

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

**WRIT PETITION NO. 12611 OF 2012**

**In the matter of:**

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

And

**In the matter of:**

S. M. Faridul Hoque being dead his legal heirs  
1(a) Khodeja Khatun and others  
... Petitioners

-Versus-

The Secretary Ministry of land, Bangladesh  
Secretariat, Ramna, Dhaka and others.  
... Respondents

Mr. Md. Khalilur Rahman Bhuiyan, Advocate  
...For the petitioners

Mr. Mohammad Mohsin Kabir, DAG,  
Mr. Mostafizur Rahman (Tutul), AAG,  
Mr. Md. Moniruzzaman, AAG  
Mr. Md. Fuad Hasan, AAG  
Ms. Sonia Tamanna, AAG and  
Mr. Ashraful Alam, AAG  
...For the respondent nos. 1,7,8 and 9  
Mr. Md. Nazmul Haque, Advocate  
...For the respondent no. 6

**Heard on 22.07.2025, 23.07.2025, 03.08.2025  
and Judgment on 03.08.2025**

**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 calling upon the respondents to show cause as to why a direction should not be given upon the respondents to allot permanent lease settlement of the scheduled property measuring 8 (eight) decimals of land of District: Dacca (Dhaka), mouza, Senpara Porbata, plot No. 1512 (Part), Khatian No. 28 of holding No. 451, nature of land, *Chala* to the petitioner and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, the parties were directed to maintain status quo in respect of possession of the land for a period of 06(six) months. The said period of stay was subsequently extended from time to time.

The short facts leading to issuance of the instant rule are:

The petitioner had a dwelling house and properties in his native village in Sirajgonj District which was washed away by the mighty river, Jamuna in the year 1976 and all the paternal properties had gone under water by the said river, Jamuna. Thus the petitioner became a distress person in the year 1976 and then applied to the Deputy Commissioner, Dhaka as a former Air force employee for giving allotment a piece of land in Dhaka city. After scrutiny of the papers submitted by the petitioner and as per the rules and regulation that was existing at that time and to rehabilitate the petitioner in Dhaka as a distress person as well as a victim of liberation war and a former defence personnel, the Deputy Commissioner, Dhaka then allotted a piece of land that is, 8 decimals of land (precisely suit land) in Dhaka, Mouza-Shenpara parbata, plot No.

1512 (Part), khatian No. 28 as year-to-year lessee. Then a lease agreement was executed on 30.06.1976 which was subsequently renewed from time to time. After getting lease and as per terms and conditions laid down in the lease agreement, the petitioner then constructed a semi-pucca dwelling house on the said lease hold property and started living there by giving all utility bills including electricity bill, wasa bill, gas bill and also took a telephone connection and paid municipality tax and other taxes. However, after taking possession in the suit property and on erecting a semi-pucca building thereon, the petitioner then applied to the government for giving him permanent lease of the land. But since the respondents did not take any visible action in providing permanent lease to the petitioner, he then finding no other alternative, prayed to the then Hon'ble President of the Peoples Republic of Bangladesh to consider his prayer on humanitarian ground to give him permanent lease of the said property. Then after scrutiny of the petitioner's application, the then Hon'ble President vide office letter bearing no. 32.145.1.33.89-290 dated 02.07.1990 directed the secretary, ministry of land for giving permanent lease to the petitioner but ultimately it has not yielded any positive outcome. Subsequently, the petitioner through appropriate authority also prayed to the then Hon'ble Prime Minister to allot him the said land and to direct the appropriate authority for giving him lease of the said property permanently. In response to that, the Hon'ble Prime Minister by her office memo No. 4001/33/A and L-1/Biman/211 dated 03.05.2000 directed the ministry of land for allotting the suit property as permanent lease to the petitioner. After the said directives issued from the office of Hon'ble

