

**IN THE SUPREME COURT OF BANGLADESH**

**HIGH COURT DIVISION**

**(Special Original Jurisdiction)**

**Writ Petition No. 11395 of 2012.**

**IN THE MATTER OF:**

An application under Article 102 read with Article 44 of the Constitution of the People's Republic of Bangladesh.

And

**IN THE MATTER OF:**

Shantinagar Bohumukhi Samabay Samity Limited.

.....Petitioner.

-Versus-

Bangladesh, represented by the Secretary Ministry of Land, Bangladesh Secretariat Building, Ramna, Dhaka.

..... Respondents.

Mr. K. M. Zabir, Advocate with

Mr. M. M. Zulfikar Ali Hyder, Advocate.

.....For the petitioner.

Mrs. Amatul Karim, D. A. G. with

Mr. A. R. M. Hasanuzzaman, A. A. G. with Mr. Abu Saleh Md. Fazle Rabbi Khan, A.A.G.

..... For the Respondent No. 1.

Dr. Zamirul Akhter, Advocate.

..... For the respondent No. 10.

**Heard On: 01.11.2016, 23.11.2016.**

**Judgment On: 07.12.2016.**

Present:

Mr. Justice Tariq ul Hakim

and

Mr. Justice Md. Faruque (M. Faruque)

**Md. Faruque (M. Faruque), J:** Rule Nisi was issued calling upon the respondents to show cause as to why the respondent Nos. 1-9 should not be given direction upon the respondents to consider the applications of the petitioner dated 06.06.2012 and 20.06.2012 for giving long term lease allotment in the name of the petitioner Shantinagar Bohumukhi Samabay Samity Ltd. measuring 25.98 acres in R. S. Dag Nos 92,94,77,80,95 and 86, P. S. Dag Nos. 404,405,406,407,408,413 and B. S. Dag No. 12077,12079,12080,12081 and 12082 of Mouza Pachim Sholoshahar under Police Station Bayzid Bostami (old Paschalish) District-Chittagong as bonafide possession holder and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts prompting the petitioner to file the writ petition are shortly that the petitioner is a registered co-operative association bearing registration No. 8363/2005. With the verbal permission of local authority, the petitioner constructed small and slummy cottage and huts and other structures and established schools, madrasa and semi-cottage industries with the help of BRAC and City Corporation upon the land appertaining to S.A. Plot Nos. 404, 405, 406, 407, 408 and 413 within Mouza Paschim Sholoshahar under Police Station-Bayezid Bostami (Old Panchlaish), District-Chittagong. For about 70-74 years, approximately one thousand families have been residing in the said land. In 1982, members of those families constituted a registered Samity having the name “Shantinagar

Samaj Kalyan Samity” under registration No. 1018/1982, which was subsequently renamed as “Shantinagar Bohumukhi Samabaya Samity Ltd.”. Since long, the members of the Samity have been paying electricity bills, municipality taxes and other charges in favour of the government. In 1981, the said “Shantinagar Samaj Kalyan Samity”, briefly the predecessor of the petitioner Samity, applied to the District Land Administrator, Chittagong for a long term lease of the land for their living. Having received no response, the predecessor of the petitioner made representation to the Minister of the Ministry of Land on 17.12.1985 to consider a long term lease in their favour. The representation was forwarded with recommendation to the Secretary, Land Administration Board of the Ministry, which again forwarded the same to the Additional Deputy Commissioner (Revenue), Chittagong, for investigation with a direction to place his report to the Ministry. The Additional Deputy Commissioner in his turn assigned the Circle Officer, Sadar, Chittagong, to hold a physical inquiry and submit his report. In compliance, the Circle Officer conducted physical inquiry and submitted his report dated 14.01.1986 finding that there are about three to four thousand people who are living there in a sound manner. In the report, he passed a recommendation to consider the application for long term lease. The matter eventually proceeded up to a direction dated 13.03.1986 of the Land Administration Board upon the Deputy Commissioner, Chittagong to submit a specific proposal for rehabilitation or settlement of the members of the petitioner Samity with demarcation of the property. The Board lastly directed the Additional Deputy Commissioner (Revenue),

Chittagong, to fix the value of land for the purpose of settlement by letter under memo No. 5-305/87/309 dated 25/1/87, which is reproduced below:

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার  
ভূমি প্রশাসন বোর্ড  
শাখা-নং ৫

স্মারক নং-৫-৩০৫/৮৭/৩০৯

তারিখ-২৫/১/৮৭ ইং

প্রাপকঃ- অতিরিক্ত জেলা প্রশাসক (রাজস্ব)

