

5 SCOB [2015] HCD 57**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Mr. Md. Ziaul Haque, Advocate
.....For the petitioner

WRIT PETITION No. 9397 of 2013

Mrs. Sitara Siddiq
.....Petitioner.

Versus-

**Government of the people's Republic of
Bangladesh and others.**

..... Respondents.

Mr. Md. Motaher Hossain (Sazu), D.A.G
with
Ms. Purabi Rani Sharma, A.A.G.
Mr. Md. Shafiqul Islam Siddique, A.A.G.
..... For the respondent No.1

Heard on: 16.11.2014, 23.11.2014,
10.12.2014 and judgment on: 11.02.2015.

Mr. Shafique Ahmed, Senior Advocate

Present:

Mr. Justice Moyeenul Islam Chowdhury

And

Mr. Justice Md. Ashraful Kamal

Abandoned Buildings (Supplementary Provisions) Ordinance, 1985**Section 7 and 8:**

The application under sub-section (1) of section 7 shall contain the particulars as stipulated in Sub –section (1) of section 8 and also shall be accompanied by all the documents or the Photostat or true copies, as stipulated in Sub-section (2) of section 8 of the Ordinance No. LIV of 1985. In both the Sub-sections (1) and (2) of section 8 of the said Ordinance, the word ‘shall’ has been used i.e. “shall contain” and “shall be accompanied. So the particulars in sub-section (i) and documents as per sub-section (2) of section 8 of the Ordinance are the essential condition in making an application under sub-section (1) of section 7 of the said Ordinance. Without any of the said particulars and documents, it is not possible to file an application under section 7 of the said Ordinance.

...(Para 21, 22 and 23)

Judgment**Md. Ashraful Kamal, J:**

1. This Rule was issued calling upon the respondents to show cause as to why the inclusion of the property of the petitioner measuring 14 kathas 15 ½ chattaks lying in Plot No. SW(D)-9, Road No. 8 of Gulshan Model Town, Dhaka in the `Kha` list of the Abandoned property shown at Serial No. 19, Page No. 9764 of Gulshan Area, Dhaka published in the Bangladesh Gazette, Additional Issue dated 23.09.1986 (Annexure J) should not be declared to have been published without any lawful authority and is of no legal effect and why the respondent Nos. 1 & 2 should not be directed for taking necessary steps to ensure the exclusion of the property of the petitioner from the abandoned list and for publishing a Gazette Notification for the same.

2. Brief facts, necessary for the disposal of this rule, are as follows:

The property in question was allotted by the then DIT to one Mrs. Nurunnahar Abedin wife of Mr. Zainul Abedin of 244, Jubilee Road, Enayet Bazar, Chittagong and the DIT executed standard Lease Deed No. 145 dated 04.01.1967 registered with the Sadar Sub-registrar, Dhaka in favour of Mrs. Nurunnahar Abedin and accordingly she got delivery of possession by metes and bounds and had been paying the Government dues during continuance of her possession.

3. Thereafter, Mrs. Nurunnahar Abedin transferred the property in question to one Mr. H.A. Rehman @ Abdur Rahman vide Deed No. 23462 dated 08.12.1967 registered with the District Registrar, Dhaka. The said H.A. Rahman constructed a residential building on the land in question by taking approval from the then DIT and loan from the House Building Finance Corporation (HBFC). Subsequently, vide memo No. DIT/EO/252 dated 05.02.1968 DIT mutated the plot in question. Then, he obtained no objection certificate vide memo No. DIT/EO/2886 dated 08.11.1968 from DIT and accordingly mortgaged the property to the House Building Finance Corporation vide registered mortgaged deed No. 2232 dated 19.03.1969.

4. The present petitioner on behalf of H.A. Rahman paid capital gains tax of the house on 28.1.1972 and Mr. H.A. Rehman sworn an affidavit before the Magistrate, 1st Class, Dhaka on 05.04.1972 declaring that he is a permanent resident of Bangladesh. The then Member of Constituent Assembly (MCA) K.M. Obaidur Rahman issued a certificate on 20.05.1972 that Mr. H.A. Rehman did not take part any activity subversive of the state and against the interest of Bangladesh and the Deputy Magistrate and Deputy Collector, Dhaka issued memo No. 102NC/DC dated 31.07.1972 that Mr. H.A. Rehman is a Bangladeshi citizen.

