

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

Writ Petition No. 2776 of 2004

In the matter of :

An application under Article 102 (1)(2)(a)(ii) of the
Constitution of the People's Republic of Bangladesh.

And

In the matter of:

Government of Bangladesh
.... Petitioner.

Vs.

The Chairman, First Court of Settlement and others
.... Respondents.

Mr. Abdus Salam Mondol, D.A.G with
Mr. Sukurmar Biswas, A.A.G
... For the Petitioner.

Mr. Joynul Abedin, Senior Advocate with
Mr. Md. Rafiqul Islam, Advocate
... For the Respondent No. 2

Mr. Fida M. Kamal, Senior Advocate with
Mr. Shakhawat Hossain, Advocate
... For the Respondent Nos. 3-6

Hearing on: 05.12.2012

and

Judgment on 9th December, 2012

Present:

Mr. Justice Nozrul Islam Chowdhury

AND

Mr. Justice Mohammad Ullah.

Mohammad Ullah, J.

This Rule Nisi was issued on an application filed by the petitioner under Article 102 (2) (a) (ii) of the Constitution, calling upon the respondent No.2, to show cause as to why the impugned judgment and order dated 16.08.1995 passed by the respondent No. 1 in Case No. 115 of 1987 should

not be declared to have been passed without any lawful authority and is of no legal effect.

Subsequently the respondent Nos. 3-6 were added in the instant writ petition by an order dated 14.2.2012.

The facts leading to disposal of the Rule are briefly stated below:

The respondent No. 2 Md. Solaiman Khan son of late Kurban Khan as a claimant before the Court of Settlement, filed Case No. 115 of 1987 invoking section 7(1) of the Abandoned Buildings (Supplementary Provisions) Ordinance LIV of 1985 (**hereinafter referred to as the Ordinance LIV of 1985**) for exclusion of the House No.4, Block-C, Lane-3, Section-10, Mirpur, Dhaka, from the 'Ka' list of the Ordinance LIV of 1985.

The case of the respondent No. 2, claimant before the Court of Settlement, in short, is that he acquired the case property by taking lease from the then East Pakistan Government through a registered lease deed dated 1.1.1962. Respondent No. 2 while owning and possessing the case property with his family members was forcibly dispossessed by miscreants from the case house soon after liberation in 1972 and he had to take shelter in other place. Therefore, the respondent No. 2 prayed for restoration of the possession of the case house to the different authorities of the Government including the then Director, District Control Center, Dacca Control Collectorate, Court Building, Dacca. The case property is the personal

property of respondent No. 2 and it has never been treated as abandoned property within the meaning of P.O 16 of 1972.

The petitioner as opposite party before the Court of Settlement contested the case and claimed that one Md. Solaiman Khan was the original allottee of the case property and his whereabouts were not known and that he had left this country after independence of Bangladesh keeping the case property uncared for. The Government had taken over possession of the case property found it uncared for and had been possessing it through demand note (D. N.) holder, and the inclusion of the case property in the abandoned list was correct and legal.

The claim of the added respondent Nos. 3-6 is that, their predecessor Md. Doud Hossain got a Demand Note from the petitioner and the petitioner also entered into an agreement dated 9.1.1986 for sale of the case property with the said predecessor of the respondent Nos. 3-6 and upon payment of full consideration they have been possessing and residing in the case house with their family members long before.

The respondent No. 2 testified before the Court of Settlement and produced all of the original deeds and documents in support of his case by way of firisty before the Court of Settlement. The Court of Settlement on consideration of the material evidence on records allowed the case of respondent No. 2 by its judgment and order dated 06. 08. 1995. The

Settlement Court allowed the case of the respondent No. 2 mainly finding that the case property had not fallen within the meaning of abandoned property as defined in Article 2(1) of P.O. 16 of 1972.

Thereafter the Government preferred the instant writ petition in the year 2004 challenging the said judgment and order dated 06. 08. 1995 passed by the 1st Court of Settlement, Dhaka and Rule was issued as stated above.

