

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Nuruzzaman
Mr. Justice Borhanuddin
Ms. Justice Krishna Debnath

CIVIL APPEAL NO. 5 OF 2014

WITH

CIVIL PETITION FOR LEAVE TO APPEAL NO.1994 OF 2022

(From the judgment and order dated 09.12.2009 passed by the High Court Division in Writ Petition No.10404 of 2006)

Md. Mustafizur Rahman Appellant
(In C.A. No.5 of 2014)

The Government of the
People's Republic of
Bangladesh, represented by
the Secretary, Ministry of
Land, Secretariat Building,
Dhaka and others : ... Petitioners
(In C.P. No.1994 of 2022)

=VERSUS=

Mohibur Rab Chowdhury and
others Respondents
(In C.A. No.5 of 2014)

Mohibur Rab Chowdhury and
another Respondents
(In C.P. No.1994 of 2022)

For the appellant :Mr. A. J. Mohammad
(In C.A. No.5 of 2014) Ali, Senior Advocate
with Ms. Jamila
Montaj, Advocate,
instructed by Mr. Md.
Taufique Hossain,

Advocate-on-Record.

For the petitioners (in C.P. No.1994 of 2022)	:Mr. Md. Jahangir Alam, Deputy Attorney General instructed by Mr. Haridas Paul, Advocate-on-Record
For the Respondent Nos.2-5 (In C.A. No.5 of 2014)	:Mr. Md. Jahangir Alam, Deputy Attorney General, instructed by Mr. Haridas Paul, Advocate-on-Record
For the respondent No.1 (In C.A. No.5 of 2014)	:Not represented
For the respondents (in C.P. No.1994 of 2022)	:Not represented
Date of hearing	:01-06-2022, 08-06-2022 and 03-08-2022
Judgment on	:The 16 th August, 2022

J U D G M E N T

MD. NURUZZAMAN, J:

Delay of 4601 (four thousand six hundred and one) days in filing of the Civil Petition For Leave To Appeal No.1994 of 2022 is condoned.

This Civil Appeal, by leave, has arisen out of the judgment and order dated 09.12.2009

passed by the High Court Division in Writ Petition No.10404 of 2006 rejecting the leave petitioner's application for being added as a respondent in that writ petition and also the judgment and order dated 09.12.2009 passed in the same Writ Petition No.10404 of 2006 making the Rule absolute.

Facts leading, to filing of this civil appeal, in short, are that the writ petitioner as respondent No.1 herein filed the above mentioned writ petition challenging the memo dated 13.02.2006 issued by the respondent No.1 i.e. the Secretary, Ministry of Land, Government of Bangladesh approving the proposal of the respondent No.2, i.e. the Deputy Commissioner, Noakhali for granting settlement of total .2650 acre of non-agricultural land of

Plot Nos.59 and 33 of mouza 237 Alipur under Upazilla Begumgonj, District-Noakhali in favour of Md. Mustafizur Rahman-the present Leave-petitioner stating that the said land along with other lands belonged to one Salehuddin Ahmed from whom he purchased the same. Before such purchase the said land along with other lands were acquired by the Government from the said Salehuddin Ahmed. Salehuddin Ahmed had been enjoying and possessing the land even after such acquisition since the Government did not take its possession and utilize the same for the purpose of acquisition. After purchasing the suit land the petitioner has been enjoying and possession the same by constructing his residence thereon. The petitioner prayed to the Government for

granting settlement of the suit land in his favour since the Government did not utilize the suit land and on his such prayer a settlement proceeding being Miscellaneous Case No. 570/1998-99 was initiated, but has not yet been finalized, while the petitioner had been enjoying and possessing the suit land, some other persons prayed for settlement of the same in their favour and behind the back of the petitioner, the Government officials took initiative to settlement the suit land with them and by the impugned memo, the respondent No.1 gave approval to the proposal of the Deputy Commissioner, Noakhali to grant such settlement. In such circumstances, the petitioner, finding no other alternative remedy, moved the above mentioned writ petition

before the High Court Division and obtained the Rule Nisi.

