

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

**Writ Petition No. 2586 of 2001**

**In the matter of :**

An application under Article 102 (1) (2) (a) (ii) of the  
Constitution of the People's Republic of Bangladesh.

And

**In the matter of:**

Mohammad Mokshed Ali Jodder

..... Petitioner.

Vs.

Bangladesh and others

..... Respondents.

Mr. M.I. Farooqui, Senior Advocate with

Ms. Razia Sultana, Advocate

..... For the Petitioner.

Mr. Abdus Salam Mondol, DAG with

Mr. Sukumar Biswas, AAG.

..... For the Respondents.

Hearing on 22.11.2012

**Judgment on 26<sup>th</sup> November, 2012**

**Present:**

**Mr. Justice Nozrul Islam Chowdhury**

**AND**

**Mr. Justice Mohammad Ullah.**

**Mohammad Ullah, J.**

This Rule Nisi was issued on an application filed by the  
petitioner under Article 102 of the Constitution, calling upon the  
respondents to show cause as to why the enlistment of House No.  
33/16, Block-F, Joint Quarter, Mohammadpur Housing Estate, Dhaka

in the 'Kha' list of abandoned building published in the Bangladesh gazette dated 23.9.1986 at page No. 9762(21) against serial No. 53, under the caption Block-F, Joint Quarter, Mohammadpur, Dhaka and the judgment and order dated 22.4.2001 passed by the 1<sup>st</sup> Court of Settlement, Dhaka in Case No. 3 of 2000 (KHA-53, Block-F, Joint Quarter, Mohammadpur, Dhaka) (Annexure-I-1) should not be declared to have been made and passed without lawful authority and is of no legal effect and why they should not be directed to de-list the same and why the respondent No.6 should not be held liable for making false statements in disguise of oral submission before the 1<sup>st</sup> Court of Settlement, Dhaka in Case No. 3 of 2000 and or such other or further order or orders passed at to this Court may seem fit and proper.

By the Rule issuing order dated 24.6.2001 operation of the impugned judgment and order dated 22.4.2001 passed by the 1<sup>st</sup> Court of Settlement, Dhaka was stayed.

Mr. M. I. Farooqui, the learned Senior Advocate appearing on behalf of the petitioner at the very outset has taken us to the Rule issuing order and submits that he wants to press the Rule only so far the judgment and order dated 22.4.2001 passed by the 1<sup>st</sup> Court of Settlement, Dhaka in Case No. 3 of 2000 is concerned. Mr. Farooqui, the learned Advocate submits further that he has instruction not to press the other part of the Rule.

So we have to confine our attention only with the impugned judgment passed by the 1<sup>st</sup> Court of Settlement, Dhaka.

The facts leading to disposal of the Rule are briefly stated below:

The petitioner Mohammad Mokshed Ali Jodder as a claimant instituted Case No. 3 of 2000 before the 1<sup>st</sup> Court of Settlement, Segun Bagicha, Dhaka against the Government invoking section 7(1) of the Abandoned Buildings (Supplementary Provisions) Ordinance LIV of 1985 (**hereinafter referred to as the Ordinance LIV of 1985**) claiming that the case property was originally allotted to one Md. Abdul Karim through a registered lease deed dated 17.01.1963 by the then East Pakistan Government who while owning and possessing the said property being in need of money transferred it to the petitioner by another registered deed No. 5690 dated 24.10.1973 and handed over possession thereof in favour of the petitioner on the same date. The petitioner also obtained clearance certificate from the Housing Estate Mohammadpur, Dhaka dated 15.05.1974. The vendor of the petitioner was a Bangladeshi national and subsequently nationality of the vendor of the petitioner was confirmed by the Ministry of Home Affairs by its memo dated 29.05.1974. The petitioner while possessing the case building applied

to the Housing and Settlement for mutating his name in place of original lessee Md. Karim and then upon query the Ministry of Works by its memo dated 28.01.1981 informed the Deputy Commissioner Housing and Settlement that the property in question was not an abandoned property. The petitioner got his name mutated in the record of Ministry of Public Works in place of his vendor original allottee Md. Karim. Thereafter on the prayer of the petitioner, the Housing and Settlement allowed the petitioner to mortgage the case property by its memo dated 12.06.1981 and the petitioner got loan from the House Building Finance Corporation in loan Case No.D-14943 by depositing the original documents and papers.

Despite the above situation and his continuous possession in the case property, the property had been listed in the 'Kha' list of abandoned properties under Ordinance LIV of 1985 which should be eliminated from the said abandoned property list.

On the other hand, the Government without filing any written statement/objection orally claimed to the Court of Settlement that the original allottee Md. Abdul Karim left this country during liberation war keeping the case property uncared for and as such the Government rightly included the case property in the 'Kha' list of the

Ordinance LIV of 1985. Further case of the Government is that the petitioner created forged deeds and documents with a view to grab the abandoned property and he has been residing in the case property as an unauthorized occupant.

