

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

Present

**Madam Justice Kashefa Hussain
And
Madam Justice Kazi Zinat Hoque**

Writ Petition No. 1718 of 2014

In the matter of:

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

-And-

In the matter of:

Khaledul Islam

..... Petitioner

Vs.

Government of Bangladesh and others

..... Respondents

Mr. Md. Abdur Razzak, Advocate

.....for the petitioner

Mr. Monirujjaman, Advocate

..... for the respondent No. 7

Mr. Noor Us Sadik Chowdhury, D.A.G

with Ms. Syeda Sabina Ahmed Moli, A.A.G

with Ms. Farida Parvin Flora, A.A.G.

..... for the respondents

Heard on: 03.01.2023 and

judgment on: 09.01.2023.

Kashefa Hussain, J:

Supplementary affidavit do from part of the main petition.

Rule nisi was issued calling upon the respondents to show
cause as to why the respondents should not be directed to allot the
Plot No. 13-A/A (Eastern Part), 1st Colony, Mirpur, Dhaka along with
the structure thereon in favour of the petitioner as wounded freedom

fighter on assessing the price/valuation of the above mentioned plot along with the structure as per office order under Memo No. গৃগম/প্রস-২০০৮/৬৪ dated 31.08.2009 in pursuance of schedule of rates of 1972 (annexure-B) instead of schedule of rate of 1997 published by the Ministry of works and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner's name is Khademul Islam son of Samser Ali Biswas (Wounded/ Freedom Fighter), 13-A/A (Eastern Part), First Colony, Mirpur, Dhaka.

The respondent No. 1 is Government of Bangladesh, represented by the Secretary, Ministry of Works, Secretariat Building, Ramna, Dhaka, respondent No. 2 is Additional Divisional Commissioner, Dhaka, respondent No. 3 is Commissioner, Housing and Settlement authority, Segunbagicha, Dhaka, respondent No. 4 is Additional Commissioner, Abandoned Property Management Board, Segunbagicha, Dhaka, respondent No. 5 is Assistant commissioner Abandoned Property Management Board, Segunbagicha, Dhaka, respondent No. 6 is Executive Engineer, maintenance Division, Ministry of Works, Segunbagicha, Dhaka and Added respondent No. 7 is M.A Quddus son of late Yakub Ali Sarkar of House No. 13-A/AC Eastern part) first Colony, Mirpur, Dhaka.

The petitioner's case inter alia is that he is a veteran freedom fighter and wounded in the liberation war of Bangladesh. That after the liberation war of Bangladesh he received state felicitation and honorium and he has been receiving honorium regularly.

That the petitioner has been wounded in the great liberation war. That he has no landed property in Dhaka in his name or in the name of the member of his family. That as a wounded freedom fighter and destitute he has been living with the members of his family in the abandoned Plot No. 13-A/A, 1st Colony (Eastern Part), Mirpur, Dhaka for a long period. That if the said plot and the structure thereon is allotted in his name as a crippled freedom fighter, he will be rehabilitated and he might have a shelter to live in with his family.

That as per স্মারক নম্বর-গৃহম/প্রস-২০০৮/৬৪ তারিখ ৩১ আগস্ট-২০০৯ খ্রি: issued by the Ministry of Housing and works, Government decided to sell the abandoned house to the family of Shaheed Freedom Fighter and Crippled Freedom fighters at the price fixed in the year 1972.

That as per decision of the Government no family of the injured/Shahed Freedom Fighters shall be evicted from their present residence by the Ministry of Public Works and Urban Development without prior approval of the President.

That the petitioner filed a petition addressing the Hon'ble Minister, Ministry of Housing and Works, Government of the People's Republic of Bangladesh for allotment of the said plot. That on the basis of said application Additional Divisional Commissioner, Dhaka and member Secretary, Abandoned Property and Management Board, Dhaka and the office of the Executive Engineer, Maintenance Department of the Ministry of Works, Segunbagicha jointly enquired about the possession of the plot and as per their enquiry report the petitioner has been found in possession of the plot along with the structure thereon. That the said report was sent to the additional

Divisional Commissioner, Dhaka Division and Member Secretary Abandoned Property, Management Board by the Executive Engineer, Public Works Maintenance Division, Dhaka for necessary action on 18.03.2010 which is under active consideration of the Government.

That another petition dated 09.01.2011 was filed to the Secretary, Ministry of Housing and Works to allot the said plot in favour of the petitioner. But the respondent No. 1 did not take any tangible steps to allot the schedule plot in favour of the petitioner and it has been kept pending for a long time. Therefore since the respondents have not taken any positive steps in favour of the petitioner. Hence the petitioner finding no other alternative remedy filed the instant writ petition.

