

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

Present:

Justice Md. Toufiq Inam.

Company Matter No. 157 of 2023.

(Arising out of an application under Section 43 of the Companies Act, 1994).

In the matter of :

1. Sajjad Ahmed Rubel,
2. Shakil Ahmed Shakil, Both sons of late Mahatabuddin Ahmed, permanent address: 21/2, Kheelje Road, Block-B, Mohammadpur, Dhaka-1207, present address : House # 32 (4th Floor), Metropolitan Housing, Babar Road, Mohammadpur, Dhaka-1207.

----- Petitioners.

-Versus-

C.A. Tower Ltd. having its office at C.A. Tower Bhaban, Road No.5, House No.9, Block-K, Baridhara, Gulshan, Dhaka-1212 and others.

----- Respondents.

Mr. Khaled Ahmed, Advocate.

----- For the Petitioners.

Mr. Abdullah Al Mahmud, Advocate with
Mr. S.M. Wahidul Enam, Advocate.

---- For the Respondent Nos. 4(C) and 4(d).

Heard On: 24.08.2026, 08.09.2026;

Judgment delivered On: 10.09.2026.

Md. Toufiq Inam, J:

This is an application under section 43 of the Companies Act, 1994 seeking rectification of the Register of Members of respondent No.1- *C.A. Tower Limited* in respect of 1,000 shares relating to Flat No. 3W, C.A. Tower, House No. 9, Road No. 5, Baridhara, Dhaka-1212.

The petitioners are two brothers, sons of late Mahtabuddin Ahmed, and late Faisal Ahmed Sohel, predecessor of the contesting

respondents, was another son of the said deceased. The petitioners' case, in substance, is that during 1996 their father purchased/allotted Flat No. 3W, which was then being constructed by ZNR Enterprise Limited, and that, pursuant to an application dated 13.05.1996 made by their father on behalf of his three sons, namely, late Faisal Ahmed Soheli, Sajjad Ahmed Rubel and Shakil Ahmed Shakil, ZNR Enterprise Limited issued an allotment letter dated 15.05.1996 in the names of all three brothers. It has been stated that C.A. Tower Limited was subsequently incorporated as a private limited company with the Registrar of Joint Stock Companies and Firms under Registration No. C-30057/95 dated 21.12.1995 and that the owners of the flats thereafter became shareholders of the company. Notwithstanding the original allotment in the names of all three brothers, the 1,000 shares corresponding to Flat No. 3W were subsequently recorded in the sole name of late Faisal Ahmed Soheli on 30.07.1998, thereby wrongfully excluding the petitioners from the Register of Members.

The petitioners' father died on 26.11.2009 and thereafter the three brothers took possession of the flat. According to them, late Faisal Ahmed Soheli managed the flat and collected rent therefrom, assuring the petitioners that their respective shares of the rental income would be paid to them. As such payments were allegedly not made despite repeated demands, the petitioners instituted C.R. Case No. 1563 of 2022 under section 420 of the Penal Code on 04.10.2022. During the inquiry conducted in connection with the said criminal case, they came to know for the first time that the shares relating to the flat had been recorded solely in the name of late Faisal Ahmed Soheli. The petitioners allege that their names had been deliberately omitted from the Register of Members through collusion and mala fide conduct on the part of the persons concerned and that the impugned entry was therefore made without sufficient cause. On that basis, they seek rectification of the Register by entering their names in respect of the said shares.

The application has been opposed by the respondents. Their case is that the shares in question were duly issued and recorded in the name of late Faisal Ahmed Soheli on 30.07.1998 and that the said entry continued without challenge for almost twenty-five years. It is contended that the petitioners were fully aware of the affairs of the flat and of the position in which late Faisal Ahmed Soheli was dealing with the property, yet they never raised any objection to the shareholding or sought rectification of the Register during his lifetime.

Mr. Khaled Ahmed, learned Advocate for the petitioners submits that the allotment letter dated 15.05.1996 was issued in the names of all three brothers and, therefore, clearly establishes their joint entitlement to Flat No. 3W and the corresponding shares. He submits that the subsequent recording of the shares solely in the name of late Faisal Ahmed Soheli was contrary to the original allotment and was made without the knowledge or consent of the petitioners.

On the other hand, Mr. Abdullah Al Mahmud, learned Advocate for the ProformaRespondent Nos. 4 (c) and 4(d) submits that the petitioners' claim rests merely on the original allotment letter, which cannot, by itself, establish any subsisting title or shareholding interest after the subsequent recording of the shares in the name of late Faisal Ahmed Soheli. He further submits that the subsequent conduct of the parties, including the appointment of the petitioners' father and thereafter their mother to deal with the flat on behalf of late Faisal Ahmed Soheli, with both petitioners signing the latter instrument as witnesses, clearly demonstrates that the petitioners themselves accepted his ownership and cannot now assert title solely on the basis of the original allotment letter. Relying upon the waiver and delay he cites the cases of *Tabassum Kaiser vs Partex Cables reported in 30 BLC (AD) 276* and *Shamsul Alam Bhuiyan vs Joint Stock Companies reported in 23 BLC (HCD) 215*.