The petitioner in support of his case testified on 01.11.2000 as P.W.1 before the Court of Settlement.

Upon consideration of the evidence on record the Settlement Court by its impugned judgment dismissed the case of the petitioner mainly on the ground that the petitioner failed to prove that the original lessee Md. Karim had ever been present in Bangladesh when President Order 16 of 1972 came into operation. The Settlement Court also disbelieved the signature of the original allottee Md. Karim put on the registered deed of the petitioner. The Settlement Court also recorded its finding that the original allottee transferred the case property in favour of the petitioner in violation of the condition of the lease agreement. The Settlement Court recorded further finding that the petitioner obtained his alleged title deed by way of false personation producing false person as original allottee Md. Karim. The Settlement Court also recorded its finding that the petitioner failed to prove his case and the listing of the case property

in the abandoned list under Ordinance LIV of 1985 was lawful. The Settlement Court also directed the Government to take over possession of the case property by evicting its unauthorized occupant.

Against the said judgment of the 1<sup>st</sup> Court of Settlement, Dhaka the petitioner approached this Court and Rule was issued and stay order was passed as stated above.

Mr. M. I. Farooqui, the learned Senior Advocate appearing with Ms. Razia Sultana on behalf of the petitioner submits that the statutory notice under Article 7 of P.O. 16 of 1972 read with Proviso (b) of sub section (1) of section 5 of the Ordinance LIV of 1985 was not served upon the petitioner or his vendor before listing the case property in the abandoned property list and thus the listing of the case property in the abandoned property list should be declared to have been made or included in the list without lawful authority and is of no legal effect.

Mr. Farooqui, the learned Advocate further submits that until and unless the kabla of the petitioner is canceled on the specified allegation of fraud by a competent civil court it cannot be said that the kabla is forged one and in such view of the matter the findings of

the Settlement Court about disbelieving the signature of the executant, Md. Karim is illegal, without jurisdiction as the Settlement Court cannot have assumed the jurisdiction of a civil court to decide the title of the contending parties sitting over a limited jurisdiction.

Mr. Farooqui, the learned Advocate further submits that although at the instance of the petitioner all the original documents were produced by an authorized officer of the House Building Finance Corporation, to the Court of Settlement, but the Court of Settlement misread and misconstrued the evidence on records produced before it and thus the impugned judgment should be declared to have been passed without lawful authority and is of no legal effect.

Mr. Farooqui, the learned Advocate finally submits that the listing of the case property in the abandoned property list is liable to be declared without lawful authority, since, the original allottee Md. Karim was found in this country by the Ministry of Home Affairs and to substantiate this assertion, the petitioner produced original copy of determination of nationality status of his vendor to the Court of Settlement.

In support of his submission Mr. Farooqui, the learned Advocate placed reliance on the cases of (1) Bangladesh and another Vs. Mrs. Shirely Anny Ansari, reported in 20 BLD(AD) 284, (2) People's Republic of Bangladesh, represented by the Secretary, Ministry of Public Works Vs. Chairman, Court of Settlement and others, reported in 50 DLR(AD) 93, (3) Syed Mohammad Salem Azam and others Vs. The Secretary, Ministry of Works, Government of Bangladesh and others, reported in 14 BLD (AD) 259, and (4) Bangladesh Vs. Amela Khatoon and others, reported in 53 DLR(AD) 55.

On the other hand in reply Mr. Abdus Salam Mondal, the learned Deputy Attorney General appearing with Mr. Sukumer Biswas, the learned Assistant Attorney General on behalf of the respondent-Government submits that no evidence was produced before the Court of Settlement to show that the original allottee Md. Abdul Karim was present in Bangladesh and he occupied, managed and supervised the case property when P.O. 16 of 1972 came into operation and as such the listing of the case property in the 'Kha' list as abandoned property in view of the Ordinance LIV of 1985 was lawful as it was an abandoned property by operation of law.



Mr. Mondol, the learned D.A.G submits further that when the original allottee Md. Karim left this country keeping the case property uncared for and when his whereabouts were not known to the Government and he ceased to occupy, supervise and manage the case property in person at the very relevant time i.e on 28.02.1972 thus the Government has rightly declared the case property as abandoned property within the meaning of Article 2(1) of P.O. 16 of 1972 and listing of the case property in the Gazette is conclusive proof of facts.

Mr. Mondol, the learned D.A.G submits further that the documents which were submitted before the Court of Settlement by the petitioner are all forged and fabricated documents and created the same for the purpose of grabbing the abandoned property which was discovered by the Court of Settlement and as such the listing of the case property in the abandoned property list was lawful.

