

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

WRIT PETITION NO. 13575 OF 2018

In the matter of:

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

And

In the matter of:

Md. Touhidul Islam and others
... Petitioners

-Versus-

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

Mr. Md. Yamin Newaz Khan, Advocate
...For the petitioners

Mr. A.S.M. Mokter Kabir Khan, D.A.G. with
Mr. Mohammad Mohsin Kabir, D.A.G. with
Mr. Mostafizur Rahman (Tutul), A.A.G
Mr. Md. Fuad Hasan, A.A.G
Mr. Md. Moniruzzaman, A.A.G.
Ms. Sonia Tamanna, A.A.G. and
Mr. Md. Ashraful Alam, A.A.G.
... For the respondents.

Heard on: 14.08.2025, 26.08.2025 and 27.08.2025
Judgment delivered on: 28.08.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Bashir Ullah, J.

On an application under Article 102 of the Constitution of the
People's Republic of Bangladesh, a Rule *Nisi* was issued calling upon

the respondents to show cause as to why the decision contained in Memo No. 31.00.0000.036.49.16.15.312/41 dated 16.08.2015, signed by the respondent no. 7 on 23.08.2015 should not be declared to have been issued without lawful authority and to be of no legal effect, and /or pass such other or further order or orders as to this Court may seem fit and proper.

The relevant facts leading to the issuance of the Rule are that the predecessors of the petitioners purchased more than 171 bighas of land in 37 Chit Taluk, Shalbari, Haldi Bari, Subdivision- Mekhliganj, District- Kochbihar, West Bengal, India through registered deeds dated 12-06-1955 and 11-02-1956. After the purchase, they settled and possessed the land. Upon their death, the petitioners inherited ownership and have been in possession. Subsequently, under the Land Boundary Agreement, 1974, executed between Bangladesh and India to simplify the international boundary enclaves were to be exchanged and to improve the lives of those living in the enclaves. Bangladesh ratified the agreement in 1974 and thereafter decided to survey and record the aforesaid lands of the enclave in the names of the real owners. In this back drop, a meeting was held on 16.08.2015 in the conference room of the Ministry of Land, Bangladesh Secretariat, chaired by the Senior Secretary, Ministry of Land, regarding "অধুনালুপ্ত হিটমহল ও অপদখলীয় জমির ব্যবস্থাপনা ও জমি জরিপকরণ সংক্রান্ত". The proceedings of the meeting were circulated by Memo No. ৩১.০০.০০০০ .০৩৬.৪৯.১৬.১৫.৩১২/৪১ dated 23.08.2015.

Thereafter, on 15-10-2015, a notice was issued and duly published in the Bangladesh gazette by the Ministry of Land, granting administrative approval for conducting the survey and preparing the Record of Rights in respect of the former Indian enclaves which had fallen within the administrative jurisdiction of Panchagarh District, Bangladesh under Article 2 of the Constitution of the People's Republic of Bangladesh.

It is stated that the gazette notification did not authorise the formation of any committee or working group, or Upazilla Sub-Committee. Nevertheless, a District Committee, an Upazilla Committee and an Upazilla Sub-Committee or working group were constituted pursuant to the said meeting. The district committee included the Deputy Commissioner (Convenor), the Additional Superintendent of Police, the District Registrar, the District Statistics Officer, the Deputy Director Local Government, two local elites nominated by the Deputy Commissioner and the Additional Deputy Commissioner (Revenue). The Upazilla Committee consists of Upazilla Nirbahi Officer (Convenor), Upazilla Agriculture Officer, concerned Officer In-Charge of respective police station, Sub-Registrar, Concerned Assistant Settlement Officer, Upazilla Statistics Officer, concerned Union Council Chairman and Assistant Commissioner (Land). The Upazilla Sub-Committee or Working group consists of Kanungo of the concerned Upazilla (Convenor), Upazilla Assistant Statistics Officer, Upazilla Settlement Officer, An Officer of the Upazilla Agriculture

Office, Secretary to the concerned Union Parishad and Surveyor of the office of the Assistant Commissioner (Land).

