

12 SCOB [2019] AD 8

APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain,
Chief Justice
Mr. Justice Muhammad Imman Ali
Mr. Justice Hasan Foez Siddique

CIVIL PETITION FOR LEAVE TO APPEAL NO.133 OF 2017 WITH CP NOS. 663 AND 530 OF 2017

(From the judgement and order dated the 17th day of September, 2015 passed by the High Court Division in Writ Petition No.1940 of 2013 with Writ Petition No.6974 of 2013)

Mir Showkat Ali : Petitioner (in CP No.133 of '17)
Md. Khaled Ahmed (M. Khaled Ahmed) and others : Petitioners (in CP No.633 of '17)
Shamsunnahar Khawaja Ahasanullah and another : Petitioners (in CP No.530 of '17)

-Versus-

Md. Morsalin Khan and others : . . . Respondents (in all the cases)
For the Petitioner (in CP No.133 of '17) : Mr. Rokanuddin Mahmud, Senior Advocate instructed by Mr. Md. Taufique Hossain, Advocate-on-Record
For Petitioner Nos.2-21 (in CP No.663 of '17,) : Mr. A. J. Mohammad Ali, Senior Advocate Mr. M. Khaled Ahmed, Advocate instructed by Mrs. Shahanara Begum, Advocate-on-Record
For Petitioner No.1 (in CP No.663 of '17) : Mr. Mohammad Ali Azam, Advocate-on-Record
For the Petitioner (in CP No.530 of '17) : Mr. Mahbub Ali, Senior Advocate instructed by Mr. Md. Zahirul Islam, Advocate-on-Record
For Respondent Nos.1-3 (in CP No.133 of '17) : Mr. A.Y. Masihuzzaman, Advocate instructed by Mrs. Madhumaloty Chowdhury Barua, Advocate-on-Record
For Respondent No.5 (in CP No.133 of '17) : Mr. Nurul Islam Chowdhury, Advocate-on-Record
For Respondent No.7 : Mr. Mahbubey Alam, Attorney General

(in CP No.133 of '17 instructed by Mr. Soyeb Khan, Advocate-on-Record

For Respondent Nos.4, 6, 8-21 : None represented
(in CP No.133 of '17)

For Respondent Nos.1-3 : Mr. A.Y. Masihuzzaman, Advocate instructed
(in CP No.530 of '17) by Mrs. Madhumaloty Chowdhury Barua,
Advocate-on-Record

For Respondent Nos.7 and 12 : Mr. Soyeb Khan, Advocate-on-Record
(in CP No.530 of '17)

Respondent Nos.4-6, 8-12 and 13-20 : None represented
(in CP No.530 of '17)

Date of Hearing : The 12th day of March, 2018

Authority of the Executive Committee of the Orphanage to deal with property;

The Management/Executive Committee of the Orphanage had no authority to deal with the land other than for the purpose stipulated in the indentures. Those persons at the helm of the affairs of the Orphanage could not arrogate to themselves the authority to transfer the title in the property, which they themselves did not have. The Orphanage was given the property on a short term lease, which was apparent from the lease deeds. As long as these lease deeds existed and as long as the terms were not altered by the executant of the deeds none had the authority to deal with the land other than the purpose for which the lease was granted.

JUDGEMENT

Muhammad Imman Ali, J:

1. These petitions for leave to appeal have been filed against the judgement and order dated 17.09.2018 passed by the High Court Division in Writ Petition No.1940 of 2013 which was heard along with Writ Petition No.6974 of 2013 making the Rule *Nisi* absolute.

2. The facts relevant for disposal of these civil petitions for leave to appeal are as follows:
In Writ Petition No.1940 of 2013: a Rule *Nisi* was issued calling upon the writ-respondents to show cause as to why failure of the writ-respondents to protect the property of Sir Salimuallah Muslim Orphanage (the Orphanage) and their failure to prevent the illegal transfer of the land in question to Concord Limited a real estate company (of which writ-respondent No.16 is the Managing Director) under the influence of the committee members of the Orphanage should not be declared to be without lawful authority and of no legal effect and further to show cause as to why the writ-respondents should not be directed to protect and maintain the property of the Orphanage in accordance with the purpose of the lease agreements signed by the then Government vide Annexure A, A-1, A-2, A-3. There was also an ad-interim order of direction upon writ-respondents Nos.13-17 to maintain status-quo in respect of the position of the entire land covered within the area of the Orphanage.

In Writ Petition No.6974 of 2013: a Rule *Nisi* was issued calling upon the writ-respondents to show cause as to why failure of the writ-respondents in implementing the recommendation of the investigation committee dated 10.04.2013 should not be declared to be without lawful authority and was of no legal effect and accordingly, why writ-respondents Nos.1 and 2 should not be directed to implement the recommendation made under Memo No.41.00.0000.005.003.2012 dated 10.04.2013.

