

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 3441 OF 2008

In the matter of:

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

And

In the matter of:

Jashimuddin Mazumdar, son of late Hazi
Abdul Kader Mazumdar and others.

... Petitioners

-Versus-

Zonal Settlement Officer, Noakhali Zone,
Noakhali and others.

... Respondents

Mr. M. A. Azim Khair, Senior Advocate with
Mr. Abul Kalam Azad and

Mr. Md. Sultanuzzaman, Advocates

...For the petitioners

Mr. A.S.M. Mokter Kabir Khan, DAG with

Mr. Mohammad Mohsin Kabir, DAG,

Mr. Mostafizur Rahman (Tutul), AAG,

Mr. Md. Moniruzzaman, AAG and

Ms. Sonia Tamanna, AAG

...For the government

Heard on 15.07.2025 and 16.07.2025.

Judgment on 16.07.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, 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 impugned order contained in Memo No. 12/34/Part-5/S/06-346 dated 09.03.2008 (Annexure-‘E’ to the writ petition) issued under the signature of respondent no. 1 should not be declared to have been issued 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.”

At the time of issuance of the rule, the operation of the impugned Memo dated 09.03.2008 contained in Annexure-‘E’ to the writ petition was stayed for a period of 3(three) months which was subsequently extended from time to time.

The case of the petitioners as described in the instant writ petition in precise are:

The suit property comprising two C.S. Plot Nos. 2569 and 2570 measuring an area of .39 acres and 1.62 acres respectively totaling 2.01 acres of land originally belonged to the predecessor of one, Moharaja Birendra Kishore Manikka, Pacha Gazi and Becha Gazi and the said property was ultimately devolved upon their successor, Amangee,

Rahim Box, Hamid Ali and Md. Hanif. Subsequently, the said landlord Birendra Kishore Manikka claiming the said land as khas land filed a suit being Title Suit No. 1104 of 1911 against the C.S. recorded tenants for recovery of khas possession. Ultimately, the suit was decreed on compromise by judgment and decree dated 04.11.1911 declaring the suit land as tenancy land of the landlord and the defendants of the said suits were recognized as tenants fixing a certain amount of money as rent. Subsequently, one, Kazi Lutful Huq purchased entire 2.01 acres of land from the heirs of C.S. recorded tenant who were earlier made defendant no. 1-16 in Title Suit No. 1104 of 1911 and six sale deeds all executed and registered between 1914-1915. Thereafter, Kazi Lutful Huq died leaving behind two wives, three sons and two daughters and SA record being SA Khatian No. 320 was prepared in the name of the heirs of Kazi Lutful Huq. Thereafter, the petitioners acquired their respective portion of the land from the disputed properties from the heirs and subsequent heirs of the S.A. recorded tenants by way of purchase and gift. It has been stated that, out of 2.01 acres of land, Government acquired 0.26 acres of land acquired for Roads and Highways, 0.33 acres became the part of the road and the remaining 1.50 acres of lands belong to the petitioners. It has further been stated that in course of preparing revision of record-or-right undertaken vide section 144 of the State Acquisition and Tenancy Act, 1950 draft publication of the record-of-rights (D.P. Khatian) under rule 29 of State Acquisition and Tenancy Rules, 1955 was prepared in the name of the petitioners in respective shares against which the respondents filed objection cases under rule 30 of the said

Rules and all the objection were ultimately rejected. Thereafter, the respondent nos. 2-3 preferred several appeals under the provision of rule 31 of the Rules, 1955 and all the appeals were ultimately taken up for hearing and the Appeal Officer, Chagnaiya, Feni vide judgment and order dated 09.10.2005 modified the order of the objection officer held under rule 30 of the Rules, 1955.

Feeling aggrieved by and dissatisfied with the said order dated 09.10.2005 passed by the appellate authority, the respondent nos. 2 and 3 preferred a review before the Zonal Settlement Officer, Noakhali Zone, Noakhali for review of the order passed in the appeals. Then the Zonal Settlement Officer vide impugned Memo dated 09.03.2008 constituted a three-member review panel to review the order passed in 35(thirty-five) appeal cases earlier disposed of under rule 31 of the Rules, 1955.

