

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

**Writ Petition No. 565 of 2020**

In the matter of:

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

AND

In the matter of:

Rojina Khatun Bhiva

..... Petitioner.

-Versus-

Chairman, First Court of Settlement,  
Dhaka, and others,

... Respondents.

Mr. A.K.M. Bodruddoza, Advocate with

Mr. Mirza Sultan Alraza, Advocate

...For the petitioner.

Mr. Bepul Bagmar, D.A.G. with

Mr. M. Nazrul Islam Khandaker, A.A.G and

Mr. Sukumar Biswas, Advocate

...For the respondent No.4.

Mr. Md. Oziullah, Advocate

Mr. Syed Nazmul Karim, Advocate

...For the Respondent No.5.

**Judgment on: 17.12.2023**

**Present:**

**Mr. Justice Md. Khasruzzaman**

**and**

**Mr. Justice K M Zahid Sarwar**

**Md. Khasruzzaman, J:**

In the application under article 102 of the Constitution, on  
05.02.2020 the *Rule Nisi* under adjudication was issued in the  
following terms:

*“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned order dated 20.11.2019 so far as it relates to the petitioner, passed by the respondent Nos. 1-3 in Settlement Case No. 14 of 1991 (Annexure-A) rejecting the application for substitution of the petitioner as successor-in-interest of late Hasibur Rahman Chowdhury should not be declared to have been passed without any 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.”*

Facts necessary for disposal of the *Rule Nisi*, in short, are that Kumudini Kanto Talukder, Abonikanto Talukder and Raboti Kanto Talukder were the owners of the case property measuring 34.65 decimals of land relating to C.S. Khatian No.5881, Plot Nos. 234 and 61 of Mouza-Shahar Dhaka now Wari under Holding No.21 at Larmini Street, Wari, Dhaka as described in the schedule to the writ petition. They transferred the scheduled land to Abola Sundari vide registered deed of kabala No.264 dated 10.01.1927. Abola Sundari transferred the land to Korom Debi vide registered deed No.3368 dated 17.07.1946, and Korom Debi transferred the same to Mst. Hamidunnessa vide registered sale deed No.5430 dated 11.10.1947. During S.A. Survey, the scheduled land was recorded in S.A. Khatian No.1385, Plot No.4523 in the name of Mst. Hamidunnessa who then transferred the said land to her son Hasibur Rahman Chowdhury by a registered deed of gift No.3156 dated 19.03.1962. Accordingly, Hasibur Rahman Chowdhury got the land mutated in his name vide Mutation Case No.70 of 1962-63 and paid rent to the

government. Hasibur Rahman Chowdhury had been in possession through Sirajunnessa by way of rental agreement dated 07.01.1974 effective from 01.01.1974 to 31.12.1985 and the same was renewed thereafter. Subsequently, he came to know that the scheduled land was enlisted in the Ka list of abandoned buildings as abandoned property by gazette notification dated 23.09.1986. He also came to know that one Abul Hashem and Manir Ahmed filed Case No.14 of 1991 [Ka:SL.118, P.9762(11), dated 23.09.1986, House No. 21, Larmini Street, Sutrapur, Dhaka] in the First Court of Settlement for releasing the scheduled property from the list of abandoned buildings. But the Court of Settlement vide its judgment and order dated 31.10.1993 rejected the said case.

In such circumstances, Hasibur Rahman Chowdhury filed an application for review of the judgment and also prayed for releasing the property in his favour. The Court of Settlement vide its order dated 10.10.2000 rejected the application for review as well as for releasing the property. Challenging the said order dated 10.10.2000, Hasibur Rahman Chowdhury filed Writ Petition No.5864 of 2000 and obtained the *Rule Nisi*. Subsequently, he also filed Writ Petition No.6442 of 2008 challenging the enlistment of scheduled property as abandoned property for the second time after execution of sale agreement and allotment letter in favour of respondent No.3 and obtained the *Rule Nisi*. This Court vide judgment and order dated 19.05.2011 made the *Rule Nisi* issued in Writ Petition No.5864 of 2000 absolute and the *Rule Nisi* issued in Writ Petition No.6442 of 2008 has been disposed of. The impugned order dated 10.10.2000

and the judgment and order dated 31.10.1993 passed in Case No. 14 of 1991 by the First Court of Settlement has been set aside. The case was sent back on remand with direction upon the Court of Settlement to dispose of the case within 04(four) months from the date of receipt of the record. By the said judgment, Hasibur Rahman Chowdhury was allowed to file his respective papers and documents, if any, in support of his case.

