

14 SCOB [2020] AD

APPELLATE DIVISION

PRESENT

Mr. Justice Syed Mahmud Hossain, Chief Justice

Mr. Justice Hasan Foez Siddique

Ms. Justice Zinat Ara

Mr. Justice Md. Nuruzzaman

CIVIL APPEAL NOs.31-32 OF 2017

With

CIVIL APPEAL NO.30 OF 2017

And

CIVIL PETITION NO.4232 OF 2018

(From the common Judgment and Order dated 24th August, 2015 passed by the High Court Division in F.A. No.167 of 2010 and T.A. Nos.7-11 of 2014.)

Noor Mohammad Khan being dead his heirs:

Firoza Noor Khan and others.....Appellants

(In C.A. No.31-32 of 2017)

Jamila Khatun.....Appellant

(In C.A. No.30 of 2017)

Jamila Khatun and another.....Petitioners

(In C.P. No.4232 of 2018)

-Versus-

Raisa Aziz Begum and others.....Respondents

(In C.A. No.31 of 2017)

Khadija Islam and others.....Respondents

(In C.A. No.32 of 2017)

Haji Md. Sujauddin and others.....Respondents

(In C.A. No.30 of 2017)

Raisa Aziz Begum and others.....Respondents

(In C.P. No.4232 of 2018)

For the appellant
(In C.A.No.31/17)

: Mr.Nozrul Islam Chowdhury,
Senior Advocate, instructed by
Mr. Zainul Abedin,
Advocate-on-record

For the appellant
(In C.A.No.32/17)

: Mr. Khair Azaz Maswood,
Advocate, instructed by
Mr. Zainul Abedin,
Advocate-on-record

For the appellant
(In C.A.No.30/17)

: Mr. Farooque Ahmed,
Advocate, instructed by
Mr. Serajur Rahman,
Advocate-on-record

For the petitioner : Mr. Farooque Ahmed,
(In C.P.No.4232/18) Advocate, instructed by
Mr. Sirajur Rahman,
Advocate-on-record

For the Respondents : Mr. A.M. Aminuddin,
(In C.A.Nos.31-32/17 & Senior Advocate, instructed by
30/17) Ms. Madhumaloti Chowdhury Barua,
Advocate-on-record

For the Respondent : Not represented
(In C.P.No.4232/18)

For the Government (In all : Mr. Murad Reza,
the appeals) Additional Attorney General, with Mr. Sk.
Saifuzzaman, Deputy Attorney General (appeared with
the leave of the Court)

Date of Hearing: 08.01.2019, 09.01.2019, 15.01.2019, 20.02.2019, 24.04.2019 & 30.04.2019
And

Judgment on: The 14th May, 2019.

Khas Mohal property of the Government, Article 104 of the Constitution, Complete Justice;

Any property owned by the Government is the property of the People's of the Republic of Bangladesh and the citizens of this country are the actual owners of such property. Therefore, no one can dispose of valuable Government properties at his/their sweet will to anyone else unlawfully. ... (para 65)

The power of this Court under article 104 of the Constitution is an extensive one though it is not used often or randomly. It is generally used for doing complete justice in any cause or matter pending before it in rare occasions in exceptional or extra-Ordinary cases for avoiding miscarriage of justice. To meet unwarranted and unpredicted exceptional situation this power is vested in this Division for doing complete justice. Article 104 widens our hands so that this Division is not powerless in exceptional matters. ... (para 114)

J U D G M E N T

Zinat Ara, J:

1. Civil Appeal Nos.30-32 of 2017 and Civil Petition for Leave to Appeal No.4232 of 2018 have arisen out of the common judgment and decree/Order dated 24th August, 2015 passed by the High Court Division in First Appeal No.167 of 2010, heard analogously with Transfer Appeal Nos.7, 8, 9, 10 & 11 of 2014 disallowing First Appeal No. 167 of 2010, Transfer Appeal Nos.07 of 2014, 09 of 2014, 10 of 2014 and 11 of 2014 and thereby, affirming the judgment and decree dated 18.08.2009 of the 1st Court of Subordinate Judge, Dhaka (shortly, the trial court) in Title Suit Nos. 483 of 1974, 112 of 1984, 113 of 1984 and 66 of 1990 dismissing the aforesaid suits but allowing Transfer Appeal No.08 of 2014 and

decreeing Title Suit No.224 of 1997, thereby reversing the judgment and decree dated 18.08.2009 of the 1st Court of Joint District Judge, Dhaka in Title Suit No.224 of 1997.

2. The aforesaid Civil Appeals and Civil Petition for Leave to Appeal have arisen out of the common judgment and decree of the High Court Division in First Appeal (FA) No.167 of 2010 with Transfer Appeal(TA) Nos.7, 8, 9, 10 and 11 of 2014 and the aforesaid first and transfer appeals arose out of the common judgment and decree dated 18.08.2009 of the trial court in the above mentioned suits and the parties are all claiming the same property in the aforesaid appeals/suits and the present civil appeals and the civil petition. Therefore, the Civil Appeal Nos.30-32 of 2017 and Civil Petition No.4232 of 2018 have been heard together and are being disposed of by this common judgment.

Jamila Khatun's case in
Title Suit (TS) Nos.483 of 1974
as Plaintiff and as defendants of other suits

3. Plaintiff-appellant-Jamila Khatun (briefly, Jamila) on 27.09.1974 filed Title Suit No.483 of 1974 in the 1st Court of Subordinate Judge, Dhaka(the trial court)against Raisa Aziz Begum (shortly, Raisa) and others for specific performance of contract and also for some other reliefs stating, inter alia, that Raisa, defendant No.1 of the suit had entered into an agreement with plaintiff-Jamila on 20.01.1972 to transfer 29.36 decimals of land with buildings, structures and shop rooms standing thereon of Holding No.10, Purana Paltan, Dhaka, present Plot No.1184, Khatian No.217 of Mouza-Ramna beingold Dag Nos.26, 27 and 28, Ward No.3, Sheet No.22 of Mouza-Sahar Dhaka, (hereinafter referred to as the suit property). The price of the suit property was fixed at Rs.1,10,000/- and Raisa received a sum of Rs.3,000/- as earnest money on the terms and conditions that Raisa would obtain necessary clearance certificates and complete all other formalities within six months and intimate the same to Jamila and Jamila, within three months of such intimation would pay the balance consideration amount of Rs.1,07,000/- to Raisa and then Raisa would execute and register a saledeed in favour of Jamila. Subsequently, Raisa received Tk.92,000/- from Jamila on different occasions between 15.03.1972 to 19.08.1974 and Raisa admitted/acknowledged about receiving of the said amountthrough some money receipts. Thus, Tk.15,000/- remained outstanding out of the total consideration money. Raisa did not execute the sale deed on receiving the balance amount. Therefore, Jamila filed TS No.483 of 1974.

Initial result of the Suit &
subsequent events, etc.

4. The suit was decreed ex-parte on 18.07.1978 against Raisa. So, plaintiff Jamila deposited the balance consideration of Tk.15,000/- through Chalan No.561 dated 13.07.1978. Subsequently, Raisa filed Miscellaneous Case No.34 of 1979 to set-aside the ex-parte judgment and decree. Whereupon, the learned judge of the trial court by order dated 24.03.1980 allowed the saidmiscellaneous case, set asidethe ex-parte judgment and decree and restored the suit to its original file and number.

5. Jamila thereafter amended the plaint of the suit alleging that after filing of the suit by Jamila, defendant Nos.3-7 knowing fully well about the agreement between Raisa and Jamila created some forged and fraudulent documents including sale deed and they were engaged in a conspiracy to deprive Jamila from the suit property.

**Jamila Khatun's Case in TS No.66 of 1990
as plaintiff and as defendants of other suits**

6. Plaintiff-Jamila of TS No.483 of 1974 filed another suit being TS No.66 of 1990 for cancellation of sale deed as well as lease deed in favour of Khadiza Islam (briefly stated as Khadiza), contending, inter alia, that Raisa did not sale/transfer the suit property to Syed Badiur Rahman (briefly, Badiur) as claimed by him inasmuch as Badiur negotiated the Baina agreement dated 20.01.1972 between Jamila and Raisa and so, the alleged sale deed in favour of Badiur is forged. Khadiza purchased the suit property from Badiur knowing about her agreement for purchase the suit property from Raisa dated 20.01.1972 and also about the fact that the sale deed in favour of Badiur was/is forged. Khadiza created the sale deed in her favour knowing the aforesaid facts. Therefore, the deed of purchase as well as the deed of lease extension in her favour is liable to be cancelled. It was specifically alleged that there was no agreement of sale between Raisa and Badiur dated 11.09.1969 and that the alleged agreement of sale and registered deed dated 15.01.1982 are all forged and fraudulent documents without consideration. Badiur did not get any possession of the suit property through his forged deed of purchase at any time. Similarly, Khadiza did not get possession of the suit property at any time through her alleged deed of purchase. After knowing about the alleged forged deeds of Badiur and Khadiza, Jamila filed this subsequent suit for cancellation of the aforesaid deeds.

**Noor Mohammad Khan's (being dead his heirs)
Case as plaintiff in Title Suit No.113 of 1984
(original Title Suit No.364 of 1982)
and as defendants of other suits**

7. Noor Mohammad Khan (Khan), defendant No.5 of Title Suit No.483 of 1974, as sole plaintiff, filed Title Suit No.364 of 1982 in the 3rd Court of Subordinate Judge, Dhaka against Raisa, Badiur, Jamila and some others for specific performance of contract against Raisa on the basis of an agreement for sale dated 23.07.1969 as well as an agreement dated 10.07.1977 renewing the previous agreement for sale and also for khas possession of the suit property contending, inter alia, that Raisa for raising cash money wanted to sell the suit property. Whereupon, Khan offered to purchase the same at Tk.45,000/-. Raisa accepted the said offer. Thereafter, on receipt of Tk.15,000/- as earnest money she entered into an agreement for sale of the suit property with Khan on 23.07.1969. Raisa's cousin Badiur was a witness to the agreement for sale. It was decided that after procuring clearance certificate Raisa would execute and register the sale deed in favour of Khan but Raisa could not procure all necessary documents for registration of the deed and on her request Khan paid her Tk.5,000/- on 23.10.1970 but due to political disturbance at the relevant period Khan could not obtain the deed of sale from Raisa. After liberation of Bangladesh, Khan traced out Raisa and Badiur in September, 1973 and came to know from Raisa that some miscreants took over possession of the suit property and that the suit property was enlisted as an abandoned property. Raisa disclosed that after release of the suit property, she would execute and register necessary deed of sale in favour of Khan. At her request, Khan paid further amount of Tk.3,000/- in the 1st part of January, 1977. Raisa and Badiur demanded a further amount of Tk.50,000/- to meet the expenses for release of the suit property from the list of abandoned property and to evict the unauthorized occupants therefrom. Considering all those aspects another instrument was executed between them on 21.01.1977 in the form of an agreement. This agreement provided that Mr. Yakub Ali, the learned Advocate for Raisa would take steps to release the suit property and Khan would pay Tk.50,000/- for this purpose. Accordingly, Khan paid

Tk.20,000/- and a cheque of Tk.30,000/- to Raisa and the said instrument was kept in the custody of Mr. Yakub Ali. Subsequently, Raisa and Badiur told Khan that Mr. Yakub Ali, trapped them and if the transaction of cash as well as the encashment of cheque was made with the knowledge of Advocate Mr. Yakub Ali, he would keep a major portion thereof. They requested Khan to stop payment of the cheque. Subsequently, on mutual understanding Raisa issued a notice rescinding the agreement dated 21.01.1977 through Mr. Yakub Ali and then Raisa and Khan entered into a new agreement dated 01.05.1977 fixing the price of suit property at Tk.4,50,000/- out of which Tk.1,35,500/- was paid earlier according to the previous agreement and Tk.92,500/- was paid on 01.05.1977. It was also decided that Khan would pay Tk.60,000/- for release of the suit property. Then, Raisa disclosed that she would go to Pakistan to attend the marriage ceremony of her daughter and she appointed her brother as her attorney by an instrument dated 17.05.1977 to complete the transaction. Badiur showed a photocopy of the said power of attorney to Khan. On 11.07.1977 Khan departed for London after paying Tk.10,000/- to Badiur on 10.07.1977 for release of the property. He returned to Bangladesh in the middle of 1979 and Badiur told him that they were processing the matter. Badiur also asked him to pay further amount as Raisa was badly in need of some money. So, he again paid Tk.1,80,000/- in cash out of the balance consideration money as well as Tk.10,000/- to Badiur for the purpose of release of the suit property and then left for London. He returned in November, 1980 and requested Badiur to complete the transaction and paid Tk.40,000/- in cash and further amounts on different dates against written money receipt issued by Badiur on behalf of Raisa. The suit property was accordingly released from the list of abandoned property on 12.01.1982. Accordingly, Memo No.Sec.XVI/AP-28/77/20 dated 21.01.1982 was issued by the abandoned property authority releasing the suit property from the list of abandoned property. So, Khan came back to Dhaka on 18.01.1982 for getting the sale deed registered from Raisa. He paid Tk.40,000/- on 25.01.1982 to Raisa but again Raisa informed him that she would go to Syedpur for seven days and asked him to get ready with necessary papers for obtaining income tax certificate. Accordingly, Khan procured necessary papers but Raisa did not return in time. Thereafter, she refused to execute and register the sale deed in his favour. Subsequently, Badiur also disclosed that he purchased the suit property from Raisa and he would not transfer it to him, unless he pays an amount of Tk.25,00,000/-. Then, on search he found out that Badiur has created a forged sale deed on 15.01.1982 and has been claiming the suit property through it illegally.

8. Title Suit No.364 of 1982 was subsequently, transferred to the trial court and renumbered as Title Suit No.113 of 1984.

