respect of establishment of proposed Upazila Complex Bhaban and other buildings to the district administration upon visiting Eidgaon Mouja under Islamabad Union instead of Eidgaon under Eidgaon Mouja within Eidgaon Union. Thereafter, Upazila Nirbahi Officer

Sadar, Cox's Bazar (respondent No. 8) submitted another report on 19.10.2021 for acquisition of 6(six) acres of land at Eidgaon Mouja under Islamabad Union and eventually on 28.10.2021 the respondent No. 6 sent a proposal to the respondent No. 1 asking for administrative approval for acquisition of such land at Eidgaon Mouja under Islamabad Union in line with the proposal sent by the respondent No. 8 (i.e. UNO, Cox's Bazar) for establishment of Upazila Complex and other buildings. On receipt of the said proposal from respondent No. 6, on 02.11.2021 the Senior Assistant Secretary, Upazila-1 Branch, Local Government Division, Ministry of Local Government, Rural Development and Co-operatives (respondent No. 11) issued a letter giving administrative permission for acquisition of 6(six) acres of land for such proposed Upazila Complex and others. In such circumstances, the petitioners were constrained to file above numbered writ petition and obtained the instant *Rule Nisi*.

4. The respondent No. 1 entered into its appearance by filing an affidavit-in-opposition controverting the statements made in the writ petition. The case of the respondent No. 1 as stated in the affidavit in opposition *inter alia* is that the administrative approval was issued on the basis of the following the decision of the NICAR taken in its 117<sup>th</sup> meeting dated 26.07.2021 and being free from undue influence of any quarter and in tune with the terms and conditions of the Policy of 2004. Nowhere in the NICAR decision it was stated that Eidgaon

Upazila would be established at Eidgaon under Eidgaon Mouja. In the agenda of the decision of 117<sup>th</sup> meeting of the NICAR dated 26.07.2021, it is clearly stated that the Eidgaon Upazila Headquarter would be established in the Eidgaon Mouja. Moreover, the Gazette notification dated 24.08.2021 also clearly reveals that Eidgaon Upazila Headquarter should be established in the Eidgaon Mouja which in fact spills over 3 unions namely- Eidgaon Union, Islamabad Union, and Jalalabad Union.

5. Further case of the respondent No.1 as stated in the affidavit-in-opposition is that the petitioners obtained the Rule by distorting the facts, for example, they mentioned in the writ petition that the proposed Upazila Headquarter is 6 (six) kilometers away from Eidgaon Bazar. But in the report dated 28.10.2021 (Annexure- E) it is clearly mentioned that the proposed Upazila Headquarter is only 0.6 K.M. away from Eidgaon Bazar and have good connectivity with the rest 4(four) Unions of the proposed Upazila. It is stated that the petitioners also annexed a fragmented map of Eidgaon Upazila (Annexure G series) having no authenticity. On the other hand, the respondent No. 1 claims that the administrative Map annexed by the respondent No. 1 clearly shows that the site proposed for the Eidgaon Upazila Headquarter is exactly in the middle of the Upazila and in plain land but unlikely the rest of the land of the Mouja is dotted with

knolls, woods and marshland. Thus the petitioners have not come before this court with clean hands.

6. The respondent No. 1 also filed an affidavit in reply on 31.01.2023 stating *inter alia* that there was no irregularity in the whole process of selecting the proposed site for Eidgaon Upazila Complex since the same was undertaken by the government in compliance with the NICAR decision. It was further added that the writ petition involves disputed question of facts which cannot be resolved in writ jurisdiction. Moreover, the petitioners have prayed for interfering with the policy decision of the government which is not tenable in the eye of law. Thus the Rule is liable to be discharged for ends of justice.

7. One Mr. Abdur Razzak, a member of Islamabad Union Parishad has been added as respondent No. 17 in this writ petition, who also contested the Rule by filing an affidavit-in-opposition stating *inter alia* that the present writ petition is not maintainable, because (i) the present writ petition has been filed as a public interest litigation to represent some opulent members of the locality who have vested interest in the subject matter of this petition, hence, the petition should not be entertained due to lack of *sufficiency of interest*; (ii) the petitioners are liable to be considered as '*interlopers* who are interfering with the action of the government authorities which does not at all concern them for which they are not entitled to

file the present writ petition; (iii) the present writ petition is pure and simple a 'private interest litigation' not 'public interest litigation'. The writ petitioners have not come with clean hands and filed the writ petition on behalf of such disadvantaged and helpless persons that will entitle them to maintain the present petition as public interest litigation; (iv) the writ petition has been filed challenging the policy decision of the government which is not permissible in law. The petitioners obtained the present Rule by misleading the Court and suppressing the facts. They also misrepresented relevant government guidelines to their advantage in consequence of which the entire development works have come to a halt. The government is not being able to implement the development works; (v) the contents of the present writ petition are mostly disputed question of facts. This Court is not a tribunal of fact rather this Court is a tribunal of law and cannot adjudicate disputed questions of fact. Thus the present writ petition is not maintainable and as such the Rule is liable to be discharged.

