

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

**Writ Petition No. 6034 of 2023**

In the matter of:

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

AND

In the matter of:

Md. Rustum Shana

..... **Petitioner.**

**-Versus-**

Government of Bangladesh, represented  
by the Secretary, Ministry of Land,  
Bangladesh Secretariat, Ramna, Dhaka,  
and others,

... **Respondents.**

Mr. Muha Noman Hossain, advocate,

...For the **petitioner.**

Mr. Bepul Bagmar, D.A.G

...For the **respondent No.1.**

Mr. A.B.M. Altaf Hossain, Senior Advocate with  
Mr. Md. Abul Kashem, Advocate,

.....**For Respondent No.9.**

**Judgment on: 12.12.2023**

**Present:**

**Mr. Justice Md. Khasruzzaman**

**And**

**Mr. Justice K M Zahid Sarwar**

**Md. Khasruzzaman, J:**

In an application under article 102 of the Constitution, on  
28.05.2023 *Rule Nisi* under adjudication was issued in the  
following terms:

*“Let a Rule Nisi be issued calling upon the respondents to show  
cause as to why the order dated 08.05.2023 passed by the  
Additional Divisional Commissioner(Revenue), Khulna in  
Miscellaneous Appeal No. 21 of 2023 allowing the appeal along*

*with setting aside the order of Additional Deputy Commissioner(Revenue), Khulna in Miscellaneous Appeal No. 06 of 2023 (সায়রাত) and directing to give lease of "ক্ষেপনা মৌজা জলকর (বদ্ধ) জলমহল" for the year of 1430 to 1432 B.S. in favour of the "পাটুলিয়া ও দশবাড়িয়া মৎসজীবী সমবায় সমিতি" should not be declared to have been passed without any lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper."*

Facts necessary for disposal of the *Rule Nisi*, in short, are that the petitioner is a President of Patnikhali Purbopara Motsojibi Somobai Samity (hereinafter referred to as the petitioner samity). Respondent No. 9 is a President of Patulia Dashbaria Motsojibi Somobai Samity Limited (hereafter referred to as the respondent samity). On 16.01.2023 respondent No.5, Upazila Nirbahi Officer (UNO), Koyra, Khulna vide Memo No.31.44.4753.003.001.99.23-10 dated 16.01.2023 invited a tender for leasing out a Jalmahal namely- "ক্ষেপনা মৌজা জলকর (বদ্ধ) জলমহল" for a period of 03(three) years commencing from 1<sup>st</sup> Boishakh 1430 B.S. to 30<sup>th</sup> Choitra 1432 B.S.(Annexure-A). The petitioner samity purchased a tender form to participate in the tender scheduled to be held on 28.02.2023. The petitioner samity quoted the lease money of TK.1,25,500.00. The respondent samity also purchased a tender form to participate in the said tender. The respondent samity quoted the lease money of TK.1,12,500.00 as appears from the resolution of the meeting held on 28.02.2023 (Annexure-B). Upon a scrutiny of the applications by the Upazila Jalmahal Management Committee, the said Jalmahal was leased out to the petitioner samity by resolution

taken in a meeting held on 28.02.2023 (Annexure-B). Thereafter, on 23.03.2023 the respondent No.5 issued work order in favour of the petitioner samity directing him to deposit the lease money within 06.04.2023 and take possession of the Jalmahal by executing a contract on a non judicial stamp (Annexure-C). It is stated that in compliance of the said work order the petitioner samity deposited the full amount of the lease money by three challan Nos. 24, 25 and 26 all dated 28.03.2023 (Annexure-D, D-1 and D-2). It is also stated that after depositing the lease money the petitioner samity was handed over the possession of the Jalmahal on 1<sup>st</sup> of Boishakh 1430 B.S.