The facts of Writ Petition No.1940 of 2013:

The writ-petitioners grew up as orphans in the Orphanage and were studying in different colleges. From their childhood, the writ-petitioners were directly involved with the interest of the Orphanage. They tried to stop the illegal transfer of the property of the Orphanage by raising their voice. They were waiting to get result, but due to interference of the influential people of the executive committee, it was not possible to protect the property of the Orphanage. Though several times initiative was taken and a committee was formed, but finally nothing could be done to recover the land. Even no investigation could proceed due to interference of the influential group of people. Being conscious citizens, they challenged the illegal acts of the influential persons, who upon violating the provisions of law transferred the land of the Orphanage for their personal gain and as such, for the interest of the orphans as well as of the writ- petitioners and for the benefit of the helpless citizens of the country and in order to establish the rule of law, the writ-petitioners moved this Public Interest Litigation (PIL) before the High Court Division under article 102 of the Constitution along with the prayer for direction upon the writ-respondents to take necessary measures as per article 31 of the Constitution to protect the property of the Orphanage. Late Nawab Sir Salimullah established the Orphanage under the name Sir Salimullah Mohamedan Orphanage Society in 1909 in Azimpur, Dhaka. A constitution was adopted and an Executive Committee was constituted for the Orphanage and subsequently, the constitution was amended. The purpose of setting up the said Orphanage was to look after the orphans of the society and to give them education to lead their life properly with the financial support of the said organisation. Subsequently, the then Government of India decided to give patronage to the said orphanage and accordingly, on 27.07.1915, 29.10.1929, 14.05.1931, 18.05.1934 and 07.09.1934, the then Collector of Dacca, on behalf of the State of India, granted year to year lease of total 22 bighas land from different plots including Plot No.1014 of sheet No.20 of Ward No.7 under Police Station-Azimpur, Dhaka to the Orphanage Committee for its foundation and extensions respectively through indentures: Annexures-A, A-1, A-2, A-3. The said indentures, amongst other conditions, contained a condition that the said leased out lands could not be used for any other purpose except for the purpose detailed in the indenture for the benefit of the Orphanage.

3. The constitution of the Orphanage also contains a condition, like the terms and conditions of the lease deeds, not to transfer any land of the orphanage by any of the members of the executive committee without the approval of 2/3 of the members of the general committee.

4. But by violating all the conditions of the lease deeds of the Government as well as the constitution, some members of the Executive Committee signed an agreement on 22.07.2003 with Concord Real Estate Limited (the Developer) (writ-respondent No.16) for construction

of a Multi-storied Commercial-cum-Residential Building on 40 (forty) Kathas land of the Orphanage. According to the terms of the said agreement writ-respondent No.16 would get 65% of the said multistoried building and the remaining 35% would go to the Developer. Subsequently, on 13.04.2004, some amendments were made in the said agreement which allowed writ-respondent No.16 to own and sell 70 % of the said building. Thereafter, the President and Honorary Secretary of the Executive Committee (writ-respondent Nos.15 and 17 respectively) executed a Power of Attorney nominating writ-respondent No.16 to do the needfull to carry out the works to that effect. With regard to the irregularities and illegalities about the property of the Orphanage, some news items were published in different media. On the basis of such media report, the Director General, Department of Social Welfare, formed an inquiry committee to enquire, about the matter and submit a report. On 29.11.2007, after completion of the enquiry, the committee submitted a report to the authority stating that some members of the committee of the Orphanage by violating the terms, condition, rules and regulations have entered into an agreement by which they transferred the land of the Orphanage in favour of writ-respondent No.16, although there was no scope for anyone to transfer the property of the Orphanage. Despite the said specific report no step was taken by the authority to protect the property of the Orphanage. Rather, the influential and vested/interested group managed to stop the authority from taking further action against the illegal transfer of the property. Some influential members, including writ-respondent Nos.15 and 17, of the executive committee of the Orphanage, who were responsible to protect the interest of the Orphanage, by way of taking some financial benefit acted against the interest of the Orphanage by executing the said deed for construction of the said multistoried commercial-cum-residential building on the land measuring 40 kathas in favour of writ-respondent No.16.

5. Thereafter, on the basis of the application submitted by the students of the Orphanage dated 21.11.2012, the Director General, Social Welfare Department formed another enquiry committee who fixed 28.11.2012 for holding enquiry and accordingly notified all concerned. Similarly, the Ministry of Social Welfare also formed an inquiry committee to hold inquiry about the property and management of the Executive Committee of the Orphanage. Thereafter, on 03.01.2013, the committee issued a letter to the Superintendent of the Orphanage and requested him to be present, but subsequently no effective step was taken by the authority concerned. Several news items were published in the daily newspapers on different dates under different headlines. The writ-petitioners upon going through the said news items felt aggrieved about the inaction of the writ-respondents in protecting the properties of the Orphanage along with some other allegations therewith, and issued a notice demanding justice upon the writ-respondents through their learned Advocate, but in vain. Thus, finding no other alternative, they filed the instant writ petition and obtained the present Rule *Nisi*.

6. The writ-petitioners filed a supplementary affidavit by annexing some relevant papers and documents which are also vital for disposal of the instant Rule. The papers and documents contain the 1st Lease Deed No.1919 dated 27.07.1915 by which the Orphanage was set up and presently situated; the 68th Annual Report of the Orphanage, published in 1978 which contains the history of the Orphanage, including when and how the land belonging to the Orphanage were granted. It was stated that in the Government records the land in question was marked as belonging to the Government and this statement was admitted by writ-respondent No.7 in his affidavit-in-opposition dated 22.06.2015. While the order of status-quo was granted by the High Court Division, one Mr. Sameer Kanti Datta, Deputy Project Manager of writ-respondent No.16 (the Developer) led about 40 persons, who

claimed to be the flat purchasers from writ-respondent No.16, to forcibly enter into the disputed land, for which the police had to be called, who dispersed the unruly mob. A General Diary No.1295 dated 22.06.2015 was lodged with the Lalbag Police Station. The said incident was also published in the Daily Prothom Alo on 23.06.2015.