8. Besides raising the issue of maintainability, the respondent No. 17 also controverted the statements in detail made in the writ petition. In a nutshell the moot points canvassed by the respondent No. 17 in his affidavit-in-opposition are that the petitioners misled the Court by making false statements that Islamabad Union shares a minor part of Eidgaon Mouja along with Eidgaon Union which has



major part of Eidgaon Mouja in it. This is absolutely a statement of convenience rather than statement of truth. It is clearly evident from the relevant Mouja map that the Eidgaon Mouja actually shares with three Unions namely- Islamabad Union, Jalalabad Union and Eidgaon Union out of which 25% land covered by Eidgaon Union, 90% land covered by Islamabad Union and 100% land covered by Jalalabad Union. The truth of this assertion will be succinctly evident from the Mouja map as well as the special map prepared by a team of competent government officials (consisting of AC Land, Kanungo & Surveyor) for Eidgaon Upazila demarcating the boundary line of each Union of Eidgaon Upazila along with the specific demarcation line of Eidgaon Mouja. This clearly proves that the allegation of improper and abusive exercise of power by the then Senior Secretary, Local Government Division is merely a jargon and exaggerated statement purposely made to mislead the Court and to obtain unauthorized gain. There was no influence from any quarter while issuing the impugned memo dated 28.10.2021. The site inspection report submitted by the respondent No. 10 i.e. Deputy Director Local Government, Cox's Bazar dated 28.10.2021 (Annexure- E), the letter sent by Assistant Commissioner (Land), Union Bhumi Office, Eidgaon vide Memo No. **ইউ ভূ অ/ঐদগাঁও/২০২১-২৪১/১** dated 17.10.2021 along with the report of Assistant Commissioner (Land) Sadar, Cox's Bazar, the report submitted by Upazila Nirbahi Officer vide Memo

No. 05.20.2200.2228.2021-828 dated 19.10.2021, the letter sent by Deputy Commissioner, Cox's Bazar vide Memo No. 05.20.2200.126.04.019.2017-538 dated 21.10.2021, the proposal submitted by the Deputy Commissioner, Cox's Bazar on 28.10.2021 [Annexure- E(1)] - all were submitted asking for administrative approval for acquisition of such lands at Eidgaon Mouja under said Islamabad Union. The said entire administrative process was carried out by authorities concerned absolutely in accordance with the law. The petitioners unnecessarily distorted the facts with the *malafide* intention to create confusion and hoax in establishment of the Upazila head quarter at Islamabad Union within Eidgaon Mouja.

9. Further case of the respondent No. 17 *inter alia* as stated in the affidavit-in-opposition is that nowhere in the government policy guideline nor in any government decision it has been stated that the proposed Eidgaon Upazila head quarter complex is to be established at Eidgaon Mouja under Eidgaon Union rather the basic requirement is that the proposed 6 (six) acres of land has to be within Eidgaon Mouja. The truth of this assertion is reflected in the NICAR decision dated 26.07.2021, Gazette notifications dated 10.08.2021 and 24.08.2021. So, the proposed land for Upazila headquarter complex in Islamabad Union perfectly meets the criteria set out by the government in its policy guidelines and decisions taken by various authorities of the government from time to time because the

proposed site at Islamabad Union is situated in the middle of the Eidgaon Mouja, it is connected with other four Unions, it is situated 0.6 K.M. away from Eidgaon Bazar and close to all other educational, health, commercial and other facilities like railway station, bus station etc. As opposed to this, the site proposed by the petitioners does not meet the criteria because it is situated far away from Eidgaon Bazar, health complex, educational institutes, railway station, business centres, government and non-government offices. Moreover, the said site is situated adjacent to reserve forest area and in the middle of a small Khal/river which is prone to erosion and during rainy season the entire area remains under water because of the incoming water flow from the adjacent hills and reserve forest area. Some portion of the lands of that area are also known to be Hindu religious property of Mogeshwery Temple and reportedly crematorium/burning ground of Hindu community. Therefore, the place is not at all suitable for establishing Upazila Headquarter not being environment friendly, safe and convenient. Since the said place is situated near busy Cox's Bazar, Chattogram highway, it is highly vulnerable for road accident too.

10. Mr. Manzill Murshid, the learned Advocate appearing on behalf of the petitioners submitted that the petitioners have sufficient interest in the subject matter and being aggrieved they brought this application before this Court. The petitioners never stated that it is a

public interest litigation. However, for the sake of argument if it is assumed that the petitioners have brought the application as a public interest litigation to address the cause of the others, it squarely satisfies the criteria of National Board of Revenue V. Abu Saeed Khan as reported in 18 BLC (AD) 116. Since the petitioners are inhabitants of those area, they have filed this writ petition for their own causes as well as the pains of others. So, the Rule is maintainable.

11. Mr. Murshid further submitted that the petitioners did not challenge the policy decision as taken by NICAR in its 117<sup>th</sup> meeting, rather it is an administrative approval dated 02.11.2021, a product by way of deviation from such NICAR decision, which is under challenge in this writ petition and this Court is empowered enough to look into the matter for scrutiny of illegality committed by the respondents for ends of justice.

