

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

Present:

Justice Sheikh Abdul Awal

And

Justice S.M. Iftekhar Uddin Mahamud

Writ Petition No. 7220 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. Jahangir Hossain and others

..... Petitioners.

-Versus-

The Administrator of Waqfs and others.

..... Respondents.

Mr. Md. Nur Alam, Advocate

..... For the Petitioners.

Mr. Md. Mokhesur Rahman with

Mr. Md. Akmal Hossain, Advocate

..... For the Respondent No. 5.

Mr. Md. Mohsin Kabir, D.A.G with

Mr. A.K.M. Rezaul Karim Khandaker, D.A.G with

Ms. Shahin Sultana, A.A.G with

Mr. Md. Manowarul Islam Uzzal, A.A.G with

Mr. Md. Moklesur Rahman, A.A.G

..... For the Government.

Heard and Judgment on 02.12.2025.

Sheikh Abdul Awal, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why Memo No. 16.02.0000.013.31.460.23/189 dated 10.04.2023 issued by the

respondent No. 1 for evicting the petitioners from the scheduled premises of the Haji Golam Nabi Waqf Estate (Annexure-N) should not be declared to have been made without any lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

Material facts of the case as stated in the writ petition, briefly, are that the petitioners as tenants possessed 4 suit shops for conducting business situated on the land of Haji Golam Nabi Waqf Estate and respondent No.5 issued a notice on the petitioners claiming rents on 27.12.2020 and thereafter the Waqf Administrator (Respondent No.1) after preliminary inquiry also issued an evicting notice upon the petitioners on 10.04.2023 (Annexure-N).

Aggrieved thereby the petitioners preferred this Writ Petition and obtained the present Rule.

Mr. Md. Nur Alam, the learned Advocates appearing for the petitioner submits that the petitioners are very much respectful in law and the petitioners have been paid rents for their suit shops. The learned Advocate further relying on the decision reported in 10 BLC (AD) 171 submits that since the petitioners are neither stranger nor trespasser as regard to Waqf property rather being the tenant of Waqf Estate and the said tenancy having not been terminated the order of administrator of Waqf for eviction of the petitioners as per provisions of section 64(1) of the Waqfs Ordinance cannot be considered as legal, rather the said order is misconceived one.

Mr. Md. Mokuhlesur Rahman, the learned Advocate appearing for the respondent No.5 submits that the petitioner No.1 is not a tenant, petitioner Nos. 2&3 took rent of the suit

premises from earlier Mutwalli of Haji Golam Nabi Waqf Estate by executing a rent agreement. He adds that the said rent agreement has already been expired on 30.12.2023 and that at this stage the petitioners are illegal occupant, they are not tenants whatsoever. He further submits it is on record that the eviction notice initiated by the Waqfs Administrator involves specific statutory procedures, if aggrieved the legal remedy is indeed an appeal under Section 64(2) of the Waqfs Ordinance and as such, this writ petition is misconceived and not maintainable.

Having heard the learned advocate for the parties and having gone through the materials on regard including the writ petition along with annexures as filed thereto.

On a scrutiny of the record it appears that the petitioner No.1 is not at all a tenant and the Waqf Administrator issued a notice for eviction him as illegal occupant and the petitioner Nos. 2&3 possessing the suit shops by way of sub-let and the Waqf Administrator after investigation into the matter issued a notice (Annexure-N) stating- “তদশ্রেণিতে ওয়াকফ পরিদর্শক তদন্তপূর্বক প্রতিবেদন দাখিল করেছেন। দাখিলকৃত তদন্ত প্রতিবেদন মোতাওয়াল্লী কর্তৃক আনীত অভিযোগের সত্যতা পাওয়া গেছে মর্মে উল্লেখ করা হয়েছে।

এমতাবস্থায়, উক্তি আবেদনের শ্রেণিতে নিম্নতফসিল বর্ণিত ওয়াকফ সম্পত্তি হওয়ায় বর্ণিত ব্যক্তিগণকে ওয়াকফ অদ্যাদেশ ১৯৬২ এর ৬৪(১) ধারার বিধানমতে উচ্ছেদ করে সম্পত্তির দখল মোতাওয়াল্লীর বরাবর বুঝিয়ে দেয়ার প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য অনুরোধ করা হলো।”

This narration certainly indicates that the Waqf Administrator considered all the material aspects of the matter and thereafter, recorded the eviction notice. Further, it appears that the petitioners are defaulter in payment of rent regularly. The proposition of law is by now well settled that no protection can be

given to a tenant under law once he is found to be a defaulter in payment of rent. Moreover, the tenancy period has already been expired on 30.12.2023 and thereafter no extension deed has been executed. Moreover, as per section 64(2) of the Waqfs Ordinance the impugned order is appealable and that the present writ petition is not tenable in law.

The Administrator of Waqfs has the authority to initiate eviction proceedings against the occupants under section 64(2) of the same Ordinance. Section 64(2) of the Ordinance provides a specific remedy for any person aggrieved by an eviction order passed under Section 64(1) of the Waqfs Ordinance, they may appeal to the District Judge within three months from the date of eviction. It is a settled legal principle that a writ petition under Article 102 of the Constitution of Bangladesh is generally not maintainable if the petitioner has not exhausted the alternative, efficacious statutory remedies provided by the specific law.

The decision cited by the learned Advocate for the petitioner in the facts and circumstances of the case is not applicable.

In view of our discussion made in the forgoing paragraphs it is by now clear that instant Rule must fail.

In the result, the Rule is discharged. The order of stay granted earlier stands vacated. There will be no order as to costs.

Communicate this judgment at once.

S.M. Iftekhar Uddin Mahamud, J:

I agree.