It is at that stage, the petitioners aforementioned filed this writ petition fining no other alternative efficacious remedy.

Mr. M. A. Azim Khair, the learned senior counsel appearing for the petitioners upon taking us to the impugned letter and all other documents appended with the writ petition at the very outset submits that there has been no provision in rule 31 of the State Acquisition and Tenancy Rule, 1955 basing on which any “judgment review committee” (রায় তদন্ত কমিটি) can be formed by a Zonal Settlement Officer to review the judgment passed by an appellate authority and therefore, the impugned letter issued by the respondent no. 1 is without any legal lawful authority and the said letter should be held to have no legal effect.

The learned counsel further contends that though in rule 42 of Rules, 1955 special powers has been vested upon a Revenue Officer to direct any portion of the proceedings taken in rules 28 to 32 cancelled but that very cancellation can only be made in respect of any District, part of District or local area but under no circumstances, can a record (DP Khatian) prepared under rule 29 of the Rules can be cancelled of an individual's land and therefore, the formation of the judgment investigation committee (রায় তদন্ত কমিটি) through impugned letter bears no legal substance and the same is liable to be struck down.

The learned counsel by referring to the provision of section 145A of the State Acquisition and Tenancy Act, 1950 (incorporated under Chapter XVIIIA in the said Act) also contends that once the draft publication is completed under rule 32 of the Rules, 1955 on completing the proceeding of the appellate authority under rule 31 of the Rules, 1955 there has been no scope for any aggrieved party to file any review against the judgment passed under that rule 31 other than to challenge the final record to be prepared under rule 32 of the Rules by initiating a suit before the Land Survey Tribunal under section 145A of the State Acquisition and Tenancy Act, 1950.

To intensify the said submission, the learned counsel then referred to a decision passed in the case of *Zahirul Islam & others-Vs-Government of Bangladesh and others reported in 65 DLR (HCD) 168* where similar point was raised and it has been settled that, “*Even under rule 42 does not empower the Settlement Officer to sit and act as an*

appellate authority over an appellate order passed under rule 31 of the Rules”.

The learned counsel also contends that even rule 42 of Rules, 1955 has never empowered any Revenue Officer to review any appellate judgment passed by an appellate authority under rule 31 of the Rules, 1955 let alone to form any committee as done in the impugned order.

By supplying us a copy of the gazette dated 26.01.2023, the learned counsel then submits that due to pendency of the instant writ petition, the preparation of the final record to be made under rule 32 of the Rules, 1955 has not yet been done. With those submissions, the learned counsel finally prays for making the rule absolute.

On the contrary, Mr. Mohammad Mohsin Kabir, the learned Deputy Attorney-General appearing for the government opposes the contention taken by the learned senior counsel for the petitioners and submits that the Zonal Settlement Officer has given every authority under rule 42 of the Rules, 1955 to cancel any record and by virtue of that authority given to a Revenue Officer, a three-member committee has been formed by the impugned letter having no illegality in it.

However, in support of his such submission, the learned counsel has placed his reliance in the case of *Hossain Ali alias Hassan Ali Matbar and others-Vs-Government of Bangladesh and others reported in 68 DLR (HCD) 37* and takes us through paragraph 17 thereof and contends that a Revenue Officer reserves the authority under rule 42 to cancel any portion of the proceedings taken in rules 28-32 and in order to cancel the record wrongly prepared, the Zonal Settlement Officer vide

impugned letter just formed a three-member committee and basing on their recommendation, the Revenue Officer could take a decision and therefore, the petitioners have nothing to be aggrieved with the impugned letter. With that submission, the learned Deputy Attorney-General finally prays for discharging the rule.

Be that as it may, we have considered the submission so advanced by the learned senior counsel for the petitioners and that of the learned Deputy Attorney-General for the government. We have also carefully gone through the impugned letter contained in Annexure-‘E’ to the writ petition and all other documents in particular, S.A record, judgment passed in Title Suit No. 1104 of 1911 and all other documents including the appellate judgment dated 09.10.2005 as of Annexure-‘D’ to the writ petition.