12. Mr. Manzill Murshid then strenuously submitted that the approval was not taken in accordance with law rather the respondents resorted to illegal clever tricks to deviate from NICAR decision. He immensely put emphasis to the fact that NICAR approved the formation of a new Upazila at Eidgaon Mouja in its 117<sup>th</sup> meeting on the basis of the primary proposal dated 05.08.2019 as forwarded by the Divisional Commissioner, Chattogram. The said primary proposal contained in its official report initiated and prepared by

Upazila Nirbahi Officer (UNO) Cox's Bazar Sadar, Cox's Bazar on 22.10.2019. The said report in definite and clear terms at clause 5, 6, 7, 8 and 11 mentions everything relying on the Eidgaon Sadar/Eidgaon Bazar which is under Eidgaon Union.

13. Showing us a Table at Page 43 of the Writ Petition, Mr. Murshid further submitted that by using the term "Head Quarter" in the said table of the said primary proposal, the Head Quarter of Eidgaon Upazila was meant to establish at Eidgaon under Eidgaon Union at Eidgaon Mouja. But the impugned administrative order dated 02.11.2021 has subsequently approved the acquisition of land for establishment of headquarter of such new Upazila at Eidgaon Mouja under Islamabad union at the clever interference and initiation of the government high official, rather than Eidgaon Mouja under Eidgaon Union. In this way, the respondents deviated from NICAR decision. So, the decision of NICAR cannot be considered isolated rather it has to be interpreted along with the primary proposal as well as the report containing maps/ drawings, land, plots reflected in undertakings and drawings as initiated by the Upazila Nirbahi Officer, Sadar, Cox's Bazar.

14. Mr. Murshid further submitted that after the decision of NICAR was passed, then the question of acquisition of land for Upazila headquarters and other establishments came at the forefront. Accordingly, on 15.09.2021 the responsible officer at the office of

the Deputy Commissioner, Cox's Bazar sent a letter to the Assistant Commissioner (Land), Cox's Bazar Sadar requesting him to send report as regards schedule land measuring 6.24 acres at different B.S. plots at Eidgaon Mouja as mentioned in the said letter. Those B.S. Plots are under Eidgaon Union of different Eidgaon inhabitants in line with the said report dated 22.07.2019 as prepared by the Upazila Nirbahi Officer. But subsequently, at the influence of a local person as being the then government high official, the site for the Upazila Headquarter was shifted to the land of Eidgaon Mouja under Islamabad Union from Eidgaon Union. In this way, the respondents had taken biased decision depriving the people of Eidgaon Union.

15. Before controverting the statements of facts as illustrated in the writ petition, Mr. Mizan Sayeed, learned Advocate appearing on behalf of the respondent No. 17 drew our attention to the issue of maintainability of the writ petition at the first instance. He submitted that the Appellate Division in NBR case reported in 18 BLC (AD) 116, categorically spelt out the criteria within which the High Court Division should exercise its discretionary jurisdiction. The petitioners not being affected directly, cannot be considered as aggrieved parties. They are liable to be considered as 'interlopers' who are interfering with the action of the government authorities which does not concern them at all. Moreover, it is categorically mentioned in the said judgment that "*no petitions will be entertained*

*challenging the policy matters of the Government, development works being implemented by the Government ...*” So, the Rule is not maintainable at all. In addition to the above, the petitioners alleged that they did not challenge any policy decision taken by NICAR in its 117<sup>th</sup> meeting rather they claimed to have challenged administrative approval dated 02.11.2021 which is (according to them) a product by way of deviation from NICAR decision. This statement is out and out baseless and misconceived.

16. Taking us through the NICAR decision Mr. Sayeed further submitted that NICAR decision mainly focuses on the formation of concerned new Upazila and traditionally NICAR merely suggests the name of relevant Mouja only where the Upazila headquarter will be established. This commonly happens in almost all cases and Eidgaon Upazila is no exception to that. This will be evident from the full text of NICAR decision taken in its 117<sup>th</sup> meeting where he showed us that in case of Dharmapasha Upazila of Sunamganj District and Kalkini Upazila of Madaripur District same procedure was followed. The impugned memo dated 02.11.2021 is a natural consequence after the policy decision taken by NICAR with regard to the formation of new Eidgaon Upazila. As such, the impugned memo is a bye-product of policy decision taken by NICAR in accordance with law, not by way of deviation from NICAR decision.

