

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

Writ Petition No. 7294 of 2009

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. Afsor Uddin

----Petitioner.

-Versus-

The Government of The People's Republic of
Bangladesh, represented by the Secretary, Ministry of
Land, Secretariat Building, Bangladesh Secretariat,
Raman, Dhaka and others

----Respondents.

Mr. Chanchal Kumar Biswas, Advocate

----For the Petitioner.

Mr. Md. Jahangir Hossain, Advocate

----For the Respondent No. 5.

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice S. M. Saiful Islam

Heard on: 06.05.2026 and 19.05.2026.

Date of Judgment: 14.06.2026.

S. M. Saiful Islam, J:

On an application under Article 102 of the Constitution of the
People's Republic of Bangladesh, a Rule Nisi 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 07.09.2009 passed by the Assistant Commissioner (Land), Sadar, Sylhet (Respondent No. 4) in Miscellaneous Case No. 03 of 2009, cancelling the Mutation Khatian being Nos. 640 and 681 (Annexure-F) should not be declared to have been done without 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 leading to this Rule, in short, are that the predecessor of the petitioner, namely, Haji Kamal Uddin purchased 4.52 acres of land from recorded owner and also from the successive transferee of the recorded owner by different Kabala deeds and got possession thereof. He filed Mutation Case No. 1800/91 for mutation of 2.05 acres of land in his name which was allowed by the Respondent No. 4 and a new Khatian No. 640 was opened accordingly. Haji Kamal Uddin filed Mutation Case No. 1248/92-93 and 1249/92-93 for mutation of 1.95 acres of land which were allowed by the Respondent No. 4 and a new Khatian No. 643 was opened accordingly. He also filed Mutation Case No. 2025/92-93 for mutation of the rest .52 acres of land which was allowed by the Respondent No. 4 and a new Khatian No. 681 was opened accordingly. While owning and possessing the said 4.52 acres of land by mutating his name in the aforesaid Mutation cases, Haji Kamal Uddin died leaving behind his widow- namely, Most. Hamida Khatun, two sons- namely, Afsar

Uddin (present petitioner) and AKM Shahabuddin and two daughters- namely, Lili Yeasmin and Naznin Kader. Thereafter, one Roushan Ara Chowdhury, through her brother- Md. Shamsuzzaman Chowdhury filed an application before Respondent No. 4, Assistant Commissioner (Land), Sadar, Sylhet for cancellation of the aforesaid mutation Khatians. After hearing the application, Respondent No. 4, cancelled the mutation Khatian Nos. 640 and 681 and maintained the mutation Khatian No. 643 by the impugned order dated 07.09.2009. Consequently, the petitioner filed the instant writ petition challenging the legality and authority of the impugned order and obtained the Rule.

At the time of issuance of the Rule, operation of the impugned memo was stayed for a period of 3 (three) months and subsequently it was extended till disposal of the Rule.

The Rule was opposed by the added Respondent No. 5, who filed an affidavit-in-opposition denying all the material allegations set forth in the writ petition. The said Respondent contended that he filed Miscellaneous Case No. 03 of 2009 before the Assistant Commissioner (Land), Sadar, Sylhet for cancellation of the Mutation Case Nos. 1800/91, 2067/91 and 426/92-93. Respondent No. 4, Assistant Commissioner (Land), Sadar, Sylhet after holding an inquiry cancelled the mutation Khatian Nos. 640 and 681 by the impugned Order dated 07.09.2009. He contended that the Order of a Revenue Officer cannot be challenged in a writ petition. He further contended

that, if a party is aggrieved by the Order of Revenue Officer, he has to file an appeal under section 147 of the State Acquisition and Tenancy Act or a revision under section 149 of the said Act. According to him the petitioner has filed the instant writ petition without exhausting those forums. He further claimed that the Respondent No. 5 purchased 1.28 acres of land previous to Haji Kamal Uddin and Respondent No. 4, Assistant Commissioner (Land), Sadar, Sylhet, on consideration of deeds of both the parties rightly rejected the mutation Khatian Nos. 640 and 681. Accordingly, the Respondent No. 5 claimed the Rule to be discharged.

