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. 1711 of 2019

In the matter of :

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

-And-

In the matter of :

Karoonee Knit Composite Mills Limited, represented by its Managing Director Md. Kutubuddin Ahmed and another.

..... Petitioners

-VERSUS-

Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Land, Bangladesh Secretariat, Shahabag, Dhaka and others.

.....…Respondents

Mr. Md. Imam Hossain, with
Mr. Sikder Mahmudur Razi, Advocates
.....For the petitioners

Mr. Amit Das Gupta, Deputy Attorney General
....… For the respondents

Date of Hearing : 09.05.2024 and 30.05.2024
Date of Judgment: 02.06.2024

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 extra Gazette notification bearing Memo No.31000000.45.53. 005.12-21 dated 21.01.2014 published on 27.01.2014 including the petitioners property in the ‘Ka’ list of vested property as an extra gazette notification in page No.1274, Serial No.1, containing V.P. Case No.22/89 and in page No.1278, Serial No.1, containing V.P Case No.44/79 should not be declared to have been passed without lawful 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.

Relevant facts for disposal of the Rule are that the land measuring 18.20 acres of land of Plot Nos. 603, 605 and 635 appertaining of C.S. Khatian No.90 under Kawchakuri Mouza, district of Gazipur belonged to 1. Ram Sundor Barman, 2. Sham Charan Barman, 3. Ram Kundu Barman, 4. Ram Nath Barman and 5. Ram Charan Barman. Ram Sundar Barman died as unmarried leaving behind his four brothers. Thus four brothers became the owners of the entire land in equal shares. Sham Charan Barman transferred his entire share to his nephew Bindu Charan Burman and Ram Nath transferred his share to Jagat Barman, Peari

Barman. Bindu Charan Barman, Jagat Barman and Peari Barman become co-sharer with Ram Kundu Barman and Ram Charan Barman. Accordingly S.A. record was prepared in their names as khatian Nos. 300 and 301.

Bindu Charan and Shindu Charan two sons of Ram Kumar Barman become the owners of 0.19 acres of land and R.S. record was prepared in their names. Bindu Charan and Shindu Charan as heirs of Ramkumar Barman became owners of 4.55 acres of land. Bindu Charan became owners of 6.92 acres of land by inheritance and purchase. Similarly Shindu Charan became the owner of 2.37 acres of land by inheritance and purchase. Then Bindu Charan and Shindu Charan sold out 2.94 acres of land of S.A plot No.605 to Md. Umed Ali Shikder, Sarju Begum, Mojibur Rahman and Habibur Rahman and Bindu Charan sold 0.99 acres of land to Md. Umed Ali Shikder and Bindu Charan solely sold 0.99 acres of land from the R.S pot Nos.750 and 752 to Ummed Ali Shikder by registered deed No.6821 dated 11.10.1972. Bindu Charan and Shindu Charan jointly sold 2.00 acres of land to Md. Sanem Uddin, Ibrahim Lehajuddin, Mokbul Hossain Shikder, Shohrab

Hossain, Abdul Mannaf and Mojibur Rahman vide registered deed No.6375 dated 27.10.1970. Similarly Bindu Charan and Shindu Charan sold 1.15(1/2) acres of land to Md. Umed Ali Shikder. Subsequently Md. Umed Ali Shikder, Sarju Begum, Shohrab Hossain, Md. Mannaf, Sanam Uddin, Md. Mojibur Rahman, Md. Habibur Rahman sold out total 6.60 acres of land to Dr. Tarafder Rabiul Islam vide registered deed No. 4214 dated 29.02.1995. On 08.08.1999 Joinal Abedin sold 2.21 acres of land to Doctor Tarafder Rabiul Islam. Dr. Tarafder Rabiul Islam purchased 0.20 acres of land from Nemai Chandra Ghos. Then Doctor Tarafder Rabiul Islam purchased 1.750 acres of land from A. Salam, Sarju Begum and Jinnat Ali by registered deed No.7708 dated 26.11.1998 and deed No.7014 dated 30.10.1999. Thus Dr. Tarafder Rabiul Islam became the owner of 9.64(1/2) of land vide deed Nos. 7708 and 7614. He sold out his 2.64 acres of land to Karonee Nit Composite Mills Ltd. vide registered deed No.3938. On 23.06.2004 Dr. Rabiul Islam also sold 3.33 acres of land to Kutubuddin vide registered deed No.3937 and sold 2.01 acres of land vide deed No.3936. Soharab Hossain sold 0.10 acres of land to Kutubuddin vide