7. The writ-petitioners filed another supplementary affidavit annexing the combined Zarip Map with the Government regarding the land of S.A. Plot No.9, 1004, 1013, R.S. Plot Nos.615, 1241, 1242 and City Zarip Plot No.1002. From the said combined Zarip Map it was clear that writ-respondent Nos.15 and 17 illegally transferred the land to writ-respondent No.16, which was situated in the main part of the Orphanage which was obtained by the second lease deed (1st extension) being Deed No.1560 dated 29.10.1929 from the Khas Mohal land, sanctioned by the Government vide letter No.2713 dated 27.11.1927.

8. When the Rule *Nisi* was ready for hearing, Mr. Asaduzzaman Siddique, on behalf of Human Rights and Peace for Bangladesh (HRPB), filed an application for impleading his organization as writ-petitioner No.5 in the Rule *Nisi*. After considering the application and for effective assistance to the Court for disposal of the Rule *Nisi*, his application for addition of party was allowed vide order dated 16.06.2015. Accordingly, he was made co-petitioner No.5 who relied upon the facts and circumstances of other petitioners of Writ Petition No.1940 of 2013 and made submissions accordingly.

9. Writ-respondent Nos.1, 2 and 8 in one set; writ-respondent No.7 in another set, writ-respondent Nos.15 and 17 as the 3rd set and writ-respondent No.16 as the 4th set contested the Rule *Nisi* contending, *inter alia*, that after publication of the news items in different newspapers about the illegal transfer of land of the Orphanage by the then Executive Committee, to writ-respondent No.16, a meeting was held on 01.11.2007 in the Ministry of Social Welfare, Bangladesh Secretariat, Dhaka whereupon it was decided that the matter should be investigated. Accordingly, a high level investigating committee comprising three members was constituted under section 9 of The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961(the Ordinance, 1961). After conclusion of the investigation, the said committee submitted a report holding that the allegations were correct and the executive committee violated the constitution of the Orphanage, the provisions of the Ordinance, 1961 and Order of 1962 and accordingly made some recommendations. Pursuant to which the then Executive Committee of the Orphanage was suspended and a five member Managing Committee was constituted to run the Orphanage and to hold election to elect the new Executive Committee and to operate the institution. It was further decided that the elected Executive Committee would take necessary steps against all the illegal acts of the suspended Executive Committee. But the elected committee did not take any step against the illegalities of the suspended Executive Committee nor took any step to recover the illegally transferred land of the Orphanage. According to the decision of the Ministry of Social Welfare, and letter No.সকম/প্রতিঃশাঃ/এজিও-২৭/০৭-১৭৭ dated 20.05.2009 and the recommendation of the Anti-Corruption Commission vide Memo No.দুদক/২৭-২০০৮ (অনুঃ ও তদন্ত-১/ঢাকা/৬২০২ dated 22.04.2008, Md. Abu Siddik Bhuiyan, District Social Welfare Officer, Dhaka filed a criminal case against the suspended Executive Committee before the Court of the Chief Metropolitan Magistrate, Dhaka. According to the constitution of the Orphanage, the elected committee with the help of the general members of the organisation directly controlled the supervisory power about all the moveable and immoveable properties of the Orphanage. On 28.02.2013, the Deputy Director, District Social Welfare Office, issued letter No.৪১.০১.২৬০০০.০০০.২৮.১৯২(০৯) .১৩.৩৮৬ to the General Secretary of the Orphanage (writ-respondent No.15) requesting him to take appropriate and effective steps about the demand of justice notice

issued by the learned Advocate for the writ-petitioners. By letter dated 11.03.2013, the Secretary of Sir Salimuallah Muslim Orphanage (writ-respondent No.15), informed the Deputy Director, District Social Welfare Office that they had taken necessary steps about the Demand Justice Notice issued by the learned Advocate for the writ-petitioners.

10. It was stated that the present elected Executive Committee was responsible to maintain, run and protect the Orphanage including protecting the movable and immovable properties of the Orphanage. As such, since the previous Executive Committee illegally transferred the land of the Orphanage, the present committee was bound to explain and recover the same. It was not the responsibility of the Department of the Social Welfare Ministry.

11. On 04.06.2013, a letter was issued by the Ministry of Social Welfare to the Deputy Commissioner, Dhaka vide letter No.41.01.000.046.24.043. 13-259 directing him to take necessary steps according to the investigation report and recommendations dated 10.04.2013 against the corruption and mismanagement related to the movable and immovable property of the Orphanage. Accordingly with a view to take necessary steps, a letter was issued by the Ministry of Social Welfare to the Deputy Commissioner, Dhaka vide letter No.41.01.0000.046.24.043.13-259 to that effect and constituted a committee comprising five members and the working of that committee was still running. So article 21 of the constitution was followed properly along with other statements therewith.

12. Respondent No.12 herein, the Deputy Commissioner, Dhaka (writ-respondent No.7) further contended, *inter alia*, that the property of Sir Salimuallah Muslim Orphanage is situated on S.A. Plot Nos.9, 1004, 1013 and 1014 measuring an area of 3.3288 acres land under 'Khasmahal' Touzi. The land in question was leased out to Sir Salimuallah Muslim Orphanage by the then Deputy Commissioner, Dhaka, on a nominal salami of taka 1 (one) only and the possession of the land was delivered to the Orphanage authority. In the R.S. record, the land was recorded as "Khas" land. City Zarip was also prepared in the name of the Deputy Commissioner, Dhaka as "Khas land". Thus the orphanage authority had no power to transfer a portion of the land to the Developer. Thus the transfer was illegal as the land of S.A. Plot Nos.9, 1004, 1013 and 1014 was recorded in the name of the Deputy Commissioner, Dhaka as khas land and the Orphanage was simply a lessee. Writ-respondent No.7 also filed an affidavit-in-reply to the affidavit-in-opposition of writ-respondent No.16 and contended that on 01.10.2013, writ-respondent No.16, Concord Condominium Limited, filed a supplementary affidavit-in-opposition annexing a letter of the office of writ-respondent No.7 dated 05.01.2004 (Annexure-"1") which on examination and on consultation of the office records was found to be not genuine. The office of writ-respondent No.7 did not issue any such letter, rather annexure-"1" was created by writ-respondent No.16 for its own interest. The said annexure was fake and managed with a view to grab the land of the Orphanage.