It is stated that before disposal of the above two writ petitions, Hashibur Rahman Chowdhury (petitioner of the above two writ petitions) died on 22.08.2010 leaving behind the present petitioner (i.e. his daughter Rojina Khatun Bhiva) as his successor-in-interest. She was not aware of filing of the above two writ petitions as well as Settlement Case No. 14 of 1991. However, after the judgement has been passed by this Division, one fictitious Hasibur Rahman Chowdhury showing him as real Hasibur Rahman Chowdhury filed an application before the First Court of Settlement under section 7(1) of the Abandoned Buildings (Supplementary Provisions) Ordinance, 1985 for releasing the property from the Ka list of abandoned property. After coming to know about filing of above application by fictitious person, the present petitioner namely Rojina Khatun Bhiva claiming herself as a daughter of the real Hasibur Rahman Chowdhury, who died on 22.08.2010, filed an application for substitution along with an application for condonation of delay in Settlement Case No. 14 of 1991. On the other hand, one Shafiqur Rahman claiming himself as an attorney of late Hasibur Rahman Chowdhury filed an application for addition of party. Both the

applications were heard. The First Court of Settlement vide order dated 20.11.2019 rejected both the applications (Annexures- H and H-1 respectively).

Challenging the order of rejection of the applications for substitution as well as for condonation of delay in filing the application for substitution, the petitioner Rojina Khatun Bhiva filed the instant writ petition and obtained the *Rule Nisi* in the manner as stated hereinabove on 05.02.2020. Thereafter, on an application being filed by the petitioner, further proceedings of Settlement Case No.14 of 1991 was stayed for a period of six months from 10.03.2021 and subsequently, on 14.02.2022 the same was extended till disposal of the *Rule Nisi*.

Respondent No.4, Ministry of Housing and Public Works filed an *affidavit-in-opposition* denying all the material allegations made in the writ petition contending *inter-alia* that as per judgment and order dated 19.05.2011 passed in Writ Petition No.5864 of 2000 heard alongwith Writ Petition No.6442 of 2008, the Court of Settlement treated Hasibur Rahman Chowdhury as a petitioner in Settlement Case No.14 of 1991 and he has been contesting the case and he was examined as P.W.1. It is further stated that while the impugned order was passed on 20.11.2019, the Court of Settlement found that Hasibur Rahman Chowdhury appears to be alive and he has been contesting the case as per direction given in the judgment and order dated 19.05.2011 passed in those two writ petitions. The Court of Settlement also found no necessity to add anyone as his daughter as a party in this case. It is also stated that Death

Certificate, Graveyard Certificate and Succession Certificate (Annexures-E, E-1 and E-2 respectively) by which the present petitioner filed her applications in the Court of Settlement for substitution, are all false, fabricated and fraudulent documents because the address of Hasibur Rahman Chowdhury mentioned in the Graveyard Certificate as Village-Moitpara, Post Office-Moksudpur, Ward No.6 of 7 No. Moksudpur Union Parishad, Dohar, Dhaka, whereas in the *Warishan* Certificate dated 26.04.2014 the address of Hasibur Rahman Chowdhury was mentioned as 21 Larmini Street, Wari, Dhaka. So, there remains material controversy regarding death of Hasibur Rahman Chowdhury. It is stated that Hasibur Rahman Chowdhury being claimant filed application under section 7(1) of the said Ordinance in which he was allowed to depose as P.W.1 and he submitted documentary evidences which were marked as Exhibit Nos. 1 to 6. The Court of Settlement has rightly rejected the application filed by the present petitioner for substitution and also rejected the application filed by one Shafiqur Rahman Chowdhury for addition of party as attorney of Hasibur Rahman Chowdhury. There is no illegality in the order and as such the *Rule Nisi* is liable to be discharged.

