

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

WRIT PETITION NO. 7360 OF 2012

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. Alim Uddin

... Petitioner

-Versus-

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

... Respondents

Mr. M. Khaled Ahmed, Senior Advocate with
Mr. Md. Al-Amin Sheikh,
Ms. Nadia Mehrin and
Ms. Nasrin Sultana, Advocates

...For the petitioner

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. Moniruzzaman, A.A.G and
Ms. Sonia Tamanna, A.A.G

...For the respondent nos.1-7.

Heard on: 17.07.2025

Judgment delivered on: 20.07.2025.

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 order dated 27.01.2011 passed by the Additional Commissioner (Revenue), Sylhet Division, Sylhet directing to initiate a certificate proceedings (Annexure-E to the writ petition) and order dated 13.12.2011 passed by the Member, Land Appeal Board, Dhaka directing to initiate certificate proceedings against the petitioner (Annexure-G to the writ petition) and notice dated 03.05.2012 issued by the General Certificate Officer, Sunamgonj for realization of arrear dues (Annexure-H to the writ petition) should not be declared to have been passed 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.

At the time of issuance of the Rule, this Court stayed the operation of the impugned orders (Annexure-E-, G and H to the writ petition) for a period of 03(three) months, which was extended on 03-10-2012 for another 06 months. However, no further extension was given.

The relevant facts leading to issuance of the Rule are that a tender was invited for leasing out "Telekhal Fishery" situated in Upazila Duarabazar, Sunamgonj for the years 1415-1417 BS and accordingly the petitioner participated in the said tender and was awarded lease of the fishery. He then paid rent for the year 1415 BS

amounting to Tk.2,46,000/-. Thereafter, the lease deed was executed between the petitioner and the Revenue Deputy Collector of Sunamgonj on 05.04.2009 and the authority delivered possession in his favour on 02.06.2009. Thereafter, the petitioner paid rent of Tk.2,50,271/- for the year 1416 B.S on 27.07.2009 and paid Tk. 2,46,000/- as the rent for the year 1417 BS on 29.3.2010.

Subsequently, the Revenue Deputy Collector sent a requisition to the General Certificate Officer, Sunamgonj to initiate a Certificate Case and accordingly, the Certificate-officer initiated the certificate case against respondent No.8 on 25.05.2009. Feeling aggrieved, respondent No.8 filed a Miscellaneous Appeal No. অক-61 of 2010 before the Additional Divisional Commissioner, Sylhet. The said appeal was allowed in-part and it was directed to realise Tk. 1,16,104/- from the respondent No.8 for the year 1415 BS and Tk. 2,32,209/-from one, Alim Uddin, the petitioner. Respondent No.8 then filed a Review Application before the Additional Divisional Commissioner, Sylhet Division which was also dismissed. Thereafter, the petitioner filed a Revision under Section 51 of the Public Demands Recovery Act before the Land Appeal Board, Dhaka and upon hearing the parties, the Land Appeal Board without considering the facts and circumstances of the case rejected the Revision and directed to initiate a certificate case against the petitioner for realization of Taka 3,00,101/- on 13.12.2011. Accordingly, a certificate case was initiated and the Certificate-officer issued notice dated 3.05.2012 under Section 7 of the Public Demands Recovery Act demanding Tk. 4,64,392/-. Being aggrieved by and

dissatisfied with the impugned order dated 13-12-2011 and notice dated 03-05-2012 the certificate-debtor as petitioner came before this court and obtained the instant rule and order of stay.

Mr. M. Khaled Ahmed, the learned senior Advocate along with Mr. Md. Al-Amin Sheikh, the learned Advocate appearing for the petitioner submits that the petitioner was the lessee for the years 1415-1417 BS and he paid rent for three years which is apparent from Annexure-A, A1, A2, B and C to the writ petition and therefore, the petitioner is not liable to pay any money but without considering the said facts and circumstances of the case, the impugned order dated 13.12.2011 was passed by the Member, Land Appeal Board, Dhaka and pursuant to that order the Certificate-officer without any basis issued impugned notice of certificate which is illegal and void.

He next submits that as per Section 4(2) of the Land Appeal Board Act, 1989, the Board consists of one Chairman and two members but the impugned order (Annexure G) was passed by a Single Member of the Land Appeal Board and therefore, the impugned order passed by the Land Appeal Board is *coram non judice* and the same is liable to be declared to have been passed without lawful authority and to be of no legal effect.

He further submits that the petitioner was made party to Appeal No.61 of 2010 but no notice was served upon him and as such the order dated 27-01-2011 is against the principle of natural Justice and therefore the same is liable to be declared to have been passed without lawful authority and is of no legal effect.