This court has heard the learned Advocates for the parties and perused the application, affidavits and documents placed on record. The question before this court is whether the petitioners have established that their names were omitted from the Register of Members without sufficient cause and, consequently, whether the Register requires rectification in respect of the 1,000 shares relating to Flat No. 3W. Section 43 of the Companies Act, 1994 provides a remedy where the name of any person is, without sufficient cause, entered in or omitted from the Register of Members. Sub-section (3) further enables the Court, where necessary for the purpose of rectification, to decide any question relating to the title of a person who is a party to the application. Thus, in the present case, this court is competent to examine the petitioners' claim of title to the extent necessary for determining whether the Register requires rectification. The mere fact, however, that the Court possesses such jurisdiction does not relieve the petitioners of the obligation to establish that the impugned entry was made without sufficient cause.

There is no dispute that the allotment letter dated 15.05.1996 was issued in the names of the three brothers. The petitioners place considerable reliance upon this document and seek to contend that, since their names appeared therein, they acquired and continued to retain a corresponding proprietary interest in the flat and, consequently, an entitlement to the shares representing the flat. This court is of the view that the submission cannot be accepted in such an absolute form. The allotment letter may undoubtedly constitute evidence of the original allotment position in 1996; but the issue before this court is not confined to what the position was at the time of the original allotment. The relevant question is whether, notwithstanding the subsequent events, the petitioners have established that they continued to possess a subsisting proprietary or

shareholding interest and that their exclusion from the Register in 1998 was without sufficient cause. An allotment letter, standing alone, cannot satisfactorily answer that question where the subsequent record shows that the shares were entered in the name of another person and that such entry continued unchallenged for almost twenty-five years.

In this connection, the subsequent conduct of the parties assumes considerable importance. During the lifetime of the petitioners' father, the predecessor of the respondents, treating himself as the owner of the flat, appointed the petitioners' father as his constituted attorney to deal with and manage the flat on his behalf. After the death of the petitioners' father, the same person subsequently appointed the petitioners' mother to deal with the flat on his behalf by a further instrument of authority. Of particular significance is the fact that both the petitioners admittedly signed that instrument as witnesses. If the petitioners themselves had continued to assert an independent proprietary interest in the flat by virtue of the allotment letter of 1996, their participation as witnesses to an instrument by which their mother was authorized to deal with the flat on behalf of the person treated as its owner calls for a satisfactory explanation. No convincing explanation has been placed as to why the petitioners, while now claiming that they themselves were entitled to the flat and the corresponding shares, would participate in such subsequent dealings without raising any objection to the ownership or authority of late Faisal Ahmed Sohel. The admitted conduct of the petitioners is therefore a significant circumstance which cannot be ignored in determining the nature of the right now asserted.

The position is further strengthened by the fact that the shares relating to the flat were recorded in the name of late Faisal Ahmed Sohel on 30.07.1998 and remained so until his death in 2023. During this entire

period, extending over nearly twenty-five years, there is no material before this court showing that either of the petitioners challenged the entry, demanded rectification of the Register, asserted their alleged shareholding before the company, or otherwise took any step to establish that the shares had been wrongly recorded. The petitioners seek to explain this prolonged silence by stating that they became aware of the position only in 2022 during the inquiry relating to the criminal case. This court finds such explanation difficult to accept in the facts and circumstances of the present case. The petitioners were not strangers to the property. They were the brothers of late Faisal Ahmed Soheli, had been named in the original allotment letter, had admittedly been involved in the affairs of the flat, and, most importantly, had themselves participated as witnesses in subsequent dealings relating to the flat. Petitioner No.2 is also stated to have acted as a witness to the lease transaction concerning the property. These circumstances make it difficult to accept that the petitioners remained wholly unaware, throughout the intervening period, of the manner in which the flat was being dealt with and of the position asserted by late Faisal Ahmed Soheli.

This court is conscious that section 43 does not prescribe a specific period of limitation for an application for rectification and, therefore, the application cannot be rejected merely because it was filed after a particular number of years. Nevertheless, an unexplained delay of nearly twenty-five years is a material circumstance when the Court is required to determine whether the impugned entry was made without sufficient cause and whether the present claim represents a genuine assertion of a subsisting right. Mere passage of time, by itself, may not amount to waiver or acquiescence; but prolonged silence, when accompanied by conduct inconsistent with the right subsequently asserted, may legitimately be taken into consideration. In the present case, the delay is not standing alone. It is accompanied by the

petitioners' participation in subsequent dealings concerning the flat, including their admitted signatures as witnesses to the instrument by which their mother was authorised to deal with the property on behalf of the person treated as owner. The cumulative effect of these circumstances materially weakens the petitioners' present assertion that the impugned entry was clandestinely made without their knowledge or consent.

