

**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. 6200 of 2018

In the matter of :

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

-And-

In the matter of :

Mohammad Ridownaul Bari and another
..... Petitioners

-VERSUS-

The Deputy Commissioner, Chittagong and others
..... Respondents

Mr. A.K.M. Shamsul, Haque, Advocates
..... For the petitioners

Mr. Md. Taufiq Sajawar Partho, Assistant Attorney
General

..... For the respondents

Date of Hearing : 21.01.2024 and 08.02.2024

Date of Judgment: 15.02.2024.

Kazi Zinat Hoque, J :

In this application under Article 102 of the Constitution, a Rule nisi has been issued, calling upon the respondents to show cause as to why the inclusion of the property measuring 0.850 decimals, appertaining to R.S. Khatian No. 689, P.S. 683/689, P.S. Mutation No. 683/2, R.S. and P.S. Plot No. 3555, B.S. Khatian No. 299, B.S. Mutation No. 299/2, B.S. Mutation No. 2999/2, B.S. Plot No. 6044, Mouza-South Kattoli, Police Station-Doboulemooring,

presently Pahartali, District Chattogram, at serial No. 270 in the 'Ka' list of vested property, vide Memo NO. 31.00.0000.040.53.005.2012-220 dated 08.02.2012, published in the Bangladesh Gazette dated 08.04.2012, should not be declared to have been done without lawful authority.

The petitioners claim ownership through purchase. Their names were mutated in respect of the case property through Mutation Case No. 01-2051/03 dated 22.06.2004. The petitioners had been residing in the United States and after return on 26.11.2017 they came to know from the Tahsil Office that their property has been included in the 'Ka' list of vested property. Thereafter on 28.12.2017 they filed application before respondent No.5 to exclude the case property from the 'Ka' list of vested property. However, the respondents did not consider the petitioners' application. As such they filed this writ petition for releasing the case property from the 'Ka' list of vested property.

Mr. A.K.M. Shamsul Haque, learned Advocate representing the petitioners, argued that the petitioners purchased the case property and mutated their names and have been paying rent to the government. All on a sudden they came to know that the case property has been included in the 'Ka' list of vested property through V.P. Case No.8/1976-1977 long

after the repeal of Enemy Property (Continuance of Emergency Provisions) Ordinance, 1969 i.e. Ordinance No. I of 1969 (on March 23, 1974). Therefore, the inclusion of the case property in the 'Ka' list of vested property published in Bangladesh Additional Gazette dated 08.04.2012 should be declared to have been issued without lawful authority.

Mr. Md. Taufiq Sajawar Partho, learned Assistant Attorney General appearing for the respondents, argued that the original owner of the case land having left the country for India during India-Pakistan War of 1965, the government rightly declared the case property as enemy property through V. P. Case No. 8/1976-1977. He also submitted that the writ petition is not maintainable as there is alternative forum. Therefore, the Rule is liable to be discharged.

In *Arati Rani Paul Vs. Sudarshon Kumar Paul* [56DLR (AD)73] it was held that after the repeal of the Enemy Property (Continuance of Emergency Provisions) Ordinance of 1969 [Ordinance No. 1 of 1969] (on 23.3.1974) no property can be enlisted as vested property on the basis of an obsolete law. In this case the government initiated V.P. Case No. 8/1976-1977 long after the repeal of Ordinance No. I of 1969. After the enactment of Vested Property Return Act 2001 (amended in 2011) the case property was included in the 'Ka'

list of vested property through gazette notification in 2012. Therefore the enlistment of the case property as vested property through V.P. Case No. 8/1976-1977 and inclusion of the same in 'Ka' list of vested property through gazette notification in 2012 are illegal.

In the case of Bangladesh Vs Syed Chand Sultana [18 BLD(AD)274] it has been held that writ petition challenging inclusion of the case property in the 'Kha' list of abandoned property without filing application before the Court of Settlement is maintainable because it violates the petitioner's fundamental right to property. Since enlistment of the case property as vested property vide V.P. Case No. 8/1976- 1977 after the repeal of Ordinance No. 1 of 1969 (on 23.3.1974) and inclusion of the same in the 'Ka' list of vested property through gazette notification in 2012 are ex facie illegal and violate the petitioners' fundamental right to property this writ petition is maintainable.

In the facts and circumstances stated above, we find merit in the Rule.

In the result, the Rule is made absolute. Inclusion of the case property in the 'Ka' list of vested property at serial NO. 270 of Memo No.31.00.0000.040.53.005.2012-220 dated 08.02.2012 published in the Bangladesh Additional Gazette

dated 08.04.2012 is declared to have been done without lawful authority.

The respondents are directed to exclude the petitioner's case property from the "Ka" list of vested property published in Bangladesh Additional Gazette dated 08.04.2012 through a fresh Gazette notification within a period of 60(sixty) days from the date of receipt of a copy of this judgment.

The interim order of status-quo is hereby recalled and vacated.

There is no order as to cost.

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

(Kazi Zinat Hoque, J):

I agree

(Naima Haider, J):