চট্টগ্রাম।

বিষয়ঃ সরকারী খাসজমি বন্দোবস্তের জন্য জনাব আবুল খায়ের ও অন্যান্যদের আবেদন, চট্টগ্রাম।  
কর্তৃপক্ষ কর্তৃক আদিষ্ট হইয়া জনাব আবুল খায়ের ও অন্যান্য কর্তৃক দাখিলকৃত ১৭-১২-৮৫ ইং তারিখের দরখাস্তের পরিশ্রেক্ষিতে তাহাদের আবেদন সহানুভূতির সহিত বিবেচনার জন্য সিদ্ধান্ত গ্রহণ করিয়াছেন।

প্রস্তাবিত জমির মূল্য নির্ধারণ পূর্বক এই ব্যাপারে একটি প্রতিবেদন জরুরী ভিত্তিতে অত্র বোর্ডে প্রেরণ করিবার জন্য নিম্নস্বাক্ষরকারী তাহাকে অনুরোধ করিতেছি।

(শেখ লুৎফর রহমান)

শাখা প্রধান

তারিখঃ-২৫-০১-৮৭ ইং”

These correspondences were annexed with the writ petition as Annexure-B Series.

It is also stated in the writ petition that in pursuance to the decision of the Government to grant long term lease in favour of the petitioner. Suddenly the petitioner came to know that the land where they have been living for 70-74 years was leased out to the respondent No. 10, Sama Shamitta Griha Nirman Samabaya Samity Ltd. for a period of 30 years although there was no application from the respondent No. 10. From a photocopy of the order sheet of Settlement Case No. 4/73-74, it appears that it was not the respondent No. 10, but another organisation, namely, Sama Shamitta Krishi-O-Khamar Samabay Limited, which applied for getting lease for co-operative farming. It could also appear from the order

sheet that the Ministry of Land Administration and Land Reforms by its letter under memo No. VI-310/75/200 dated 04.03.1981 approved the proposal of long term lease of 37.54 acres of khas land to the respondent No. 10 for the purpose of providing residential accommodation to the members of the society, but the letter was a false and fictitious one and it was fraudulently created by the respondent No. 10. Again, the Additional Deputy Commissioner (Revenue), Chittagong by his memo No. 12(A)/55(P)/85/727/SA dated 08.03.1986 intimated the Secretary, Land Administration Board that the lease deed in favour of the respondent No. 10 could not be finalized on account of imposition of bar on the settlement of khas land and also that he had sought for instruction in this regard vide office memo No. Rev/Sett/12(A)-28(2)/85-2506 dated 04.08.1985, but no instruction was received by him.

It is also stated in the writ petition that from a memo bearing No. 5-305/85/66 dated 13.03.1986 of Land Administration Board, Section-5, it was intimated to the Deputy Commissioner, Chittagong that at the relevant time, there was no policy of the government to settle the hilly khas land and the predecessor of the petitioner had been living for a long period there by erecting houses, availing various facilities, enlisting its members' names in the voter list, etc., and, therefore, if they were to be evicted lawfully, complicity may arise in respect of their rehabilitation. In the said letter, opinion was also sought for as to how those poor and landless people could be rehabilitated.

It is stated in the writ petition that one M.A. Wahed being a surveyor with the concerned Kanoongo Office, Chittagong became the

Secretary of the respondent No. 10 and got two lease deeds being No. 6308 dated 22.09.1987 and No. 533 dated 02.02.1988 registered in violation of the policy of leasing out khas land.

It is further stated in the writ petition that the petitioner filed an application on 22.01.2009 to the Ministry of Land for granting lease of the land in question in its favour through proper spot inquiry by determining the actual possession of the said land. Despite directions to make the spot inquiry on different occasions from the Ministry of Land and the office of Divisional Commissioner, Chittagong, no step was taken for conducting the spot inquiry. Rather the Additional Divisional Commissioner issued a couple of notices for conducting inquiry in his office on 12.04.2009. Such reluctance of the government to make a spot inquiry prompted the petitioner to file Writ Petition No. 4431 of 2009, in which this Court directed the respondent No. 6 on 30.06.2009 for holding a spot inquiry within 7 (seven) days from the date of receipt of the copy of the order. The said order was complied with in holding a spot inquiry and from the report of the inquiry, it was revealed that the petitioner is in possession of almost the entire area of land in question and found therein it has schools, orphanage, madrasas, mosques, etc. and a very small portion is under the possession of the respondent No. 10 using as Ansar camp. The Rule issued in that writ petition was not proceeded and the same was discharged for non prosecution.