registered deed No.3774 dated 05.06.2005 Kutubuddin purchased 0.16 acres of land from the heirs of Mokbul Hossain vide registered deed No.3774 dated 05.06.2005. Kutubuddin Ahmed purchased 0.05 acres of land from Sirajul Islam vide registered deed No.3772 dated 05.06.2005. Kutubuddin Ahmed purchased 0.45 acres of land vide deed No.1995 dated 10.04.2006 from Abdul Ali and Abdul Gafur. Mr. Kutubuddin purchased 1.50 acres of land from Habibur Rahman vide deed No.402 dated 25.01.2007. Kutubuddin purchased 0.97 acres of land from Pancha Nanda on 28.09.2005 vide deed no.7169 dated 28.09.2005. On 11.10.1972 Bindu Charan sold 0.85 acres of land to Umed Ali vide registered deed No.6821 and Umed Ali sold 0.1150 acres to Shahadat Ali vide registered deed No.5251. Shahadat Ali sold 0.1150 acres of land to Kutubuddin vide registered deed No.2198 dated 03.04.2005. Kutubuddin transferred 0.3450 acres of land Karoonee Knit Composite Mills Ltd. to 09.02.2006 vide registered deed No.712. Kutubuddin purchased 2.50 acres of land from Shohrab Uddin vide registered deed No.401 dated 25.01.2007 from Shohrab Uddin and 0.03 acres vide registered deed No.5628 dated 29.06.2005 and the

petitioner purchased 0.10 acres of land from Sukkur Ali vide Registered deed No. 1934 dated 06.04.2006. In this way Kutubuddin and Karonee Knit Composite Mills Ltd. became the owner of 8.7150 acres of land by purchase vide 13 registered deeds on different dates and enjoyed the same by paying rent to the government after mutating his name. The petitioner established Karonee Knit Composite Mills Ltd. thereon running his export oriented garments business where he provided job for 9500 employers in different posts and developed his business taking loan of Tk.60 crore. The petitioner is also paying rent, electricity bills, Gas bills and other taxes and levies to the government of Bangladesh. The land measuring 8.71(1/2) acres has been illegally included in the "Ka" list of vented property.

The petitioner has been enjoying and possessing the land in question since long time. The predecessor of the petitioner also enjoyed and possessed the said land by paying rent to the government. S.A and R.S records were correctly prepared in the names of the predecessors of the petitioner. The government never possessed or enjoyed the property or leased out the same to any other persons. The petitioner filed this writ

petition for release of the case land from the ‘Ka’ list of vested property.

Mr. Md. Imam Hossain, with Mr. Sikder Mahmudur Razi,, learned Advocates representing the petitioner, argued that the respondents most illegally and arbitrarily included the case property in the ‘Ka’ list of vested property after abolition of the ‘Kha’ list. He further argued that the government initiated V.P. Case Nos. 22/89 and 44/79 long after the repeal of the Enemy Property (Continuance of Emergency Provisions) Ordinance, 1969 i.e. Ordinance No.I of 1969 (on March 23, 1974). Therefore the case property should be released from the ‘Ka’ list of vested property.

Mr. Amit Das Gupta, learned Deputy Attorney General representing for respondents, submitted that the writ petition is not maintainable as the Vested Property Return Act, 2001 provides for alternative forum. Therefore the Rule is liable to be discharged.

After the India Pakistan War of 1965, the Enemy Property (Continuance of Emergency Provisions) Ordinance was promulgated in 1969. As per the said Ordinance, properties, the owners of which left Pakistan and went to India, became enemy properties and vested

in the government. After the War of Liberation Ordinance No. I of 1969 was repealed on 23.3.1974. The Vested Property Return Act 2001 was enacted to return properties enlisted as vested properties to their Bangladeshi owners or Bangladeshi heirs of original owners or successors-in-interest. The Act provides that the government shall prepare a list of vested properties. Section 9 of the Vested Property Return Act 2001 provided for two categories of vested property. Vested properties in possession of the government were to be included in the 'Ka' list, while vested properties not under government control were to be included in the 'Kha' list. The term “Kha” was omitted from the legislation by the Vested Property Return (Amendment) Act 2013. Section 10 of the Vested Property Return Act, 2001 provides that any person aggrieved by the inclusion of their property in the list of vested property may file an application before the Vested Property Return Tribunal within 300 days of publication of the list in the gazette for the release of the property. The petitioners’ property was initially listed in the 'Kha' list of vested property. Subsequently, after the cancellation of the 'Kha' list, the same property was included in the

'Ka' list of vested property. The inclusion of the same property in the 'Ka' list of vested property after the cancellation of the 'Kha' list is mala fide, arbitrary, and without lawful authority because a property cannot simultaneously be under government control and in possession of private individuals.

In Arati Rani Paul Vs. Sudarshon Kumar Paul [56 DLR (AD) 73] it was held that after the repeal of the Enemy Property (Emergency Provisions) Ordinance of 1969 i.e. 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 Nos. 22/89 and 44/79 long after the repeal of Ordinance No.I of 1969. After the enactment of the 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 Nos. 22/89 and 44/79 and inclusion of the same in the ‘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], the Appellate Division held that

writ petition challenging the inclusion of the case property in the ‘Kha’ list of abandoned property without filing an application before the Court of Settlement is maintainable because it violates the petitioner’s fundamental right to property. Therefore, this writ petition is maintainable because the inclusion of the case property in the ‘Ka’ list of vested property after the repeal of the Ordinance No. I of 1969 violates the petitioners’ fundamental right to property.

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 is declared to have been done without lawful authority. The respondents are directed to exclude the case property from the ‘Ka’ list of vested property 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 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):

A.K