The writ respondent No.2 contested the Rule Nisi by filing affidavit-in-opposition stating that the writ petitioner had no possession at all in the suit land. During pendency of the Rule, the present petitioner Md. Mustafizur Rahman filed an application for being added as a party claiming that he was granted lease of the land in dispute from the Government in lieu of huge money and that he had also been possessing and enjoying the suit land. The High Court Division rejected that application of this leave-petitioner holding that since the Government was contested the writ petition, the applicant, being a lessee

from the Government was not a necessary party in the writ petition

A Division Bench of the High Court Division upon hearing the parties made the Rule Nisi absolute by the impugned judgment and order dated 09.12.2009 and directed the respondents to grant settlement of the land in dispute for 99 years to the writ-petitioner within 3 (three) months from the date of receipt of the copy of that judgment.

Feeling aggrieved by the impugned judgment and order dated 09.12.2009 of the High Court Division, the added respondent No.17-petitioner herein preferred the Civil Petition for Leave to Appeal No.2357 of 2010 before this Division and obtained leave, which, gave rise to the instant appeal.

Mr. A.J. Mohammad Ali, the learned Senior Advocate appearing on behalf of the appellant in Civil Appeal No.5 of 2014 submits that this appellant was granted lease of the land in dispute in a long term lease case being No. 2/2005-2006 on furnishing proper 'Salami' of an amount of Tk. 12,67,628/- to the Government for establishing M/s. Rahman dairy Farm, Begumganj, Noakhali which was duly approved by Secretary, Ministry of land vide memo dated 13.02.2006, that the High Court Division without considering these facts and circumstances at all passed the impugned judgment and order directing the Government to lease out this property again to the writ petitioner most unjustly and arbitrarily. The High Court Division committed

a significant error in finding that the writ-petitioner is in possession of the land in question. The fact of possession being a disputed question, so, was not possible to be adjudicated in writ jurisdiction, because, there is no scope to adduce evidence. He has further submitted that the High Court Division, in the facts and circumstances of the case ought to have allowed this leave petitioner's application for being added as the respondent, undisputedly, as the Government long before had granted lease of the land in question. He has also pointed out that admitted position is that after acquisition of this land in question by the Government, the original owner who is the vendor of the writ petitioner hire leave

respondent had no right to sell the same land to the writ-petitioner, so, the alleged purchase of the said land by the writ petitioner itself suggests that the writ-petitioner tried to grab the property in question illegally and in the circumstances the writ-petitioner's claim was not acceptable at all by the Court, the High Court Division without considering all these facts and circumstances insignificant way made the rule absolute causing grave injustice to this appellant and, as such, the interference of this Division is necessary. He has next submitted that the High Court Division manifestly erred in law resulting in an error occasioning failure of justice in misreading the evidence on record and filed to consider

the legal and admitted facts and in basing decision on mere surmise and conjecture, since the appellant is the lease holder of the land in question which is located vide dag No.59 in 237 No. Alipur by way of long term lease case being No.2/2005-2006 on furnishing proper Salami for an amount of Tk. 12,67,628/- to the Government for establishing M/s. Rahman Dairy Farm, Begumganj, Noakhali which was duly approved by the Secretary, Ministry of Land vide memo being No.ভূঃমঃ/শা-৮/খামার/৩১/২০০৬/৯৩ dated 13.02.2006, thus the impugned Judgment and order as passed by the High Court Division is liable to be interfered with by this Court. He in a same breath submitted that the High Court Division has misread, misconstrued and misunderstood the materials on record and

consequently failed to comprehend the facts of the case and misapplied the law, because of the fact that the respondent No.1-writ petitioner having no right and title over the schedule land, as matter of course, the property has been leased out to the leave petitioner for establishing aforesaid M/s. Rahman Dairy Farm, the High Court Division erred in law in making the Rule absolute which is liable to be interfered with by this Court for doing effective and complete justice in the case. He has finally submitted that the High Court Division failed to appreciate the facts and circumstances of this case in its true perspective, as a result of which there has been serious miscarriage of justice since the respondent No.1-writ petitioner and two

others have created fake and fictitious Kabalas, while the Government has been controlling the property by means of leasing out the same to the appellant, the High Court Division erred in law in making the Rule absolute and, directing to lease out to the writ petitioner. As such, considering the same, the impugned judgment and order passed by the High Court Division is liable to be set aside. Hence, the instant appeal may kindly be allowed.