It is stated in the writ petition that the petitioner made representations to the respondents for getting long term lease and the government has taken steps for evicting them from the land in question. A

letter bearing memo No. ভূমঃ/শা-৮/খাজব/বিবিধ/৪৭/২০১২ (অংশ-১)/৫১৮ dated 23.04.2012 was issued by the respondent No. 1, Ministry of Land to the effect of the letter earlier mentioned in memo No. VI-310/75/200 dated 04.03.1981 refusing the approval of long term lease of 37.54 acres of khas land to the respondent No. 10 namely Sama Samitta Greha Nirman Samity Limited, was detected as false and fraudulent. In view of the said letter, the petitioner made representations to the Ministry on 14.05.2011, 06.06.2012 and 20.06.2012 (Annexures-K Series) to have been lease or settlement of the land in favour of the petitioner but the Ministry having failed to disposed of the same, the petitioner brought this writ petition for direction upon the respondents No. 1-9 for considering and disposal of those letters and obtained the Rule and direction to dispose of the applications as aforesaid.

Mr. M.M. Zulfikar Ali Hyder, the learned Advocate appearing for the petitioner by filing supplementary affidavit submits that in respect of the approval of the Government to accord settlement in favour of respondent No. 10 Sama Samitta Griha Nirman Samabaya Samity Ltd. by the Ministry of Land Administration and Land Recovery vide Memo No. VI-310/75/200 dated Dacca, the 4<sup>th</sup> March, 1981. There arose some confusion as to the approval of such settlement by the aforesaid Memo dated 04.03.1981, and respondent No. 3 issued Memo No. ভূমঃ/শা-৮/খাজব/বিবিধ/৪৭/২০১২ (অংশ-১)/৫১৮ dated 23.04.2012 to respondent No. 7 calling for the opinion with some queries. On the basis of those letters, firstly an opinion was called for in respect of the land referred to in the Memo dated 04.03.1981, which was not issued by the Ministry of Land

Administration and Land Reforms. Respondent No.3 further instructed the Deputy Secretary, আইন অধিশাখা-৪, Ministry of Land, to report as to whether any settlement was accorded in favour of respondent No. 10 on the basis of the Memo dated 04.03.1981. The Deputy Secretary, Law Section-4(আইন অধিশাখা-৪) of respondent No. 1 by the memo No. 31.045.032.02.00.023.2011-468 dated 23.04.2012 intimated the respondent No.3 that the Memo dated 04.03.1981 was not concerned with that section. It was, however, specifically stated by respondent No. 3 in his memo No.518 dated 23.04.2012 that '(ক) ৪/৩/১৯৮১ তারিখে VI-৩১০/৭৫/২০০ নং স্মারক পত্রটি ভূমি প্রশাসন ও ভূমি সংস্কার মন্ত্রণালয় হতে জারিকৃত নয়, তাই উক্ত স্মারকে উল্লেখিত জমির বিষয়ে মতামত: "and it is sufficient to find out that no such Memo was issued from the then Ministry of Land Administration and Land Reforms, Section-VI. On the other hand, respondent No.7 through his Memo No. 12(Ka)-2/2009 226/S.A. dated 21.06.2012 replied that ".....পত্রটি সঠিক কিনা অত্রাফিসের রেকর্ড পত্র দেখে সিদ্ধান্ত নেয়া যাচ্ছে না।"

Learned Advocate for the petitioner further stated in the supplementary affidavit that the land allegedly claimed by the respondent No. 10 was never in its possession but the respondent No.10 recently filed Writ Petition No.5224 of 2012 for a direction to hand over possession of entire portion of 25.98 acres of land to the same. Accordingly, Rule was issued to that effect by a Division Bench of this Hon'ble Court. As such the same speaks that respondent No.10 is not a leasee and is not in possession of 25.98 acres of land in any corner of the said land.

Ms. Amatul Karim, the learned Deputy Attorney General, appearing for the respondent No. 1 filed affidavit-in-opposition stating that the Government has allotted the land in question to the respondent No. 10 Samity vide Lease Case No. 4/73-74, much before the prayer of the writ petitioner Samity and lease deed were executed and registered by the Government in favour of the respondent No. 10 Samity who also subsequently got mutation from the Government and the said registered instruments have not been set aside by any competent court. Moreover, the petitioner Samity has been treated as unauthorized occupant in respect of the land in question and they have created obstacle in earning the Government revenue by filing litigations one after another and as such the writ petitioner Samity is not entitled to get relief as prayed for. The aforesaid facts and circumstances of the case and for the ends of justice, the Rule issued in the instant writ petition is liable to be discharged and the ad-interim order of status quo passed at the time of issuance of the Rule may kindly be vacated.