Khadiza Islam's case
as plaintiff in Title Suit No.224 of 1997
(original Title Suit No.75 of 1996)
and defendants of other suits

9. Khadiza, defendant No.7 of Title Suit No.483 of 1974, as sole plaintiff, filed Title Suit No.75 of 1996 in the 5th Court of Subordinate Judge, Dhaka on 27.04.1996 impleading Md. Waziuddin, Jamila, Salauddin, Mobarak Hossain, Noor Mohammad Khan and Bangladesh as defendant Nos.1, 2, 3, 4, 5 and 6 respectively for cancellation of sale deed No.4722 dated 30.11.1982 obtained through Court by Md. Waziuddin as well as for declaration of her right, title to and interest in the suit property and also for recovery of khas possession thereof by evicting Md. Waziuddin therefrom and permanent injunction upon Md. Waziuddin not to transfer the suit property to anyone stating that Raisa left the suit property under lock and key in the wake of liberation war of Bangladesh and in her absence, some miscreants took over

possession thereof. The Government erroneously included the suit property in the list of abandoned property. However, on Raisa's application, the Government released the suit property on 12.01.1982 and handed over possession thereof to her. Then Raisa transferred the suit property to Badiur by a registered deed of sale dated 15.01.1982 in pursuance of an agreement dated 11.09.1969 and delivered possession to him. He got his name mutated and then with the permission of the Government sold it to Khadiza for a sum of Tk.10,00,000/- by a registered deed of sale dated 04.09.1984. Badiur also delivered vacant possession of the suit property to her after execution of sale deed. She, after renewal of the lease deed from Government, had been in possession thereof till 05.05.1993, by using it as storage of construction materials of her construction company namely, Nirman Construction Company Limited (shortly, Nirman). Md. Waziuddin (Waziuddin) dispossessed her therefrom through Court on 05.05.1993 in Title Execution Case No.06 of 1992 arising out of the judgment and decree in First Appeal No.23 of 1984 arising out of Title Suit No.541 of 1982. Khadiza Islam was neither a party to Title Suit No.541 of 1982 nor in First Appeal No.23 of 1984 and she had no knowledge about the suit or appeal. Khadiza and the Managing Director of Nirman filed Civil Petition for Leave to Appeal (CPLA) No.195 of 1993 before the Appellate Division against the judgment and decree of First Appeal, but it was rejected as not being pressed. Thereafter, Khadiza filed the suit. In the plaint, it was further stated that according to the decree of First Appeal No.23 of 1984, Waziuddin was to deposit the balance consideration money within ninety days from the date of judgment and decree failing which the suit would stand dismissed. Waziuddin deposited the balance consideration money on 12.02.1992 by Challan No.24047, which was beyond the period of ninety days and, as such, the said suit stood dismissed but the execution case was filed on the basis of an inoperative decree and Khadiza was dispossessed from the suit property illegally. This suit on transferred to the trial court and was renumbered as Title Suit No.224 of 1997.

Title Suit No.112 of 1984
Plaintiffs-Salauddin and Mobarak's case

10. Plaintiffs Salauddin and Mobarak also filed Title Suit No.436 of 1982 before the 3rd Court of Subordinate Judge, Dhaka for specific performance of contract against Raisa, relating to the suit property. The suit was transferred to the 1st Court of Subordinate Judge, Dhaka. i.e. the trial court and renumbered as Title Suit No.112 of 1984. They claimed specific performance of contract relating the suit property on the basis of an agreement of sale dated 04.05.1979 with Raisa.

Written statement case of defendant No.1 Md. Waziuddin in Title Suit No.224 of 1997

11. It needs be mentioned that previously in the year 1997, one Waziuddin filed Title Suit No.541 of 1982 before the Subordinate Judge, Dhaka for specific performance of contract against Raisa on the basis of an oral agreement for sale of the suit property. The said suit was dismissed. Then Waziuddin filed First Appeal No.23 of 1984 before the High Court Division and the said appeal was allowed and the suit was decreed. Thereafter, Waziuddin got the sale deed registered through Court on 30.11.1992 and in execution of the said decree got possession of the suit property. Whereupon, Khadiza filed CPLA No.195 of 1993 before this Division against the said judgment and decree but it was dismissed as not pressed by Khadiza. Subsequently, Khadiza, as plaintiff, filed TS No. 224 of 1997 challenging the said judgment and decree of Waziuddin as discussed hereinbefore.

Written statement case of Raisa
(defendant No.1 in T.S. No. 483 of 1974)

12. Raisa filed written statement on 10.08.1976 denying all the allegations made in the plaint of Title Suit No.483 of 1974 and stating that she was not acquainted with Jamila and she did not enter into any agreement for sale with Jamila and that Jamila filed the suit with forged and created Bainapatra/agreement for sale and so, the suit is liable to be dismissed. However, Raisa eventually did not contest the suit.

Written statement case of Syed Badiur Rahman
(defendant No.6 in T.S. No.483 of 1974)

13. Defendant No.6 Badiur also filed a written statement and an additional written statement denying the plaint case and stating that Raisa left the suit property under lock and key in the wake of liberation war of Bangladesh and in her absence some miscreants took over possession thereof. The Government erroneously included the suit property in the list of abandoned property. However, on Raisa's application, the Government released the suit property on 12.01.1982 and handed over possession thereof to her. Then Raisa transferred the suit property to Badiur by a registered deed of sale dated 15.01.1982 in pursuance of an agreement dated 11.09.1969 and made over possession to him. He got his name mutated and then sold it to Khadiza for a sum of Tk.10,00,000/- by a registered deed of sale dated 04.09.1984 and delivered possession to Khadiza.

Written statement case of
Defendant Government in the suits

14. The Government as defendant of Title Suit Nos. 483 of 1974, 112 of 1984, 113 of 1984, and 66 of 1990 contested the suits by filing separate written statements denying all material allegations made in the plaints of the aforesaid suits. However, the Government admitted part of plaint case of Title Suit No.224 of 1997 filed by Khadiza. In the written statements the Government stated, inter alia, that original owner and possessor of the suit property was Norendra Mohan Sen by virtue of a long term lease granted by the then Secretary of the State for India Council through registered deed dated 24.04.1924. While Remendra Sen was in physical possession of the suit property, he transferred his lease-hold interest to Aswimi Kumar Bhowmik, who subsequently transferred the same to Raisa by Deed No.8497 dated 11.12.1957. Raisa being a non-bengali Urdu speaking person abandoned the suit property during liberation war. She was not traceable after liberation. So, the suit property was legally declared as abandoned property and some persons including the plaintiffs of the suits were trying to grab the suit property by creating forged bainapatra, deeds, etc.

15. However, mysteriously the Government subsequently changed its stand, released the suit property from the list of abandoned property allegedly on an application filed by Raisa. Thereafter, Raisa allegedly transferred her lease-hold interest to Badiur by registered deed No. 1204 dated 15.01.1982. While Badiur had been exercising his right to and possession in the suit property as lessee under the Deputy Commissioner, Dhaka, he transferred his lease-hold interest of the suit property to Khadiza through deed No. 368 dated 04.09.1984. Khadiza got the lease renewed from the Government on 03.07.1985 in continuity for a further period of 30 years as provided under section 170 of the Government Estate Manual, 1958. The suit property is the Khas Mohal Property of the Government. The transferees acquire only lease

hold interest in the suit property subject to the terms of the renewal deeds, both Badiur and Khadiza mutated their names in the record of right maintained by the Revenue Department and she has been possessing the suit property as a lessee under the Government. Khadiza became a recognized lessee under the Government through Misc. Case No. 48 of 1984. The suit property is being administered by the Dhaka Collectorate. The documents like bainapatra or otherwise must be false, fabricated and inoperative and are not binding upon the Government in anyway. The decree, if any, must have been obtained by practicing fraud.

Issues, trial and decisions in Title Suit Nos.483 of 1974, 112 of 1984, 113 of 1984, 66 of 1990 and 224 of 1997.

Issues

16. The following issues were framed by the trial courts together for deciding the merit of Title Suit Nos.483 of 1974, 112 of 1984, 113 of 1984, 66 of 1990 and 224 of 1997, as the suits were being tried analogously.

17. বিচার্য বিষয় সমূহঃ

- ১) দেওয়ানী ৪৮৩/৭৪, দেওয়ানী ১১২/৮৪, দেওয়ানী ১১৩/৮৪, দেওয়ানী ২২৪/৯৭, ও দেওয়ানী ৬৬/৯০ নং মামলা গুলো বর্তমান আকারে ও প্রকারে চলিতে পারে কি?
- ২) নালিশী সম্পত্তি বাবদে মিসেস জামিলা খাতুন চুক্তি প্রবলের ডিক্রী এবং মিসেস খাদিজা ইসলাম ও ভূমি মন্ত্রণালয়ের সচিবের মধ্যে ০৩/০৭/৮৫ ইং তারিখের সম্পাদিত ও ১১/১০/৮৬ ইং তারিখের ১৪৫৯৫ নং লীজ দলিল বেআইনী ভাবে করা হইয়াছে কি?
- ৩) রাইসা আজিজ কর্তৃক সৈয়দ বদিউর রহমান (বর্তমানে মৃত) এর সম্পাদিত ও রেজিস্ট্রিকৃত ১৫/০১/৮২ ইং তারিখের ১২০৮ নং দলিলটি বে-আইনী ও যোগাযোগী ভাবে সৃজিত করা হয় কি?
- ৪) সৈয়দ বদিউর রহমান কর্তৃক (বর্তমানে মৃত) আজিজুল ইসলামের অনুকূলে রেজিস্ট্রিকৃত ১৪৮৭ নং বায়না পত্রটি যোগাযোগ ও তৎপরতামূলে সৃজন করা হইয়াছে কি?
- ৫) ৩০/১১/৯২ ইং তারিখের ৪৭২২ নং দলিলটি ওয়াজ উদ্দিন কর্তৃক যোগাযোগীভাবে সম্পাদন ও রেজিস্ট্রি করা হইয়াছে কি?
- ৬) অত্র মোকদ্দমায় প্রার্থীত মতে ডিক্রী পাইতে পারে কি?"

Recording of evidence

18. The plaintiff of Title Suit Nos.483 of 1974 and 66 of 1990-cum-defendants of some other suits examined five witnesses in support of her case and they were cross-examined by the various defendants- cum-plaintiffs of some other suits. The defendants-cum-plaintiffs of some other suits examined totally fifteen witnesses in support of their respective cases, who were cross-examined by the contesting parties. The witnesses also produced some documents and those were marked as exhibits by the trial Court.

Decision of the trial Court

19. The trial Court on examination of the evidence on record by the common judgment and decree/order dated 18.08.2009 dismissed in Title Suit Nos.483 of 1974, 112 of 1984, 113 of 1984, 224 of 1997 and 66 of 1990 on contest against the contesting defendants and ex-parte against the rest.

First Appeals

20. Jamila filed Title Appeal Nos.454 of 2009 and 455 of 2009 before the High Court Division. The said appeals on transfer were re-numbered as Transfer Appeal(T.A) Nos.09 of 2004 and 10 of 2004.

21. On the other hand, Salauddin and Mobarak filed First Appeal No.167 of 2010 before the High Court Division. Noor Mohammad Khan filed First Appeal No.74 of 2010 and on transfer it was re-numbered as T.A. No.07 of 2014.

22. Khadiza filed First Appeal No.398 of 2009 and Waziuddin filed First Appeal No.488 of 2009 and on transfer the appeal of Khadiza was re-numbered as T.A. No.08 of 2014 and the appeal filed by Waziuddin was re-numbered as T.A. No.11 of 2014.

Decision of the High Court Division in appeals

23. The High Court Division, upon hearing all the appeals together, by a common judgment and decree/order dated 24th August, 2015 decided the appeals as under:

“In the result, the F.A. No.167 of 2010, T.A. No.7 of 2014, T.A. No.9 of 2014, T.A. No.10 of 2014 and T.A. No.11 of 2014 are dismissed without any order as to costs. The Transfer Appeal No.6 of 2014 arising out of Title Suit No.224 of 1997 is hereby allowed and the Title Suit No.224 of 1997 is decreed. The impugned Judgment and decree so far as it relates to Title Suit No.224 of 1997 is set-aside. The appellant of T.A. No.11 of 2014 is directed to handover vacant possession of the suit property in favour of Khadiza Islam, appellant of T.A. No.8 of 2014 within 6(six) months from the date of receipt of this judgment, in default, the appellant T.A. No.8 of 2014 is at liberty to get possession of the same through process of law.”

Civil Petition for Leave to Appeals

24. Feeling aggrieved-

Jamila filed CPLA No.1846 of 2016 before this Division, against the disallowance of her Transfer Appeal No.10 of 2014 by the High Court Division, for granting leave to appeal and leave was granted by this Division, which resulted in Civil Appeal No.30 of 2017. Jamila also filed CPLA No.4232 of 2018 against the dismissal of Transfer Appeal No.9 of 2014.

25. The heirs of Noor Mohammad filed CPLA No.1119 of 2016 before this Division against disallowance of Transfer Appeal No.07 of 2014 by the High Court Division and leave was granted by this Division. This resulted in Civil Appeal No.31 of 2017. The heirs of Noor Mohammad also filed CPLA No.2557 of 2016 before this Division against the judgment and decree, allowing Transfer Appeal No.08 of 2014 by the High Court Division, for granting leave to appeal. Leave was also granted in this CPLA which resulted in Civil Appeal No.32 of 2017.

26. However, Salahuddin and Mobarak did not take any further steps by filing CPLA after disallowance/dismissal of their F.A.No.167 of 1984. Similarly, Waziuddin did not take any further steps by filing CPLA after the High Court Division allowed T.A. No. 08 of 2014 of Khadiza and dismissed T.A. No.11 of 2014 filed by Waziuddin.

Grounds for granting leave by this Division in CPLA Nos.1119 of 2016, 1846 of 2016 and 2557 of 2016.

27.

(I) Because, the High Court Division has committed a manifest error of law in not considering the evidences and materials on record adduced from the side of the plaintiff in Title Suit No.113 of 1984 and also judgment of the trial Court, particularly when the trial Court itself failed to consider those evidence and materials on record while dismissing the

aforesaid Title Suit No.113 of 1984 and, as such, the impugned judgment and decree warrants interference by this court and therefore, the impugned judgment and decree is liable to be set aside.

(II) Because, the High Court Division as a last Court of facts misdirected itself in dismissing Transfer Appeal No.7 of 2014 by not taking into consideration the main point at issue involved in a suit for specific performance of contract such as whether or not the contract of sale between the parties was a genuine one or not and, as such, the impugned judgment and decree is liable to be set-aside.

(III) Because, both the courts below fell into an error of law by not considering that a contract for sale subject to subsequent registration of a deed of sale in respect of the property involved and that the transferor is debarred from enforcing any subsequent transfer in favour of a third-party and, as such, the impugned judgment and decree is liable to be set-aside.

(IV) Because, the High Court Division misdirected itself in law in decreeing the respondent's Title Suit No. 224 of 1997 without considering the petitioners' case that the plaintiff-respondent purchased the schedule suit land with prior notice of the contract for sale (bainapatra) dated 23.04.1969, exhibit-B, executed by defendant No.1, the original owner of the schedule suit land in favour of the petitioners' predecessor, namely, Noor Mohammad Khan, the original plaintiff and, as such, the impugned judgment and decree is liable to be set-aside."