17. Mr. Sayeed also submitted that as far as the present case is concerned, site selection for establishing Upazila Headquarter is a policy decision and the same cannot be challenged in writ jurisdiction. The impugned administrative approval for selection of site for establishment of Upazila Parishad is a policy decision of the government. The writ petition has been filed challenging the policy decision of the government. It is established by a long line of judicial pronouncements both in local and international jurisdictions that –

*“no writ lies against the policy decision of the Government unless the same is contrary to the statutory provisions or the provisions of the constitution.”*

In *Md. Abdul Motaleb Sarkar Vs. Md. Laskar Ali and others*, 6 ADC (2009) 361, the Appellate Division of the Supreme Court of Bangladesh in clear terms observed that-

*“the site selection is a business of the Government and relates to policy matter concerning the administration and administrative function of the Government and the decision cannot be called in question.”*

In this regard, Mr. Sayeed substantiated his argument with reference to a number of cases being *Golam Murtuza Bhuiyan and others Vs.*



*Government of Bangladesh and others*, 48 DLR (AD) 47; *Iftekhhar Hossain Chowdhury Vs. The State*, 71 DLR 303; *National Board of Revenue Vs. Abu Saeed Khan and others*, 18 BLC (AD) 116; *Ugar Sugar Works Ltd. Vs. Delhi Administration and others*, (2001) 3 SCC 635; *BALCO Employees' Union (REGD) vs. Union of India and others*, (2002) 2 SCC 333; *Federation of Railway Officers Association and others Vs. Union of India*, (2003) 4 SCC 289; *State of Orissa and others Vs. Gopinath Dash and others*, (2005) 13 SCC 495; *Directorate of Film Festivals and others Vs. Gourav Ashwin Jain and others*, (2007) 4 SCC 737; *Parisons Agrotech Private Limited and another Vs. Union of India and others*, (2015) 9 SCC 657.

18. Apart from the above, Mr. Mizan Sayeed by taking us through pages 71-72 of the writ petition submitted that while obtaining Rule the petitioners by providing documents with forged signature misled the Court. They also misinterpreted NICAR decision relevant government Guidelines to their advantage in consequence of which the entire development works of the government have come to a halt. The government is not being able to implement the development works. On this one ground alone this writ petition is liable to be rejected not being maintainable. Therefore, the Rule is liable to be discharged. Mr. Sayeed also continued by arguing that the contents of the present writ petition are mostly disputed question of facts. This

Court is not a tribunal of fact rather this Court is a tribunal of law. It is a trite law that this Court cannot adjudicate disputed question of facts and as such, the *Rule Nisi* is liable to be discharged for not being maintainable.

19. Although Mr. Sayeed persistently hammered on the issue of preliminary ground of maintainability, he also made submissions on merit in response to the submissions made by the learned Advocate Mr. Manzill Murshid. With regard to the issue whether NICAR decision was taken on the basis of primary proposal made by Upazila Nirbahi Officer vide memo dated 22.07.2019 as alleged by the petitioners, Mr. Sayeed vigorously submitted that there is in fact no scope to say that NICAR decision was taken on the basis of the primary proposal made by the Upazila Nirbahi Officer vide memo dated 22.07.2019. This is because the term “proposal” itself denotes that it is a set of suggestions prepared by sub-ordinate officers put forward for consideration of the highest decision-making authority of the state (i.e. NICAR) which may or may not be approved by NICAR.

20. Mr. Sayeed continued to argue that in reality NICAR took decision on the basis of the summary approved and forwarded by the Secretaries’ Committee, not on the basis of the proposal of UNO. The petitioners have failed to comprehend that the proposal of UNO does not have any enforceable binding effect upon NICAR. Rather it

is an absolute domain of NICAR to approve or disapprove the said proposal. When the proposal prepared by UNO was forwarded to the LGRD Ministry via Divisional Commissioner of Chattogram, then the Ministry upon necessary scrutiny prepared a summary of the proposal in a prescribed format and forwarded the same to the Cabinet Division for consideration and approval of the Secretaries' Committee. Upon approval of Secretaries' Committee only then the summary is placed for consideration before NICAR. This procedure is prescribed in the Guidelines for establishment of New Upazila, Thana and Investigation Centre. Therefore, the question of placing whole bundle of files forwarded by sub-ordinate officers before NICAR as alleged by the petitioners does not arise at all. The petitioners are totally misconceived on this aspect of the fact.

21. Taking us through the memo dated 24.06.2019, Mr. Sayeed added that the respondent No. 1 i.e. the Ministry of Local Government, Rural Development and Cooperatives asked the Deputy Commissioner, Cox's Bazar to send a proposal for establishment of Eidgaon Upazila. In all subsequent correspondences as well as in the relevant Guidelines, the term "proposal" was used recurrently which suggests the conclusion that the crux of the proposal was the establishment of Eidgaon Upazila and the issue of establishment of Upazila Headquarter was an issue consequent upon establishment of Upazila subject to approval of NICAR. Site selection for

establishment of Upazila Head Quarter (HQ) is a matter to be regulated by a separate statute (i.e. The Acquisition and Requisition of Immovable Property Act, 2017) where even NICAR does not interfere. NICAR mentions only the Mouja in a broader spectrum where the Head Quarter will be established. This is the common and longstanding tradition practiced by NICAR.

