

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique

Chief Justice

Mr. Justice M. Enayetur Rahim

Mr. Justice Jahangir Hossain

CIVIL PETITION FOR LEAVE TO APPEAL NO.903 OF 2023

with

C.P. No.2256 of 2017, 2427 of 2018 & C.R.P. No.339 of 2018.

(From the judgment and order dated 21.11.2022 and 08.12.2014 passed by the High Court Division in Writ Petition No.9051 of 2018, 688 of 2014 and order dated 17.08.2009 passed by the Appellate Division in C.P. No.2260 of 2008)

S. Nehal Ahmed.

Petitioner.

(In C.P.No.903/23)

Bangladesh, represented by the
Secretary, Ministry of Housing and
Public Works and another

Petitioners.

(In C.P.No.2256/17,
2427/18 & C.R.P.
No.339 of 2018)

=Versus=

Bangladesh, represented by the
Secretary, Ministry of Housing and
Public Works and another

Respondents.

(In C.P.No.903/23)

S. Nehal Ahmed

Respondent.

(In C.P.No.2256/17,
2427/18 & C.R.P.
No.339 of 2018)

For the Petitioner
(In C.P No.903/23)

:

Mr.M. Quamrul Hoque Siddique,
Advocate (with Mr. Nakib
Saiful Islam, Advocate),
instructed by Mr. Md.Nurul
Islam Chowdhury, Advocate-on-
Record.

For the Petitioners
((In C.P.No.2256/17 &
2427/18 & C.R.P. No.339
of 2018)

:

Mr.A.M. Amin Uddin, Attorney
General (with Mr. Kazi Mynul
Hasan, Deputy Attorney
General) instructed by Mr.
Haridas Paul, Advocate-on-
Record & Ms. Sufia Khatun,
Advocate-on-Record.

For the Respondents
(In C.P.No.903/23)

:

Mr.A.M. Amin Uddin, Attorney
General (with Mr. Kazi Mynul
Hasan, Deputy Attorney
General) instructed by Mr.
Haridas Paul, Advocate-on-

Record.

For the Respondent : Mr.M. Qumrul Hoque Siddique,
(In C.P. No.2256/17 & Advocate (with Mr. Nakib
2427/18) Saiful Islam, Advocate),
instructed by Mr. Minul
Hossain, Advocate-on-Record &
Mr.Md. Taufique Hossain,
Advocate-on-Record.

For the Respondents : Not represented.
(In C.R.P.No.339/18)

Date of hearing and judgment on : 15.05.2023

J U D G M E N T

Hasan Foez Siddique, C.J: The delay in filing Civil Petitions for leave to Appeal No.2256 of 2017, 2427 of 2018 and Civil Review Petition No.339 of 2018 is condoned.

Civil Petitions for Leave to Appeal Nos.2256 of 2017, 2427 of 2018, 903 of 2023 and Civil Review Petition No.339 of 2018 have been heard together and they are being disposed of by this common judgment and order.

Civil Petition for Leave to Appeal No.2256 of 2017 has been filed against the judgment and order dated 08.12.2014 passed by the High Court Division in Writ Petition No.688 of 2014 making the Rule absolute in part and declaring the notification communicated under memo No.আঃ কোঃ কঃ ১/২০১২/১৯৪ dated 16.06.2013 issued under the signature of an Assistant Secretary,

Ministry of Housing and Public Works to have been issued without lawful authority and is of no legal effect. By the said order, the Ministry cancelled its earlier order communicated under Memo No. আঃকোঃ কঃ ১/২০১২/২৩৯ dated 6th August, 2012, by which, the Government released the abandoned House No.139/A, Road No.1(Old), Dhanmondi Residential Area, Dhaka (hereinafter referred to as "disputed property") from the list of Abandoned Properties. The Ministry, in compliance with the order passed in Contempt Petition No.146 of 2006 arising out of judgment and order dated 05.04.2006 in Writ Petition No.2653 of 2005 and judgment and order dated 17.08.2009 passed in Civil Petition for Leave to Appeal No.2260 of 2008, released the disputed property from the "Ka" list of the abandoned properties published in gazette notification, additional page No.9762(14), Dhanmondi Serial No.1.

Against the order dated 16th June, 2013, passed by the Ministry of Housing Settlement and Works, S. Nehal Ahmed, filing Writ Petition No.688 of 2014, obtained Rule which was made absolute in part. Against which, the Government

preferred Civil Petition for Leave to Appeal No.2256 of 2017. Against the same order, the Government also filed Civil Petition for Leave to Appeal No.2427 of 2018.

