

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

**WRIT PETITION NO.1459 OF 1998**

**IN THE MATTER OF:**

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

**AND**

**IN THE MATTER:**

**Syed Ahmed Ali Aziz**, Son of late Syed Motahir Ali of 113/B, Tejgaon Industrial Area, Dhaka. ....**Petitioner**

**-Versus-**

The Secretary, Ministry of Housing and Public Works, Bangladesh Secretariat, Dhaka and others ..... **Respondents**

**Mr. Habibul Islam Bhuiyan**, Senior advocate with **Mr. Ariful Islam Bhuiyan**, Advocate .....For the petitioner

**Mr. Md. Abdus Salam Mondal**, Deputy Attorney General

.....For the respondents no.3 and 4

Present:

Mr. Justice Obaidul Hassan

And

Justice Krishna Debnath

Heard on:09.06.2016 & 17.07.2016

**Judgment on:31.07.2016**

**Obaidul Hassan, J.**

This Rule Nisi was issued calling upon the respondents to show cause as to why the impugned order in memo no.Section-6/IL-8/98/176 dated 16.04.1998 issued under the signature of the respondent no.2 should not be declared to have been made without lawful authority and is of no legal effect.

The facts relevant for the purpose of the disposal of the Rule, in short, are that on 27.06.1956 the erstwhile government of East Pakistan leased out one bigha of land situated at Industrial Plot no.113/B, Tejgaon Industrial Area, Dhaka in

favour of M/S Dawood Sultan & Company for establishment of an industry thereon. The said company thereafter established an industry thereon for production of fountain pen and ink and while the War of Liberation started in 1971 the owners thereof abandoned the property and the industrial unit and left Bangladesh as a result whereof the said property became an abandoned property within the meaning of P.O. no.16 of 1972 and the same was vested in the government who took over possession and management thereof. In one point of time the government decided to sell the same in pursuance of their policy of disinvestment of the abandoned properties. Whereupon, the Dawood Sultan Company Sramik Karmochari Co-operative Multipurpose Society Limited, a Co-operative Society formed under Co-operative Societies Act, 1940, proposed to purchase the same and the government having found its offer as highest price, sold the same to them at a price of Tk.3,00,005.00 only under registered Sale Deed no.3342/13535 dated 18.06.1975. After purchase of the said property along with the industry its assets and liabilities the aforesaid Dawood Sultan Sramik Karmachari Multipurpose Co-operative Society Limited was running the industry and managing the property for a couple of years as its lawful owner. Thereafter, they decided to sell the same. The petitioner purchased the said property along with the industry from the

aforesaid Dawood Sultan Sramik Karmachari Multipurpose Co-operative Society Limited vide registered Sale Deed no.4238 dated 26.11.1994 and thereafter mutated his name in the revenue records of the government as owner thereof and paid rents regularly. Since the date of purchase the petitioner has been running the industry. Suddenly the petitioner received a memo no.Shakha-6/IM-34/94(Aa-1)865 dated 18.11.1997 issued under the signature of the respondent no.2 asking him to show cause as to why the lease of the aforesaid industrial plot shall not be cancelled. The petitioner vide his letter dated 01.01.1998 replied to the said show cause notice which was received by the respondent no.2 on the same day. In the reply, the petitioner categorically stated that the property in question was vested in the government by operation of law and thereafter the government sold the same to Dawood Sultan Sramik Karmachari Co-operative Multipurpose Society Limited and the said Co-operative Society in their turn sold the same to the petitioner under a registered sale deed. After receiving the said reply the respondent did not proceed further. So, the petitioner was peacefully running his industry of manufacturing plastic Bobbin for Textile Spinning Mills and also of manufacturing disposal razor (one time user razor) by investing his own finance. Thereafter suddenly the petitioner received memo no.Shakha-6/II-8/98176 dated 16.04.1998 issued under the

signature of the respondent no.2 cancelling the lease of the Industrial Plot no.13/B, Tejgaon Industrial Area on certain false and flimsy grounds. The petitioner thereafter caused a demand justice notice issued upon the respondents no.1 and 2 through his learned advocate demanding justice by cancelling/ withdrawing/rescinding the aforesaid cancellation order, but the respondents no.1 and 2 did not comply with the said demand and hence the petitioner was compelled to file this writ petition.