It is asserted that these committees were formed in violation of Rules 28, 30 and 31 of the East Bengal Tenancy Rules, 1955, and the Upazilla Committee unlawfully entertained and disposed of objections or disputes raised against the decision of the Upazilla Sub-Committee, which is without lawful authority.

The Sub-Committee or Working Group further engaged in survey activities and preparation of *Khanapuri Tothya* (Preliminary record), which is a clear violation of Rule 28 of the East Bengal Tenancy Rules, 1955.

There were various disputes raised in relation to Shalbari Mouza, previously known as Indian enclaves and therefore, the Head office of the Directorate of Survey and Land Record returned the proposal for gazette notification of the final records of rights vide memo no. 31.03.0000. 003.02.019.16-148 dated 06-02-2018 forwarded by the Zonal Settlement Officer, Dinajpur Zone. The entire procedure of conducting the survey and preparing the Record of Rights was unlawful and biased.

Being aggrieved and having no other equally efficacious remedy, the petitioners then approached this Court by filing the instant writ petition under Article 102 of the Constitution of the People's Republic of Bangladesh, wherein the instant Rule was issued.

Respondent No. 9 contested the Rule by filing an affidavit-in-opposition, contending *inter alia* that the '*Chhitmahal*' problem was a

long-standing issue of the India-Bangladesh sub-continent, and prior to the settlement operation, there was no acceptable legal documentation or authority to administer those lands. Law and order situations were often unstable, and crimes relating to land were frequent. So, the Government decided to conduct a settlement operation to create an authentic record.

It is stated that respondent No. 15 prepared the record of rights under the State Acquisitions and Tenancy Act 1950, the East Bengal Tenancy Rules, 1955, the Survey and Settlement Manual, 1935 and the Technical Rules, 1957 under the supervision of respondent nos. 5, 6 and 9. The said record was not prepared by the instruction of that committee (working group, upazilla committee and district committee). They merely assisted the survey team with the ambition of making a correct record of rights. The settlement operation, which was guided by the Ministry of Land and Government, can take any decision in favour of public interest. The respondent no. 15 prepared the record following the Rules, and all the disputes, objections, and appeals filed during the settlement operation have been disposed of duly. There is no dispute, objection or appeal case pending. The writ petitioner did not submit any dispute, objection, or appeal under the Rules 28, 30 and 31 of the East Bengal Tenancy Rules, 1955. It is further stated that all the disputes raised in relation to Shalbari mouza (previously known as an Indian enclave) with the other 16 *Chhitmahal* mouzas were already disposed of in due process and time. After the disposal of all claims survey and settlement department duly prepared the record of rights of

said mouza. Before filing this writ petition record of rights is finally published as per Rule 33 of the Tenancy Rule, 1955. The record has been duly prepared under section 144 (A) of the State Acquisition and Tenancy Act, 1950 and Rule 35 of the East Bengal Tenancy Rule, 1955. There was no irregularity in the total settlement operation. Fifty objections and six appeals were filed by some other land owners under Rules 30 and 31 of the East Bengal Tenancy Rule, 1955, during the settlement operation of said mouza. After disposal of all objections, the final record has been sent to the Directorate of Land Records and Survey for gazette notification. Except this mouza, all *Chhitmahal* mouzas have already been finally notified in the Bangladesh gazette on 17/05/2018 and also handed over to the collectors and other concerned offices.