In the meantime, challenging the resolution dated 28.02.2023 so far it relates to leasing out of the aforesaid Jalmahal, the respondent samity preferred Miscellaneous Appeal No.06 of 2023 before the Additional Deputy Commissioner (Revenue), Khulna. The Additional Deputy Commissioner (Revenue), Khulna vide his order dated 12.04.2023 dismissed the appeal by affirming the decision dated 28.02.2023 of the Upazila Jalmahal Management Committee, Koyra, Khulna. After dismissal of his appeal by the Additional Deputy Commissioner (Revenue), the respondent samity preferred Miscellaneous Appeal No.21 of 2023 before the Additional Divisional Commissioner (Revenue), Khulna. The Additional Divisional Commissioner (Revenue) Khulna vide his order dated 08.05.2023 allowed the appeal on contest by setting aside the order dated 12.04.2023 passed by the Additional Deputy Commissioner

(Revenue), Khulna in Miscellaneous Appeal No.06 of 2023 (সায়রাত) and thereby directing the respondent No.5 to lease out the Jalmahal in favour of the respondent samity for the year commencing from 1430 to 1432 B.S..

Challenging the order dated 08.05.2023 passed by the Additional Divisional Commissioner (Revenue), Khulna the petitioner samity filed the writ petition and obtained the *Rule Nisi* and an order of stay operation of the aforesaid impugned order dated 08.05.2023.

Respondent No.9 (respondent samity) filed *affidavit-in-opposition* denying the material averments made in the writ petition and contending *inter-alia* that the writ petition is a writ of certiorari in nature. The petitioner samity failed to take any legal ground to show that the Additional Deputy Divisional Commissioner (Revenue), Khulna committed illegality in passing the impugned order. The petitioner samity in writ petition stated that after depositing the full amount of lease money, the Upazila Nirhabhi Officer (UNO) gave possession of the said Jalmahal to the petitioner on 1<sup>st</sup> Boishakh 1430 is out and out false representation. The petitioner samity could not annex any document to show that possession was handed over to them. As such the petitioner samity is guilty of false representation of fact. However, it is stated that the meeting held on 28.02.2023 and it was held that out of the two applicant samities, the respondent samity is nearer to the Jalmahal but on the basis of the enquiry report dated 02.03.2023 of the

Upazila Co-operative Officer the Jalmahal was leased out to the petitioner samity in violation of clause (Cha) of sub article (4) of article 5 of the Government Jalmahal Management Policy, 2009 (as amended upto 2012). It is also stated that how the Upazila Jalmahal Management Committee could consider the enquiry report of the Upazila Cooperative Officer dated 02.03.2023 in the resolution taken in a meeting held on 28.02.2023. So, the decision of the Upazila Jalmahal Management Committee in leasing out the Jalmahal in favour of the petitioner samity is illegal and not sustainable in law. In article 6 of the Government Jalmahal Management Policy, 2009 (amended in 2012) it is provided that in absence of Assistant Commissioner(Land), the Fisheries Officer of the concerned Upazila will perform the functions as Member-Secretary of the Upazila Jalmahal Management Committee. Whereas the minutes of the meeting was communicated by the Upazila Nirhabi Officer as President of the Jalamahal Management Committee as well as Member-Secretary which means he has played dual role in the meeting and as such, the decision dated 28.02.2023 suffers from major illegalities. It is stated that against the decision dated 28.02.2023 of the Upazila Jalmahal Management Committee the respondent samity preferred Miscellaneous Appeal No. 06 of 2023 (সায়রাত) before the Deputy Commissioner, Khulna which was ultimately heard by the Additional Deputy Commissioner (Revenue). When his appeal was pending before the Additional Deputy Commissioner (Revenue), the respondent No.5 issued a notice dated 23.03.2023 to the petitioner