Mr. Chanchal Kumar Biswas, the learned Advocate, appearing for the petitioners, submits that the impugned order is without lawful authority and is of no legal effect. He holds that if a party is aggrieved by the mutation order of Assistant Commissioner (Land), he has to file an appeal with the Appellate Authority and the Respondent No. 4 had no legal authority to cancel the mutation after almost 17 (seventeen) years. He further claimed that the mutation in the name of the predecessor of the petitioner was effected and acted upon in the year- 1990, 1992-93 and the petitioner and his predecessor has been paying rent since then and the self same authority has no jurisdiction to cancel the mutation by the impugned order. On these grounds, the learned Counsel for the petitioner prays for the Rule to be made absolute.

Conversely, the learned Advocate, Mr. Md. Jahangir Hossain, appearing for the Respondent No. 5 submits that the writ petition is not maintainable as the petitioner could have sought proper relief by way of appeal and revision through proper authority. He further claims that predecessor of the petitioner fraudulently obtained mutation which was rightly cancelled by the impugned order. On these grounds, the learned Advocate for the Respondent prays for discharge of the Rule.

We have heard the learned Advocates of both sides, perused the application and affidavit-in-opposition and the Annexures thereto.

From the facts and documents on record, it appears that the impugned order cancelling the mutation of the petitioner's predecessor-in-interest was passed by the Respondent No. 4, the Assistant Commissioner (Land), Sadar, Sylhet. It has been stated in the Writ petition that the petitioner filed this petition finding no other alternative efficacious remedy. However, Section 147 and 149 of the State Acquisition and Tenancy Act, 1950, explicitly provide statutory remedies against such order. Specifically an appeal and a revisional application lie to the Collector against such an order passed by the Assistant Commissioner (Land). The petition offers no explanation as to why the petitioner failed to exhaust these alternative forums, where an equally efficacious remedy could have been obtained.

According to the provisions of Article 102(2) of the Constitution, exhaustion of statutory remedies is a condition precedent

for invoking writ jurisdiction. It is well settled law that the existence of an alternative, efficacious remedy operates as a positive bar to the exercise of such jurisdiction. Before entertaining a petition under Article 102 (2) of the Constitution, the Court has to be satisfied that 'no other equally efficacious remedy is provided by law'. In the instant case, however, an alternative and seemingly equally efficacious remedy was available to the petitioner. Despite this, the petitioner neither availed himself of these alternative forums, nor offered any explanation for failing to resort to them.

It is also well settled that writ jurisdiction may be invoked without exhausting alternative statutory remedies where the impugned order is without jurisdiction, *coram non judice*, *ex facie* illegal or *malafide*. In the present case, the impugned cancellation order cannot be characterized as *malafide*, as the mutation was cancelled on some specific grounds which the petitioner has failed to controvert in his petition. Moreover, by the impugned order, the case land has been restored to the original Khatian and both the parties have been afforded the opportunity to seek mutation afresh on the basis of their respective title deeds and possession. In such circumstances, the impugned order cannot be said to be *ex facie* arbitrary, unreasonable or *malafide*. On the other hand, while the petitioner contends that the impugned order is entirely without jurisdiction and the writ petition is maintainable on that ground alone, Section 150 of the State Acquisition and Tenancy Act, 1950, explicitly empowers the Revenue

Officer to review, modify or reverse his own order. Although, the impugned order does not expressly state whether it was passed under review jurisdiction, it cannot be conclusively asserted that the impugned order is completely without jurisdiction in view of the statutory powers vested by Section 150 of the said Act.

In view of the facts, circumstances, and discussions detailed above, we find merit in the submissions of the learned Advocate for the Respondent. Accordingly, we are of the opinion that the instant writ petition is not maintainable as an equally efficacious remedy is provided by other statutory law, and the petitioner has filed this petition without first exhausting the alternative forums available to obtain that relief. Consequently, the Rule Nisi is liable to be discharged.

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

The order of stay granted earlier is hereby recalled and vacated.

Communicate this judgment forthwith.

Md. Iqbal Kabir, J:

I agree.