Arguments on behalf of the contending parties

Arguments for Jamila Khatun

**Appellant of Civil Appeal No.30 of 2017 and Petitioner of CPLA No.4232 of 2018
(Plaintiff of Title Suit Nos.483 of 1974 and 66 of 1990 and defendants of other suits)**

28. Mr. M. I. Farooqui, the learned Advocate for the appellant of Civil Appeal No.30 of 2017 takes us through the judgments and decree of the trial court, the first appellate court, the connected materials on record and submits as under:

i) Jamila Khatun examined several witnesses to prove her case for specific performance of contract as well as cancellation of the deed of transfer infavour of Khadiza and lease renewal document in Khadiza's favour. She also produced the original bainapatra which is a document of more than 30 years old and submitted before the court from the custody of the proper person claiming the suit property. The witnesses of Jamila proved the case of execution of bainapatra by Raisa, admitted lease holder. The bainapatra was also proved through Ashfaq Ahmed (husband of Jamila) and other three witnesses.

ii) Raisa subsequently accepted consideration money for the suit property on various occasions and those money receipts were also proved by Jamila by producing money receipts with revenue stamps.

iii) After receiving most of the considering price upon executing bainapatra Raisa was infact merely a trusty of Jamila under sections 91 and 99 of the Trust Act and therefore, there was no scope for selling the suit property to any one by Raisa. But the trial court as well as the High Court Division (1st Appellate Court) without considering the said facts and circumstances unlawfully dismissed the suits as well as the appeals of Jamila.

iv) Raisa never sold the property to Badiur and the document of alleged sale by Raisa was a forged document and that is why Khadiza did not produce the original deed of such sale to Badiur by Raisa. Khadiza claimed that all the original documents were/are lying with her but she did not produce the most vital document of alleged sale by Raisa to Badiur as it was a forged document. The trial court legally dismissed the suit of Khadiza but the High Court Division allowed the appeal of Khadiza and decreed the suit infavour of Khadiza

unlawfully without considering that the original deed of alleged transfer of the suit property by Raisa infavour of Badiur was not produced before the courts below.

v) In the facts, circumstances and evidence on record, Jamila's suits ought to have been decreed, but the trial court dismissed the suits. The High Court Division erroneously dismissed the appeals of Jamila and allowed the appeal of Khadiza and decreed the suit filed by Khadiza illegally. Therefore, the civil appeal and CPLA of Jamila are liable to be allowed, decreeing the suit for specific performance of contract in favour of Jamila and cancelling of documents infavour of Khadiza by setting aside the judgment and decree of the High Court Division in Transfer Appeal No.8 of 2014.

In support of his submissions, Mr. Farooqui has relied on the decisions of the following cases:

- a) Lal Miah (Hajee) Vs. Nurul Amin and others reported in 57 DLR (AD) 64,
- b) Joynab Begum and others Vs. Shaheb Ali Akunji and others reported in 12 MLR (AD) 337 and 60 DLR (AD) 14.
- c) Md. Akbar & another Vs. Md. Aslam & another reported in 22 DLR (SC) 146.

Arguments for the heirs of

Noor Mohammad Khan

Appellant of Civil Appeal No.31 of 2017

(Plaintiff of Title Suit No.364 of 1982 renumbered as Title Suit No.113 of 1984 and defendants of other suits)

29. Mr. Nozrul Islam Chowdhury, the learned Senior Advocate for the heirs of Khan in Civil Appeal No.31 of 2017 takes us through the original bainapatra dated 23.07.1969 allegedly executed by Raisa infavour of Khan, legal notice dated 21.01.1977 allegedly issued by Raisa to Khan through her learned Advocate cancelling Bainapatra dated 23.07.1969, the agreement dated 01-05-77 i.e. the alleged Novation deed between Raisa and Khan, the other evidence on record and put forward the following arguments before us:

1) The bainapatra dated 23.07.1969, the legal notice dated 21.01.77 sent by Raisa to Khan cancelling bainapatra and the new agreement for sale i.e. novation deed dated 01.05.1977 and the money receipts clearly show that Raisa had entered into an agreement to sell the suit property in favour of Khan and she also received various amounts of money from Raisa on difference dates by issuing money receipts.

2) Raisa admitted in her legal notice (Exhit-1) about the execution of bainapatra dated 23.07.1969 and subsequently, Raisa also executed a fresh agreement of Novation dated 01.05.1977 infavour of Khan.

3) All the documents produced by Khan's heirs clearly proved that Raisa entered into an agreement of sale with Khan on 23.07.1969 long before liberation war. Therefore, their case is genuine.

4) Khadiza, Badiur, Jamila and others created some fraudulent bainapatra/deed of sale, etc. after liberation with the knowledge about original agreement between Khan and Raisa.

5) Khadiza did not produce the original document of alleged sale to Badiur by Raisa as it was a forged document. Moreover, Badiur himself was a witness of the agreements of Raisa with Khan.

6) Badiur subsequently, created a forged deed after release of the suit property from the list of abandoned property with the money of Khan and then he illegally transferred it infavour of Khadiza and Khadiza knowingly well that the bainapatra as well as transfer deed between Raisa and Badiur dated 23.07.69 and 01.05.77 are both forged documents created transfer document from Badiur.

7) Badiur neither acquired any lease hold right nor possession to the suit property from Raisa as she never transferred it to him. Therefore, Khadiza had not acquired any lease hold right to the suit property by her alleged purchase of leasehold right from Badiur.

8) The trial court considering all the facts dismissed the suit of Khadiza but the appellate court without considering the material evidence on record erroneously allowed the appeal filed by Khadiza and decreed the suit in her favour. Therefore, the judgment and decree allowing Transfer Appeal No.8 of 2014 and decreeing Title Suit No.224 of 1997 are liable to be set aside and the judgment and decree of dismissal by the trial court of the suit is liable to be restored.

9) Khan's heir proved the agreement of sale by Raisa with Khan by a series of documents marked as exhibits by the trial court since the year 1969, long before liberation and by examining witnesses. So, suit filed by Khan (Title Suit No.113 of 1984) is liable to be decreed in their favour.

Arguments for the heirs of

Noor Mohammad Khan

Appellant of Civil Appeal No.32 of 2017

(Plaintiff of Title Suit No.364 of 1982 renumbered as Title Suit No.113 of 1984 and defendants of other suits)

30. Mr. A. J. Mohammad Ali, the learned Senior Advocate for the heirs of Khan in Civil Appeal No. 32 of 2017 adapts the arguments of Mr. Nozrul Islam Chowdhury and adds that Nuru Miah as a witness of the novation dated 01.05.1977 proved deed of novation executed by Raisa apart from other witnesses. Khan also filed Title Suit No. 364 of 1982 on 20.07.1982, it was renumbered Title Suit No. 113 of 1984. Therefore, the suit was also filed by Khan long before the alleged purchase of the property by Khadiza. He next submits that Khan's heirs are entitled to have a decree for specific performance of contract as all other claimants to the suit property are bound by the contract, which was executed earlier on 23.07.1969, under section 27B of the Specific Relief Act. Therefore, Civil Appeal No. 32 of 2017 is liable to be allowed and the suit filed by Khadiza is liable to be dismissed by setting aside the judgment and decree passed by the High Court Division in Transfer Appeal No. 8 of 2014.

31. In support of the contentions, Mr. A. J. Mohammad Ali has relied on the decisions in the cases of- (a) I.C.I (Bangladesh) Limited Vs. M/s. G. K. Brothers reported in 36 DLR (HC) 114 (b) Ezaher Meah and others Vs. Shaher Banu and others reported in 2 BLC (AD) 30 and (c) Lal Miah (Hajee) Vs. Nurul Amin and others reported in 57 DLR (AD) 64.

Arguments on behalf of respondent Khadiza

in Civil Appeal Nos.30-32 of 2017

(Plaintiff of Title Suit No.224 of 1997, original Title Suit No.75 of 1996 and defendants of other suits)

32. Mr. A.M. Aminuddin, the learned Senior Advocate for Khadiza takes us through the copy of the deed of transfer by Badiur in favour of Khadiza, renewal of lease by Government in favour of Khadiza and the other documents filed by her and contends as under:

1) Admittedly, Raisa had lease-hold right to the suit property through registered document dated 11.12.1957. Raisa, being non-bengali left suit property immediately after liberation by keeping it under lock and key and some miscreants took over possession of it.

2) The suit property was then declared as abandoned property.

3) Raisa filed an application for its release and got the suit property released in her favour on 15.01.1982. Raisa then transferred the suit property to Badiur. Thereafter, Badiur

transferred the suit property to Khadiza in 1984. Then Khadiza extended the lease from Government for another 30 years by paying taka one lac.

4) Khadiza had been in possession of the suit property by using it as a storage for building construction materials of her company 'Nirman' till she was dispossessed on 05.05.1993 in Execution Case No.6 of 1992, arising out of judgment and decree in First Appeal No.23 of 1984.

5) Khadiza was never a party to the suit, appeal or execution case and she had no knowledge about the suit, appeal or execution case and after her knowledge she filed the suit.

6) The trial court erroneously dismissed the suit but the High Court Division in consideration of the evidence on record allowed T.A. No.08 of 2014 in favour of Khadiza and decreed the suit legally.

7) The bainapatra and other documents of Khan, Jamila, Wajiuddin, Mobarak and others are all forged documents. Therefore, dismissal of the suits and appeals filed by those persons are legal and Civil Appeal Nos.31-32 and CPLA No.4232 of 2018 are all liable to be dismissed.

Arguments on behalf of the Government:

33. Mr. Murad Reza, the learned Additional Attorney General with the leave of the Court appearing on behalf of the Government in all the appeals and the CPLA takes us through the materials on record, specially the original record/file of abandoned property authority since middle of the year 1977, and submits as under:

1) It is clear from the record of abandoned property authority that once the prayer for releasing the suit property by alleged Raisa Aziz Begum was rejected by the Government, considering all the facts and circumstances of the case. The original file relating to the suit property from the beginning of 1972 up to part of 1977 was not traceable and missing.

2) Subsequently, most curiously the then Chief Election Commissioner issued a letter in favour of Raisa Aziz Begum certifying that he knew her. Whereupon, abandoned property authority with reference to the said letter again considered alleged Raisa's case and eventually released the suit property from the list of abandoned properties. However, immediately after such release order, there is a note in the relevant file showing that the release of the suit property from the list of abandoned property should be immediately stopped.

3) Many documents in connection with this case were also seized by CID and now they are not traceable. Similarly, it is noted in the file that original file were sent to the then learned Government Pleader, but the said original file was not traceable and the learned Government Pleader denied to have received any such file.

4) The original alleged deed of sale by Raisa to Badiur was neither produced before the abandoned property authority/Dhaka collectorate i.e. Khas Mohal property management authority nor in the Court by Khadiza in support of her case. She has not also filed the said most important document in any other court or Government authority. This clearly proves that Raisa did not sale/transfer her lease-hold right to the suit property to Badiur or anyone else.

5) From the record of the abandoned property authority, it is crystal clear that the suit property was rightly included in the list of abandoned property, but unfortunately in connivance with some dishonest Government Officials a valuable property of the Government was unlawfully released from the list of abandoned property authority. There is no evidence on record to prove that Raisa was in Bangladesh after liberation. Everything was done through a fictitious person.

6) Even if the suit property is released from the list of abandoned property, the suit property is a Government khas mohal property. Khadiza could not produce the original documents of alleged sale by Raisa to Badiur and, therefore, she was not entitled to extend the leasehold right as Raisa never transferred the property to Badiur.

7) As the original deed of purchase by Badiur could not be produced, Khadiza miserably failed to prove her title to or leasehold right to the suit property. Therefore, the subsequent extension of lease by Khadiza is *ex facie* collusive, illegal and void.

8) Waziuddin also obtained a decree in F.A. No.283 of 1983 for specific performance of contract by forged document. So, the said decree ought to be set-aside and his registered deed is liable to be cancelled.

9) All the suits including that of Khadiza are fictitious suits filed through some forged documents and therefore, all the suits were legally dismissed by the trial court on examining the evidence on record and all the appeals are legally dismissed by the High Court Division except the appeal filed by Khadiza. The appeal filed by Khadiza ought to have been dismissed as she failed to prove her case but the High Court Division without properly examining the evidence on record erroneously allowed Khadiza's appeal and decreed the suit. Thus, Civil Appeal No.32 of 2017 and CPLA 4232 of 2018 are liable to be allowed to the extent of Khadiza's decree in appeal for khas possession and the judgment and decree passed by the trial Court dismissing all the suits including that of Waziuddin is/are liable to be restored. Civil Appeal Nos.30 and 31 of 2017 are liable to be dismissed.

10) The matters/appeals/civil petition are of exceptional in nature as a deed for lease extension was obtained by Khadiza through forged documents and several influential parties are fighting for grabbing the valuable Government property i.e. suit property and one of them i.e. Khadiza almost succeeded to do so in collusion with the Government Officials. Thus in these matters, the Court's power under article 104 of the Constitution needs to be exercised for doing complete justice to protect a Government property, otherwise other land/property grabbers would be encouraged to do so.

Examination of records:

34. We have examined the leave granting order, the judgment and decree passed in the various suits, in the appeals, the CPLAs of the respective parties and carefully examined the evidence on record including the documents marked as exhibits by the trial court and the testimonies of the witnesses. We have also carefully studied the file of Abandoned Property Authority, produced before us as per our direction.

Admitted facts:

35. The suit property is the khas Mohal property of the Government vide plaint and the schedule of the plaint of Title Suit No.112 of 1984 filed by Khadiza. Norendra Mohan Sen (Norendra) was a long term lessee under the Government by virtue of a long term lease granted by the then Secretary of State of India Council through a registered deed. Norendra transferred his leasehold right to Aswini Kumar Bhowmik (Aswini) and Aswini transferred his leasehold right to Raisa by a registered deed dated 11.12.1957 vide judgments of the trial Court and the High Court Division, testimonies of D.W.1 and other witnesses and the materials on record. Khan's heirs claim that Norendra was the owner of the suit property and he transferred it to Aswini by a registered deed. Aswini then transferred the suit property to Raisa by a registered deed dated 11.12.1957. However, during their arguments before us, the learned Senior Advocates/ Advocates for all the contending parties admitted that the suit property is the Khas Mohal property of the Government and Raisa was a long term lessee under the Government. The suit property bearing Holding No.10 is situated at Purana Paltan, Dhaka i.e. at the heart of Capital and is a valuable property. All the plaintiffs of respective

suits claimed the suit property through Raisa. Raisa was a non-bengali. So, immediately before liberation of Bangladesh, Raisa left the suit property. Whereupon, the suit property was declared as an abandoned property and was enlisted in the list of abandoned properties. The suit property being enlisted as an abandoned property was included in the 'ka' list of the abandoned properties published in the Gazette Notification. But subsequently it was dropped from the list of abandoned properties by another Gazette Notification. It was released on prayer of a person allegedly claiming herself to be Raisa, the leaseholder of the suit property.