5. The S.D.O. South, Dhaka has confirmed that the house is not abandoned property vide memo No. 2003-PASA/2/72 dated 22.08.1972 and the Executive Engineer, Central Dhaka Division, issued memo No. EE/CD/DIT/561(6)6.stha dated 23.08.1972 to the effect that the holding had been dropped from the list of the abandoned property and the said memo was communicated to the Ministry of Public Works. He obtained income tax clearance certificate vide serial No. 108020 No. 6/72/73 and capital gain tax certificate No. 473 CGP/72/73 dated 31.08.1972. The petitioner took permission from the DIT vide memo No DIT/EO/1064/2 dated 05.09.1972. She paid loan of the House Building Finance Corporation on 08.09.1972.

6. On 09.09.1972, said Rahman by showing affidavit declared himself as a member of Ismailia Somproday and he executed a power of attorney on 09.09.1972 in favour of the petitioner's husband Mr. Abu Bakar Siddiq. The petitioner paid income tax against the house on 31.12.1972.

7. The petitioner paid a sum of Tk. 14,473.77 to the House Building Finance Corporation on 27.02.1975 against the loan of H.A. Rahman. On 19.11.1975, the petitioner applied for mutation and accordingly the then DIT vide memo No. DIT/EO/4091-L dated 23.06.1976 mutated her name.

8. The Bangladesh House Building Finance Corporation issued Memo No. HBFC/Law/HBD-5103 dated 19.09.1979 to the effect that loan account of H. A. Rahman has been closed and the property has been redeemed in favour of the petitioner. Thereafter, the property was mortgaged with the Bangladesh Shilpa Rin Sangsta against loan, which was released on 09.05.1988. Thereafter, the land in question was mortgaged with ICB Islami Bank Ltd. in the year 1988. The petitioner filed Title Suit No. 209 of 2002 before the Subordinate Judge, 5th

Court, Dhaka to get back her property documents. Ultimately, the petitioner got release of her title deed on 13.09.2012. After that the petitioner intended to develop the land in question and some developers submitted their proposals for developing the property. Thereafter, the petitioner sent her representative to the local revenue office to clear up the dues. But, the revenue office refused to take khazna and taxes showing the reason that the property is in the list of abandoned property published in the Bangladesh Gazette. Then, the petitioner served notice upon the respondents on 08.09.2013 demanding justice for exclusion of the property from the abandoned list, but in vain.

9. Being aggrieved by the said inclusion of the property of the petitioner measuring 14 kathas 15 ½ chattaks lying in Plot No. SW(D)-9, Road No. 8 of Gulshan Model Town, Dhaka in the `Kha` list of the Abandoned property shown at Serial No. 19, Page No. 9764 of Gulshan Area, Dhaka published in the Bangladesh Gazette, Additional Issue dated 23.09.1986 (Annexure J), the petitioner preferred this Writ Petition and obtained the present Rule.

10. The respondent No.1 by filing an affidavit-in-opposition contended that the writ petition is misleading, mala-fide, incorrect and based on false statements. The petitioner had full knowledge about inclusion of the properties. Moreover, H.A. Rehman was a non Bangali and he left this country during the liberation war of Bangladesh. After liberation his house was vacant and accordingly the properties were declared abandoned as per law. The respondent No 1. further stated that the so-called mortgage- deeds and documents are fake and collusive which has been created by the petitioner for grabbing the properties in question and the petitioner had prior knowledge about the abandoned list. Moreover, the SDO did not issue any release order/exclusion of the properties from abandoned list. The respondent issued notice upon the dweller of the said house, but as per direction of the notice the petitioner or anybody did not appear before the authority concerned with the documents, if any. H.R. Rehman was never a citizen of Bangladesh and all documents using his name are also false and fake documents. An illegal claimer has no right to get any protection from the state. Although the property was in the abandoned property list H.A. Rehman i.e. allottee transferred the property to Mr. A.B. Siddiq and on 19.11.1975 the wife of A.B. Siddiq i.e. Sittara Siddiq filed an application for mutation to the Estate Officer, DIT Dhaka and the Estate Officer in Charge DIT Dhaka getting the same on 22.04.1976 issued a letter for supplying or producing the original copy of the transfer deed but the petitioner could not produce the same. Mr. Kamrul Hasan authorized officer issued a notice through a special messenger on 07.08.1984 upon the dweller of the said house and the gazette of the abandoned list of scheduled properties was published on 23.09.1986 but till now the petitioner did not file any case before the court of settlement as per provision of specific law for exclusion of the scheduled land from abandoned list.