In the instant writ petition, the only point-in-issue to be adjudicated as to whether the Revenue Officer holds any authority to travel beyond the judgment passed by an appellate authority acting under rule 31 of the Rules, 1955 when rule 32 speaks, soon after disposing of any dispute taken under rule 31, a Revenue Officer will take steps for preparing final record-of-right. Record shows, after disposing of the appeals, initiated by the respondents against the orders in objection cases passed under rule 30, they have filed review petition to review the judgment and order dated 09.10.2005. So it would be expedient to reproduce rule 42 of the Rules of 1955 here, because it is the sole contention of the learned Deputy Attorney-General that in view of the

said provision, the Revenue Officer has passed the impugned letter which runs as follows:

“42. When all such objections and appeals have been disposed of, the Revenue-officer shall make such alterations in the draft Compensation Assessment-roll as may be necessary to give effect to any orders passed on objections made under sub-section (1) of section 40 or on appeals preferred under section 41 and shall cause the said roll as so altered to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the Compensation Assessment-roll has been duly made under this Chapter, and every entry in the Compensation Assessment-roll so finally published shall, except as hereinafter provided, be final and conclusive evidence of the matter referred to in such entry and also of the nature of the interests of the rent-receivers, the true area of the land and the apportionment of the compensation among the persons claiming interest therein.”

On careful perusal of the rule 42 of the Rules, 1955, we find that though special power has been bestowed upon a Revenue Officer by designating it as Settlement Officer to cancel any portion of the proceedings referred in rules 28-32 of the Rules, 1955 before publication of final-record-of-right but fact remains, the said authority can be exercised by a Settlement Officer in respect of a District or part of a District or any local area but not any individual's personal property of specific plots. So, on the face of the clear provision, we find that the property of the petitioners do not come within the ambit of one of three different categories mentioned above.

On top of that, from the impugned letter dated 09.03.2008, we find that a three-member “judgment investigation committee” (রায় তদন্ত কমিটি) was formed whose designation is Assistant Settlement Officer (ASO) that is, Subordinate to Appeal Officer who disposed of appeal cases vide judgment and order dated 09.10.2005 which is on the one hand, totally beyond the express provision provided in rules 28-32 of the Rules, 1955 and on the other hand, it is disrespectful for the appellate authority to get its order investigated by their subordinate which no law of a civilized nations ever permits.

The second point is that soon after exhausting the provision of appeal provided in rule 31 steps is to be taken by the Revenue Authority to prepare a final record under rule 32 of the State Acquisition and Tenancy Rules, 1955. In this regard, we find substance in the submission placed by the learned senior counsel for the petitioners, that the avenue is open to the respondents or an individual to challenge preparation of final record by taking resort to the provision of section 145A of the State Acquisition and Tenancy Act through filing a suit before the Land Survey Tribunal. Though the learned Deputy Attorney-General put emphasis on the provision of rule 42 of the Rules, 1955 but from the aforesaid discussion and observation, it is crystal clear that the Revenue Authority has not been empowered to **review any decision** passed beforehand under rule 30 and 31 of the Rules, 1955. Rather the revenue authority has no other option but to take steps for final publication of the record-of-rights under rule 32 of the Rules, 1955. In this regard, the decision reported in 65 DLR (HCD) 168 has settled the point.

Given the above facts and circumstances, we are of the considered view that the respondent no. 1 has very illegally passed the impugned letter clearly going beyond the provision provided in rules 28-32 of Rules, 1955 which has got no basis.

Accordingly, the rule is made absolute however without any order as to costs.

The impugned Memo dated 09.03.2008 contained in Annexure- 'E' to the writ petition issued under the signature of the respondent no. 1 is hereby declared to have been passed without lawful authority and is of no legal effect and the same is thus struck down.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment be communicated to the respondents forthwith for taking appropriate steps.

Md. Bashir Ullah, J.

I agree.