

19-4-05, 07-4-05, 07-4-05, 9.7.05, 9.7.05.

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

WRIT PETITION No. 3084 of 2004.

In the matter of:

An application under Article 102 of the Constitution Republic  
of Bangladesh.

- And -

In the matter of:

Saleh Ahmed Chowdhury and others .... Petitioner

- Versus -

People's Republic of Bangladesh and others .... Respondents

Dr. Kamal Hossain with

Mr. H.S. Deb Barmon .... For the Petitioner

Mr. Rafiqul Hoque and

Mr. Habibul Islam Bhuiyan .... For the respondent No. 9.

Present:

Mr. Justice Md. Abdul Wahhab Miah

And

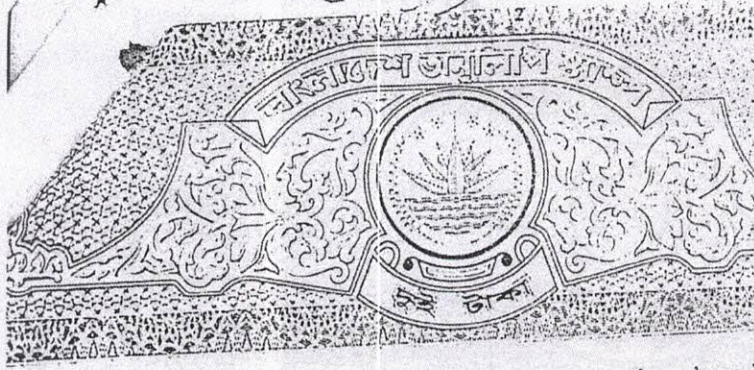
Justice Zinat Ara.

Heard on 26<sup>th</sup>, 27<sup>th</sup> February & 13<sup>th</sup> March, 2005

Judgment on 18<sup>th</sup> April, 2005.

Md. Abdul Wahhab Miah, J.- This rule was issued calling upon the respondents  
to show cause as to why the impugned notice for eviction dated 7.6.2004 issued by  
respondent No. 10 (Annexure-B) for evicting the inhabitants of the slum including  
petitioner no. 2 from 22.776 acres of land of Laldiar Char situated on B.S. Khatian No.  
6, B.S. Plot No. 505, Block No. 1, under Mouza East Patenga alias Laldiar Char, Police





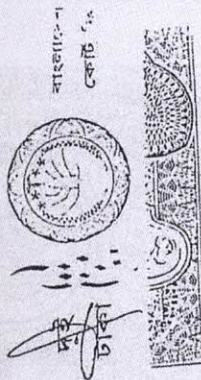
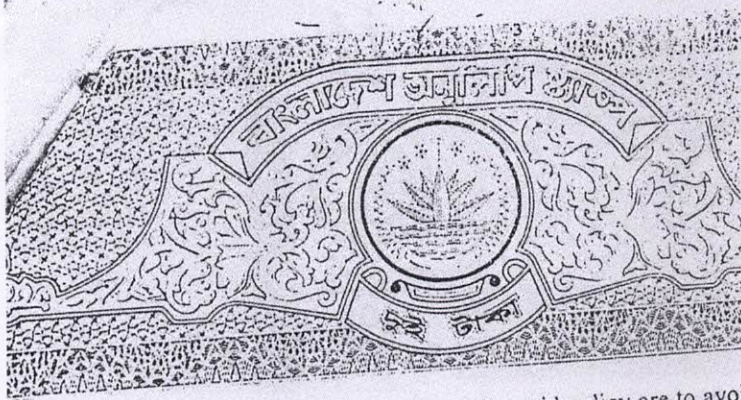
Station Patenga, Chittagong should not be declared to have been issued without lawful authority and is of no legal effect and as to why the respondents should not be directed to comply with the principle/guidelines enunciated by law and or pass such other or further order or orders as to this court may seem fit and proper.

Facts relevant for the disposal of this Rule, in brief, are as under :

Petitioner No. 1 is the commissioner of Chittagong City Corporation, the petitioner No. 2 is a cultivator, petitioner no. 3 is a petty businessman all of them are citizens of Bangladesh and are committed by protect the right of landless persons living in slum area for public interest. The paternal homesteads of the petitioners no. 2-3 were within the area of Chittagong Air Force Base namely, Bangladesh Airforce base, Zahurul Hoque, Chittagong. It was acquired by the Government in the year 1972 along with the lands of others situated therein. Since then petitioners no. 2-3 and others were compelled to live in Laldiar Char. Petitioners no. 2-3 are barely surviving on this land. The petitioners have no place to live in other than the Government owned lands at Laldiar Char and they have no source of financial support other than the meagre earning of their respective families. In pursuance of the strategy of poverty alleviation among the urban poor, and being aware of its responsibilities, as enunciated in the Constitution and under international law including in the <sup>al</sup>University Declaration of Human Rights and ICECR and several United Nations resolutions, to secure for its citizens the basic necessities of life, including food, shelter, clothing and employment, the Government of Bangladesh has formulated and approved a National Housing policy on 13.12.1993 at a

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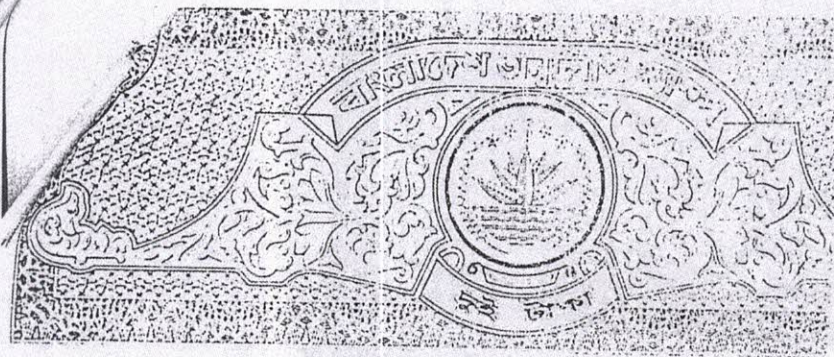




Cabinet Meeting. The main features of the said policy are to avoid forcible relocation or displacement of slum dwellers as far as possible R.S. Khatian No. 5 of mouza East Patenga comprising R.S. Plots Nos. 1733 and 1601 measuring an area of 36 acres was recorded in the name of the District Collector under Bharat Samrat and was part of the Karnafully river, Chittagong, but in course of time a char, namely, Laldiar Char formed therein and the same was recorded in the name of the Government in khatian no. 01 during R.S. operation. During B.S. operation the said land was wrongly recorded as B.S. plots no. 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512 and 513 under B.S. Khatian No. 6 in the name of the Chittagong Port Trust. The Chittagong Port Trust claimed the said land vide paper advertisement dated 10.5.2002 in the daily Azadi. So the Government instituted other suit no. 55 of 2002 in the Court of Assistant Judge, 3<sup>rd</sup> Court, Chittagong for declaration that the B.S. khatian in the name of the Chittagong Port Trust is wrong and not acted upon. The said suit is still pending Petitioners no. 2-3 along with 1000 other land<sup>less</sup> families<sup>are</sup> living in R.S. plots no. 311, 354, 356, 357, and 359 under R.S. Khatian no. 01 of Mouza East Patenga under R.S. Khatian No. 5, corresponding to B.S. Khatian No. 6 and B.S. plot no. 505 under the Patenga Police Station, Chittagong. They constructed huts, semi pucca homes thereon. Power Development Board regularly supply electricity. There is a primary school, two madrasahs, one orphanage and one mosque thereon Laldiar char is situated under ward no. 41 (South Patenga) of Chittagong City Corporation. The City Corporation has constructed pucca road and dam for welfare of the inhabitants. The petitioners along

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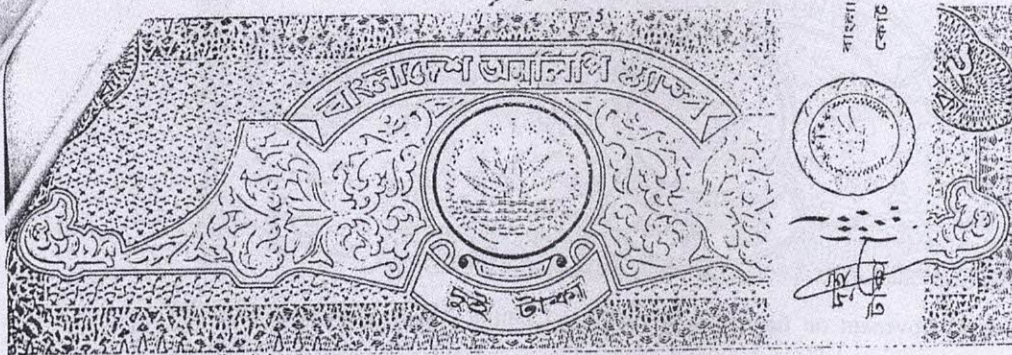




with others established purbapatenga krishi samabay Samity under registration no. 7759, the existing members of which are 1000. While the petitioners were possessing the said land along with other members of the said samity measuring an area of 124 acres of the then Sub-Divisional Officer (North Chittagong) issued notice for vacating the land in pursuant to M.L.R no. 15. So, the petitioners along with other residents made applications to the Deputy Commissioner, Chittagong for lease. The Government issued lease letters in favour of the petitioners along with other residents and they are paying rent. While petitioners no. 2 and 3 and the other inhabitants are living in the land of B.S. Khatian no. 5 and 6 (no mouza has been mentioned), respondent No. 10 Magistrate, 1<sup>st</sup> Class, Chittagong Port Authority issued a notice in Case no. CR (Estate) 21/04/98 for evicting them from 22.776 acres (1378 khata) of land of Laldiar Char of B. S. Khatian no. 6. B.S. plot no. 505 under <sup>Memo</sup> East Patenga alias Laldiar Char stating the boundary as North khal no. 13. South khal no. 14, East Karnafully River, West Airport Road. The said notice was published in the daily Purbakone on 7.6.2004. The petitioners as well as other slum dwellers of the said basti are entitled under the Constitution and the Government policy to the protection of their lives and livelihood. The obligation of the respondents to improve the conditions of urban slum dwellers pursuant to the Government policy would be violated by the forcible eviction and such would not only deprive the petitioners of their only source of shelter but also of their livelihood. It would also tantamount to depriving them of the health facilities, employment opportunities, institutional loan facilities for self employment, destroy their lives and

