

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Special Original Jurisdiction)**

**WRIT PETITION NO. 10896 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:**

Alhaj Md. Kamrul Haque

... Petitioner

-Versus-

People's republic of Bangladesh represented by the  
Secretary, Ministry of Land, Bangladesh  
Secretariat and others.

... Respondents

Mr. Samarendra Nath Biwsas, Advocate for  
Ms. Sabina Yeasmin, Advocate

...For the petitioner

Mr. Syed Ejaz Kabir, DAG

with

Mr. Mohammad Imam Hossain, DAG

with

Ms. Mahbuba Tasnim Akhi, AAG and

Mr. Mustafizur Rahman Mukul, AAG

...For the government

**Heard on 24.11.2025, 01.12.2025, 07.12.2025  
and Judgment on 08.12.2025**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Hamidur Rahman

**Md. Mozibur Rahman Miah, J.**

On an application under article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why inclusion of 0.0338 acres of land of the petitioner appertaining to SA khatian No. 17 SA plot No. 23 corresponding to *Hal* (latest) Khatian No. 235, *Hal* (latest) plot No. 21 of Mouza, Alomshah Katghar under Police Station-Kutwali, District-Chattogram in 'Ka' schedule as of vested property vide V.P. Case No. 43/65-66 published in Bangladesh Gazette Additional issue, dated 08.04.2012, at page No. 9175 as mentioned in serial No. 23 (annexure-L to the writ petition), should not be declared to have been done/published without lawful authority and is of no legal effect and as to why the respondents should not be directed to exclude the land measuring an area of 0.0338 acres appertaining to S.A khatian No. 17, SA plot No. 23, corresponding to *Hal* khatian No. 235, *Hal* plot No. 21 of Mouza-Alomshah Katghar, under Police Station-Kutwali, District-Chattogram in 'Ka' schedule as vested property vide V.P Case No. 43/65-66 published in Bangladesh Gazette, Additional issue dated 08.04.2012 at page No. 9175 as appeared in serial No. 23 (Annexure-L to the writ petition) and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, this court also directed to the parties to maintain status quo in respect of possession and position of the land in question for a period of 06( six) months which was subsequently

extended from time to time and it was lastly extended on 30.01.2022 till disposal of the rule.

The salient facts so figured in the instant writ petition are:

One, Hironmoy Projapoti, Chinmoy Projapoti, Jobonmoy Projapati and Jotirmoy Projapoti all sons of Shyma Charon Projapoti were the original owner of the land in question and they had been possessing the said land peacefully. While the aforesaid owners were possessing the land jointly, they executed and registered a deed of partition on 31.01.1937 and in the said deed of partition, the total land was divided in equal four shares and Hironmoy Projapoti became the owner of land described in the first part, Chinmoy Projapoti became the owner of the land in the second part, Jibonmoy Projapoti became the owner of the land in third part and Jotirmoy Projapoti became the owner of the land in the fourth part described in the schedule to the said partition deed. Thereafter, Chinmoy Projapoti while enjoying his portion of land transferred 49 decimals of land to one, Shagor Singha by registered sale deed dated 12.04.1956. Shagor Singha was the head of the joint Hindu family and the land in question was purchased from his own resources but to avoid any further complication in future, he made partition with other legal heirs of the family which was registered by registered deed dated 14.04.1970 regarding the land in question and pursuant to the said registered deed of purchase and registered deed of partition, Shagor Singh became the owner of the land in question. Thereafter, SA record was prepared in the name of Shagor Singh and another named, Begum Nur Akter in SA Khatian No. 17 for 0.0569 acres of land. Subsequently, BS Khatian being no. 11 corresponding to earlier SA Khatian

No. 17 was prepared in the name of aforesaid Shagor Singha and other co-sharers (Annexure –‘E’ to the writ petition). Subsequently, the present petitioner by two separate registered deeds of sale dated 05.09.1980 and 24.04.1980 purchased the land in question from the aforesaid BS recorded tenant and after purchasing the said land, the petitioner got their name mutated in the Khatian (ROR) vide mutation case no. 2045/1995-96 on 26.10.1995 from the office of respondent no. 5 and accordingly record of right was corrected in his name. After getting mutation, the petitioner paid land development tax (*Khazana*) up to 1418 BS and also got a holding number being no. 2727 of Bag Monirum, Ward No. 15, Chattogram City Corporation and paid holding tax accordingly to the City Corporation. It has also been stated that the petitioner also obtained permission from Chattogram Development Authority (shortly, CDA) and constructed a four storey building over the said land. In the aforesaid way, the petitioner has been in possession of the land in question by making construction a residential building over the same and availed various utility facilities in his building and kept on paying utility bills regularly. It has also been stated that the petitioner paid land development tax till 1418 BS to the concerned respondent but suddenly became sick and could not pay the land development tax and thereafter in the last part of 1427 BS when he went to local *Tahshil* Office to pay *Khazana*, the concerned official refused to accept the same saying that the property in question has been included in ‘Ka’ schedule of vested property. Having heard, the petitioner became surprised and he then collected relevant gazette notification and found that his property has been included in ‘K’ schedule of the vested property and it was