11. Mr. Shafiq Ahmed with Mr. Md. Ziaul Haque the learned Advocates appearing for the petitioners submits that the petitioner is lawful owner of the property through purchase and the petitioner is a Bangladeshi citizen purchased the property by taking prior permission from the DIT and the DIT recognized the petitioner as lessee and the petitioner paid municipal taxes on 25.02.1975. He further submits that SDO Sadar, Dhaka vide Memo No. 2003PASA/2/72 dated 22.08.1972 declared that the property is not an abandoned property rather belonged to Mr. H.A. Rehman. The Executive Engineer, Central Dhaka Division, DIT also confirmed vide memo No. EE/CD/DIT/651(6). tha dated 23.08.1972 that the property is not an abandoned property. He also submits that the petitioner was not given any notice at any time to surrender possession or to furnish her papers relating to title or information

regarding her legacy of the title or possession. He further submits that the respondent No.1 has filed a letter dated 07.08.1984 by which none was asked to produce some documents and there is no mention of the name of the petitioner in the so-called letter and nobody received it on 07.08.1984 making it clear that the said document is a fake document purportedly to mislead the court and the said letter is not a notice under section 5 (1)b of the Abandoned Buildings (Supplementary Provisions) Ordinance, 1985 (Ordinance No. LIV of 1985) and the said letter does not contain any notice for surrendering possession or taking over possession of the house of the petitioner. Mr. Shafique Ahmed finally submits that it has already been held by the apex Court by referring to the case of Bangladesh Vs. Amela Khatun and others reported in 53 DLR(AD)-55 that in the absence of notice under section 5(1)(b) of Ordinance, 1985, enlistment of any property is illegal and without any lawful authority.

12. Mr. Motaher Hossain, the learned Deputy Attorney General alongwith Ms. Purabi Rani Sharma and Mr. A.B.M. Mahbub the learned Assistant Attorney Generals appearing on behalf of the respondent No.1 submits that H.A. Rahman was never a citizen of Bangladesh and the petitioner did all evil producing a fake H.A. Rahman and all the documents which have used his name are also forged and fake documents and to testify the genuineness of all documents, the proper court is only the Court of Settlement. He further submits that the so-called deed of Sitara Siddiq was a fake one, therefore, she could not submit the original copy of the said deed before DIT authority and for want of original one, DIT authority refused to mutate the land in her name on 22.04.1976. He also submits that as per provision of Article 4 of P.O. of 1972, the control, management and disposal of abandoned properties vested in the government and accordingly the government is discharging its duty in that regard. The case land is under their control and management. The petitioner had full knowledge regarding the status of the case land i.e. same is lying in the list of abandoned property, but the petitioner never filed any application before the concerned authority of the government. He also submits that the alleged deed No. 23462 dated 03.12.1967 which was executed between Mrs. Nurunnahar Abedin and H.A. Rahman ex-facie shows that the same was executed by one Jamil Chowdhury and as such it appears that the deed is a fake one. Mr. Motaher finally submits that the petitioner ought to have come to the court of settlement and without exhausting that forum the petitioner could not come before this court.

13. We have perused the writ petition, annexures therein, affidavit-in-opposition filed by the respondent No.1 and considered the submission of the both the learned Advocates for the petitioner and the leaned Deputy Attorney General for the respondents.

