IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

Present

Mr. Justice Sikder Mahmudur Razi

And

Ms. Justice Fatema Anwar

Writ Petition No. 2065 of 1998

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Cherag Uddin Ahmed and others being died their leaving heirs;

1(a) Md. Kamran Kabir and others

.....Petitioners.

-Versus-

The Deputy Commissioner, Sylhet and others.

.....Respondents.

Mr. Fida M. Kamal, Senior Advocate with

Mr. Chanchal Kumar Biswas, Advocate

For the Petitioners.

Mr. Nur Mohammad Azami, DAG

Mr. Zasidul Islam Jony, DAG

Mr. Md. Asif Imran, AAG

Mr. Md. Mostofa Kamal Bachchu, AAG

Mr. Minhazur Rahman, AAG

Mr. Md. Mosaddek Billah, AAG

Mr. S.M. Emamul Musfiqur, AAG

For the respondents.

Heard and Judgment on: The 11th November, 2026

Sikder Mahmudur Razi, J:

1. The instant writ petition concerns the legality of a collective demand for land development tax made against the representatives of 74 families of village Kuchai, Police Station & District- Sylhet.

2. The Rule was issued in the following manner:

Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned notice dated 19.03.1998 issued by the respondent

no. 2 Certificate Officer Sylhet in Certificate Case No. 86/97-98 and the proceedings thereof (Annexure-C) should not be declared to have been made/issued without lawful authority and is of no legal effect and as to why the impugned notice and the proceedings of the Certificate Case No. 86 of 1997-98 should not be declared to have been made illegally and/or such other or further order or orders passed as to this Court may seem fit and proper.

3. The material facts, briefly stated, are that the petitioners are inhabitants of village Kuchai, Police Station & District- Sylhet. Their claim relates to approximately 65 acres of land known as Lohajuri Beel, which, according to them, had long been used for cultivation of boro paddy. A dispute between the villagers and the then Government was decided in Title Suit No. 119 of 1963. By judgment and decree dated 18.05.1965, the learned Munsif, First Court, Sylhet, decreed the suit in favour of the plaintiffs.

4. The petitioners stated that, following the decree, land development tax was paid on behalf of the villagers in the name of Madabbir Ahmed and others. By a registered instrument dated 22.03.1987, the land was subsequently divided among 74 families. The land allotted to a family ranged from 0.21 acres to 2.37 acres. Their further case is that the names of the respective family heads were entered in the revenue record and that tax was thereafter paid separately by the families. They rely upon the mutated record of rights, Annexure-A, and the 74 rent receipts, Annexures-B to B(73), in support of that contention.

5. According to the petitioners, tax was paid up to 1397 B.S. They rely upon a circular issued by the Ministry of Land dated 04.05.1991 corresponding to 20.01.1398 B.S. providing exemption from land development tax in respect of

agricultural holdings up to 25 bighas with effect from the first day of Baishakh, 1398 B.S. Since the land held by each family was below that ceiling, they contend that no tax was payable thereafter.

6. Nevertheless, respondent No. 2 initiated Certificate Case No. 86 of 1997–98 and issued the impugned notice (Annexure- C) under section 7 of the Public Demands Recovery Act, 1913, demanding Tk.1,60,545/- for a period covering 1394 to 1403 B.S. It is also alleged that the notice included 35 recorded persons who had already died.

7. Respondent No. 1 filed an affidavit-in-opposition. Its principal contention is that the entire 65 acres, situated in Mouza Kuchai, J.L. No. 105, Holding No. 525, Khatian No. 1/1, is held jointly by the petitioners as tenants under the Government. According to respondent no. 1, absence of separate individual khatians disentitles them to the claimed exemption and the petitioners are not person aggrieved to maintain this writ petition.

8. We have perused the writ petition, the affidavit- in- opposition, the documents annexed therewith and submission of the learned advocates. The question is whether the respondents have shown a lawful basis for recovering the composite amount demanded through the impugned notice, notwithstanding the division of the land, payments and exemption relied upon by the petitioners.