samity for depositing the lease money which is not in accordance with law. The Additional Deputy Commissioner (Revenue) called for an enquiry report of three member committee headed by Revenue Deputy Collector (RDC), Khulna. The said committee submitted its report on 10.04.2023 stating that the respondent samity is nearer to the Jalmahal. This report was seen by the Additional Deputy Commissioner (Revenue). Despite of having such clear report the Additional Deputy Commissioner (Revenue) wrongly came to a finding that from the report of the Revenue Deputy Collector, Khulna the petitioner samity is nearer to the Jalmahal and thereby dismissed the appeal. This finding is outright illegal and without any basis. But the Additional Divisional Commissioner (Revenue) rightly found that the report of the RDC and other two surveyors which was seen by the Additional Deputy Commissioner (Revenue) affixing with official seal is more admissible and acceptable wherein the distance of the applicant samity has been mentioned and as such, the respondent samity is nearer to the Jalmahal. The Additional Divisional Commissioner (Revenue) also raised question about the consideration of the enquiry report dated 02.03.2023 of the Upazila Cooperative Officer in the meeting held on 28.02.2023. Accordingly, the Additional Divisional Commissioner (Revenue) has rightly allowed his appeal with direction to lease out the Jalmahal in his favour. By making false statement on the possession of the Jalmahal, the writ petitioner misled the Court and got the *Rule Nisi* and order of stay, and for improper conduct of the writ petitioner, he cannot get any equitable relief under article 102 of the

Constitution and as such the *Rule Nisi* is liable to be discharged with cost.

Mr. Md. Muha Noman Hossain, the learned Advocate appearing on behalf of the petitioner submits that the petitioner samity is situated near the Jalmahal as per provision of clause (Cha) of sub article (4) of article 5 of the Government Jalmahal Management Policy, 2009 (as amended in 2012) which was found by the Additional Deputy Commissioner (Revenue) in his order dated 12.04.2023. But the Additional Divisional Commissioner (Revenue), Khulna erred in reversing the findings of the Additional Deputy Commissioner (Revenue) while passing the impugned order which is liable to be declared to have been issued without lawful authority. He further submits that the impugned order is against the principle of natural justice and as such the same is illegal and without lawful authority. He also submits that the petitioner has already deposited the lease money and took possession of the Jalmahal and is still enjoying the same and as such, the impugned order is infructuous and consequently, the same is liable to be declared to have been issued without lawful authority.

Mr. A.B.M. Altaf Hossain, the learned Advocate along with Mr. Md. Abul Kasem, the learned Advocate appearing on behalf of the respondent No.9 samity submits that regarding leasing out the Jalmahal the Jalmahal Management Committee will determine which one of the applicant samities local and is nearer to the Jalmahal and whether the members of the samity are real

fishermen according to clause (cha) of sub article (4) of article 5 of the Government Jalmahal Management Policy, 2009 (as amended in 2012). Referring to the resolution dated 28.02.2023 and the enquiry report on the distance of the applicants from the Jalmahal, he further submits that the distance of the respondent samity is about 1.5 K.M. and that of the petitioner samity is about 2.61 K.M. and as such the respondent samity is entitled to get the lease of the Jalmahal. The Upazila Jalmahal Management Committee and the Additional Deputy Commissioner (Revenue) in flagrant violation of the Government Jalmahal Management Policy leased out the Jalmahal in favour of the writ petitioner. The Additional Divisional Commissioner (Revenue) on proper consideration of the finding of the resolution of the Upazila Jalmahal Management Committee and the enquiry report on the distance of the applicants from the Jalmahal came to a finding that the respondent samity is nearer to the Jalmahal. Accordingly, he has prayed for discharging the *Rule Nisi*.

We have considered the submissions advanced by the learned Advocates for both the parties, perused the writ petition, affidavit-in-opposition and all other connected papers annexed thereto as well as the Government Jalmahal Management Policy, 2009 (amended upto 2012).

By the impugned order, the Additional Divisional Commissioner (Revenue), Khulna directed the Upazila Nirbahi Officer and President of the Upazila Jalmahal Management



Committee to lease out the Jalmahal in favour of the respondent samity.