Mr. Salam Mondal, the learned D.A.G further submits that the signature in the original lease deed of Md. Karim was in Debanagari language, which is different in the alleged purchase deed of the petitioner and the petitioner failed to produce the original lessee Md. Karim before the Court of Settlement to prove his case and thus the

Settlement Court has not committed any illegality and as such nothing to interfere with the judgment of the Court of Settlement.

Mr. Mondol, the learned D.A.G further submits that in view of the provision of Article 6 of P.O. 16 of 1972 as well as Article 7 of P.O. 142 of 1972 without prior permission of the appropriate authority i.e. lessor the abandoned property i.e. lease hold property cannot be transferred in any manner or be created any charge and any transfer made or charged in contravention of this Ordinance shall be null and void.

Mr. Mondol, the learned D.A.G finally submits that service or non service of notice is a question of fact and determination thereof is required upon consideration of the evidence led or to be led by the parties and it should be decided at the court of 1<sup>st</sup> instance, not in a writ jurisdiction.

In support of his submission Mr. Abdus Salam Mondol, the learned D.A.G placed reliance on the cases of (1) Government of Bangladesh, represented by the Secretary, Ministry of Works Vs. Md. Jalil and others, reported in 48 DLR(AD) 10, (2) Government of Bangladesh Vs. Ashraf Ali @ Ashraf Ali and another reported in 49 DLR(AD) 161, and (3) Rawshan Ara Begum Vs. Secretary, Ministry of

Works and Urban Development, Government of Bangladesh and others reported in 59 DLR(AD) 165.

We have heard the learned Advocates of both the parties perused the impugned judgment, writ petition, annexures, affidavit-in-opposition and other evidence on records, and have gone through the decisions referred to, wherefrom it transpires that the admitted allottee Md. Abdul Karim transferred the case property to the petitioner by registered deed dated 24.10.1973 and handed over all the original deeds and documents to the petitioner. The petitioner has been possessing and residing in the case property ever since the registration of the deed in his favour.

Before the Court of Settlement the petitioner produced original copy of the lease deed of admitted allottee Md. Karim dated 17<sup>th</sup> day of January, 1963 (Annexure-A), registered deed dated 24. 10. 1973 executed by said Md. Karim in favour of the petitioner (Annexure-B), a clearance certificate being No. 916-A/O dated 15.05.1974 issued by the then office of the Administrative Officer, Mohammadpur and Mirpur Housing Estate, Dacca showing that the original allottee Md. Karim had paid the full consideration to the Government exchequer against House No. F/33/16, Joint Quarter,

Mohammadpur, Housing Estate, Dhaka (Annexure-C), a memo being No. 1443-IMN/III(IN-283/78) dated 29.5.1979 issued by the Ministry of Home Affairs, Immigration Branch-III, Government of the People's Republic of Bangladesh in favour of the original allottee Md. Karim about determination of his national status (Annexure-C-1), a memo being No. শাখা-৯/এফ-১৮/৭৮৯/১৮৩, তারিখ-২৮-১-১৯৮১ ইং issued by the office of Public Works and Urban Development Ministry, Peoples Republic of Bangladesh to the Assistant Commissioner (Settlement) Segun Bagicha, Dhaka informing that the case property was not an abandoned property (Annexure-D), a memo being No. ৩ এল-৩২৪/৬১, তারিখ-২৭/৩/১৯৮১ ইং issued by the office of Deputy Commissioner Settlement, Public Works and Urban Development Ministry, Segun Bagicha, Dhaka to the petitioner informing him that the case property has been mutated in the name of the petitioner in place of original allottee said Md. Karim (Annexure-E), and স্বারক নং- ৩ এল-৩২৪/৬১/২৮৭৬, তারিখ-১২/৬/১৯৮১ ইং issued by the office of Deputy Commissioner Settlement, Public Works and Urban Development Ministry, Segun Bagicha, Dhaka to the petitioner giving permission to mortgage the case property (Annexure-F).

We have noticed that the original allottee Md. Abdul Karim was present in this country and to that effect a nationality certificate

dated 29.05.1979 was issued in favour of the said Md. Karim by the Ministry of Home Affairs which is quoted below:

“Government of the People’s Republic of Bangladesh

Ministry of Home Affairs

Immigration Branch-III

No. 1443-Imn/III (IN-283/78), dated Dacca, the 23.5.1979

From : Mr. A. M. Chowdhury,  
Deputy Secretary.

To : Mr. Md. Abdul Karim, son of late Zakaria Mia,  
33/16, Block-F, Joint Quarter, Mohammdpur Housing Estate, Dacca.

Subject : Determination of your national status.

Dear Sir,

I am directed to inform you that the Govt. of the People’s Republic of Bangladesh have been pleased to confirm that you are a national of Bangladesh under Article 2(ii) of Bangladesh Citizenship (Temporary Provisions) Order,1972 (P.O No. 149 of 1972).