13. Writ-respondent Nos.15 and 17 contended that the allegations of the writ-petitioners were not true and they had no *locus standi* to file the instant writ petition though the writ-petitioners were residents of the said Orphanage, now they were no more residents as they passed out and left the Orphanage. They were more than 18 years, thus writ-petitioner Nos.1-4 were not connected with the said Orphanage anymore. As such, they had no *locus standi* to file the instant writ petition. The Executive Committee of the Orphanage was entitled to take decision for betterment of the orphans as well as the Orphanage. Since the Orphanage had no permanent source of income, writ-respondent Nos.15 and 17 took necessary steps to arrange

a permanent source of income for the Orphanage. Accordingly, for the betterment of the orphans of the said Orphanage, the agreement was executed on 22.07.2003 for the benefit of the Orphanage. The Orphanage had no money of its own to construct the building which could permanently provide huge income every month upon letting out the same to different persons. On the execution of the agreement with writ-respondent No.16, the orphanage initially earned taka 30,00,000.00 apart from owning a portion of the building after the construction was complete. Respondent Nos.15 and 17 along with other members of the executive committee, first took over the charge of the Orphanage vide Memo No.2706(6)/09 dated 05.11.2009 issued by the registering authority of the Department of Social Welfare. After taking over the charge, the Executive Committee of writ-respondent Nos.15 and 17 created pressure upon the Developer (writ-respondent No.16) to enhance the share of the Orphanage. Accordingly another supplementary deed of agreement was executed by writ-respondent Nos.15 and 17 and the Developer, Concord Limited, where the share of the Orphanage was enhanced to additional 03% of the commercial space and 08% of the total residential spaces and also realised taka 50,00,000.00 (fifty lac) only in cash in addition to earlier amount of taka 30,00,000.00 (taka thirty lac) only and also added the saving clauses to its agreement. The supplementary agreement was annexed as Annexure-1. The writ-respondents did not transfer any land to the developer. On the basis of some incorrect news published in some of the daily newspapers, the writ-petitioners filed the instant writ petitions falsely.

14. It was further stated that in 2007, during the Caretaker Government, a high power committee was constituted, headed by Ms. Giti Ara Safia Chowdhury, the then Advisor in charge of Ministry of Social Welfare wherein writ-respondent No.7 was a member. In a meeting of the said committee, the then Additional Deputy Commissioner (Revenue), Dhaka representing writ-respondent No.7 stated that the land in question had already vested upon the Orphanage by way of permanent settlement and as such, the authority of the Orphanage had all power to own and manage the land which was vested upon the Orphanage. Accordingly, the authority of the orphanage concerned, in pursuance of the rules, entered into such deeds of agreement and power of attorney with writ-respondent No.16. A letter dated 05.01.2004 (annexure-1) issued by the office of writ-respondent No.7 and the resolution dated 01.11.2007 (annexure-7) if read together, it would be easily construed that the statements made in paragraph No.4 of the writ petition were false and the investigation report in question was concocted.

15. Writ-respondent No.16 (Managing Director of the Developer Company) also contended by filing an affidavit-in-opposition that writ-respondent No.16 was not personally liable for any act done in the capacity of Managing Director of the Concord Condominium Limited, a company registered under Companies Act, 1994. The Orphanage which was not a party in the instant writ petition, was neither a statutory body nor it could be said to be a Government authority against whom judicial review would be maintainable. The writ-petitioners purported to challenge the legality of the contract dated 22.07.2003 entered into between two private parties, the Orphanage and the Concord Condominium Limited to develop a private property belonging to the Orphanage which was not amenable to writ jurisdiction and as such, the writ petition was not maintainable. The subject matter of the writ petition involving a private contract entered into between two private parties writ-respondent Nos.1-10 and 12 had no connection with the said private contract dated 22.07.2003. The writ-petitioners made them parties just to invoke the writ jurisdiction with a *mala fide* intention to by-pass the civil jurisdiction as they knew that they had no factual as well as legal basis in support of their contentions. The Orphanage being the perpetual lease holder of the

contracted property, it required no permission from any authority to sell or change the nature and character of the property, especially when the steps were taken to enhance the income of the orphanage smoothly. The Executive Committee of the Orphanage being empowered under Part 'Tha' Clause 2 Ka of its constitution took resolution to deploy writ-respondent No.16 as the developer for developing its property to enhance the funds of the Orphanage. Subsequently, the General Body of the Orphanage proposed to enhance the share of the Orphanage in the developed property which was accepted by writ-respondent No.16. The Orphanage sought an amendment of the agreement dated 22.07.2003 vide letters dated 20.10.2011 and 22.09.2011, thereafter both parties entered into the amendment agreement on 27.10.2011. Writ-respondent No.16 was carrying on the construction work for the last 10 (ten) years and within that period, nobody had ever raised any question as to the legality of the project or the contract dated 22.07.2003. The structural construction work had already been completed. The interior decoration work was in progress now. Being empowered vide the aforesaid development contracts and the power of attorney executed thereunder most of the spaces/shops/flats of the developed property had already been transferred to third parties. The contract dated 22.07.2003 was not in any way an illegal or void/voidable contract; the contract was legal and valid. The writ-petitioners had no *locus standi* to file the instant writ petition. Since by now long time elapsed after entering into the contract dated 22.07.2003 writ-respondent No.16 and other third party transferees acquired legal and vested rights over the contractual property under part 'Tha' of clause 2Ka of its constitution.