Mr. Md. Jahangir Alam, the learned Deputy Attorney General appearing for the petitioners in Civil Petition for Leave to Appeal No.1994 of 2022 has submitted that the Government acquired 608.00 acres of land in Begamgonj Upazilla for construction of Noakhali

District Head Quarter. The property in question and along with other acquired property was recorded at the time of M.R.R. survey in the name of the Deputy Commissioner of Noakhali in Khatian No.1 Plot No.59 measuring an area of 0.37 acres and plot No.33 measuring an area of .045 acres. Many Government and semi Government's Offices, Schools, Colleges land Industries have constructed and established in the acquired property. He has further submitted that the writ petitioner and two others created forged kabals to grave the Government's Khas land, the property in question is in possessing by the Government. He has finally submitted that while making the Rule absolute by the High Court Division the following direction has been given 'The respondents are hereby directed to

grant settlement the land in dispute for 99 years to the petitioner within 3 months from the date of receipt of the copy of this judgment" and, as such, the impugned judgment and order of the High Court Division is liable to be set aside.

Mr. Md. Jahangir Alam, the learned Deputy Attorney General appearing for the respondent Nos.2-5 in Civil Appeal No.5 of 2014 has made same submissions in supporting the submissions advanced Mr. A. J. Mohammad Ali for the appellant. In addition to that he has argued that the High Court Division committed serious error in making the Rule absolute and directing to grant lease in favour of writ petitioner herein respondent, therefore, the

appeal and Civil Petition for Leave to Appeal required to allow for ends of justice.

We have heard Mr. A.J. Mohammad Ali, the learned Senior Counsel for the appellant in Civil Appeal No.5 of 2014 and Mr. Md. Jahangir Alam, the learned Deputy Attorney General for the petitioners in Civil Petition No.1994 of 2022 and respondent Nos.2-5 for the Civil Appeal No.5 of 2014. Perused the impugned judgment and order of the High Court Division and other connected materials on record.

Before entering into the merit of the appeal, it would be pertinent to go through the grounds, for which, leave was granted. The grounds are quoted below:

"I. Because a Division Bench of the High Court Division manifestly erred

in law resulting in an error occasioning failure of justice in misreading the evidence on record and failed to consider the legal and admitted facts and in basing decision on mere surmise and conjecture, since the leave petitioner is the lease holder of the land in question which is located vide dag No. 59 in 237 No. Alipur by way of long term lease case being No. 2/2005-2006 on furnishing proper Salami for an amount of Tk. 12,67,628/- to the Government for establishing M/s. Rahman Dairy Farm, Begumganj, Noakhali which was duly approved by the Secretary, Ministry of Land vide memo being No. ভূঃমঃ/শা-

৮/খামার/৩১/২০০৬/৯৩ thus the impugned Judgment and order as passed by the High Court Division is liable to be interfered with by this Court.

II. Because the High Court Division has misread, misconstrued and misunderstood the materials on record and consequently failed to comprehend the facts of the case and misapplied the law, because of the fact that the respondent No. 1 writ petitioner having no right and title over the schedule land, as matter of course, the property has been leased out to the leave petitioner for establishing aforesaid M/s. Rahman Dairy Farm, the Hon'ble High Court Division erred in

law in making the Rule absolute which is liable to be interfered with by this Court for doing effective and complete justice in the case.