Deliberation of the Court:

36. At the beginning, we would like to discuss the merit of the case of Khadiza, as allowing of her appeal is challenged by the heir of Khan in Civil Appeal No.32 of 2017 and by Jamila in CPLA No.4232 of 2018.

37. The learned Additional Attorney General in his arguments strenuously argued that the suit property is an abandoned property and Raisa never executed any bainapatra or deed of transfer in favour of Badiur and that those are forged documents but the Government Officials in collusion with Badiur and Khadiza excluded this valuable property from the list of abandoned property.

38. Khadiza filed a suit for declaration of her 16 annas title to the suit property, recovery of khas possession, perpetual injunction and some other relief. Therefore, we would first examine how far Khadiza has been able to prove her title to the suit property.

39. For this purpose, we would first study the abandoned property record/file relating to the suit property, which has been submitted by the concerned authority as per order of this Court.

40. Some of the notes of this file are quite mysterious and so, we would like to quote those relevant notes hereinafter:

“দরখাস্ত তাং- ১৩-৭-৭৭ হইতে আঃ রহিম খান,

দরখাস্ত তাং- ১৩-৭-৭৭ হইতে নুর হোসেন খান,

দরখাস্ত তাং- ১৩-৭-৭৭ হইতে আরফান উদ্দীন আহমদ

১। আলোচ্য পত্র গুলি দেখা যাইতে পারে। মূল নথি ১০/১১/৭৬ তারিখে কনফতর দনরর প্রেরণ করা হইয়াছিল। এখন পর্যন্ত ফেরত পাওয়া যায় নাই। কনফতর দনরর নথিটি ফেরত দেওয়ার জন্য তাগিদ দেওয়া যাইতে পারে।

আবেদনকারীগণ ভাড়া দিয়াছেন কিনা জানা যায় না। ভাড়া পরিশোধের চালান কপি দাখিল করিতে নির্দেশ দিতে পারি।

খসড়া জারী করা যাইতে পারে।

স্বাঃ দুস্পাঠ্য

১৮/৭/৭৭

বিলি নং- ৬২৬(২) তাং- ২৮-৭-৭৭

দরখাস্ত তাং- ২০-৭-৭৭ হইতে আরফান উদ্দীন

দরখাস্ত তাং- ২০-৭-৭৭ হইতে আঃ রহিম খান

দরখাস্ত তাং- ২০-৭-৭৭ হইতে নুর হোসেন খান

২। আলোচ্যপত্রগুলি দেখা যাইতে পারে। ভাড়া দেওয়ার জন্য নির্দেশ দেওয়া যাইতে পারে।

খসড়া জারী করা যাইতে পারে।

স্বাঃ দুস্পাঠ্য

৬/৮/৭৭

পত্র তাং- ২০-৮-৭৭ হইতে নুর হোসেন খান,

পত্র তাং- ২৩-৮-৭৭ হইতে আঃ রহিম খান

পত্র তাং- ২৩-৮-৭৭ হইতে আরফান উদ্দীন

৩। আলোচ্য পত্রটি দেখা যাইতে পারে।

১০ নম্বর পুরানাপল্টনস্থ পরিত্যক্ত বাড়ীটিতে পুরাতন ভাড়াটিয়া হিসাবে ডিমাড নোটিশ পাইয়া জনাব নূর হোসেন, আবদুর রহিম খান এবং আরফান উদ্দিন আহমেদ ভিন্ন ভিন্ন দোকানে ব্যবসা চালাইতেছেন। ডিমাড নোটিশ মোতাবেক দেখা যায় মাসিক ৯০/- টাকা হিসাবে ১/১/৭২ হইতে টাকা জমা দেওয়ার নির্দেশ দেওয়া হয় পত্রাংশ ৫, ৩৩ ও ৭ পৃঃ। তাহারা ৩১/৭/৭৭ তারিখ পর্যন্ত নির্ধারিত হারে ভাড়া পরিশোধ করিয়াছেন (পত্রাংশ ২৪, ২৯ ও ৩৬পৃঃ)। পুরাতন ভাড়াটিয়া হিসাবে তাহারা প্রত্যেকেই পূর্বত পুরাতন ভাড়াটিয়া রশিদ দাখিল করিয়াছেন (পত্রাংশ ১৬, ১৫, ১২ ও ১১ পৃঃ) প্রয়োজন বোধে আরো ভাড়াটিয়া রশিদ চাওয়া যাইতে পারে।

এমতাবস্থায় পুরাতন ভাড়াটিয়া হিসাবে তাহাদের বরাদ্দদেওয়ার ব্যাপারে বিবেচনা করা যায় কিনা সদয় আদেশের জন্য পেশ করা হইল।

স্বাঃদুস্পাঠ্য

৭/১০/৭৭

৪। উপ সচিবের সহিত আলোচনা হইয়াছে খসড়া জারী করা যাইতে পারে।

স্বাঃ দুস্পাঠ্য

১৭/১০/৭৭

জারী নং ৯৩৬ তাং-১৮/১০/৭৭

৫। ১০ এ নম্বর পুরানাপল্টনে পুরাতন ভাড়াটিয়া হিসাবে ডিমাড নোটিশ পাইয়া জনাব নূর হোসেন, আবদুর রহিম খান এবং আরফান উদ্দিন আহম্মদ ভিন্ন ভিন্ন দোকানে ব্যবসা করিতেছেন। পুরাতন ভাড়াটিয়া হিসাবে ভাড়ার রশিদ দাখিল করিয়াছেন। (পত্রাংশ ১১, ১২ ও ১৫ ও ১৬) ডিমাড নোটিশ মোতাবেক মাসিক ৯০/- টাকা হিসাবে ১/১/৭২ হইতে টাকা জমা দেওয়ার জন্য নির্দেশ দেওয়া হয় (পত্রাংশ ৫, ৭, ২২ ও ৩৩ পৃঃ)। তাহারা ৩১/১২/৭৭ পর্যন্ত ভাড়া পরিশোধ করিয়াছেন। (পত্রাংশ ৩৯ হইতে ৪০ পৃঃ)।

তাহারা বরাদ্দ চাহিয়া আবেদন করিয়াছেন (পত্রাংশ ৩২ পৃঃ)। তাহাদের আবেদন বিবেচনা করা যায় কিনা। সদয় আদেশের জন্য পেশ করা হইল।

স্বাঃদুস্পাঠ্য

২৩/১২/৭৭

৬। How can it be determined if they are old tenants or not without the original file? The file from L.C. may be brought such for the purpose.

s/d- illegible

26.12.77

Legal cell কে মূলনথি ফেরত দিতে অনুরোধ করা হইতেছে।

স্বাঃ দুস্পাঠ্য

৩১/১২/৭৭

৭। নথি নং ১ই -৫২/৭২ অংশ হোল্ডিং নং ১০/এ, পুরানা পল্টনস্থ নথি খানা গত ২২/১২/৭৬ তারিখে সরকারী উকিল সাহেবের নিকট পাঠানো হইয়াছিল। উক্ত নথি খানা অদ্যাবধি ফেরত আসে নাই। সদয় বিবেচনার জন্য পেশ করা হইল।

জানানো হউক।

ট.অ.কার্যক্রম নিন।

স্বাঃ দুস্পাঠ্য

৯.২.৭৮

৮। তদন্ত রিপোর্টের জন্য নির্বাহী প্রকৌশলী এপি বিভাগ এর নিকট লেখা যাইতে পারে।

খসড়া জারী করা যাইতে পারে।

স্বাঃ দুস্পাঠ্য

১১.২.৭৮

বিলি নং- ১৬৬ তাং- ১৩-২-৭৮ (পৃ ৪৫)

৯। Pl. send an urgent requisition to the G.P. Dacca to send the file lese. Put up with it on 25.3.78. who had asked to call for a report on 10, where the file is on 10/A PP? will he clarify please?

স্বাঃ দুস্পাঠ্য

১৭.৩.৭৮

১০। Be the drafted letter issued at once to G.P. The draft for the letter at page 45 was ready put up by the former S.A. that in his writing is not available now. Whether the typist made any mistake or the Asstt. through inadvertence or otherwise, cannot be determined now D.S. may see this with reference to his query dt. 17.03.1978

স্বাঃ দুস্পাঠ্য

১৭.৩.৭৮

বিলি নং- ৩৫২ তাং ২১-৩-৭৮ (পৃঃ ৪৬)

11.Pl. issue reminder to G.P. to send back the file under mention in our memo at p-46/C.

Pl. do not delay.

স্বাঃ দুস্পাঠ্য

১১/৬

Orders above.

Draft put up below may issue.

স্বাঃদুস্পাঠ্য

১২/৬/৭৯

Page No. 47 issue.

পত্রাংশ ৪৮ জারি

পত্রাংশ ৪৯ জারি।

১২। অনুচ্ছেদ নং ৭ এ উল্লেখিত নথিটি শাখা প্রধান সাহেবের সম্মুখে বিজ্ঞ জি.পি, সাহেবের অফিসে খোজ করা হইয়াছে। আলোচ্য নথিটি পাওয়া যায় নাই। এমনকি তাহাদের ডায়রীতে উল্লেখিত মামলার কোন প্রকার উল্লেখ পাওয়া যায় নাই। কোর্টে কয়েকবার উল্লেখিত মামলার বর্তমান পরিস্থিতি জানিতে গেলে কোর্টের সেরেন্সা অফিসের পেশকার মেসবাহ সাহেব জানাইয়াছেন যে, উল্লেখিত মামলার রেকর্ড পাওয়া যাচ্ছে না।

স্বাঃ দুস্পাঠ্য

২৯/১০/৮১

১৩। শাখা প্রধান(আইন) মহোদয়ের সহিত আলোচনা হইল।

আইন কোষের সমস্ত রেকর্ড অনুসন্ধান করিয়া নথি রক্ষক জানাইয়াছেন ১০/এ পুরানা পল্টনস্থ বাড়ীর আর কোন নথি আইন কোষে নাই।

স্বাঃ দুস্পাঠ্য

৩১/১০/৮১

শাখা প্রঃ(আইন)

১৪। ১০ নং পুরানা পল্টনস্থ বাড়ীটি খারিজ করার জন্য জনাবা রায়সা আজিজ বেগমের আবেদন।

আলোচ্য পত্রটি দেখা যাইতে পারে। জনাবা রায়সা আজিজ ১০ নম্বর পুরানা পল্টনস্থ পরিত্যক্ত মালিকানা দাবী করিয়া আবেদন করেন। মালিকানার স্বপক্ষে দলিল সহ সংশ্লিষ্ট কাগজপত্র এবং পাকিস্থান যাইবার জন্য ইচ্ছা প্রকাশ করেন নাই - এই মর্মে স্বরাষ্ট্র মন্ত্রণালয় হইতে প্রতিবেদন চাওয়া যাইতে পারে।

খসড়া জারী করা যাইতে পারে।

স্বাঃ দুস্পাঠ্য

৩০/১১/৭৭

বিলি নং- ১১১৮ তাং ৩০-১১-৭৭(পৃঃ ৭)

পত্র তাং- ১০-৭-৭৮ হইতে Legal cell (পৃঃ ৮)

১৫।As desired by the OSD (Legal Cell) the file may be sent to S.O. Law.

S/d- illegible

১৮/৭

বিলি নং- ১৩৭ তাং ১৭-৫-৭৯(পৃঃ-৯)

বিলি নং- ১৩৮ তাং ১৭-৫-৭৯(পৃঃ-১০)

নং ২১৩ তাং ২২.৫.৭৯ হইতে এ হাকিম(পৃঃ ১১)

১৬।বিবেচ্য পত্র দ্রষ্টব্য- আবেদনকারিনীর নিকট একখানা Forwarding letter সহ স্বরাষ্ট্র মন্ত্রণালয়ের Form পূরণ করার -খসড়া উপস্থাপন করা যাইতে পারে।

স্বাঃ দুস্পাঠ্য

২৪/৫/৭৯

১৭।-----

পত্রাংশ ৪২ জারি

পত্রাংশ ৪৩ জারি

No. ১৬৪৬- Im/III(IN-40/780 dt. 4-7-80 from M/O Home Affairs.

১৮।মিসেস রইসা আজিজ ১০ নং পুরানা পল্টন বাড়ীর মালিকানা দাবী করিয়াছেন। দাবীর সমর্থনে তিনি দলিল (তিনখানা), খতিয়ান এবং সদর মহকুমা অফিসার, ঢাকা/ দক্ষিণ) এর নিকট লিখিত ২/৫/৭২ তারিখের পত্রের ফটোস্ট্যাট কপি দাখিল করিয়াছেন। মন্ত্রণালয় নন অপশন ও নাগরিকত্ব সার্টিফিকেট স্বরাষ্ট্র মন্ত্রণালয় হইতে সংগ্রহ করিয়াছেন। মিসেস রইসা আজিজকে ৯/১/৮০ তারিখের স্মারকে মূল দলিল ইত্যাদি দাখিল করিতে বলা হইয়াছে। কিন্তু ইহার কোন জবাব পাওয়া যায় নাই। দেখা যায় যে, বাড়ীটি সম্পর্কে একটি মামলাও দায়ের করা আছে। মামলাটির বিস্তারিত বিবরণ নথিতে নাই। বাড়ীটি বর্তমানে কাহার দখলে আছে তাহারও কোন তথ্য নাই।

এই অবস্থায় মামলা সম্পর্কে অবহিত করার জন্য আইন কোষকে অনুরোধ করা যাইতে পারে। বাড়ীটি সম্পর্কে সরেজমিনে তদন্ত করিয়া একটি রিপোর্ট দেওয়ার জন্য ও জয়েন্ট সার্ভে টিমকে লেখা যাইতে পারে।

স্বাঃ দুপ্পাঠ্য

২৪/৭/৮০

১৯।প্রস্তাব মতে কাজ করুন। ৯-১-৮০ তারিখের চিঠির তাগিদ দিন এবং মূল দলিল পত্র লইয়া তাঁহার ছবি ও নমুনা স্বাক্ষর সহ ০৭ দিনের মধ্যে মন্ত্রণালয়ে ব্যক্তিগতভাবে উপস্থিত হইতে বলুন। ছবি ও নমুনা স্বাক্ষর একজন প্রথম শ্রেণীর গেজেটেড অফিসার দ্বারা সত্যায়িত হইতে হইবে।

