

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

Present:

**Mrs. Justice Fatema Najib
and
Mr. Justice Md. Hamidur Rahman**

Writ Petition No. 10567 of 2024

In the matter of:

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

In the matter of:

Abul Kashem and others

---Petitioners.

-Versus-

The Government of the People's
Republic of Bangladesh, represented
by the Secretary, Ministry of
Industries, Bangladesh Secretariat,
Police Station-Ramna, Dhaka and
others.

---Respondents.

No one appears.

---For the petitioners.

Mr. Md. Hafizur Rahaman Khan,
Advocate

---For the respondent No. 3.

Mr. Mohammad Osman Chowdhury,
D.A.G with

Mr. Akhtar Hossain Md. Abdul Wahab,
D.A.G. with

Mr. S.M Emamul Musfiqur, A.A.G with

Ms. Tamanna Sultana, A.A.G with

Ms. Khandaker Asma Hamid, A.A.G with

Mr. Imrul Kayes Rana, A.A.G

....For the respondents.

Heard and Judgment on: 27.08.2025

Md. Hamidur Rahman, J:

On an application under Article 102 (2)(a)(i) of the Constitution of the People's Republic of Bangladesh Rule was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned notices vide Memos Nos. সূত্র নং ডি এসডব্লিউএল/প্রশাসন/২০২৪/১০৫৯ তারিখ-১১.০৮.২০২৪, Memo No. সূত্র নং ডি এসডব্লিউএল/প্রশাসন/২০২৪/১০৬৪ তারিখ- ১১.০৮.২০২৪, Memo No. সূত্র নং ডি এসডব্লিউএল/প্রশাসন/২০২৪/১০৬১ তারিখ- ১১.০৮.২০২৪, Memo No. সূত্র নং ডি এসডব্লিউএল/প্রশাসন/২০২৪/১০৬২ তারিখ- ১১.০৮.২০২৪, Memo No. সূত্র নং ডি এসডব্লিউএল/প্রশাসন/২০২৪/১০৫৮ তারিখ- ১১.০৮.২০২৪, Memo No. সূত্র নং ডি এসডব্লিউএল/প্রশাসন/২০২৪/১০৫৭ তারিখ- ১১.০৮.২০২৪, issued by the respondent No. 3 asking the petitioners to execute lease agreement at a higher rate within 3 (three) days, failing which to take legal action Annexure- J, J-1, J-2, J-3, J-4 and J-5 respectively to the writ petition should not be declared to be without lawful authority and is of no legal effect and as to why a direction should not be given upon the respondents to execute lease Deed in favour of the petitioners as per earlier rate i.e. at the of Tk.51.00, which the respondents are bound by law to do so and/or such other or further order or orders passed as to this court may seem fit and proper.”

The respondent No.2 was also directed to dispose of the representations of the petitioners dated 14.08.2024 (Annexure-M, M-1, M-2, M-3, M-4 and M-5) to the Writ Petition within 15 (fifteen) days from the date of receipt of a copy of this order in accordance with law.

The relevant facts, for disposal of this rule, in short, are that the petitioners are the reputed businessman doing business in 343/344, Tejgaon Industrial Area, Dhaka-1208. The petitioner No.1 is the proprietor of KASHEM STORE, the petitioner No.2 is the proprietor of 1. M/S A. Goni & Co. 2. MA Restaurant, 3. MA Pharmacy and 4. MA Cha Pan Bitan, the petitioner No. 3 is the proprietor of ARM Enterprise, the petitioner No. 4 is the proprietor of M/S Ocean Enterprise, the petitioner No. 5 is the proprietor of M/S M.A Bhuiya Flower Mill and the petitioner No. 6 is the proprietor of Rising Food and Hotel & Restaurant . The petitioner Nos. 1 and 2 have been in possession of the said premises for last 34 years having valid lease from the concerned authority. The petitioner Nos. 3, 4, 5 & 6 have been possession of the said premises for more than 6 years having valid lease from the concerned authority.

The concerned authority in exercise of their statutory power under Bangladesh Industrial Enterprises (Nationalization) Order 1972 (now Bangladesh Shilpa

Protisthan Jatiyokoron Ain, 2018) provided lease to the petitioners and renewed the same from time to time and lastly on 26.08.2020 upto 31.01.2022. The petitioners applied for renewal of the said leases on different dates and paying rents as per the agreement between the parties and were waiting for formal lease renewal agreement.

The petitioner Nos. 1-2 have been enjoying the same with peaceful possession and lease rights for over 34 years and petitioner Nos.3-6 have been enjoying the same with peaceful possession for over 5-6 years respectively and total investment had been made about 2 crore taka by the petitioners to retrofit and upgrade the shop premises. But all on a sudden, without assigning any reason whatsoever and just quoting a decision allegedly taken in 20th Board Meeting of the respondent No.3, eviction notice dated 22.05.2022 was issued against the petitioners to vacate the premises within 31.08.2022. This eviction notice was later followed up by the letters dated 21.07.2022, 31.07.2022 and 07.08.2022.

The petitioners being aggrieved by and dissatisfied with the above mentioned eviction notices have filed a Writ Petition being No. 10936 of 2022 challenging the said eviction notices before High Court Division. After hearing a Rule Nisi was issued and stay order was passed as well. Subsequently,

same was extended from time to time and lastly on 10.10.2023 which was extended for 01(one) year.