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condemn them to utter destitution again. The impugned notice for eviction is without lawful authority inasmuch as the petitioners and other residents of the said basti have been lived<sup>19</sup> there since 1972 with the full consent and permission of the Government. Since the Government itself brought the petitioners and other inhabitants of the Basti from their paternal homestead and allowed them to erect their huts therein, they cannot be evicted forcibly without their proper rehabilitation as observed by this court in the cases of *Ain-O-Salish Kendra Vs. Bangladesh* reported in 4 B.L.C. 591 and *Modhumala Vs. Housing & Building Research Institute* reported in 53 DLR, 540. The fundamental right to life as guaranteed by Articles 31 and 32 of the Constitution cannot be restricted to mere animal existence, but must necessarily include the right to livelihood inasmuch as preventing the exercise of such right would render the right to life wholly illusory. There is clear and positive duty cast on the Government by Article 15 of the Constitution to provide for the people, inter alia, the basic necessities of life, including food, clothing, shelter, education and medical care, the right to work and the right to social security, and thus read with the fundamental rights guaranteed by the Constitution assures the petitioners of the protection of their right to life including the right to a livelihood. The impugned notice of eviction would be violative of the fundamental rights of the petitioners and other slum-dwellers guaranteed by Articles 27, 31 and 32 of the Constitution. The impugned notice of eviction would further result in the breach of the Government's obligations under international law, in particular its treaty obligations under the International Covenant on Civil and Political Rights, 1966 and the

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International Covenant on Economic, Social and Cultural Rights 1966 to protect the

right to life, and the right to shelter.

The petitioner also filed a supplementary affidavit stating inter alia, that the Government leased out the lands of Lalaiar Char to the members of the Samity and

executed lease agreements with the lessees including one Gannu Meah for the year 1380

B.S., where S.D.O. Sadar (North) Chittagong put his signature as lessor. The inhabitants

of Lalaiar Char were settled on the land in question after transferring them from Zahurul

Haque Air Base vide Miscellaneous Case No. 101/S. A. 1972-1973. The inhabitants of

Lalaiar Char applied to the Government for making their lease permanent, as such,

Tahshilder of Agrabad Land Office submitted report to the Assistant Commissioner

(Land) Mahanagar Land Office vide Memo No. 111/02 dated 4.6.2002. It was stated in

the said report that the inhabitants are living there for 30 years and their leases have

become permanent as per R121-77/70/223 dated 02.8.1972. The Government of

Bangladesh instituted Other suit no. 55 of 2002 in the court of Assistant Judge, 3<sup>rd</sup>

Court, Chittagong challenging the wrong B.S. Khatian recorded in the name of

Chittagong Port Authority. In the said suit an application for temporary injunction was

filed by the Government and the same having been rejected on 16.4.2003, the

Government preferred Miscellaneous Appeal no. 100 of 2003 before the District Judge,

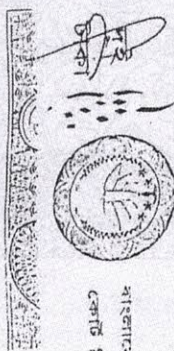
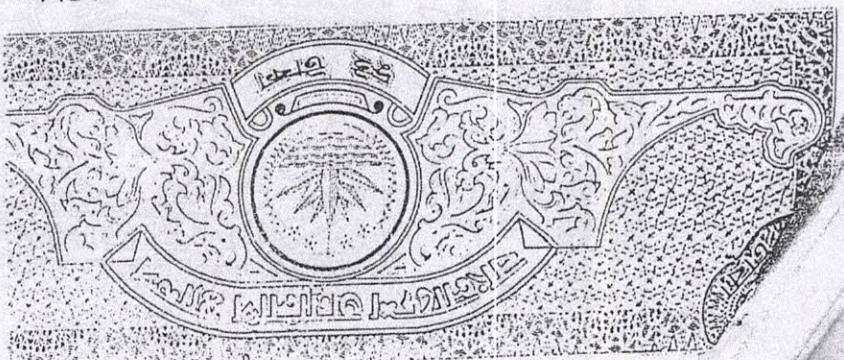
Chittagong. In the appeal the learned Additional district Judge, 1<sup>st</sup> Court, Chittagong

although passed a order of statusquo on 4.6.2003 the appeal was dismissed on

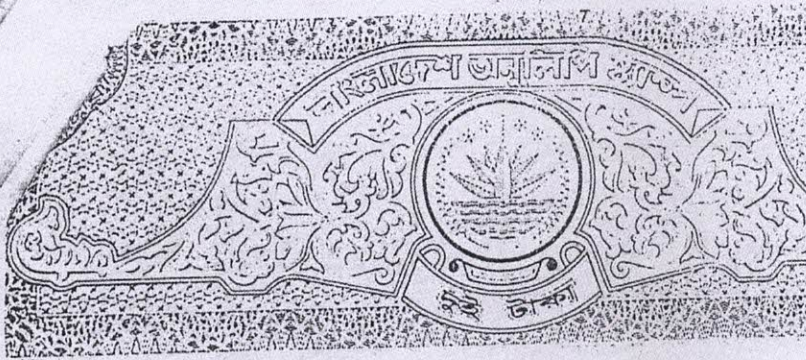
17.9.2003. The said suit is still pending for final hearing and thus title of respondent no.

APPENDIX  
FACTS

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9 has yet not been decided. The impugned notice vide Annexure-B is without lawful authority inasmuch as the very record of the land Laldiar Char in the B.S. khatian in the name of Chittagong Port Authority (hereinafter referred to as the Port Authority) is under challenge in the said suit.

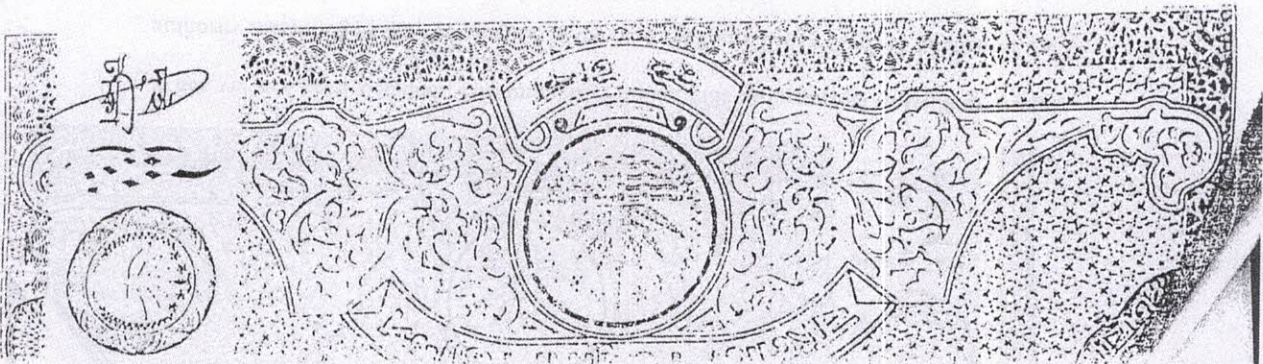
This rule is being contested by respondent No. 9 by filing an affidavit-in-opposition stating, inter alia, that neither petitioners no. 2 and 3 nor any body else were settled in the lands of R.S. khatian no. 5 under mouza East Patenga by the Government. Petitioners have not filed any paper whatsoever to substantiate their claim. Petitioners no. 2 and 3 were never compelled by any one to live in the lawfully acquired lands of respondent no. 9 nor were the lands in question or part thereof was ever acquired by the government in 1972 or at any point of time. Petitioners no. 2 and 3 were and are not living in P.S. Plots no. 311, 354, 356, 357 and 359 under Khatian No. 1 of Mouza East Patenga under R.S. Khatian no. 5 corresponding to B.S. plot no. 505 under Patenga Police station. Petitioner no. 2 is out and out a trespasser in the lands of the Port Authority. there is no existence of any primary school, madrassha, orphanage, mosque multistoried community centre in the land in question. Respondent no. 10 had lawfully issued the notice in CR (Estate) case no. 21/04/98. Therefore, the question of its harshness does not arise at all. The land in question along with other lands belong to the Port Authority and the same has been shown in the third schedule to the Chittagong Port Act (Bengal Act, V of 1914). On the basis of the said third schedule of Chittagong Port Act, B.S. Khatian No. 6 has been recorded in the name of the Port Authority and it is

