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

Present:

Mr. Justice Md. Badruzzaman

And

Mr. Justice Sk. Tahsin Ali

WRIT PETITION NO. 1556 OF 2015.

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF :

Mohammad Nazmul Haider Chowdhury

…….. Petitioner

-Versus-

Government of Bangladesh represented by the Secretary Ministry of land, Bangladesh Secretariat, Ramna, Dhaka and others.

... Respondents.

Mr. Md. Motiur Rahman, Advocate

... For the Petitioner.

Mr. Md. Rahamat Ali, Advocate

…For respondent Nos. 2-5

Mr. Mohammad Imam Hossen Tareq, D.A.G
with Mr. Mohammad Rashedul Hasan, D.A.G
with Mr. Shakir Uddin Ahmed Bappy, D.A.G
with Mr. Mohammad Anowar Hossain, A.A.G
with Mr. Md. Shahidul Islam, A.A.G with
Mr. Kamrunnahar Lipi, A.A.G

…For the Respondent No. 1.

Heard on: 29.10.2026.
Judgment on: 02.11.2026.

Md. Badruzzaman, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, this Rule *Nisi* was issued calling upon the respondents to show cause as to why they shall not be directed to

permit the petitioner to deposit the instalment money in place of the original allottee, namely, Late Razia Khatun, in respect of the land covered by the Power of Attorney and the Baina Nama, situated at Mouza-Bholanathpur, J.L. No. 82, Rupganj, Narayanganj, measuring a total area of 0.4135 acre, covered by L.A. Case No. 23/93-94, Award Nos. 10(Ja), 414(Kha) and 510, under R.S. Khatian No. 12, R.S. Dag Nos. 539 and 546, comprising a plot measuring 3 (three) kathas, bearing Plot Code No. 46799 and Bank Serial No. 6571; and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts relevant to the disposal of the present Rule Nisi, in brief, are that the land owned by one Razia Khatun was acquired by the Government for the Purbachal Project of RAJUK under L.A. Case No. 23 of 1993-94, for which she was duly paid compensation. Subsequently, following the declaration issued by RAJUK, Razia Khatun, being an affected person, submitted an application in the prescribed form seeking allotment of a plot, upon fulfilling all the requisite formalities.

In the meantime, the petitioner, having learnt from a reliable source that Razia Khatun was likely to be allotted a plot as an affected person, approached her with a proposal to purchase the plot to be allotted to her. Accordingly, Razia Khatun agreed to sell the said plot to the petitioner for a consideration of Tk. 20,00,000/-. The petitioner paid Tk. 19,90,000/- in cash towards the agreed consideration, whereupon Razia Khatun executed and registered a Baina Nama being Deed No. 9807 dated 04.07.2007 in favour of the petitioner. On the same date, she also executed and registered a Power of Attorney Deed being Deed No. 9808 in favour of the petitioner in respect of the proposed allotment.

Subsequently, Razia Khatun died on 14.02.2011. Thereafter, on 14.10.2013, RAJUK allotted a plot measuring 3 (three) kathas in her favour as an affected person, bearing Plot Code No. 46799. Upon learning of the said allotment, the petitioner submitted an application to respondent No. 4, the Deputy Director (Estate)-3, RAJUK, stating that he had acquired an interest in the allotted plot through the registered Baina Nama and the Power of Attorney executed by late Razia Khatun and requesting the authority not to hand over possession of the plot to any other person. Thereafter, on 08.09.2014, the petitioner submitted a further application to the respondents seeking permission to deposit the instalment money in respect of the allotted plot in place of late Razia Khatun, upon acceptance of the registered Power of Attorney and Baina Nama. In response, respondent No. 4 informed the petitioner that, since the specific plot ID and code number had not been mentioned in the Power of Attorney, there was no scope to consider his application.

Being aggrieved by such refusal, the petitioner subsequently served a notice demanding justice dated 25.01.2015 upon the respondents, requesting them to redress his grievance by taking necessary steps to permit him to deposit the instalment money in place of late Razia Khatun on the basis of the Power of Attorney and Baina Nama. However, the respondents neither took any initiative nor provided any effective response to the petitioner's request.

Having no other alternative efficacious remedy, the petitioner filed the instant writ petition under Article 102 of the Constitution of the People's Republic of Bangladesh and obtained the present Rule Nisi.

Respondent Nos. 2-5 contested the Rule by filing an affidavit-in-opposition, contending, inter alia, that neither the Baina Nama nor the

Power of Attorney executed in favour of the petitioner contained any specific plot number. As such, the petitioner had no legal entitlement to deposit the instalment money in place of the original allottee, late Razia Khatun, in respect of the plot subsequently allotted by RAJUK in her favour. On this ground, the respondents asserted that the petitioner's claim was not legally tenable and prayed for discharge of the Rule.

Mr. Md. Motiur Rahman, learned Advocate appearing for the petitioner, in support of the Rule, taking us through the registered Baina Nama and the Power of Attorney, submits that the petitioner acquired an interest in the prospective allotment of the plot through the aforesaid registered instruments executed by the original allottee, late Razia Khatun. He contends that, in view of the said instruments, RAJUK is legally obliged to recognize the petitioner's interest and permit him to deposit the requisite instalments in respect of the allotted plot, with a view to obtaining a registered lease deed from RAJUK in his favour in place of the original allottee. He further submits that RAJUK, without properly considering the relevant facts and legal implications of the registered Baina Nama and Power of Attorney, arbitrarily and unlawfully refused to accept the instalment money from the petitioner solely on the ground that the specific plot number had not been mentioned in the said registered instruments. Accordingly, he prays that the Rule be made absolute.