The learned Deputy Attorney General by filing supplementary affidavit-in-opposition submits that the Ministry of Land vide its memo No. 31.00.0000.043.62.437.12-547 dated 16.08.2016 has sent the information about the petitioner's applications wherein they claimed lease on adverse possession by cancelling the deeds executed in favour of the Samasamitta Griho Nirman Samity vide Settlement Case No.4/73-74 and memo No. vi/310/75/200 dated 04.03.1981. The Ministry of Land vides its memo No. Bhi:M:/Sha/Khajob/06/09 (Chattogram)-499 dated 14.08.2016 issued by the Deputy Secretary, Khasjami-2 has informed that

upon an application preferred by Md. Ilias, President, Interim Committee, Shantinagar Bohumukhi Samobay Samity Ltd dated 22.01.2009 the Ministry of land vide its memo No. Bhu:M/Shah-8/Khajob/06/09 (Chattogram)-33 dated 24.02.2009 requested the Divisional commissioner to take steps as per rule by inquiring the matter. The Divisional Commissioner, Chittagong sent an inquiry report with opinion vide its memo No. 2-1/2009-767 dated 28.10.2009 to the Ministry of Land by conducting the same through the Additional Ministry of Land conducting the same through the Additional Divisional Commissioner (Revenue). The Ministry of Land had kept that application with file in the light of opinion of the Divisional commissioner and communicated the same to the Divisional commissioner vide its memo No. Bhu:M:/Shah:-8/Khajob/06/2009/261 dated 16.03.2016 and the copy of the same also was sent the Shantinagar Bahumukhi Samabay Samity. The petitioner again filed two applications dated 06.06.2012 and 20.06.2012 respectively on the selfsame matter to Ministry of Land and those are also kept with the record since those are regarding the same matter.

She further submits that the petitioner's allegation regarding the deeds executed in favour of the Samasamitta Griho Nirman Samity vide Settlement Case No. 4/73-74 and memo No. vi/310/75/200 dated 04.03.1981 is not true. On several occasions the allegation brought by the petitioner proved was found false the inquiry conducted by the competent authority. The Shantinagar Samaj Kallayan Samity, Shantinagar Bahumukhi Samabay Ltd. and Shantinagar Khaza Garibey Newaz are on the same group of people. They have been occupying the government

Khas land without any legal support and have been frustrating the government's initiative to implement its decision on other words to collect revenue by filing cases one after another by using the name of Shantinagar Samaj Kllayan Samity, Shantinagar Bahumukhi Samabay Ltd and Shantinagar Khaza Garibey Newaz.

The learned Deputy Attorney General by filing another supplementary affidavit-in-opposition stated that the land under Khas Khatian No.1 mouza-Poshim Soloshahar, Police Station Bayazid Bostami, Chittagong Metropolitan Police, District-Chittagong corresponding to R.S. Khatian No. 92,77,80,95,94 P.S/S.A Plot No. 408,404,4005,46,407, B.S.Plot No.12077,1279,12081and 12080,80 respectively measuring 25.98 acres of land gave settlement in favour of Samasamitta Griho Nirman Samity, government gave land under R.S. Plot No. 86 P.S/S.A.Plot 413, B.S. Plot No. 12082(part) measuring 1(One) acre in favour of Bayejid Bostami Police Station, C.M.P. Chittagong Sholoshahar Union Land Office. Government gave land under R.S. Plot No. 86, P.S./S.A. Plot No. 413, B.S. Plot No. 12081(part) and 12082(part)measuring 7.6850 acres in favour of Sheikh Fazlul Haque Moni Medical College and Nursing Institute and Sehikh Rasel Memorial Hospital. The Land under R.S. Plot No. 85, P.S./S.A. Plot 412, B.S. Plot No. 12083 (part) and 12085(part) measuring 5.59 acres is used as Graveyard for Muslims. The land under R.S. Plot Nos. 87, 88, 89, P.S/S.A.Plot Nos. 410, 411 and 412, B.S. Plot Nos. 12332, 12334 measuring 5.69 acres and 2.84 belong to Estate owned by Amin Jute Mills limited and Private owners respectively. The total quantum of land is

48.785 acres. The Government gave long term lease vide settlement case No. 4 of 1973-74 of the land under R.S. Plots Nos. 92,77,80,95,94 corresponding to P.S/S.A.Plots Nos. 408,404,405,406,407 and B.S. Plot Nos. 12077, 12079, 12081, 12080 and 80 Mouza Poshim Saloshahar Police Station-Boyizid Bostami District Chittagong measuring 25.98 acres in favour of Somasmitta Griho Nirman Samabay Samitee Ltd. Chittagong vide two deeds bearing No. 6308 signed on 20.09.1987 (31.83 acre) and deed No. 533 signed on 01.02.1988(4.15acre) corresponding to Khatian No. 1681 and 1712 respectively as available in Khatian No. 1/38.

