

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

WRIT PETITION NO. 6951 OF 2015

In the matter of:

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

And

In the matter of:

Samir Chandra Sajwal being dead his legal
heirs 1. Sudhir Chandra Sawjal and others.

... Petitioners

-Versus-

The Government of the People's Republic of
Bangladesh represented by the Deputy
Commissioner, Barishal and others.

... Respondents

Mr. Swapan Kumar Dutta with

Mr. Md. Abu Baker Siddique, Advocates

...For the petitioners

Mr. Mohammad Mohsin Kabir, DAG with

Mr. Mostafizur Rahman (Tutul), AAG,

Mr. Fuad Hasan, AAG,

Mr. Md. Moniruzzaman, AAG,

Ms. Sonia Tamanna, AAG and

Mr. Ashraful Alam, AAG

...For the government

Heard on 29.07.2025 and 30.07.2025.

Judgment on 31.07.2025.

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 in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the order dated 02.12.2014 passed by the respondent no. 4 in Miscellaneous Case No. 26 M.L. of 2013-2014 (Annexure- ‘G-1’ to the supplementary-affidavit dated 05.07.2015) should not be declared to be without lawful authority and of no legal effect and/or pass such other or further order or orders as to this court may seem fit and proper.”

At the time of issuance of the rule, this court also directed the respondent no. 4 to dispose of the Miscellaneous Case No. 26 M.L. of 2013-2014 in the light of the judgment and decree dated 13.02.2013 passed by this court in Civil Revision No. 1540 of 2011 within a period of 90(ninety) days from the date of receipt of the copy of the order.

The salient facts leading issuance of the instant rule are:

The predecessor of the present petitioner no. 1, namely, Samir Chandra Sajwal and the petitioner nos. 2-7 as plaintiffs originally filed a suit being Title Suit No. 106 of 2005 before the court of Assistant Judge, Muladi, Barishal for declaration of title in the suit properties measuring an area of 12.95 acres of land so have been described to the schedule of

the plaint. In the suit, the trial court framed as many as five different issues and upon taking evidence of the parties to the suit, the learned Judge vide judgment and decree dated 19.04.2009 decreed the suit on contest against the sole defendant that is, the government being represented by the Deputy Commissioner, Barishal. Against the said judgment and decree, the respondent no. 1 then preferred an appeal being Title Appeal No., 114 of 2009 before the learned District Judge, Barishal which was on transfer heard by the learned Joint District Judge, 3rd Court, Barishal and the learned Judge of the appellate court then after considering the materials and evidence on record vide judgment and decree dated 03.11.2010 allowed the appeal and thereby reversed the judgment and decree passed by the learned Assistant Judge, Muladi, Barishal consequent to dismissed the suit.

Feeling aggrieved by and dissatisfied with the said judgment and decree passed by the appellate court below, the petitioners then filed a Civil Revision No. 1540 of 2011 before this court and after a contesting hearing, this court vide judgment and order dated 13.02.2013 made the rule absolute.

Soon after disposing of the Civil Revision, the petitioners then filed an application before the respondent no. 4 that is, Assistant Commissioner (Land), Muladi Upazilla, Barishal under section 150 of the State Acquisition and Tenancy Act, 1950 for opening a separate khatian in their name in view of the judgment and order passed in said Civil Revision. The said application so filed for opening a separate khatian then gave rise to Miscellaneous Case No. 26 M.L./2013-2014.

During the proceeding of the said Miscellaneous Case, the respondent no. 4 vide impugned order dated 02.12.2014 (Annexure-‘C-1’ to the supplementary-affidavit) sent relevant documents to the respondent no. 1, the Deputy Commissioner, Barishal for taking further step in regard to preparing a separate khatian in the name of the petitioners.

It is at that stage, the petitioners filed the instant writ petition challenging the said order passed by the respondent no. 4.

Mentionable, long after disposing of the Civil Revision, the government filed a civil petition for leave to appeal no. 19 of 2016 which was out of time by 1055 days and the Appellate Division vide judgment and order dated 16.03.2017 dismissed the said appeal. Against that very judgment and order passed by the Appellate Division in the said civil petition for leave to appeal, the government then filed a civil review being civil review petition no. 386 of 2017 and the Appellate Division again vide judgment and order dated 05.08.2018 dismissed the said civil review petition.

It is worthwhile to mention here that soon after disposing of the said civil review petition, the government sought an opinion from government pleader, Barishal who vide letter dated 10.07.2017 informed the said Deputy Commissioner, Barishal that there has been no occasion other than to allow the application for opening a separate khatian so prayed for by the petitioners under section 150 of the State Acquisition and Tenancy Act.