S. Nehal Ahmed, filing Writ Petition No.2653 of 2005 in the High Court Division, obtained direction against the Government to get exclusion of the disputed property from the "Ka" list of the abandoned properties and also for getting possession of the same within 2(two) months from the date of receipt of the judgment and order dated 5th April, 2006. Against which, the Government preferred Civil Petition No.2260 of 2008 which was dismissed on 17.08.2009. Against which the Government filed Civil Review Petition No.339 of 2018.

S. Nehal Ahmed filed Civil Petition for Leave to Appeal No.903 of 2023 against the judgment and order dated 21st November, 2022 passed by the High Court Division in Writ Petition No.9051 of 2018 and Writ Petition No.7082 of 2015. The government filed writ petition No.9051 of 2018, against the judgment and order dated 16th July, 1997 passed by the First Court of Settlement in Settlement Case

No.84 of 1996 (Ka-1, Dhanmondi, Dhaka). In the said Settlement Case, S. Nehal Ahmed got the disputed property released from the "Ka" list of the abandoned properties.

From the aforesaid facts, it appears to us that the fate of all the matters is to be decided, regulated and governed by the judgment and order to be passed in Civil Petition for Leave to Appeal No.903 of 2023 since the same arises out of the judgment and order of the Court of Settlement which was the basic judgment passed in favour of S. Nehal Ahmed, for getting release of the disputed property from the list of abandoned properties. So, we have decided to narrate the facts of the case as stated in Civil Petition for Leave to Appeal No.903 of 2023 arising out of Writ Petition No.9051 of 2018 and Settlement Case No.84 of 1996.

Facts of the said Settlement case were that, the Government leased out the disputed property to one Abdul Hakim Khan by registered deed of lease No.8378 dated 11.11.1957 who transferred the same to S. Jamil Akthar, S. Jalil Akthar and petitioner of Civil Petition

No.903 of 2023, namely, S. Nehal Ahmed. It was the case of S. Nehal Ahmed that his 2(two) brothers namely, S. Jamil Akhtar and S. Jalil Akhtar gifted the same in his favour (S. Nehal Ahmed). S. Jamil Akhter and S. Jalil Akhtar by swearing an affidavit before the Notary Public, declared that they have gifted their shares of the disputed property in favour of S. Nehal Ahmed on 10th January, 1969. After getting shares of those two brothers, S. Nehal Ahmed had been possessing the entire disputed property till he was dispossessed by some miscreants in 1972. He tried to get the disputed property released from the list of abandoned properties but could not succeed. The disputed property was wrongly included in the "Ka" list of the abandoned properties. Thus, S. Nehal Ahmed as claimant filed Settlement Case No.84/1996 (Kha-1, Dhanmondi, Dhaka) for getting the disputed property released from the "Ka" list of the abandoned properties.

In the Court of Settlement, the Government contested the said case but without filing any written reply. It was submitted on behalf of

the Government that the whereabouts of the owners were not traced. S. Nehal Ahmed was also untraced since the War of Liberation. Accordingly, the property, in question, had been included in the "Ka" list of the abandoned properties.

Mr. Quamrul Hoque Siddique, learned Advocate appearing for the petitioner in C.P. No.903 of 2023, submits that the High Court Division, without proper appreciation of the materials on record, erroneously reversed the well reasoned judgment and order of the Court of Settlement. He submits that the Government earlier released the disputed property from the "Ka" list of the abandoned properties pursuant to the order of the High Court Division, thereafter, erroneously cancelled the same. He further submits that the Government officials, upon consideration of the submitted papers, came to the conclusion that S. Nehal Ahmed is not fictitious man and being satisfied as to his presence in Bangladesh, the Court of Settlement released the property, in question, from the list of abandoned properties and after long lapse of time, the Government

challenged the legality and propriety of the judgment and order of the Court of Settlement which was not sustainable. He, lastly, submits that S. Nehal Ahmed is a citizen of Bangladesh by birth and he never left this country and he was not untraced after leaving the disputed house and he has been living at Mohammadpur area, the observation of the High court Division that he managed to get some fictitious papers and got the order of release of the disputed property is erroneous.

Mr. A.M. Amin Uddin, learned Attorney General, appearing with Mr. Kazi Moynul Hasan, learned Deputy Attorney General for the Government, submits that the High Court Division scrutinized the papers produced by the petitioner in the Court of Settlement as well as in the High Court Division and came to the conclusion that the petitioner, creating some fraudulent papers, managed to get the property released from the Court of Settlement in the aforesaid Settlement case. He, lastly, submits that S. Nehal Ahmed is a fictitious person and all the 3 brothers were untraced since the War of Liberation and the property, in question,

was rightly enlisted in the list of abandoned properties, the High Court Division upon proper appreciation of the materials on record, came to the conclusion that S. Nehal Ahmed got order of release by practising fraud upon the Court.