22. Mr. Manzill Murshid, the learned Advocate for the petitioners persistently pointed his finger to a high official who allegedly influenced in the decision making process for establishing the Eidgaon Upazila Head Quarter in Islamabad Union. In response to the submission of Mr. Murshid Mr. Sayeed strenuously submitted that the petitioners kept on making evasive, stray and wild allegations against the former Senior Secretary of LGRD Ministry of exerting influence in the decision-making process without producing any specific evidence whatsoever for which the petitioners alleged that the administrative approval dated 02.11.2021 is illegal and malafide. Such allegation against the former Senior Secretary is pure and simple disputed question of fact and can only be adjudicated/tried in a civil court of competent jurisdiction, not in writ jurisdiction. In this regard Mr. Sayeed referred to the case of Bangladesh represented by the Secretary, Ministry of Home Affairs and others Vs. Sontosh Kumar Saha and others, *21 BLC (AD) (2016)*

23. Lastly Mr. Sayeed submitted that no one is allowed to give an extended meaning while construing a document. It is also important that the intention of the authority must be looked into, and the cardinal rule is that intention as disclosed by clear and plain words shall prevail over any “supposed intention” purposely imposed or invented by any party. As far as the NICAR decision is concerned, the petitioners at their sweet will interpreted the NICAR decision by giving an extended meaning, which is not permissible under the law. NICAR decision states that “the Eidgaon Upazila Head Quarter will be established in Eidgaon Mouja.” But the understanding and interpretation of the petitioners is – “the Eidgaon Upazila HQ will be established in Eidgaon Mouja under Eiadgaon Union.” Law does not permit the imposition of such kind of extended meaning.

24. Mr. Md. Ashraful Alam, the learned Advocate appearing for the respondent No. 1 adopted the full argument advanced by the learned Advocate Mr. Mizan Sayeed in this matter. Supporting his case made out in the affidavit in Opposition, Mr. Alam further added that the petitioners with the malafide intention twisted the fact relating to the decision of NICAR and the terms and conditions spelt out in Policy 2004. They challenged the policy decision of the government which is not amenable to writ jurisdiction.

25. Mr. Alam further submitted that no where in the NICAR decision it is stated that Eidgaon Upazila would be established in

Eidgaon Mouja under Eidgaon Union. In the decision of the meeting, it is clearly mentioned without any ambiguity that Eidgaon Upazila Headquarter would be established in the Eidgaon Mouja. The petitioners by misinterpreting the NICAR decision obtained the Rule by misleading this Court.

26. Mr. Alam further added that in the NICAR decision it was further clearly mentioned that the Upazila Headquarter has to be established in the middle of the Eidgaon Mouja as far as possible and while acquiring land, non-agricultural khas land should be given preference. But due to unavailability of 6 acres of suitable Khas land in the middle of the said Mouja, the government was constrained to go for acquisition of Nal land. However, by doing so, the concerned authority of the government did not violate the decision of NICAR or any provision of the Policy 2004.

27. Mr. Alam also submitted that site selection is done by the Site Selection Committee headed by the Deputy Commissioner. So, it is absurd that NICAR decision was taken on the basis of primary proposal given by UNO, Cox's Bazar. In fact, these are all disputed question of facts and site selection is a matter closely related to government policy and as such, these cannot be adjudicated in writ jurisdiction. Thus, the Rule is liable to be discharged on the ground of maintainability.

28. Heard the learned Advocates extensively on matters of law and facts and perused the writ petition and affidavits filed by all parties.

29. The first question to be dealt with by this Court is the preliminary ground of maintainability. The word 'policy' denotes the general principles by which a government is guided in its management of public affairs. Hence the policy of Government is the same thing as policy. Theoretically, the difference between administrative decision and policy decision is that when a decision is taken in relation to some individual, in particular, it is an administrative decision but when a decision is taken as an enterprise, the decision is a policy decision. Administrative decision is an incident, a policy decision is an event. Decision taken in relation to any locals for example, to construct a dam, to choose a place as bus stand, to have or not to have a government office at one or other place may be the instances of policy decision.

30. As far as the present case is concerned, admittedly NICAR decision to establish the Eidgaon Upazila Headquarter in Eidgaon Mouja is a policy decision. Mr. Manzill Murshid argued that the petitioners have not challenged the policy decision taken in the NICAR meeting. Rather it is the impugned administrative approval dated 02.11.2021, a product by way of deviation from such NICAR decision which is under challenge in this writ petition. We do not find any substance in the submission of Mr. Murshid because

although the memo dated 02.11.2021 is an administrative approval that does not mean that it is a simple administrative order. It is important to note that the administrative approval for acquisition of land has been given to implement the policy decision of NICAR to establish the Upazila head quarter in the proposed site at Islamabad Union. Therefore, both the NICAR decision and the approval for acquisition of land are to be considered and understood together. Because without NICAR decision, the administrative approval becomes completely useless and *non-est*.

