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

Present:

Mr. Justice Fatema Najib and

Mr. Justice Md. Hamidur Rahman

Writ Petition No. 11234 of 2023

In the matter of:

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

In the matter of:

Haripur Mathsajibi Samabay Samity Ltd.

---Petitioner.

-Versus-

The Government of Bangladesh, represented the Secretary, by Bangladesh Ministry of Land, Abdul Secretariat, Gani Road, Shahbag, Dhaka-1000 and others.

---Respondents.

No one appears.

----For the petitioner.

Mr. A.B Shawket Ali, Advocate

---For the respondent No. 13.

Mr. Md. Osman Chowdhury, DAG with Mr. Akhtar Hossain Md. Abdul Wahab, DAG with

Mr. S.M Emamul Musfigur, AAG with

Ms. Tamanna Sultana, AAG with

Ms. Khandaker Asma Hamid, AAG with

Mr. Imrul Kayes Rana, AAG

....For the respondents.

Heard on:26.06.2025,

And

<u>Judgment on: 31.07.2025</u>

Md. Hamidur Rahman, I:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh Rule was issued on 30.8.2023 in the following terms:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned memo being No. 31.00.0000.050.59.041.17.507 dated 20.06.2023 issued under the signature of the Respondent No. 2 rejecting the application of the petitioner to adjust the lease money for the period of 30 Chotro 1430 B.S. corresponding to 13 April 2024 AD in respect of the "Koraljan Bill Group" Jalmahal within Jamalganj Upazila under Sunamgani District and extend the tenure of the said lease for a further period of 1 (one) year (Annexure-I), should not be declared to have been issued without lawful authority and is of no legal effect and further as to why respondents, should not be directed to waive the lease money payable by the petitioner for the period of 30 Chotro 1430 B.S. corresponding to 13 April 2024 AD and/or to extend the lease of the petitioner for a further period of 1 (one) year without any lease money as compensation for the losses suffered by the petitioner as evident from the inquiry report submitted by the Respondent No. 10, i.e. District Fishery Officer, Sunamganj vide letter being No. 33.02.9000.400.45.008.22.212 dated (Annexure: F and F-1) 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 Rule this Court stayed the operation of the order dated 17.08.2023. The parties were directed to maintain status quo in respect of possession and position of the "Koraljan Bill Group" Jalmahal measuring an area of 305.65 acres within Jamalganj Upazila under District Sunamganj. The Deputy Commissioner, Sunamganj was also directed to determine the earth filling on 80 acres land out of 400 acres Jalmohol and to determine the payment against the filling area and to adjust the same from the lease amount within 3 (three) months from date if it is found to be correct.

Facts, in brief, are that the petitioner Samity has been registered on 08.04.2010 bearing registration No.1536 under Samobay Samity Ain, 2001 (as amended in 2002). All the respective members of the said Samity are genuine fisherman.

The Ministry of Land vide memo dated 19.09.2018 leased out the jalmahal namely "Koraljan Bill Group" measuring an area of 305.65 acres within Jamalganj Upazila under Sunamganj District in favour of the petitioner for the period of 1425-1430 B.S. Accordingly, the petitioner paid the required lease money and a lease agreement was executed between the Government represented by the respondent No. 3. i.e. Deputy Commissioner, Sunamganj under the signature of respondent No.5 and the petitioner on 15.10.2018.

Subsequently, the respondent No.8 Union Land Assistant Officer, Sachna, Jamalgonj, Sunamganj vide memo dated 04.11.2018 and 08.11.2018 issued the deed of possession of the said fishery measuring (270.00+35.59) in total 305.65 acres in favour of the petitioner samity.

After getting the possession of the said jalmahal the petitioner found that the contractor of the Water Development Board already filled in huge area of the said jalmahal by dredging machine for which natural living area of fishes has been destroyed. As a result, the petitioner suffered huge loss and damage in cultivating fish in the said jalmahal. Accordingly, the petitioner filed representations dated 24.03.2019 and 02.05.2019 requesting the respondent No.3, to investigate into the matter to ascertain the loss and damage suffered by the petitioner. But the respondent No. 3 did not pay any heed.