She also submits that the Government gave settlement of the land R.S Plot No. 86, P.S/S.A Plot No. 413 B.S Plot No. 12082 (part) measuring 1 acre in favour of Bayzid Bostami Police Station Chittagong Metropolitan Police, Chittagong and Salosharhar Union land Office. But the petitioner occupied the land illegally and filed writ petitions one after another only to frustrate the development process of the government. It has been stated that the Government gave settlement of the land under R.S. Plot No. 86 P.S/S.A Plot No. 413 B.S Plot No. 12081(part) and 12082 part measuring 7.6850 acres in favour of Sheikh Fazlul Haque Moni Memorial College and Hospital and Nursing Institute and Sheikh Rasel Memorial Hospital vide Long Term Settlement Case No. 01 of 2010. But the petitioner occupied the land illegally for which an eviction case no, 37 of 2008 has been instituted, the petitioner contested that case. The Additional Deputy Commissioner (Revenue) passed an order dated 25.11.2010 in the said eviction case No. 37 of 2008 against the petitioner. The petitioner filed Miscellaneous Appeal No. 160 of 2010 against the

said order and after hearing the said miscellaneous Appeal No. 160 of 2010 was discharged on 20.09.2011.

The learned Deputy Attorney General submits that Mr. Taiob Ali and Mr. Safiqul Islam as president and General Secretary Shantinagar Samj Kallayan Samitee registration No. 118 of 1982 respectively and as member of Shantinagar Bahumukhi Samabay Samitee Ltd. Registration No. 8363 of 2005 created forged deeds in the name of Shantinagar Samaj Kallayan Samitee registration No. 1018 of 1982 and sold out those land appertaining to R.S. Plots No. 87,88,89, P.S/S.A. Plots No. 410,411,412 corresponding to B.S. Plot No. 12332, 12334 to different persons for which Durnitee Daman Commission (Anti Corruption Commission ACC), Chittagong lodged a criminal case with Kotowali Police Station, Chittagong under section No. 420/467/468/471/109 of the Penal Code which was registered as Kotwali Police Station Case No. 63(3)/2016 dated 26.06.2016.

The learned Deputy Attorney General finally by filing supplementary affidavit-in-opposition dated 03.08.2016 stated that the Ministry of Land informed vides its memo NO. 31.00.0000.043.62.437.12-499 dated 28.07.2012 has informed that the applicant being illegal occupier of the land in question the district administration instituted and eviction case No. 37 of 2008 against hem for the interest of Government previously. No steps could be taken in respect of that eviction case due to pendency of the Rule in this Court. The authority gave settlement of the said land in favour of Sheikh Fazlul Haque Moni Medical Collage and Nursing Training Institute respondent

No. 10 herein and Bayezid Police Station Complex. In such circumstances the application of the petitioner dated 06.06.2012 and 20.06.2012 has kept with the file. The respondent No. 1 also requested to fix the next steps to be taken against the illegal occupier for protection of the public interest and to inform the this Court about the matter. It is learnt from memo No. Bhu:Ma:Ma:/Sha:-8/Khajab/06/09 (Chattogram)-468 dated 28.07.2016 issued from Khasjami-2, Ministry of Land that the applications dated 06.06.2012 and 20.06.2012 filed by the petitioner are kept with the file since those were not considered by the Land Ministry.

Mr. Zamirul Akter the learned Advocate appearing for the respondent No. 10 by filing affidavit-in-opposition submits that the Government has allotted the land in question in favour of the respondent No. 10 Samity vide lease Case No. 4/73-74 and vide lease Deed No. 6308 dated 22.9.1987 and lease Deed No. 533 dated 02.2.1988 much before the prayer of the writ petitioner Samity lease deeds were executed and registered by the Government of the People's Republic of Bangladesh in favour of the Respondent No. 10 Samity who also subsequently got mutation from the Government and the said registered deeds have not been set aside by any competent court of law. Moreover, the petitioner samity has been treated as unauthorized occupant in respect of the land in question and they have created obstacle in earning Government revenue by filing litigations one after another and as such the writ petitioner Samity is not entitled to get any relief as prayed for.