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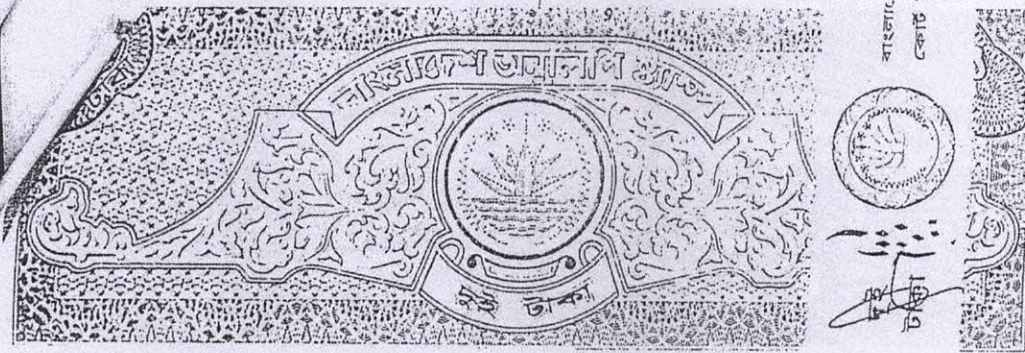


absolute owner and possessor of the land in question. The land in question along with other lands is a reversion land of mouza Putha and Dakhin Patenga between Khall no 11 and Potenga point measuring more or less 171.30 acres and belong to the Port Authority wholly, fully and exclusively. For increasing the efficiency of the Port Authority and to avoid the container congestion in Chittagong port the Authority decided to lease out the land in question along with other lands in order to establish Container Freight Station /Supply Base Station /Inland Container Depot/ Port and shipping related industries and accordingly on 22.4.2004, they invited tender from interested and bonafide parties for the said purpose. Thereafter the Port Authority signed an agreement with the highest bidder M/S. Incentrade Ltd. After publication of the said tender notice dated 22.4.2001, the Deputy Commissioner, Chittagong plaintiff filed Other Class suit no. 55 of 2002 against the Port Authority for declaration of their title in respect of the land in question. In the suit an application was filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure praying for restraining the Port Authority from selling or leasing out the land in question. This prayer was rejected by the Court. Against the said order of rejection the Government filed miscellaneous Appeal no. 100 of 2003 before the District Judge, Chittagong which was also dismissed by judgment and order dated 17.9.03. Thereafter, the Deputy Commissioner, Chittagong

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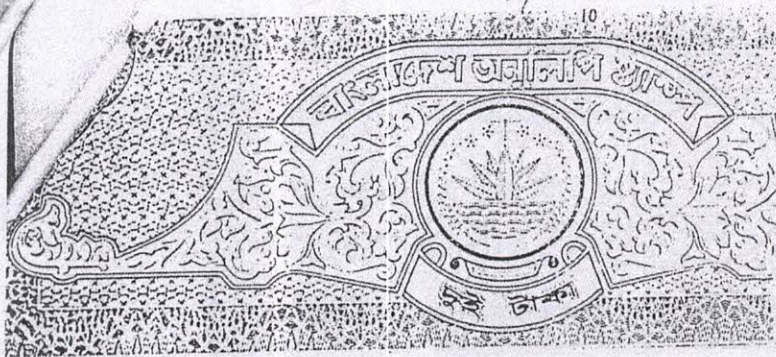




since both the Ministers are under the Government, they should rather act in a harmonious manner and advised to settle the matter mutually. After signing of the aforesaid agreement between the Port Authority and M/S. Incontrade Ltd. the Authority had taken steps to hand over the land in question to the said company. When the Officers of the Port Authority went to measure the lands they to their utter surprise found that some unscrupulous land grabbers trespassed into the land in question and raised some kachcha structures and started living there. The unscrupulous land grabbers are the unlawful trespassers in the land of the Port Authority. So, it asked them to leave the land. But they paid no heed to such requests. Then a "on the <sup>spot</sup> post enquiry" was held on the land in question and after completion of the enquiry, the Port Authority found 99 (ninety nine) unauthorized occupants in the said land by erecting some kachcha structures thereon. On 12.04.2004, the Port Authority issued a Gana Biggapy in the daily Newspaper, the Azadi requesting the illegal and unauthorized occupants to leave the land in question within 15 days from the date of the notice, in default, they would be evicted by demolishing the structures standing thereon through Magistrate, 1<sup>st</sup> Class. As those unauthorized and illegal occupiers and trespassers did not leave the land, the Port Authority filed a case on 10.5.2004 being C.R. (Estate) case no. 21/2004 before the Authorized Officer and Magistrate, 1<sup>st</sup> Class under section 3 of the Port Authorities Land & and Building (Recovery of Possession) Ordinance, 1962 (hereinafter referred to as the Ordinance 1962) for their eviction. The Authorized Officer and Magistrate 1<sup>st</sup> class duly served notices upon the said illegal and unauthorized occupiers in the case

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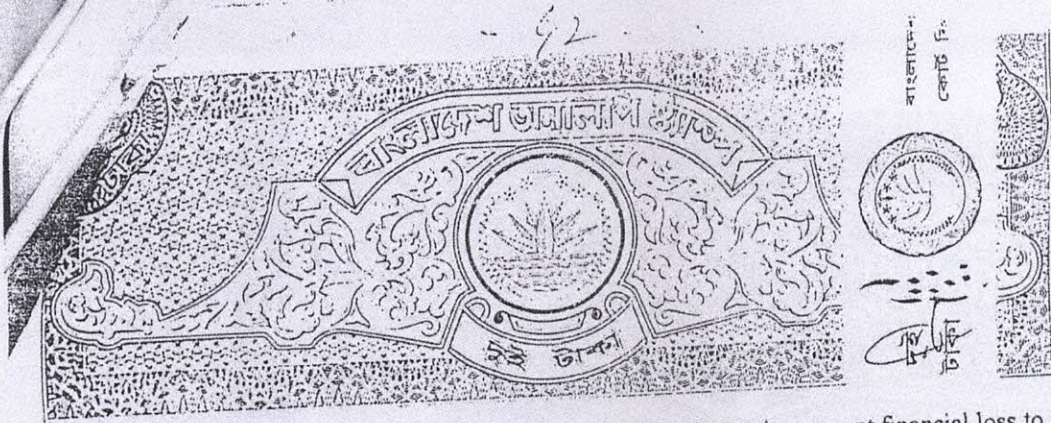




fixing 15.5.04, 16.5.04, 17.5.04, 18.5.04 and 19.05.04 for their appearance. But in spite of service of the notices upon the illegal occupants they did not appear wilfully before the Authorities Officer and Magistrate 1<sup>st</sup> class, as such, the Authorized Officer and Magistrate 1<sup>st</sup> Class. As such, the Authorities Officer and Magistrate-1<sup>st</sup>-Class fixed 5.6.2004 for order. On the said fixed date also the unauthorized occupants did not appear, so the Authorized officer passed an order for eviction. Thereafter, on 7.6.2004 the Authorized Officer issued and published a notice under section 4(2) of the Ordinance, 1962 directing the illegal occupants who were opposite parties in the case to leave and vacate the land within 7 days, otherwise, they would be evicted therefrom. The illegal unauthorized occupiers of the land did not comply with the said notice. In the meantime some interested quarter managed to grab one of the 99 (ninety nine) illegal unauthorized occupants and two others and filed this writ petition on some flimsy grounds in order to defeat the purpose and to obstruct the scheme of the Port Authority. Petitioners no. 1 and 3 are in no way connected with the land in question. Only petitioner no. 2 has been named in the notice vide annexure B to the writ petition. They cannot claim their right to stay in the lawfully acquired lands of the Port Authority. Nobody can claim their fundamental right to forcefully occupy and stay on the lawfully acquired lands of others. Moreover, petitioner 2 could have gone to the District Magistrate in appeal against the order of Authorized office and Magistrate, 1<sup>st</sup> class under section 5 of Ordinance, 1962, instead he has filed the instant writ petition along with 2 outsiders with ulterior motive only to frustrate the development scheme of the

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Port Authority. The pendency of this writ petition is causing a grant financial loss to the Port Authority. Although the petitioners have stated in the writ petition that the government granted lease to the members of Krishi Samabaya Samity for one year and that they are paying rents to the Government, they have not produced a single paper in support thereof. The Port Authority as the owner and possessor of the land in question paying land development tax to the Government regularly.