Yours faithfully,

(A. M. Chowdhury)

Deputy Secretary.”

We have also noticed that the papers and documents in connection with the case property were called for from the House Building Finance Corporation and those papers and documents were

produced before the Court of Settlement and the Court of Settlement recorded the following order:

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“অদ্য শুনানীর জন্য ধার্য্য, বাদী পক্ষে হাজিরা দিয়াছে। সরকার পক্ষ এক দরখাস্ত দিয়া বর্নিত কারনে সময়ের প্রার্থনা করিয়াছে। তলবকৃত দলিলাদির নিয়া HBFC হইতে প্রতিনিধি মূল দলিলাদি আদালতে উপস্থাপন করিয়াছে। আদালত কৃত্তক দলিলাদি পর্যবেক্ষন করার পরে ফিরিস্তি যোগে সত্যায়িত ফটোকপি আদালতে দাখিল করেন এবং মূল কপি বাহকের নিকট ফেরত দেওয়া হয়। সরকার পক্ষের সময়ের আবেদন মঞ্জুর করা হইল। আগামী ইং ১/১১/২০০০ তারিখে শেষবারের মত শুনানীর দিন ধার্য্য করা হইল।”

It is pertinent to mention here that the Settlement Court disbelieved the signature of the admitted allottee Md. Abdul Karim put on the registered deed by which the petitioner has got right and title in the case property. But when the competent authority has certified that the deed had been duly registered the Court of Settlement cannot question the registration or that the signature of the executant was forged. It can only be decided by the civil court having jurisdiction. The Court of Settlement is not a Court determining title to the rival claimants. It is a court having limited jurisdiction for determination as to whether the case property is an abandoned property or not. In other words the Court of Settlement has no jurisdiction to decide matters which are not concerned with the inclusion of abandoned property.

The Ministry of Home has issued certificate about nationality of the original allottee Md. Abdul Karim dated 29.05.1979 wherefrom it transpires that the original allottee was very much present in Bangladesh after liberation war. But the Settlement Court did not consider the certificate issued by the Ministry of Home about nationality of the original allottee Md. Abdul Karim. When a citizen remains in this country at the time of promulgation of P.O. 16 of 1972 his property should not be listed in the abandoned property list simply because the said property does not fall within the meaning of P.O. 16 of 1972. Issuance of the memo dated 29.05.1979 by the Ministry of Home about nationality of the original allottee Md. Karim, cuts the root of the claim of the Government.

So far the submissions as advanced by the learned D.A.G that without prior permission of the lessor transfer of the lease hold property was illegal, we hold that no such provision of taking prior permission from the lessor was present in the lease agreement and as such the submission of the learned D.A.G has got no substance.

We agree with the contention of the learned D.A.G that service or non service of notice is a question of fact and determination thereof is required upon consideration of the evidence brought on

record by the parties. In the instant case the petitioner did not make any stand or take any step before the Court of Settlement about non service of notice and as such the submission as advanced by the learned Advocate for the petitioner about non service of notice has got no merit. But when the original allottee Md. Karim is found in Bangladesh after liberation war the question of enlistment of the property of a Bangladeshi national in the abandoned property list under P.O. 16 of 1972 does not arise at all, in other words property of a Bangladesh national should not be listed in the abandoned property list within the meaning of P.O. 16 of 1972.

It is pertinent to mention here that the Appellate Division in some cases held that the enlistment of a building under section 5(1) of the Ordinance LIV of 1985 raises a presumption in law that the property is an abandoned property under section 5(2) of the same Ordinance. But, the Appellate Division also held that this presumption is, of course, a rebuttable presumption and in the instant case the petitioner succeeded to rebut the presumption by oral and documentary evidence that the case property was not an abandoned property, but the Court of Settlement misread and misconstrued the evidence on records produced before it.



For the reasons and discussions made herein above and also the relevant law and the decision cited by the petitioner, we are of the view that the Rule has merit and thus the Rule is made absolute. However without any order as to costs.

The judgment and order dated 22.04.2011 passed by the 1<sup>st</sup> Court of Settlement, Dhaka in Case No. 3 of 2000 is hereby declared illegal, without lawful authority, without jurisdiction and is of no legal effect.

The respondents are hereby directed to eliminate the case property being House No. 33/16, Block-F, Joint Quarter, Mohammadpur, Housing Estate, Dhaka listed in the 'Kha' list of the abandoned property list (KHA-53, Block-F Joint Quarter, Mohammadpur, Dhaka) published in Bangladesh Gazette (Extraordinary) dated 23.09.1986 within 6 (six) months from the date of receipt of the judgment of this Court.

Send copy of this judgment to the respondents for compliance and to the 1<sup>st</sup> Court of Settlement, Segun Bagicha, Dhaka.

**Nozrul Islam Chowdhury, J.**

I agree.