

**IN THE SUPREME COURT OF BANGLADESH  
APPELLATE DIVISION**

**PRESENT:**

**Mr. Justice Syed Mahmud Hossain,**  
Chief Justice  
**Mr. Justice Hasan Foez Siddique**  
**Ms. Justice Zinat Ara**

**CIVIL PETITION FOR LEAVE TO APPEAL NO.1589 OF 2018.**

(From the judgment and order dated 28.01.2018 passed by the High Court Division in Writ Petition No.2390 of 2014.)

Government of Bangladesh, represented by the Secretary, Ministry of Works, Bangladesh Secretariat, Ramna Dhaka & others : Petitioners.

**=Versus=**

Md. Tariq Sultan and others : Respondents.

For the Petitioners : Mr. Murad Reza, Additional Attorney General, instructed by Mr. Haridas Paul, Advocate-on-Record.

For Respondent No.1 : Mr. Fida Kamal, Senior Advocate, instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record.

Respondent No.2 : Not represented.

***Date of hearing and judgment : 25.02.2019.***

**JUDGMENT**

**Hasan Foez Siddique, J:** Delay in filing of this leave petition is condoned.

This petition for leave to appeal is directed against the judgment and order dated 28.01.2018 passed by the High Court Division in Writ Petition No.2390 of 2014 making the Rule absolute.

Writ petitioner-respondent Md. Tariq Sultan, through his constituted power of attorneys, filing

the instant writ petition, challenged the notification of enlistment of the property mentioned in Serial No.34 at page No.9762(8), Plot No.388, New Eskaton Road (hereinafter referred as disputed property) in the 'Ka' list of the abandoned properties vide Bangladesh Gazette dated 23.09.1986 as per provision of the Abandoned Buildings (Supplementary provisions) Ordinance, 1985 (Ordinance LIV of 1985) and obtained Rule. His case, in short, was that the disputed property originally belonged to Ali Mohammad son of Mohammad Jawad Ispahani who got the same by virtue of the sale deeds No.4196 and 4197 dated 08.06.1951. Ali Mohammad transferred the said property to the writ petitioner by a registered sale deed dated 21.04.1955 and delivered possession. In S.A. operation, the same was recorded in the name of the writ petitioner in Khatian No.382. In R.S. operation, the same was also recorded in the name of the writ petitioner. In March 2001, the writ petitioner went to collect city jarip khatian of the disputed property and came to know that the disputed property had been enlisted in the 'Ka' list of the abandoned properties. The writ petitioner went to the Court of Settlement for taking step to get the same released but the Court of Settlement did not

accept the writ petitioner's prayer since the same was time barred. Thus, the writ petitioner filed the writ petition.

The Government appeared in the Rule and contested the same contending that the papers produced by the writ petitioners are forged, created and fraudulent. The original owner Md. Tariq Sultan left this country during the war of liberation and he was found untraced. Accordingly, the Government took over possession of the said property treating the same as abandoned property as per provision of Article 4 of the P.O.16 of 1972. The power of attorney as allegedly executed by Md. Tariq Sultan is fraudulent one. The Government has been possessing the said property through its lessee. The Rule should be discharged.

The High Court Division, by the impugned judgment and order, made the Rule absolute directing the writ respondents to release the disputed property from the list of abandoned properties.

Mr. Murad Reza, learned Additional Attorney General appearing for the petitioners, submits that the disputed property has been enlisted in the 'Ka' list of the abandoned properties and it is the settled principle that it is to be presumed

that the same has been enlisted rightly and the Government has been possessing the same, the High Court Division committed an error of law in directing to release the property, in question. He submits that the writ petitioner has failed to rebut the presumption as to correctness of enlistment producing sufficient materials. He submits that the Government has been possessing the same through its allottee who are the members of "shahid" family and have been residing therein since 1972. He further submits that the papers produced by the writ petitioners in the High Court Division are apparently forged and fraudulent and that writ petitioner Tariq Sultan is a fictitious man and his so-called power of Attorneys, creating the documents, made such attempt to misappropriate the valuable properties of the Government.

Mr. Fida M. Kamal, learned Senior Counsel appearing for the respondents in his submission, supported the judgment and order of the High Court Division.

Admittedly, the disputed property was enlisted in the 'Ka' list of the abandoned properties so it is to be presumed that the same was enlisted rightly and the Government has been possessing the same. The onus is upon the writ petitioner to

prove that the same is not an abandoned property. The Government has no obligation either to deny the facts alleged by the writ petitioner or to disclose the basis of treating the property as abandoned property merely because the same is disputed by him. This Division earlier in the case of Government of Bangladesh V. Md. Jalil and others reported in 48DLR(AD) page 10 has expressed the aforesaid views.

It appears that the alleged writ petitioner Md. Tariq Sultan instituted the instant writ petition showing his address at No.388, New Eskaton, Shantinagar, Ramna, Dhaka. Writ petition was filed through his alleged constituted power of attorneys, namely, Rashed Zahid, Firoza Begum and Shamsun Nahar. From the writ petition, it appears that address of Rashed Zahid and Firoza Begum, two of the attorneys, is of Road No.2, House No.D/31 Eastern Housing, Pallabi, Dhaka and address of third power of attorney, namely, Shamsunnahar is of village-Uttarkhan, Miabari, P.S. Uttarkhan, Dhaka. In the power of attorney (Annexure-1), address of the writ petitioner Md. Tariq Sultan, alleged executant of power of attorney, has been shown at No.63/2 Purana Paltan, P.S. Lalbagh, District-Dhaka.