পূর্ব পৃষ্ঠায় ক চিহ্নিত সম্পর্কে অবহিত করার জন্য নথি আইন কোষে পাঠানো গেল।

স্বাঃদুপ্পাঠ্য

২৮/৭/৮০

২০

২১

২২

২৩

২৪। মামলার পরিস্থিতি জানার জন্য নোট করিয়া নেওয়া হলো।

স্বাঃদুপ্পাঠ্য

১১/৯/৮০

Application dt.23.09.81 from Raisa Aziz Begum

২৫। পুরানা পল্টনস্থ ১০ নং বাড়ীর উপর মালিকানা দাবী সম্পর্কিত রাইছা আজিজ বেগমের আবেদন ৯৬ পাতায় দেখা যাইতে পারে। তিনি ইতিপূর্বে আবেদন করিলে তাহার নিকট তাহার দাবীর স্বপক্ষে সংশ্লিষ্ট কাগজপত্র ও দলিলাদি মন্ত্রণালয়ে পেশ করার জন্য বলা হয় এবং আবেদনকারিনী পাকিস্তানে যাওয়ার ইচ্ছা প্রকাশ করিয়াছিলেন কিনা এই মর্মে প্রতিবেদন দেওয়ার জন্য স্বরাষ্ট্র মন্ত্রণালয়কে অনুরোধ করা হয়। অত্র মন্ত্রণালয়ের বক্তব্যেও অনুসরণে জনাবা রাইছা আজিজ তাহার দাবীর স্বপক্ষে যেসব দলিলপত্র ও কাগজাদি পেশ করেন তাহা ৬৩-৮৭ পাতায় দেখা যাইতে পারে। স্বরাষ্ট্র মন্ত্রণালয় কর্তৃক প্রদত্ত সনদ হইতে দেখা যায় যে তিনি পাকিস্তানে যাওয়ার ইচ্ছা প্রকাশ করেন নাই। জনাবা রাইছা আজিজ যে বরাবরই বাংলাদেশী নাগরিক সে মর্মেও স্বরাষ্ট্র মন্ত্রণালয় সনদপত্র জারী করিয়াছেন। অবস্থা দৃষ্টে প্রতীয়মান হয় যে জনাবা রাইছা আজিজ বেগমই উক্ত বাড়ীর প্রকৃত মালিক। বর্তমানে যাহারা উক্ত বাড়ীতে বসবাস করিতেছেন তাহাদেশ বক্তব্যেও রাইছা আজিজকে মালিক বলিয়া উল্লেখ করিয়াছে। তবে ইতিপূর্বে বিষয়টি সম্পর্কে কোন সিদ্ধান্ত নেওয়া হয় নাই। নথি খানা লিগেল সেলে ছিল।

২৬। অনুচ্ছেদ ৭ হইতে প্রতীয়মান হয় উক্ত বাড়ী সংক্রান্ত আরো একটি ফাইল ছিল এবং টি.এস.কেস নং-৪৯৩/৭৪ এর প্রেক্ষিতে ১৯৭৬ সালে সরকারী উকিলের নিকট প্রেরণ করা হয়। এ বিষয়ে আমি ব্যক্তিগতভাবে সরকারী উকিলের সহিত যোগাযোগ করিয়াছি কিন্তু ফাইল এবং উক্ত মামলা সম্পর্কে কোন পাতাই পাওয়া যায় নাই। ফাইলটি পাওয়া যাওয়ার পর কোনসম্ভাবনা আছে বলিয়াও মনে হয় না। এপ্রসঙ্গে নোটের ১২ এবং ১৩ অনুচ্ছেদে প্রতি সদয় দৃষ্টি আকর্ষণ করা হইল। উক্ত মামলাটি কি সংক্রান্ত তাহা বুঝা যাইতেছে না। মামলার প্রকৃতি সম্পর্কে অন্বেষণ হওয়ার পূর্বে মালিকানা দাবী সম্পর্কে কোন সিদ্ধান্ত গ্হনওয়া সমীচীন হইবে বলিয়া মনে হইতেছে না। বাড়ীর উপর মালিকানা দাবীদারকে মামলা সংক্রান্ত কোন কাগজপত্র থাকিলে তাহা পেশ করার জন্য বলা যাইতে পারে।

Yes

স্বাক্ষর: দুপ্পাঠ্য

২০/১১/৮১

স্বাক্ষর: দুপ্পাঠ্য

উপসচিব

২৬/১১/৮১

২৭.

28. Receipt at page 103/C along with its enclosures in response to our memo at page 97/C may kindly be seen. This relates to the claim of ownership on holding No.10, Purana Paltan by Raisa Aziz Begum. In this connection page 96/C and para 25/N & 26/N ante may also kindly be seen. As for T.S. Case No.483 of 1974 as mentioned under para 26/N

ante, this is a case for breach of specific performance of contract. It appears that the owner of the said holding allegedly entered into an agreement with one Mrs. Jamila Khatoon for selling the property in question on 20th January, 1972. **The applicant, Raisa Aziz Begum personally appeared before me and stated that the said case was engineered by said Mrs. Jamila Khatoon Begum to grab her property illegally.** As for this Ministry, we are not any way connected or concerned in the said suit for specific performance of contract as initiated by Mrs. Jamila Khatoon wife of Ashfaque Ahmed. It appears from page 102/C, that the rent of the property is being paid by Mrs. Raisa Aziz Begum as a owner of the property. It appears that rent is cleared up to date. Now the papers submitted by Mrs. Raisa Aziz in support of her ownership as previously indicated under para 25/N ante, we may strike off the property at **10, Purana Paltan from the abandoned list and release the same in favour of its owner, Mrs. Raisa Aziz Begum wife of late Sayed Azizur Rahman.**

S/d illegible

04.12.81

29. Notes above may be perused. **The owner Mrs. Raisa Aziz Begum is a Bangladeshi national (C.P>94)& comes of a respectable Muslim family as certified by the Chief Election Commissioner, vide C.P.95.** The house may be struck off from the list of A.P.

S/d illegible

04.12.81

30. According to the petitioner herself, **her prayer for release was rejected in 1976 (vide memo No.1-E-52/72/296 dt. 20-5-76).** Please put up that file for perusal.

S/d illegible

08.12.81

31. Minutes at para 30/N ante prepage bottom may kindly be seen. The original file as is already indicated under para 26/N ante was sent to the Court in connection with the suit (483/1974) for specific performance of contract. The alleged suit was brought by one Mrs. Jamila Khatoon for breach of contract by Mrs. Raisa Aziz Begum, the claimant of the property at 10, Purana Paltan. **As the original file is missing the memo No.1-E-52/72/296 dt. 20.5.76 is not available in the Ministry now.** It appears that the previous petition was rejected because of the above mentioned suit in which this Ministry is not involved anyway. Further this suit reveals that the applicant **Raisa Aziz Begum is the defecto owner of the property in question.** Being asked by this Ministry the papers submitted by Mrs. Raisa Aziz bear testimony that **she is the original owner of the property at 10, Purana Paltan, Dacca.** Now at this stage in pursuance of Article 16(2) of the P.O.16/72, the property at 10, **Purana Paltan, Dacca may be dropped from AP list in favour of Mrs. Raisa Aziz Begum.**

S/d illegible

14.02.81

32. **Let us wait for the original file.**

33. S.O XVI to please put up in file.

34. Receipt at pages 104-109/C received from Raisa Aziz Begum regarding her claim on the property at 10, Purana Paltan may kindly be seen. In this connection preceding notes from 25/N ante detailing the issue may also kindly be perused. As to the observation under para 32/N ante prepage bottom, it is already indicated under paras 12/N and 13/N ante that the original file is neither available in Ministry nor in the office of the CJP. In the office of the CJP extensive search was made in my presence, but the file was not found and there is little possibility of its availability as it is missing since 1974. Now in consideration of the papers made available by Raisa Aziz Begum in support of her right

of claim on the property in question and the exposition made under para 31/N ante, the property at 10, Purana Paltan may be dropped from the AP list.

35. **Why had she delay in filing this papers?**

36. Issue the draft.

37. Minutes at para 35/N ante prepage bottom. In this connection page 110/C and the submission made by Raisa Aziz Begum may kindly be seen at page 112/C. It appears that Mrs. Raisa Aziz Begum has been claiming the title of ownership on the property at 10, Purana Paltan since 1972 and has been pursuing it continuously as it appears from the instant representation. Now in pursuance of the expectation made under para 34/N ante and the Article 16(2) of P.O.16/72, the property at 10, Purana Paltan may be dropped from the AP list.

38. Issue the draft.

S/d. illegible

12.01.82

39. **Please discuss and stay proceedings until we come to a decision.**

40. Pl put up in file immediately.

41. Slip at page 115/C along with the minutes of the HSM on it as transcribed under para 39/N ante may kindly be seen. This relates to the holding No.10, Purana Paltan, Dacca which is dropped from the list of AP in pursuance of Article 16(2) of the P.O. 16/72. In this connection para 37/N ante and preceding paras from 25/N ante may also kindly be seen for discussion of the issue with the Hon'ble State Minister.

42. H.S.M. is no more in office and as such there is no scope for discussion with him.

43. S.O. XII for n.a.

44. Notes from preceding para 41/N ante. It is for kind decision whether eviction as prayed for vide representation at page 121/C should be restored to. Submitted for kind orders.

S/d. illegible

31.03.82

45. What is the name of the occupant & what is his profession? Please give him a notice by name **to vacate the house on or before 5.4.1982 failing which he will be evicted,** with copy to the owner.

S/d. illegible

31.03.82

46. Pl issue the draft.

৪৭। বিবেচ্য পত্র ১২৪-১৫৬ পাতায় এবং ১৫৭-১৬০ পাতায় অনুগ্রহপূর্বক দেখা যাইতে পারে। বিষয়টি ১০ নং পুরানা পল্টনস্থ বাড়ীর দখল সম্পর্কিত। বাড়ীটি বিগত ১২-১-৮২ তারিখে জনাবা রইসা আজিজের অনুকূলে খারিজ করা হইয়াছে। বাড়ী বসবাস কারীগণের মধ্যে শুধুমাত্র শালিঙ্গনগর ক্লাব ব্যতীত বাকি ৬জন বসবাসকারী মালিককে দখল বুঝাইয়া দিয়াছে বলিয়া জনাবা রইসা আজিজ আবেদনে জানাইয়াছেন। (পত্রাংশ ১২৪ হইতে ১৫৬) শালিঙ্গনগর ক্লাবের দখলীয় অংশ বুঝাইয়া দেওয়ার জন্য ২২-৫-৮২ তাং জনাবা রইসা আজিজ আবেদন করিলে উপদেষ্টা মহোদয় “Can't we help if she is stating the facts?” বলিয়া মন্তব্য করিয়াছেন।

৪৮। শালিঙ্গনগর ক্লাব, উপদেষ্টা মহোদয়ের নিকট অস্থায়ীভাবে থাকার অনুমতি প্রার্থনা করিলে সমস্ত বিষয়টি লিখিতভাবে উপদেষ্টা মহোদয়ের দৃষ্টিগোচর করা হয় (পত্রাংশ ১৬০) শালিঙ্গনগর ক্লাবকে ২৭-২-৭৬ তারিখে ইন্স্টেট অফিস হইতে তাহাদের দখলীয় অংশ বরাদ্দ করা হয়। কিন্তু ভাড়া ধার্য কিংবা পরিশোধের কোন প্রমান নথিতে নাই। সরকারী বাসস্থান পরিদপ্তর হইতে কোন সময়ই তাহাদের নিকট হইতে ভাড়া আদায়ের কোন ব্যবস্থা গ্রহন করে নাই। এক্ষণে শালিঙ্গনগর ক্লাবের দখলীয় অংশের ভাড়া নির্ধারণ করিয়া উহা আদায়পূর্বক বাড়ীর মালিককে দখল বুঝাইয়া দেওয়ার জন্য ব্যবস্থা গ্রহন করা যাইতে পারে।

S/d. illegible

১০.০৬.৮২

৪৯। ৪৭-৪৮ অনুচ্ছেদ অফিস টোকা দ্রষ্টব্য। শান্তিনগর ক্লাবকে ০৭ দিনের ভিতর দখল ছাড়িয়া দেওয়ার জন্য নোটিশ দেওয়া যাইতে পারে। এর ভিতর দখল না বুঝিয়ে দিলে উচ্ছেদ করা যাইতে পারে। অন্য কোথাও খালি জায়গা/বাড়ী থাকিলে শান্তিনগর ক্লাবের অনুকূলে বরাদ্দ বিবেচনা করা যাইতে পারে।

স্বাঃ দুস্পাঠ্য

২/১১/১৯৮২

৫৬। আলোচ্য পত্রাংশ দয়া করিয়া পত্র পাতা ১৬২ দেখা যাইতে পারে। এগিড়া ও সংস্কৃতি বিভাগ শান্তিনগর ক্লাবের আবেদনে শান্তিনগর ক্লাবের অনুকূলে বর্তমান ঘরটি পুনঃ বরাদ্দ অথবা অন্য একটি ঘর বরাদ্দের জন্য আন্তঃ মন্ত্রণালয়কে অনুরোধ করিয়াছেন।

এই প্রসঙ্গে উল্লেখ্য যে ১০নং পুরানা পলটন বাড়ীটি বর্তমানে পরিত্যক্ত বাড়ী ঘর এর তালিকা হইতে ইহার মূল মালিক জনাবা রইসা আজিজ বেগমকে দখল বুঝাইয়া দেওয়া হইয়াছে, **শুধুমাত্র ঐতিহ্যবাহী শান্তিনগর ক্লাব তাহাদের দখল জনাবা রইসা আজিজকে ছাড়িয়া দেন নাই**। এমতাবস্থায় যখন ক্লাব বাড়ী ছাড়িতে প্রস্তুত, অতএব ক্লাবের জন্য ক্লাবকে তাহাদের নিজস্ব এলাকায় একটি পরিত্যক্ত বাড়ী খুঁজিয়া অত্র মন্ডনালয়কে জানাইতে বলা যাইতে পারে কেননা ক্লাব কি ধরনের বাড়ী চায় তাহাও তাহাদের জানান প্রয়োজন।