III. Because the High Court Division failed to appreciate the facts and circumstances of this case in its true perspective, as a result of which there has been serious miscarriage of justice since the respondent No. 1 writ petitioner and two others have created fake and fictitious Kabalas, while the Government is controlling the property by means of leasing out the same to the leave petitioner, a Division Bench of the High Court

Division erred in law in making the Rule absolute."

It is admitted facts from the statement of the writ petition that the land in question and other lands measuring 188.77 of Begumgonj Upazilla were acquired vide L.A. Case No.3(3)/1941-42 for constructing Noakhali Zilla Head Quarter. After so, acquiring the property, the previous land owner had no right title and possession over the property.

Our this view has already been upheld and affirmed by this Division, in the case of Government of Bangladesh and others Vs. Dewan Fakhrul Alam and others reported in 27 BLT(AD)2019 which are as follows:

"Our considered views are that the land in question cannot be

released from the acquisition because as per Section 5(6) of the Requisition of Property Act compensation has already been paid to the owner. So, there is no scope to withdraw the proposal of the acquisition and return back the land to the person from whom the same has been acquired although the final gazette has not yet been published."

In that view of the matter, the writ petitioner-respondent-Mohibur Rab Chowdhury and others had no locus standi either to purchase the suit property from the heirs of the original C.S. owner nor they are entitled to occupy the acquired land without any legal

basis, if any, such occupation/possession is found in favour of that persons should be treated to be illegal occupier/possessors in the Government acquired property for which they should be evicted from the property in accordance with law by the concerned authority for away to have direction to grant lease of 99 years. However, in the instant case, the High Court Division under Article 102 of the Constitution by a writ of mandamus directed to lease out the suit property for 99 years to the so-called occupier/possessors. Such directions were obviously beyond the writ of mandamous.

In our above view, we find legal support which has already been affirmed by this Division, in the case of Government of Bangladesh and others Vs. Pankoj Kumar Mondal

and others reported in 27BLT(AD)2019 wherein it has been held that

"Our considered views are that the land in question cannot be released from the acquisition because as per Section 5(6) of the Requisition of Property Act compensation has already been paid to the owner. So, there is no scope to withdraw the proposal of the acquisition and return back the land to the person from whom the same has been acquired although the final gazette has not yet been published."

It is admitted fact that the instant writ petitioner challenged the Memo No. ভূঃমঃ/শা-

৮/খাজব/৩১/২০০৬/৯৩ তারিখঃ ১৩/২/২০০৬ ইং of the Ministry of
Land, the Government of the People's Republic
of Bangladesh which runs as follows:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
ভূমি মন্ত্রণালয়
শাখা-৮।

নং-ভূঃমঃ/শা-৮/খাজব/৩১/২০০৬/৯৩

তারিখঃ ১৩/২/২০০৬ ইং

প্রেরকঃ শাহ মোঃ ইমদাদুল হক
সিনিয়র সহকারী সচিব।

প্রাপকঃ জেলা প্রশাসক
নোয়াখালী।

বিষয়ঃ অকৃষি খাস জমি দীর্ঘ মেয়াদী বন্দোবস্ত প্রসংগে।

সূত্রঃ তাহার স্মারক নং জেঃ প্রঃ/নোয়া/এস-এ/১৩-১/২০০৬-৭৫ তারিখ ২২/১/২০০৬ ইং

উপরোক্ত বিষয় ও সূত্রের বরাতে আদেশক্রমে জানানো যাইতেছে যে, সরকার তাহার
সুপারিশ ও প্রস্তাব মোতাবেক নোয়াখালী জেলার বেগমগঞ্জ উপজেলাধীন ২৩৭ নং আলীপুর
মৌজার ৫৯ নং দাগে ০.২৫ একর এবং ৩৩ নং দাগের অন্তরে ০.০১৫০ একর মোট ০.২৬৫০
(শূন্য দশমিক দুই ছয় পাঁচ শূন্য) একর অকৃষি খাস জমি প্রস্তাব অনুমোদনের তারিখ হইতে
পূর্ববর্তী ১২ মাসের সম-শ্রেণীর জমি বেচাকেনার গড় মূল্যের ভিত্তিতে বিধি মোতাবেক সেলামী
ধার্য ও আদায়ক্রমে নীতিমালার ৩০(এ) অনুচ্ছেদ মতে মেসার্স রহমান ডেইরী ফার্ম স্থাপনের
জন্য জনাব মোঃ মোস্তাফিজুর রহমান এর অনুকূলে দীর্ঘ মেয়াদী বন্দোবস্তের প্রস্তাব অনুমোদন
করিয়াছে।