Mr. Habibul Islam Bhuiyan, the learned senior advocate appearing along with Mr. Ariful Islam Bhuiyan, the learned advocate appearing on behalf of the petitioner submitted that the property in question having vested in the government in the Ministry of Industries by operation of law, i.e. the President's Order no.16 of 1972. The President of the Republic represented by the Secretary of the Ministry of Industries having transferred the same by way of absolute sale in favour of M/s Dawood Sultan Sramik Karmachary Co-operative Multi-purpose Society Limited by a registered Sale Deed the respondents in the Ministry of Housing and Public Works ceased to remain owner anymore, therefore they do not have any lawful authority to cancel the lease as the employees union subsequently became the owner and sold the property to the petitioner and as such the notice issued by the respondents is

liable to be declared to have been issued without lawful authority and is of no legal effect. He further submitted that M/s Dawood Sultan Sramik Karmachary Co-operative Multipurpose Society Limited an association of Dawood Company (3<sup>rd</sup> class and 4<sup>th</sup> class employees) before they purchased the industry in question, and when they purchased the property from the government under the government policy of disinvestment they became the absolute owner and they sold the same to the present petitioner at the highest market price at that time and the petitioner became the owner of the property. In this way the respondent no.2-government lost its right on the property and as such they do not have any right to issue the notice as contained in Annexure-G dated 16.04.1998 cancelling the lease of the plot in question and as such the same is liable to be declared to have been issued without lawful authority and is of no legal effect. Mr. Habibul Islam Bhuiyan by filing a supplementary affidavit on 08.11.2015 has submitted a list of taken over industries as on 30.11.1972 in which the name of M/S Dawood Sultan & Company was included in serial no.193. It appears that the property was enlisted as abandoned property during 1972 after the War of Liberation.

Mr. Abdus Salam Mondal, the learned Deputy Attorney General appeared by filing an affidavit in opposition on behalf

of the respondents no.3 and 4, but no affidavit was filed on behalf of the respondents no.1 and 2. By filing this affidavit in opposition he stated that the petitioner did not purchase the case land following the procedure of law. The signatures given in the sale deed are not proper as because the signatories did not mention their membership number of the co-operative society and even they did not put the seal impression in the deed. He also stated that the order of cancellation of the lease/allotment to the original owner dated 18.11.1997 has been issued following the rules of allotment as the allottee could not use the land as per provision of the lease. The petitioner did not purchase the case land following the Rules. He further submits that the proprietor of M/S Dawood Sultan & Company being petitioner filed and moved a Writ Petition being no.3280 of 1998 before this Hon'ble Court and obtained Rule and thereafter while the aforesaid Rule came up for hearing on 26.04.2009 the same was discharged for default for non-appearance of the petitioner as the petitioner felt that the order dated 16.04.1998 was correctly and legally issued cancelling the lease/allotment and as such the present Rule is also liable to be discharged. He also submits that the order dated 16.04.1998 as contained in Annexure-G was issued cancelling the plot no.113/B as per decision of the plot allotment committee correctly and as such the Rule is liable to be discharged.