Having received no response from the respondent No.3, the petitioner filed a representation dated 04.03.2020 requesting the respondent No.1, i.e. Secretary, Ministry of Land to take necessary steps in this regard. Then the Ministry of Land issued memo dated 17.08.2020 directing the respondent No.3 to take necessary steps upon inquiry into the matter.

Thereafter, the respondent No.3 vide memo dated 20.09.2020 directed the respondent No.8, i.e. Upazila Nirbahi Officer, Jamalgonj to submit inquiry report. The respondent No.8 vide memo dated 27.10.2020 directed the respondent No.7, i.e. Assistant Commissioner (Land), Jamalgonj to submit report.

The respondent Nos. 8 and 9 jointly inquired into the matter and submitted a report before the respondent No.7, i.e. Assistant Commissioner (Land), Jamalgonj vide memo dated 01.06.2021 wherein it was categorically found that 80.95 acres of the said jalmahal was filled up. After receipt of the said report the respondent No.9 vide memo dated 02.06.2021 & 13.06.2021 forwarded the same before the respondent No. 8 and the respondent No.3 respectively.

Thereafter, 03 (three) members inquiry committee was constituted comprising of (1) District Fishery Officer, Sunamgani, (2) Executive Engineer (0&M-2), Water Development Board, Sunamganj and (3) Assistant Commissioner (Land), Jamalgoni, Sunamgani to inquire into the matter in question. The said inquiry committee upon thoroughly inquire into the matter and found that 80 (Eighty) acres of the said jalmahal was filled up and consequently the petitioner suffered huge loss and damage. Accordingly, the inquiry committee submitted its report on 25.05.2022 and the respondent No.10, i.e. District Fisheries Officer, Sunamganj vide memo dated 29.08.2022 forwarded the said report before the respondent No.3, i.e. Deputy Commissioner, Sunamganj.

The petitioner already paid lease money upto 1429 BS. and the petitioner was legitimately expecting that the respondent Nos. 1-7 will adjust the loss and damage suffered by the petitioner and adjust the lease money for the period of 1430 B.S. But the respondent Nos. 1-7 did not take any step to compensate the petitioner for its loss and damage.

In such circumstances, the Petitioner made a representation dated 14.06.2023 requesting the respondent No.1, i.e. Secretary, Ministry of Land to compensate the petitioner by adjusting the lease money for the period of 1430 B.S. and also extending the lease period for another year.

The Ministry of Land rejected the said application of the petitioner vide memo dated 20.06.2023 and challenging the same the petitioner filed the instant writ petition and obtained the Rule.

After expiry of the lease period of the petitioner Respondent No.3 invited tender notice to lease out 'Koraljan Bill Group' Jalmahal on 11.10.2023 for the year of 1431 -1436

B.S. and the petitioner challenging the said memo filed an application for issuance of supplementary Rule on 31.01.2024 and accordingly supplementary Rule was issued in the following terms:

"Let a Supplementary Rule Nisi be issued calling upon the respondents to show cause as to why the impugned Memo No. 05.46.9000.008.34.007.22-1710 dated 16.11.2023 issued under the signature of the respondent No. 12 in respect of the "Koraljan Bill Group" Jalmahal within Jamalganj Upazila, District- Sunamganj on the basis of purported report submitted by the respondent No. 6 vide Memo No. 1003 dated 01.11.2023 (Annexure-R) should not be declared to have been issued without lawful authority and is of no legal effect and/or to pass such other or further order or orders as to this Court may seem fit and proper."

This Court also further extended the order of stay granted earlier for a period of three months.

Thereafter, respondent No. 12 vide its letter dated 14.08.2024 replied to the petitioner about his representation dated 01.01.2024 (Annexure-T-2 to the supplementary rule dated 25.08.2024) which is reproduced below:

"উপযুক্ত বিষয় ও সূত্রের পরিপ্রেক্ষিতে জানানো যাচ্ছে যে, সুনামগঞ্জ জেলার জামালগঞ্জ উপজেলাধীন 'করালজান বিল গ্রুপ (বদ্ধ)' জলমহালটি ১৪২৫-১৪৩০ বঙ্গাব্দ মেয়াদে উন্নয়ন প্রকল্পে প্রথম চার বছর বার্ষিক ৬৩,৭৮,৭৫০/- (তেষটি লক্ষ আটাত্তর হাজার সাতশত পঞ্চাশ) টাকা এবং পরবর্তী দুই वছत जात्र ३८% वर्षिण ইজाताभूला जाभनात मिर्मिणत जन्मकृत रेखाता भ्रमान कता रहा। त्म त्माणतिक ५८२८ वाश्ना मिर्मिश कताह्म प्रक्षित्र मध्यामम् अति स्थाय कताह्म प्रक्षित्र मध्यामम् अति स्थाय कताह्म हिल्मि मध्यामम् मध्याम कता रहा। ज्ञामतिक विविध मामना नः ०५/२०५৮-२०५८ मृत्न विज्ञाभीह्म किम्मिनात, मिर्निष्ठ मत्हामत्ह्म २८/०५/२०५८ जाति एवत ज्ञाममान मार्भिक ५८.५० अकत ज्ञानाज्ञि 'कतानज्ञान विन क्रम (वक्त)' ज्ञाममान मार्थ मश्चल कता रहा। जात्र धातावारिक जाह्म ज्ञाममान मिर्मिश्च ज्ञाममान स्थाय मश्चल कता रहा। जात्र धातावारिक जाह्म ज्ञाममान कतामि ज्ञाममान विन क्षम विन्न क्षम ज्ञाममान स्थाय मश्चल कता रहा। जात्र धातावारिक जाह्म ज्ञाममान कतामि अत्रामा कतामि भित्रिस्माध कति क्षम।

০২। আপনার সমিতি ১৪২৬-১৪২৯ বাংলা সনের ২০% হিসেবে জামানতের ব্যাংক ড্রাফট জমা প্রধান করেননি এবং ১৪৩০ বাংলা সনের অর্থাৎ শেষ বছরের ইজারামূল্য পরিশোধের জন্য বার বার নোর্টিশ প্রদান করা হলে ইজারামূল্য পরিশোধ না করে মহামান্য হাইকোর্ট বিভাগে রিট পিটিশন নং ১১২৩৪/২০২৩ দায়ের করেন। উক্ত রিট মামলার রুলে আপনার আবেদনে বর্ণিত ৮০.০০ একর জলাভূমি ভরাটের विষয়ে যাচাই সাপেক্ষে সত্যতা পাওয়া গেলে ইজারামূল্য সমন্বয়ের প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য নির্দেশনা প্রদান कता रয়। সে প্রেক্ষিতে উপজেলা নির্বাহী অফিসার, জামালগঞ্জকে সরেজমিন তদন্তপূর্বক প্রতিবেদন দেওয়ার জन্য वना २য়। তৎপ্রেক্ষিতে উপজেলা নির্বাহী অফিসার, জाমानभक्ष ०১/১১/২०২७ जातिस्थत ১००७ नः त्यातरक প্রতিবেদন দাখিল করেন। <u>প্রতিবেদন পর্যালোচনায় দেখা যায়,</u> <u>পুরো জলমহালটি পানিতে নিমজ্জিত, প্রাকৃতিকভাবে</u> <u>ভরাটকৃত অংশে নাব্যতা বৃদ্ধি পেয়ে তা পূর্বাবস্থায় ফিরে</u> <u>গিয়েছে এবং ভরাট কোন অংশ পাওয়া যায়নি।</u> 'করালজান বিল গ্রুপ (বদ্ধ)' জলমহালের উন্নয়ন প্রকল্প ছক মোতাবেক ইজারাদার সমিতি ১৪২৫-১৪৩০ বঙ্গাব্দ সন মেয়াদে ইজারা নিয়ে সরেজমিন ভোগ দখলে ছিলেন। ইজারাদার সমিতি চুক্তিপত্রের শর্তানুযায়ী বর্ণিত জলমহালে দৃশ্যমান কোন উন্নয়ন কার্যক্রম করেননি; যা চুক্তিপত্রের শর্ত ভঙ্গের সামিল মর্মে প্রতিবেদনে উল্লেখ করেছেন।