On behalf of the respondent No.9, two supplementary affidavits have been filed on 27.11.2004 and the other on 6.3.2005. In the affidavit in opposition dated 27.11.2004 it has been stated, inter alia, that after filing of the CR (Estate) case no. 21 of 2004, the authorized officer and Magistrate 1<sup>st</sup> class sent notices to the illegal and unauthorized occupiers under section 4(1) of the Ordinance, 1962. About 9 persons received the said notice by putting their signatures on the back page thereof. While the rest willfully refused to receive the notices. As a result notices, were served upon them by affixing the same on some conspicuous place by the process server. The authorized officer and Magistrate, 1<sup>st</sup> class caused a notice issued and published in the Dainik Purbakone, a Bangali daily published in Chittagong (Annexure-10 of the application for vacating the stay order dated 14.6.2004) to vacate the land in question within 7 seven days failing which they would be evicted therefrom. After issuing the notices under section 4 of the Ordinance, 1962 the Authorized Officer and Magistrate 1<sup>st</sup> class also published a notice under rule 3(2) (e) of the Chittagong Port Lands and Buildings (Recovery of possession)

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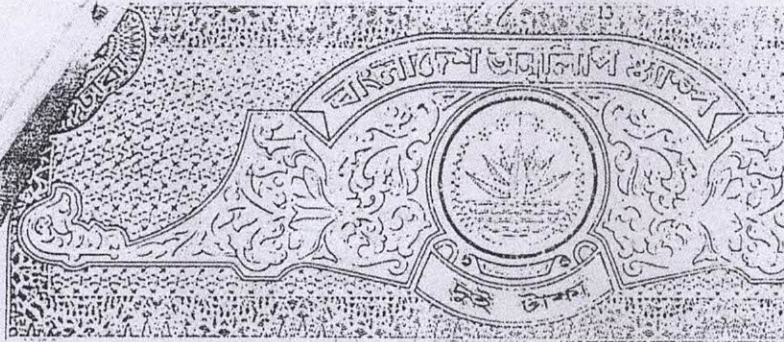


Rules, 1964. Therefore, the requirements of the Ordinance 1962 and the Rules framed thereunder were duly complied with.

An affidavit-in-reply against this supplementary affidavit it has been filed by petitioner no. 2, stating inter alia, that no notice was received by any of the 0 persons as alleged by the respondent. The notices were also not served upon the rest inhabitants of Laldiar Char and no notices was affixed on any conspicuous place of Laldiar Char by any process server. East Patenga (Laldiarchar) is situated on R.S. Plot No. 1733/1601<sup>1700</sup> comprising an area of 323.60 acres under Mouza East Patenga police station Doublemooring (presently Patenga), District Chittagong and R.S.Khatian No. 5 of the said was recorded in the name of the government P.S. Khatian No. 359, 357, 311, 356, 354 comprising 124, 770 acres of land of Laldiar char was recorded in the name of the Government of East Pakistan Province, where Abul Kashem and Abul Hashem were shown as illegal possessors. Abul Kashem and Abul Hashem were in possession of 117 acres of land of PS Khatian from 1354 B.S. to 1370 B.S. they took lease of the said land from 1371 B.S. to 1377 B.S. but they did not apply for lease for the period of 1378 to 1379 which was disclosed in the written objection of the government against the application <sup>here injunction</sup> filed in Other suit no. 124 of 1974. Government settled 124 acres of land to 124 families for agricultural purpose vide Miscellaneous Case No. 101/L.S./1972-1973 for the year 1380 B.S. After acquisition of the homesteads of all the inhabitants of Zahurul Hoque Air Base including said 124 families they were settled at Laldiar char in the year 974. They constructed residence on their lease hold land. Earlier illegal

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possessors, namely, Abul Kashem and Abul Hasem being unable to get lease in their favour instituted other suit no. 124 of 1974 and other suit no.119 of the 1974 in the Court of Munsif, Second court Sadar, Chittagong as is evidenced from the written objection filed by the government against the application for injunction in other suit no. 124 of 1974. On an application filed by the Secretary of the Samity for permanent settlement of the land in question and other lands A.D.C. (Revenue) Chittagong vide memo no. 1463/S. A. dated 4.5.1974 sent a proposal to the Ministry of land Administration for leasing out the land to the Samity. The Ministry of Land vide its memo no. 177/V-120/73-D.S. dated 16.5.1974 duly approved the proposed of the A.D.C. (Revenue). Due to the pendency of the said suits leases were not renewed or permanent settlement of the land were not possible. But the earlier inhabitants were in possession of the said land as would be evident from the report dated 23.5.2001 given by Tahshilder to the A.C. (Land), Petitioner no. 2 along with others again applied for permanent settlement of the land which was forwarded by A.C. (Land) Sadar Chittagong to the A.D.C. (Revenue). A.D.C. (Revenue) asked for a report from A.C. (Land) on 15.11.2000 regarding the ownership of the said land as per <sup>R.</sup>S.R. P.S. and B.S. Khatian. The A.C. (Land) asked for report from the Tahashilder, Agrabad on 19.11.2000 who submitted his report on 23.5.2001 to the A.C. (Land) requesting him for taking steps for correction of wrong B.S. Khatian and for permanent settlement of the said land in favour of the inhabitants. The A.C. (Land) asked for a report from the tahashilder on 1.6.2002 pursuant to the memo dated 14.5.2002 of the Ministry of Land.

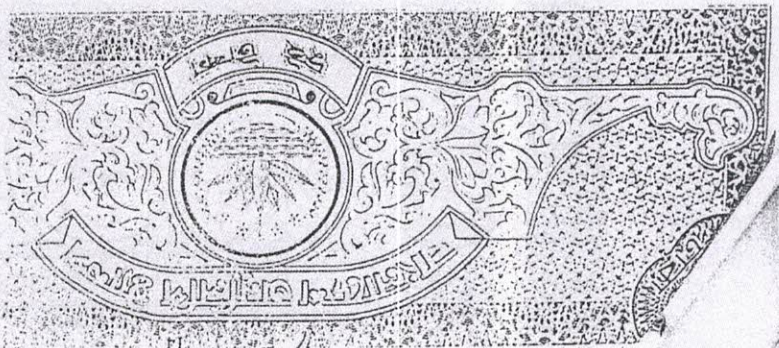
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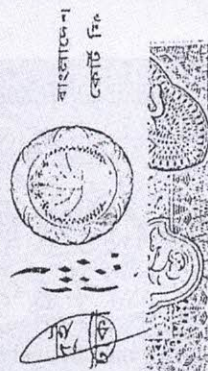
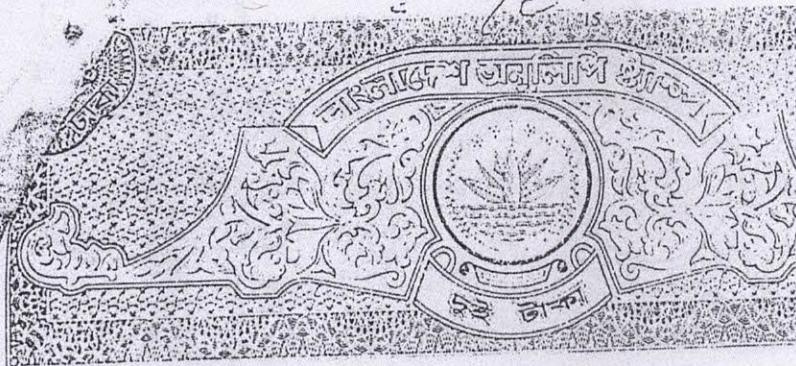
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The Tahshildar submitted his report on 4.6.2002 to the A.C. (Land) recommending for permanent settlement. In the report it was stated that about 1536 families were living in the said land for 30 years by erecting huts. The A.C. Land requested A.D.C. (Rev) on 24.7.2001 for instituting suit for correction of B.S. Khatri and accordingly Other Suit No. 55 of 2002 was filed on 19.3.2002 by the Deputy Commissioner, Chittagong for declaration of title and for correction of B.S. Khatri.