We have gone through the writ petition, supplementary affidavit, the affidavit in opposition and the annexures annexed thereto. We have also considered the submissions of the learned advocates for the parties and the relevant laws. It appears that the affidavit in opposition was filed before this Court on 02.11.2015. This affidavit was sworn in on 01.11.2015. After filing this affidavit in opposition an order was passed from this Court on 15.11.2015. By this order the respondents were allowed three months time for affording the concerned authority for furnishing a correct reply to some queries made by the Court, which was very much necessary for the purpose of disposal of this writ petition effectually and completely. It appears from the record that the Executive Engineer, Public Works Division-3, the respondent no.4 by writing a letter addressing Mr. Abdus Salam Mondal, the learned Deputy Attorney General, requested him to take some time so that they can give a proper reply regarding the genuinity of Deed no.3342/13535 dated 18.06.1975 and to verify about the gazette notification no.M9-463 dated 06.03.1972 and to see the original record of the Privatization Commission. On the basis of this letter possibly Mr. Abdus Salam Mondal the Deputy Attorney General on 15.11.2015 took adjournment for 3(three) months for giving proper reply, but unfortunately till this date no reply has been submitted to this Court from the side of the respondents.

It appears from the record that admittedly the property in question was declared as abandoned property, which was listed in the abandoned property list in serial no.193 as contained in Annexure-I issued by the Ministry of Industries dated 30.11.1972 filed by the petitioner in his supplementary affidavit. From annexure-A it appears that by a notification dated 06.03.1972 the property in question (113/B, Tejgaon Industrial Area, Dacca) was included in the list of abandoned properties and one Mr. Shamsul Huda was appointed as an Administrator for the unit. Thereafter, on 18.06.1975 the said property was sold to M/S Dawood Sultan & Company by a registered deed being no.3342/13535. The said deed was executed between the government and the Sramik Karmochari Union and the deed was signed by one Joynul Abedin on behalf of the seller-government. Thereafter, the Sramik Karmochari Union in their turn they sold the property to the petitioner by a registered deed being no.4238 dated 26.06.1994 and since then the petitioner is in possession of the said property. From these annexures it is very clear that the property was declared abandoned property and it was listed in the list of abandoned properties by operation of law and thereafter the government sold the same to the employees of the same industry and they ran the industry for a few days and thereafter, they sold it to the present petitioner at the highest prevailing rate. From the



Annexure-E it appears that on 18.11.1997 one Assistant Secretary of Ministry of Housing issued a letter to the Proprietor of M/S Dawood Sultan & Company asking them to reply why the lease of the land in question should not be cancelled. From the Annexure-F it appears that the petitioner gave a reply on 01.01.1998 which is self explanatory, in which he has categorically stated that the said property was sold by the government to the Sramik Karmochari Union of Dawood Sultan Company and thereafter they being the owner of the Company and the property in question, they sold it to the petitioner, and since 1994 he has been possessing the same investing huge amount of money and has established an industry of plastic Bobbins. Thereafter, on 16.04.1998 the respondents-government again sent a letter to the Managing Director of M/S Dawood Sultan & Company stating that the lease of the property in question has been cancelled.

The question is whether the respondents action in cancelling the lease was done in accordance with law. Since the property in question was sold by the government to the Dawood Sultan Karmochari Union, they (the government) lost their ownership on the property. Subsequently, Dawood Sultan Karmochari Union sold the property to the petitioner. The petitioner became the absolute owner of the property in question. The respondents-government did not have any right

to issue such letter to the petitioner. The learned Deputy Attorney General took time from this Court to give answer of the queries of this Court whether the property was declared abandoned and whether the government has any right to retain the same. The government side i.e. the learned Deputy Attorney General failed to give any satisfactory answer till this date. On the contrary the petitioner has shown us that after purchasing the same he has been possessing the said company and running the same peacefully. In the situation, we are of the view that the respondents-government has utterly failed to prove that the property in question is still an abandoned property. On the other hand, Mr. Habibul Islam Bhuiyan has shown us that the petitioner purchased the property from Dawood Sultan Karmochari Union who became the owner of the property by way of purchase from the government and as such we are of the view that there is merit in the Rule. The memo no.Section-6/IL-8/98/176 dated 16.04.1998 is hereby declared to have been issued without lawful authority. Accordingly, the Rule is made **absolute**.

Let a copy of this judgment be communicated at once.

Krishna Debnath, J.

*I agree*