Respondent No.5 Hasibur Rahman Chowdhury filed an *affidavit-in-opposition* contending *inter-alia* that he has no daughter as like the name of the petitioner. He has only son Chowdhury Riyad Azad. The petitioner submitted some fake documents regarding certificate of Class-VIII from Dholaikhal National Pre-Cadet High School which was established in 2003, whereas she studied in the

said school upto 12.12.1994. The Principal of the said school by using a certificate on 12.04.2022 denied issuing of such certificate of Class-VIII. So, the writ petition is based on serious disputed question of facts regarding false and fabricated documents and as such, the High Court Division sitting in a writ jurisdiction cannot resolve the disputed question of facts since the adjudication of the same can be done by legal evidence. Moreover, the settled principle of law is that he who seeks equity must come before the Court with clean hands and as such, the *Rule Nisi* is liable to be discharged. It is further stated that respondent No.5 being the real Hasibur Rahman Chowdhury filed the application under section 7(1) of the Ordinance, 1985 in compliance of the judgment and order of the High Court Division. He has already deposed as P.W.1 and he was allowed to submit some documentary evidences which were marked as Exhibit Nos. 1 to 6. So, the Court of Settlement has rightly rejected the application for substitution as well as addition of party filed by the petitioner and one Shafiqur Rahman Chowdhury. Hence, the *Rule Nisi* is liable to be discharged.

Mr. A.K.M. Bodruddoza, alongwith Mr. Mirza Sultan Alraza, the learned Advocates appearing on behalf of the petitioner, by referring to the death certificate, *warishan* certificate and the academic certificate for Class-VIII, submits that she is a daughter of Hasibur Rahman Chowdhury and since Hasibur Rahman Chowdhury died on 22.08.2010 leaving behind his daughter (the petitioner) as his legal heir, she filed an application in Settlement Case No. 14 of 1991 before the Court of Settlement for substitution

alongwith all types of relevant documents. The petitioner also filed an application for condonation of delay in filing the said application for substitution. The Court of Settlement without considering the documents placed before it by the impugned order most illegally rejected her application for substitution. Mr. A.K.M. Bodruddoza, the learned Advocate further submits that right to property is a fundamental right of the petitioner and for protection of such right she requires to be substituted in place of her deceased father late Hasibur Rahman Chowdhury who was the owner of the case property which was enlisted illegally as abandoned property. Referring to the impugned order Mr. A.K.M. Bodruddoza, the learned Advocate also submits that the petitioner does not have any objection regarding the proceedings started in compliance of the judgement and order dated 11.05.2011 passed by this Court in Writ Petition Nos. 5864 of 2000 and 6442 of 2008. But the said proceedings cannot be allowed to continue at the instance of fake and fictitious person who has claimed himself as Hasibur Rahman Chowdhury inspite of the fact that he died long before on 22.08.2010 leaving behind the petitioner as his legal heir. Accordingly, he has prayed for making the *Rule Nisi* absolute.

Mr. Bepul Bagmar, the learned Deputy Attorney General alongwith Mr. M. Nazrul Islam Khandaker, the learned Assistant Attorney General and Mr. Sukumar Biswas, the learned Advocate appearing on behalf of the respondent No.4 submits that the documents based on which the petitioner claims to be the daughter of Hasibur Rahman Chowdhury are fake, concocted and disputed



documents and as such, the same cannot be considered in a Court of law. Since the subsequent proceeding was initiated in compliance of the judgment an order dated 19.05.2011 passed in those two writ petitions, there is no scope to raise any question to the same. There is no scope to entertain the application for substitution in the Court of Settlement, because as per section 10 of the Ordinance No.54 of 1985 there is no scope for application of the provision of Order 1 rule 10 of the Code of Civil Procedure for addition of party or for substitution in a case pending in the Court of Settlement. So, the Court of Settlement did not commit any illegality in rejecting the application for substitution by the impugned order.

Md. Oziullah, the learned Advocate for the respondent No. 5 submits that Hasibur Rahman Chowdhury appears to be alive and as such his alleged successor-in-interest (petitioner) is more required to be added as party. Moreover, the petition was filed out of time and as such the court of settlement rightly rejected the application and as such he has prayed for discharging the *Rule Nisi*.

