

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 1860 OF 2014

IN THE MATTER OF:

An application under Article 102(2) of the
Constitution of the People's Republic of Bangladesh

AND

IN THE MATTER OF:

Md. Khursed Alam and others

.....Petitioners

-VERSUS-

Bangladesh and others

..... Respondents

Mr. M.A. Quddus Shaikh, Advocate

..... For the Petitioners

Mr. Mohammad Waliul Islam Oli, D.A.G with
Mr. Md. Ershadul Bari Khandakar, D.A.G with
Ms. Nilufar Yesmin, A.A.G with
Mr. Md. Moshiur Rahman (Rahat), A.A.G with
Mr. Md. Motasin Billah Parvez, A.A.G with
Mr. Md. Faridul Islam, A.A.G

.....For the Respondents

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

**Heard on 06.01.2026, 07.01.2026 and
Judgment on 08.01.2026**

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under
Article 102(2) of the Constitution of the People's Republic of Bangladesh

calling upon the respondents to show cause as to why the impugned Memo No. 282. 010. 016. 06. 14. 049. 2012-700 dated 13.10.2013 purportedly issued under the signature of Additional Deputy Commissioner (Revenue), Sherpur directing to register Kabuliyat of khas land in favour of one Kamala Begum measuring 1.45 acre of BRS Khatian No. 01, BRS Plot No. 9588, Khas in Mouza-Harindhara, Upazila-Sherpur Sadar, District-Sherpur (Annexure-F) should not be declared to have been passed without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The fact necessary for disposal of the instant Rule, in short, are that, the petitioners are residents of village- Harindhara, Mouza- Harindhara, District- Sherpur and they claim themselves as landless. Government decided to lease out বন্দোবস্ত khas agricultural land to the landless people and to that end circulated কৃষি খাস জমি ব্যবস্থাপনা ও বন্দোবস্ত নীতিমালা vide memo dated 16.04.1997 corresponding to 03.01.1404 B.S. which was published by the Gazette notification dated 12.05.1997. The petitioners, being landless, took peaceful possession of the vacant government khas land measuring an area of 1.45 acres situated in mouza-Harindhara, upazila-Sherpur Sadar, District-Sherpur , corresponding to BRS plot no. 9588 appertaining to BRS khatian no. 01. After taking over possession they applied to the Government on 15.05.2011 for granting lease of the said land in their favour as landless people of that area. After receiving their

applications along with others, the Upazilla Land Office prepared a list of the applicants for scrutiny of the same by the memo dated 09.08.2011 issued under the signature of the Assistant Commissioner (Land) Sherpur Sadar, Sherpur. Chan Mia, one of the petitioners, filed an application on 11.10.2012 before the Assistant Commissioner (Land) Sherpur Sadar, Sherpur, on behalf of the landless people of the area, alleging that after receiving their applications the UNO directed the Union Land Assistant Officer to conduct an enquiry regarding the land, who filed a report stating that 1.60 acres of land of Harindhara mouza has already been given settlement in 1990-91; however, this is not true and as such he prayed for giving settlement in the names of the landless persons upon cancelling the earlier settlement. On the basis of this application the Assistant Commissioner (Land) directed the Union Land Assistant Officer by the memo dated 22.10.2012 to conduct an enquiry in this regard. Thereafter a notice was issued on 17.04.2013 in the names of both the parties to appear for hearing. The উপজিলা কৃষি খাস জমি ব্যবস্থাপনা ও বন্দোবস্ত কমিটি presided over by the UNO, Sherpur Sadar in its meeting dated 05.06.2013 approved the proposal by the Kanungo, Union Land Office, Sherpur to cancel the lease no. 3541(XII)89-90/999(XII)88-89 for violation of article 11 of the kabuliyat and it was decided that this along with other recommendations for cancellation of some other leases would be sent to the জেলা কৃষি খাস জমি ব্যবস্থাপনা ও বন্দোবস্ত কমিটি through the UNO for taking appropriate decisions. As such lease records were sent to the AC (Land)

office on 26.06.2013. In the aforesaid backdrop, facts and circumstances the Respondent No. 3, Additional Deputy Commissioner (Revenue), without cancelling the alleged lease of the respondent no. 6, issued the impugned memo dated 13.10.2013, directing to register the kabuliyat in favour of Kamala Begum, the Respondent no. 6, regarding the land in question. Thereafter the petitioners served a legal notice upon the Respondents through their lawyer on 09.02.2014 requesting them to give settlement in their names upon cancelling the previous decision but with no result. Finding no other appropriate, alternative and efficacious remedy, they have filed this writ petition and obtained Rule and an order of stay of the impugned memo dated 13.10.2013 (Annexure-F).

