

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

Writ Petition No. 13635 of 2024

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Laila Shahed

.....Petitioner

Present:

Mr. Justice Sashanka Shekhar Sarkar
And
Justice Urmee Rahman

-Versus-

Bangladesh, represented by the Secretary,
Ministry of Defence and others

..... Respondents

Mr. M. Sarwar Hossain, Advocate

...For the petitioner

Mr. Md. Abdul Alim Miah (Jewel), Advocate with
Ms. Momtaj Parvin, Advocate,
Mr. Rafaelur Rahman, Advocate and
Ms. Amena Siddika, Advocate

.... For the respondent No. 8

Heard on 30.07.2026

Judgment on 03.08.2026

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under Article 102 of the Constitution of the People's Republic of Bangladesh in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the inaction/failure of the respondent concerned to issue warishan certificate after the death of the mother of the petitioner who was the permanent resident of

Dhaka Cantonment, shall not be declared to have been done without lawful authority and hence, is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.”

Facts leading to the issuance of the instant Rule, in short, are that, the father of the petitioner Mr. Harunur Rashid died on 14.04.1999 and thereafter her mother Israt Jahan got re-married on 01.05.2003 with one Mr. Nurul Islam, son of Md. Ashraf Ali. Subsequently, petitioner’s mother divorced her second husband Mr. Nurul Islam on 31.03.2018. No child was born out of their wedlock during that period. After divorce, petitioner’s mother filed Family Suit No.582/2021 in the Court of 1st Senior Assistant Judge and Family Court, Dhaka, where in the plaint she asserted that during her marriage to her second husband, she conceived once; however, the pregnancy was terminated following an abortion after three months. Subsequently, she and her second husband adopted respondent No. 8 as their son in the presence of several witnesses. The mother of the petitioner died on 31.12.2023 leaving behind the petitioner as her only daughter, 5(five) brothers and 1(one) sister and since then the petitioner is trying to get the warishan certificate from the respondent No. 5, under whose jurisdiction the petitioner has permanent address but unable to get the same due to an application filed by the respondent No.8. Lastly, the petitioner applied for the warishan certificate on 28.08.2024 and the respondent No. 5 replied vide memo dated 11.09.2024 advising the

petitioner to go to the court to resolve the dispute regarding the heirs certificate.

Being aggrieved by the impugned memo issued by the respondent No. 5 and there having no other alternative equally and efficacious remedy available, the petitioner has filed the instant writ petition and obtained the present Rule.

On the prayer of the petitioner, this Division at the time of issuance of the Rule was pleased to direct the respondent Nos. 6 and 7 to take necessary steps in due compliance of law in conducting DNA Test of the petitioner and the respondent No. 8 as per Section 12(a), (d), (f) of DNA Act, 2014 in order to determine their relationship within a period of 4(four) weeks from the date of receipt of the copy of this order.

In compliance with the said direction of this Court, a DNA Test was conducted at the National Forensic DNA Profiling Laboratory (NFDPL), Dhaka Medical College Hospital and the report was submitted before the Registrar General on 31.05.2025. The report was submitted before this Court on 02.07.2025 as appears from the order sheet. In the conclusion part of the report it has been stated that:

“Based on the results of DNA analysis, it is sufficient to conclude that LAILA SHAHED and NUHER ISLAM are highly likely to be unrelated to each other.”

Learned Advocate Mr. M Sarwar Hossain, appearing on behalf of the petitioner submits that, petitioner's mother died on 31.12.2023 leaving behind 1(one) daughter i.e. the petitioner herself, 5(five) brothers and 1(one) sister and since then she has been trying to obtain the warishan certificate from the respondent No. 5 i.e. the Cantonment Board under whose jurisdiction the petitioner has her permanent address, but the authority is not issuing the same in her favour because of an application filed by the respondent No. 8. Hence she has no other option but to file this writ petition challenging the memo issued by the respondent No. 5 in this regard.

Learned Advocate further submitted that, the petitioner is lawfully entitled to obtain a heir certificate from the Cantonment Board Authority on the death of her mother but they are not issuing the certificate in gross violation of law, hence, the Rule is liable to be made absolute.

On the other hand, Mr. Md. Abdul Alim Miah Jewel, the learned Advocate entered appearance on behalf of the respondent No. 8 and vehemently contested the Rule by filing an affidavit in opposition.