Mr. Swapan Kumar Dutta along with Mr. Md. Abu Baker Siddique, the learned counsels appearing for the petitioners upon taking

us to the writ petition and all the documents so have been appended therewith as well as the supplementary-affidavits at the very outset submits that under the provision of Article 111 of the Constitution of the People's Republic of Bangladesh, the respondents are duty bound to abide by the order passed by the apex court of our country and in spite of giving a specific direction upon the respondent no. 4 to dispose of Miscellaneous Case No. 26 M.L. of 2013-2014 in light of the judgment and decree dated 13.02.2013 passed in Civil Revision No., 1540 of 2011 within 90(ninety) days vide rule-issuing order dated 06.07.2015, the said respondent no. 4 showed a rare audacity in not complying such order of this Hon'ble court which is a classic case of contempt of court committed by the respondent no. 4.

The learned counsel further contends that for not complying with the specific direction to the respondent no. 4 to dispose of the above Miscellaneous Case, the petitioners finding no other alternative had earlier compelled to file a contempt petition under Article 108 of the Constitution of the People's Republic of Bangladesh but when that petition was about to move before this Hon'ble court, it verbally asked the petitioners not to proceed with the said contempt petition rather to take necessary step in disposing of the instant writ petition for which the petitioners has not proceed further with the said contempt petition.

The learned counsel further contends that since all the respondents in a co-ordinated manner sat over the judgment and decree passed by this Hon'ble court in Civil Revision No. 1540 of 2011 by simply

exchanging absurd communication over accomplishing a petty job which they cannot do at any circumstances.

The learned counsel next contends that since the government ultimately travelled up to the apex court challenging the judgment and decree passed by the trial court and they all through become unsuccessful so the respondents have got no other option but to comply with the direction so have been made by this Hon'ble court at the time of issuance of the rule. With those submissions, the learned counsel finally prays for making the rule absolute directing the respondent no. 4 to dispose of the Miscellaneous Case No. 26 M.L. of 2013-2014 by giving a time frame.

By contrast, Mr. Mohammad Mohsin Kabir, the learned Deputy Attorney-General appearing for the government finds it difficult to oppose the rule since the matter has already been settled in favour of the petitioners by the apex court though he prays for discharging the rule.

Be that as it may, we have considered the submission so advanced by the learned counsel for the petitioners and that of the learned Deputy Attorney-General. We have very meticulously gone through the writ petition and all the Annexure appended therewith in the writ petition and those in the supplementary-affidavits.

On going through the documents, we find that the respondents left no stone unturned to challenge the judgment and decree passed in favour of the present petitioners in respect of the suit property even by preferring review in the Appellate Division. But fact remains, after disposing of the Civil Revision No. 1540 of 2011 dated 13.02.2013, a

specific direction has been made by this court on 06.07.2015 upon the respondent no. 4 for disposing of the Miscellaneous Case No. 26 M.L. of 2013-2014 within 90(ninety) days filed for opening a separate khatian but as the said respondent has not complied with that direction thus we are of the view that the respondent no. 4 has committed a gross misconduct by disregarding the order of this court.

In effect, the matter has thus been settled by the Appellate Division in review finding title of the petitioners in the said land for which the petitioners claimed for preparing separate khatian. Since the title and possession of the petitioners over the suit property has already been settled by the apex court so there has been no other legal impediment to dispose of the Miscellaneous Case by making the rule absolute.

On top of that, as per Article 112 of the Constitution of the People's Republic of Bangladesh, it is incumbent on the executive to act in aid of the Supreme Court but from the demeanor to have shown by the respondent no. 4 towards the order of the Supreme Court clearly deserves to face contempt proceeding. But as the petitioners will be left with further legal tangle in getting their substantive relief we thus refrain from proceeding with such legal action. But certainly the respondent should face severe legal consequence if it again sits over the matter when it will be tantamount to disregard the order of the Appellate Division in view of the matter settled by it finally.

Consequently, the rule is made absolute however without any order as to costs.

Regard being had to the above facts, circumstances and observation, the respondent no. 4 is hereby directed to take necessary steps in line with the direction of this court dated 06.07.2015 by disposing of the application so filed by the petitioners before it which has been annexed as of Annexure-‘F’ to the supplementary-affidavit filed before this court dated 05.07.2015 within a period of 2(two) months from the date of receipt of the copy of this order positively, in default, the petitioners are at liberty to do the needful as observed hereinabove.

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

Md. Bashir Ullah, J.

I agree.