16. The facts of Writ Petition No.6974 of 2013:

In addition to the similar facts and circumstances as stated in Writ Petition No.1940 of 2013, the writ-petitioner in Writ Petition No.6974 of 2013 stated that for the purpose of establishment and running of Sir Salimullah Muslim Orphanage, the then Government of India granted five lease deeds wherein the orphanage was set up and run uninterruptedly. Recently when the Executive Committee entered into such agreement with writ-respondent No.16 the residents of the Orphanage submitted several applications to the writ-respondents to take steps against the illegality and requested to protect the property of the Orphanage. On the basis of the application dated 21.11.2012 the Director, Social Welfare Department, of the government of Bangladesh formed an inquiry committee. The date of the inquiry was fixed on 28.11.2012. Similarly the Ministry of Social Welfare also formed an Investigation Committee on 13.12.2012 to investigate about the property and management of the Orphanage. Thereafter, on 03.01.2013 the committee issued a letter to the Superintendent of the Orphanage and requested him to be present on 09.01.2013.

17. Thereafter, on 10th April, 2013 the said Investigation Committee comprising (i) Deputy Director (Current Charge), District Welfare Office, (ii) Deputy Director Institution-2, Department of Social Welfare and (iii) Deputy Director (Institution) Ministry of Social Welfare submitted the Investigation report.

18. The said investigation report pointed out the following problems;

"(a) 20 to 25 over aged boys are living in the Orphanage area and these over aged students are involved in unsocial and immoral activities.

19. As per S.A survey it was recorded that the orphanage owns Plot No.48 Azimpur Road, Mouja Lalbagh, Khatian No.15, Dag Nos.9, 10, 15, 146, 147 and 148 measuring up to 8.14 acres. But during the Metropolitan Survey no record has been made in the name of the Orphanage, rather all the properties of the Orphanage are shown under the name of D.C,

Dhaka (Khatian No.1, land-measuring 3.416 acres) and under the C & B Bangladesh Government in Khatian No.1, Dag No.431 measuring up to 2.5640 acres.

20. The agreement entered into between the Governing Body of the Orphanage and Concord Limited is against the interest of the Orphanage.

21. That the said investigation report also made certain recommendations for the purpose of protecting the land of the Orphanage which are as follows:

To recover the landed properties of the Orphanage and file civil cases to rectify the records.

To evict the over aged students who are living in the Orphanage.

To take steps to recover the properties which have been done away by the Governing Body illegally.

To cancel the agreement with Concord Limited and recover its lost properties.

As a long term development plan transform the Orphanage into children village.

As the Governing Body has failed to carry out its duty properly, to suspend the current Governing Body and appoint an Administrator.

To appoint an experienced lawyer to conduct the Writ Petition No.1940 of 2013 pending before the High Court Division of the Supreme Court of Bangladesh.”

22. In the meantime, several news items were published in the Daily Newspapers on different dates under different headlines in respect of the illegalities surrounding the Orphanage. The petitioner read the news items of the newspapers and felt very much aggrieved about the inaction of the respondents to protect the leasehold property of the Orphanage illegally transferred upon violating the provisions of lease deeds and the law. It was reported in the newspaper that some of the influential persons are behind the scene.

23. After lapse of about two months when it was found that no step had been taken by the respondents to protect the properties of the Orphanage, the writ-petitioner, on 03.06.2013, wrote a letter to writ-respondent No.1 and requested to take steps according to the investigation report. But no step having been taken the writ-petitioners filed this writ petition and obtained Rule *Nisi* for direction for implementation of the aforesaid recommendation.

24. Writ-respondent Nos.1, 2 and 4, Secretary, Ministry of Social Welfare, Director General (DG) Department of Social Welfare, Director (Institution) Ministry of Social Welfare appeared in the Rule *Nisi* by filing a joint supplementary affidavit-in-opposition contending, *inter alia*, that they supported the Memo dated 10.04.2013 of respondent No.1(Annexure-4) and pursuant to the recommendation of the investigation committee, writ-respondent No.2, the Director General, Department of Social Welfare issued a show cause notice on 09.09.2013 upon writ-respondent No.8, Nawabzada Khawaja Zaki Ahsanullah, President, Executive Committee, Sir Salimullah Muslim Orphanage asking him to show cause, within seven days, as to why the Executive Committee would not be suspended under sections 9(1) and 9(2) of the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961. But on receipt of the said show cause notice, writ-respondent No.8 instead of replying to the same sent an application for time, on 22.09.2013 which was rejected. Thereafter, writ-respondent No.2, considering the investigation report and the recommendations dated 10.04.2013 (Annexure-4) temporarily suspended the Executive Committee of Sir Salimullah Muslim Orphanage and appointed the Additional Deputy Commissioner (General) Dhaka, as the Administrator of the said Orphanage, vide order No.41.01.0000.046.24. 036.13-88 dated 19.02.2014. It further stated that the Additional

Deputy Commissioner (General), Dhaka, Md. Jasim Uddin has already taken over the charge of the office of Sir Salimullah Muslim Orphanage as an Administrator and issued three letters dated 03.03.2014, 13.03.2014 and 23.03.2014 to the Ex-President of the Executive Committee, Nawabzada Khawaja Zaki Ahsanullah for making an inventory of the assets and liabilities of the orphanage.