०७। ১८७० वङ्गात्मत रेजाताभूना यथात्रभार भितिसाथ ना कताय व्यापनात प्रभिवित विरुद्ध प्रतकाति भाउया व्यामाय व्यारेन ১৯১७ মোতাবেক प्रािटिक्टिक मामना रुजू करत प्रतकाति जनभरान वावश्रापना नीिव, २००৯ মোতাবেক ১८७১-১८७७ वङ्गान स्पयाद्य उत्यापन उत्यापन वेत्रव्य वार्षिक ১,১৫,०৫,১०७/-(এक कािट भर्माता विश्व भाँठ राजात এकभ्य रया) होका रेजाताभूना व्याह्मनभूत उत्यापभूत भाभना भरपाजीवी प्रभवाय प्रभिवि निभित्तिए, श्राभ- व्याह्मनभूत, एकचत- प्रथारेए, উপজেना- जाभानभक्ष, एजना-प्रनाभभक्ष এत व्याकृतन रेजाता श्रमान कता रहाए।

০৪। এমতাবস্থায়,

- (১) চুক্তি পত্রের শর্তাবলীর ১ নং ক্রমিকে উল্লেখ রয়েছে যে, ইজারা প্রহীতা জলমহালের পরিসীমা বজায় রাখবেন এবং সংরক্ষণ করবেন। কেহ যাতে এ জলমহালে অনুপ্রবেশ বা বেদখল করতে না পারে ইজারা গ্রহীতা নিজ দায়িত্বে তা নিশ্চিত করবেন।
- (২) চুক্তি পত্রের ২১ নং ক্রমিকে লীজগ্রহীতা দখল গ্রহণকালে যে পরিমাণ জলমহালের দখল সরেজমিনে গ্রহণ করবেন তার কোন পরিবর্তন করতে পারবেন না এবং তার কোন পরিবর্তন/কম বা বেশী দাবী করে কোন আপত্তি উত্থাপন করবেন না বা কোন মামলা দায়ের করতে পারবেন না এবং
- (৩) ইজারাদার সমিতি উন্নয়ন প্রকল্পে ইজায়া গ্রহণকালে উন্নয়ন প্রকল্প ছক পরিশিষ্ট 'ক' তে অনাবর্তক ব্যয় কলামে ১ম বছর এবং ৪র্থ বছর মাটি খনন ও সামাজিক বনায়ন করবেন মর্মে উল্লেখ করেছেন কিন্তু আপনি তা প্রতিপালন করেননি।

०६। এ পরিপ্রেক্ষিতে সুনামগঞ্জ জেলার জামালগঞ্জ উপজেলাধীন 'করালজান বিল গ্রুপ (বদ্ধ)' জলমহালের ১৪২৫-১৪ বঙ্গাব্দ মেয়াদে আপনার সমিতি সরেজমিন ভোগ দখলে থাকায় এবং সরকারি জলমহাল ব্যবস্থাপনা নীতি, ২০০৯ এর ৫(৯) অনুচ্ছেদ এবং ইজারা সংক্রান্ত সম্পাদিত চুক্তি পত্রের ১ ও ২১ নং শর্ত এবং ইজারাদার সমিতি কর্তৃক দাখিলকৃত উন্নয়ন প্রকল্প হক পরিসি 'ক' এর বর্ণনা মোতাবেক আপনার কর্তৃক দাখিলকৃত আবেদনটি বিবেচনা করার কোন সুযোগ না থাকায় তা নথিভুক্ত করা হয়েছে।

০৬। ইহা নির্দেশক্রমে আপনাকে অবহিত করা হলো।"

In the meantime, the petitioner did not pay lease money for the year 1430 BS and the respondents' initially issued notice in F.C.C. 01 of 2024 to recover the unpaid lease money.

Then the petitioner again filed an application for issuance of the supplementary Rule challenging the notice in F.C.C. 01 of 2024 corresponding to Process Execution No.49 dated 24.04.2024 issued under Section 7 of the Public Demand Recovery Act, 1913.

The petitioner obtained again Supplementary Rule in the following terms:

"Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why the notice in F.C.C.01 of 2024 corresponding to Process execution No. 49 dated 24.04.2024 issued under Section 7 of the Public Demand Recovery Act, 1913 purported to have been signed

by the General Certificate Officer, Sunamganj illegally demanding of Tk. 97,06,397/- for the lease money of the Jalmahal namely "Koraljan Bill Group" Jalmahal within Jamalganj Upazilla under Sunamganj for the period of the 1430 B.S. pursuant to the certificate contained in docket No. 259 dated 05.05.2024 purported to have been signed by the Revenue Deputy Collector, Sunamganj the Respondent No. 12 (Annexure-U and U-1) should not be declared to have been issued without any lawful authority and is of no legal effect and/or pass such other or further order or orders as to this court may seem fit and proper."

