

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

WRIT PETITION NO.13433 of 2022

IN THE MATTER OF:

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

IN THE MATTER OF:

B. M. Nazibul Haque and others
.....Petitioners.

-Versus-

Bangladesh and others
.....Respondents.

Mr. Md. Mesbahul Islam Asif, Advocate
.....For the petitioners.

Mr. Md. Ashraful Alam, Advocate
..... for the Respondent No. 2

Mr. Nawroz M.R. Chowdhury, D.A.G. with
Mrs. Afroza Nazneen Akther, A.A.G. with
Mrs. Anna Khanom (Koli), A.A.G.
..... For the respondents-government.

**Heard on: 06.11.2023, 07.11.2023,
14.11.2023, 19.11.2023 and 22.11.2023**

Judgment on: 26.11.2023.

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice S M Masud Hossain Dolon

Md. Jahangir Hossain, J:

On an application under Article 102 of the Constitution of the
People's Republic of Bangladesh, this Rule Nisi was issued calling upon
the respondents to show cause as to why the inaction and failure of the
respondents to execute lease deed in favour of the petitioners upon
receiving last 2 (two) installments in respect of Semi-pacca Tin-Shade

House No. 257 of Section-13, Mirpur, Dhaka should not be declared to have been made without lawful authority and is of no legal effect and as to why a direction should not be given upon the respondents to receive the last 2 (two) installments amounting Tk. (29,158+29,155)=58,313 including interest from 15.11.2010 and to execute a lease deed in favour of the petitioners 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, the respondents are directed to maintain status-quo in respect of possession of the schedule property for a period of 6 (six) months from date.

Facts relevant for disposal of this Rule are that, the petitioners are predecessors of late Khadiza Begum got allotment of a Tin-Shed House being No. 257 of Section-13 of Mirpur Housing Estate vide Memo No. 477/95/9705 dated 14.11.2000 and accordingly she had been owning and possessing the same on payment of last 8th installment out of 10(ten) on 26.08.2008. Out of total 10 (ten) installments 8(eight) installments were duly paid in due course but 2 (two) installments amounting Tk. 29,158/- (twenty thousand three hundred thirteen) only was unpaid and for payment of which she was duly filed an application before the respondents on 15.11.2010 but the respondents did not give any response.

On 29.09.2011 the petitioner's mother Khadiza Begum expired leaving behind her 2 sons and 2 daughters as her legal heirs and after her death the petitioner have been owning and possessing the Tin-Shade house. The death Khadiza Begum her heirs were given amended allotment on 27.04.2014 vide Memo No. জাগুক/ভূসব্য/টি-৪৪৭/৯৫/৪৮৯৮ in her place and the amount already paid was duty adjusted by the respondents.

Thereafter the death Khadiza Begum her heirs were given amended allotment on 27.04.2014 vide Memo No. জাগুক/ভূসব্য/টি-৪৪৭/৯৫/৪৮৯৮ in her place and the amount already paid was duly adjusted by the respondents.

Later on the prayer of the petitioners, the respondents No.3 issued a letter on 30.11.2014 vide Memo No. জাগুক/ভূসব্য/-বাস ফাইল-১৯/২০১৪/১৪৯৬৫ asked the petitioners to appear with all necessary documents in the office of the National Housing Authority for hearing and accordingly they appeared, but in vain. The petitioner tried to make payment but failed and lastly on 01.01.2020 and on 01.03.2021 they made representations with a request to pay the unpaid amount of Tk.58,313/- (fifty eight thousand and three hundred thirteen) only the respondents but they did not pay any heed to it as yet.

Upon such activities and discriminate action petitioners served a Notice of Demand of Justice though their engaged lawyer on 19.09.2022

with a request to receive the outstanding amount and to execute a lease deed in their favour but the respondents did not take any proper steps. Without assigning any reason whatsoever to the petitioners for last 8(eight) years for the reasons best known by the respondents. The respondents under statutory obligations to execute a lease deed in favour of the petitioners.

Respondents are not receiving the outstanding amount and not executing lease deed in favour of the petitioners. The respondents have taken away the right to property of the petitioners as guaranteed under Article 42 of the Constitution.

The petitioner also submit supplementary affidavit with other annexure papers which is marked as Annexure K to N5 by pray to treating the supplementary affidavit as part of the main application.

On the other hand affidavit in opposition has been filed by the respondent No.3 where it is stated the petitioner failed to pay the total 10(Ten) installments in time, but in 2010 applied for permission to make two unpaid installments. Since the petitioner was already in default of the regular installments and thereby in breach of the terms of the allotment the payment could not be accepted.