25. Writ-respondent No.7, the Deputy Commissioner, Dhaka appeared in the Rule *Nisi* by filing an affidavit-in-opposition contending, *inter alia*, that more or less 17 acres land was granted by lease in favour of purpose "Sir Salimullah Muslim Orphanage" with a condition not to use the said land other than the purpose for which it was leased out. Writ-respondent No.7 has come to know that some office bearers of the Sir Salimullah Muslim Orphanage by violating the terms and conditions of those lease deeds illegally handed over more or less 40 kathas of land to the Concord Real Estate Company for construction of Multi- storied Commercial and Residential Building. It was further stated that the case land is Government Khas land, the District Magistrate, Dhaka has got the right to investigate the matter for such transaction between the office bearers and the developer company accordingly appropriate steps are being taken in accordance with law.

26. Writ-respondent Nos.8 and 9, Nawabzada Khawaja Zaki Ahsanullah, the then President, and Md. Anisur Rahman, the then Secretary, of the Executive Committee of the Sir Salimullah Muslim Orphanage filed a joint affidavit-in-opposition denying all material allegations of the petitioner. But they did not appear at the time of hearing of the Rule.

27. In due course, after hearing the parties, by the impugned judgement and order the said Rules *Nisi* were made absolute. Hence, writ-respondent No.16 filed Civil Petition for Leave to Appeal No.133 of 2017 before this Division. Against the same judgement and order, Civil Petition for Leave to Appeal No.633 of 2017 was filed by Md. Khaled Ahmed and others claiming that they have purchased flats from the Developer. Shamsun Nahar Khawaja Ahsanullah and another being the former President and present President respectively of the committee of the Orphanage filed Civil Petition for Leave to Appeal No.530 of 2017.

28. For the petitioner in Civil Petition for Leave to Appeal No.133 of 2017, Mr. Rokanuddin Mahmud, learned Senior Advocate appeared. Petitioner Nos.2-21 and petitioner No.1 in Civil Petition for Leave to Appeal No.633 of 2017 were represented by Mr. A.J. Mohammad Ali, learned Senior Advocate and Mr. Mohammad Ali Azam, learned Advocate-on-Record and Mr. Mahbub Ali, learned Senior Advocate, appeared for the petitioners in Civil Petition for Leave to Appeal No.530 of 2017.

29. Mr. Rokanuddin Mahmud, learned Senior Advocate, appearing for the petitioner in Civil Petition for Leave to Appeal No.133 of 2017 submitted that the petitioner as a Real Estate Company on 22.07.2003 entered into a contract with the Orphanage to develop the private property of the Orphanage which was not amenable to writ jurisdiction and thus the writ petition was not maintainable; the High Court Division upon misconceived view made the Rule *Nisi* absolute with direction and observation declaring the contract as illegal. He further submitted that the High Court Division failed to consider that the Orphanage as perpetual lease holder of the contracted property requires no permission from the concerned authorities to sell or change the nature and character of the property, particularly any steps taken for enhancement of income from the said charitable organisation and as per clause 2(Ka) of the constitution, the Orphanage took resolution and deployed the developer company, namely, Concord Condominium Limited by entering into an agreement with

subsequent amendment, which had been made in accordance with law. Hence, the High Court Division erred in law in declaring the agreement as illegal and void *ab initio*. He further submitted that after entering into agreement the petitioner as Real Estate Company started construction over 8.5 bighas land of Sir Salimullah Muslim Orphanage and the authority of RAJUK on 26.05.2004 by a letter mentioned that earlier over the proposed land clearance letter was issued on 13.01.2004 for construction of 6 stories residential-cum-commercial building as per section section 75(1) of Building Construction Rules, 1996 and thus considered the proposal of construction of 18 storied building over more or less 6 bighas land of orphanage by the petitioner; the High Court Division overlooked the correspondence and earlier transactions by the managing committee of the orphanage and made the Rule *Nisi* absolute by declaring the legal private contract with the petitioner for developing the land of the Orphanage by making construction of residential cum commercial building as illegal and made some directions upon different authorities which are liable to be set aside. He further submitted that under the constitution of Sir Salimullah Orphanage, Dhaka to raise fund of the Orphanage, article 2 provides that “(ক) অত্র গঠনতন্ত্রের নিয়মাবলী অনুসারে তহবিল উন্নয়নের স্বার্থে বিভিন্ন প্রকল্প হাতে নেওয়া যাইবে এবং (খ) প্রকল্প বাস্তবায়নের স্বার্থে গঠনতন্ত্রে বিধি অনুযায়ী স্থাবর কিংবা অস্থাবর সম্পত্তি সমূহ লগ্নি করা যাইবে” and the managing committee of the Orphanage as per provision of the constitution entered into a contract with the petitioner for developing the property after issuing tender notice in the newspaper. Thus the High Court Division ought to have discharged the Rule as the agreement was approved in the general meeting of Sir Salimullah Muslim Orphanage on 02.10.2003 in which 61 members were present and accepted the agreement unanimously. He further submitted that the writ-petitioner in response to the tender notice published in the daily Inqilab dated 17.03.1999 wherein Sir Salimullah Muslim Orphanage authority called bid for development of a multipurpose complex on their land at Lalbagh through joint venture, submitted bid in the tender and became highest bidder, thus was awarded the contract, the High Court Division without considering such the facts abruptly declared the agreement as illegal and made directions, which is liable to be set aside. He further submitted that the writ-petitioner was awarded the contract in 1999, signed the project in 2003 and has undertaken construction work from 2007 and the writ petition was filed in the year 2013 when the total structure of the building was completed. Furthermore, the petitioner has constructed the building upon getting necessary permission and approval from all concerned government bodies including RAJUK, the filing of writ petition under Public Interest Litigation depicts clearly dishonest intention as after 10 years of signing of the agreement and after 6 years of commencement of work, they filed the writ petition; the High Court Division ought to have discharged the Rule *Nisi* in holding that the writ petition is not maintainable. He further submitted that as perpetual lease property, Sir Salimullah Muslim Orphanage Trustees had the legal authority to handover the land to any outside party with a view to betterment of the orphanage and the High Court Division erred both in law and facts in not considering that the orphanage as a registered society had complied with the terms of the lease deeds, entered into an agreement with the petitioner for making construction of the building for the purpose of enhancement of funds for betterment of the orphanage.

