

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

Present:

Ms. Justice Naima Haider
And
Ms. Justice Kazi Zinat Hoque

Writ Petition No. 4803 of 2018

In the matter of :

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

-And-

In the matter of :

Government of People's Republic of Bangladesh,
represented by the Deputy Commissioner, District –
Narsingdi.

..... Petitioner

-VERSUS-

District Judge, Narsingdi and another

.....Respondents

Mr. Amit Das Gupta, Deputy Attorney General

.....For the petitioner

Mr. Md. Mansurul Hque Chowdhury, with

Mr. Mohammad Sahfikul Islam Ripon, Advocates

..... For the respondent No.2

Date of Hearing : 18.01.2024.

Date of Judgment: 21.01.2024.

Kazi Zinat Hoque, J :

In this application, under Article 102(2) of the Constitution, a Rule Nisi has been issued calling upon the respondent Nos. 1 and 2 to show cause as to why the impugned judgment and decree dated 07.05.2017 (decree signed on 16.05.2017) passed by learned District Judge, Narshingdi allowing the Vested Property Restoration Appeal No.27/16 and

thereby affirming the judgment and decree dated 21.04.2016 (decree signed on 26.04.2016) passed by the Senior Assistant Judge, Narshingdi Sadar, in decreeing the Vested Property Restoration Case No.502/12 should not be declared without having any authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

Respondent No.2 filed Vested Property Return Case No.502 of 2012 in the Vested Property Return Tribunal, Narsingdi for release of the case property contending, inter alia, that Hari Charan Kaibarta was the original owner of 30 decimals of property recorded in C.S. Khatian No.319, Plot No.220 under Mouza – Satirpar, District – Narshingdi and 35 decimals of land in respect of Plot No.219. Haricharan died leaving behind two sons namely Rajanikanta Das and Harendra Chondro Das. S.A. Khatian was correctly recorded in the name of Gopal Chondro Das, son of Harendra Chandra Das, Ram Krisna Das, Ruma Chandra Das, Gobindra Chandra Das, Khitish Chondra Das, Ghar Chandra Das all sons of Rajanikanta Das in respect of 30 decimals of land of S.A. Plot No.220. Horicharan Kaibarta was the original owner of 30 decimals of land in C.S. Plot No.220, C.S. Khatian No.319 along with other lands. Harendra Chondro Das died leaving

behind one son namely Gopal Chandra Das. Rajanikanta Das died leaving behind five sons namely Ramkrishno Das, Ruma Chandra Das, Gobindra Chandra Das, Khitish Chondra Das, Ghan Chandra Das. S.A. Plot No. 220, S.A. Khatian No. 471 was correctly recorded in the names of heirs of Harendra Chandra Das, Rajanichandra Das. Bimal Chandra Das, son of Gobindra Chandra Das. Narayan Chandra Das sold two decimals of land from R.S. Plot No.1640 vide deed of sale No.9621 dated 20.03.1975 in favour of Sundar Ali. The heirs of Sundar Ali sold two decimals of land in favour of Islam Khan vide deed of sale No.7837 dated 30.06.1982. Islam Khan got his name mutated by creating separate jama and paid land development tax. Islam Khan sold the said two decimals of land in favour of respondent No.2 vide deed of sale No.9485 dated 06.11.1991. The property was mutated in the name of respondent No.2 by opening mutation case and separate jama. Respondent No.2 has been paying land development tax and enjoying peaceful possession of the property by constructing building on the case land. The names of Narayan Chandra Das and Bimal Chandra Das, sons of Gobindra Chandra Das were recorded in R.S. record. However, the government did not file any objection against such record of right which was published

in 1990. The government most illegally included the case property at serial No.164 of 'Ka' list of vested property.

The government contested the suit by filing written objection contending, inter alia, that names of Gobindra Chandra Das and others were rightly recorded in S.A. Khatian No.471 as owners of the case property. It was the contention of the government that during Indo-Pakistan War of 1965 Gobindra Chandra Das along with his family members went to India. Thereafter, the property was rightly recorded as enemy property in the census list. The government has been in possession of the property through its lessees and the property is leased out vide V.P. Case No.326/67 and as such the suit is liable to be dismissed.

Mr. Amit Das Gupta, learned Deputy Attorney General representing for the petitioner, submitted that the Vested Property Return Tribunal and the Vested Property Return Appeal Tribunal most illegally decreed the suit without considering the fact that the original owner of the case property Gobindra Chandra Das left this country along with his family members during the India-Pakistan War of 1965 and settled in India. As such the government rightly included the property as enemy property. The government initiated V.P. case in 1968.

Therefore, the judgments of the courts below are liable to be set aside.

The Rule has been opposed by respondent No.2. Mr. Md. Mansurul Hoque Chowdhury, learned Senior Advocate appearing with Mr. Mohammad Sahfikul Islam Ripon, learned Advocate, submitted that after elaborate discussion the courts below rightly decreed the suit. He further submitted that the government has not been able to provide census list wherein the case property was included as enemy property. Therefore, the Rule is liable to be discharged.

It is a settled principle of law that judgments of the courts below cannot be interfered with unless there is palpable illegality or coram non judice. Since both the Vested Property Return Tribunal and Vested Property Return Appellate Tribunal concurrently held that the case property is not vested property, the impugned judgments do not call for any interference.

It was the contention of the petitioner-government that the case property became enemy property after S.A. recorded owner Gobindra Chandra left this country for India during Indo-Pakistan War of 1965. The government has been in peaceful possession of the property through its lessee. The case land property has been leased out vide V.P. Case No. 326/67.

In Arati Rani Paul Vs. Sudarshon Kumar Paul [56DLR (AD)73] it was held that no property can be declared as enemy property after the repeal of Enemy Property (Continuance of Emergency Provisions) Ordinance, 1969 i.e. Ordinance No. I of 1969 (on March 23, 1974) on the basis of a defunct law. However, there is no presumption that a property is vested property because vested property case was initiated prior to the repeal of Ordinance No. I of 1969 (on 23.03. 1974). Since both the Tribunals below concurrently held that the case property is not vested property, we do not find any substance in the submission of learned Deputy Attorney General that the property became vested property because the government initiated V.P. case in 1967.

In the facts and circumstances stated above, we do not find any merit in the Rule.

In the result, the Rule is discharged without any order as to costs.

The interim order of stay and status-quo are recalled and vacated.

Transmit a copy of this judgment to the concerned Tribunal at once.

(Kazi Zinat Hoque, J):

I agree

(Naima Haider, J):