We have considered the submissions of the learned Advocates of the respective parties and perused the writ petition along with all materials on record as well as the judgment and order passed by the Appellate Division in Civil Appeal Nos. 202-203 of 2014 along with Civil Petition Nos. 1257-1258 of 2023.

The point raised in this writ petition to determine as to whether the impugned order dated 20.11.2019 passed by the First Court of Settlement, Segunbagicha, Dhaka in Case No. 14 of 1991 is

lawful or not. By the impugned order the Court of Settlement has rejected the applications for substitution filed by the present petitioner as well as for addition of party filed by one Shafiqur Rahman claiming him as attorney of Hasibur Rahman Chowdhury.

It appears that the prayers for substitution and for addition of party were made in a subsequent proceeding in Case No. 14 of 1991 at the instance of Hasibur Rahman Chowdhury initiated by the Court of Settlement in compliance of the judgment and order dated 19.05.2011 passed in Writ Petition Nos. 5864 of 2000 and 6442 of 2008.

For proper understanding we need to record some facts as summarized from the writ petition and the *affidavits-in-opposition* as well as the materials appended thereto.

Case No. 14 of 1991 was filed by Abul Hashem and Manir Ahmed under section 7(1) of the Ordinance No.54 of 1985 claiming the property as their own and also praying for exclusion of the case property from the 'Ka' list of the abandoned property. The case of the claimants was that they got the property by exchange with Abul Hossain through Kaser Ali who purchased the same in auction in Money Execution Case No. 5 of 1963. After the said exchange with Abul Hossain, when the claimants tried to get possession of the house they came to know that the property was enlisted as abandoned property. Hence the case.

On the other hand, the case of the Government was that the case property was never sold in auction and the alleged sale

certificate is a forged document and neither Abul Hossain nor his father Kaser Ali ever possessed the same. It was stated that the original owners of the property were Hamidunnessa and her son, Hasibur Rahman Chowdhury and they possessed the same till 1971. Afterwards, their whereabouts were not known and the Government has been in possession the same since 1972 through its allottee being a freedom fighter. The property was rightly declared and listed as abandoned property.

The basis of the applicants' claim in the settlement case was that they got the case property by a exchange deed with Abul Hossain and Abul Hossain got the same from his father Kaser Ali who purchased it in auction as per Money Execution Case No. 5 of 1963. So, the alleged sale certificate of Kaser Ali is the vital document of title. Since the sale certificate was disputed by the Government, the Court of Settlement very carefully examined the same with Money Execution Register of Money Execution Case No.5 of 1963 and the case record of Title Suit No. 296 of 1961. Having compared the signatures contained in the sale certificate along with those in the records the Court of Settlement found grave anomaly and thereby came to a finding that the claimants have fraudulently and dishonestly used the forged sale certificate as genuine. However, the Court of Settlement vide its judgment and order dated 31.10.1993 dismissed the case and affirmed the inclusion of the case property in the 'Ka' list of abandoned buildings as abandoned property.

Hasibur Rahman Chowdhury was not a party in the said case. After 10 years from the said judgment, Hasibur Rahman Chowdhury filed an application for reviewing the judgment and order dated 31.10.1993 in the said case by impleading him as petitioner. The Court of Settlement vide its order dated 10.10.2000 rejected the said application holding that review petition was not maintainable and the applicant was not a party in the case. Against the said order, Hasibur Rahman Chowdhury filed Writ Petition No. 5864 of 2000 and obtained the *Rule Nisi*. During pendency of the said *Rule Nisi*, Hasibur Rahman Chowdhury filed another Writ Petition No. 6442 of 2008 against the execution of sale agreement and order of allotment in favour of writ respondent No.3, Raihana Shafi in respect of the disputed property and obtained the *Rule Nisi*.

Writ Petition No. 5864 of 2000 and Writ Petition No. 6442 of 2008 were heard analogously and ultimately by judgment and order dated 19.05.2011 made the *Rule Nisi* issued in Writ Petition No. 5864 of 2000 absolute and set aside the judgment and order dated 10.10.2000 and 31.10.1993 passed by the Court of Settlement in Settlement Case No. 14 of 1991. The *Rule Nisi* issued in another Writ Petition No.6442 of 2008 was disposed of. By the said judgment this Division sent back the case on remand to the Court of Settlement with a direction to dispose of the case within 04(four) months.