30. Mr. A.Y. Masihuzzaman, learned Senior Advocate for respondent Nos.1-3, Mr. Mahbubey Alam, learned Attorney General for respondent No.7, Mr. Nurul Islam Chowdhury, learned Advocate-on-Record for respondent No.5, appearing in Civil Petition for Leave to Appeal No.133 of 2017 and Mr. Soyeb Khan, learned Advocate-on-Record for respondent Nos.7 and 12, appearing in Civil Petition for Leave to Appeal No.530 of 2017 all supported the impugned judgement and order of the High Court Division.

31. From the judgement of the High Court Division, it appears that the conduct of the supervisory and controlling authority of the said Orphanage, i.e. the Executive Committee, was found to be not satisfactory and the high power inquiry committee made some observations and recommendations to safeguard and protect the interest of the Orphanage which was considered by the High Court Division. The High Court Division observed that to protect the Government property and the orphanage, it needed to pass some directions for the interest of backward, disadvantaged and helpless Orphans of the said Orphanage.

32. The High Court Division observed that the failure of the respondents to protect the Government property leased out in favour of the Orphanage and illegal transfer of land to the developer company (respondent No.16) under the influence of the committee members, namely, the President and the Secretary (respondent Nos.15 and 17 in the Writ Petition No.1940 of 2013) to be without lawful authority and of no legal effect. The High Court Division declared that the deed of agreement dated 22.07.2003 and amendment agreement dated 22.07.2003 and irrevocable power of attorney dated 13.04.2004 Annexures-C, C-1 and C-2 respectively between respondent Nos.15, 16 and 17 are also illegal and thus those were cancelled as those are void *ab-initio*.

33. The High Court Division went on to hold that the building which was being constructed on the Government land along with all properties and structures situated thereon made in pursuance of Annexures-C, C1 and C2 be confiscated in favour of the Orphanage to be used for the purpose and benefit of the orphans and the Orphanage. Respondent No.16 was directed to hand over the said multi-storied building in favour of the Orphanage through respondent No.1 within 30 (thirty) days from the date of receipt of the order of the High Court Division. Respondent No.1 was also directed to take possession of the said land along with the multi-storied building from respondent No.16 and hand over the said building to the Orphanage within the said period, failing which respondent Nos.1 to 12 of Writ Petition No.1940 of 2013 were directed to take necessary steps for taking possession of said building and property by evicting respondent No.16 and his men from the said property within 7(seven) days without fail in accordance with law and hand over the same to the said Orphanage.

34. The High Court Division also directed respondent Nos.1 to 12 to take immediate steps for constituting an effective managing committee to run the administration and management of the said Orphanage who will protect, maintain, improve and run the administration of said Sir Salimullah Muslim Orphanage and properties situated within the campus of the Orphanage in accordance with law keeping in mind the purposes of the lease deeds executed by the Government vide annexures-A, A-1, A-2 and A-3 and H respectively.

35. Respondent No.7 was also directed to take necessary steps against respondent Nos.15, 16, 17 and others, if any, for committing forgery, cheating and abetting and purposefully acting against the interest of the orphans/Orphanage, in accordance with law.

36. We find from annexures-‘A’ that the Government granted lease of land at various times for the benefit of the Orphanage at a nominal rent. Each of the deeds stipulates the specific purpose for which the land is to be used, failing which the land would revert to the Government.

37. The High Court Division observed that the Management/Executive Committee of Sir Salimullah Muslim Orphanage framed its own constitution on 13.12.1987 giving themselves

the authority to sell land of the organisation, but there is no such provision to sell Government leasehold property of the Orphanage in any manner. By reference to the Government Estates Manual, the High Court Division held that the lease of the land of the Orphanage was short term and the land is not transferrable; the land is recorded in the name of the Government, and hence the entire land of the Orphanage is Government land, and as such, the transfer of the land by the Executive Committee was illegal.

38. Turning to the inquiry report of the Ministry of Social Welfare, the High Court Division noted that the land used by the Orphanage is recorded in Khatian No.1 in the name of the District Collector, Dhaka on behalf of the Government. The high powered inquiry committee recommended, *inter alia*, to cancel the agreements between the Executive Committee of the Orphanage and respondent No.16-the Developer and thereby confiscate the said building in favour of the Orphanage.

