

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

WRIT PETITION NO. 7106 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:

Jonoseba Matshajibi Samabay Samity Ltd.

- Petitioner

-vs-

Government of Bangladesh and others.

- Respondents.

And

Mrs. Nigar Sultana, Advocate

..... For the Petitioner.

Mr. Samarendra Nath Biswas, D.A.G with

Mr. Md. Abul Kalam Khan Daud, A.A.G. with

Mr. Md. Modersher Ali Khan (Dipu), A.A.G and

..... For the Respondent-government.

Heard on 18.01.2024 and

Judgment on 28.01.2024

Present:

Mrs. Justice Farah Mahbub.

and

Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, J:

In this Rule, issued under Article 102 of the Constitution of the People's Republic of Bangladesh, the respondents have been called upon to show cause as to why the inaction of the respondents towards disposal of the petitioner's representation dated 15.02.2022 to extend the lease period in respect of the "jalmohal" namely "Gangina Khatia Group" situated within Upazilla-Sadar, District-Sylhet for the year

1431 B.S. by adjusting the lease money paid for 1426 B.S on compensatory grounds should not declared to have been done without lawful authority and hence, of no legal effect and also, as to why a direction should not be given upon the respondents to extend the lease period of the petitioner in respect of the said “jalmohal” by adjusting the lease money paid for 1426 B.S. on compensatory grounds.

At the time of issuance of the Rule the respective contending parties were directed to maintain *status-quo* over the possession and position of the case property for a prescribed period with further direction upon the respondent No. 1 to dispose of the petitioner’s representation dated 15.02.2022 (Annexure-O) within a prescribed period in due compliance of law.

Challenging the interim direction of *status quo* the added respondent No. 8 moved the Hon’ble Appellate Division by filing C.P.L.A No. 831 of 2023. However, upon hearing the parties vide order dated 24.07.2023 the Appellate Division directed the respective contending parties to maintain *status quo* in respect of the possession and position of the fisheries in question till disposal of the Rule with further direction upon this Bench to hear and dispose of the Rule on merit.

Facts, in brief, are that the petitioner Samity has been registered on 14.08.2016 bearing registration No. SY1-02/16-17 under Samabay Samity Ain, 2001 (as amended in 2002) [(Annexure-A- A(3) respectively]. However, all the respective members of the said Samity are

genuine fishermen being certified by the Senior Fishery Officer, Sylhet Sadar, Sylhet (Annexure-B2).

On 10.11.2016, the petitioner Samity filed an application to the Secretary, Ministry of Land, respondent No. 1 for getting lease of Gangina Khata Group fishery (in short, the fishery) under development scheme for the year 1424-1429 B.S (Annexure-C). Pursuant thereto the Deputy Secretary, Ministry of Land vide Memo No. 31.00.0000.5.68.047.16-27 dated 12.01.2017 called for report from the District Fishery Managing Committee, Sylhet in respect of the respective fisheries including the fishery in question. In response thereof said Committee, in its meeting dated 11.05.2017 gave recommendation to lease out the fishery in question in favour of Kurigaon Matshajibi Samaby Samity Ltd. who offered 120% more than the offer of the previous lease year (Annexure-D). The minutes of the said meeting was duly forwarded to the authorities concerned including the Deputy Commissioner, Sylhet, respondent No. 3 for necessary steps [(Annexure-E and E(1) respectively]. Said respondent vide Memo No. 05.46.9100.008.32.016.11-1790 dated 12.06.2017 (Annexure-F), in his turn, forwarded the same to the respondent No. 1 along with the relevant documents submitted earlier by 2(two) other “grm”Rex mgeVq mlgZ” including the petitioner for final decision. Meanwhile, the recommended Samity vide its representation dated 16.01.2018 (Annexure-G) made a prayer before the respondent No. 3 for withdrawal of its offer for lease of the said fishery in its favour and to return back the earnest money on the grounds as stated therein.

In view of the said context, since the offer of the petitioner for lease stood second accordingly, an application was filed before the respondent No. 1 on 05.02.2018 for getting lease of the fisheries in question (Annexure-H). Ultimately, the “Dbbq b cKří miKwi Rjgnj BRviv Mnb msµvš KigU” in its 46th meeting dated 27.02.2018 (Annexure-I) took decision to lease out the fishery in question in favour of another Samity with direction upon the Deputy Commissioner, Sylhet, respondent No. 3 to take necessary steps accordingly. Pursuant thereto the proposal for leasing out the fisheries in question in favour of “vjcv i wgti iMv! grm”Rxx mgevq mwgZ wjwgtU” was accepted for 1425-1430 BS with 25% enhanced rate. In response thereof said Samity having paid lease money for 1425 B.S. a lease agreement was executed with handing over possession of the same in its favour on 05.04.2018.