During pendency of the said writ petition the concerned authority verbally offered the petitioners to withdraw the writ petition and come to a settlement regarding renewal of lease in question. Then the petitioners prayed in Writ Petition No. 10936 of 2022 that they do not want to proceed with the Rule due to which the said rule was discharged for non-prosecution and vacated order of stay granted earlier.

In the above-mentioned scenario the respondent No.3 issued letters being Memo dated 07.09.2020 to the petitioner No. 1, by memo dated 30.08.2023 to the petitioner No.2, by memo dated 07.09.2023 to the petitioner No.3, by memo dated 07.09.2023 to the petitioner No.4, by memo dated 30.08.2023 to the petitioner No.5 and by memo dated 07.09.2023 to the petitioner No.6 regarding renewal of rent agreement on payment of arrears and in those letters clearly show that the authority without assigning any reason whatsoever and just quoting a decision allegedly taken in 26th Board meeting of the respondent No.3 demanded arrears of rent in connection with renewal of rent agreement and in this regard the petitioners have made a verbal request for some time to deposit two months rents but the authority concerned

did not consider the same. Thereafter the petitioners were constrained to file the instant writ petition.

At the time of hearing of the rule no one appears on behalf of the petitioners to press the rule.

On the other hand, Mr. Md. Hafizur Rahaman Khan, learned Advocate appearing on behalf of the respondent No.3 filed an application for discharging the rule but no affidavit-in-opposition was filed.

Mr. Md. Hafizur Rahaman Khan, learned Advocate for the respondent No.3 submits that the respondent No. 3 already disposed of the representation dated 14.08.2024. He next submits that it is a settled principle of law that the writ jurisdiction can be invoked for breach of contract only if the contract is entered into by the Government in sovereign capacity. In the instant case, the rental agreement with the petitioners is a pure and simple bilateral contract, the Respondent No.3 holding the right to renew the same on fresh terms and conditions pursuant to Clause-7 of the said agreement. Therefore, in case of any dispute pertaining to such contract, the available remedy for the petitioners is in the respective civil Courts and writ jurisdiction will not be available as remedial

measure. Therefore, the instant writ is not maintainable and the rule is liable to be discharged. He also submits that the petitioners being tenants are merely licensee and have no locus standi to file the instant writ petition. In case of any dispute arising out of the rental agreements, the petitioners have alternative forum to seek redress for their grievances. In the instant case, the petitioners had the opportunity to seek remedy under the agreement itself either for breach of contract or for damages or for any other relief under the Contract Act, 1872, Rent Control Premises Act, 1991 or any other law, as applicable. However, the petitioners without exhausting such efficacious forums provided by law preferred the instant writ petition. With these submissions he prays to discharge the Rule.

We have perused the writ petition, supplementary affidavit, annexures and application for discharging the rule.

A plain reading of the contract agreement (Annexure-E1) it appears that it is a tenancy agreement between the Dhaka Steel works Ltd. and the petitioners. In the terms and conditions of the said agreement are

narrated about tenancy and clearly stipulated about the consequence of the tenancy and breach of the contract between the parties. On perusal of the relevant laws we do not find that the Dhaka Steel Works Ltd. is conferred by any statute to make the said tenancy agreement. The said agreement is private in nature.

In the case of Superintendent Engineer, RHD & Ors.- Vs- Md.Emas and Brothers (Pvt.) Ltd. & Ors, reported in 31BLD(AD)1[2011], the Appellate Division held that writ jurisdiction can be invoked in case of breach of contract when;

(a) The contract is entered into by the Government in the capacity as sovereign,

(b) Where contractual obligation sought to be enforced in writ jurisdiction arises out of statutory duty or sovereign obligation or public function of a public authority;

(c) Where contract is entered into in exercise of an enacting power conferred by a statute that by itself does not render the contract a statutory contract, but if entering into a contract containing prescribed terms and conditions is a must under the statute then that contract becomes a statutory contract. If a

contract incorporates certain terms and conditions in it which are statutory then the said contract to that extent is statutory,

(d) Where a statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions and the contract so entered by the statutory power then merely because one of the parties to the contract is statutory or public body such contract is not a statutory contract;

(e) When contract is entered into by a public authority invested with the statutory power, in case of breach thereof relief in writ jurisdiction may be sought as against such on the plea that the contract was entered into by the public authority invested with a statutory power;

(f) Where the contract has been entered into in exercise of statutory power by a statutory authority in terms of the statutory provisions and then breach thereof gives right to the aggrieved party to invoke writ jurisdiction because the relief sought is against breach of statutory obligation.

On perusal of the tenancy agreement it appears that the said contract do not fall into the statutory contract. It is merely tenancy agreement which is governed by the terms and conditions of the said tenancy agreement. The present tenancy

agreement of the petitioners does not fulfill the conditions enunciated by the Hon'ble Appellate Division as mentioned above.

In view of the above we find no merit in the case.

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

Let a copy of the judgment and order be communicated at once.

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(Md. Hamidur Rahman, J)

Fatema Najib, J:

I agree.

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(Fatema Najib, J)