In the supplementary affidavit dated 6.3.2005 filed by respondent No. 9 it has been stated, inter alia, that in 1950 the Port Authority published the Third Schedule. It exactly corresponds to the 3<sup>rd</sup> schedule mentioned in the Chittagong Port Authority Act 1914 (the 3<sup>rd</sup> Volume of East Pakistan Code). Subsequently in 1960 the Port Authority also published another Act. In between these two periods i.e. 1950-60 there are so many amendments as to the inclusion of plots which were included in the 1960 Edition. It is now 44 years old so it has some evidentiary value. The two P.S. plots being no. 1601 and 1909 were actually in the Kamaphuli River within the port limit. These two plots were included at page 81 of 1960 publication but the area of land was not changed. It remained 171.30 acres though in fact area of plot no. 1601 was 115.10 acres and that of plot no. 1909 was 208.50 acres. Relating to these two R.S. Plots, that is, 1601 and 1909 there was a dispute to these two R.S. Plots that is, 1601 and 1909 there was a dispute between the Government and the Port Authority. In P.S. these two plots were recorded in the name of the Port Authority, Tahshildar of Agrabad Tahsil office on behalf of the Deputy Commissioner filed objection under section 50 of the State Acquisition and







Tenancy Act 1950 before the settlement officer, Chittagong Noakhali and Comilla for correction of record and for recording those two plots in the name of the Government. The case was heard by the settlement officer who vide order dated 8.2.1964 held that these two plots of land belonged to the Government. Against that order a review case being no. 11-R-of 1964 was filed by the Port Authority before the Charge officer (settlement) Chittagong who held personal inquiry and then by order dated 26.2.65 directed to record the land in question in the port khatian cancelling all the previous orders. In the review case it was clearly stated that the said two plots of land are of very big areas but the areas have not been included in the Third Schedule. The area of the land inadvertently was not changed. B. S. was completed in 1987, thereafter, there was no revision of the khatian. In the finally published B.S. Khatian plot no. 505 has been recorded in the name of Port Authority. So, the story that in 1972 predecessor of petitioner no. 2 and some persons were shifted from Zahurul Hoque Base to the land in question is not correct. If they were staying there since 1972, then in 1987 the said plot would not have been recorded in the name of Port Authority as the owner. The area of B.S. plot No. 505 is only 22.7750 acres and is not the part of R.S. Plots no. 1601 and 1909. In this supplementary affidavit it has been contended by way of submissions that writ court is not a civil court to decide the title of the parties. In any case till now the petitioners could not produce a single scrap of paper to show that they were residing in the suit plot, namely, B.S. plot no. 505 since 1972. There is not a single piece of paper showing that any time the petitioners were in possession of B.S. Plot No. 505 or they are

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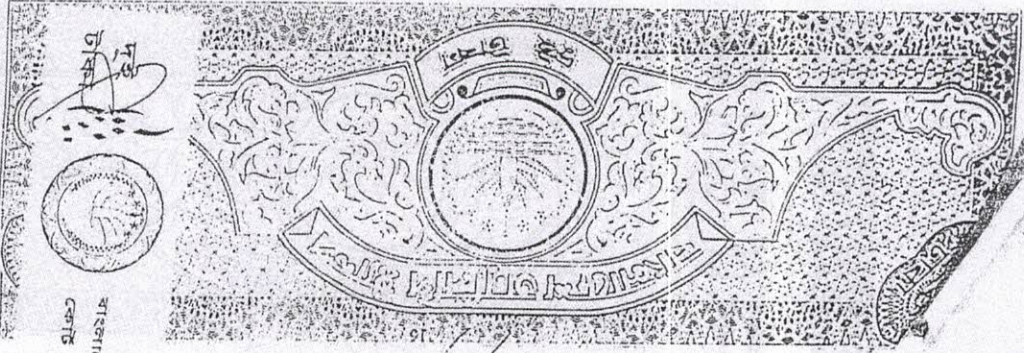


the owners of that plot of land. In fact the Government is demanding land development tax for B.S. Plot No. 505 from the Port Authority.

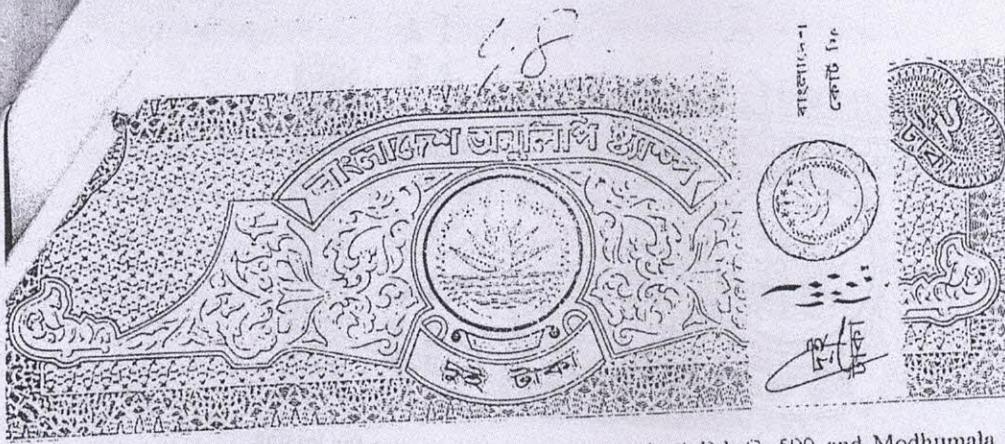
Against this supplementary affidavit in opposition petitioner no. 2 has also filed an affidavit in reply stating, inter alia, that the Port Authority is not vested with any legislative power to amend the Chittagong Port Act or the 3<sup>rd</sup> schedule thereto or to print its own version of the Chittagong Port Act incorporating amendments which have never been enacted by the legislature. It has never been published either in the Gazette or in the subsequent amended official texts of the Chittagong Port Act as published by the Government Press in 1963 or in the official Gazette of 1960. Indeed there is no evidence of any legislative amendment having been made inserting plots number 1909 and 1601 into Chittagong Port Act. The possession of the petitioners and others in B.S. Plot no. 505 in respect of whom the eviction notice was published is admitted by the impugned eviction notice itself. The legal issue involved relating to title to the land in question are to be adjudicated in Other Suit No. 55 of 2002 pending in the Court of Assistant Judge, 3<sup>rd</sup> Court, Chittagong. The Government being a respondent has not contested the writ petition and thus it may be regarded as having admitted the averments made by the writ petitioners that they have been re-settled in this land in question by the Government after having been displaced from their ancestral property along with the Karnataka River for the establishment of Zahurul Hoque Air Base.

Dr. Kamal Hussain, the learned Advocate appearing for the petitioners by referring to two decisions of this court in the case of Ain-U-Salish (ASK) and others Vs.

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Government of Bangladesh and others reported in 4 B.L.C. 590 and Modhumala Vs. **DR. KAMAL HOSSAIN'S ARGUMENTS**  
Director, Housing and Building Research Institute and others reported in 53 D. L.R. 541  
and to Articles 31 and 32 of the Constitution of the People's Republic of Bangladesh  
submits that right to shelter is a fundamental right and it relates to right to life, therefore,  
petitioner no. 2 and others who are living in the land in question since 1972 being  
settled there by the Government after their homesteads were acquired for Zahurul  
Hoque Air Base cannot be just evicted without rehabilitation in proper place. He  
submits that before issuance of the impugned notice the Port Authority did not comply  
with the provision of the Ordinance, 1962 and the rules framed thereunder in 1964, as  
notices upon the occupiers were not served individually as provided in the said  
Ordinance and the rules, as such, the impugned notice is liable to be declared to have  
been passed without lawful authority and is of no legal effect. Dr. Kamal Hossain  
further submits that two R.S. plots being no. 1601 and 1909 were not included in the 3<sup>rd</sup>  
schedule to the Port Authority Act 1914, therefore, the eviction notice given to  
petitioner no 2 and the other inhabitants of the land of B.S. plot no. 505 without proving  
their ownership therein is absolutely arbitrary Dr. Kamal Hossain further submits that  
since the government has filed a suit being other suit no. 55 of 2002 in the court of  
Senior Assistant Judge, 3<sup>rd</sup> Court, Chittagong for declaration of its title, thereby the title  
of the Port Authority to the land <sup>in</sup> question is under challenge and till the said suit is  
decided petitioner no. 2 and other inhabitants of the land in question cannot be evicted  
Dr. Kamal Hossain further submits that although the prayer for temporary injunction

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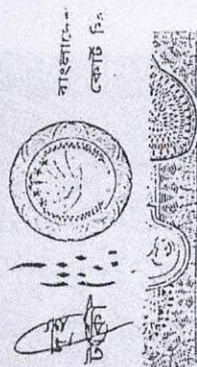
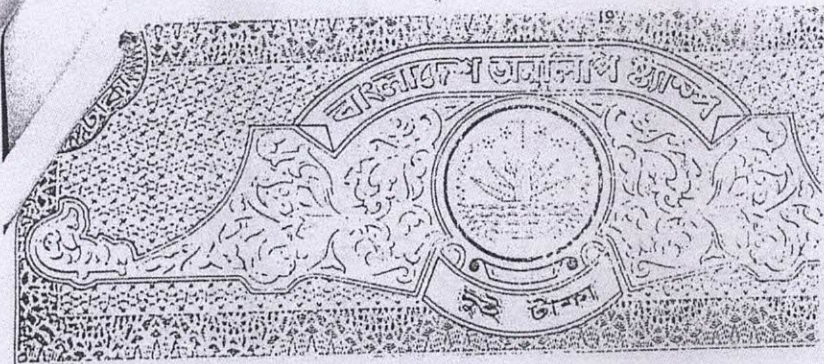


filed by the Government restraining the Port Authority from inviting tender for leasing out or transferring the land in question was rejected up to the appellate court, yet on a reference made by the Deputy Commissioner, Chittagong to the Ministry of Law for filing revision application before this Court he was advised to take step to settle the dispute amicably through interministerial meeting and unless such step is taken the petitioners cannot be evicted from the land in question and a direction need be given upon the respondents to rehabilitate the inhabitants of the land in question before evicting them.

