

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present:

Mr. Justice Sikder Mahmudur Razi

-And-

Mr. Justice Raziuddin Ahmed

Writ Petition No.10009 of 2013

In the matter of:

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

-And-

In the matter of:

Nazmunnahar Islam

... Petitioner

-Versus-

The Government of the People's
Republic of Bangladesh and
others.

... Respondents

No one appears

... For the Petitioner

Mr. M. Nazrul Islam Khandaker, Advocate
... For the Respondent No. 3

Heard & Judgment on 19.11.2025

Raziuddin Ahmed, J:

1. On an application under Article 102 of the Constitution of the People's Republic of Bangladesh a Rule was issued in the following terms,

*“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the order bearing সারকন্স- প্রাপ্তি মংস্কা-
১১/উচ্চেদ/ ২০১৩/৯৮৭ তারিখঃ ০১/০৭/২০১৩ issued by the
Respondent No. 4 Senior Assistant Secretary & Deputy*

Commissioner, Ministry of Housing & Public Works asking the petitioner to vacate her Residential house, the preserved abandoned House No. H/41 (1 Floor), Block-E, Zakir Hossain Dhaka Road, Mohammadpur, (Annexure- "A") shall not be declared to have been issued without lawful authority and is of no legal effect and why the respondents should not be directed to consider the application of the petitioner praying for allotment of the abandoned house No. H/41, Block-E, Zakir Hossain Road, Mohammadpur, Dhaka permanently in favour of the petitioner or to offer her for sale of the same house (As of Annexure- "F" Series) or to arrange for alternative house on the basis of the Policy decision of the Government and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. The facts relevant for disposal of this Rule, in brief, are that the late husband of the petitioner, Nur Islam was a freedom fighter who valiantly fought for the country in the liberation war of 1971 and in the war, he received a bullet injury on the right thigh during an encounter with the occupation Army on 28 November 1971 at Kakiladaha under Mirpur Police Station in Kustia District. The late husband of the petitioner finding no other alternative during flood season started living in the first floor of an abandoned house being House No.H/41 (1st floor) Block-E, Zakir Hossain Road (Madani road), Mohammadpur, Dhaka and filed an application before the concerned authority requesting them not to evict him and his family from the said house till the arrangement of an

alternative residence. That the government in the year of 1982 issued a circular vide Memo No. XVII/IM-8/79/375(99) Dacca, the 30th June, 1982 to the effect that no family of the Shaheed/crippled freedom fighters would be disturbed from the present abandoned house/ accommodation under MLO 15/982. That subsequently on 18.04.2012 Md. Nazmun Salehin, son of the petitioner filed an application before the Respondent No.1 praying for permanent allotment/sale of the house in question on the basis of the decision of the government dated 07.01.1990 issued by the Ministry of Defense. The Respondent No.1 remained silent over the issue and subsequently issued the impugned notice bearing শারকনং-গৃঃগামা/শাখা-১১/ উচ্ছেদ /২০১৩/ ৯৮৭ তারিখ ০১/০৭/২০১৩ issued by the Respondent No.4 asking the petitioner to vacate her residential house, being House No.H/41 (1st Floor), Block-E, Zakir Hossain Road, Mohammadpur, Dhaka within 7 (seven) days.

3. The Respondent No.3 appeared in the writ petition by filing a vokalatnama and filed an application for discharging the Rule.

4. The learned advocate M. Nazrul Islam Khandaker appearing on behalf of the Respondent No.3 submits that the petitioner's husband entered into the house in question without taking any allotment from the office of the respondent No. 3 and he did not pay any rent to the Government. For this reason, the Executive Engineer (Maintenance) had filed certificate case under the Public Demands Recovery Act, 1913 to recover the outstanding rents from him. After getting the decision from

the Certificate Officer, Dhaka, the petitioner's husband paid rents of Tk. 1000 (one thousand) per month upto 2002 and became the allottee of the Respondent No. 3 by paying rent to the Government and in the same year, the husband of the petitioner died and thereafter the petitioner did not pay any rent to the office of the respondent No. 3 and became a rent defaulter.

5. The learned advocate Mr. Khandaker further submits that the petitioner as a plaintiff earlier instituted a civil suit being Title Suit No. 83 of 2005 before the learned Assistant Judge, 1st court, Dhaka challenging the eviction notice issued vide Memo No. ৪ (২০১) ফিএ /৮৭/১৬/১ তাঁ ১৩/০২/২০০৫ by the Directorate of Government Accommodation for a mandatory injunction for not to evict the petitioner from the house in question until giving her an alternative house in accordance with the Memo No. XVII/1M-8/79/375 (99) dated 30.06.1982. The said Title Suit was transferred to the learned Assistant Judge, 11th Court, Dhaka and renumbered as Title suit No. 88 of 2009 and after hearing the witnesses of both the sides and after consideration of the evidence on record, the learned Assistant Judge, 11th Court, Dhaka was pleased to dismiss the suit on merit on contest on 21.06.2012 (Decree signed on 21.06.2012) and against the said Judgment and Decree dated 21.06.2012, the petitioner as an appellant filed an appeal being Title Appeal No. 284 of 2012 before the learned District Judge, Dhaka. The appeal was transferred to the learned Additional District Judge, 8th Court, Dhaka for adjudication and the same was rejected on 30.11.2014 due to lack of taking steps by the appellant and the original file of the suit has been sent to the Nejrat Division of the

learned District Judge, Dhaka for destroying the same which is evident from the information slip dated 13.03.2019.