It is relevant here to state that this Division earlier held that onus is on the claimant of the building to prove that the building is not an abandoned property. The Government has no obligation either to deny the facts as alleged by the claimants or to disclose the basis of treating the property as abandoned property merely because the claimant disputes the same [Government of Bangladesh Vs. Md. Jalil 15 BLD (AD) 175]. In the application for getting release of the disputed property from the list the claimant petitioner admitted that he was dispossessed from the same in 1972 and it is the case of the Government that all the three brothers are untraced since the war of liberation.

Admittedly, Abdul Hakim got lease of the disputed property by a registered lease deed dated 11.11.1957. It is the case of petitioner that Abdul Hakim transferred

the disputed land to him and his two brothers, namely, S. Jamil Akhtar and S. Jalil Akhtar, by registered kabla deed No.8656 dated 28.12.1960. His two other brothers S. Jamil Akhtar and S. Jalil Akhtar gifted their shares to him and in support of such oral gift they swore an affidavit on 10.01.1969 in his favour. It is settled principle that when an instrument of gift is reduced into writing, the same must be registered. Oral gift is admissible in the Mohammedan Law and in order to prove oral gift, offer, acceptance and delivery of possession of the alleged gifted land must be established.

At the time of hearing of the instant matter in the High Court Division, the High Court Division called for the record of Settlement Case No.84 of 1996 (ক-১/ধানমন্ডি আ/এ). We have also perused the case record of the Court of Settlement as well. Photocopy of the application for getting release and possession of the disputed house as

submitted in the Court of Settlement is reproduced below:

Dated: 8/1/1987

To
The Chairman
Court of Settlement
Ministry of Works
Dhaka.

Sub: Application for release and hand over possession of House No.139-A, Road No.1(old) Dhanmondi R/A, Dhaka from abandoned property list-KA-1, Dhanmondi R/A, Dhaka.

I beg to state that I am a Bangladeshi national. The government has wrongly enlisted my above house as abandoned under serial 1-KA of Dhanmondi R/A, Dhaka as per Gazzete published on 23-9-1986 and for the release of the above house as per requirement under Section 7(1) of abandoned Building (supplementary) provision) Ordinance No.54 of 1985 from the list I beg to furnish the following particulars for your kind and sympathetic consideration :-

1. Name : S. NEHAL AHMED.
2. Father's name : Late S. Nizamuddin.
3. Permanent Address : House No.139/A, Road No.1(old) Dhanmondi R/A, Dhaka.
4. Present Address : 3/6, Block-F, Joint Quarter Mohammadpur, Dhaka.
5. Place and date of birth : Dhaka in 31.3.1940.
6. Description of the claimed property : House No.139/A, Road No.1(old) Dhanmondi R/A, Dhaka purchased by registered lease deed No.8378 dated 11.11.1957 subsequent Kabola deed No.8656 dated 28.12.1960 and finally by deed of oral gift through affidavit dated 10.01.1969.
7. Date of possession taken by the Govt. : After promulgation of P.O. 16 in 1972, Date not known.
8. The occupation and residence of the Claimant before promulgation of presidential order 16/72. : In the house described in para 6 above till I was ousted by some unknown persons after liberation. Thereafter I alongwith my family members took shelter at 1/5 Tajmohol Road, Mohammadpur, Dhaka and other places of Dhaka City and never left Bangladesh.

: 2 :

9. Description of the property before issuance of the P.O.16/72:
Same as in para 6 above.
10. Name and description of the occupant of property just before taken possession of the property by the Govt. : I was in possession of the house with my family members and on 01.11.1972, I was evicted from the house in 1972, I took shelter at the address described in para-8.
11. Steps taken by the Claimant for protection of the right and ownership : I tried to get my property released by sending applications to the authorities right from 1972 but could not succeed.
12. Property documents submitted : a) Copy of original Lease Deed No.8378 dt. 11.11.1957.
b) Kabola deed No.8656 dt.28.12.1960
c) Deed of oral gift through affidavit dated 10.1.1969.
d) Memo No.2900/L dated 6.12.1969 of the Govt.of East Pakistan regarding mutation.
13. Rent Receipt : Rent receipt copy submitted.
14. Receipt showing payment of charges/Taxes : N/A
15. Succession certificate in case of property claim : N/A
16. Nationality certificate by the Ward Chairman, Municipal Corporation/Town Committee or Gazetted officer. : Bangladeshi National by birth, however, a certificate from Ward Chairman, Municipal Corporation will be submitted later on.
17. Non-option certificate from Ministry of Home in case of non-locals. : N/A.