Mr. Md. Mesbahul Islam, the learned Advocate appearing for the petitioners submits that the predecessor of the petitioners have been owning and possessing the allotted tin shed house and lastly on 15.11.2010 filed an application before the respondent No. 03 to receive the outstanding 2(two) installments with interest but in vain. Subsequently she died on 29.09.2011 and accordingly her heirs i.e. the present petitioners were given amended allotment of the same as her legal heirs on 27.04.2014 by the respondents. The present petitioners again filed an application on 14.09.2014 for payment of the outstanding 2(two) installments through chalan for execution of the lease deed and pursuant to that a letter was issued on 30.11.2014 for hearing by the respondents and accordingly hearing was concluded on the date so fixed. But the respondents did not take any step to that effect. Lastly on 01.01.2020, 01.03.2021 and on 04.08.2022 the petitioners made series of representations before the respondents with a request to execute the lease deed upon receiving the outstanding total dues of Tk. 58,313 (fifty eight thousand three hundred thirteen) i.e. 02(two) installment with interest in accordance with law. The petitioner after being failed, were compelled to prefer the instant writ petition.

Mr. Md. Mesbahul Islam, the learned Advocate further submits that the petitioners after being failed were compelled to prefer the instant

writ petition and submitted that the petitioners under a statutory agreement have been owning and possessing the allotted finished house having all utility facilities for about 35 years but the respondents with an ulterior motive are not accepting the outstanding 2(two) installments and executing lease deed in favour of the petitioners which is purportedly illegal malafide and colourable exercise of power and hence appropriate order of direction of this Hon'ble Court is required to that effect.

Mr. Md. Mesbahul Islam, the learned Advocate lastly prayed for absolute the Rule.

On the other hand Mohammad Isamil Hossain, learned Advocate for the respondent No.3 submits that the petitioners are defaulter to make regular payment. The payment could not be received due charge of price of land came to effect since 11.03.2019 as per resolution of the 197th 'Board Meeting' and, as per the new rate, price of the land allotted in the name of the petitioners; i.e. in the area of Mirpur Section-13. In support of his submission he submits Annexure-R and the Office Order জাতীয় গৃহায়ন কর্তৃপক্ষ, গৃহায়ন ভবন which we examine elaborately where it is decided and stated “জাতীয় গৃহায়ন কর্তৃপক্ষর আওতাধীন বিভিন্ন হাউজিং এ-স্ট-টর জমির মূল্য

১৯৭ তম বোর্ড সভার ৫নং সিদ্ধান্ত মোতা-বক পুনঃনির্ধারণ করা হ-লা। এ আ-দশ আগামী ১১/০৩/২০১৯খ্রিঃ তারিখ হতে কার্যকর হবে। তবে এক্ষেত্রে ইতোপূর্বে বোর্ড সভায় অনুমোদিত প্রস্তাবিক রেটে বরাদ্দের বিষয়ে গৃহীত সিদ্ধান্তসমূহ বহাল থাকবে।”

It appears to us it is admitted by the respondent the new rate of the land and the installment will not effect upon the petitioners. We are commenced upon this letter of the “জাতীয় গৃহায়ন কর্তৃপক্ষ” that the new rate will not affect with any way of the petitioner. Further it appears from the annexure submitted by the petitioner that the petitioners are owning the property about 35 years and they are paying electricity and water bills. We have perused the electricity bill and the other bills submitted by the petitioner which is clearly shows that those all are paid by the petitioner from the first allotment and the newly allotment shows they are possessing the land regularly being from the respondent near about 35 years. In perusing the other documents that the requesting letter from the petitioner to receive the only two rest installments, The respondents failed to response or resolve the prayer of the petitioners since long years

which is very much unfortunate. The respondent never denied the allotment papers of the petitioner and hold the possession of the tin shed house by the petitioner near about 35 years. Why the respondent shows in action upon such subject and prayer and why they took such consuming of time of the petitioner. We cannot gaze why such activity of the relevant officer and the staff of the department why the petitioners suffer 35 years to get such relief and to pay the rest money it a big question. The authority of the জাতীয় গৃহায়ন কর্তৃপক্ষ, গৃহায়ন ভবন should be cautious in future to have done such malafide activities.

We are fully agreed with submissions of the learned Advocate for the petitioner Mr. Md. Mesbahul Islam Asif. The respondents acted illegally and arbitrarily to restrain the property and executing lease by receiving the outstanding dues. The respondent without giving allotment by received from the petitioner are not permitted to do under law. So we are of the view that the judicial intervention is immense. We are of the view that there are cogent and real ground to absolute the rule.

Hence the Rule is made absolute.

The respondents are directed to receive the last two installment 58,313/-(fifty eight thousand three hundred thirteen) Taka including the interest on 15.11.2010 and execute the lease deed in favour of the petitioners within 90(ninety) days of receiving this judgment and order.

The order of status-quo order earlier by this Court stands vacated.

Communicate the order at once.

S M Masud Hossain Dolon, J:

I agree.