It is the contention of learned Advocate for the respondent No. 8 is that the respondent No. 8 is the legitimate son out of the wedlock of Ishrat Jahan i.e. the deceased mother and father Nurul Islam. Israt Jahan gave birth to respondent No. 8 at the Hospital, Dhaka on 30.03.2005 and the birth was duly registered with the

Central Hospital under Registration No. 2646 of 2005 and the birth certificate was issued accordingly. During the dispossession of Respondent No. 8 from his residence situated at Flat-A/2, House-16/H, Road-2/A, Dhaka Cantonment, Dhaka-1206, the illegal occupant forcibly took away his original birth certificate along with all other valuable personal documents under his possession. As a result, he filed an application in the prescribed form to Central Hospital, with reference to the original registration and upon verification, a birth certificate was re-issued in his favour on 26.02.2024. Moreover, the birth of respondent No. 8 was registered with Dhaka Cantonment Board on 13.03.2008 and the Birth Certificate bearing Personal Identification. No. 2003 2620 8980 09255 was issued in confirmation thereof. The National Identity Card being No. 557 925 9010 was issued in his name on 17.01.2025. Both the NID card and the passport of the respondent No. 8 duly recorded Md. Nurul Islam and Israt Jahan as his parents.

Learned Advocate next submitted that, the respondent no. 8 disputes the claim of the petitioner that she is the daughter of deceased Israt Jahan. By referring to Annexure-A to the writ petition, which the *Nikahnama* of Israt Jahan dated 01.05.2003, learned Advocate further submitted that, it has been specifically mentioned therein that the marital status of Israt Jahan was ‘unmarried’ (কুমারী) at the time of her second marriage with Nurul Islam and therefore, the very birth of the petitioner becomes questionable.

Learned Advocate further submits that, the alleged DNA Test report relied upon by the petitioner has been procured through coercion, collusion, in connivance and by practicing fraud. The report has not been proved by examination or testimony of the issuing authority and as such, it cannot be treated as conclusive evidence. Furthermore, Respondent No. 8 is the only biological son of the deceased Israt Jahan and the petitioner bears no filial relationship with her. Consequently, any assertion of DNA compatibility between the petitioner and Respondent No. 8 is unfounded, misleading, and devoid of merit and considering the same, the Rule is liable to be discharged.

Learned Advocate very strongly submitted that, the Cantonment Board, i.e. the Respondent Nos. 1-5 are not the competent authority to determine the heirship of the deceased Israt Jahan. Such adjudication of succession falls exclusively within the jurisdiction of the learned District Judge as per the provisions of Succession Act, 1925 and considering the same, the Rule issued in the instant writ petition is liable to be discharged.

He finally submitted that, since the relief sought in the writ petition involves complex and disputed questions of fact particularly concerning paternity, maternity, and succession of the deceased Israt Jahan, which requires adjudication through oral and documentary evidence, such matter falls squarely outside the scope of writ jurisdiction under Article 102 of the Constitution and must be resolved by the appropriate civil court. Without availing the

appropriate available remedy, the petitioner has come before the High Court Division. Hence, the same is misconceived and not maintainable in the eye of law.

We have heard the learned Advocates for the respective parties and perused the writ petition, affidavit in opposition and all the documents annexed thereto.

It appears from the impugned memo dated 11.09.2024 (Annexure-D-1) that, the Cantonment Executive Officer by referring 2 (two) applications filed by the petitioner as well as by the respondent No. 8 categorically stated that, since both the applicants claimed themselves to be the lawful heirs of deceased Israt Jahan, such dispute is to be resolved through court and further action may be taken subject to settlement of the dispute. Therefore, he refrained from issuing any heir certificate to the petitioner. This act of the respondent no. 5 correctly reflected the true legal position and no illegality has been committed by the concerned authority in issuing the impugned memo.

Besides, the petitioner neither in the writ petition nor in the oral submission could place any legal ground to show what illegality has been committed by the authority in issuing the impugned order.

An heir certificate is issued by the Cantonment Board in the capacity of an Administrative Office, where the documents are submitted before it remains uncontested by any other parties. In the

present case, apparently 2(two) contrary applications are pending before the authority. The Cantonment Executive Officer in his administrative capacity cannot adjudicate this dispute by going beyond the authority conferred upon him. This is purely a subject matter to be raised before a competent civil court, who shall resolve the dispute upon taking necessary evidence.

The DNA report has been duly submitted by the authority pursuant to the order issued by this Division at the time of the issuance of the Rule. In this report though there is a finding as to the relationship between the petitioner and the respondent No. 8, we find that the DNA report cannot be treated as a conclusive proof to resolve the dispute. This report is merely an evidence and not a verdict. When a contradictory claim is found to be on record, no decision can be given as to the issue of heirship solely based upon a DNA report.

In view of the foregoing, we are of the view that the dispute between the parties as to whether the respondent no. 8 is or is not an heir of the deceased is a disputed question of fact, requiring adjudication upon evidence, and therefore cannot be resolved in this writ jurisdiction. Accordingly, we refrain from expressing any opinion on the merits of the rival contentions of the parties, including as to the reliability or otherwise of the DNA report, the manner of its procurement, the evidentiary value of the plaint filed by the deceased in the earlier family suit, or the genuineness and effect of the documents produced by the respondent no.8. All these

issues are left open to be agitated and established before the competent civil court.

In view of the facts and circumstances discussed hereinabove, we find no merit in the Rule.

In the result, the Rule is discharged.

However, without any order as to costs.

Let a copy of this judgment and order be communicated to the concerned authorities at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.