This Court also stayed the further proceedings of the said notice.

At the time of hearing of the Rule no one appears on behalf of the petitioner.

On the other hand, the learned Advocate appears for the added respondent No.13 submits that the lease period has already been expired and the added respondent got the lease for the year 1431 -1436 B.S. and the concerned authority handed over possession of the said Jalmahal and they are now possessing the said Jalmahal. In view of the above submission he prayed for discharging the Rule.

We perused the writ petition, Annexures, supplementary Rule, order of the Appellate Division (Annexure-X8) to the addition of party petition, relevant laws and other materials thereto.

It is pertinent to mention here that this Court after hearing Rule Nisi and granted stay and status-quo and the said ad-interim order extended upto 13.04.2024 and fixed the matter for the final hearing vide order dated 30.11.2023. Subsequently, the writ petitioner got extention of the order of status-quo from this Court on 14.05.2024 for the period of 03 months after obtaining a supplementary Rule. The added respondent as valid lessee of the fishery challenged the said extension order dated 14.05.2024 before the Hon'ble Appellate Division by filing Civil Petition for Leave to Appeal No. 1861 of 2024 and the Hon'ble Court stayed the operation of the order of extention dated 05.06.2024 for 08 (eight) weeks. The lease of the added respondent already implemented in due process for the year of 1431 B.S.- 1436 B.S. upon payment of rent, execution of lease deed and delivery of possession of the fishery. On the other hand writ petitioner at present is not in possession over the leased land and the lease term of the petitioner has already been expired on 14.04.2024.

It is apparent from the Annexure-T (An application for supplementary rule dated 25.08.2024) which is quoted in the judgment that the petitioner enjoyed the possession of total area of jalmahal in question.

However, the lease agreement which was executed between the petitioner and the respondent concerned dated 15.10.18 for 1425 -1430 B.S. (Annexure B-1 to the writ petition) where in Clause 27 provides that:

"२१। ইজারাপ্রাপ্ত সমিতি জলমহাল ব্যবস্থাপনা নীতি, ২০০৯ এ উল্লিখিত সকল কাগজপত্র দাখিল করবেন এবং ১৪২৫ বঙ্গাব্দের যে সময় প্রতিক্রান্ত হয়েছে ঐ অতিক্রান্ত সময়ের জন্য ইলায়ামূল্য সমন্বয়/বর্ধিত করার জন্য পরবর্তীতে কোন আবেদন করতে পারবেন না এবং তিনি যে সময়ই লিখিতস্তাবে দখল বুঝে নেন না কেন তিনি ১৪২৫ বঙ্গাব্দের ১লা বৈশাখ হতে জলমহালের দখলে ছিলেন মর্মে প্রযুক্ত হবে।"

Having agreed to the said condition, amongst others, with payment of the lease money for the respective period the petitioner has given right to enjoy the fishery in question for 1425 -1430 BS, as leasee.

Last but not the least, the petitioner has been provided with right to enjoy the fishery in question for 1425 -1430 B.S. subject to payment of lease money with VAT and Tax for the respective period. From record it appears that the petitioner has paid required lease money with VAT and Tax for 1425 -

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1429 B.S. However, the petitioner did not make payment of

lease money and tax for the year 1430 B.S. and the petitioner

enjoyed the fishery thereof pursuant to the order of status-quo

granted earlier by the Court.

The respondents i.e. concerned authority has already

taken decision to recover the said lease money through Public

Demand Recovery Act, 1913.

In view of the above facts and circumstances, we find no

substance in the Rule and Supplementary Rules.

In the result, the Rule is discharged without any order as to

costs. The order of status-quo and stay granted earlier by this

Court is hereby vacated.

Let a copy of the judgment and order be communicated

at once.

(Md. Hamidur Rahman, J)

Fatema Najib, J:

I agree.

(Fatema Najib, J)