published in Bangladesh gazette on 08.04.2012 and then compelled to file the instant writ petition. It has also been stated that since in the *Aripta Shompatti Protarpan Ain*, 2001, there has been time limit to file a case but as the petitioner had no knowledge about the impugned publication, he could not file the case to the tribunal and as such, finding no other alternative efficacious remedy, the petitioner has thus compelled to file the instant writ petition challenging inclusion of his property in “Ka” schedule as of vested property.

By filing a supplementary-affidavit dated 23.11.2025, the petitioner has also reiterated the facts in detail so described in the original writ petition adding that the petitioner along with his other family members also purchased the land from Shagor Singha and thereafter latest Khatian No. 235 under plot no. 21 and 22 was finally published in their name as well for an area of 23 decimals. Then after mutating his name, the petitioner then got a (Bata) Khatian No. 235/1 where petitioner got .0569 and 0054 from plot no. 21 and 22 respectively.

Mr. Samarendra Nath Biswas along with Ms. Sabina Yeasmin, the learned counsels appearing for the petitioner upon taking us to the writ petition and 2 supplementary-affidavits and the documents appended therewith at the very outset submits that, the authority concerned has failed to take into its notice that inclusion of the case property in ‘Ka’ schedule as of vested property has been done legally and thus liable to be declared to have been passed without lawful authority and is of no legal effect.

Mr. Biswas goes on to submit that, ownership of the writ petitioner over the case land has not at all been taken into consideration as the case land was finally mutated in the name of petitioner who has been in possession over the same and

thus impugned inclusion of the case property as vested property and published the same in schedule 'Ka' is thus liable to be declared to have been passed without lawful authority and is of no legal effect. It has also been asserted by the learned counsel that the respondents having been satisfied with the ownership of the petitioner have mutated his name in the ROR but they without considering the said legal aspect, in an arbitrary manner, included the case property in 'Ka' schedule by impugned gazette notification and as such the same is liable to be declared to have been done without lawful authority and is of no legal effect.

The learned counsel further contends that, even CDA gave permission to the petitioner to construct a multi storey building over the case property finding the petitioner in possession but without considering the said vital facts, the respondents have most illegally and arbitrarily included the land in question in 'Ka' schedule which is absolutely illegally and liable to be declared to have been done without lawful authority.

The learned counsel also contends that before inclusion of the case property, the respondents have failed to make any enquiry about of the real owner of the land in question and violated the mandatory provision of law and as such inclusion of the property in schedule 'Ka' as of vested property is patently illegal and liable to be declared to have been done without lawful authority and is of no legal effect. In the end, the learned counsel contends that, since the chain of acquiring title in the case land by the petitioner from RS recorded tenants till mutation of the case property in the name of the petitioner, nothing has been challenged by the government, so it has no authority to include the case land of the petitioner in 'Ka' schedule and hence the respondents are debarred to include the case property in 'Ka' schedule. With those submissions, the learned counsel finally prays for making the rule absolute by releasing the case property from 'Ka' schedule.

On the contrary, Mr. Mohammad Imam Hossain, the learned Deputy Attorney General by filing an affidavit-in-opposition contends that the schedule land was though originally belonged to Hironmoy Projapati Das, father of late Krishna Chandra Das and as all the original owners left Bangladesh for India between 1965 and 1969 which is why, the said land was highly included as vested property (formerly enemy property) and the said property was subsequently included in 'Ka' schedule by publishing gazette on 08.04.2012. It has further been asserted that the government has leased out the said property on an annual basis that is, on yearly settlement by settling it to on, Md. Abdul Kader who got lease for an area of 0.023 acres of land as lessee by paying rent for Bengali year 1432 BS and one, Ms. Shamima Akhter who took lease to the extent of 1565 square feet and also paid lease money up to Bengali year 1431. It has also been asserted that the petitioner filed Miscellaneous Case No. 204/1995-96 and obtained Khatian involving BS Khatian No. 22 though it has been recorded in the name of the government in BS Khatian No. 235 and .0338 acres of land out of plot no. 21 and those very rightly gazetted in 'Ka' schedule as of vested property and therefore the government has got full ownership over the case land and has been in possession by leasing out the same to different lessee. It has also been asserted by the learned Deputy Attorney General that filing of the instant writ petition against the gazette including the property in 'Ka' schedule, the petitioner since has not filed case before the respective tribunal, the rule itself is not maintainable and the rule is liable to be discharged.

