

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

Writ Petition No. 5630 of 2009

IN THE MATTER OF:

An application under Article 102 (1) (2) (a) (i) and (ii) of the Constitution of the People's Republic of Bangladesh.

And

IN THE MATTER OF:

Md. Salah Uddin

----Petitioner.

-Versus-

The Government of Bangladesh, represented by the Secretary, Ministry of Agriculture, Bangladesh Secretariat, Raman, Dhaka and others

----Respondents.

Mr. Mohammad Ali with

Mr. Md. Abdul Kader Bhuiyan, Advocates

----For the Petitioner.

Mr. Md. Aminul Islam, Advocate

----For the Respondent Nos. 2-4.

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice S. M. Saiful Islam

**Heard on: 26.04.2026, 03.05.2026 &
10.05.2026.**

Date of Judgment: 18.05.2026.

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 Memo No. সওকা/অ: প্র:/ ২১৮/২০০২-০৩/ ৪৫৩ dated 25.5.2009 issued and signed by Mr. A. B. M. Sirajul Haque, Secretary BADC, Dhaka, cancelling the lease of seven residential quarter and other structures situated in Kalurghat under BADC, Chittagong Circle, Kalurghat, Chittagong and directed to handover the possession of the same with rent and other dues to the Superintendent Engineer (সওকা), BADC, Chittagong Circle, Chittagong within 90 (Ninety) days from the date of service of the notice (Annexure-F) should not be declared to have been issued without lawful authority and is of no legal effect and / or pass such other order or orders as to this Court may seem fit and proper.”

Facts leading to this Rule, in short, are that the petitioner took part in a tender called by BADC, Chittagong Circle, Kalurghat, Chittagong for taking lease of seven residential quarter and other structures situated in the side of BADC Office, which had remained unused and abandoned for long period of time. Thereafter, the Superintendent Engineer of BADC, Chittagong Circle (Respondent No. 5), informed the petitioner vide Memo No. 18 dated 25.01.2006 to execute an agreement within 7 (seven) days upon payment of Taka 2,72,392/- (Two Lac Seventy Two Thousand Three Hundred and Ninety Two) to BADC as rent for a period 6 (six) months. Accordingly, the petitioner paid the said amount and executed a lease agreement with the Secretary, BADC (Respondent No. 5) on

01.02.2006, thereby taking the aforesaid lease for a period of 3 (three) years commencing from 01.02.2006. The petitioner asserts that after taking possession of the subject property, he carried out necessary repairs with the prior permission of BADC, expending approximately Taka 75,73,165/- (Seventy five Lac Seventy Three Thousand One Hundred and Sixty Five) to make it usable. The petitioner remained consistent in paying rent throughout the lease term and subsequently applied for a renewal on 30.10.2008. BADC approved the aforesaid lease in a General Meeting held on 04.02.2009, and a Lease Renewal Agreement was duly executed on 17/02/2009 for a further period of 3 (three) years effective from 01.02.2009. The petitioner alleges that unexpectedly, Respondent No. 3 issued a letter via the impugned Memo, informing the petitioners that BADC had decided to utilize the subject property for its own purpose. Consequently, the petitioner was requested to handover possession, along with all outstanding rent and dues, within 90 (Ninety) days of service of notice. The notice specified that the lease would be treated as cancelled after 90 (Ninety) days. On 05.08.2009, the petitioner issued a notice demanding justice, urging the Respondents to recall the impugned memo and honor the renewal agreement, which secured his lease until 31.01.2012. Despite this, the Respondents remained silent. Consequently, the petitioner filed the petition and obtained the Rule.

At the time of issuance of the Rule, operation of the impugned memo was stayed for a period of 4 (four) months and subsequently it was extended till disposal of the Rule.

The Rule was opposed by the Respondent Nos. 2-4, who filed an affidavit-in-opposition denying the material allegations set forth in the writ petition. The Respondents contended that the writ petition was filed with malafide intention to secure unlawful benefits for the petitioner. They further asserted that the subject land and the residential quarters were leased only on a temporary basis, and that BADC now requires to accommodate officers and staffs appointed for an ongoing irrigation project under Irrigation Wing. It was contended that BADC exercised its authority to cancel the lease agreement pursuant to Clause 5 of the lease agreement, which provides a unilateral right of cancellation. They asserted that the notice under the said provision was duly served by lawful authority. Furthermore, the Respondents maintained that the impugned notice to vacate and handover possession of the residential quarter is lawful, being rooted in public interest with the ultimate objective of bolstering the agro based economy. The Respondents also challenged maintainability of the petition, asserting that Condition No. 6 of the agreement requires all disputes to be referred to an Arbitrator before seeking judicial intervention. They maintained that the petitioner bypassed this mandatory condition precedent and filed the writ petition while concealing this material requirement from the Court. It was also

contended that the petition relates to a simple contract regarding which writ petition is not maintainable in the eye of law.