As we have already found that the Court of Settlement in compliance of the direction passed in the said judgment and order initiated subsequent proceeding in Settlement Case No. 14 of 1991 by impleading and allowing Hasibur Rahman Chowdhury as

petitioner in that case. The present petitioner claiming herself as daughter of Hasibur Rahman Chowdhury filed an application in the said proceeding before the Court of Settlement for substitution stating that Hasibur Rahman Chowdhury died on 22.08.2010 and one fake and fictitious Hasibur Rahman Chowdhury claiming him as real Hasibur Rahman Chowdhury has been conducting the case. The Court of Settlement vide the impugned order dated 20.11.2019 rejected the said prayer. Hence, she has filed the instant writ petition and obtained the *Rule Nisi*.

It appears that against the said judgment and order dated 19.05.2011 passed in Writ Petition Nos. 5864 of 2000 and 6442 of 2008, writ respondent No.3, Raihana Shafi, preferred Civil Petition for Leave to Appeal Nos. 1640 of 2011 and 1641 of 2011 before the Appellate Division and obtained leave giving rise to Civil Appeal Nos. 202-203 of 2014. The Appellate Division when granting leave vide its order dated 07.09.2014 stayed the operation of the impugned judgment and order dated 19.05.2011 passed in Writ Petition Nos. 5864 of 2000 and 6442 of 2008 till disposal of the appeals. Against the same judgment, the Government also filed Civil Petition for Leave to Appeal Nos. 1257 of 2023 and 1258 of 2023.

It further appears that on 07.09.2014 the Appellate Division stayed the operation of the judgment and order of the High Court Division dated 19.05.2011 passed in Writ Petition Nos. 5864 of 2000 and 6442 of 2008 till disposal of the appeals. But on the basis of the order dated 19.05.2011, a proceeding was started by the Court of Settlement without mentioning the order of the Appellate Division.

Since the operation of the said judgment dated 19.05.2011 was stayed till disposal of the appeals by the Appellate Division, there is no scope in law to raise any question of compliance of the said judgment till the appeal is disposed of. Consequently, filing of the said application by Hasibur Rahman Chowdhury under section 7(1) of the Ordinance as well as initiation of the proceeding on the basis of the said application as per the judgment and order dated 19.05.2011 passed in those two writ petitions is not permissible in law.

The Appellate Division vide judgment and order dated 17.05.2023 allowed both the appeals filed by writ respondent No.3, Raihana Shafi, a freedom fighter and allottee of the disputed land and disposed of the civil petitions filed by the Government. In those two civil appeals before the Appellate Division, the question was raised as to whether the High Court Division rightly allowed Hasibur Rahman Chowdhury to ventilate his grievance in the Court of Settlement in the settlement case filed by Abul Hashem and Manir Ahmed or not.

In that judgment, the Appellate Division held as follows:

*“The law does not provide any provision to review a judgment and order passed by the Court of Settlement at the instance of third party whose claimed, if any, is barred by the provision of limitation. Section 10 of the Ordinance specifically provides that except as otherwise provided in the Ordinance, the provisions of the Code of Civil Procedure shall not apply to a Court of*

*Settlement and sub-section (2) of section 10 limits the area of the applicability of the Code of Civil Procedure. The Court of Settlement is not a civil Court and its authority is to determine as to whether the disputed property is abandoned property or not. The provisions of the Code of Civil Procedure should be applicable in respect of summoning and enforcing the attendance of any person and examining him on oath; requiring the discovery and production of any document; requiring evidence on affidavit; requisitioning any public record or copy thereof from any office; and issuing commission for the examination of witnesses or documents. In such view of the matter a question stands on the way as to the entertainability of the application under Order 1 rule 10 of the Code of Civil Procedure for adding the applicant as claimant to get release of abandoned property filed by other party making different pleading. Our view is “no”.*

In view of the aforesaid finding of the Appellate Division, it is clear that there is no scope for Hasibur Rahman Chowdhury to add himself as claimant to get release the property in a case filed by other party making different pleadings. In the said case, it is also settled that as per section 10 of the Ordinance, the provision of Order 1 rule 10 of the Code of Civil Procedure is not applicable before the Court of Settlement. Since the judgment and order dated 19.05.2011 passed in Writ Petition Nos. 5864 of 2000 and 6442 of 2008 was set aside by the Appellate Division, the subsequent

proceedings initiated by the Court of Settlement as per the said judgment and order dated 19.05.2011 is not tenable.