The learned Deputy Attorney General further contends that, though the property in question belonged to Hironmoy Projapati but the petitioner claimed to get the case property from the heirs of Chinmoy Projapati even though the case property falls within the share of Hironmoy Projapati having no scope to get the property by the petitioner.

The learned Deputy Attorney General lastly contends that, the explanation so have been made in the instant writ petition for not availing required forum that is, filing the case to the *Orpita Shompatti Protarpon* tribunal is totally untenable in the eye of law and hence the writ itself is not maintainable. With those submission, the learned Deputy Attorney General finally prays for discharging the rule.

We have considered the submission so placed by the learned counsel for the petitioner and that of the learned Deputy Attorney General for the government.

At the same time, we have also perused the writ petition and the document annexed with it as well as 2 supplementary affidavits. On going through the documents so have been annexed with the writ petition, we find that the petitioner got the property by way of 2 sale deed dated 28.08.1980 and 09.05.1980 from one of the S.A recorded tenants named, Shagor Singha and after getting the property from that Shagor Singha, B.S record was prepared in the name of one, Md. Ismail, Golsofa Begum and Md. Kamrul Hoque and that Md. Kamrul Hoque who is the petitioner before us and the quantum of property so have been recorded in those 3 joint names is 23 decimals of land and subsequently by mutating his name, the petitioner got .0623 decimals of land vide opening a *Bata* Khatian namely, Khatian no. 235/1 where we find that said mutation khatian was prepared in the sole name of the petitioner and accordingly he also paid rent to the respective authority up to 1418 B.S which has been annexed as of annexure-‘H’ series. So, all those very vital documents lead us to hold that under no circumstances the person whose name SA record was published could leave for India and the case property can be recorded as vested property. Furthermore, so far as regards to 2 (two) sale deeds through which the petitioner got the case property, has also been executed and registered in the year 1980 and mutation has been given to the petitioner in the year 1995. Furthermore, from B.S record, it clearly shows that the property has been recorded in the name of the tenants which was published on



26.04.1988 (Annexure-‘P’ to the supplementary affidavit). So under no circumstances the case property can be include in ‘Ka’ schedule in the year 2012 AD. Then again, on going through the gazette notification, we further find the name on whose absence the property has been enlisted as vested property and included in ‘Ka’ schedule is Hironmoy Projapati Das and his present address was mentioned in Chattogram and then India which is totally absurd. Because, the address of a person cannot be mentioned only in India without mentioning any specific address. Since from the aforesaid discussion, we find that in S.A Khatian, the case property has been recorded in the name of Shagor Singha and another and that very S.A record was prepared in our country between in the year 1950-1960 AD and subsequently mutation was also made in the name of the present petitioner and he paid rent accordingly so there has been no scope to include the case property in ‘Ka’ schedule treating the same as vested property. Though the learned Deputy Attorney General for the respondents tried to impress us by submitting that the writ itself is not maintainable for having an equally efficacious remedy but it has already been decided in a decision reported in 3 SCOB (2015) HCD 52 that if malafide is found to have done in the process of inclusion of any property in ‘Ka’ schedule, such wrong inclusion can well be struck down by this court exercising judicial review. We find the said decision is squarely applicable in the facts and circumstances of the instant case as well. Because, in spite of acquiring title and possession in the case land through title documents within the very knowledge of the respondents, the government in an abrupt manner included the case property in ‘Ka’ schedule which cannot stand.

Regard being had to the above facts and circumstances, we don’t find any shred of substance in including the property in ‘Ka’ schedule treating the same as vested property.

Accordingly, the rule is made absolute however without any order as to costs.

The inclusion of 0.0338 acres of land appertaining to SA khatian No. 17, SA plot No. 23 corresponding to *Hal* Khatian No. 235, *Hal* plot No. 21 of Mouza Alomshah Katghar under Police Station-Kutwali, District-Chattogram in 'Ka' schedule treating it as vested property vide V.P. Case No. 43/65-66 published in Bangladesh Gazette, Additional Issue, dated 08.04.2012 at page No. 9175 and serial No. 23 (annexure-L to the writ petition), is thus declared to have done and published without lawful authority and is of no legal effect and thus set aside.

The respondents are hereby directed to release the said property from 'Ka' schedule as mentioned in gazette notification published on 08.04.2012 as has been annexed as of annexure 'L' to the writ petition with in 02 (two) months from date.

The order of status quo granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment and order be communicated to the respondents forthwith.

**Md. Hamidur Rahman, J.**

I agree.