14. At the outset, we deem it essential to refer to the first part of the 'Preamble' of the Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972 (President's Order No. 16 of 1972), which runs thus:

"WHEREAS it is expedient to make provisions for the control, management and disposal of certain property abandoned by certain persons who are not present in Bangladesh or whose whereabouts are not known or who have ceased to occupy or supervise or manage in person their property, or who are enemy aliens;"

15. So, the whole purpose of the P.O. 16 of 1972 is for the control, management and disposal of certain properties which were abandoned by four categories of person, (1) those who had left Bangladesh (2) those whose whereabouts were not known (3) those who had ceased to occupy or supervise or manage in person and (4) those who were enemy aliens.

And their such act of desertion or abandonment ought to be completed on or before 28-02-1972, when the said President's Order No. 16 of 1972 was promulgated and come into force.

16. After the enactment of the P.O. 16 of 1972, the Government to get the actual detailed list of the said abandoned properties, made and promulgated 'The Abandoned Buildings (Supplementary Provisions) Ordinance, 1985', (Ordinance No. LIV of 1985).

17. Sub-section (2) of the Section 5 of the said Ordinance 54 of 1985 says that the lists published under sub-section (1) of the section 5 shall be conclusive evidence of the fact that the buildings included therein are abandoned properties and have vested in the Government.

18. In the case of Government of Bangladesh Vs. Ashraf Ali @ Ashraf Ali and another reported in 49 DLR (AD) – 161 Our apex Court held that;

"It has been held by this Division in various decisions that the enlistment of building under section 5(1) of Ordinance 54 of 1985 raised a presumption in law that the property is an abandoned property under section 5(2) of the Ordinance. This presumption is, of course, a rebuttable presumption."

19. Therefore, if any person wants to rebut such presumption, alternatively, claim any property of the lists published under Sub-section (1) of the section 5 of the said Ordinance 54 of 1985, such person ought to file an application under Sub-section (1) of the section 7 of the Ordinance 54 of 1985, which runs thus:-

" 7. Persons claiming interest in certain buildings to apply to the Court of Settlement.- (1) Any person claiming any right or interest in any building which is included in any list published under section 5 may, within a period of one hundred and eight days from the date of publication of the list in the official Gazette, make an application to the Court of Settlement for exclusion of the building from such list or return or restoration of the building to him or for any other relief on the ground that the building is not an abandoned property and has not vested in the Government under the President's Order or that his right or interest in the building has not been affected by the provisions of that Order."

20. It is also important to quote section 8 of the said Ordinance, which runs thus:

8. Contents of application. (1) An application under section 7 shall contain the following particulars, namely,-

- (a) name, description, citizenship and place of residence of the applicant;*
- (b) date and place of birth of the applicant;*
- (c) full particulars of the building in respect of which any right or interest is claimed by the applicant;*
- (d) date, if known, on which the possession of the building was first taken by the Government;*
- (e) period for which the applicant is not in possession of the building;*
- (f) occupation and residence of the applicant immediately before the commencement of the President's Order and during the period from such commencement till the making of the application;*

- (g) name and description of the person in possession of the building immediately before the commencement of the President's Order;**
 - (h) name and description of the person in possession of the building immediately before the possession is taken by the Government under the President's Order;**
 - (i) action taken by the applicant for protecting his right or interest or getting back the possession of the building;**
 - (j) brief statement in support of the claim of the applicant;**
 - (k) relief claimed by the applicant; and**
 - (l) any other matter relevant to the relief claimed.**
- (2) The application shall be accompanied by all the documents, or the photostat or true copies thereof, on which the applicant relies as evidence in support of his claim.**

21. So, the application under sub-section (1) of section 7 shall contain the particulars as stipulated in Sub-section (1) of section 8 and also shall be accompanied by all the documents or the Photostat or true copies, as stipulated in Sub-section (2) of section 8 of the Ordinance No. LIV of 1985.

22. In both the Sub-sections (1) and (2) of section 8 of the said Ordinance, the word 'shall' has been used i.e. "shall contain" and "shall be accompanied."