স্বাঃ দুস্পাঠ্য

২/১১/১৯৮২

৬০। পরবর্তীতে দেখা যাইতেছে যে উক্ত সম্পত্তি জৈনিক সৈয়দ বদিউর রহমান দলিল নং ৩৬৮৬ তাং- **৪/৯/৮৪ তারিখে জনাবা খাদিজা ইসলামের অনুকূলে বিক্রয় করেন (পৃঃ ১৬৬-১৭৭) এবং তদানুসারে উক্ত খাদিজা ইসলামের নামে নামজারী পরচা ও খাজনা প্রদান করা হইতেছে (পৃঃ পৃ ১৬৪-১৬৫)। কিন্তু ইহা অত্যন্ত সনেদহ প্রবণ যে উক্ত সম্পত্তি রইসা আজিজ বেগমের নিকট হইতে কিভাবে সৈয়দ বদিউর রহমানের নিকট হস্তান্তরিত হয়েছে তাহার কোন প্রমাণ নাই। এছাড়া ক তালিকাভুক্ত বাড়ীর ব্যাপারে সঠিক সিদ্ধান্তের জন্য ইয়াক্কুফ্ শফ্ জনচক্রনলনশচএর নিকট প্রেরণ করা যাইতে পারে।**

স্বাঃ দুস্পাঠ্য

২৪/৮/৮৬

(Bold and underlined, emphasized)

41. From the aforesaid notes and the other materials of the abandoned property file the following facts are revealed:

a) The original file of abandoned property relating to the suit property is not traceable/missing for the period starting from 1972 up to part of 1977.

b) Raisa got possession of part of the suit property i.e. the shops on 25.04.1982 and 30.04.1982 respectively through renewing monthly rental agreements dated 25.04.1982 and 30.04.1982, vide rental agreement dated 25.04.1982 between Raisa and M/S. Globe Battery Works and rental agreements dated 30.04.1982 between Raisa and M/S. Jatiya Shahitya Prakashani, M/S. Elora, M/S. Hakim Electronics, M/S. Dacca Electric and Lift works, M/S. Kajal Enterprise after release of the suit property. So, she did not get possession in any part of the suit property till 25.04.1982/30.04.1982 after release of the suit property from the list of abandoned properties.

c) Raisa did not get possession of the rest part of the suit property i.e. the building from Shantinagar Club at least till 02.11.1982.

d) She filed several applications to the abandoned property authority initially for delivery of possession of the entire suit property and then for delivery of possession of the rest part of the suit property, which was in possession of Shantinagar Club.

e) The Sports and Cultural Division applied for re-allotment of the said building or any other house in favour of the Shantinagar Club.

f) Shantinagar Club did not hand over possession in favour of alleged Raisa, at least up to 02.11.1982.

g) Raisa, in none of her applications vide letters of Raisa from 1977 up to 22.05.1982 claimed that she had entered into an agreement to transfer the suit property to Badiur on 11.09.1969 or that she had transferred the suit property to Badiur at any time.

h) There was no evidence before Abandoned Property Authority as to how Badiur got the suit property vide Note No.60 dated 24.08.1986 of the abandoned property file.

42. In the plaint Khadiza claimed that Raisa firstly executed a bainapatra dated 11.09.1969 in favour of Badiur and then transferred the suit property in favour of Badiur on 15.01.1982 and handed over possession to him. But the Government Official record and statement of D.W.15-Md. Monsur Rahman clearly show that Raisa could not have transferred her leasehold right/any other right or handed over possession of the suit property to Badiur at the time of so called transfer on 15.01.1982 for the reasons that:

1) Raisa herself prayed for handing over possession of the entire suit property admitting that she was not in possession of the suit property before and after 15.01.1982 and till 25.04.1982.

2) She, in her application dated 22.02.1982 stated that since release of her property (12.01.1982) from the list of abandoned properties, one month has elapsed but no step was taken to deliver possession to her.

3) Raisa in her application dated 22.05.1982 stated that Shantinagar Club did not hand over possession to her although she got possession of the other shops .

4) Raisa never claimed to have executed any bainapatra on 11.09.1969 or at any time in favour of Badiur or that she transferred her leasehold or any other right to Badiur at any time, and rather she filed series of applications for delivery of possession in her favour even after her (Raisa) so-called transfer to Badiur on 15.01.1982.

5) D.W.15 Md. Monsur Rahman, Kanungo of Deputy Commissioners' Office in his cross-examination stated that,

”খাদিজা ইসলামের নামে লীজ নবায়ন করিয়া দেই ৩/৭/৮৫ ইং তারিখ। আমরা ৩০ বৎসরের জন্য লীজ দিয়াছি। মেয়াদ ২০১৪ পর্যন্ত মেয়াদ বলবৎ আছে।”

He further stated that,

”রহীসা আজিজ নালিশী সম্পত্তি transfer এর জন্য অনুমতি লয় নাই তবে সৈয়দ বদিউর রহমান বিএনীর অনুমতি লয় রাইসা আজিজের পক্ষে ১৯/৪/৮২ইং তারিখে। বদিউর রহমানের বরাবরে দলিল হয় ১৫/১/৮২ইং তারিখে অর্থাৎ সরকারের অনুমতি পাওয়ার পূর্বেই নালিশী সম্পত্তি বিএনীর করিয়া দেয়।-----”

6) So, Raisa herself never obtained any permission from the Government Khas Mohal authority to transfer her leasehold right to Badiur at any time, and

7) Admittedly, permission from the Government was/is necessary for transfer of leasehold right to anyone in view of the provisions of Government Estate Manual, 1958.

43. It be mentioned that the original deed of alleged transfer of the suit property dated 15.01.1982 by Raisa to Badiur was neither produced before the abandoned property authority nor before any Government Office or before any Court.

44. Khadiza had tried to establish a new case by examining D.W.1 Awlad Hossain Chowdhury, a witness who deposed on her behalf. This witness stated that the original document of transfer by Raisa to Badiur is deposited with a bank at the time of marking a certified copy of the deed as exhibit M1(5) with objection. But this witness at the time of marking exhibit M1(5) did not mention the name of the bank. He also stated that Nirman took loan from the bank after 1984 without mentioning the date of taking loan.

45. Further, the Bank Officer, D.W.3 Kazi Md. Adam Ali stated that the loan was taken from the bank, the present name of which is Eastern Bank Ltd and earlier known as BCCI

Bank. From statement of this witness it also appears that he brought a certified copy and a photocopy was submitted before the Court and not the original one. D. W.3 the Bank Official did not say that the original deed was missing from the bank. Moreover, no other documentary evidence was/is placed before the Court to show that the original document was missing and that any action was taken by Khadiza over missing of this document by the bank or by any other means.

46. At the time of hearing, this Court inquired about the whereabouts of this original document and Khadiza's learned Senior Advocate replied that the original document is missing from the bank.

47. Therefore, it appears that Khadiza allegedly mortgaged the suit property for the purpose of taking loan from a bank but neither the mortgaged deed nor the original document was ever produced before the court or the Government authorities. The new case about mortgage of suit property to the bank is beyond pleadings as no such case was mentioned in the plaint, even by way of amendment. It appears that Khadiza suppressed a vital information in the plaint and did not bring this new case in the plaint by way of amendment. Perhaps it is due to the fact that she did not obtain any permission from the Government before mortgaging the suit property to the bank and that too by using a fictitious document. It is evident that Khadiza intentionally avoided to produce original document so that Raisa's signature could not be compared.

48. In the above circumstances, it is crystal clear that even if we consider that Raisa was a genuine person and the suit property was lawfully released by abandoned property authority in her favour, in such case also plaintiff Khadiza failed to prove Raisa's transfer of the suit property to Badiur.

49. In consideration of the original file of abandoned property authority and non-production of the original deed of so-called transfer by Raisa to Badiur, we are fully convinced that Raisa never sold/transfer the suit property to Badiur for which the original document was not produced before the Government authorities or in any Court. Further, Khadiza claimed that her leasehold right was extended for 30 years but she prayed for declaration of her 16 annas title to the suit property again as a fraudulent device to grab the Government valuable property by practicing fraud upon the Court.

50. It be mentioned that all the contesting parties claimed that Raisa never transferred her right to the suit property to Badiur and the so-called deed of transfer is a forged document.

51. Since, Raisa's transfer of the suit property to Badiur is not proved, Khadiza has not acquired any legal/valid right to the suit property, leasehold or otherwise, through her purchase from Badiur as Badiur himself had no legal right to transfer it to anyone. Thus, it is evident that the so called deed of transfer by Raisa to Badiur is a fraudulent/ forged/ fictitious and collusive document created with the sole purpose to grab the valuable Government property.

52. It is evident that Khadiza in collusion with Badiur and some other persons obtained a deed of transfer in her favour from Badiur, who himself had no legal right or authority to transfer it. Khadiza managed to extend the leasehold right for 30 years in her favour by fraudulent means in active collaboration/collusion with the Government Officials.

53. It is very unfortunate to note that the suit property, a valuable property situated at the heart of the Capital of Bangladesh measuring at least twelve khatas vide statement of the witnesses was grabbed by Khadiza with the help of some dishonest Government officials, who were/are the protectors of the Government properties.

54. From the beginning till the end, the Government Officials, both abandoned property authority as well as the office of the Deputy Collector, Dhaka played a heinous role in this matter including filing of written statements in various suits changing Governments initial stand that the suit property is an abandoned property. Moreover, several civil litigations were going on but without waiting for the result of those litigations, the suit property was released from the list of abandoned property and lease extension was given to Khadiza-that too illegally without verifying if Raisa transferred the suit property to Badiur.

55. It be mentioned that the original file of abandoned property was/is not traceable/missing till date. The said file contained all notes and all records/documents from 1972 up to part of the year 1977. Thus, whether Raisa is a genuine person or not that could not be ascertained as all the documents containing her original signatures from 1972 up to part of 1977 are missing from the record. Therefore, the so called Raisa might be a fake person. Possibly, for that reason she was not examined as a witness in the court by Khadiza or any other parties in the suits.

56. It needs be mentioned that from the materials on record it appears that so called Raisa filed Misc. Case No. 34 of 1979 for setting aside the ex-parte decree obtained by Jamila Khatun previously against her. In the said case, in her deposition, she stated that,-

“এই ঘরের মধ্যে বোরখা ও ব্যাগ আমার। এই বাড়ির হোল্ডিং নম্বর আমি জানি না।..... আমি ১১/২৭ নং হোল্ডিং কায়েদে আজম রোডে থাকিতাম। তার আগে মিরপুর থাকিতাম। এখন এই বাড়িতে থাকি।..... আজ্ঞার আলম আমার ভাই তিন বছর আগে পাকিস্তানে চলিয়া গিয়াছেন। আমার ছেলে মেয়েরা সকল করাচি নাছিরাবাদ আছে, তাদের সাথে ৪ বছর ধরে দেখা সাক্ষাৎ নাই। এখানে আমি ১৫/২০ দিন যাবৎ আছি। এর আগে কায়েদে আজম রোডে থাকিতাম। আমার রান্না-বান্নার হাড়ি পাতিল আছে। ট্রাংক ছটকেস আছে। আমার হাড়ি পাতিল ১১/২৭ নং কায়েদে আজম রোডে আছে। আমি এখানেই আছি। রেশন কার্ড নাই। এ ব্যাপারে আমার সাক্ষী নাই। কমিশন আরম্ভ হওয়ার কিছুকাল আগে বোরখা ভানিটিব্যাগ সহ এখানে ঢুকিয়াছি।”

57. This so-called Raisa was examined in Misc. Case No. 34 of 1979 on commission and on question by the Advocate Commissioner-

“প্রশ্নঃ আপনার কোন সনাক্ত চিহ্ন আছে কিনা? আপত্তিমূলক। উঃ সাক্ষী উত্তর দেয় নাই।” Moreover, she herself admitted that,

“আমি এখানেই আছি। রেশন কার্ড নাই। এই ব্যাপারে আমার সাক্ষী নাই।”

58. It clearly indicates that the person deposed in the court in miscellaneous case may not be actual Raisa, as evidently she came to the place where the commission was held on the same day and she had no cookeries in the house where commission was held and she refused to disclose her identifying mark, which was very much vital. After her examination on Commission on 29.07.1979, Suit No.483 of 1974 (filed by Jamila) was restored to its file and number upon allowing the miscellaneous case. But Raisa never appeared before the trial court to contest the said suit. From Note No.28 of the abandoned property file, it appears that Raisa appeared, but how the concerned officer knew her or who identified her is not mentioned therein. Therefore, from the statement of so-called Raisa and abandoned property file, it appears that there is every likely hood that she may not be a genuine person.

59. Even if we presume that Khadiza was in possession of the suit property, her possession was illegal for the reasons discussed hereinbefore. Thus, the possession of Khadiza in the suit property, if there be any, was illegal possession in the Government property.

60. Moreover, D.W.2 Md. Selim in his examination-in-chief stated that,
“মালিক হবার দিনে দখল নিয়ে কোং এর সাইনবোর্ড টানাই।”

61. D.W.1Md. Awlad Hossain in his examination-in-chief stated that,
“সৈয়দ বদিউর রহমান উহাতে ভোগ দখলকার থাকাবছায়৪/৯/১৯৮৪ ইং তারিখে একটি রেজিঃ সাফ-কবলা দলিলমূলে বিক্রী করে দখল খাদিজাআলমৎফকে বুঝাইয়া দেন।”

62. But at the time of cross-examination D.W.1 stated that, “৪/৯/১৯৮৪ ইং তারিখে বাদিনীর নামে খরিদা রেজিঃ হয়। কত দিন পর বাদিনী খোদেজা ইসলাম নালিশী সম্পত্তির দখলে যায় তা স্মরণ নাই, তবে কিছু দিনের মধ্যে দখলে যায়।”

63. Therefore, there is also contradiction about the date on which Badiur handed over possession to Khadiza.

64. It appears that though the Government machineries are not willing to protect the suit property but the learned Additional Attorney General pointed out all the facts before us and made submissions that in these matters i.e.the appeals/CPLA the Court must exercise its power as provided in article 104 of the Constitution for doing complete justice, to protect a valuable Government property, a property of the People of Bangladesh.

65. Any property owned by the Government is the property of the People’s of the Republic of Bangladesh and the citizens of this country are the actual owners of such property. Therefore, no one can dispose of valuable Government properties at his/their sweet will to anyone else unlawfully.

66. We have already seen that Khadiza failed to prove her vendor’s title/leasehold right to the suit property and, as such, the extension of lease in her favour by certain unscrupulous Government officials is also collusive and fraudulent. However, Khadiza's illegal extended lease period for 30 years has also expired meanwhile.