It is further stated that the survey and settlement department has prepared the record of rights of said land under Rules 28, 29, 30, 31, 33, 34, 35, 42, 43 and 44 of the East Bengal Tenancy Rules, 1955 and other Rules and Regulations. In Panchagorh, Nilphamary, Lalmonirhat, and Kurigram, the total number of *Chhitmahal* (including 17 mouzas of three upazila of Panchagarh district) is 111. Total area is 17,160.63 acres, and Settlement Operation has been completed successfully except Shalbari mouza. All the records and maps of concern *Chhitmahal* mouza (including 17 *Chhitmahal* mouza of Panchagorh District under Dinajpur zone) have already been finally published. Among them and record of right of Sixteen *Chhitmahal* mouzas have been notified in the Bangladesh gazette after final publication and

handed over to the land owners, concerned collectors and other authorities, except the suit mouza due to this writ petition. Due to filing of this writ petition, other landholders of this mouza are being affected in land transferring, mutation and paying government revenue, and therefore, the Rule is liable to be discharged.

Mr. Md. Yamin Newaz Khan, the learned Advocate appearing on behalf of the petitioners contends that the relevant Acts and Rules in relation to survey and settlement provide that no committee or working group can be engaged in conducting the survey or preparing *Khanapuri Tothya* (Preliminary record) instead of Revenue Settlement Officer and as such the impugned memo is liable to be declared to have been issued without lawful authority.

He further submits that the formation of any committee or working group was not mentioned in the gazette notification (Annexure-C). Nevertheless, the committees were formed, violating the Rules 28, 30, 31, 42A, 42B, and 44 of the East Bengal Tenancy Rules, 1955.

He next submits that the impugned memo reflects the discussion of the meeting where the Additional Deputy Commissioner (Revenue), Kurigram said that, "১৯৬২ সাল পর্যন্ত দাসিয়ারছড়ার ভূমি মালিকগন খাজনা প্রদান করেছেন। তিনি আরও জানান গ্রামের মানুষ একত্রে বসে মালিকানা সিদ্ধান্ত গ্রহন ও নিষ্পত্তি করতে পারবেন।" This statement is totally contradictory to Rule 28, 30, 31, 42A, 42B and 44 of the East Bengal Tenancy Rules, 1955 and Rule 533 of the Bengal Survey and Settlement Manual 1935 and as such the

impugned memo is liable to be declared to have been issued without lawful authority and is of no legal effect.

Mr. Khan argues that the impugned memo reflects the discussion of the said meeting where the Chairman, The Board of Land Reforms said that, "বিলুপ্ত ছিটমহলের জমি ক্রয়-বিক্রয়, রেজিস্ট্রেশনের বিষয়ে সিদ্ধান্ত গ্রহণ করতে হবে। সি.এস রেকর্ডকে ভিত্তি ধরে জরিপ কাজ করতে হবে। জরিপের আগে মালিকানার ভিত্তি কি হবে তা দেখা প্রয়োজন।" But no clear and lawful decision was made regarding the basis of determining the title and possession of the lands located in the added territory of Bangladesh previously known as Indian Enclaves in the said meeting, in pursuance of the opinion of the Chairman, the Board of Land Reforms.

The learned counsel next contends that the inclusion of the 'local elites' in the District Committee has given an opportunity to influence the responsibility of the Upazilla Committee and Upazilla Sub-Committee and overrides the legal responsibility of the Settlement Officers provided by the section 144, 144A, 144B of the State Acquisition and Tenancy Act, 1950 and Rule 26 to 44 of the East Bengal Tenancy Rules, 1955 and made the whole procedure of conducting the survey and preparing the Record of Rights unlawful and biased and as such the impugned memo is liable to be declared to have been issued without lawful authority and is of no legal effect.

In support of his contention, the learned counsel relies upon the decision in *Mujibur Rahman(Md) Vs. Government of Bangladesh and others*, reported in 44 DLR(AD)(1992)111. With these

submissions, the learned counsel finally prays for making the Rule absolute.

Per contra, Mr. Mohammad Mohsin Kabir, the learned Deputy Attorney General appearing on behalf of the respondent No. 9 by filing an affidavit-in-opposition, contends that the committees were formed solely to assist the Survey and Settlement Department and as such the Rule is liable to be discharged.

He further contends that the Settlement Department already prepared the record of said *Chhitmahal* under the East Bengal Tenancy Rules, 1955, section 144 of the State Acquisition and Tenancy Act, 1950, the Survey and Settlement Manual 1935 and Tenancy Rule, 1957. The survey and settlement were duly carried out under the above-mentioned laws.

