

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

WRIT PETITION NO. 2881 OF 2013

In the matter of:

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

And

In the matter of:

Md. Anowar Hossain Talukder and others.
... Petitioners

-Versus-

Government of the People's Republic of
Bangladesh represented by the Secretary,
Ministry of Land, Secretariat Building, Abdul
Goni Road, Ramna, Dhaka-1000 and others.
... Respondents

Mr. Md. Moinul Islam with
Mr. Khaled Saifullah, Advocates
...For the petitioners

Mr. A.S.M. Mokter Kabir Khan, DAG with
Mr. Mohammad Mohsin Kabir, DAG,
Mr. Mostafizur Rahman (Tutul), AAG,
Mr. Fuad Hasan, AAG,
Mr. Md. Moniruzzaman, AAG and
Ms. Sonia Tamanna, AAG
...For the government

Heard on 28.07.2025 and 29.07.2025.
Judgment on 29.07.2025.

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 respondents should not be directed to mutate the decreed land in the name of the petitioners in the light of the judgment dated 10.09.1997 passed in Other Class Appeal No. 90 of 1989 by the Subordinate Judge, 2nd Court, Mymensingh affirming the judgment and decree dated 26.12.1988 and 01.01.1989 respectively passed by the Assistant Judge, Phulpur, Mymensingh in Other Class Suit No. 15 of 1984 and/or pass such other or further order or orders as to this court may seem fit and proper.”

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

On the back of recording the name of the government of the suit property measuring an area of 29 decimals of land in ROR Khatian No. 1 in respect of Settlement Plot No. 540-the predecessor of the petitioner filed a suit being Other Class Suit No. 15 of 1984 before the learned Assistant Judge, Phulpur, Mymensingh and by framing as many as five

different issues and taking evidence of the plaintiffs (the predecessor of the petitioner witnesses) as P.W-1 to P.W-4 and on examining the documents which were marked as exhibit nos. 1-4(g) and that of the testimony of the government witness, the Tahshilder of Mojahardi Tahshil Office as D.W-1 eventually, by the judgment and decree dated 26.12.1988 decreed the suit on contest against the government.

Being aggrieved, the government who is the respondent here preferred an appeal being Other Class Appeal No. 90 of 1989 before the learned District Judge, Mymensingh which was heard by the then learned Subordinate Judge, 2nd court, Mymensingh who after hearing the parties to the appeal vide judgment and decree dated 10.09.1997 dismissed the appeal.

Soon after getting decree from two consecutive courts, the petitioners approached to the respondent no. 2 to get their name mutated in the khatian in respect of 29 decimals of land. But without taking step in mutating the name of the petitioners in the suit property, the respondent no. 3 sat over the matter and ultimately the respondent no. 1 undersigned by the Deputy Secretary dated 02.02.2010 forwarded the matter to the respondent no. 2 for disposal in line with the rules and regulations. In spite of that the Additional Deputy Commissioner (Revenue), Mymensingh again vide its letter dated 04.03.2010 forwarded the matter to the Ministry, respondent no. 1 seeking guidelines in mutating the name.

Finding no other alternative, the petitioner finally wrote a letter to the respondent no. 1 that is, Secretary, Ministry of Land stating all the

sufferings they endured for last 15 years just to get their name mutated in the ROR in spite of getting the decree from two consecutive courts and prayed for taking necessary steps so that they can get mutation in respect of the suit property in their name but of no avail.

It is at that stage, challenging the inaction of the respondents in not mutating the name of the petitioners in the ROR filed instant writ petition seeking direction upon the respondents to mutate the name of the petitioners.

Mr. Md. Moinul Islam along with Mr. Khaled Saifullah, the learned counsels appearing for the petitioners upon taking us to the writ petition and by reading out the judgment passed by the trial court as well as the appellate court, at the very outset submits that since the Deputy Commissioner, Mymensingh, respondent no. 2 although contested the suit and the appeal but the said respondent no. 2 sat over the matter for an unlimited period which clearly manifests his high-handedness in resolving the issue.

The learned counsel by referring to section 143 of the State Acquisition and Tenancy Act, 1950 also contends that moment a decree is passed in favour of any tenant, the respondents have got no other option but to mutate the name of the tenant herein the petitioners as proper application has been filed but the respondents adopted back and forth over the application filed for mutation which is absolutely illegal and without lawful authority and having no legal effect.

The learned counsel lastly contends that since the respondents did not file any revision against the concurrent judgment and decree

declaring the disputed khatian illegal, so this Hon'ble court may direct the respondents by giving a time frame, for mutating the name of the petitioners as per the judgment and decree passed in their favour. 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 submits that the process is now ongoing to mutate the name of the petitioners in the khatian and since the respondent did not prefer revision so the petitioners can get the mutation in accordance with law.

Be that as it may, we have considered the submission so advanced by the learned counsel for the petitioners and that of the learned Deputy Attorney-General for the government and perused the writ petition and all the documents so have been appended therewith in the writ petition.

There has been no gainsaying the fact that the suit property since has been prepared wrongly in the name of the government in ROR khatian the predecessor of the petitioners had challenged that very wrong recording and got a decree up to the appellate court below which remains unchallenged by the government in revision. So there has been no other option on the part of the government rather than to mutate the name of the petitioners in the respective ROR under the respective provision of law. But documents depicts the respondent has been making a dilly-dally tactics over the matter though it is the statutory responsibility vested upon the respondents to mutate the name of a tenant moment a proper application is filed to that effect. From

Annexure-‘E’ to the writ petition, we find that a mutation case has also been registered on which the government represented by the Deputy Secretary of the Ministry, respondent no. 1 even asked the Deputy Commissioner to take necessary step to mutate the name. But without paying any heed to the said letter, the Deputy Commissioner again forwarded the matter to the respondent no. 1 seeking guidelines from that Ministry (Annexure-‘F’ to the writ petition) which is totally absurd given the clear instruction so have been provided on 02.02.2010 asking the Deputy Commissioner, respondent no. 2 to take necessary step for mutating the name of the petitioners in the ROR since the petitioners got a decree from competent court of law.

On top of that, adoption of such kind dilly-dally tactics by the respondents is tantamount to sheer disregard to the concurrent judgment and decree passed by competent civil courts.

Given the above circumstances, we are of the considered view that it would be expedient if a direction is given to the respective respondents to mutate the name of the petitioners since there has been no legal impediment to the contrary.

Accordingly, we find ample merit in the rule.

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

The respondents are hereby directed to take necessary step in mutating the name of the petitioners in the ROR as per the letters so have been issued for the respondent no. 1 to respondent no. 2 bearing

Annexure-‘E’ to the writ petition within a period of 60(sixty) days from the date of receipt of the copy of this judgment.

Let a copy of this judgment be communicated to the respondents forthwith.

Md. Bashir Ullah, J.

I agree.