Initially Mr. Habibul Islam Bhuiyan, the learned Advocate appeared on behalf of respondent No. 9 and made his submissions in extenso then Mr. Rafiqul Hoque joined him who just reiterated the submissions made by Mr. Habibul Islam Bhuiyan. Both the learned Advocates submitted that the dispute as to the ownership of B.S. plot no. 505 which is now being raised by the petitioners was raised in 1964 as the Tahashilder of Agrabad Tahashil office filed Dispute case before the Settlement Officer under section 50 of the East Bengal State Acquisition and Tenancy Act 1950 and eventually the said dispute was rejected by the charge officer (Settlement) Chittagong with the clear finding that the Land belongs to the Port Authority and giving direction to record the land in the port khatian cancelling all previous orders. now there is no scope to raise the said dispute in this writ petition. The learned Advocates further submitted that B.S. Khatian was finally published in 1987 and plot no. 505 from which the illegal occupant(s) are sought to be evicted being finally published B.S. Khatian it has a presumption of

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K.A.

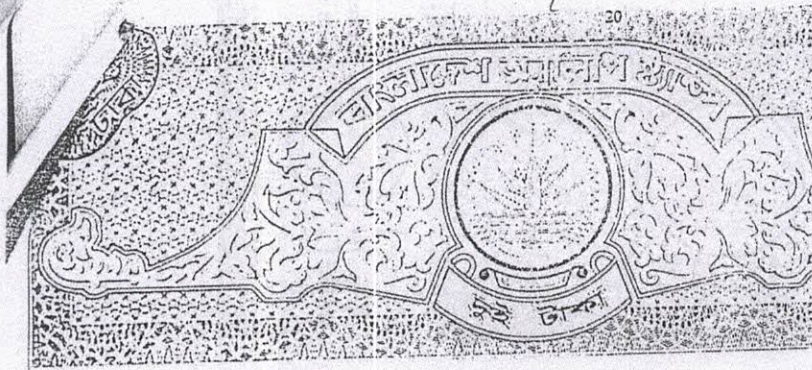




correctness under section 14 of the State Acquisition and Tenancy Act, 1950 and the said presumption cannot be taken lightly unless is rebutted by strong *prima facie* evidenced by the petitioners, which they have failed to do. The learned Advocates further submitted that the Port Authority published the Act in 1960 and in the schedule to the Act B.S. plot no. 505 was clearly included and since that time 44 years have already elapsed and this fact coupled with the finally published B.S. Khatian *prima facie* establishes the title of the Port Authority to the land in question and, therefore, it has acted within its jurisdiction to issue the impugned notice to evict the unauthorized occupants and this court exercising extraordinary jurisdiction under Article 102 of the Constitution cannot question the same rather is to act on this. The learned Advocates further submitted that the area of the land from which petitioner no 2 and other occupants are sought to be evicted is not part of R.S. Plot No. 1601 and 1909, therefore even if those two R.S. plots were not included in the schedule of the port Trust Act as published in 1914 cannot dislodge the presumption of finally published B.S. khatian. The learned Advocates further submitted that petitioners no. 1 and 3 are in no way connected with the land in question and in fact they are not in possession in any inch of the same and, as such, at their instance this writ petition cannot be maintained. The learned Advocates further submitted that the notices were duly issued upon the occupants of the land in question including petitioner no. 2 under the provisions of the Ordinance, 1962 asking them to vacate the land but they did not and accordingly complaint was filed before the Authorised Officer and Magistrate First Class of the Port

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JCA





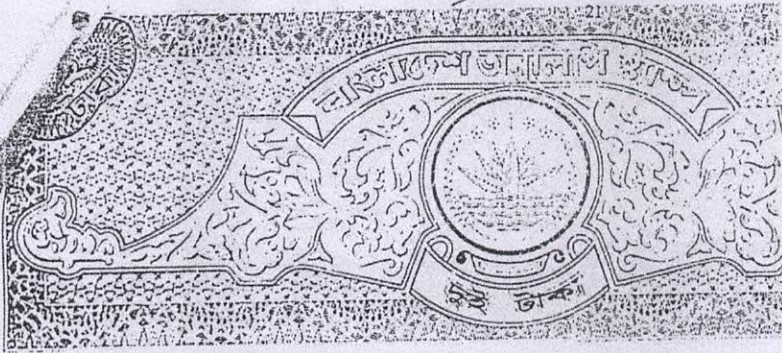
Authority who passed the order of eviction after due notice to the occupant therefore the petitioners cannot have any grievance to come before this court. The learned Advocates lastly submitted that in support of the case of petitioner no 2 that it is the government who rehabilitated him and other inhabitants in the land in question after their homesteads were acquired for Zahurul Hoque Air Base have not filed a single scrap of paper. therefore, they have no right to continue their possession in the land in question on the plea of pendency of the suit filed by the Government the rule is liable to be discharged.

*DECISION*

At the very out set we <sup>try</sup> lie to deal with the objection taken by the learned Advocates for the respondent as to the maintainability of the writ petition. This petition has been filed by three petitioners of whom petitioners No. 2 and 3 have claimed that they were settled in the land in question by the Government after their homesteads along with other residents were acquired for Bangladesh Air force Base Zahurul Hoque, Chittagong, though respondent No. 9 in its affidavit in opposition has admitted the possession of petitioner no. 2 only; petitioner No. 1 is the Commissioner of <sup>Chittagong</sup> Customs Corporation and all the petitioners have claimed that they are committee to uphold public interest and are mindful of the need to be visilant to protect the landless people living in slums in public interest. The petitioners have been active in filing public interest litigation for the protection of the fundamental right of the people and, as such, they are aggrieved by the impugned notice of eviction of the petitioners and other inhabitants of Laldiarchar. The assertions made by the petitioners as to the fact that they

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are committed to uphold public interest and have been active in filing public interest litigation for the protection of fundamental rights of the people have not been denied. The concept of locus standi or aggrievedness has undergone a new era in the case of Dr. Mohiuddin Farooque Vs. Bangladesh reported in 49 DLR (AD) 1. In the said case Mustafa Kamal, J who delivered the main judgment held that in so far as it concerns public wrong or public injury or invasion of fundamental rights of an indeterminable number of people, any member of the public, being a citizen, suffering the common injury or common invasion in common with other or any citizen or an indigenous association, as distinguished from a local component of a foreign organization, espousing that particular cause is a person aggrieved and has the right to invoke the jurisdiction under Article 102 of the constitution. In the said case B.B. Roy Chowdhury, J held that the expression "person aggrieved" means not only any person who is personally aggrieved but also one whose heart bleeds for his less fortunate fellow being for a wrong done by the Government or a local authority in not fulfilling its constitutional or statutory authority. Similar kinds of writ petitions were filed by Ain-O-Salish Kendra (ASK) and others and one Modhumala against the Government of Bangladesh and others and the Director, Housing and Building Research Institute and others respectively vide writ petitions no. 3034 of 1999 and 59 of 1994 reported in 4 BLC, 590 and 53 DLR, 540 and those writ petitions were found maintainable. In this writ petition also the petitioners have approached this court to protect the fundamental right of shelter which is a right to life of the persons in the land in question and in fact

MAINTAINABILITY

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15/8



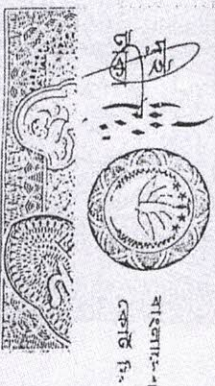
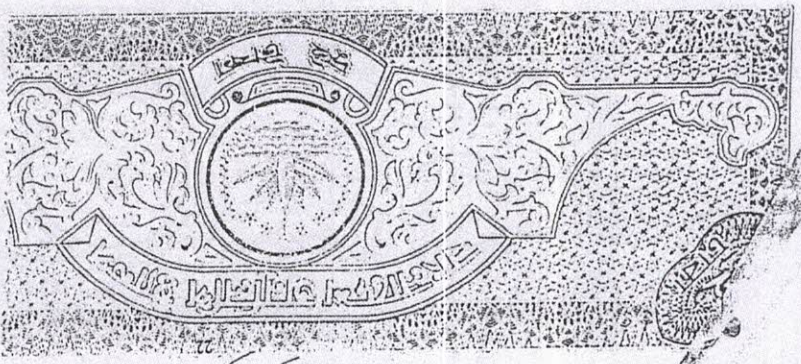
this writ petition has been filed in the nature of public interest, therefore, we hold that the writ petition is maintainable in law.