In the power of attorney said Md. Tarique Sultan, by swearing affidavit on 27.03.2011, declared to the effect, “পরিত্যক্ত সম্পত্তির আইন, ১৯৭২ সনের রাষ্ট্র প্রধানের ১৬নং আদেশের সংজ্ঞানুযায়ী পরিত্যক্ত নহে।” inasmuch as in paragraph 7 of the writ petition he stated that in the month of March, 2001 the petitioner collected City Jorip Khatian and came to know that the property has been included in the list of abandoned properties and, upon query, he found that the case property has been enlisted in the “Ka” list of the abandoned buildings published in the official gazette dated 23.09.1986 at page No.9762(8), serial No.34. That is, knowing fully well that the disputed property is abandoned property, the writ petitioner made such false declaration.

The writ petitioner produced the photostate copy of his National Identity Card (Annexure-A) which shows that the date of birth and ID number were hand-written. Peculiar aspect is that the digit mentioned in the I.D. card encroached its border which is unusual. The signature of the Md. Tariq Sultan is not visible. Annexure-A1 shows that the same is a citizenship certificate which has been issued by the penal Mayor of Bogra Municipality and address of the writ petitioner

has been mentioned as Thonthonia Sufipara, Ward No.12, Bogra. Annexure-A-2, birth certificate issued by Bogra Municipality, shows that Md. Tariq Sultan was born on 03.06.1933 but from the photostate copy of the deed dated 21.01.1955 produced before the Court it appears that Mohammad Tariq Sultan was shown as minor inasmuch as according to birth certificate, at the relevant time, Mohammad Tariq Sultan was aged about 22 years. From Annexure-A-3 certificate issued by the panel Mayor of Bogra Municipality it appears that late Sultan Mirza son of late Gazi Sultan died leaving only heir, namely, Md. Tariq Sultan. That is, his grand father used the title 'Gazi' and father used the title 'Mirza'. From annexure 'B' the photostate copy of the certified copy of deed executed on 21.04.1955 it appears that recipient of the deed was Mohammad Tariq Sultan minor son Mr. Sultan of No.63/2 Purana Paltan, Police Station-Lalbagh, Dhaka. It is not the case of the writ petitioner Md. Tareque Sultan that when he was minor, he came to Dhaka from Thanthania, Bogra and started residing at No.63/2 Purana Paltan, Lalbag, Dhaka and purchased 1 bigha 1½ chattaks of land of New Eskaton, Ramna Dhaka. It is not the case of the writ petitioner that his father purchased the disputed property in his name, that

is, he was the benamder of his father. It appears from Annexure-G and G-1 that on 20.12.2012 and 11.03.2013 aforesaid three persons, namely, Rashed Zahid, Firoza Begum and Shamsunnahar, on behalf of Tarique Sultan, filed two separate applications addressing the Secretary, Ministry of Housing and Public Works for getting release of the disputed property from the list of abandoned properties. Annexure-1 shows that on 03.03.2014 those three persons swearing an affidavit before the Notary Public, Dhaka declared that Tarique Sultan filed an application on 02.03.2014 before the First Court of Settlement, Dhaka along with the prayer for condonation of delay for getting release of the disputed property inasmuch as in paragraph 7 of the writ petition it was stated that in the month of March 2001 the petitioner collected the City Jorip Khatian and came to know that the property has been included in the list of abandoned properties and, upon query, he found that the case property has been enlisted in the 'Ka' list of the abandoned buildings published in the official gazette dated 23.09.1986 at page No.9762(8) serial No.34. Annexure-1, the photostate copy of the certified copy of the power of attorney allegedly executed by Tarique Sultan in favour of those three persons it appears that



father of Ali Mohammad, the executant of the deed dated 21.04.1955, is “মোহাম্মদ জাবেদ টিপানী” inasmuch as the name of Ali Mohammed was Mohammad Jawad Ispahani.

From the materials on record, it is apparent that writ petitioner Md. Tarique Sultan never appeared before the Court and those three persons namely, (1)Rashed Zahid, (2)Firoza Begom and (3) Shamsun Nahar, creating some documents, attempted to get the disputed valuable property released from the list of abandoned properties.

It is a fit case for holding an elaborate inquiry to find out the actual culprits who are involved in this fraudulent attempt. The writ petitioner never produced the original title deeds before the Court for perusal. It is apparent that they fraudulently used some instruments for weighing which they know to be false.

The aforesaid facts clearly questioned the identity of the writ petitioner. Though the papers produced in the High Court Division were highly doubtful, the High Court Division, ignoring those aspects, erroneously believing the papers (though original documents were not produced) released the property, in question.

Since the learned Counsel for the respondent appeared, we are of the view that it would delay the disposal of the matter if we grant leave.

Accordingly, we have decided to dispose of the matter finally.

Thus, the civil for leave to appeal is disposed of.

The judgment and order of the High Court Division is set aside.

**C.J.**

**J.**

**J.**

**The 25<sup>th</sup> February, 2019.**

M.N.S./words-1825/