The learned Advocate for the respondent No. 11 further submits that the Government of the People's Republic of Bangladesh published

Gazette notice as Non Agricultural Khas Land Lease Policy where it is categorically stated in section-3 (Gha) that “প্রাকৃতিক দুর্যোগ জনিত কারণে ক্ষতিগ্রস্ত ও সরকার কর্তৃক বৈধভাবে পুনর্বাসিত লোকজনকে সংশ্লিষ্ট জমি সরকারের অন্য কোন প্রয়োজনে না লাগিলে দখল বিবেচনায় আনিয়া পরিবার প্রতি সর্বোচ্চ ০.০৫ একর (পাঁচ শতাংশ) জমি দীর্ঘ মেয়াদী বন্দোবস্ত দেওয়া যাইবে। তবে নারায়ণগঞ্জ সহ ঢাকা মেট্রোপলিটন এলাকায় এবং চট্টগ্রাম মেট্রোপলিটন এলাকায় এই ধরনের বন্দোবস্ত দেওয়া যাইবে না।”

The learned Advocate by filing another affidavit-in-opposition on behalf of the respondent No. 11 wherein it has been stated that the petitioner filed this instant writ petition and obtained a status-quo as such the eviction process cannot be accomplished by the Government and regarding this matter the Deputy Revenue Collector, Chittagong under Memo No. 05.20.1500.029.12.1666.12.3291 dated 26.11.2015 informed the matter to added respondent No.11.

The Shantinagar Somaj Kalyan Samiti earlier filed writ petition No. 9975 of 2010 and the petition was rejected as being not pressed on 31.05.2011. Then the Shantinagar Shmaj Kalyan Samity filed another writ petition being No. 9019 of 2011 to stop the eviction process and after hearing on 25.10.2011 this Court stayed the eviction order dated 25.11.2010 by Deputy Commissioner, Chittagong for a period of 3(three) months and thereafter the said Shomaj Kalyan Samity applied for non-prosecution and as such the Rule was discharged for non-prosecution on 20.11.2014. Thereafter, the petitioner filed a restoration petition and it was also rejected by this court by order dated 23.02.215.

It is further stated that the present petitioner earlier filed Writ Petition No. 4431 of 2009 regarding the same matter and the learned Advocate for the petitioner submits that he has got instruction from his client, not to proceed with the Rule. Accordingly, the rule was discharged for non-prosecution with a cost of 3000/= (three thousand) by order dated 18.05.2011.

In reply to the submission of the respondents the petitioner by filing affidavit-in-reply stated that the respondent No.1 filed the two supplementary affidavits to its affidavit-in-opposition. From the annexure-2 of the same shows that there is some pending case for eviction and as the said land was leased out to respondent No. 10 and added respondent No. 11, the applications dated 06.06.2012 and 20.06.2012 have been kept with the record. On the other hand, Annexure-3 shows that the letters have been kept with the record as the same were not considered by the Ministry of Land, respondent No. 1 and those others were not communicated to the petitioner and were not annexed in the affidavit-in-opposition by respondent No. 1. Moreover, there were some issues raised in those letters which the respondents overlooked deliberately.

The second supplementary affidavit to affidavit-in-oppositin filed by respondent No. 1 that there was an attempt to validate Memo No. VI-310/75/200 dated 04.03.1981 in the report of an inquiry Committee dated 06.12.2012 but it clearly transpires from Memo No. ভূঃমঃ/শা-৮/খাজব/বিবিধ৪৭/২০১২ (অংশ-১)/৫১৮ dated 23.04.2012 of respondent No.3, (Annexure-N Series to the supplementary affidavit to the writ petition) that no lease was granted by the Ministry to the respondent No. 10

Moreover, respondent No. 7 through his Memo No. 12 (ka)-2/2009 2261/S.A. dated 21.06.2012 replied that “... .. পত্রটি সঠিক কিনা অত্রাফিসের রেকর্ড পত্র দেখে সিদ্ধান্ত নেয়া হচ্ছে না।” Therefore, the respondents have once again made a perfunctory have been taken attempt to validate the aforesaid Memo dated 04.03.1981 without any tangible proof.

It would also be transparent from a report dated 24.04.2012 (Annexures-4 Series to the second supplementary affidavit -in-opposition that 5 (five) co-operative housing societies and some other associations were given long term lease. In the past, the respondents were sympathetic to the cause of the petitioner and that intention of the respondents was reflected in the letters (Annexures-B series) to the writ petition, but they are now refusing the petitioner to make any sort of accommodation without assigning any reason whatsoever.

The learned Advocate for the petitioners submits that regarding the registration number and address of respondent No. 10 Sama Samitta Griha Nirman Samabaya Samity Ltd. have been mentioned by itself in its affidavit-in-opposition (Annexures-9 Series) to be the registration No. 6081 and Wahed Market, 2<sup>nd</sup> Rail Gate, Sholoshahar, Chittagong. The petitioner came to know leasor's registration number being 6081 belongs to another organization being Sama Samartha Griha Nirman Samabaya Samity Ltd. (সম-সামর্থ্য গৃহ নির্মাণ সমবায় সমিতি লিঃ), which obtained registration No. 6081 on 19.10.1978. In the Certificate of Registration, the address of the said Sama Samartha Griha Nirman Samabaya Samity Ltd. (সম-সামর্থ্য গৃহ নির্মাণ সমবায় সমিতি লিঃ) has been mentioned as Shershah Colony, Bayejid Bostami, Sholokbahor, Panchlaish, Sadar (Uttar), Chittagong. Later the