23. So the particulars in sub-section (i) and documents as per sub-section (2) of section 8 of the Ordinance are the essential condition in making an application under sub-section (1) of section 7 of the said Ordinance. Without any of the said particulars and documents, it is not possible to file an application under section 7 of the said Ordinance.

24. Since the petitioner had no such particulars and documents as per sub-section (1) of Section 8, therefore, he did not go before the Court of Settlement and file any application as per sub-section (1) of Section 7 of the Ordinance No. LIV of 1985.

25. In the case of Government of Bangladesh and another vs. Rowshan Ara Begum and another reported in 10 MLR (AD) (2005) 337, wherein it has been held that:

"The claimant of the property for releasing the claimed property from the list of abandoned buildings is required to file petition before the Court of Settlement as per provision of section 7 of the Ordinance."

"12. The property in question has been listed in the 'kha' list as abandoned property and the said list as per provision of the Ordinance No. 54 of 1985 has been published in the official Gazette. Section 5(2) of the Ordinance attaches statutory presumption that a particular building listed in the list of abandoned buildings and published in the official Gazette then the property so listed is an abandoned property and has vested in the Government. In such a situation if a person claiming right title and interest therein intends to take the property out of the list of the abandoned building or seeks any other relief's as provided in section 7 of the Ordinance he is required to apply to the Court of Settlement established under section 7 of the Ordinance and there he is required to establish that the property is not an abandoned property and that has not vested in the Government."

13. *The provisions as are in section 5(2) and section 7 of the Ordinance clearly show that onus of rebutting the presumption. i. e. the property is an abandoned property and has vested in the Government or in other words establishing the fact that the property is not an abandoned property and has not vested in the Government is totally on the person who challenges the presumption or in other words claiming the property and intends to take such property out of the list of the abandoned property ;published in the official Gazette or for any other relief as are in section 7 of the Ordinance. In this connection reference may be made to the case of Government of Bangladesh Vs. Md. Jalil and others reported in 48 DLR (AD) 10 wherein it has been held “section 5(2) of the Ordinance clearly provides that the list published under sub-section (1) shall be conclusive evidence of the fact that the buildings included therein are abandoned property and have vested in the Government as such. Section 7 says that a person claiming any right or interest in any such building may make an application to the Court of Settlement for exclusion of the building from such list etc. on the ground that the building is not an abandoned building and has not vested in the Government under President’s Order No. 16 of 1972 or that his right or interest in the building has not been affected by the provisions of that Order. The onus, therefore, is squarely on the claimant of the building to prove that the building is not an abandoned property. The Government has no obligation either to deny the facts alleged by the claimant or to disclose the basis of treating the property as abandoned property merely because the same is disputed by the claimant”. Similar view has been expressed in the case of Hazerullah and another vs. Chairman, 1st Court of Settlement and another reported in (1998) 3 BLC (AD), 42. Therein it has been held “that the onus lies upon the claimant of the building to prove that the building is not an abandoned property” and that the onus lies upon the claimant of the property and that any other person claiming through the original owner to prove to establish the fact that the owner of the property or any other person claiming through the owner “had been present in Bangladesh or had been occupying, supervising or managing in person the disputed property” when on 28 February, 1972 president’s Order No. 16 of 1972 came into operation. This Division in the case of Government of Bangladesh vs. Ashraf Ali and another reported in 49 DLR (AD), 161 has held “that the enlistment of a building under section 5(1) of Ordinance 54 of 1985 raises a presumption in law that the property is an abandoned property under section 5(2) of the Ordinance. The presumption is, of course, a rebuttable presumption but respondent No. 1 failed to rebut this presumption”. In the case of Bangladesh vs. Md. Shajahan reported in (2000) 20 BLD (AD), 166 it has been held “Thus, section 7 enjoins upon the claimant before the Court of Settlement to prove that the property is not an abandoned property, in a like manner the plaintiff is to prove his case and the Government, like that of a defendant, is under no legal obligation to prove that the property is an abandoned property or to disclose the basis of treating the property as an abandoned property”. In the case of Asma Begum vs. Bangladesh and others reported in (2001) 21 BLD (AD), 134 it has been held that the onus lies on the claimant of the property ‘ to rebut the conclusive evidence as provided in section 5(2) of the Ordinance”. The*

High Court Division in disregard of the provisions as are in sections 5(2) and of the Ordinance encumbered the appellants to establish that the property in question is not an abandoned property and has not vested in the Government or that to establish the facts in the presence whereof the property can be listed as abandoned property and vests in the Government. This approach of the High Court Division was erroneous and as the High Court Division thereupon interfered with the judgment of the Court of Settlement, the judgment under appeal is not sustainable.