Mr. Mohammad Ali, the learned Advocate, along with the learned Advocate, Mr. Md. Abdul Kader Bhuiyan, appearing for the petitioner, submits that the impugned memo is illegal and issued in gross violation of the principles of natural justice. He contends that the action is violative of the petitioner's fundamental rights as guaranteed under Article 27, 40, 42 and 44 of the Constitution of the People's Republic of Bangladesh. He asserts that the petitioner invested a substantial sum for the repair of the quarters with the full knowledge and assurance of the respondents that the lease would not be prematurely terminated. Notwithstanding, the renewal agreement executed on 17.02.2009 for a 3 (three) years term, the lease was cancelled within a mere 3 (three) months of its execution, an act which, the learned Advocate argues, was driven by malafide intention.

The learned Advocate further contends that the impugned cancellation of the lease is ex-facie illegal, having been issued in blatant violation of the mandatory 3 (three) months notice period stipulated in the lease agreement. Furthermore, it is submitted that the justification provided in the impugned memo claiming the property is required for the BADC's own purpose is a mere ruse. In reality, the cancellation is tainted by malafides and dictated by the extra legal influence of one Md. Selim, who seeks to acquire the lease for himself. The petitioner will suffer irreparable loss if the petition is not

allowed. He further contends that the Condition No. 6 of the lease agreement which provides for the referral of disputes to arbitration is applicable only when the agreement remains in force. He argues that since the respondents have cancelled the agreement, the provisions of Condition 6 are no longer operative. He asserts that the petitioner has no alternative remedy other than invoking the Court's writ jurisdiction. Furthermore, he submits that the petitioner is ready to pay rent to the BADC at prevailing maximum market rate. On these grounds, the learned Counsel for the petitioner prays for the Rule to be made absolute.

Conversely the learned Advocate Mr. Md. Aminul Islam appearing for the Respondent Nos. 2-4 submits that the writ petition is not maintainable due to the petitioner's failure to comply with the arbitration clause contained within the lease deed. He points out that the lease was renewed for a period of 3 (three) years effective from 01.02.2009 to 31.01.2012 and that this natural term has already expired. Consequently, the petitioner no longer holds a lawful claim over the property, rendering the Rule infructuous. He further contends that the property is required by the BADC for its own administrative purpose and for broader public interest. On these grounds, the learned Advocate for the Respondents 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.

It is admittedly established that the BADC leased the property to the petitioner for the period of 3 (three) years commencing from 01.02.2006 with a formal Lease Agreement executed on that date. It is further admitted that the lease was renewed for a further period of 3 (three) years commencing from 01.02.2009, pursuant to a renewal agreement executed on 17.02.2009. However, the Respondent (BADC) issued the impugned memo dated 25.05.2009 (Annexure-F), notifying the petitioner of its decision to utilize the leased property for its own purposes. The petitioner was requested to surrender possession and settle all outstanding rent and dues within 90 (ninety) days from the service of notice. The impugned memo explicitly stated that upon expiry of this 90 (ninety) days period, the lease would be deemed cancelled. To determine the legality of the impugned notice as well as maintainability of this writ petition, we must carefully examine the provisions of both the original lease agreement and the subsequent renewal agreement.

On perusal of the lease Renewal Agreement dated 17.02.2009 (Annexure-E), it appears that the document does not stipulate detailed terms and conditions, rather it specifies only the duration of extended lease period. It has been stated in that deed; "উভয় পক্ষের মধ্যে ০১/০২/০৬ তারিখে সম্পাদিত মূল চুক্তিপত্রের অন্যান্য শর্তাবলী অপরিবর্তিত থাকবে।"

Upon perusal of the Lease Agreement dated 01.02.2006 (Annexure-A), it appears that Clause 6 of the deed stipulates the provisions and procedures for resolving disputes arising between the

parties in relation to the lease. The provisions of Clause 6 of the Lease Agreement are reproduced below;

“That any dispute arising out of or relating to or connected with this agreement shall be referred to arbitration in accordance with the provision of the Arbitration Act, 2001 and the Chairman, BADC will act himself or nominate another officer as sole Arbitrator and the decision given by the sole Arbitrator shall be final and binding on both the parties. Reference to such Arbitration shall always be a condition precedent to any action in court of law.”

Admittedly the petitioner did not take recourse to this arbitration process which was binding upon him. The learned Advocate for the petitioner has submitted that since the agreement was cancelled by the respondents through the impugned notice, the provisions of condition 6 are no longer applicable. However, we find no merit in this submission. The phrase “any dispute arising out of or relating to or connected with this agreement” as set out in Clause 6 is broad enough to encompass all disputes between the parties in their capacities as lessor and lessee. Insofar as the petitioner asserts a claim over the property based on the lease deed, he is strictly required to exhaust the remedy provided by the arbitration clause before seeking recourse in a Court of Law.