respondent No. 10 used its own registration number as No. 6081/1. But it had all along used the registration number of another organization towards obtaining the long term lease from the government, and the government with malafide and ulterior motive ignoring the fact of non-registration of respondent No. 10. Despite that respondent No. 10 had no registration at the relevant time, the government with malafide and oblique intent granted long term lease in pursuance of a fictitious and dubious Bandobosto Case (বন্দোবস্ত মামলা নং ৪/১৯৭৩-৭৪). It is also to notice from the documents of registration of Sama Samartha Griha Nirman Samabaya Samity Ltd. (সম-সামর্থ্য গৃহ নির্মাণ সমবায় সমিতি লিঃ) that it was registered on 19.10.1978 with the registration number as 6081. Therefore, it is not possible or practicable for any organisation having registration number as 6081 obtained on 19.10.1978 to file the aforesaid Bandobosto Case (বন্দোবস্ত মামলা নং ৪/১৯৭৩-৭৪) in the year 1973-1974. As such the claim of respondents of granting long term lease in favour of respondent No. 10 upon Bandobosto Case (বন্দোবস্ত মামলা নং ৪/১৯৭৩-৭৪) allegedly initiated by respondent No. 10 is palpably false on the face of the record.

We have considered the submissions made on behalf of the respective parties and carefully perused the writ petition, affidavit-in-oppositions, supplementary affidavits, affidavits-in-reply and all the annexures and other materials on record.

It is to be mentioned there that during the hearing of the Rule, some other aspects came to surface and both the petitioner and the respondents filed a number of supplementary affidavits, affidavits-in-reply, etc. The respondent No. 1 through its affidavit-in-opposition stated that the

Government has allotted the land in question to the respondent No. 10 Samity vide Lease Case No. 4/73-74, much before the prayer of the writ petitioner Samity and lease deed was executed and registered by the Government in favour of the respondent No. 10 Samity who also subsequently got mutation from the Government and the said registered instruments have not been set aside by any competent court. Moreover, the petitioner Samity has been treated as unauthorized occupant in respect of the land in question and they have created obstacle in earning the Government revenue by filing litigations one after another and as such the writ petitioner Samity is not entitled to get relief as prayed for. The aforesaid facts and circumstances of the case and for the ends of justice, the Rule issued in the instant writ petition is liable to be discharged and the ad-interim order of status quo passed at the time of issuance of the Rule may be vacated. By filing supplementary affidavit-in-opposition made submissions to the effect that the petitioner is an illegal occupier in respect of the khas land in question and also that the petitioner has brought a number of legal proceedings due to which the Government facing difficulties for collecting taxes.

On the other hand, the petitioner rebutted the same by submitting that previously the status of the petitioner of being an illegal occupier had never been an issue before leasing of the land in question. It is an admitted case of the respondents that the petitioner is in possession for about 70 years from the time of its predecessors and by this time they have been constructed structures for about 1000 family members.

However, it is very much apparent that more or less 1000 families of the petitioner's samity are in possession of the land in question. Learned Deputy Attorney General for respondent No. 1 submits that due to the order of status quo directing the parties to maintain status quo in respect of possession and position of the land, Government could not take any step for eviction of the persons and other inhabitants of the petitioner and that the petitioner has been maintaining its possession in the land in question as illegal occupier.

She further submits regarding the applications of the petitioner (Annexure-K series) as being directed by this court for disposal within 90 days, that from the memo No. Bhu : Ma : / Sha:- 8 / Khajab / 06 / 09 (Chattogram) - 468 dated 28.07.2016 issued from Khasjami-2, Ministry of Land that the application dated 06.06.2012 and 20.06.2012 filed by the petitioner have been kept with the file since those were not considered by the Land Ministry. We like to hold that the respondents should have complied the direction of this Court by disposing of the applications of the petitioner dated 6.6.2012 and 20.06.2012 on merit.