39. The claim of respondent No.16-the developer and respondent Nos.15 and 17-President and Secretary respectively of the Executive Committee of the Orphanage is that the agreements Annexures-C, C1 and C2 are legal and valid being in accordance with article 2(Ka) of the Constitution of the Orphanage. They also claim that the building was constructed with due permission from the Government through the Additional Deputy Commissioner (Revenue), Dhaka. Thereafter, RAJUK accorded permission to construct the multi-storied building. The claim of respondent No.16 that the lease was a perpetual one was refuted by the Deputy Commissioner, Dhaka (respondent No.7).

40. With regard to the permission by RAJUK to construct a building on the land, the High Court Division, upon scrutiny of the affidavit materials found that there was no final approval letter issued by RAJUK for constructing the said Residential-cum-Commercial Multi-storied Building on any land of the Orphanage.

41. On perusal of the five original lease deeds in favour of the Orphanage, it is plainly evident that each time more land was given on lease for the Orphanage, there was a specific purpose mentioned in the deed itself and there was a categorical bar on using the land for any purpose other than the one stipulated, and failure to observe the condition would result in the land reverting to the Government. We find from annexure-‘A’ series that on each occasion of new lease for land, the specific purpose of giving more land was to expand existing Orphanage for dormitory etc. In 1934, land was given for the purpose of a playground for the Orphanage. In each of the leases, there was a condition that if the land was not used for the purpose stipulated then it would revert to the Government.

42. By no stretch of imagination can a multi-storied residential-cum-commercial building, where apartments have been sold to the public, be said to comply with the stipulations entrenched in the lease deeds. This, along with the record of rights and the reports of the high power committee, led the High Court Division to hold that respondent Nos.15 and 17 entered into agreement with respondent No.16 illegally to construct the multi-storied building. It was held that the deeds of contract and power of attorney in respect of the land in question were illegal and void *ab-initio*.

43. In the case of Begum Khaleda Zia-Vs-Government of Bangladesh and others, 63 DLR 385 it was held that “it is a well settled principle of law that void deeds need not be cancelled....[possession] for 28 years on the basis of a void deed cannot create vested right against the Government.”

44. We find it curious to note that writ-respondent Nos.15 and 17 defended their action of entering into an agreement with respondent No.16 *by claiming that they were acting for the benefit of the orphans/Orphanage* by arranging a permanent source of income and that they did not transfer any land to the Developer. On the other hand, it is patently obvious from the standpoint of respondent No.16 that the Orphanage held the land on the basis of a perpetual lease and there was no bar to sell or change the nature and character of the property. Indeed, respondent No.16 has admitted that third party transferees have acquired legal and vested rights over the contracted property. According to the third party petitioners (petitioners in Civil Petition for Leave to Appeal No.633 of 2017), they purchased apartments in the building constructed by the Developer on payment of large sums of money. The obvious legal and factual position is that the Developer can only transfer to others right/title/interest in the property if it had such right/title/interest in the property and had the authority to make such transfer.

45. It is on record that the Deputy Commissioner, Dhaka (writ-respondent No.7) denied the issuance of the letter from his office which purportedly stated that the property was held by the Orphanage on a perpetual lease. Writ-respondent No.7 categorically stated that the letter dated 05.01.2004 (Annexure-1) claimed by the Developer to have been issued by the Office of the Deputy Commissioner, was a forgery.

46. The report dated 10.04.2013 makes reference to the land of the Orphanage given under lease deeds dated 27.07.1915, 29.10.1929, 14.05.1931, 18.05.1934 and 01.09.1934, comprising in total more or less 22 bighas. The report indicates that the inquiry committee comprising officials of the Department of Social Services and Ministry of Social Welfare came to a finding that the agreement between the Executive Committee of the Orphanage and Concord Condominium Limited was contrary to the interests of the Orphanage. It recommended, *inter alia*, that steps be taken to recover the property of the Orphanage which had been illegally transferred.

47. In any event, we are of the view that the lease deeds, Annexure-‘A’ series are short term leases incorporating specific terms and conditions, breach of which would result in the land reverting to the Government. The Management/Executive Committee of the Orphanage had no authority to deal with the land other than for the purpose stipulated in the indentures. Those persons at the helm of the affairs of the Orphanage could not arrogate to themselves the authority to transfer the title in the property, which they themselves did not have. The Orphanage was given the property on a short term lease, which was apparent from the lease deeds. As long as these lease deeds existed and as long as the terms were not altered by the executant of the deeds none had the authority to deal with the land other than the purpose for which the lease was granted. The agreements entered into between respondent Nos.15 and 17 and respondent No.16 as well as the power of attorney are, therefore, illegal and void *ab initio* and of no legal effect.

48. In view of the discussion above, we find the claims made by the petitioners in Civil Petition for Leave to Appeal No.530 of 2017 untenable. Hence we do not find any merit in the petition.

49. With regard to Civil Petition for Leave to Appeal No.633 of 2017, the claims of the petitioners rise and fall with those of the Developer. Since we do not find any merit in the

claim of the Developer, the claim of the petitioners in Civil Petition for Leave to Appeal No.633 of 2017 fails. Their claim, if any, may be against the Developer.

50. Hence, we do not find any illegality or impropriety in the impugned judgement and order of the High Court Division.

51. Accordingly, the Civil Petition for Leave to Appeal No.133 of 2017 is dismissed. Consequently, the Civil Petition for Leave to Appeal Nos.530 of 2017 and 633 of 2017 are also accordingly dismissed.