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

WRIT PETITION NO. 3675 OF 2017

In the matter of:

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

And

In the matter of:

Md. Abdul Latif

… Petitioner

-Versus-

Deputy Commissioner, Khulna and another

… Respondents

Ms. Syeda Shoukat Ara, Advocate for
Mr. Ahmed Nowshad Jamil, Advocae

…For the petitioner

Mr. Mohammad Saiful Islam, Advocate

…For the respondent no. 2

Heard on 29.10.2025, 30.10.2025
and Judgment on 30.10.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Rezaul Karim

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 calling upon the respondents to show cause as to why the Memo No. 05.44.4700.031.32.569.17-462(1) dated 22.02.2017 issued by the respondent no. 1 as evident by Annexure-F shall not be declared to have

been issued without lawful authority and to be of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, the operation of the impugned memo issued by the respondent no. 1 was stayed for a period of 06(six) months. On the same date, this court also passed an order restraining the respondents by an order of injunction from disturbing peaceful possession of the petitioner in the disputed land for a period of 06 (six) months. That interim order of stay was subsequently extended from time to time and it was lastly extended on 27.07.2025 for another 06 (six) months.

The salient facts leading to issuance of the instant rule are:

The present respondent no. 2, Bangladesh House Building Finance Corporation filed a Miscellaneous Case under Article 27 of Presidential Order no. 7 of 1973 (PO 7 of 1973) against the present petitioner and another for recovery of defaulted loan amounting to taka 5,27,881/30. It has been stated in the petition filed under Article 27 of PO 7 of 1973 that gave rise to Miscellaneous Case No. 69 of 1999 that the respondent no. 2 sanctiond an amount of taka 1,44,000/- through Rin (loan) Case No. BK-2551 at a interest rate of taka 11% per annum fixing repayment at taka 1277.15 as of monthly installment. Since the petitioner failed to repay the installment as per the sanction letter, the said respondent then initiated that Miscellaneous Case.

The learned District Judge, Khulna then took up the said Case for hearing and after taking into consideration of the materials and evidence on record, vide judgment and decree dated 16.06.2004 allowed the said

Miscellaneous Case. As the opposite parties to the Miscellaneous Case did not come forward to pay back the decreetal amount, the respondent no. 2 then initiated an execution case being Title Execution Case No. 42 of 2004. In course of the said execution case the property so have been mortgaged with the respondent no. 2 then put on auction sale to realize the decreetal dues and ultimately it was sold out in a thorough away price, the petitioner then filed a Miscellaneous Case under order 21 rule 90 of the Code of Civil Procedure for setting aside the said auction alleging that no summons or notice was served upon them (judgment debtors). However, without following the provision so have been provided in Order 21 rule 69(2) and rules 66,67,85 and 86 of the Code of Civil Procedure, the executing court proceed with the auction sale and sold out the mortgaged property in favour of the auction purchaser and as such the said auction is liable to be set aside. It has also been asserted in the said Miscellaneous Case that, though meantime the petitioner repaid an amount of taka 8,80,000/- to the respondent no. 2 yet that very vital aspect has not been taken into consideration. In the said Miscellaneous Case, the petitioner examined himself as PW-1 while respondent no. 2 also examined 1 witness. Apart from that both the parties also produced several documents in support of their respective claimed which were marked as exhibits. However, the learned District Judge without considering the materials and evidence on record ultimately dismissed the said Miscellaneous Case vide judgment and order dated 06.08.2015.

Feeling aggrieved by and dissatisfied with the said order dated 06.08.2015 the petitioner and his brother who are the judgment debtors in

the execution case as appellants then preferred an appeal being First Miscellaneous Appeal being Tender No. 462 of 2016 before this court where they also filed an application for stay of the operation of the impugned judgment passed in the said Miscellaneous Case on which this court also passed an order of status quo which gave rise to Civil Rule No. 791(FM) of 2016. However, when the said First Miscellaneous Appeal as well as the rule was pending, respondent no. 1 all of a sudden, issued a notice upon the petitioner vide impugned memo no. 05.44.4700.031.32.569.17-462(1) dated 22.02.2017 giving 15 days time to hand over possession of the disputed building to the auction purchaser/respondent no. 2.