31. In view of the above, learned Advocate Mr. Mizan Sayeed correctly pointed out that the impugned memo dated 02.11.2021 is a bye product of policy decision which cannot be considered in isolation. Moreover, we have noticed that although apparently the petitioners have challenged the administrative approval for acquisition of land for establishing the Upazila Head Quarter in Islamabad Union, the key contention of the petitioners is the “site selection”. All allegations and contentions of the petitioners are centered round the proposed site selected for establishing the Upazila Head Quarter. Hence, in whatever form the dispute takes its shape, the main dispute in this matter is the “selection of site”. The only grievance of the petitioners in the matter is that the proposed site has been selected by the Selection Committee of the Government instead of the site proposed by Upazila Nirbahi Officer at Eidgaon Union



under Eidgaon Mouja. Therefore, keeping all these into consideration this Court is of the view that the impugned memo dated 02.11.2021 which was issued pursuant to policy decision taken by NICAR in its 117<sup>th</sup> meeting on 26.07.2021 shall also be considered and treated as policy decision and the same cannot be adjudicated in writ jurisdiction.

32. The above view of this Court leads support from the decision made in the case of *Golam Murtaza Bhuiyan vs. Government of Bangladesh*, 48 DLR (AD) 47 wherein our Apex Court has held as under:

*“This matter has arisen out of a Government decision as to the selection of a site for construction of a new Union Parishad Office-cum-Community Centre. The grievance of the petitioners cannot be examined in the summary proceeding under Article 102 of the Constitution. The allegations of malafides are unfounded. There is no conflict between the Government and the local body. The Government acted on the resolution of the Union Parishad and the report of the Deputy Commissioner. Its*

*decision to select a site for construction of a building cannot be questioned.”*

33. The above view of our Apex Court was subsequently reiterated by the same Division in the case of *Md. Abdul Motalib Sarker vs. Md. Laskar Ali*, 6 ADC 361 wherein our Apex Court held as under:

*“It appears that the site selection is the business of the Government and relates to policy matter concerning the administration and the petitioner as plaintiff had no locus-standi to challenge such a policy decision of the Government.”*

34. *The aforesaid two cases were followed in Samsunnahar Begum Vs. Govt of Bangladesh*, 71 DLR 303 where the Court held that –

“Selection of site for construction of Union Parishad Office Complex is a policy decision and administration function of the government and the said decision cannot be called in question and examined in a summary proceeding under Article 102 of the Constitution unless there is clear evidence of *malafide*. The petitioner has no *locus-standi* to challenge a policy decision of the Government. Moreover, the impugned decision

has been taken *bonafide* following the circular dated 16.09.2013 (Annexure-B).”

35. In view of the aforesaid facts and circumstances and the decisions cited above, this Court holds that the selection of a site for construction of Upazila Headquarter is a policy decision and in order to implement the said decision, any subsequent administrative approval for acquisition of land pursuant to the policy decision, shall also be treated and considered as the part and parcel of the government policy. Thus, the Rule issued earlier cannot survive on this one ground alone.

36. In addition to the above, the petitioners have raised quite a number of factual contents like distance of proposed site from the local bazar, the connectivity of the proposed site, the nature of the land, proximity of commercial, educational and other facilities from the proposed site etc. which are pure and simple disputed question of facts, which cannot be, in our view, adjudicated or decided in the summary procedure of writ jurisdiction under article 102 of the Constitution. Moreover, the question of genuineness of some documents also have been raised by the respondents before this Court which also cannot be determined without taking evidence.

37. The learned Advocate for the petitioners argued that they never claimed that the writ petition was filed in the form of public interest litigation. However, even if for the sake of argument, it is assumed

that the petitioners have brought this writ petition as a public interest litigation, it squarely satisfies the criteria specified in *NBR Case* reported in 18 BLC (AD) 116. The Appellate Division has stated in clear terms in the said case that-

*“No petitions will be entertained challenging the policy matters of the Government, development works being implemented by the Government, Orders of promotion or transfer of public servants, imposition of taxes by the completed authority.”*

[Underlined to put emphasis]

38. We have already expressed our view in clear terms that all contentions raised by the petitioners are centered round the issue of “site selection”. This is basically the root of this matter and the administrative approval for acquisition of land in the selected site for establishing Upazila Head Quarter will be considered as part and parcel of the policy decision of the government. Therefore, the petitioners seem to have failed on this count. Moreover, the petitioners have failed to show to the satisfaction of this Court that they represent such a disadvantaged or poor or less fortunate section of people or fellow beings for which their hearts bleed. This suggests the conclusion that their sufficiency of interest in the matter also can well be called into question. Thus it is clearly evident that the

petitioners have utterly failed to meet the criteria set out by the Appellate Division in NBR case reported in 18 BLC(AD) 116.

39. It may be mentioned here that despite the fact that the question of maintainability was raised by the respondents at the very outset, nevertheless, this Court accommodated the parties with an extensive hearing on merit for ends of justice. In consideration of the application, affidavits and detailed submissions made by the Counsels of both parties this Court spared no pains to examine and consider the case on merit too. The outcome of such examination on merit is also negative and the Rule does not survive on this score which would be reflected in our observations and discussions illustrated below.