On the other hand, Mr. Md. Rahamat Ali, learned Advocate appearing on behalf of RAJUK, in support of the statements made in the affidavit-in-opposition, submits that, since neither the Baina Nama nor the Power of Attorney executed in favour of the petitioner contained any specific plot number, RAJUK rightly refused to accept the instalment money from the petitioner in respect of the plot

subsequently allotted in favour of late Razia Khatun. He, therefore, submits that the respondents acted lawfully and that the Rule is liable to be discharged.

We have heard the learned Advocates for the respective parties and perused the writ petition, the affidavit-in-opposition, the registered Baina Nama, the irrevocable Power of Attorney and other materials available on record.

The principal question for determination is whether the death of the original allottee, late Razia Khatun, extinguished the rights and interests acquired by the petitioner through the registered Baina Nama and the irrevocable Power of Attorney and whether RAJUK was justified in refusing to accept the instalment money solely on the ground that no specific plot number was mentioned in those instruments.

Section 2(4) of the Power of Attorney Act, 2012 defines an irrevocable Power of Attorney by reference to the nature and purpose of the transaction. Section 4(6) provides for the devolution of rights and liabilities arising out of an irrevocable Power of Attorney upon the lawful heirs or successors of the deceased or legally incapacitated person, subject to the statutory proviso. Similarly, section 11(1)(d) excludes an irrevocable Power of Attorney from the general rule of termination upon the death of the donor.

Furthermore, section 7 of the said Act recognizes the legal consequences of acts performed by the donee under a Power of Attorney as though those acts had been performed by the donor himself. Section 16(2) also preserves acts done and measures taken under the repealed Powers-of-Attorney Act, 1882. Thus, the legal effect of the Power of Attorney executed in 2007 requires consideration in the

light of the law applicable to the instrument and the subsequent statutory provisions.

In this connection, section 202 of the Contract Act, 1872 is particularly relevant, which provides that where an agent has an interest in the property forming the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. The illustration appended to the said section also recognizes that an agency coupled with interest is not terminated by the death of the principal.

Upon a harmonious interpretation of the aforesaid provisions, we are of the considered view that an irrevocable Power of Attorney coupled with consideration and interest stands on a different footing from an ordinary Power of Attorney. Where the attorney has acquired a subsisting interest in the subject matter of the agency through a lawful transaction, the instrument cannot be treated as a mere delegation of authority divorced from the underlying transaction. Nor can the interest so acquired be defeated merely by the death of the principal.

We further hold that where an affected person, being eligible for allotment of a plot, executes a registered Baina Nama and an irrevocable Power of Attorney coupled with consideration and interest in favour of another person before the actual allotment of the plot, the mere absence of a specific plot number, which was not available at the time of execution of those instruments, cannot by itself defeat the interest acquired by the attorney. Upon subsequent allotment of an identifiable plot arising out of the very entitlement forming the subject matter of the transaction, the allotting authority is required to examine the registered instruments and the nature of the interest created thereby instead of rejecting the claim solely on the ground of absence

of a specific plot number. Such recognition, however, remains subject to the validity of the underlying transaction, the terms and scope of the Power of Attorney and the applicable allotment policy and statutory restrictions.

Applying the aforesaid principles to the facts of the present case, we find that late Razia Khatun executed the registered Baina Nama and the irrevocable Power of Attorney in favour of the petitioner on 04.07.2007, upon receipt of substantial consideration, long before any specific plot was allotted in her favour. Consequently, there was no occasion to mention any particular plot number in those instruments. Subsequently, RAJUK allotted a plot measuring 3 (three) kathas in her favour on 14.10.2013, bearing Plot Code No. 46799, as an affected person. It, therefore, appears that the subsequent allotment identified the particular plot arising out of the entitlement in respect of which the petitioner had already acquired an interest through the registered instruments. In the circumstances, the absence of a specific plot number in the Baina Nama and the irrevocable Power of Attorney cannot be considered a sufficient ground to defeat the petitioner's claim.

We also find that late Razia Khatun died on 14.02.2011, but neither during her lifetime nor, as appears from the materials placed before us, by her legal heirs or successors has the validity of the registered Baina Nama or the irrevocable Power of Attorney been challenged. No material has been placed before us to demonstrate that the said instruments were cancelled, revoked or declared invalid by any competent court.

In such circumstances, RAJUK, being the allotting authority, ought to have examined the petitioner's claim in the light of the registered

instruments and the relevant provisions of law. Its refusal to accept the instalment money solely on the ground that the specific plot number was not mentioned in the Baina Nama and the Power of Attorney, without considering the circumstances in which those instruments were executed and the interest created thereby, cannot be sustained in law.

We are, therefore, of the considered view that the petitioner has established a legitimate claim to have his interest recognized on the basis of the registered instruments and to deposit the requisite instalment money in respect of the allotted plot, subject to compliance with the applicable terms and conditions of allotment.

In view of the facts and circumstances of the case, the submissions advanced by the learned Advocates for the respective parties and the relevant provisions of law, we find merit in the Rule.

In the result, the Rule is made absolute.

The respondents are directed to accept the registered Baina Nama and irrevocable Power of Attorney executed by late Razia Khatun in favour of the petitioner and permit him to deposit the outstanding instalment money in respect of the three-katha plot bearing Plot Code No. 46799, allotted in favour of late Razia Khatun as an affected person.

Upon deposit of the requisite instalment money and completion of all other necessary formalities in accordance with the applicable terms and conditions of allotment, the respondents shall take necessary steps to execute and register the lease deed in respect of the said plot in favour of the petitioner.

There shall, however, be no order as to costs.

(Justice Md. Badruzzaman)

I agree,

(Justice Sk. Tahsin Ali)