After granting leave staying operation of the judgment and order dated 19.05.2011 passed in those two writ petitions when there was no scope to start subsequent proceeding at the instance of Hasibur Rahman Chowdhury, our view is that the present petitioner (Rojina Khatun Bhiva) does not have any *locus standi* to file the application for substitution in the said case before the Court of Settlement. Consequently, passing of the impugned order dated 20.11.2019 by the Court of Settlement in rejecting the prayer for substitution is nothing but a futile exercise because the very proceeding in Case No.14 of 1991 wherein the impugned order was passed suffers from legal infirmity. Moreover, the judgement and order dated 19.05.2011 based on which the subsequent proceedings was initiated by the Court of Settlement was set aside by the Appellate Division vide judgment and order dated 17.05.2023 passed in Civil Appeal Nos. 202-203 of 2014 with Civil Petitions No. 1257-1258 of 2023. After the judgment and order of the Appellate Division in those cases, this Court does not require to go into the controversy as to whether Hasibur Rahman Chowdhury is a genuine or not. As such, the report called for in this regard, during the course of hearing of the *Rule Nisi*, be kept with the record.

Hasibur Rahman Chowdhury being third party with different pleadings has no right to file any review application against the judgment and order dated 31.10.1993 passed in settlement Case No. 14 of 1991 as Settlement Case No. 14 of 1991 was filed by Abul



Hashem and Monir Ahmed as applicants. Instead of Abul Hashem and Monir Ahmed, Hasibur Rahman Chowdhury claiming himself as the real owner of the property filed review application which was rightly rejected by the Court of Settlement finding that the petitioner (Hasibur Rahman Chowdhury) was not a party in the case.

It is settled that no suit will be restored on the basis of an application for restoration filed by a third party with different pleadings. Moreover, a suit can not be proceed on the basis of an application for review filed by the third party with different pleading against the interest of the concerned party. In the present case, Hasibur Rahman Chowdhury as third party with different pleading filed review application which was rightly rejected by the Court of Settlement decided by the Appellate Division in Civil Appeal Nos. 202-203 of 2014.

It also appears that against the judgment and order dated 19.05.2011 passed by this Court in Writ Petition Nos. 5864 of 2000 and 6442 of 2008, writ respondent No.3 Raihana Shafi i.e. the allottee of the disputed plot preferred Civil Appeal Nos.202 of 2014 and 203 of 2014. The Government also filed Civil Petition for Leave to Appeal No. 1257 of 2023 and 1258 of 2023. The Appellate Division upon hearing the parties and on perusal of the materials on record vide judgment and order dated 17.05.2023 allowed both the appeals filed by the writ respondent No.3 and disposed of the civil petitions filed by the Government. The judgment and order dated 19.05.2011 passed by this Court in those two Writ Petition Nos. 5864 of 2000 and 6442 of 2008 was set aside. In such

circumstances, the subsequent proceeding initiated at the instance of Hasibur Rahman Chowdhury by the Court of Settlement in Case No. 14 of 1991 in compliance of the judgment and order dated 19.05.2011 passed in Writ Petition Nos. 5864 of 2000 and 6442 of 2008 has no legal basis and the same should be set aside.

Accordingly, we do not find any substance in the submissions of the learned Advocate for the petitioner as well as merit in the *Rule Nisi*.

In the result, the *Rule Nisi* is discharged.

Thus the subsequent proceedings started as per the direction of the judgment and order dated 19.05.2011 passed in Writ Petition Nos. 5864 of 2000 and 6442 of 2008 by the Court of Settlement in Case No. 14 of 1991 are hereby set aside.

There will be no order as to costs.

Send down the records of settlement Case No. 14 of 1991 pending in the 1<sup>st</sup> Court of Settlement, Segunbagicha, Ramna, Dhaka.

Communicate the order.

**K M Zahid Sarwar, J:**

I agree.