40. Mr. Mizan Sayeed comprehensively analyzing the chronology of facts and by showing the full text of NICAR decision taken in its 117<sup>th</sup> meeting dated 26.07.2021 submitted that NICAR mainly focuses on the formation of concerned new Upazila and traditionally/historically NICAR suggests the name of relevant Mouja only, where the Upazila Head Quarter will be established. This commonly happens in almost all cases. Therefore, NICAR approves only the establishment of concerned new Upazila with the suggestion of relevant Mouja only where the Upazila Head Quarter will be established but it does not ear mark or select the specific site with detailed description because it is the statutory duty entrusted to

“Site Selection Committee” headed by the Deputy Commissioner which is conferred by a separate regulatory regime.

41. Besides the above-mentioned argument of Mr. Sayeed, this Court considered the argument of Mr. Manzill Murshid that NICAR decision was taken on the basis of UNO proposal with immense significance. It is noted that the petitioners heavily relied on the proposal made by UNO vide his memo dated 22.07.2019. In Column 11 of the annexed Table, it was proposed that Upazila Head Quarter will be in “Eidgaon”, Mouja: Eidgaon. Even though this argument of the petitioners has been taken to be valid, the validity/legitimacy of the said proposal by UNO can well be called into question when it does not comply with the requirements of relevant guidelines of the government because such proposal of UNO has no enforceable binding character. Rather it is merely a proposal which is subject to scrutiny and approval of the higher authority. For any deviation from the legal requirements, it would be considered as *ultra vires and void ab initio*. It appears from the said document vide memo dated 22.07.2019 that the site proposed by UNO for establishment of Upazila Head Quarter is not specified in clear terms with particular mention of Dag and Khatian numbers of land except mentioning the word “Eidgaon” nor he has the jurisdiction to do so. This presupposes that he made this primary proposal merely to perform his official/ceremonial job just to fill in the prescribed table knowing

full well that the site will be ultimately selected by the Site Selection Committee headed by the Deputy Commissioner after approval of the establishment of Upazila by the NICAR. This Court therefore finds no cogent reason behind relying on the primary proposal made by the UNO whereas NICAR is the ultimate deciding authority which in clear terms already mentioned that the Upazila Head Quarter of Eidgaon Upazila shall be in Eidgaon Mouja. Moreover, in case of conflict or ambiguity between NICAR decision or provisions of Guideline and the UNO proposal undoubtedly the decision of NICAR/Guideline shall prevail.

42. In addition to the above, it is clearly evident from the memo dated 17.10.2021 that the UNO himself has clarified the reason behind selecting the proposed site in question, relevant part of which is quoted below:-

“উপর্যুক্ত বিষয় ও সূত্রের পরিপ্রেক্ষিতে জানানো যাচ্ছে যে, সূত্রোক্ত পত্রে বর্ণিত তপশীলের জমি ইতোপূর্বে নবসৃষ্ট ঈদগাঁও উপজেলা কমপ্লেক্সের জন্য প্রাথমিকভাবে অধিগ্রহণযোগ্য জমি হিসেবে পত্রে বর্ণিত তফসিলের জমি নির্ধারণ করা হলেও নবসৃষ্ট উপজেলার ৫টি ইউনিয়নের সর্বসাধারণের যাতায়াত, যোগাযোগ, বর্ষা মৌসুমে জলাবদ্ধতা ইত্যাদি বিবেচনা করে উর্ধ্বতন কর্তৃপক্ষের সদয় সিদ্ধান্ত সাপেক্ষে উপজেলা কমপ্লেক্সের জন্য পুকুরসহ নিম্ন তফসিলের জমি প্রস্তাব করা হলো। প্রস্তাবিত জমি আরাকান সড়ক হতে ১.২০ কিঃমিঃ ও

স্থানীয় বৃহত্তর ঈদগাঁও বাজার হতে ০.৬০ কিঃমিঃ দূরে  
অবস্থিত।”

Hence, it appears that even though for the sake of argument the UNO proposed to establish the Eidgaon Upazila Head Quarter Complex in a particular place, it has been changed for the mentioned reasons keeping in mind the provisions of the NICAR decision and guidelines. Without giving attention to this letter, the petitioners remained strict to the primary proposal of the UNO which was subject to approval of the higher authority. Subject to approval of the higher authority means that it is always subject to change and not conclusive. In view of the above, we found that the primary proposal of the UNO has nothing to do with the impugned administrative approval for acquisition of land for establishing the Eidgaon Upazila Head Quarter Complex.

43. Mr. Manzill Murshid, the learned Advocate has repeatedly argued that the decision making process for establishing the Eidgaon Upazila Head Quarter in Islamabad Union was influenced by a high official of the government for which the administrative approval dated 02.11.2021 is illegal and malafide. However, he failed to provide any clear and credible evidence whatsoever in support of this allegation. It is an established principle of law that merely making evasive statements that a particular action taken by a person is *malafide* will not suffice. Because a malafide action is a disputed



question of fact and law. In this regard, the Appellate Division in the case of *Bangladesh vs. Sontosh Kumar Saha*, 21 BLC (AD) 94, observed that-

*“The expression malafide has definite significance in legal phraseology and the same cannot emanate out of fanciful imagination or even apprehension but there must be existing definite evidence of bias which cannot be attributed to be otherwise bonafide, however, by themselves would not amount to be malafide unless the same is accompanied with some other facts which would depict a bad motive or intent on the part of the authority and the same cannot be decided in summary proceedings in writ jurisdiction.”*

In view of the observations of the Apex Court, this Court finds that the allegation against the former Senior Secretary is pure and simple a disputed question of fact which can not be adjudicated in writ jurisdiction.