President as well as the office of Hon'ble Prime Minister Ministry, the ministry of land, then by a letter directed the Deputy Commissioner that is, respondent no. 7 to allot land to the petitioner on permanent basis on receiving *rayati salami*. However, since no positive response came forward from the respondent no. 7 even after the directions from the highest authorities of the republic, the petitioner then on 14.08.2011 made a representation to the Deputy Commissioner, Dhaka stating the facts enclosing all the previous correspondences so made earlier to the office of the Hon'ble Prime Minister and Hon'ble President for allotting the suit land to him permanently upon receiving *raiyaati salami*. However, due to not allotting the suit land to the petitioner permanently and due to having a temporary establishment of the petitioner over the suit land, he was then subjected to humiliation and harassment on several occasion by different organizations such as City Corporation and local miscreants unnecessarily. Subsequently, without giving prior notice to the petitioner they also demolished a part of the wall of the petitioner's dwelling house on 12.09.2012. Then finding no other alternatives and repeated threat exerted by the respondents, the petitioner then consulted his lawyer and served a notice upon the respondents demanding justice and ultimately filed the instant writ petition. By filing a supplementary affidavit it has further been stated that the petitioner has regularly been paying rents to different government apparatus and in return, received duplicate carbon receipt (DCR) from the Additional Deputy Commissioner (revenue) up to the year 2020 and also paid City Corporation tax up to financial year 2023-2024 AD vis-à-vis paid gas bill up to 15<sup>th</sup> April, 2024. Apart from that, it

has also been asserted that, the petitioner recently paid rent and got DCR up to 1426 BS and since after 1426 BS, the respondent no. 7 is not renewing the lease agreement and declined to receive rent from the petitioner, he then compelled to file an application on 20<sup>th</sup> April 2025 to the Additional Deputy Commissioner (revenue), Dhaka praying for renewal of the lease up to 1432 BS as well as to take rent up to that period.

By filing an affidavit-in-reply against the affidavit-in-opposition so filed by the respondent no. 6, it has also been asserted that, SA plot No. 1512 has subsequently been bifurcated in 6 city *jarip* plots under city *jarip* (survey) out of which city *jarip* plot no. 38178 falls as pathway measuring 16 feet width and 53 feet long in the name of north City Corporation but for that, entire SA plot no. 1512 has not been utilized by the said city corporation and the petitioner is still in possession in the suit land.

Mr. Md. Khalilur Rahman Bhuiyan, the learned counsel appearing for the petitioner upon taking us to the writ petition as well as two supplementary-affidavits as well as the affidavit-in-reply against the affidavit-in-opposition filed by the respondent no. 6, at the very outset submits that, since the petitioner has been given lease in the year 1976 by way of furnishing a lease agreement and it was subsequently renewed from time to time and record shows that, the last renewal was made in the year 1426 BS so the petitioner has acquired indefeasible title in the suit land and thereby he is entitled to have permanent lease from the respondent yet in spite of repeated reminders as well as giving assurance by the respondents to give permanent lease to the petitioner they have

utterly failed to act to that effect and thereby fundamental right to property guaranteed by the constitution has been violated and therefore the respondents may be directed to give permanent lease to the petitioner.

The learned counsel further contends that, since the respondents have regularly been receiving all the utility bills and DCRs for several years have also been issued so a vested right has been created in favour of the petitioner to hold on possession over the suit property that is, in 08 decimals of land, so the respondent is bound to give permanent lease in his favour.

The learned counsel lastly contends that, since the renewal of lease as well as taking rent from the petitioner are still under consideration of the respondents so under no circumstances can the petitioner be denied giving permanent lease since it is an admitted position that the petitioner has been enjoying the suit property by erecting a dwelling house thereon and since 1976 he has been living in the suit property so the respondents are bound to give permanent lease to the petitioner.

The learned counsel finally made a humanitarian submission contending that, since the petitioner is a victim of liberation war and also a former employee of defence force (Air force) and considering the contribution he made to the state, he was allotted the suit land so his such right cannot be taken away by the respondents which he has been enjoying for long 40 years by residing with his family and if the petitioner is evicted from the suit property, there would have no other place for the petitioner to live in this Dhaka city and considering that, this Hon'ble

court may direct the respondents to give lease of the suit land to the petitioner permanently under the relevant provision of law.