- ২। নীতিমালা মোতাবেক লীজ গ্রহিতা কর্তৃক বন্দোবস্তের সকল শর্তাদি যথাযথভাবে প্রতিপালিত হইলে মন্ত্রণালয়ের ০৭/০৯/৯৫ ইং তারিখের ভূঃ মঃ/শা-৮/খাজব/৪৬/৮৪/৬৮৬ নং স্মারকের পরিপত্রের ১৯(১) অনুচ্ছেদ মোতাবেক বন্দোবস্তের মেয়াদ ৯৯ (নিরানব্বই) বৎসর ধার্য করা যাইতে পারে।
- ৩। উপরোক্ত মর্মে বিধি মোতাবেক প্রয়োজনীয় কার্যক্রম গ্রহণের জন্য অনুরোধ করা হইল।
- ৪। সংশ্লিষ্ট কেস নথি এতদসঙ্গে ফেরৎ প্রদান করা হইল।

স্বা/-
(শাহ মোঃ ইমদাদুল হক)
সিনিয়র সহকারী সচিব।

উং ড্রঃ মঃ/শা-৮/খাজব/৩১/২০০৬/৯৩/১

তারিখঃ ১৩/০২/২০০৬ ইং

অনুলিপি অবগতির জন্য প্রেরণ করা হইলঃ-

- ১। জনাব মোঃ মোস্তাফিজুর রহমান, সাং-মিরওয়ারিশপুর, উপজেলাঃ বেগমগঞ্জ, জেলাঃ নোয়াখালী।

স্বা/- অস্পষ্ট
১৩/০২/২০০৬
(শাহ মোঃ ইমদাদুল হক)
সিনিয়র সহকারী সচিব।

Wherefrom it is apparent that the same property has already been leased out for 99 years to the appellant of this civil appeal. However, the High Court Division in its

judgment without passing any order in respect of the above memo directed the concerned authority to dispose of the petition which was filed by the writ petitioner-respondent, rather, passed the impugned order which is glaring instance of misuse of the judicial review. Such judgment, therefore, cannot be upheld by this Division, rather, such direction should be scrapped for future safety of the acquired landed property.

The Government of the People's Republic of Bangladesh also filed the Civil Petition for Leave to Appeal No.1994 of 2022 was heard.

In view of the instant Civil Petition, we are inclined to condone the delay in filing of the instant Civil Petition for leave to Appeal.

In view of the merit of this civil appeal has already been discussed by us which are also the whole points of the instant Civil Petition for Leave to Appeal.

The submissions advanced by the learned Deputy Attorney General in the instant Civil Petition for Leave to Appeal, we find substance in the contentions raised by him.

The Civil Appeal No.5 of 2014 which was filed against the order of rejection of application for addition of party is not substantive relief, rather, the substantive relief is lying with the respondents-Government in the instant Civil Petition for Leave to Appeal.

In view of the facts and circumstances of the instant civil appeal and civil petition, we

are inclined to dispose of the Civil Petition for Leave to Appeal No.1994 of 2022 and set aside the impugned judgment of the High Court Division but dismissed the Civil Appeal No.5 of 2014.

We do not find any substance in the writ petition.

Accordingly, this Civil Appeal is dismissed without any order as to costs. This Civil Petition is disposed of with above mentioned observations. The impugned judgment and order of the High Court Division is hereby set aside.

J.

J.

J.

The 16th August, 2022
Hamid/B.R/*Words 3,241*