Learned Advocate Mr. Md. Abdur Razzak appeared on behalf of the petitioner while learned advocate Mr. Monirujjaman appeared for the respondent No. 7, learned Deputy Attorney General Mr. Noor Us Sadik Chowdhury with Ms. Syeda Sabina Ahmed Moly, A.A.G. with Ms. Farida Parvin Flora, A.A.G. appeared for the respondent No. 1.

Learned Advocate for the petitioner submits that the inaction and conduct of the respondents in not allotting the premises in favour of the petitioner is without lawful authority. He prays for a direction from this division that the plot may be allotted in his name.

Upon elaborating his submissions he argues that the petitioner is a wounded freedom fighter and which is reflected by several documents which have been annexed as annexure-A, A1 and B etc. He submits that although it is the policy of the Government and which

is evident by way of annexure-C that there is bar of eviction of Freedom Fighter family. He contends that inspite of the government policy however the respondents are not taking the matter into consideration by not allotting the plot in the name of the petitioner. He next draws out attention to annexure-D of the writ petition wherefrom he submits that it is reflected in annexure-D which is the petitioner's application to the respondents that the petitioner is in possession of the property. He particularly points out to the petitioner's statement that “পরিত্যক্ত বাড়িটির দখলে থেকে আমি আমার পরিবার পরিজন নিয়ে বসবাস করে আসছি।” He submits that the respondents could not deny that the petitioner is in possession of the property. He argues that it is the policy of the government to allot homes in favour of freedom fighters and particularly wounded and martyred freedom fighter's families. Next he takes us to the যৌথ তদন্ত প্রতিবেদন annexure-D wherefrom he points out that the যৌথ তদন্ত প্রতিবেদন conducted by the relevant officials, in such যৌথ তদন্ত প্রতিবেদন enquiry report the respondents themselves stated that they found the petitioner (যুদ্ধাহত মুক্তিযোদ্ধা) including others in possession of the house. He also submits that it is an admitted fact that the petitioner is a wounded freedom fighter and therefore it is a legitimate expectation and legal right of the petitioner to be allotted the plot in his name.

He next draws our attention to the supplementary affidavit filed by the petitioner. He particularly draws attention to annexure-II page 85 of the supplementary affidavit which is a writ petition filed by the added respondent No. 7 being Writ Petition No. 6317 of 2010. He submits that in this matter after hearing, when date was fixed for

delivery of judgment the added respondent No. 7 being Writ Petition No. 6317 of 2010 however did not press the matter and prayed for discharging the same for non prosecution. He continues that in pursuance the Rule was discharged by this division. He submits that therefore the added respondent No. 7 does not have any locus standi to press his issue since he already pressed for non prosecution over the same matter in another writ petition. He submits that the petitioner is in possession of the property and which is admitted and he is also admittedly a wounded freedom fighter. In pursuance, he continues that therefore allotment of plot is a legal right and legitimate expectation of the petitioner and the Rule bears merits and ought to be made absolute for ends of justice.

On the other hand learned added respondent No. 7 opposes the Rule. He admitted that the petitioner along with the added respondent No. 7 and another person are in possession of the property. He submits that however the plot was lawfully allotted in the name of the added respondent No. 7 by way of annexure-4 series which includes documents of delivery of possession. He next takes us to Annexure-5 which is letter of the respondents to the added respondent No. 7 to pay the necessary holding taxes from 1989-90 retrospectively. He takes us to examine other annexures which are basically documents of payment of taxes along with arrears, utility bills etc. He next takes us to some other documents which have been annexed with affidavit in opposition to press that the added respondent No. 7 is in lawful possession in the property and he has been lawfully allotted the plot. He submits that therefore the petitioner does not have any legal right

to the property since the property is allotted in the name of respondent No. 7.

Upon a query from this bench regarding the non prosecution by the added respondent No. 7 in Writ Petition No. 6317 of 2010, he contends that the issue in this writ petition and the issue of that writ petition are not the same. He elaborates that in Writ Petition No. 6317 of 2010 the added respondent No. 7 was aggrieved since the government inspite of receiving holding taxes, rents etc. in inspite of lawful allotment was not however completing the registration of the deed in favour of the added respondent No. 7. He submits that the petitioner has no case here and the Rule bears no merits and ought to be discharged for ends of justice.

Learned Deputy Attorney General appears on behalf of the respondent No. 1 and also opposes the Rule. By way of photocopies of inter ministerial documents he attempts to shows us that several writ petitions have been filed and against an order of this Division there is a CMP pending in the Appellate Division. He submits that therefore since the matter is pending the Appellate Division it cannot be decided here.