The allegation of fraud and collusion also requires consideration. The petitioners have alleged that their names were deliberately omitted from the Register through collusion between the persons concerned. Such an allegation, however, must be supported by material capable of establishing that the impugned entry was in fact made without sufficient cause. Apart from relying upon the original allotment letter, the petitioners have not produced any contemporaneous document demonstrating that, in or around 1998, they or their father objected to the recording of the shares in the name of late Faisal Ahmed Soheli. Nor have they produced any subsequent document evidencing an assertion by them of an independent shareholding or proprietary interest in the flat during the long period in which the impugned entry remained on the Register. In contrast, the subsequent documents and conduct relied upon by the respondents demonstrate a course of dealings in which late Faisal Ahmed Soheli was treated as the person entitled to deal with the property. While such conduct may not, standing alone, conclusively determine title, it is plainly relevant to the question whether the petitioners have established that their exclusion from the Register was without sufficient cause.

This court has also considered the petitioners' claim of title specifically on the basis of the allotment letter dated 15.05.1996. It is the considered view, there is a distinction between establishing the original allotment and establishing a subsisting title or shareholding

interest at the time when rectification is sought. The allotment letter may establish that, at the initial stage, the flat was allotted in the names of the three brothers. The petitioners' claim of title, however, cannot rest merely upon the allotment letter dated 15.05.1996. An allotment letter, by its very nature, evidences the original allotment or contractual arrangement in respect of the flat; it does not, without more, clearly establish the nature, extent or continuance of the proprietary or shareholding rights claimed by the allottee. The petitioners are required to demonstrate not only that their names appeared in the original allotment letter, but also that such allotment resulted in, and continued to confer upon them, a subsisting and enforceable interest in the flat and the corresponding shares. Particularly in the present case, where subsequent events disclose that the shares representing the flat were recorded in the name of late Faisal Ahmed Sohel in 1998 and that the parties thereafter acted upon that position for nearly twenty-five years, the original allotment letter cannot be considered in isolation.

More importantly, the petitioners have not produced any subsequent document showing that, after the original allotment, they continued to assert or exercise any independent proprietary or shareholding right in respect of the flat. On the contrary, the subsequent conduct of the parties points in a different direction. During the lifetime of the petitioners' father, the predecessor of the respondents, treating himself as the owner of the flat, appointed the petitioners' father as his constituted attorney to deal with the flat on his behalf. After the death of their father, the same owner appointed the petitioners' mother for the same purpose, and both the petitioners admittedly signed that instrument as witnesses. Such subsequent conduct is wholly material in determining whether the petitioners' alleged rights under the original allotment letter continued to subsist.

This court is, therefore, of the view that the allotment letter may establish the position at the stage of the original allotment, but it cannot, standing alone and without any supporting subsequent evidence of subsisting rights, be treated as conclusive proof of the petitioners' present title or entitlement to the shares. To hold otherwise would be to disregard the subsequent corporate record and the conduct of the parties over a prolonged period. The question before us is not simply whether the petitioners were named in the original allotment letter, but whether they have established a continuing right which was subsequently and without sufficient cause omitted from the Register of Members. On the materials before us, they have failed to establish such continuing right.

It is, therefore, not necessary for this court to hold that the allotment letter was of no legal significance. Rather, this Court's finding is that the allotment letter, standing alone, is insufficient to establish the petitioners' present title or entitlement to the shares for the purpose of obtaining rectification under section 43. The petitioners were required to establish not merely that their names appeared in the original allotment letter, but that the subsequent entry of the shares in the name of late Faisal Ahmed Sohail was without sufficient cause. On the materials before us, they have failed to do so. The uninterrupted continuation of the impugned entry from 1998, the absence of any contemporaneous objection, the subsequent dealings with the flat, the appointment of the petitioners' father and thereafter their mother to deal with the property on behalf of the person treated as owner, and the admitted participation of both petitioners as witnesses to the latter instrument, when considered cumulatively, are inconsistent with the case now advanced.

This court accordingly finds that the petitioners have failed to establish that the name of late Faisal Ahmed Sohail was entered in the

Register of Members without sufficient cause or that their names were omitted therefrom in circumstances warranting rectification under section 43 of the Companies Act, 1994. The petitioners' prolonged silence and subsequent conduct further constitute circumstances of acquiescence which materially weaken their claim. This court is not treating the passage of time as an independent statutory bar; rather, the delay, together with the surrounding conduct and absence of objection, has been considered as an important evidentiary circumstance in determining whether the statutory foundation for rectification has been established.

For the reasons stated above, this court finds that the petitioners have failed to establish any subsisting title or shareholding interest on the basis of the allotment letter dated 15.05.1996 alone and have further failed to establish that the impugned entry in favour of late Faisal Ahmed Sohel was made or retained without sufficient cause. The application under section 43, therefore, does not merit interference by this Court.

Accordingly, the application is dismissed without any order as to costs.

(Justice Md. Toufiq Inam)