9. At the very outset let us examine whether the petitioners are person aggrieved to maintain the instant writ petition. The objection of the respondent as made in the affidavit-in-opposition to the effect that the petitioners are not persons aggrieved is without any substance. The demand is directed against the persons through whom the petitioners are claiming and concerns land in which they assert an existing interest.

The recovery process under challenge would directly affect those interests and therefore, they are persons aggrieved as per Article 102 of the Constitution.

10. Now, let us embark upon other issues. The Public Demands Recovery Act, 1913 provides a procedure for recovery of an existing public demand. It does not itself create a tax liability where none otherwise exists. The statutory satisfaction that a demand is due must rest upon an identifiable legal obligation and a properly ascertained amount. Section 7 requires service upon the certificate-debtor of the prescribed notice together with a copy of the certificate. Sections 9 and 10 provide for denial and determination of liability. These safeguards presuppose that the person proceeded against can understand the liability asserted against him and meaningfully dispute it.

11. Although that Act provides a procedure for objections, the present challenge concerns the foundation of a collective demand and the legal basis upon which the respondents have excluded the petitioners' claim to exemption. It is not confined to correction of an isolated calculation. In these circumstances, the availability of an objection before the Certificate Officer does not require this Court to decline examination of the legality of the impugned action under Article 102 of the Constitution.

12. The governing tax framework for the relevant period is the Land Development Tax Ordinance, 1976, read with the applicable exemption measures. Section 3 makes the total agricultural land held by a family or body material to assessment, and subsection 5 of Section 3 defines a family for that purpose. The statutory inquiry therefore concerns the person or unit holding the land and the quantity attributable to that unit. The existence of a common khatian cannot, by itself, dispense with that inquiry.

13. The respondent's proposition that the Ordinance applies exclusively to persons holding land under separate individual khatians is unsupported by the provisions relied upon. A khatian is relevant evidence concerning the holding; it cannot substitute a different test for the test prescribed by law. Equally, separate names or receipts do not conclusively establish that each named person constitutes a separate statutory family. The revenue authority must examine the actual family units and the land attributable to them under the applicable law.

14. Nor does the reference in section 3 to a "body" permit every group of persons appearing in a common record to be treated automatically as one taxable unit. If the respondents seek to assess these persons collectively as a body, they must establish the factual and legal basis for doing so. The affidavit relies upon joint recording and possession, but does not explain why the registered partition, mutation and history of separate payments relied upon by the petitioners should be disregarded in identifying the relevant unit of assessment. Moreover, from Annexure-A to the writ petition, which is the mutation khatain of 1987, it appears that in the 'মন্তব্য' column quantum of land held by each individual group has been identified clearly and separately.

15. The petitioners' claim to exemption is consequently substantial and required consideration. They have pleaded the division among 74 families, specified the range of their respective allotments and relied upon separate tax receipts. The respondent has not answered that claim by identifying any particular family whose aggregate agricultural holding exceeded the applicable ceiling or any particular condition of exemption which that family failed to satisfy. Its principal answer is the absence of separate khatians. For the reasons already stated, that answer is insufficient.

16. In this regard it is pertinent to mention that following independence of Bangladesh, President's Order No. 96 of 1972 waived land revenue (Khajna) for

