

**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. 2983 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 :

Md. Humayun Kabir and others
..... Petitioners

-VERSUS-

The Government of the People's Republic of
Bangladesh, represented by its Secretary,
Ministry of Land and others.

..... Respondents
Mr. Md. Mahabubur Rashid, Advocate
..... For the petitioners
Mr. Amit Das Gupta, Deputy Attorney General
..... For the respondents

Date of Hearing : 21.01.2024.

Date of Judgment: 23.01.2024.

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 enlistment of petitioners 0.0731 acre land of S.A. Plot No.5020 of S.A. Khatian No.2579 corresponding to R.S. Plot No.7222 of R.S. Khatian No. 965 corresponding to Dhaka City Survey Plot No.8566 of Dhaka City Survey

Khatian No. 1351 of Mouza-Wari, under Police Station– Sutrapur, District – Dhaka in serial No.798 at page 41565 of the vested property ‘Ka’ list prepared vide Gazette Notification No. 31.00.0000.040.53.005. 2012-220 dated 08.02.2012 and published in the Additional issue of Bangladesh Gazette dated 06.05.2012 under the signature of respondent No. 2 on the basis of E.P. Case No.105/68 (Annexure-E) should not be declared to have been enlisted without lawful authority and is of no legal effect and as to why the respondent Nos. 1-4 should not be declared to delist/release the case property of the petitioners from the ‘Ka’ list of vested property (Annexure-E) and/or pass such other or further order or orders as to this court may seem fit and proper.

Relevant facts as stated in the writ petition are that Ramgoti Chacroborti was the original owner of 0.1868 acres of land of C.S. Plot No.19, C.S. Khatian No.16221 and 0.0448 acres of land of C.S. Plot No.20 and C.S. Khatian No.4101. Ramgoti Chacroborti died leaving behind three sons namely Kufa Chacroborti, Laxian Chacroborti and Horimohon Chacroborti. Horimohon Chacroborti died leaving behind one son Lalita Mohon Chacroborti who became owner and possessor in respect of the case land including other lands without any hindrance of others. He transferred the aforesaid

property to Abdur Rahman Dhali vide registered sale deed No.2153 dated 14.02.1958. Thereafter, Abdur Rahman Dhali constructed house on the schedule land and started leaving there. He had been paying land development taxes to the government regularly and subsequently S.A. Khatian Nos.2579 and 1580 and R.S. Khatian Nos. 965 and 964 were correctly prepared and published in his name. Abdur Rahman Dhali died leaving behind two sons namely Arshad Alam (predecessor of the petitioner Nos. 6-10) and Humayun Kabir (petitioner No.1) and four daughters Hasina Begum (petitioner No.2), Rahima Begum (petitioner No.3), Ruksana Begum (petitioner No.4) and Latifa Begum (Petitioner No.5) 0.2316 acres of land of Plot No.8566, Dhaka City Survey Khatian No.1351 were correctly prepared and published in the name of Arshad Alam, Humayun Kabir, Hasina Begum, Rahima Begum, Ruksana Begum and Latifa Begum. Arshad Alam died leaving behind his wife Shahanaz Akter (petitioner No.6), three daughters namely Aklima Khatun (petitioner No.7), Taslima Khatun (petitioner No.8) and Tahlima Khatun (petitioner No.9) and one son Md. Ashrafal Alam (petitioner No.10). Petitioner Nos. 6-10 have been owning and possessing the part of the schedule land by way of inheritance. The predecessor of the petitioner Abdur Rahman Dhali and after his death the petitioners have been

enjoying the property since 1958 and they have been paying electricity bills and land development taxes up to 1417 B.S. to the concerned authority. On 15.12.2018 the petitioners went to the office of respondent No.7 for paying rent. However, respondent No.7 refused to accept the same for the first time and that the 0.0731 acres of land of S.A. Plot No. 5020 has been included as a vested property in the 'Ka' list and same has been published in the Gazette Notification dated 06.05.2012 as such the petitioners filed this writ petition for releasing their property from the 'Ka' list of vested property.

Mr. Md. Mahabubur Rashid, learned Advocate appearing on behalf of the petitioners, submitted that the predecessor of the petitioners purchased the case property in 1958 from the original owner Ramgoti Chacroborti long before the India-Pakistan War of 1965. The petitioners inherited the case property and they have been in peaceful possession in their property. The government most illegally and arbitrarily included the property in the 'Ka' list of vested property. Therefore, the inclusion of the case property in the 'Ka' list of vested property should be declared to have been done without lawful authority and the said property should be released from the 'Ka' list of vested property.

The Rule has been opposed by respondent Nos. 3-4 by filing affidavit-in-opposition. Mr. Amit Das Gupta, learned Deputy Attorney General representing respondent Nos.3-4, argued that the owners of the case property having left this country during Indo-Pakistan War of 1965 and the property rightly declared as vested property. He further submitted that the writ petition is not maintainable. Therefore, the Rule is liable to be discharged.

On careful perusal of the impugned notification dated 08.02.2012 it is evident that the case property was declared as vested property on 27.09.1977.

In *Arati Rani Paul vs. Sudarshon Kumar Paul* [56 DLR (AD) 73] it was held that after the repeal of the Enemy Property (Continuance of Emergency Provisions) Ordinance [Ordinance No.1 of 1969] on 23.3.1974 no property can be enlisted as vested property on the basis of a defunct law. In this case the government initiated the V.P. Case on 27.09.1977 long after the repeal of Ordinance No.1 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 06.05.2012. Therefore the enlistment of the case property as vested property through V.P. case on 27.09.1977 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 [18BLD(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. 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 Enemy Property (Continuance of Emergency) Provisions Ordinance of 1969 violates the petitioners' fundamental right to property.

On careful perusal of Annexure-A it is evident that Abdur Rahman Dhali, the predecessor of the petitioners, purchased the property from Lalita Mohon Chacroborti in 1958 vide registered deed. Thereafter, the name of the purchaser (Abdur Rahman Dhali) was recorded in respect of Plot No.5020 in S.A. Khatian Nos.2579 and 1580 and R.S. Khatian Nos. 965 and 964 were correctly prepared and published in the name of Abdur Rahman Dhali. The petitioners are heirs of Abdur Rahman Dhali and after his death the names of the petitioners were recorded in Dhaka City Jarip Khatian No.

1351 (Annexure-B-4). From Annexure- D series it is evident that the petitioners paid land development taxes to Kotwali, Circle, Dhaka and utility bills paid to the concerned authority. The petitioners also paid holding tax to the Dhaka South City Corporation. Therefore, it is evident that the petitioners have been in peaceful possession of the property since the date of purchase (1958) and the property has been wrongfully included in the 'Ka' list of vested property after the repeal of Ordinance No.I of 1969.

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

In the result, the Rule is made absolute. Inclusion of S.A. Plot No.5020 in 'Ka' list of vested property through Bangladesh Additional Gazette dated 06.05.2012 is declared to have been issued without lawful authority.

The respondents are directed to release the petitioner's case property from "Ka" list of vested property published in Bangladesh Additional Gazette dated 06.05.2012 through a fresh Gazette notification and accept rent from the petitioners within a period of 60(sixty) days from the date of receipt of a copy of this judgment.

There is no order as to cost.

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

(Kazi Zinat Hoque, J):

I agree

(Naima Haider, J):