Clause 5 of the Lease Agreement stipulates;

“The LESSEE or LESSOR will be entitled to cancel / terminate this agreement on a 90 (ninety) day’s prior notice to be served upon from either side to that effect.”

It is thus evident that the lessor was contractually entitled to terminate the Lease Agreement provided that 90 (ninety) day’s notice was given in accordance with the aforementioned condition. While the learned Advocate for the petitioner contended that no such prior notice was served, a perusal of the impugned memo dated 25.05.2009 (Annexure- F), reveals that it was, indeed, a notice under Clause 5 of the Lease Agreement. The recital of the impugned memo states as follows;

“আপনাদের সাথে বিএডিসির ০১.০২.২০০৬ তারিখে সম্পাদিত মূল চুক্তিপত্রের ৫ নং শর্ত অনুসারে উক্ত স্থাপনার ভাড়া এবং অন্যান্য যাবতীয় পাওনা পরিশোধ পূর্বক অত্র নোটিশ জারী হওয়ার ৯০ (নব্বই) দিনের মধ্যে স্থাপনাটি তত্ত্বাবধায়ক প্রকৌশলী (সওকা) বিএডিসি চট্টগ্রাম সার্কেলের নিকট অথবা তার মনোনীত প্রতিনিধির নিকট বুঝিয়ে দেয়ার জন্য আপনাকে অনুরোধ করা হলো। উক্ত সময়ের পর আপনাদের সাথে ভাড়া সংক্রান্ত মূল ও নবায়নকৃত চুক্তিপত্র বাতিল বলে গন্য হবে এবং কোনো অবস্থাতেই উক্ত চুক্তি কার্যকর হিসাবে বিবেচিত হবে না।”

Thus, it clearly appears that the impugned memo constitutes a 90 (ninety) day’s prior notice in accordance with Clause 5 of the lease Agreement and we do not find any illegality therein.

It is to be noted that the lease agreement was cancelled by the impugned memo only three months after execution of the lease

renewal deed for a period of 3 (three) years. Although, the respondents claim that the lease agreement was cancelled for using the leased property for their own purpose, on perusal of Annexure- S, [সংস্থার ভাড়া ও মূল্য নির্ধারন কমিটির সভার কার্যপত্র], it appears that the purpose behind such cancellation was otherwise. It has been stated therein that;

“ইতোমধ্যে চট্টগ্রাম কালুরঘাটস্থ স্থাপনাসমূহ ভাড়া প্রদান সংক্রান্ত বিষয়ে জনৈক সেলিম কর্তৃক আনীত অভিযোগের প্রেক্ষিতে এবং কৃষি মন্ত্রণালয় কর্তৃক গঠিত তদন্ত কমিটির সুপারিশক্রমে উক্ত মন্ত্রণালয়ের স্মারকনং- ১৫১ তারিখ: ০৫/০৪/২০০৯ মোতাবেক নিম্নোক্ত নির্দেশ দেয়া হয়:

‘অভিযোগাধীন অসম চুক্তিটি বাতিল করে বিএডিসির সম্পত্তি দখলে নিয়ে পুনরায় বিধি অনুসরণ করে লীজ প্রদান/ রাষ্ট্রীয় কাজে ব্যবহার’।”

Thus, it appears that the lease agreement executed by BADC with the petitioner was considered unfair by the concerned Ministry and, pursuant to its direction, the lease was cancelled. Such conduct reflects an arbitrary exercise of authority on the part of BADC. Although, the cancellation cannot be said to be illegal in view of Clause 5 of the Lease Agreement, the same is nevertheless undesirable and unbecoming of an important statutory corporate body like BADC. A State- run statutory body is expected to act with greater responsibility, transparency, fairness and institutional integrity.

However, by the Lease Renewal Agreement dated 17.02.2009, the lease was renewed for a period of three years from 01.02.2009 to 31.01.2012. That period has also expired long before. As per

provision of Clause 3 (b) of the Lease Agreement, any extension of the lease depends upon the mutual consent of the parties, and the lessor is under no obligation to extend the lease term or renew the agreement. Therefore, after 31.01.2012, the petitioner has no subsisting legal interest in the alleged lease property, even if it is assumed that the impugned memo does not exist.

In view of the facts, circumstances, and discussions made above, we do not find any illegality in the impugned memo. We are also of the view that the instant writ petition is devoid of merit and is not maintainable for noncompliance of the arbitration clause of the Lease Agreement. So, the Rule Nisi is liable to be discharged.

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

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

Communicate this judgment forthwith.

Md. Iqbal Kabir, J:

I agree.