Being aggrieved the petitioner of the instant writ petition filed writ petition No. 5404 of 2018 before this Court and obtained a Rule Nisi on 11.04.2018. Subsequently, upon hearing the respective contending parties said Rule was made absolute in part declaring Memo dated 27.02.2018 (Annexure-I) illegal, with direction upon the respondents concerned to lease out the fisheries in question in favour of the petitioner “*if the petitioner samity agree to pay highest offer according to the Jalmohal Guidine-2009, otherwise the respondents take necessary step in accordance with law, within 3(three) months from the date of receipt of this order and the District Jalmohal Management Committee also*

directed to refund the rest of the amount, if any, to the respondent No. 9, of his deposited offer/bid money (Annexure-J) ” .

Meanwhile, pursuant to Memo No. 31.00.0000.050.51.022.17-337 dated 16.06.2020 issued by the concerned authority of the Ministry of Land the respondent No. 3 vide Memo No. 05.46.9100.008.32.016.11-377 dated 21.07.2020 (Annexure-K) sent a report stating, *inter-alia*;

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Subsequently, the Ministry of Land had approved to lease out the fisheries in question in favour of the petitioner for 1426-1430 B.S. vide Memo No. 31. 00. 0000. 050. 59. 022. 17 - 541 dated 09.09.2020. Accordingly, the petitioner Samity paid lease money with VAT and tax for 1426 B.S. and 1427 B.S. vide respective treasury challan (Annexure-L-L5 respectively), followed up with execution of lease deed dated 22.09.2020 [(Annexure-L(6)] with the following, amongst other grounds, namely:

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On execution of lease deed the petitioner was handed over the possession thereof on 23.09.2020 with effect from “১লা বৈশাখ ১৪২৬ বাংলা সন” (Annexure-M-M1 respectively). Later, the petitioner duly deposited lease money along with VAT and tax for 1428 B.S and 1429 B.S. (Annexure-N-N5 respectively).

On 15.02.2022, the petitioner Samity made a representation to the respondent No. 1 with a prayer for “.....#Z6eD +vgv#0i LwZ''1.D Owi0eie#gMbb ! +vP ' vgwRK <bq#bi j#L(+vgvi ' wgzzi ''#0q 1426 eWjv ' #bi BRvivi g#(14A1 ' #bi BRvivi g#j(i ' wnz ' g: q Kwiqv BRvivi >g9v0 e#g Ki#Z hR#i i gwR nq +PeV +vgvi ' wgzzi ''#0q 1426 eWjv ' #bi BRvivi UvKv >CiZ ''#b Kwi#Z hR#i i gwR nq|XXXXXXXXXXXXXXXXXXXX”, but there was no response thereof.

Being aggrieved by and dissatisfied with the petitioner has filed the instant writ petition and obtained the present Rule. At the same time, the respondent No. 1 had been directed to dispose of the representation of the petitioner dated 15.02.2022 within a prescribed period. However, vide Annexure-V of the application for vacating the order of *status quo* filed by the added respondent No. 8 the Deputy Secretary, Ministry of Land vide Memo No.\$%&' '&' '' '&' ('&())&' **&#+(#s, -%.- (((dated 26.09.2022 stated, *inter alia*, that;

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In view of the said position of facts, the petitioner by filing a fresh application dated 03.05.2023 (Annexure-Q) before the respondent No. 1 made a prayer for extending the lease period upto 1431 B.S on compensatory ground by adjusting the lease money of 1426 B.S. or in the alternative to refund the lease money so paid by the petitioner for 1426 B.S. Having receipt no response thereof the petitioner filed an application for issuance of supplementary Rule.

In view of the overall context of the present case, Ms. Nigar Sultana, the learned Advocate appearing for the petitioner submits that the petitioner admittedly paid lease money in connection with the fishery in question for the year 1426 B.S. as well as 1427 B.S as per order passed by the authority concerned, but said authority gave delivery of possession of the fishery in question on 23.09.2020. Consequently, the petitioner Samity could not enjoy possession of the same for 1426 B.S. In that view of the matter the petitioner made a representation to the authority concerned to extend the lease period for the year 1431 B.S. on compensatory ground by adjusting the lease money so paid for 1426 B.S. or, in the alternative to refund the lease amount so paid for 1426 B.S. But the authority concerned did not take any steps whatsoever to that effect upon disposal of the petitioner's representation dated 03.05.2023.