I would therefore request you to kindly pass necessary order for release of my above house in my favour considering me as a bonafide national of Bangladesh.

Yours faithfully,


(S. Nehal Ahmed)

From the top portion of the first page of the above produced application, it appears that the same was allegedly filed on 08.01.1987 but from the order sheet of the settlement case record, it appears that the first order was passed on 13.04.1996. In the case of Begom Lutfunnessa Vs. Bangladesh reported in 42 DLR (AD) 86 this Division has observed that the Abandoned Building (Supplementary Provisions) Ordinance, 1985 was promulgated on 28 November, 1985 and the list under section 5(1)(a) thereof was published in the gazette on 28.04.1986. Section 7 provides that any person claiming any right or interest in any building which is included in the list may, within a period of 108 (perhaps 180) days from the date of the publication of the list in the official gazette make an application to the Court of Settlement for exclusion of the building from such list etc. We do not find any cogent reason of passing first order by the Settlement Court on 13.04.1996 inasmuch as the petitioner claimed that the same was filed on 08.01.1987. In absence of any order as to the limitation, passing of first order in 1996 ignoring point

of limitation cropped up a question how the Court of Settlement entertained such case. We also did not find any order in the case record, in respect of extension of time as per provision of section 11 of the Ordinance. The Court of Settlement ignored the point of limitation holding that the petitioner could not be deprived of his right to assert his claim in that forum under the Ordinance. Which cannot be accepted as proper finding for avoiding the question of limitation in view of the provision of Section 7 of the Ordinance. In the High Court Division, this question was raised and it was resolved by the High Court Division with the following words, "Though respondent No.2 (S. Nehal Ahmed) stated that he filed the application on 08.10.1987 (Annexure-C) under section 7 of Ordinance No. LIV of 1985 in the First Court of Settlement, Dhaka but neither any receipt of filing the said application on 08.01.1987 has been produced before this Court nor the said application depict any endorsement of the First Court of Settlement, Dhaka with a date". High Court Division also observed that in response to the

query of the Court, learned Advocate for the writ respondent No.2 failed to answer the query in that regard satisfactorily. High Court Division finally observed that application dated 08.01.1987 was subsequently created to save the limitation. We do not find anything in the record to disagree with the findings and observations arrived at by the High Court Division as to the point of limitation. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy and unless it is satisfactorily discharged the Court would be reluctant to treat the document as genuine one.

The date of birth of S. Nehal Ahmed was shown on 31.03.1940. He produced a photocopy of aforesaid application in the High Court Division wherefrom it appears that by interpolation his date of birth was converted to 01.03.1940 in place of 31.03.1940 (running pages 145 and 482 of the paper book of C.P. No.903 of 2023). From the judgment it appears that the learned Advocate of the petitioner admitted in the High Court Division the fact of tempering his date of birth in the papers mentioned above. Where an instrument appears to be materially altered, the law naturally casts a heavy burden on the party who produced the same to explain the alteration and show when it

was made. Where an alteration appears upon the face of a document the party producing it must show that the alteration was made with consent of the parties. In this case the petitioner failed to offer any explanation.

From the materials on record, it appears that on 21.11.1989, he filed an application addressing the Chairman, Court of Settlement for getting necessary order pursuant to the application submitted by him on 08.01.1987. A Photostat copy of the said application is reproduced below:

ANNEXURE- 1-(B)

0211/2022

Date: 21/11/1989

Md. Musharrat Hossain
Administrative Officer
In-Charge
Court of Bangladesh
High Court Division, Dhaka

To
The Chairman
Court of Settlement
Ministry of Works
Dhaka.

Subject: Application for release and hand over possession of House NO N 139/A, Road No- 1(old) Dhanmondi R/A, Dhaka from abandoned property list- KA-1, Dhanmondi R/A, Dhaka.

Sir,

With due respect to state that I the under sign wrote an application beside the mentioned above "subject" dated 8/1/1987 at the first time after this I had submitted an application dated 17/12/1987 but it is sorry to say that I did not received any order or summon for hearing from the concern in favour of my application from 8/1/1987 to till now.

I would therefore request you to kindly pass necessary order in favour of my application(submitted on 8/1/1987) as soon as your kind may seem proper.

Thanking Yours
S. Nehal Ahmed
(S. Nehal Ahmed)

Enclosed: 01) Photocopy of previous application.