So, the point involved in this Rule Nisi is whether the impugned order dated 08.05.2023 passed by the Additional Divisional Commissioner (Revenue), Khulna in Miscellaneous Appeal No. 21 of 2023 is lawful or not?

To answer this point at first we need to go through the relevant law on which the authority should decide which one of the applicants is entitled to get the lease. The law is very clear on this matter. Clause (Cha) of sub-article (4) of article 5 of the Government Jalmahal Management Policy, 2009 (as amended in 2012) reads as follows:

“(চ) জলমহালটি যে জেলায় অবস্থিত সংশ্লিষ্ট জলমহালের তীরবর্তী বা নিকটবর্তী সেই জেলার প্রকৃত মৎস্যজীবী সমিতিতে জলমহালটি ইজারা বন্দোবস্ত প্রদান করতে হবে।”

So, as per the law as quoted above, to get lease of a Jalmahal the applicant samity must be situated on the bank of the Jalmahal or the samity is nearer to the Jalmahal and side by side the samity must be a real fishermen samity. Another question may arise, what will be the determining factor in a case when it is found that more than one applicants are situated on the same distance from the Jalmahal. In that case only question of consideration of the high quoted lease money will come into play for taking decision in accordance with law.

In the present case only two applicants submitted their tenders and the petitioner samity was leased out to the Jalmahal considering the lease money quoted in the tender. It appears from the resolution dated 28.02.23 taken by the Upazila Jalmahal Management Committee that out of the two samities Patulia and Dashbaria Motshojibi Somobai Samity Limited, Koyra, Khulna is nearer to the Jalmahal and there is an allegation against it. Thereafter, it is stated that উক্ত অভিযোগের বিষয়ে উপজেলা সমবায় কর্মকর্তা তদন্ত করে ০২.০৩.২০২৩ খ্রি: তারিখে ৮৯ নম্বর স্মারকে প্রতিবেদন দাখিল করেছেন। অভিযোগের সত্যতা প্রমানিত হওয়ায় উপজেলা সমবায় কর্মকর্তা এর সুপারিশের ভিত্তিতে এবং ইজারা মূল্য বেশী হওয়ায় পাটনীখালী পূর্ব পাড়া মৎস্যজীবী সমবায় সমিতি লি:, কয়রা, খুলনা বিধায় উক্ত সমিতির অনুকূলে বাংলা ১৪৩০-১৪৩২ মেয়াদে ইজারা প্রদানের বিষয়ে বিস্তারিত আলোচনা হয়। সভায় উপস্থিত সকল সদস্য উক্ত প্রস্তাবে একমত পোষন করেন। This finding is not in accordance with law. Moreover, the resolution has been adopted in a meeting held on 28.02.2023. So, it is nothing but ridiculous that how the committee could consider the report of the Upazila Cooperative Officer in their meeting held on 28.02.2023. So, the decision is completely illegal and without any basis. From the record it further appears that the Additional Deputy Commissioner (Revenue) Khulna called for an enquiry report from a three member enquiry committee headed by Revenue Deputy Collector. The Revenue Deputy Collector, Khulna vide report dated 10.04.2023 mentioned the distance of the two applicants. On perusal of which it appears that the respondent samity is 1.5 K.M. away from the Jalmahal and the petitioner samity is 2.61 K.M. away from the Jalmahal. This report was seen by the Additional

Deputy Commissioner (Revenue) by his initial and affixing official seal.