Now the petitioner question to be decided is whether the eviction notice issued by respondent no. 10, Magistrate First Class and Authorized officer of the Port Authority

vide annexure-B to the petition is liable to be declared to have been issued without lawful authority and is of no legal effect. The petitioner's case are that petitioners no. 2 and 3 and other inhabitants of the land in question were rehabilitated therein by the Government of Bangladesh after their homesteads were acquired for Zahurul Hoque Base in 1972. The further case of petitioners No. 2 and 3 are that initially they were given yearly lease of the land in question by the Government and then after forming a

society under the name 'Purba Patenga Kishi Samabaya Samity' proposal was went to the government for giving permanent lease duly recommended by the Additional Deputy Commissioner (Rev.) Chittagong. But no paper has been filed to show that in fact lease granted either to petitioners no. 2 and 3 or to any of the inhabitants of the land in question by the Government. On behalf of the petitioner Photostat copy of a proforma agreement has been filed (Annexure-C to the Supplementary affidavit). From the copy of the said agreement it appears that the same was prepared in connection with lease of khas land in Miscellaneous case No. 80, 251/72-73 styled as agreement for lease of agricultural purpose to be executed by the Subdivisional Officer, Sadar (North), Chittagong on behalf of the Government of the people's Republic of Bangladesh, but it does not show that this agreement relates to the land in question. There is no mention of

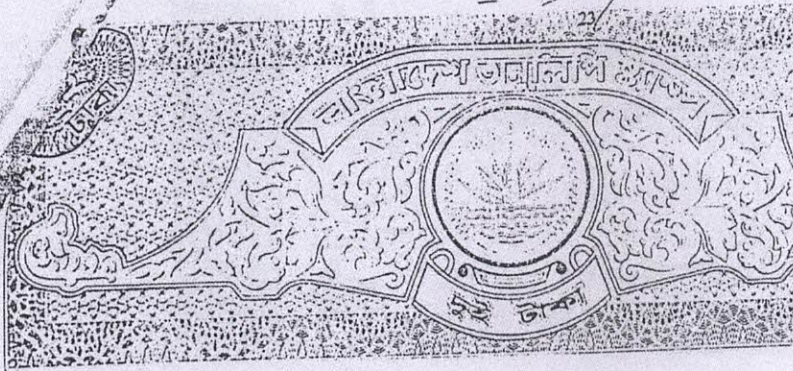
22/11/74



বুলেট  
নোটে  
স্বাক্ষর  
করা  
হয়েছে

মহানগর





any person as well. so. this cannot be connected with the lease of the land in question .  
Annexure D is a report dated 4.6.2002 sent by the Tahsilder, Agrabad Land Office, Sadar, Chittagong to the Assistant Commissioner (Land) Metropolitan Land Office Chittagong on the application filed by the inhabitants of Laldiar Char which is under City Corporation Chittagong. In the said report it was stated that the inhabitants of Laldiar Char being evicted from their paternal homesteads because of the reconstruction and extension of Zahurul Hoque Air Force Base, the Government allowed them to occupy its khas land of the said Char situated towards South west vide Miscellaneous case no. 101/S.A. 1972-73. The Tahsilder recommended for permanent settlement of the land in question in favour of the inhabitants. In the report it was further stated that on the land in question there are 1536 families and there are other establishments such as, a Government school, a community centre, pucca mosque, Madrasha, Furkania Madrasha, graveyard and other cultural and social organization, but in the B.S. Khatian the land in question was wrongly recorded in the name of Chittagong Port Authority. In the report the tahsilder further stated that the Port Authority had no right, title and possession on the land of Laldiar char and presently also they have no possession and that step had already been taken to correct the B.S., Khatian, Annexure-J is a letter written by the Section Officer, Section V Ministry land Administration and Land reforms to the Additional Deputy Commissioner (Rev.) Chittagong giving approval of the proposal sent by him in respect of the management of khas land measuring 117.00 acres of purba Patenga locally known as patenga char. Annexure-K is another report sent by the

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K.A.



Tahsildar, Agrabad Land office, Chittagong to the Assistant Commissioner (Land)  
Metropolitan office, Chittagong vide Memo no. (illegible) 2001-213 dated 23.5.2001

recommending for permanent settlement of the land of Laldiar char in favour of the  
inhabitants of the said Char stating similar facts as were stated in the report vide

Annexure-D. But these annexures in no way can be considered as documents of lease or  
settlement in favour of petitioners no. 2 and 3 and the other inhabitants of Laldiar Char

by the Government. Had there been any paper of lease and settlement by the  
Government either in favour of petitioners no 2 and 3 or the other inhabitants of the said

Char the petitioner would have produced the same. Therefore, we find it difficult to  
accept the case of the petitioners that petitioners no. 2 and 3 and other inhabitants of

Laldiar Char were rehabilitated by the Government. In this regard we are also to  
consider as to whether when the dispute as to the recording of the land in question was

resolved by the order of the Charge officer as far back as on 26.2.65, could the  
Government settle the same either in favour of petitioners no. 2 and 3 or any other

person or persons? Our answer cannot but be in the negative.

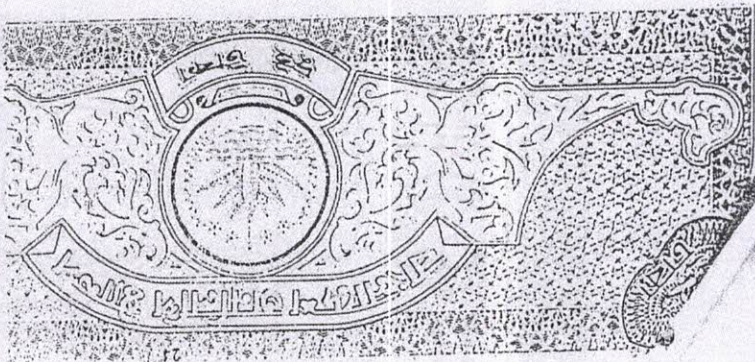
Dr. Hossain has strenuously argued that other suit no. 55 of 2002 between the

government and the Port Authority being pending in the court of Assistant Judge, 3rd  
Court Dhaka wherein ownership of the Port Authority to the land in question has been

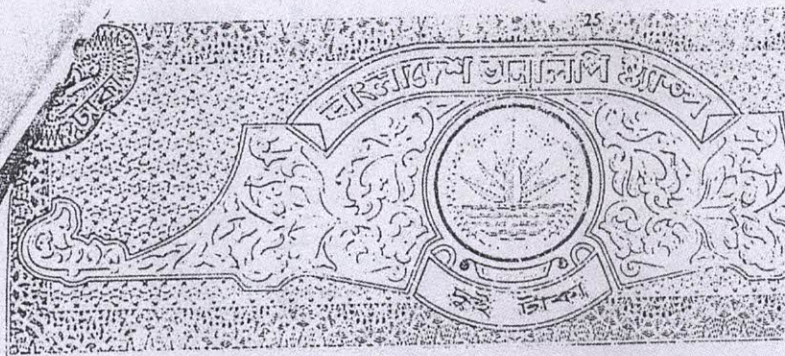
challenged, it cannot be said that Port Authority is the exclusive owner of the land in  
question, therefore, they have no locus standi to ask the inhabitants of the land in question

to vacate the same and take steps to evict them till the decision of title by the civil court.

24/1/14







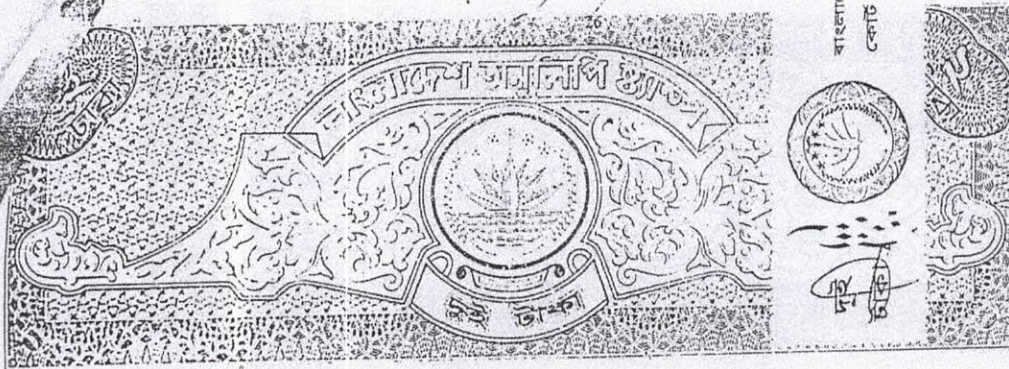
It does not require any further elaboration for the proposition of law that this court while exercising extraordinary jurisdiction under Article 102 of the Constitution cannot decide facts or title of the parties to a disputed land. A writ petition is decided in a summary manner on facts furnished by affidavits and the annexures annexed to the petition and to the affidavit in opposition. From annexure- 2 series it appears that initially also the B.S. khatian in respect of the plot in question was prepared in the name of the Port Authority. With the supplementary affidavit filed by respondent no. 9 on 6.3.2005 the order passed by the Charge officer (settlement) Chittagong on 26.2.1965 has been annexed as annexure X(2). By the said order the Charge officer directed that the land in question be recorded in the port khatian cancelling all previous orders. The ordering portion of the said order of the Charge officer is as under :

" I held local enquiry in presence of the Asstt. Estate officer, Port Trust and Md. Abul Hashem on 26.11.64. In course of my enquiry it transpired that the lands under dispute lie within port limit and they sometime go under water during high tide. Hence as per orders passed by the S.O. placed below in a separate sheet. I order that the lands under dispute will be recorded in port's Khatian and all previous orders will stand cancelled. The records are being corrected accordingly."