It is at that stage, the judgment debtor no. 2 as petitioner came before this court and obtained instant rule and order of stay and injunction as stated above.

Ms. Syeda Shoukat Ara, the learned counsel appearing for the petitioner upon taking us to the writ petition and all the documents appended therewith, at the very outset submits that, the impugned notice has not disclosed under what provision of law, the respondent no. 1 has issued the impugned notice which is illegal, illogical and vague and the same is liable to be declared to have been issued without lawful authority and is of no legal effect.

The learned counsel goes on to submit that, PO No. 7 of 1973 has not been mandated a Deputy Commissioner to issue such a notice either in a proceeding filed and disposed of in a Miscellaneous Case or an execution case initiated under Article 27 of PO 7 of 1973 or under order

21 rule 90 of the Code of Civil Procedure respectively so the impugned notice issued by respondent no. 1 is without lawful authority and is of no legal effect.

It has also been asserted by the learned counsel that the petitioner has still been possessing the suit building by paying holding tax and utility bills to the respective department of the government. It has also been asserted by the learned counsel that, against the impugned action taken by the respondent no. 1 since there has been no other alternative efficacious remedy, the petitioner has thus compelled to file the instant writ petition and obtained rule and order of stay and thus the impugned letter is liable to be set aside by making the rule absolute.

On the contrary, Mr. Mohammad Saiful Islam, the learned counsel appearing for the respondent no. 2 though opposed the contention taken by the learned counsel for the petitioner but frankly submits that at the time of issuance of the impugned notice by the respondent no. 1, the respondent no. 2 has got no knowledge about the interim order passed by this Hon'ble court vide Civil Rule No. 791(FM) of 2016 and if the respondent no. 2 had prior knowledge about filing of the FMA as well as rule and the interim order passed thereof, it would not have asked the Deputy Commissioner, respondent no. 1 to issue the impugned notice.

The learned counsel lastly contends that, though the First Miscellaneous Appeal and the rule is still pending so in the light of the above submission the rule may kindly be disposed of.

We have considered the submission so placed by the learned counsel for the petitioner and that of the learned counsel for the

respondent no. 2. We have very meticulously gone through the impugned letter so have been issued by the respondent no. 1 asking the petitioner to hand over possession of the disputed building. On going through the writ petition as well as the annexure, we find that, at the instance of the petitioner, First Miscellaneous Appeal was preferred and in the said Appeal, the petitioner also filed an application for stay and injunction and this court vide order dated 02.11.2016 issued rule as well as restrained the respondents from disturbing the peaceful possession of the petitioner in the suit land for a period of 06 (six) months. But from Annexure-'F' to the writ petition issued by respondent no. 1 we find that during subsistence of that interim order by this court he issued the impugned notice on 22.02.2017 who has got no authority to issue such kind of letter. Furthermore, the respondent no. 1, the Deputy Commissioner is so callous that he did not feel it necessary to comprehend under what authority he was going to issue the impugned notice.

Regardless, we don't find any shred of merit or substance in issuing such kind vexatious notice keeping pendency of rule an appeal and where a restrained order on possession of the suit property is in place.

As a result, the rule is made absolute however without any order as to costs.

The impugned Memo No. 05.44.4700.031.32.569.17-462(1) dated 22.02.2017 issued by the respondent no. 1 (Annexure-'F' to the writ petition) thus stands cancelled.

In any case, the order of stay and injunction granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment and order be communicated to the respondent nos. 1 and 2 forthwith.

Rezaul Karim, J.

I agree.

*Kawsar/**A.B.O.***