families holding up to 25 bighas of agricultural land starting from 1st Baishakh 1379 B.S. (April 1972). However, owners still had to pay minor cesses (like development and relief taxes). When the Land Development Tax Ordinance, 1976 came into force on April 14, 1976 (1st Baishakh, 1383 B.S.), it replaced old land revenues with a unified Land Development Tax. During this 15-year period (April 1976 – April 1991), the 25-bigha exemption was abolished, and all agricultural landholders had to pay tax regardless of land size. In April 15, 1991 using powers under Section 3(1A) of the 1976 Ordinance, the Government issued a gazette notification waiving Land Development Tax on agricultural holdings up to 25 bighas effective from April 15, 1991 (1st Baishakh, 1398). The said decision was communicated by the Ministry of Land to all the Deputy Commissioners, Additional Deputy Commissioners (Revenue) and Assistant Commissioners of Land vide memo no. *Bhu:Ma:/Sha-3/Kar/8/91/-132(600)* dated 04.05.1991. On May 30, 1995 (1402 B.S. Revision) through Ministry of Land Memo No. *Bhu:Ma:/Sha-3/Kar/100/92-106(1000)* (effective from 1st Baishakh, 1402 B.S.), the government restructured the tax slabs, reaffirming the 0 taka tax up to 25 bighas (with a nominal *dakhila* receipt fee) and setting progressive rates for holdings above 25 bighas. In September 2023 the Land Development Tax Act, 2023 repealed the Ordinance, 1976 and incorporate the 25-bigha agricultural exemption directly into permanent statutory law.

17. We do not rest our conclusion only upon the arithmetical standard obtained by dividing 65 acres among 74 families. A partition of a particular land cannot establish the actual holding of each statutory family or exclude other land required by law to be taken into account. What is decisive here is that the respondents have demanded a collective amount without undertaking or disclosing the assessment necessary to answer the petitioners' documented claim to separate treatment and exemption.

18. There is, moreover, a fundamental defect in the form and substance of the impugned demand. It is omnibus and indiscriminate in its operation. It proceeds against the recorded representatives collectively without identifying the landholding of each family, the extent to which that family is liable, the year-wise arrears attributable to it, or the basis upon which the total demanded is apportioned. Nor has a legal basis been established for imposing the entire amount jointly upon all the families.

19. If any of the families were under an obligation to pay land development tax, the respondents were required to ascertain that obligation with reference to the relevant family holding and address the recovery notice to the person legally liable. A general demand against the villagers cannot replace that exercise. Each person proceeded against must be able to ascertain the land, period, amount and legal basis of the demand affecting him. The essential particulars may be conveyed through the prescribed notice read with the accompanying certificate and its lawful particulars; they cannot remain uncertain throughout the recovery process.

20. Such uncertainty is also material. A person cannot effectively plead payment, exemption, an erroneous area, an incorrect rate or limitation without knowing the demand made against him. The failure to distinguish the respective liabilities therefore prejudices the very right of objection recognised by sections 9 and 10. In the circumstances of this case, the impugned notice suffers from vagueness and cannot sustain coercive recovery.

21. From Annexure- C it also appears that the starting point of demand is 1394 B.S., whereas the Annexures-B to B(73) evidenced payment up to 1397 B.S.. The respondents therefore, cannot recover an amount already paid. To the extent that it concerns 1398 B.S. onwards, the claim to exemption must be determined by applying

the relevant measure to the legally identified family holdings. The composite demand does not adequately address either question.

22. The limitation period in the instant matter also requires consideration. Section 142 of the State Acquisition and Tenancy Act, 1950 prescribes three years for recovery of an arrear of rent, running from the last day of the year in which it fell due. The claim of the respondents also failed to meet that threshold. However, even if part of the claim survives the challenge of limitation that does not cure the inherent defect of the impugned demand.

23. We accordingly find that the petitioners' principal grounds concerning separate family holdings, prior payments and consideration of the exemption are cogent. Additionally, the omnibus character and vagueness of the notice render the impugned demand unsustainable.

24. In the result, the Rule is made absolute without any order as to costs.

25. The impugned notice dated 19.03.1998 issued by the respondent no.2 in Certificate Case No. 86 of 1997–98, as contained in Annexure-C to the writ petition, and the proceedings founded upon that composite demand are hereby declared to have been issued and initiated without lawful authority and to be of no legal effect.

Communicate a copy of this judgment and order to the respondents forthwith.

(Sikder Mahmudur Razi, J:)

I agree.

(Fatema Anwar, J:)