67. On Khadiza’s case, the trial court in consideration of deposition of Khadiza’s witness Md. Awlad Hossain Chowdhery and evidence on record decided as under:

“ অত্র সাক্ষী আরও উল্লেখ করে যে, নালিশী সম্পত্তি ১২/০১/৮২ ইং তারিখে রাইসা আজিজ বরাবরে Abandoned property এর তালিকা হইতে অবমুক্ত করা হয়। তাহা হলে নালিশী সম্পত্তি Abandoned property এর তালিকাভুক্ত হওয়ার পর লীজ দলিলের টরভভভট্ট আর থাকিতে পারে না। তাহা ছাড়া সৈয়দ বদিউর রহমান এর নিকট সরকারের পূর্বানুমতি ছাড়া নালিশী সম্পত্তি বিক্রী করায় সৈয়দ বদিউর রহমানের নালিশী সম্পত্তিতে কোন প্রকার লীজের স্বত্ত্বও সৃষ্টি হয় নাই। পরবর্তীতে খাদিজা ইসলাম ০৪/০৯/৮৪ ইং তারিখে নালিশী সম্পত্তি খরিদ করে। নালিশী সম্পত্তি খাদিজা ইসলাম খরিদ করিলেও উহাতে লীজের স্বত্ত্ব সৃষ্টি হইবে না কারণ বদিউর রহমান এর উপর লীজের স্বত্ত্ব সৃষ্টি হইয়াছিল না। তাহা ছাড়া খাদিজা ইসলাম আরও উল্লেখ করে যে, নালিশী সম্পত্তিতে তাহার স্বত্ত্ব ও দখল আছে মর্মে ঘোষণা চাহিয়াছে। খাদিজা ইসলাম নালিশী সম্পত্তিতে বড়জোর লীজের স্বত্ত্ব সৃষ্টি হইয়াছে মর্মে দাবী করিতে পারে। কিন্তু খাদিজা ইসলাম নালিশী সম্পত্তি সরকারের নিকট হইতে পুনরায় লীজ প্রাপ্ত হইয়াছে উহা দেওয়ানী ২২৪/৯৭ নং মামলার কোথাও উল্লেখ করে না। তাহা ছাড়া খাদিজা ইসলাম নালিশী সম্পত্তি হইতে বেদখল হইয়াছে মর্মে স্বীকার করায় খাদিজা ইসলামের বরাবরে নালিশী সম্পত্তি বাবদে স্থায়ী নিষেধাজ্ঞার ডিক্রী পাইতে পারে না। তাহা ছাড়া খাদিজা ইসলাম উক্ত মোকদ্দমায় সরকারের কাছ থেকে পুনরায় লীজ গ্রহণের বিষয় আরজিতে না আসায় খাদিজা ইসলামের বরাবরে লীজ স্বত্ত্ব ঘোষণারও সুযোগ নাই। ফলে খাদিজা ইসলাম কর্তৃক দায়েরী দেওয়ানী ২২৪/৯৭ নং মোকদ্দমাটি আইনতঃ চলিতে পারে না। ”

(Bold and undelined by us)

68. In the facts and circumstances, as discussed hereinbefore, we are of the view that the trial court correctly dismissed the suit filed by Khadiza so far as it relates to declaration of her right, title to the suit property, khas possession and permanent injunction. However, the High Court Division erroneously held that Raisa with the permission of the Government transferred the suit property to Badiur although Government witness D.W.15 Md. Mousur Rahman in cross-examination clearly stated,

“রাইসা আজিজ নালিশী সম্পত্তি বিক্রির অনুমতি লয় নাই।”

69. High Court Division without considering the evidence as discussed hereinbefore, erroneously allowed Khadiza’s appeal as a whole, but curiously enough without declaring any title to or leasehold right of Khadiza in the suit property but simply directing Waziuddin to handover possession of the suit property to Khadiza within 6 months from the date of receiving copy of the judgment.

70. Now, let us turn our eyes to the fate of the appeals filed by the heirs of Noor Mohammad Khan, he being dead.

71. On the suit filed by Noor Mohammad Khan, the trial Court decided as under:

“দেওয়ানী ১১৩/৮৪ নং মোকদ্দমায় বাদী নূর মোহাম্মদ খান উক্ত নালিশী সম্পত্তি বাবদ বায়না চুক্তি করে ২৩/৭/৬৯ ইং তারিখে। নূর মোহাম্মদ খান উক্ত তারিখে ১নং বিবাদী রাইসা আজিজের সহিত বায়না চুক্তি করে। কিন্তু রাইসা আজিজ নালিশী সম্পত্তি সরকারের কাছে থেকে ১৯৫৯ ইং সালে লীজ গ্রহন করে। স্বীকৃত মতেই কোন সরকারী সম্পত্তি লীজ গ্রহন করিলে উক্ত সম্পত্তি লীজ গ্রহীতা সরকারের পূর্বানুমতি লইয়াই হস্তান্তর করিতে পারে। কিন্তু নালিশী সম্পত্তি নূর মোহাম্মদ খানের সহিত বায়না চুক্তি করিবার পূর্বে সরকারের অনুমতি লইয়া দলিল রেজিস্ট্রি করিয়া দেয়ার কথা উল্লেখ আছে। উক্ত বায়না চুক্তির বক্তব্য অনুযায়ী সরকারের অনুমতি না লইয়াই নালিশী সম্পত্তি বাবদ বায়না চুক্তি করিয়াছিল। ফলে রাইসা আজিজ সরকারের অনুমতি না নেওয়ায় উক্ত বায়না চুক্তিটি লীজ দলিলের শর্ত লংঘন করিয়া সম্পাদন করায় উক্ত লীজ ডিড আদালতে উৎসন্নতথরন হইতে পারে না।”

72. Noor Mohammad filed Title Suit No.364 of 1982, renumbered as 113 of 1984, for Specific Performance of Contract against Raisa on the basis of a Bainapatra dated 23.07.1969 as well as a deed of novation dated 10.07.1972, renewing the previous agreement for sale. He also prayed for khas possession of the suit property. Khan’s heirs examined several witnesses to substantiate their case.

73. Their first witness is Shakawat Hossain Chowdhury (D.W.9), who deposed in favour of heirs of Noor Mohammad Khan. This witness stated that Raisa is the owner of the suit property by virtue of a deed dated 11.12.1957 executed by Ashini. Raisa executed a Bainapatra in favour of Noor Mohammad on 23.07.1969 and he produced copy of the said Bainapatra (exhibit-B, with objection). He claimed himself to be present at the time of Bainapatra, but according to him he was only 12/13 years old in the year 1970.

74. During cross-examination this witness mentioned that,

“আমার জন্ম সন অনুমান ১৯৫৮ সনে। ১৯৭০ সালে স্বাধীনতা যুদ্ধ শুরু হয়। তখন আমার বয়স অনুমান ১২/১৩ বছর।”

He stated in his cross-examination that,

“আমার দাখিলকৃত একজিবিট ডকুমেন্ট এ রাইছা আজিজের দস্তখত কোনটা ইংরেজি ও কোনটা উর্দুতে আছে। **এই স্বাক্ষরগুলি রাইছা আজিজের তা দেখানোর মতো কোন অথরাইজড দস্তখত দাখিল করি নাই।”**

(Bold and undelined, emphasised)

75. Therefore, this witness was only a boy of 11 years on the date of first Bainapatra. So, his case that he was present at the time of Bainapatra is not believable. In his deposition he did not explain why Raisa put her signatures in Urdu at the time of executing the Bainapatra dated 23.04.1969, but put her signatures in English on the alleged deed of novation dated 21.01.1977. Further, it appears that he is not an witness of the bainapatra.

76. Their next witness is Bidhan Chandra Podder(D.W.10). Relevant part of his statements are as under:

“নূর মোহাম্মদ খান এর সাথে ১৯৬৯ সনে রাইসা আজিজের একটি বায়নাপত্র হয়। ১৫,০০০/- টাকা বায়না দেয়। তারিখ মনে নাই। এই বায়না পত্রে আমি সাক্ষী ছিলাম। প্রদঃ ১৩, তে আমি সাক্ষী হিসাবে ৪নং ক্রমিকে দস্তখত করিয়াছি। এই সেই স্বাক্ষর প্রদঃ ১৩/১। আমার সাথে সাক্ষী হিসাবে মোহাম্মদ আলী ও জাকির ছিল। অন্য জনের নাম বলে নাই, রাইসা আজিজ উর্দুতে দস্তখত দিয়াছেন আমার সামনে। প্রদঃ ১৩ ইংরেজী টাইপ করা।”

77. During cross-examination he stated that,

“রাইসা আজিজ খানকে ১৯৬৯ সালে প্রথম দেখি। প্রথম বায়নার তারিখের আগে রাইসা আজিজকে চিনিতাম না। প্রথম বায়না হয় ২৩/৭/১৯৬৯ তারিখে। এই বায়না হয় ১১২৭ আজম রোড মোহাম্মদপুর, ঢাকায়। ঐ ঠিকানায় রাইসা আজিজ খান বসবাস করত। বায়নাপত্র কে মুসাবিদা করে বলিতে পারি না। বায়নাপত্র ইংরেজীতে লেখা হয়। বায়নাপত্রে রাইসা আজিজ উর্দুতে সই করে। ২/১ যাহার ইংরেজীতে ও সই করিয়াছে। আমি উর্দু পড়তে পারি না। আমি মোট ৭টি দলিলে সাক্ষী হই। এই ৭ টা দলিলই বায়নাপত্র দলিল ও রশিদ। -----

(Bold and underlined by us)

--প্রথম বায়নার সময় বেলা তিনটায় আজম রোডে যাই। ঐ দিন কিবার ছিল সূরন নাই। নূর মোহাম্মদ খান আমাকে নিয়া যায়। রাইসা আজিজের স্বামীর নাম বলিতে পারি না। তার স্বামীকে দেখি নাই।-----

বদিউর রহমান প্রথম বায়নায় সাক্ষী ছিল কিনা জানি না। প্রথম বায়নাপত্র সম্পাদনের সময় ৪/৫ জন সাক্ষী ছিল। কয়জন সাক্ষী সই করে বলিতে পারি না। নূর মোহাম্মদ খানের স্ত্রী আমার পিতাকে বাবা ডাকতেন।

আমি উর্দু বা ইংরেজী পড়িতে পারি না।---- আমি যে সকল দলিলে সাক্ষী আছি আমি উহার কোনটাই আমি পড়িতে পারি না এবং উহার অর্থ জানি না। আমার বাড়ী ঢাকায়। নূর মোহাম্মদের বাড়ী নোয়াখালী। আমি যে সকল document-এ সই করিয়াছি উহা কে টাইপ করে বা কবে কোথায় টাইপ করে বলিতে পারি না।

রাইসা আজিজ পর্দানশীন মহিলা ছিল। প্রথম বায়নাপত্রের সময় সাকাওয়ানের বয়স ১২/১৩ বছর ছিল। সব গুলো দলিলে আমি সাক্ষী হিসাবে পরে সই করিয়াছি।”

(Bold and underlined by us)

78. This witness did not know Raisa and only seen her on the date of first bainapatra. Therefore, his evidence that Raisa executed the Bainapatra is of no value as he did not know Raisa.

79. Next witness of this suit is Md. Zakir Hossain (D.W.11). He stated that he had seen Raisa Aziz only one day and that Raisa Aziz put her signature in his presence.

80. During cross-examination he stated that, “২৩/৭/৬৯ তারিখে রাইসা আজিজের বয়স ৩৫/৪০ বছর ছিল। আমি তার মুখ সম্পূর্ণ দেখি নাই। ঐ সময় রাইসা আজিজের স্বামী উপস্থিত ছিল কিনা বলিতে পারি না। রাইসা আজিজের কোন ভাই উপস্থিত ছিল কিনা বলিতে পারি না। গুণ সত্য যে বায়নাপত্রে আমাদের কারো দস্তখতের নিচে কোন তারিখ উল্লেখ নাই।”

(Bold and underlined, emphasised)

81. Thus, it appears that this witness has not seen Raisa on any other day except one day and on the date of execution of bainapatra dated 23.07.1969, he did not see her full face. So, evidence of this witness that Raisa Aziz herself executed the original Binapatra is of no value, as he did not know Raisa, who was a pardansin lady according to the previous witness Bidhan Chandra.

82. Moreover, in the original Bainapatra, signature of Raisa is in Urdu but in the deed of renewal of agreement all the signatures are in English. No reason was mentioned by the witnesses as to why the signatures in the deed of novation were in English. The money receipts could not also be proved in this suit.

83. In the above circumstances, it is crystal clear that the witnesses of this suit could not prove that the original Bainapatra was executed by Raisa herself for the reasons discussed earlier.

84. Thus, it is evident that Noor Mohammad's heirs failed to prove that it was Raisa who executed the original Bainapatra on 23.07.1969. Since, the case of execution of original Bainapatra by Raisa falls through, the case of novation as continuity of the original Bainapatra is of no value.

85. Considering the totality of the evidence on record, we are fully convinced that Raisa did not execute any Bainapatra or deed of novation in favour of Noor Mohammad at any time. So, his case was lawfully dismissed by the trial Court and the appeal was also lawfully dismissed. However, the judgments for dismissal are not with cogent reasons. Both the Courts below ought to have discussed the evidence on record and on the basis of the evidence, oral and documentary ought to have dismissed the suit/appeal of Noor Mohammad's heirs.

86. In view of the above, we find no merit in the appeal of Noor Mohammad Khan's heirs so far as it relates to Civil Appeal No.31 of 2017. Thus, this appeal is liable to be dismissed.

87. Now let us examine the merit of the appeal filed by Jamila Khatun, which arose out of Transfer Appeal No.10 of 2014 and the said appeal arose out of Title Suit No.483 of 1974.

88. Jamila examined several witnesses in support of her case of execution of Bainapatra by Raisa on 20.01.1972. The trial Court dismissed the suit and High Court Division also dismissed/disallowed the appeal.

89. Jamila's witness P.W.1 Md. Ashfaq Ahmed is her husband and tadbirkarak of her suit. He proved the alleged Bainapatra in favour of Jamila dated 20.01.1972. He stated that,

“উক্ত বায়না পত্রে ১নং বিবাদীর সই (ছেড়া) ভাই সৈয়দ বদিউর রহমান, আজহার উদ্দিন আহমেদ, খোরশেদ আহমেদ, (ছেড়া) হোসেন ইত্যাদি সাক্ষী হিসাবে সই করেন। বায়নাপত্রে পর ১নং বিবাদীনি নাঃ সম্পত্তি যাবতীয় দলিলাদি বাদীনির নিকট হস্তান্তর করে। গুণগুণগুণগুণগুণ ১নং বিবাদীনি তাহার মূল টাইটেল ডিড আমাদেরকে প্রদান করে নাই। কেননা তখন উহা তদানিন্তন এস,ডি,ও, (সাউথ) এর কোর্টে দাখিল ছিল।.....”