Thus, it is clear that the dispute as to ownership of B.S Plot no. 505 was resolved in 1965. Against the said order of the Charge officer no further step was taken by the Government either in order to perfect its title or get the land in question recorded in its name till the filing of Other suit no. 55 of 2002. In the meantime B.S. khatian has been finally published in the name of the Port Authority in 1987 and under Section 144 of the

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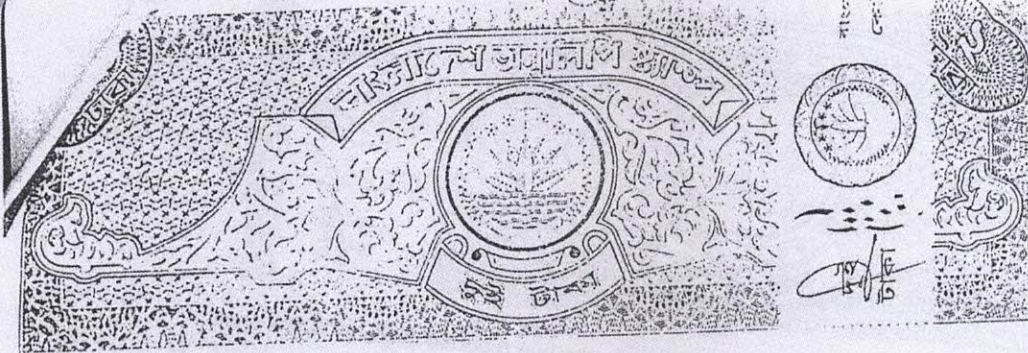
State Acquisition and tenancy Act 1950. it has a presumption of correctness. Therefore, this court sitting in writ jurisdiction cannot decide otherwise, but to accept the B.S. Khatian as the basis of the claim of respondent no. 9; and the pendency of other class suit filed by the Government cannot stand on the way as argued by Dr. Hossain.

LAND BELONGS  
TO CTG PORT  
AUTHORITY

As to the recovery of possession of the land and building of the Port Authority there are seprate enactments, namely, the Ordinance 1962 and the Chittagong Port Lands and Buildings (Recovery of possession ) Rules, 1964. It appears to us that there has been sufficient compliance of the provisions of law, that is, the Ordinance 1962 and the Rules 1964 in respect of giving notices upon the occupants of the land in question including petitioner no. 2 asking them to vacate the same terming their possession unauthorized. It further appears that as the unauthorized occupants did not vacate the land in question the Port Authority filed complaint to the Authorized officer and Magistrate 1<sup>st</sup> Class under Section 3 of the Ordinance, 1962 and accordingly a proceeding being C.R. (Estate) Case No. 21 of 2004 was started. From annexure I to the application for vacating the order of stay it appears that inspite of the service of notices occupants they did not appear before the Authorized officer and of the said case upon the accordingly he by his order dated 5.6.2004 directed the unauthorized occupants to hand over vacant possession of the land in question to the port Authority by removing and demolishing the houses, shops and other establishments therefrom within 7(seven) days from the date of service of notices under Section 4(2) of the Ordinance, 1962. Thereafter, the impugned notice vide Annexure-B was issued. Therefore, we do not see any defect or lapses in the process of service of notices for

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11/11



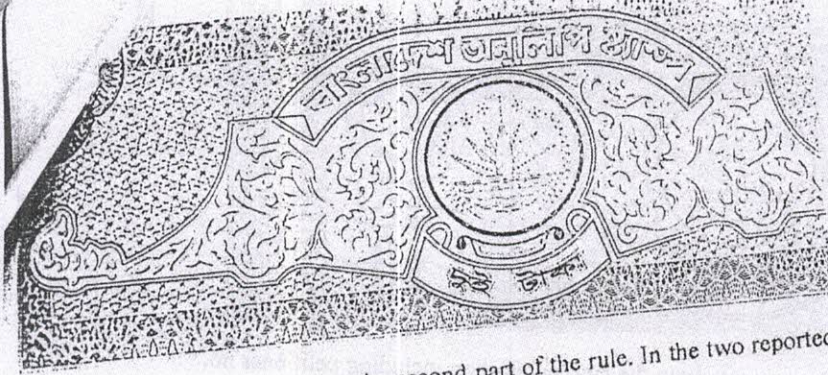


eviction of the unauthorized occupants from the land in question including petitioner no. 2 under the provisions of the Ordinance, 1962 and the rules framed thereunder, Dr. Hossain has tried to argue that none of the 9(nine) persons upon whom the notices of the said C.R. case have been alleged to have been served did not receive the notice of the said case and no notice was also served upon the other occupants by affixing in a conspicuous place as alleged. In the affidavit in opposition filed by respondent no. 9 it has been categorically stated that notices of the C.R. Case before the Authorized officer of the Port Authority were duly served upon 9 out of the 99 illegal occupants who received the same by putting their signature on the back page of the notice and as such the other occupants refused to receive the notices those were served by the process server by affixing in a conspicuous place. We sitting in writ jurisdiction cannot entertain a dispute as to whether the notices of the C.R. case filed before the Authorized officer were served upon the occupants or not. But in view of annexure I to the application for vacating the other of stay we find no other alternative but to accept the case of respondent no. 9 that the notices of the C.R. case were served upon all the 99 occupants in respect of whom the impugned notice of eviction vide annexure-B was issued. And we conclude holding that the Port Authority being the owner of the land in question it has every right to take step to evict the unauthorized occupants and, as such, we do not see any ground to declare the impugned notice to have been issued without lawful authority and is of no legal effect.

NOTICES, NOT  
W/O/LT LAWFUL  
AUTHORITY  
SINCE ISSUED BY  
CTA, PORT AUTH  
RECORDED  
OWNER OF  
LAND

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11/11





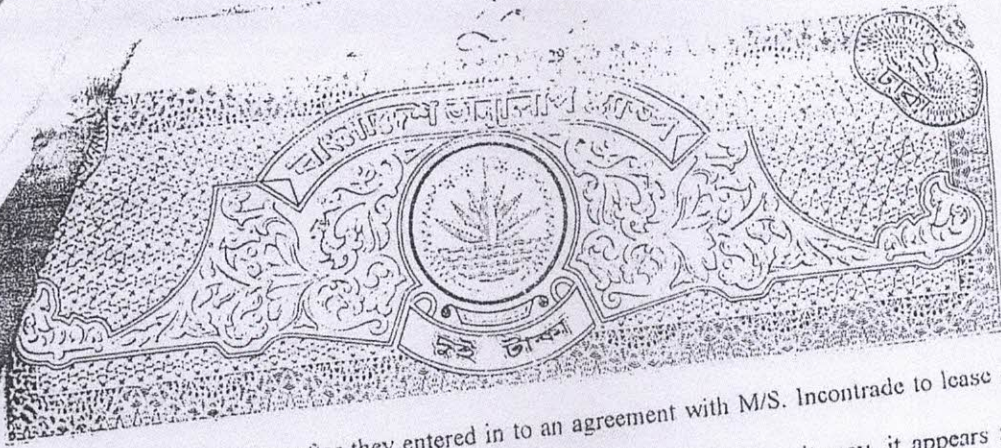
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১৯/১১/৭৮

Now remains the second part of the rule. In the two reported cases as relied upon by Dr. Hossain two Division Benches of this court observed that the slum dwellers (Basti people) can be evicted only after the process of law and that the Government should undertake a master plan or rehabilitation schemes or pilot projects for rehabilitation of the slum dwellers and undertake the eviction of the slum dwellers according to the capacity of their available abode with option to them either to go to village home or to stay back leading an urban life, otherwise the wholesale demolition of slums will give rise to multiple problems for the society and the state. We do not see any reason to differ with the observations made in the said two cases, rather we respectfully agree with the observations made therein. Although we have found that the land in question belongs to the port Authority at the same time from the two reports of the tahsildar of Agrabad Land office Chittagong given to the higher authority vide Annexures D and K, it is clear that there are some inhabitants on the land in question for quite a long time having constructed their houses and other human amenities. The Port Authority did not take any step so long either to evict the inhabitants from the land in question or to stop setting there; and as per the own admission of the port authority there are 99 occupants on the land in question. The port authority being the owner of the land in question they should not have allowed the unauthorized persons to settle there. The port Authority has also failed to produce any paper to show that any attempt was ever taken by them to prevent the present occupants from settling on the land in question; and in fact steps were being taken by the Port Authority for evicting the unauthorized

*slum dwellers*

28  
Kd





occupants only after they entered in to an agreement with M/S. Incontrade to lease out the land to them for the development of the Port. Be that as it may, it appears that besides the land of B.S. Plot No. 505 from which petitioner no.2 and other inhabitants are being sought to be evicted there are other vast land which belong to the Port Authority where the occupants may easily be rehabilitated and settled. Petitioners no. 2 and 3 and other inhabitants of the land in question may approach the port authority to rehabilitate /settle them at any other suitable place and if they approach the Port Authority may consider their case of rehabilitation keeping in view the observations made by this court in the <sup>five</sup> cases as reported in 4 BLC. 590 and 53 DLR. 540.

In the result, this rule is discharged with the observations made hereinabove.

No order as to costs.

M.A. Wahhab Miah.

Zinat Ara, J:

I agree.

Zinat Ara.

Momen/

Read by: *[Signature]*

Exd. by: *[Signature]*

*[Handwritten notes and signatures]*  
C.M. 9.7.05

*[Handwritten notes and signatures]*  
C.M. 9.7.05