In that view of the matter she submits that for the cause of justice and equity a direction be given upon the respondent concerned for disposal of the subsequent representation to that effect.

Conversely, Mr. Md. Abul Kalam Khan (Daud), the learned Assistant Attorney General appearing for the respondent-government submits that the instant writ petition is a misconceived one, for, in clause 36 of the lease agreement dated 22.09.2020 [(Annexure-L(6))] it has been specifically stipulated that the petitioner is barred from making application to the authority concerned for adjustment of lease money or for extension of lease period on the plea of expiry of the lease period of 1426 and 1427 B.S. The petitioner agreeing to the said condition has entered into the said lease agreement. As such, he submits, on the plea of not being able to enjoy possession of the fishery in question for 1426 B.S. making a prayer to the respondent No. 1 for extension of lease period upto 1431 B.S upon making adjustment of lease money for 1426 B.S, is not maintainable in the eye of law.

Further, he submits that vide Memo No. 1000/2022 (dated 26.09.2022 (Annexure-V of the application for vacating the order to stay) the respondent concerned has categorically stated that the representation dated 15.02.2022 has not been submitted by the petitioner to the Ministry concerned, as claimed by the petitioner. Hence, it was not possible for the said respondent concerned to dispose of the same in compliance of the direction given by this Hon'ble Court at the time of issuance of the Rule.

Accordingly, he submits that this Rule being devoid of any substance it is liable to be discharged along with the application for issuance of supplementary Rule.

Admittedly, the petitioner Samity is one of the 3(three) bidders who participated in the bid for long term lease of the fishery in question for the year 1424-1430 B.S. under development scheme. Ultimately, the highest bidder having declined to take lease of the same hence, pursuant to the decision of the authority concerned vide order dated 27.02.2018 (Annexure-I) passed on behalf of respondent No. 1 respective decision was taken to lease out the same in favour of the 3rd bidder, the added respondent No. 8 for 1425-1430 B.S. Pursuant thereto said Samity having paid lease money for 1425 B.S accordingly, upon execution of lease agreement possession thereof was handed over to the said Samity on 05.04.2018. Said order was ultimately knocked down by this Court in connection with writ petition No. 5404 of 2018 preferred by the present petitioner with direction upon the respondent concerned to lease out the said fishery in favour of the petitioner vide judgment and order dated 10.07.2019 (Annexure-J). Considering the context as stated in the office letter dated 21.07.2020 vide Memo No. 05.46.9100.008.32.016.11-377 (Annexure-K) issued by the respondent No. 3 (as quoted above), not controverted by the petitioner, on 23.09.2020 (Annexure-M2) possession of the fishery in question was handed over to the petitioner with effect from 1st Baishak 1426 B.S.

In view of the above uncontroverted statements/assertions so made by the respondent vide Memo No. 05.46.9100.008.32.016.11-377 dated 21.07.2020 (Annexure-K) it is found that the delay in handing over possessions of the fishery in question in favour of the petitioner by the authority concerned was unintentional.

However, in the lease agreement being executed between the petitioner and the respondent concerned dated 22.09.2020 for 1426-1430 B.S. [(Annexure-L(6)] vide clause 36 it has been specifically provided, *inter-alia*:

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Having agreed to the said condition, amongst others, with payment of the lease money for the respective period the petitioner has been given right to enjoy the fishery in question for 1426-1430 B.S. as lessee.

In view of the above, the petitioner is now esstopped from making prayer to the respondent No. 1 with representation to extend the lease period for 1431 B.S. upon adjusting lease money of 1426 B.S. on the plea of not being able to enjoy possession thereof for 1426 B.S.

Last but not the least, the petitioner has been provided with right to enjoy the fishery in question for 1426-1430 B.S. subject to payment of lease money with VAT and tax for the respective period. From record it appears that the petitioner has paid required lease money with VAT and

tax for 1426-1429 B.S. However, no document is produced before this Court till date as to the payment of lease money with VAT and tax for 1430 B.S though to date the petitioner is still enjoying possession thereof pursuant to the order of *status quo* granted earlier by this Court.

The respondent concerned is accordingly directed to take necessary steps in due compliance of law for recovery of the lease money from the petitioner with VAT and tax for 1430 B.S., if not paid meanwhile.

In view of the above facts and circumstances, we find no substance in the instant Rule, nor in the application for issuance of supplementary Rule.

In the result, the Rule is discharged without any order as to costs.

The application for issuance of supplementary Rule is rejected.

Communicate the order at once.

Muhammad Mahbub Ul Islam, J:

I agree.