By contrast, Mr. Mohammad Mohsin Kabir, the learned Deputy Attorney General appearing for the respondent nos. 1,7,8 and 9 by filing an affidavit-in-opposition vehemently opposes the contention taken by the learned counsel for the petitioner and by taking us to the affidavit-in-opposition in particular, paragraph no. 11-14 at the very outset submits that, since the property was a lease hold property of the government, the same has been enlisted as abandoned property and the Deputy Commissioner, Dhaka vide memo No. 2050(4)/Rev:IX-69/76 dated 25.05.1976 had given lease to the petitioner on purely year-to-year basis so under no circumstances can the petitioner claim that lease as of permanent one.

The learned Deputy Attorney General by taking us to paragraph no. 12 to the affidavit-in-opposition also asserts that, as per rule 8(3) of “The Bangladesh Abandoned Property (Land, Building and Any Other Property) Rules, 1972, a temporary lessee under that rule can not acquire any right for getting permanent lease on the expiry of the tenure of lease, that is, after expiry of one year.

By taking us to the respective provision of law, the learned Deputy Attorney General next contends that, since in rule 8 it has clearly been asserted that, the land and building shall be managed on a temporary basis for a period of not exceeding one year at a time, so basing on such clear terms and conditions, the government may not be directed to give permanent lease to any lessee where the respondents have no authority in

giving lease in favour of the petitioner permanently and finally prays for discharging the rule.

In the same vein, Mr. Md. Nazmul Haque, the learned counsel appearing for the Dhaka North City Corporation, respondent no. 6, vehemently opposes the contention taken by the learned counsel for the petitioner and submits that, since some part of SA plot No. 1512 has been acquired by the City Corporation for constructing pathway which falls under city plot no. 38178, so the petitioner cannot claim to get permanent lease from the government and no permanent lease of the suit property can be given to the petitioner in absence of any statutory provision of law and finally prays for discharging the rule.

Be that as it may, we have considered the submission so advanced by the learned counsel for the petitioner and those of the learned Deputy Attorney General as well as the learned counsel for the respondent no. 6. We have also gone through the affidavit-in-opposition so filed by the said respondents as well as supplementary-affidavit filed by the petitioner and affidavit-in-reply as well.

There has been no gainsaying the fact, the petitioner has been enjoying title and possession over 08 decimals of land since 1976 by virtue of a lease agreement furnished in his favour by the respondent no. 7. Record further shows that, up to 1426 BS the said lease has been renewed in favour of the petitioner and the petitioner has been regularly paying all utility bills and hold on possession in the suit property. But only question remains, whether the government has got any authority to give permanent lease to the petitioner when it is admitted position that the said property



is an abandoned property. Certainly, the management and control of that property is guided through “The Bangladesh Abandoned Property (Land, Building and Any Other Property) Rules, 1972. If that is so, then the provision of sub rule (3) of rule 8 of that rules will come into play Sub rule (3) clearly stipulates, the lessee would have no right to hold on possession after the expiry of the period the lease is given. For the convenience of understanding, let us reproduce the provision of rule 8(3) of 1972 which runs as follows:

*8(3) A temporary lessee under sub-rule(2) of any abandoned land or building shall not acquire any right of occupancy in such land or building and shall not be entitled to hold over (it) after the expiry of the period of the lease.*

Though from the record it shows that, the respective authorities under the respondents have regularly been receiving the utility bills as well as taxes but since the property is an abandoned property so under no circumstances can the petitioner claim to have the property as of permanent lessee as the provision provided in rule 8(3) as aforesaid, does not say so. Since there has been no statutory provision of law of providing permanent lease to any year-to-year lessee so this court exercising writ jurisdiction under Article 102 of the Constitution can not simply give direction (writ of Mandamus) to the respondents to give permanent lease to the petitioner. Furthermore, on going through the record in particular, the supplementary affidavit so filed by the petitioner dated 20<sup>th</sup> July, 2025,

we further find that the period of lease has lastly been renewed in favour of the petitioner for 1426 BS. Record further shows that, since the lease term in favour of the petitioner has not been renewed after 1426 BS, the petitioner has thus compelled to file an application to the ADC (revenue), respondent no. 8 to extend the said lease period up to 1432 BS and to receive the rent there against. But the said application still remains pending which should be disposed of.

Regard being had to the above facts and circumstances we don't find any substance in the submission so place by the learned counsel for the petitioner in view of the statutory provision of law.

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

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

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

**Md. Bashir Ullah, J.**

I agree.