The signatures as appeared in the above produced applications and the signatures of two brothers of S. Nehal Ahmed appeared in the affidavit sworn by them, namely, S. Jamil Akhter and S. Jalil Akhter are required to be compared with very carefully. Photocopy of signatures shown in the affidavit S. Jamil Akhter and S. Jalil Akhter are shown below for comparison:

1. S. Jamil Akhter
2. S. Jalil Akhter

Those hand writings of the two brothers and S. Nehal Ahmed appeared in the above shown two applications have been compared with very carefully. The alphabet "S", "A" and "K" are very significant. In those three signatures which appear to us that those are identical.

S. Nehal Ahmed allegedly executed a vakalatnama for the purpose of using the same in the Court of Settlement. In the said Vakalatnama he affixed Court fee of tk.5/- but we do not find that the same was punched or cancelled. Section 30 of the Court fees Act, 1870 provides that no document requiring a fee under the Act shall be filed or acted upon in

any proceeding in any Court or office until the stamp or receipt has been cancelled.

It further appears from the signature of S. Nehal Ahmed appeared in Vakalatnama submitted before the Court of Settlement does not tally with his other signatures appeared and produced subsequently. Such inconsistencies are highly doubtful. When we asked Mr. Quamrul Hoque Siddique, learned Advocate for the petitioner, about the inconsistencies particularly, non-punching the court fee affixed with Vakalatnama and the inconsistent signatures of S. Nehal Ahmed in different documents, he said that the said Vakalatnama might have been subsequently replaced by removing the original Vakalatnama by the interested parties. But it appears from the Vokalatnama that one M.A. Sarwar, a learned Advocate put his signature in the said Vakalatnama accepting the same for S. Nehal Ahmed and his name has been mentioned in the judgment of the Court of Settlement. The High Court Division observed that signatures of S. Nehal Ahmed in the Vokalatnama filed in Writ Petition No.688 of 2014 and the affidavit

sworn in Writ Petition No.688 of 2014 are also not similar. The whole attempts appear to be highly suspicious one. In such circumstances, it is difficult to accept the submission of Mr. Siddique that the Vakalatnama was subsequently replaced in the case record of the Court of Settlement by replacing another one. Since the Vakalatnama alleged to have been executed by S. Nehal Ahmed submitted in the Court of Settlement is doubtful one, we are of the view that the instant case for getting release of the disputed property and the judgment and order passed in the said case showing S. Nehal Ahmed as petitioner of the Settlement case is not liable to be approved and upheld. Someone claiming himself S.Nehal Ahmed, by practising fraud upon this Court, tried to manage the order and he successfully did so.

It is relevant here to state that one Toha Khan and 8 others earlier filed Case No.408 of 1989 (Ka-11-Dhanmondi Residential Area, Dhaka) in First Court of Settlement, Dhaka and the first Court of Settlement presided by Justice Abdul Bari Sarkar, by a judgment and order dated 15th December, 1992, dismissed the same

observing that, "it is clear that the whereabouts of S. Jamil Akhtar, S. Jalil Akhtar and Nehal Ahmed, the Vendee of Abdul Hakim Khan are not known and the case building was rightly declared as abandoned property and included in the list correctly. On 16.07.1997, same Court of Settlement in case No.84 of 1996 (Kha-1, Dhanmondi, Dhaka) has passed the impugned judgment and order without stating any single word about the consequence of its earlier finding. A Court must give reasons for its decision in a case. The reasons should include an explanation of why the Court has chosen to follow or not to follow a previous decision which is identical before it. When an earlier decision is not followed it is said to be distinguished from the earlier case. The earlier finding of the Court of Settlement and presumption that enlistment of a building under section 5(1) of the Ordinance that the property is an abandoned property and admission of the claimant petitioner that he was dispossessed from the disputed property in 1972 and discussions made above clearly established that S. Jamil Aktar, S. Jalil Aktar and S. Nehal

Ahmed could not occupy, manage or supervise the disputed property when P.O.16 of 1972 came into operation.

From the papers produced in C.P. No.2427 of 2018 it appears that some important pages of a document in connection with the disputed property were removed from the office of Housing Settlement and Works.

Considering the aforesaid facts and circumstances, we do not find any illegality in the judgment and order of the High Court Division which call for any interference by this Division.

Accordingly, the Civil Petition for Leave Appeal No.903 of 2023 is dismissed.

Civil Petition for Leave to Appeal No.2256 of 2017, 2427 of 2018 and Civil Review Petition No.339 of 2018 are to be governed and disposed of in the light of the judgment and order passed by this Division in Civil Petition for Leave to Appeal No.903 of 2023 and following the consequences and result of the civil petition.

C. J.

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