In spite of the fact, the Additional Deputy Commissioner (Revenue) dismissed the appeal and affirmed the decision of the Upazila Jalmahal Management Committee and thereby committed serious illegality in law. The Additional Divisional Commissioner (Revenue) has rightly appreciated the matter and came to a definite finding over the report of the RDC in the following manner:

“উপজেলা জলমহাল ব্যবস্থাপনা কমিটির ২৮/০২/২০২৩ তারিখের কার্যবিবরণীতে উল্লেখ আছে আপীলকারী সমিতি নিকটবর্তী। অতিরিক্ত জেলা প্রশাসক(রা:), খুলনা আদালত থেকে RDC ও অপর ২ জন সার্ভেয়ার কে দিয়ে যে দুরত্ব প্রতিবেদন গ্রহন করেছেন সেখানে দেখা যাচ্ছে একই তারিখে স্বাক্ষরিত ২টি প্রতিবেদনে পাটুলিয়া ও দশবাড়িয়া মৎস্যজীবী সমিতির দুরত্ব একটিতে উল্লেখ আছে ১.৫ কি:মি: এবং পাটনীখালী মৎস্যজীবী সমিতির দুরত্ব উল্লেখ আছে ২.৬১ কি: মি: এই প্রতিবেদনে ADC(R) Seen করে সীল স্বাক্ষর মারা আছে। এটি নথিতে সংরক্ষন করা হয়নি। আপীলকারী সমিতি প্রতিবেদনটি দাখিল করেছেন। অপর একই তারিখের প্রত্যয়নে দেখা যাচ্ছে আপীলকারী সমিতির দুরত্ব ২.৬১ কি:মি: প্রতিপক্ষের দুরত্ব ১.৫ কি:মি: একই তারিখে স্বাক্ষরিত দুরত্ব প্রতিবেদন ভিন্ন ভিন্ন। এক্ষেত্রে অতিরিক্ত জেলা প্রশাসক(রা:) স্বাক্ষরিত ও সীল স্বাক্ষর যুক্ত প্রত্যয়ন/প্রতিবেদনটি অধিকতর গ্রহণীয় বলে বিবেচিত হলো। কারন উপজেলা কার্যবিবরণীতে উল্লেখ আছে আপীলকারী সমিতি নিকটবর্তী।”

We do not find any illegality in the said finding of the Additional Divisional Commissioner (Revenue). Another finding of the impugned order is on the enquiry report dated 02.03.2023 made by the Upazila Cooperative Officer. Under no circumstances report dated 02.03.2023 can be considered in the previous meeting held on 28.02.2023 relying on which the Upazila Jalmahal

Management Committee committed serious illegality in leasing out the Jalmahal in favour of the petitioner samity. In view of the above discussion and findings, we are of the view that the Additional Divisional Commissioner (Revenue), Khulna did not commit any illegality in passing the impugned order.

The writ petitioner took a ground in the writ petition that the impugned order is against the principle of natural justice. In this respect we have gone through the impugned order. It appears that he was present and his learned Advocate was also present. Mere allegation is not suffice to prove the same against anyone without any supporting materials. The petitioner also took a ground that he has already deposited the lease money and possession of the Jalmahal was handed over to him.

It appears from Annexure-C that the respondent No.5 vide his notice dated 23.03.2023 directed the petitioner samity to deposit the lease money and take possession on executing a contract on the non judicial stamp. Nowhere in the writ petition nor in the supplementary affidavit, the petitioner could annex any paper to show that he was given the possession of the Jalmahal. Moreover, when the notice was issued, appeal was pending before the Additional Deputy Commissioner (Revenue), Khulna and immediately after dismissal of his appeal he filed appeal before the Divisional Commissioner, Khulna and got an order of stay. In such view of the matter, we are of the view that the petitioner by making false statement on possession of the Jalmahal misled the Court

and obtained the *Rule Nisi* along with an order of stay of the impugned order. There is long line of decisions of this Court that for improper conduct the applicant is not entitled to get any relief under article 102 of the Constitution.

In view of the reasons and discussions made hereinabove, we do not find any substance in the submissions of the learned Advocate for the writ petitioner as well as merit in the *Rule Nisi*. Accordingly, the *Rule Nisi* is liable to be discharged.

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

Communicate the order.

**K M Zahid Sarwar, J:**

I agree.