Mr. Kabir lastly contends that since the Rule has been issued on 02.12.2018 against the decision contained in Memo No. 31.00.0000.036.49.1615.312/41 dated 16.08.2015 signed by the respondent no. 7 on 23.08.2015, but the respondent No. 15 completed the record of rights as per rules and regulations before issuing the instant Rule, and as such, the Rule itself has become infructuous as the survey was completed by the respondent No. 15, and hence the Rule is liable to be discharged as being infructuous. With these submissions, the learned Deputy Attorney General finally prays for discharging the Rule.

We have considered the submissions advanced by the learned Advocates for both parties and perused the application, affidavit-in-opposition, affidavit-in-reply and relevant documents.

The learned Deputy Attorney General asserts that respondent No. 15 that is, the Assistant Settlement Officer, Boda, Panchagarh prepared the record following the Rules, and all the disputes, objections and appeals filed during the operation have been disposed of duly. He also asserts that in Panchagorh, Nilphamary, Lalmonirhat and Kurigram, the total number of *Chhitmahal* is 111, the total area is 17160.63 acres and the settlement operation has been completed successfully except Shalbari mouza. All the records and maps of the concerned *Chhitmahal* mouza have already been finally published.

At the time of his submissions, the learned Deputy Attorney General showed us a few gazettes. He also submits that due to this writ petition, other landholders of the mouza are affected in land transferring, mutation and paying Government revenue. The learned Deputy Attorney General further asserts that the committees were formed to assist the survey team in making a correct record of rights. The committees never instructed the Assistant Settlement Officer to prepare the record of right. We find substance in the submissions advanced by the learned Deputy Attorney General.

Mr. Khan asserts that the *Khanapuri Tothya* (Preliminary record) was prepared in contravention of Rule 28 of the East Bengal Tenancy Rules, 1955. In reply, the learned Deputy Attorney General by referring to Annexure X to the Affidavit-in-Opposition, submits that

the Department of Land Records and Survey prepared the Records of Rights in respect of the land in question under Rules 28, 29, 30, 31, 33, 34, 35, 42 and 44 of the East Bengal Tenancy Rules 1955 and other applicable Rules and Regulations, not by following the *Khanapury Tathay* (খানাপুরী তথ্য) nor under the instructions of any committee constituted merely for assisting the survey activities. Upon persusal of the order sheet passed by the Assistant Settlement Officer, Upazilla Settlement Office, Boda, Panchagarh (Annexure-X to the Affidavict-in-Opposition), we find merit in the submissions advanced by the learned Deputy Attorney General. For the sake convenience the said order sheet is quoted below:

“৩০/০৭/২০১৫ খ্রিঃ তারিখে প্রকাশিত বাংলাদেশ গেজেটের মাধ্যমে বাংলাদেশ-ভারত ছিটমহল বিনিময় চুক্তি ০১/০৮/২০১৫ খ্রিঃ তারিখ থেকে কার্যকর হয়। ভূমি মন্ত্রণালয়ের ছিটমহল এবং অপ দখলিয় ভূমির ব্যবস্থাপনা বিষয়ে অনুষ্ঠিত সভার সিদ্ধান্ত মতে ভূমি মন্ত্রণালয়ের ২৩/০৮/১৫ তারিখের ৪৯. ১৬. ১৫-৩১২/৪১ নং এবং ৩০/০৮/২০১৫ খ্রিঃ তারিখে ৩১.০০.০০.০০০০.০৩৬. ০০,০৩৬,০৪৯, ০৬,০০৬,০১৩-৩১৬/৪৫ নং স্মারকের প্রেক্ষিতে বিলুপ্ত ছিটমহল সমূহে জেলা প্রশাসকের নেতৃত্বে ৭ (সাত) সদস্য বিশিষ্ট ওয়ার্কিং গ্রুপ ১৫ই অক্টোবর থেকে সরে জমিনে কলমি নকসা ও খতিয়ান ফরমের অনুকরনে জমির হাল তথ্য সংগ্রহের কাজ শুরু করে ১৫ নভেম্বর/২০১৫ এর মধ্যে সম্পন্ন করার বিষয়ে আদেশ হয়। নির্দেশনামতে ওয়ার্কিং গ্রুপ সরেজমিন কলনি নকসা ও দখলের ভিত্তিতে ভূমি মালিকদের, যাবতীয় তথ্যাদি সংগ্রহ করে চৌহদ্দির বর্ণনা এবং চৌহদ্দি ভুক্ত মালিকদের প্রস্তুতকৃত খতিয়ান ফরমে স্বাক্ষর গ্রহন পূর্বক খানাপুরী তথ্য প্রস্তুত করেন। প্রস্তুতকৃত খানাপুরী তথ্য ১৯/০১/২০১৬খ্রিঃ তারিখের ৩১.৪৭.৭৭০০.০১৪.০০.০১২, ১৪-৪১ নং স্মারকে জেলা প্রশাসন কর্তৃক জরিপ বিভাগের নিকট হস্তান্তর করা হয়। ইতোমধ্যে ভূমি মন্ত্রণালয়ের ১৫/১০/২০১৫ খ্রিঃ তারিখের ৩১.০০.০০০০. ০৩৬.৪৯. ১৬.১৫-৩৭৯ নং স্মারকে ছিটমহল সংশ্লিষ্ট মৌজা সমূহের জরিপ কাজ শুরুর প্রশাসনিক অনুমোদন দেয়া হয়। সুষ্ঠুভাবে জরিপ কাজ সম্পন্ন করার লক্ষ্যে ছিটমহল সমূহের ০৮ টি মৌজার প্রত্যেকটিতে ০২টি করে জিপিএস পিলার স্থাপনের জন্য উর্দ্ধতন কর্তৃপক্ষ বরাবর প্রস্তাব প্রেরণ করা হয়। সে মতে নির্দেশনা অনুযায়ী ০৮টি মৌজায় ১৬টি পিলার স্থাপন

করা হয়। পরবর্তীতে পর্যায় ক্রমে ভূমি রেকর্ড ও জরিপ অধিদপ্তর থেকে পিলার গুলোর মান সরবরাহ করা হয়। মাঠের ডাটা সংগ্রহের পূর্বে বিলুপ্ত ছিটমহলের নকসা পর্যালোচনা ও স্থানীয়ভাবে ছিটমহল সমূহ পরিদর্শনে গিয়ে দেখা যায়, কিছু কিছু ছিটমহলের এরিয়া ক্ষুদ্র ক্ষুদ্র-যা পৃথক মৌজা হিসাবে রেকর্ড করার সুযোগ নেই। এ ছাড়াও ছিটমহলের মাঝে বাংলাদেশী ক্ষুদ্র ভূখন্ড আছে-যা উক্ত ছিটমহলের মৌজার সহিত একত্রে রেকর্ড ব্যতিত পৃথক ভাবে রেকর্ড প্রস্তুত করা সম্ভব নয়। বিষয়টি উর্দ্ধতন কর্তৃপক্ষ বরাবর সদয় নির্দেশনার জন্য পত্র দেয়া হয়। উক্ত পত্রের প্রেক্ষিতে ভূমি রেকর্ড ও জরিপ অধিদপ্তরের ০৭/০১/২০১৬খ্রিঃ তারিখের ৩১.০৩.০০০০.০০৩.৩৩. ০৫.০১৯.১৫-২২নং স্মারকে ছিটমহলের জরিপ কাজে কোন ব্যঘাত না ঘটিয়ে সম্ভবহলে তার প্রস্তাব মতে ব্যবস্থা নেয়ার জন্য নির্দেশ প্রদান করা হয়।