We have heard the learned counsels from both sides, perused the materials before us. The petitioner argued that he is admittedly a wounded freedom fighter and admittedly he is in possession of the property along with two others and which is reflected from some documents including annexure-D and D1 of the writ petition. By way of annexure-C he shows us that it is a general policy of the government not to evict freedom fighter's families from the plots. He

persuaded further that in pursuance of the general policy of the government particularly a wounded freedom fighter and martyred freedom fighter shall be allotted plots in their names.

The added respondent No. 7 shows us some documents attempting to press that the plot was lawfully allotted in his name and also pressed that the petitioner has no legal right to be allotted a plot.

It is our considered view that whatever be the claims of the added respondent No. 7 our duty here is to examine as to whether the petitioner has any lawful right to be allotted a plot in his name. Keeping this in mind we have examined the documents before us. We have particularly examined annexure-D and D1 of the writ petition which reflects that the petitioner along with two others are in possession of the plot. In annexure-D the petitioner inter alia stated:

“মাননীয় মন্ত্রী মহোদয়ের সদয় জ্ঞাতার্থে জানাচ্ছি যে, বর্তমান বিষয়ে বর্ণিত ১৩-এ/এ, ১ম কলোনী (পূর্বাংশ), মিরপুর, ঢাকাস্থ পরিত্যক্ত বাড়িটির দখলে থেকে আমি আমার পরিবার পরিজন নিয়ে বসবাস করে আসছি।”

Annexure-D1 is the যৌথ তদন্ত প্রতিবেদন upon the respondent's enquiry report. In annexure-D it is stated:

“তদন্তকালে বিবেচ্য বাড়িটিতে ৩টি পরিবার ও তাদের ভাড়াটেদের বসবাসরত অবস্থায় পাওয়া যায়। তারা হলেন শহীদউল্লাহ (যুদ্ধাহত মুক্তিযোদ্ধা), খালেদুল ইসলাম (যুদ্ধাহত মুক্তিযোদ্ধা) এবং মালিকানা দাবীদার জনাব সারওয়ার ই আলম এর পরিবার। তদন্তকালে শহীদউল্লাহ ও খালেদুল ইসলাম (যুদ্ধাহত মুক্তিযোদ্ধা), যুদ্ধাহত মুক্তিযোদ্ধ

সংক্রান্ত যাবতীয় কাগজপত্র তদন্তকারী কর্মকর্তাদের নিকট
উপস্থাপন করেন।”

From Annexure-D1 it particularly appears that the petitioner along with the added respondent No. 7 with one other is in possession of the property. The respondents in the enquiry report described the possession of the petitioner and the others in the status of ভাড়াটিয়া (tenants) in the plot. The added respondent No. 7 claims that he has been allotted the plot while the petitioner claims that he has legal right to be allotted the plot.

Whatever be the contention of the petitioner and the added respondent No. 7, our considered view is that to be allotted a plot is not a vested right of any freedom fighter whatsoever. It is essentially a policy matter of the government and the government may exercise its discretion as to who the plot may be allotted to. Regarding the added respondent No. 7's claim as being allottee, we are not in a position to make observations on his claim. As mentioned above it is essentially a policy matter of the government and the government may exercise its discretion as to who the plot may be allotted to.

However we are of the considered view that the petitioner also admittedly a wounded freedom fighter is in possession of the plot admittedly as a tenant of the plot. Therefore we are of the considered view that the respondents owe a duty to the petitioner to dispose of annexure-D which is an application made by the petitioner.

Upon examining the documents it appears that the petitioner made an application to the State Minister Works and Housing annexure- 'D' being application dated 01.06.2009. Our considered

view is that the petitioner may be allowed to make an application if he is so advised to the relevant authority who may dispose of the application and which relevant authority is the respondent No. 2. If an application is made by the petitioner the respondent No. 2 is directed to dispose of the petitioner in accordance with the relevant Rules and law and as per policy of the government.

Under the facts and circumstances we are inclined to dispose of the Rule with directions and observations.

In the result, the Rule is disposed of. The petitioner is at liberty to file an application to the relevant authority who is the respondent No. 2. If the petitioner makes an application to the respondent No. 2, the respondent No. 2 is directed to dispose of the application in accordance with the relevant Rules and laws and as per the government policy.

Communicate this judgment at once.

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(Kashefa Hussain, J)

I agree.

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(Kazi Zinat Hoque, j)

Shokat (B.O)