(Bold and underlined by us)

90. This witness clearly stated that,

“বায়না সম্পাদনের দিন আমি, বাদীনির স্বামী, রইসা আজিজ, তার ভাই সৈয়দ বদিয়ার রহমান, খোরশেদ, আজহার উদ্দিন আহমেদ, তোফাজ্জেল হোসেন উপস্থিত ছিলেন। বায়নার কথাবার্তার দিন রাইছা আজিজ, তার ভাই বদিয়ার রহমান উপস্থিত ছিলেন।”

91. P.W.2 Azhar Uddin Ahmed is the brother of Jamila's husband, who is a witness to the deed. This witness admits that other witnesses of the Bainapatra, named Khorshed Anwar is/was also his brother and Tofazzal Hossain was/is an employee in his brother's shop. He stated that,

“নেং বঙগবনদু এভিনিউর স্থানে যখন বায়নাপত্র হয় তখন আশেপাশের রুমে লোকজন ছিল। পার্শ্ববর্তী লোকজন বায়নার সময় উপস্থিত ছিলেন না।”

92. P.W.3 Khorshed Ahmed is another brother of D.W.1. He stated that,

“নেং বঙগবনধু এভিনিউর অন্যান্য কক্ষে লোকজন থাকতে পারে। উক্ত কক্ষের লোকজনকে বায়নার সময় ডাকি নাই।”

93. The last witness of Jamila relating to Bainapatra is P.W.4. P.W.4 Tofazzal Hossain stated that, “রাইসাকে বায়না পত্রের দিন থেকেই তিনি। আমি বায়না পত্রের দিন উপস্থিত ছিলাম। আমি বায়নাপত্রে স্বাক্ষর করিয়াছি। এই সেই দস্তখত (প্রদঃ ১/গ)। বাদিনী ও বিবাদীনি যখন বায়নাপত্রে দস্তখত করে তখন উপস্থিত ছিলাম।”

94. At the time of cross-examination, he deposed that, “রাইসাকে বায়নার দিনই প্রথম দেখিয়াছি। বায়নাপত্রের দিনে রাইসা আজিজের স্বামী জীবিত ছিল না। প্রথম সহি দেয় সৈয়দ বদিউর রহমান জমি কবে বেচা কেনার কথা হয় জানি না।”

(Bold and underlined by us)

95. Thus, from the statements of P.Ws.1, 2 and 3 it appears that they are full brothers and P.W.1 is the husband of Jamila. So, they are all very close relatives of Jamila and are interested witnesses. P.W.4 the sole witness, who is not a relative of Jamila, is an employee of Jamila’s husband. This witness clearly stated that he had seen Raisa firstly on the date of execution of Bainapatra. Thus, the solitary witness, who is not a relative of Jamila, did not know Raisa prior to execution of bainapatra. So, he had no personal knowledge whether the person who executed Bainapatra was infact Raisa or not.

96. In view of the evidence on record as discussed, it is evident that Jamila could not prove her case about execution of Bainapatra by Raisa herself by any independent witness so as to get a decree for Specific Performance of Contract relating to the suit property. Therefore, her suit for Specific Performance of Contract was correctly dismissed by the trial Court and affirmed by the appellate Court. However, both the Courts below did not consider the oral evidence of the witnesses in detail and dismissed the suit/the appeal for some other reasons as discussed.

97. In the above circumstances, we find no merit in Jamila’s appeal being Civil Appeal No.30 of 2017. Therefore, this appeal is also liable to be dismissed.

98. Waziuddin has not preferred any appeal against the decree in favour of Khadiza. However, Noor Mohammad Khan’s heirs have challenged the judgment and decree passed in favour of Khadiza in Transfer Appeal No.08 of 2014 by filing a CPLA, which resulted in Civil Appeal No.32 of 2017.

99. On the other hand, Jamila Khatun filed Title Suit No.66 of 1990 for cancellation of sale deed as well as lease extension deed in favour of Khadiza. The said suit as well as the appeal being Transfer Appeal No.10 of 2014, were both dismissed by the trial Court and the appellate Court respectively. Wherefrom, Jamila filed CPLA No.4232 of 2018. The suits for Specific Performance of Contract filed by Noor Mohammad (being dead his heirs) and by Jamila were dismissed and the appeals against the said judgments and decrees were disallowed. We have also found no merit in Civil Appeal No.31 of 2017 and Civil Appeal No.30 of 2017.

100. Ordinarily, in such scenario, it is not necessary to consider the appeal of the heirs of Noor Mohammad Khan and the CPLA of Jamila but for the observations and decisions made

hereinbefore on Khadiza's case, we find that Khadiza miserably failed to prove her valid title to or leasehold right in the suit property. As Khadiza failed to prove her case and Waziuddin is not now in the picture, it is necessary to consider the merit of Civil Appeal No.32 of 2017 and CPLA No.4232 of 2018 in the unusual facts of the matters.

101. We have already seen that Khadiza could not prove her case and, therefore, she was not entitled to have a decree in her favour and the trial Court correctly dismissed it, but her appeal was erroneously allowed by the High Court Division with decree of khas possession. Therefore, her suit for declaration of her 16 annas title to the suit property, recovery of possession and permanent injunction have to be dismissed due to the reasons as discussed. However, if Khadiza's suit is dismissed as a whole, in such case Waziuddin's decree for Specific Performance of Contract would come into operation. Therefore, it is necessary to decide whether the decree in favour of Waziuddin is liable to be set aside for doing complete justice.

102. In the above backdrop, let us now study Waziuddin's case.

103. Md. Waziuddin has been examined as D.W.7 in the trial Court. He stated that, "মৌখিক বায়নাপত্র ৭/১/৭১ তাং। বায়না বাবদ ২৫,৫০০/- টাকা নেয়। তিনি তৎবাবদ একটি টাকার রশিদ দেয়। উহাতে এ কে এম শামীম, এইচ বি রহমান, কাজী মোঃ সাইদ, মনু গাজী। দাত্রী মানি রিসিটে স্বাক্ষর করেন। আমি মূল মানি রশিদ দাখিল করিতেছি। আপত্তি সহ। সাক্ষীদের ৩ জন মারা গেছে। অন্য জনের খবর আমি জানি না।"

104. Thus, it appears that out of 4 witnesses, 3 witnesses of the money receipt are dead and he does not know the whereabouts of the other witness. About the oral agreement, the money receipt was the most important evidence, but Waziuddin failed to prove it by any independent witness. So, it appears that Waziuddin as defendant-appellant failed to prove that Raisa had entered into an oral agreement with him to transfer the suit property in his favour. Therefore, his suit being Title Suit No.541 of 1982 was legally dismissed by the trial Court but the High Court Division in F.A. No.283 of 1984 erroneously decreed the suit against Raisa for Specific Performance of Contract. As a result, Waziuddin got possession of the suit property through Court.

105. In view of the above, the decree obtained by Waziuddin in F.A. No.23 of 1984 appears to be a fraudulent decree as claimed by the Government, Khadiza, Jamila and the heirs of Noor Mohammad Khan. Perhaps due to this fact Waziuddin did not file any CPLA against the decree obtained by Khadiza. Further, Md. Waziuddin obtained the decree for specific performance of contract against Raisa. But the Government is the actual owner of the suit property, a Khas Mohal property. Therefore, Waziuddin cannot retain his possession against the Government. Moreover, Waziuddin did not deposit the entire consideration price as per direction of the Court within 90 days. So, for that reason also Md. Waziuddin's decree in F.A. No.23 of 1984 is liable to be set-aside and the registered deed obtained by him through Court is liable to be cancelled.

106. We are well aware of the fact that generally appellate Court is the final fact finding Court. But herein, the trial Court and appellate Court did not consider oral evidence led by the parties and it escaped the notice of the appellate Court that D.W.15 for the Government stated during cross-examination that Raisa did not obtain permission from the Government to transfer her right to Badiur, but the High Court Division decided the appeal on the basis of examination in chief of this witness without perusing the cross-examination of the witness. Moreover, the abandoned property file was not also before the trial Court or the

Court of appeal i.e. the High Court Division so as to consider it. Therefore, we had to examine and assess the entire evidence on record, oral and documentary, to ascertain the actual merit of the cases.

107. In view of the discussions made hereinbefore, we are inclined to dispose of Civil Appeal No.32 of 2017 by setting aside the judgment and decree obtained by Md. Waziuddin in F.A. No.23 of 1984 and further disposing of CPLA No.4232 of 2018 filed by Jamila as Khadiza failed to prove her case.

108. Khadiza could not prove her case but the appellate Court without considering the merit of the case allowed the appeal and decreed the suit in favour of Khadiza erroneously relating to her prayer for recovery of khas possession without considering her legal right.

109. In fact the appeal was allowed by the High Court Division due to some unscrupulous Government Officials' illegal and collusive activities in favour of Khadiza.

110. From the materials on record, it appears that the suit property is a Government Khas Mohal property and all parties failed to prove their respective case and unlawful lease extension period of Khadiza already expired. Raisa's lease period expired long before and she is not before us with any claim on the suit property. Therefore, the suit property is now a Khas Mohal property of the Government as the Abandoned Property Authority excluded it from the list of abandoned properties unlawfully and collusively.

111. As the unlawful lease extension in favour of Khadiza expired meanwhile, we are of the view that Khadiza Islam is not entitled to get any further extension of her lease from the Government. She had no legal right for extension of Raisa's leasehold right at any time. We are further of the view that the Government must take over actual/physical possession of the suit property from Waziuddin/Khadiza/the persons/person, whoever be in possession thereof within 60 days from the date of receiving the copy of this judgment in its present condition.

112. It is a common knowledge that many Government Officials of various departments are situated on hired buildings. For this reason the Government has to bear huge expense for payment of rents. Therefore, it is our pious wish that the Government would retain the valuable property i.e. the suit property, itself, which is situated at the heart of Dhaka by allotting the same to any Government Department or in the alternative the Government may construct a building for Government Departments/ Offices, so that this valuable property does not again fall into the hands of land/property grabbers with the help of some unscrupulous Government Officials.

113. It be noted that it is not necessary to discuss the decisions as referred to by the learned Senior Advocates/Advocates for the contending parties during their respective arguments, since we have dealt with the matters on the basis of evidence on record, oral and documentary as well as the abandoned property file independently and the parties failed to prove their respective case to get the suit property.

114. Before parting with the judgment, we would like to note that the power of this Court under article 104 of the Constitution is an extensive one though it is not used often or randomly. It is generally used for doing complete justice in any cause or matter pending before it in rare occasions in exceptional or extra-Ordinary cases for avoiding miscarriage of justice. To meet unwarranted and unpredicted exceptional situation this power is vested in

this Division for doing complete justice. Article 104 widens our hands so that this Division is not powerless in exceptional matters. The matters (appeals/CPLA) in our hands are matters requiring exercise of this power, to save a valuable property of the Government from the clutches of greedy land/property grabbers, that too with the active collaboration and help from the Government Officials. Therefore, we have no other option than to exercise our power under article 104 of the Constitution. In the instant matters, it is absolutely necessary to do so.

115. Moreover, if we do not exercise the power, given by our beloved Constitution under article 104 in these matters, it would give a wrong message to the unscrupulous land/property grabbers and in such case this judgment would be used as a tool/device to grab other Government properties with the seal of the Court. Therefore, under compelling circumstances, we have exercised our power under article 104 of the Constitution in dealing with the appeals and the CPLA for doing complete justice.

116. Finally, we appreciate Mr. Murad Raza, the learned Additional Attorney General, who with the leave of the Court, within a very short period has been able to assist the Court immensely by his elaborate arguments studying the abandoned property file meticulously. We also appreciate Mr. Nozrul Islam Chowdhury and Mr. A.M. Aminuddin, the learned Senior Advocates and Mr. Khair Azaz Maswood and Mr. Farooque Ahmed, the learned Advocates for the contending parties, who had tried their best for the interest of their respective clients and also to assist the Court. However, we do not find any merit in their submissions.

117. Accordingly,-

(1) Civil Appeal No.30 of 2017 and Civil Appeal No.31 of 2017 are dismissed.

(2) The impugned judgment and decree dated 24.08.2015 of the High Court Division in Transfer Appeal No.08 of 2014 allowing the appeal, decreeing T.S. No.224 of 1997 and directing Waziuddin to handover vacant possession of the suit property in favour of Khadiza Islam, appellant of T.A. No.08 of 2014 within 60 days from the receipt of the judgment by setting aside the judgment and decree dated 18.08.2009 of the 1st Court of Sub-ordinate Judge, Dhaka in T.S. No.224 of 1997 is set-aside and T.S. No.224 of 1997 is dismissed.

(3) The judgment and decree passed by the High Court Division in First Appeal No.23 of 1984 allowing the appeal and decreeing T.S. No.541 of 1982 of the Court of Sub-ordinate Judge, Dhaka by setting aside the judgment and decree of dismissal of T.S. No.541 of 1982 is hereby declared to be fraudulent, unlawful, and thus, set aside.

(4) The execution proceeding arising out of the said decree is also declared illegal. The registered deed of transfer of the suit property being Deed No.4722 dated 30.11.1992 in favour of Md. Waziuddin through Court is hereby cancelled.

(5) Khadiza Islam would not be entitled to get Khas possession from Md. Waziuddin and she would not be entitled to retain possession in the suit property, if there be any, by whatever means.

(6) Government Khas Mohal Authority shall takeover physical possession of the suit property presently measuring more or less 12 khatas of land with structures thereon of Holding No.10, Purana Paltan, Dhaka, Plot No.1184, Khatian No.217, present- Mouza-Ramna, Old Dag Nos.26, 27 and 28 vide statement of witnesses and plaint of Title Suit No.224 of 1997 (Khadiza Islam vs. Waziuddin and others), within 60 days from the date of receiving copy of this judgment from Md. Waziuddin/Khadiza Islam-Nirman Construction/ any person/ persons, in possession of the suit property in its present condition and retain its possession in accordance with law.

(7) Civil Appeal No.32 of 2017 and Civil Petition for Leave to Appeal No.4232 of 2018 are disposed of in the light of the observations made in the body of the judgment and the above decision/directions.

118. Send a copy of this judgment and order to the Inspector General of Registration and the concerned Sub-Registrar for taking necessary steps relating to cancellation of Md. Waziuddin's deed being No.4722 dated 30.11.1992.

119. Also send a copy of this judgment to the Deputy Commissioner/Deputy Collector, Dhaka to take necessary action for taking over possession of the suit property, a Khas Mohal Property, as per our directions as above.

120. Further, sent copies of this judgment to the Secretary, Ministry of Land, Dhaka for information.

121. Send down the lower court records at once.

122. The Abandoned Property Record submitted on our instruction be also returned to the concerned authority through the person who submitted the same before this court on receiving appropriate acknowledgement receipt.