44. Turning to the issue of interpretation of NICAR decision and the relevant Government guidelines, it is stated that the petitioners persistently argued to establish that NICAR decision was taken on the basis of the proposal of the UNO as if it had been mandatory

binding effect over and above the decision of the NICAR. This Court has noticed that in the NICAR decision only the relevant Mouja (i.e. Eidgaon) has been mentioned, nothing more. Be that as it may, while interpreting the NICAR decision they unilaterally imposed an extended meaning of the NICAR decision to imply that the Upazila Head Quarter was meant to establish in Eidgaon Mouja under Eidgaon Union, which is not permissible in the eye of law. As stated earlier, the NICAR only mentioned the name of concerned Mouja i.e. Eidgaon which is spread to three Unions namely- Eidgaon Union, Islamabad Union and Jalalabad Union. The Site Selection Committee formed by the Government upon necessary physical inspection came to a conclusion that the proposed site is situated in the middle of the Eidgaon Upazila and it fulfilled all criteria set by the NICAR decision and the guidelines. Therefore, the concerned government authority does not seem to have violated the NICAR decision and/or the provisions of the relevant guidelines in selection of the proposed site.

45. It is a well-known rule of interpretation that while construing a particular word or expression in any instrument its plain and ordinary dictionary meaning is to be preferred unless the context requires otherwise. No one is allowed to give an extended meaning while construing a document. It is also important that the intention of the authority must be looked into, and the cardinal rule is that

intention as disclosed by clear and plain words shall prevail over any “*supposed intention*” purposely imposed or invented by any party. Validating the argument of learned Counsel for the respondent No. 17, Mr. Mizan Sayeed, it is reiterated that the NICAR decision cannot be interpreted by giving extended meaning unilaterally presuming a supposed intention of the approving authority, hence no question of violation of the NICAR decision arises. NICAR did not mention the name of Eidgaon Union under Eidgaon Mouja. It only suggested that the proposed Upazila Head Quarter will be established in Eidgaon Mouja which is spread to three Unions. Out of several proposals the proposed site selected by the Site Selection Committee got the administrative approval for acquisition since it is situated in the middle of the proposed Upazila and fulfilled other criteria of the guidelines *vis-a-vis* the NICAR decision. The land proposed by the petitioners did not meet the criteria of the NICAR decision as well as the relevant guidelines stated above and hence, it was not found acceptable to the Selection Committee. Since the Site Selection Committee in the process of implementing the Government policy selected the site for establishing Eidgaon Upazila Head Quarter Complex, this Court has nothing to do with it under writ jurisdiction for the reasons already outlined above.

46. The respondent No. 17 submitted that compared to the site already selected by the Government, the site proposed by the

petitioners to establish Upazila Head Quarter in Eidgaon Union is much better and tried to substantiate his argument by pointing out that (a) the area proposed by the petitioners is not in the middle of the Upazila and hence does not fulfil the key criteria that it has to be in the middle of the proposed Upazila. (b) The lands proposed by the writ petitioners for establishing Eidgaon Upazila complex is far away from the Eidgaon Bazar, Health Complex, Educational Institutions, Banks, Police Station, Bus Station, Railway Station, Post office, Business Center, Electricity Office, Government and Non-government offices. (c) The said lands proposed by the petitioners is adjacent to reserve forest area and situated in the middle of a small river/Khal which is prone to erosion and during the rainy season the entire area remains under water because of the incoming water flow from the adjacent hills and reserve forest area. (d) It appears from the Khatians and relevant Dag numbers of the lands proposed by the writ petitioners that some portion of the lands of that area are Hindu religious property (দেবালয় সম্পত্তি) of Mogeshwery Temple (মগেশ্বরী মন্দির) and reportedly crematorium/burning ground of Hindu community. (e) The said lands are situated in a place where no existing road infrastructure is available at the moment except the facts that the place is situated near by Cox's Bazar-Chattoogram Highway which is likely to create inconvenience to the common people inasmuch as the area is highly vulnerable for road accident being very busy motor

highway. This Court takes similar view as was taken in other disputed question of facts raised by the petitioners. All these are also pure and simple disputed questions of facts and hence cannot be taken for adjudication in writ jurisdiction.

47. In view of the above facts and circumstances, this Court finds nothing to interfere with the impugned administrative approval vide Memo No. 46.00.0000.046.18.068.19.589 dated 02.11.2021 issued by the respondent No. 11 (Annexure- F) for acquisition of 6 (six) acres of land for establishing Eidgaon Upazila Head Quarter in Cox's bazaar district. Accordingly, we find no merit in the Rule.

In the result, the *Rule Nisi* is discharged.

The order of stay as initially granted is, hereby, recalled and vacated.

There is no order as to costs.

Communicate the order.

**Md. Khairul Alam, J:**

I agree.