Mr. M.A. Quddus Sheikh, learned Advocate appeared on behalf of the Petitioners and submitted that, the petitioners are all landless persons and they are living in the land in question with their family and they are in peaceful possession of the same till date and they are entitled to get lease of the land in question as landless persons of that area but the ADC (revenue) Sherpur most illegally issued the impugned order by directing to register the kabuliyat in the name of another person, who is neither landless nor a resident of this village. By referring to the কৃষি খাস জমি ব্যবস্থাপনা ও বন্দোবস্ত নীতিমালা, ১৯৯৭, in particular clause 21.0, he submitted that, as per the regulation the local administration is required to allot the khas agricultural land of a concerned mouza to the landless persons of that particular mouza on priority basis. If there remain any surpluses of land,

then the landless persons of adjacent mouza may be given allotment and the District Committee shall take decision in this regard. However, in the instant case the respondent no. 3 issued the impugned memo in violation of the provision of this provision. It is the contention of the learned Advocate that the petitioners on many occasions submitted several representations for registration of kabuliyat in their names but the ADC (Revevue) Sherpur, the respondent no. 3, most arbitrarily and illegally issued the impugned order overriding the unanimous decision of the Upazila Committee and as such the impugned order is illegal, unjust and without lawful authority. Hence he prayed for making the Rule absolute.

Mr. Md. Ershadul Bari Khandakar, learned Deputy Attorney General on behalf of the respondents at the very outset submitted that, he found it difficult to oppose the Rule.

No one appeared on behalf of Respondent no. 6 Kamala Begum to oppose the Rule.

Heard the learned Advocate for the petitioners, perused the writ petition and the documents annexed therewith.

The very contention of the learned lawyer for the petitioners is that the petitioners being landless persons of that area applied to get lease of the land but the Respondent no. 3 in violation of the guidelines settled the land in favour of Respondent no. 6, who is neither landless nor a resident of this area and as such the impugned memo is liable to be declared to have been issued without any lawful authority.

Upon examining the impugned memo dated 13.10.2013, contained in Annexure 'F' to the writ petition it appears that, there are two references in that memo: one is the recommendation sent by the Upazilla Nirbahi Officer, Sherpur and the other one is an application made by Mst. Kamala Begum, wife of late Sekander Ali of village-Munshirchar, Upazila-Sherpur, District-Sherpur.

Referring to the application the ADC (Revenue) stated in the memo that, Mst. Kamala Begum, wife of late Sekander Ali filed the application for obtaining deed regarding the settlement case no. 3541(XII)89-90/999(XII)88-89 which was earlier leased out in favour of his late husband Sekander Ali as a disabled and landless person in accordance with কৃষি খাস জমি ব্যবস্থাপনা ও বন্দোবস্ত নীতিমালা, ১৯৮৭, which was finally approved by the then Deputy Commissioner, Sherpur on 05.12.1990. In clause 2.0 (ga) of the latest কৃষি খাস জমি ব্যবস্থাপনা ও বন্দোবস্ত নীতিমালা, ১৯৯৭ it has been directed that, the settlement cases, which were finally approved before 13.08.1996 but not registered, those cases shall remain as it is and the deeds shall be executed and registered accordingly. As such, on the death of the original lessee, his wife is entitled to continue the lease as his legal heir, the ADC (Revenue) opined.

Upon referring to the recommendation made by the UNO, it has been stated in the impugned memo that, although a recommendation has been made for cancellation of that lease on the ground of violation of clause 11 of the kabuliyat, there is no evidence in support thereof as per

ভূমি সংস্কার বিধিমালা, ১৯৮৪ সনের বর্গাচুক্তির বিধি ৬। Therefore the ADC (Revenue) opined that, in such circumstances there is no scope to cancel the settlement case and accordingly directed the AC (Land), Sherpur to take necessary steps in order to execute and register the lease deed in favour of the lawful heirs of the deceased lessee in accordance with law.

On perusal of the impugned memo we find that, no illegality has been committed by the Respondent No. 3 in issuing the same. The learned lawyer for the petitioner also could not make out a case that the memo was issued beyond the jurisdiction. The petitioners' claim that they are in possession of the land in question and that the said Kamala Begum does not even reside in that land and that she is an outsider and not landless, are all disputed question of fact which cannot be decided in writ jurisdiction. It is evident from the impugned memo that the respondent no. 6, Kamala Begum, did not file any application for obtaining lease as landless person of that area, rather she prayed for execution of the deed regarding lease of the land which was already approved by the appropriate authority in the name of her husband on 05.12.1990. On the death of her husband she made the application as his lawful heir in order to get the lease deed since not lease deed was executed and registered. As per clause 7.0 of the guideline of 1997 lawful heirs are very much entitled to get the lease which was granted in the name of their deceased predecessor. In this regard it is our view that since no fresh application for getting settlement was filed by the Respondent no. 6, the Respondent no. 3 has rightly

disposed of the matter by directing to execute and register the lease deed in the name of Kamala begum on the ground clearly stated in the memo. It also appears from the applications filed by the petitioners, which have been annexed as Annexure- 'A' to 'A-10' to the writ petition, that these applications have been filed on 15.05.2011 in order to get lease of the land in question; however, this land has been already leased out a long time ago in favour of the late husband of Kamala Begum on 05.12.1990. As such the applications of the petitioners deserved no consideration in the given circumstances. Therefore the impugned memo has been rightly issued in exercise of the authority conferred by law. Hence we find no illegality, arbitrariness or infirmity in the impugned order warranting interference under writ jurisdiction.

In view of the facts and circumstances mentioned hereinabove we find that there is no merit in the instant Rule.

In the result, the Rule is discharged.

However, without any order as to costs.

Let a copy of this judgment and order be communicated to the concerned authorities concerned at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.