The Government leased out the land of 25.98 acres in favour of the respondent No. 10 through execution and registration of two separate lease deeds on the basis of the Bandobosto Case (বন্দোবস্ত মামলা নং ৪/১৯৭৩-৭৪). But it appears from the order sheet thereof as annexed with the supplementary affidavit dated 09.11.2016 of the respondent No. 1 that the settlement was allowed pursuant to a letter under memo No. VI-310/75/200 dated 04.03.1981. In respect of this particular letter, it appears

from a letter of the Ministry of Land bearing memo No. ভূমি/শা-  
চ/খাজব/বিবিধ/৪৭/২০১২ (অংশ-১)/৫১৮ dated 23.04.2012 (Annexures-N Series of  
the supplementary affidavit of the petitioner) that it has been stated in the  
said memo, “(ক) ০৪/০৩/১৯৮১ ইং তারিখে ৬-৩১০/৭৫/২০০ নং স্মারক পত্রটি ভূমি প্রশাসন  
ও ভূমি সংস্কার মন্ত্রণালয় হতে জারিকৃত নয়।” and from such assertion, it is not clear  
to us as to how the letter dated 04.03.1981 allegedly issued from the then  
Ministry of Land Administration and Land Reforms, Section VI was  
done. However, while exercising writ jurisdiction, we are not inclined to  
determine whether any lease was granted to the respondent No. 10 or not.  
The respondent No. 10 got registration No. 6081 dated 19.10.1978 on the  
other hand the Certificate Case was started in the year of 1973-74. There  
is a big question arisen how the Government lease out the land in question  
before registration of the respondent No. 10 Samity. It is unsatisfactory to  
us that the respondents without disposing of the application of the  
petitioner (Annexures-K series) has kept the same in file. The  
Government has been granting lease of khas lands for housing purpose to  
several other co-operative societies and associations while the same has  
been grossly overlooking the petitioner’s application for a long period of  
time. It has been taking measures to evict them without making any  
arrangements for their rehabilitations, which is a very pertinent, vital and  
relevant aspect in the context for any practical purpose inasmuch as there  
are thousands of families residing in the lands in question having schools,  
madrashas, orphanage, mosque, small cottages, etc., and they have availed  
utility services too; as such any step of the government towards their  
eviction shall also bring about unsettling their livelihood causing them to

go through an unspeakable devastation, which should not take place without proper rehabilitation. Moreover, if the present policy of the government allows it to lease out khas lands for housing purpose to different organizations and various others, the same policy ought to have been pursued having no discrimination to petitioner for granting long term lease. We cannot appreciate such discriminatory policy of the respondents.

By filing supplementary affidavit dated 09.11.2016 the learned Deputy Attorney General has stated that the Government allotted land under khas Khatian No. 1 of Mouza Poshchim Soloshahar, Police Station- Bayazid Bostami, Chittagong Metropolitan City, District- Chittagong, corresponding to R. S. Khatian Nos. 92, 77, 80, 95, 94 P.S and S.A. Plot Nos. 408, 404, 405, 406, 407 B.S. Plot Nos. 12077, 12079, 12081 and 12080 respectively, measuring 25.98 acres in favour of Samasamitta Griho Nirman Samity. Government also allotted land under R. S. Plot No. 86 P. S. and S. A. Plot No. 413 B.S. Plot No. 12082 (part) measuring 1(one) acre in favour of Bayejid Bosatami Police Station, Chittagong. Government also allotted land under R. S. Plot No. 86, P. S. and S. A. Plot No. 413, B. S. Plot No. 1208 (part) and 12082(part) measuring 7.6850 acres in favour of Sheikh Fazlul Haque Moni Medical College and Nursing Institute Sheikh Russel Memorial Hospital. The land under R. S. Plot No. 85 P.S./S. A. Plot No. 412, B. S. Plot No. 12083(part) and 12085(part) measuring 5.59 acres is used as Graveyard for Muslims. The land under R. S. Plot No. 1223, 1234 measuring 5.69 acres and 2.84 acres belong to State owned Amin Jute Mills limited and private owners

respectively. The total quantum of land is 48.785 acres. But she could not specify how the remaining khas lands are being used. It appears they have not been leased out to anybody.

The petitioner has given a schedule in the writ petition showing 78.0900 acres of khas land situated in khas Khatian No. 1, Mouza poshchim Solashahar, Police Station: Bayazid Bostami within Plot Nos. 264, 401, 402, 408, 407, 406, 403, 404, 447 and 441.

From the submissions of the learned Deputy Attorney General, it appears to us that all the khas lands of the khas Khatian No. 1, Mouza Poschim Solashahar, Police Station Bayazid Bostami have not been leased out yet. Considering the practical situation of the petitioner, we are inclined to direct the respondent Nos. 1-9 to consider the applications dated 06.06.2012 and 20.06.2012 (Annexure-K series) of the petitioners for granting lease to them from the unused/unallotted remaining khas lands, situated in khas Khatian No. 1 of Mouza Pochim solashahar or if no such unallotted land is available they may be granted lease from nearby Mouza under Police Station Bayazid Bostami, Chittagong for rehabilitation of the thousands of families of the petitioner samity in accordance with law within 3(three) months from the date of receipt of this judgment and order.

In view of above discussions and directions the Rule is disposed of without any order as to costs.

Tariq ul Hakim, J:

I agree.