6. The learned advocate Mr. Khandaker finally submits that one Mr. Masudul Alam, Assistant Director, Directorate of Government Accommodation, Dhaka submitted an investigation report before the respondent No. 3 on 17.01.2016 informing that an old man aged about 60 years namely Mr. Rezaul Karim is living in the house in question claiming him as a relative of the petitioner and the petitioner along with her children is living outside of Bangladesh, as such the respondent No.3 prayed for discharging the Rule.

7. No one appears for the petitioner.

8. We have heard the advocate for the respondent No.3 and perused the writ petition and application for discharging the Rule and the annexures annexed thereto.

9. It appears from the record that the petitioner has challenged a notice issued vide স্মারকনং-গৃঃগামা/ শাখা-১১/ উচ্ছেদ /২০১৩/৯৮৭ তারিখ ০১/০৭/২০১৩ by the Respondent No.3 under section 5 of “The Government and Local Authority Lands and Buildings (Recovery of Possession) Ordinance 1970 directing the petitioner to vacate the house being House No. H/41 (1st Floor), Block-E, Zakir Hossain Road, Mohammadpur, Dhaka within 7 (seven) days which she is occupying illegally.

10. It would be expedient if we reproduce the provisions of section 5 of "The Government and Local Authority Lands and Buildings (Recovery of Possession) Ordinance 1970 which are as follows,

5.(1) If the Deputy Commissioner, on his own motion or on the complaint of or upon information received from anybody or a Local Authority, is satisfied after making such inquiry as he thinks fit, that a person is an unauthorized occupant, he may issue, in the prescribed manner, a notice directing such person to vacate the land, building or part thereof in his occupation within a period of thirty days from the date of service of the notice.

Provided that the Deputy Commissioner may, where he is satisfied that thirty days' notice will not be in public interest, reduce the period of such notice to not less than seven days.

(2) If the person, against whom an order under sub-section (1) has been made, refuses or fails to vacate the land, building or part thereof in his occupation within the time fixed, then, notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the Deputy Commissioner to enter upon such land, building or part thereof and recover khas possession of the same by evicting such person and by demolishing and removing structures, if any, erected or built by that person.

11. It also appears from the application dated 28.01.1988 of the petitioner's husband that he was residing in the house with his family founding the house as empty without taking any allotment from the concerned authority. Subsequently he requested the then Minister, Ministry of Works by this application to allow him to remain in the house as a wounded freedom fighter till arranging any alternative residence. The husband of the petitioner subsequently has applied to the authority concerned several times to allot the house in question in his favour or to allot an alternative house in his favour relying on different circulars but the authority concerned never give him any offer letter for that purpose.

12. It is also evident from the investigation report submitted by Mr. Masudul Alam, Assistant Director, Directorate of Government Accommodation, Dhaka dated 17.01.2016 (Annexure-2 to the discharged application) that the petitioner along with her children is living outside of Bangladesh and an old man aged about 60 years namely Mr. Rezaul Karim is living in the house in question for a long time claiming him as a relative of the petitioner. So after being satisfied about the illegal occupancy of the petitioner, issuance of the notice dated 01.07.2013 by the respondent No.4 under section 5 of "The Government and Local Authority Lands and Buildings (Recovery of Possession) Ordinance 1970, to evict the petitioner from House No.H/41 (1st Floor), Block-E, Zakir Hossain Road, Mohammadpur, Dhaka, suffer from no illegality.

13. Therefore, we don't find any merit in this writ petition.

14. In the result the Rule is discharged. The stay order granted earlier is hereby recalled and cancelled.

15. We have observed in several cases that some individuals by occupying the government property illegally depriving the government servant who actually need it and on the other hand getting undue benefit by renting the property to someone else. So, to restrain those illegal occupants from these sorts of activities a substantial amount of compensation should be imposed upon them.

The writ petitioner is fined with Tk.25,000/- (twenty five thousand) which is to be paid in the Account being No.4435401017179 (savings account) maintained in the name of the Registrar General & Marshal of Supreme Court of Bangladesh within 30(thirty) days from the date of receipt of the order without fail, in default, the authority is at liberty to recover the said amount as per law.

The office is directed to communicate the judgment and order to the concerned authority at once. The office is further directed to communicate a copy of the judgment to the Registrar General of Supreme Court of Bangladesh.

Sikder Mahmudur Razi, J:

I agree.