However, in support of his contention the learned Advocate for the petitioner has referred to the decisions passed in the cases of *Abdul Hakim Gazi(Md) vs. Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Land, Dhaka and others*, reported in 73DLR(2021)478, *SM Abdur Rouf vs. Government of the People's Republic of Bangladesh and others*, reported in 66DLR(HC)308, and *Mannaco Lab. Ltd. Vs. General Certificate Officer and Bangladesh Shilpa Bank, Taltola, Hill Town Hotel*, reported in 42 DLR 159. With these submissions, the learned counsel finally prays for making the Rule absolute.

On the other hand, Mr. A.S.M. Mokter Kabir Khan, the learned Deputy Attorney General appearing for the respondent nos. 1 to 7 finds it difficult to oppose the Rule.

We have considered the submissions advanced by the learned counsels for both the parties and perused the writ petition as well as the supplementary affidavit filed thereto carefully.

It appears from Annexure-A3 to the writ petition *jalmahal* (Fishery), namely "Telekhal" was leased out for the years 1415-1417 BS in favour of the petitioner and accordingly a lease agreement was executed between the petitioner and the Collector of Sunamgonj on 05.04.2009 and the Union land office delivered possession of the said *jalmahal* to the petitioner on 02.06.2009. It also appears from Annexure- A, A1, A2, B and C to the writ petition that the petitioner

paid rent for the years 1415 to 1417 BS. So, it is evident that there is no due against the petitioner.

Further, Annexure-D shows that the Revenue Deputy Collector sent a requisition to the Certificate Officer, Sunamgonj on 25-05-2009 to realise Taka 3,48,313/- from one, Rezaul Haque, respondent no.8 and accordingly the General Certificate Officer initiated the Fishery Certificate Case no. 3 of 2009 against the respondent No.8 on 25.05.2009. Thereafter, respondent No.8 filed a Miscellaneous Appeal No. অক-61 of 2010 before the Additional Divisional Commissioner, Sylhet who allowed the appeal in-part and directed to realise Tk. 1,16,104/- from the respondent No.8 for the year 1415 BS and Tk.2,32,209/- from the petitioner holding that the petitioner was in possession of the fishery in 1414 BS. However, it is found from Annexure-A5 to the writ petition that the possession of the fishery was delivered to the petitioner on 02-06-2009 that is on 19th Jyaistha, 1416 BS for the years 1415 to 1417 BS. So, the petitioner is not liable to pay any amount for the year 1414 BS. Moreover, the petitioner enjoyed possession of the fishery by executing a lease agreement dated 5-4-2009 for the years 1415-1417, so there is no basis to realise compensation from the petitioner. So, the impugned order dated 27-01-2011 has been passed by the Additional Divisional Commissioner (Revenue), Sylhet without any lawful authority.

On going through the impugned order dated 13-12-2011 passed by the Member-2 of the Land Appeal Board, Dhaka, we find nothing has been mentioned that the said member was lawfully empowered or

delegated with authority by the chairman or the board to hear and adjudicate the Revision filed by the petitioner. The learned Deputy Attorney General also did not show any delegation order in this regard. A member of the Land Appeal Board generally cannot adjudicate a revision case alone unless specifically empowered by law or by the board. In some cases, particularly when delegated by the chairman, a single member may be authorised to dispose of appeals or revisions of minor disputes, but this must be done under written delegation or rule. This view gets support from the decision passed in the cases of *Abdul Hakim Gazi(Md) vs. Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Land, Dhaka and others*, reported in 73DLR(2021)478, and *SM Abdur Rouf vs. Government of the People's Republic of Bangladesh and others*, reported in 66 DLR(HC)308. In view of the above, we find that the impugned order dated 13-12-2011 passed by the single member of the Land Appeal Board in Revision Case No.2-24 of 2011, Sunamgonj was passed without any lawful authority and is of no legal effect.

Since the order dated 27-01-2011 passed by the Additional Divisional commissioner (Revenue), Sylhet and the order dated 13-12-2011 passed by the single member of the Land Appeal Board in Revision Case No.2-24 of 2011, Sunamgonj was passed without lawful authority and is of no legal effect, so, the notice dated 3.05.2012 issued under section 7 of the Public Demands Recovery Act demanding Tk. 4,64,392/- is also illegal and is of no legal effect.

In view of the above discussion, we find merit in this Rule.

Accordingly, the rule is made absolute without any order as to costs.

The order dated 27.01.2011 passed by the respondent no. 3 directing to initiate the certificate proceedings (Annexure-E{1}); order dated 13.12.2011 passed by the Member, Land Appeal Board, Dhaka directing to initiate certificate case against the petitioner and notice dated 03.05.2012 issued by the General Certificate Officer, Sunamgonj for realization of arrear dues (Annexure-H) all are hereby declared to have been passed without lawful authority and to be of no legal effect.

Communicate the judgment and order to the respondents forthwith.

Md. Mozibur Rahman Miah, J.

I agree.

Md. Ariful Islam Khan
Bench Officer