14. The Court of Settlement on consideration of the materials brought on record by the claimant of the property for having the property delisted from list of abandoned buildings arrived at the finding that the allottee of the property (to whom the property in question belonged and who gifted the same to her daughter and from whom Respondent No. 1 is claiming by purchase in October, 1979) was not present in Bangladesh and whereabouts of the allottee were not known at the time when President's Order No. 16 of 1972 came into operation i.e. on February 28, 1972. It may be mentioned the consistent case of the Government is that the allottee of the property Sahera Khatun was not present in Bangladesh at the time of emergence of Bangladesh and thereafter her whereabouts were not known and also on the date when P.O. 16 of 1972 came into operation. From claimant's side no oral or documentary evidence was led to show that Sahera Khatun was present in Bangladesh and her whereabouts were known when P.O. 16 of 1972 came into operation. The Respondent No. 1 tried to establish that Sahera Khatun was very much in Bangladesh by producing the affidavit affirmed on 14.07.1973 before the Magistrate in confirmation of the oral gift said to have been made by Sahera Khatun in favour of her daughter Anwari Khatun on 16.04.1973. The property said to have been gifted at a time when in the background of the assertion of the appellants the property has become abandoned property. The Court of Settlement in the background of the facts and circumstances of the case held that the alleged oral gift was not formally proved since the person in whose presence as mentioned in the affidavit were not examined and thereupon arrived at the finding that it has not been established that Sahera Khatun was present in Bangladesh and her whereabouts were known when P.O. 16 of 1972 came into operation. It is seen from the judgment of the High Court Division that the said Division discarded the aforesaid finding of the Court of Settlement placing reliance upon the affidavit affirmed by Sahera Khatun and the recitals therein as well as the recitals in the kabala executed by the donee Anwari Khatun (daughter of Sahera Khatun) and finally arrived at conclusion that Sahera Khatun was very much in Bangladesh and as such the property is not an abandoned property. The Respondent No. 1 has not led evidence or brought materials on record to discharge the onus of rebutting the presumption that the property is not an abandoned property and that has also not established that the property is not an abandoned property. This being the position High Court Division was in error in interfering with the judgment of the Court of Settlement.

15. The High Court Division while exercising its jurisdiction under Article 102(2) of the Constitution in respect of the judgment of a tribunal or in other words exercises its jurisdiction in certiorari is certainly not acting as

a Court of appeal and to reassess the evidence and finally to arrive at a view different from the tribunal in the absence of arriving at a finding that the view taken by the tribunal in the background of the materials noticed by it is not legally tenable or logically not well founded e.g. the case as the instant one. The High Court Division while examining the correctness of the judgment of the subordinate tribunal does not act as the Court of appeal and this has been held in the case of Government of Bangladesh Vs. Md. Jalil and others reported in 48 DLR (AD) 10 “The High Court Division was not a Court of appeal required to make determination of facts on its own. It could interfere with the findings of a tribunal of fact under its extraordinary jurisdiction under Article 102 only if it could be shown that the tribunal had acted without jurisdiction or made any finding upon no evidence or not considering any material evidence / facts causing prejudice to the complaining party or that it had acted mala fide or in violation of any principle of natural justice. In the absence of any of these conditions the interference by the High Court Division will itself be an act of without jurisdiction”. It may be mentioned in the instant case there is absence of any one of the aforesaid matters or situations. In the case of Government of Bangladesh Vs. Ashraf Ali reported in 49 DLR(AD), 161 it has been held that the High Court Division while exercising its power under certiorari in connection with the judgment of an interior tribunal is not within its jurisdiction if it act in a manner or that considering the materials on record in the manner “in which a Court of appeal disposes of an appeal”. In the instant case the High Court Division did this error in considering the materials on record in the manner as if it sat as a Court of appeal over the judgment of the Court of Settlement. In the case of Mostafa Kamal vs. First Court of Settlement and others reported in 48 DLR (AD) 61 it has been held that the High Court Division in exercise of its writ jurisdiction in connection with the judgment of the Court of Settlement “cannot sit as a Court of Appeal over the judgment of the Court of Settlement for re-setting questions of fact”. The High Court Division in fact did that i.e. without arriving at a finding that the Court of Settlement committed any procedural error or that Court of Settlement had arrived at the finding as regard the material fact that Sahera Khatun was not present in Bangladesh and her whereabouts were not known when P.O. 16 of 1972 came into operation and that oral gift made by Sahera Khatun in favour of her daughter Anwari Khatun has not been proved by calling the persons in whose presence the gift said to have been made upon ignoring any material or any material fact having the bearing in making the decision in the aforesaid matter was left out of consideration. In fact the High Court Division on fresh assessment of the fact of its own resettled the question of fact upon sitting over the judgment of the Court of Settlement like the Court of appeal.”