যেহেতু সরকার ১৮৭৫ সনের সার্ভে এ্যাক্টের ৩ ধারায় এবং ১৯৫০ সনের জমিদারী উচ্ছেদ প্রজাস্বত্ব আইনের ১৪৪ (১) ধারা (১৯৫০ সনের ইষ্ট বেঙ্গল স্টেট একুইজিশন এন্ড টেন্যান্সি এ্যাক্টের ২৮নং) মোতাবেক এবং ভূমি মন্ত্রণালয়ের ৩০/০৮/২০১৫খ্রিঃ তারিখের ৩১.০০.০০০০.০৩৬. ০০.০৩৬.০৪৯, ০৬.০০৬.০১৩-৩১৬/৪৫নং ও ১৫/১০/২০১৫ খ্রিঃ তারিখের ৩১.০০.০০০০, ০৩৬.৪৯. ১৬.১৫-৩৭৯ নং স্মারকাদেশের মাধ্যমে পূর্ববঙ্গ জমিদারী উচ্ছেদ ও প্রজাস্বত্ব আইনের ১৭ অধ্যায়ে বর্ণিত বিধি মোতাবেক পঞ্চগড় জেলার বোদা উপজেলার বিলুপ্ত ছিটমহল সমূহের ভূমি জরিপ এবং রেকর্ড সংশোধনের জন্য (যা পূর্বের তৈরী ও চূড়ান্তভাবে প্রকাশিত হয়েছিল) নির্দেশ প্রদান করেছে সেহেতু ১৫/১১/২০১৫খ্রিঃ তারিখ ধার্য করে ১৮৭৫ সনের বেঙ্গল সার্ভে এ্যাক্টের ৫ ধারা অনুযায়ী "এ" ইন্সতার জারী করা হউক। ”

It appears from Annexure-X to the Affidavit-in-Opposition that the Assistant Settlement Officer, Boda, Panchagorh, by order dated 15.10.2015 directed issuance of ইন্সতার (proclamation) under section 5 of the Bengal Survey Act, 1875. Accordingly, Form-Ka ইন্সতার (proclamation), Form-Kha, notice under section 7 of the Survey Act were duly issued. Annexure-X-2 to the Affidavit-in-opposition further reveals that the concerned Revenue Officer issued a তসদিকের ইন্সতার (proclamation) prior to commencement of the Attestation under Rule 28 of the East Bengal Tenancy Rule, 1955 on 31.08.2016.

Subsequently, a Reminder Notice of Attestation was also issued on 30.08.2016 by the Revenue Officer. Thereafter, on 20.12.2016 the Revenue Officer issued স্বত্ব লিখনের পাদুলিপি প্রচারের ইস্তেহার (Proclamation of Publication of the Draft Record) under Rule 29 of the East Bengal Tenancy Rules, 1955 and স্বত্বলিপির চূড়ান্ত প্রচারের ইস্তেহার (Proclamation of Publication of Final Record) under Rule 33 of the Rules, 1955 on 30.10.2017, as evidenced by Annexure-X-3 to the Affidavit-in-Opposition.

It further transpires that the Assistant Settlement Officer(Sadar) and the Additional Deputy Commissioner (Revenue) were members of the District Committee, while the concerned Assistant Settlement Officer and the Assistant Commissioner (Land) were members of the Upazilla Committee. The surveyor of the concerned Upazilla Settlement Office and the Surveyor of the Assistant Commissioner (Land) were members of the Working Group/Upazilla Sub-Committee. Thus, it is evident that the Assistant settlement officers and other statutory authorities were directly involved and responsible for the preparation of the Record of Rights, whereas the committees were constituted solely for proving logistical and administrative assistance.

Regard being had to the above facts and circumstances, we do not find any illegality or impropriety in Memo No. 31.00.0000.036.49.16.15.312/41 dated 16.08.2015 signed by the respondent no. 7 on 23.08.2015.

We find no substance in the Rule which is liable to be discharged.

Resultantly, the Rule is discharged, however, without any order as to costs.

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

Md. Mozibur Rahman Miah, J.

I agree.