26. In the case of Mohammad Abdul Alim Vs. Government of Bangladesh and ors reported in 21 BLT (AD) 2013, it has been held that;

8. The petitioner, an alleged transferee of the abandoned property, alleged to have obtained, a kabala from the alleged owners on 18.02.1999. The High Court Division has found that the said deed is absolutely

malafide and void as it is contrary to the provisions of Article 6 of P.O No. 16 of 1972 which reads as under;

“No person shall except in accordance with the provisions of this order or any rules made thereunder transfer any abandoned property in any manner or create any charge or encumbrance on such property, or any transfer made or change or encumbrance created in contravention of the order shall be null and void.

Since the property was declared as abandoned property pursuant to Article 2(1) of the P.O. No. 16 of 1972 thereby vested in the Government and subsequently was included in ‘Ka’ list prepared under Section 5(1) of the Ordinance, 1985 and there is nothing to show that the transfer was in accordance with the provisions of P.O. No. 16 of 1972 the alleged purchase was of no avail to the appellant and the same is void being a purported deed of transfer of an abandoned property contrary to the provisions of The Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972.

9. The building was constructed as a residential building but simply letting out the same for alleged commercial purpose could not attract the provisions regarding the commercial building under rule 6(3) of the Abandoned Property (Taking Over Possession) Rules, 1972 and the alleged purchase was of no avail to the petitioner and have not acquired any locus standi. Moreover, as the alleged purchase was made at a time when the property has already been declared abandoned and accordingly vested in the Government as abandoned property rendering the deed of transfer in favour of the petitioner as void and the alleged transferee have not acquired any interest in the abandoned property, as such, the appellant-petitioner has no locus standi to file the writ petition and thereby writ petition and consequently, this appeal at the instance of the alleged purchaser during the continuance of the property as abandoned is not maintainable.

27. Admittedly, the petitioner purchased the land from one Mr. H. A. Rahman (ALHAS ABDUR REHMAN) by virtue of the deed No. 5103 dated 30.08.1972 (Annexure-D to the writ petition). So, it is seen that the alleged purchase was made at the time when the property has already been declared abandoned and accordingly vested in the Government as abandoned property rendering the deed of transfer in favour of the petitioner as void and the alleged transferee has not acquired any interest in the abandoned property.

28. However the extraordinary this Court may be, it cannot verify the documents and truthfulness of the documents. The annexures annexed to the writ petition require elaborate investigation which is not the function of this Court and there being a forum namely the Court of Settlement set up to investigate into the facts of the case.

29. In light of the aforesaid facts and circumstances, we are of the view that that the petitioner Mrs. Sitara Siddiq fabricated some papers and documents with the aid of some unscrupulous people to grab the abandoned property in question illegally. Since the original allottee was not found in the house in question after the liberation war, the Govt. rightly declared the house as an abandoned property and included it in the ‘kha’ list.

30. Accordingly, the Rule is discharged without any order as to cost.