Mr. Fida M. Kamal, the learned Senior Advocate appearing with Mr. Md. Shakawat Hossain, the learned Advocate on behalf of the added respondent Nos. 3-6 at the very outset submits that the predecessor of the respondent Nos. 3-6 Md. Daud Hossain got demand note from the petitioner-Government upon payment of rents and the respondent Nos. 3-6 have been possessing the case property with their family members long before and the Government also made an agreement dated 9.1.1986 for sale of the case property with the said predecessor of the respondent Nos.3-6 and thereby they have acquired a right in the case property.

Mr. Fida M. Kamal, the learned Advocate submits further that the respondent No. 2 filed the case before the Court of Settlement claiming himself as Md. Solaiman Khan as the original allottee by creating some false and forged documents, whose whereabouts were not known to the Government and the Government found the case property uncared for listed it in the list of the abandoned property under Ordinance LIV of 1985 within the

meaning of Article 2(1) of P.O. 16 of 1972 and handed over possession of the case property to the predecessor of respondent Nos. 3-6 as a tenant of the petitioner.

Mr. Fida M. Kamal, the learned Advocate finally submits that the Court of Settlement without going through the statutory provision of section 7 and 8 of the Ordinance LIV of 1985 most illegally considered the case of the respondent No.2 which should be declared to be without lawful authority and is of no legal effect.

Mr. Abdul Salam Mondal, the learned Deputy Attorney General appearing with Mr. Sukumer Biswas, the learned Assistant Attorney General on behalf of the petitioner upon referring a decision reported in 32 DLR (AD) 167 submits that the Court of Settlement ought to have compared the signature of the alleged claimant (Respondent No.2) with the admitted signature of original allottee Md. Solaiman Khan available on the original lease deed and allotment letter through hand writing expert. But the Court of Settlement itself compared the signature of the alleged claimant with the signature available on the original deed which should not be taken into consideration as a mode of proof and the High Court Division can interfere with those perverted findings of the Court of Settlement in writ jurisdiction.

Mr. Mondol, the learned D.A.G submits further that when the original allottee Md. Soliman Khan left this country keeping the case property uncared

for and when his whereabouts were not known to the Government and he had ceased to occupy, supervise and manage the case property in person at the very relevant time i.e. on 28.2.1972 the Government had rightly declared the case property as abandoned property within the mischief of the Article 2(1) of P.O No.16 of 1972 and listing of the case property in the abandoned list is conclusive proof of facts.

Mr. Mondol, the learned D.A.G submits further that the onus squarely lies upon the claimant to prove his case by submitting positive evidence regarding whereabouts of him at the relevant time i.e. on 28.2.1972 to rebut the presumption of law that the property is not abandoned property as contemplated under section 5(2) of Ordinance LIV of 1985.

Mr. Mondal, the learned D.A.G submits further that mere keeping the original allotment letter and lease deed do not prove that the allottee was present in Bangladesh at the very relevant point when P.O. 16 of 1972 came into operation and that he used to occupy and supervise the case property in person or through his agents

Mr. Mondol, the learned D.A.G finally submits that the respondent No.2 is none but a fake and fictitious person and filed the case only to grab the abandoned property claiming him as the original allottee but the Court of Settlement failed to consider those aspects and hence the judgment of the

Court of Settlement should be declared to be illegal, without lawful authority, and is of no legal effect.

In support of his submission Mr. Mondol, the learned DAG referred the cases of (1) Abul Khair Mia Vs. Abdul Latif Sarder reported in 32 DLR (AD) 167, (2) Government of Bangladesh represented by the Secretary Ministry of Works Vs. Md. Jalil and others reported in 1 MLR (AD) 98, and (3) Sarder Md. Hashim Zaman and others Vs. Thana Nirbahi Officer, Mithapukur, Rangpur and others reported in 13 MLR (AD) 171.

On the other hand Mr. Joynul Abedin, the learned Senior Advocate appearing with Mr. Md. Rafiqul Islam, the learned Advocate on behalf of the respondent No.2 submits that the Court of Settlement having considered the original title deeds and other documents of this respondent came to a conclusion that the case property had not fallen within the mischief of Article 2(1) of P.O 16 of 72 and as such nothing to interfere with the judgment of the Court of Settlement invoking writ jurisdiction under Article 102 of the Constitution, unless judgment of the Court of Settlement suffers from any illegality or without jurisdiction.

Mr. Abedin, the learned Advocate submits further that the Court of Settlement compared the signature of the respondent No.2 (claimant) with the available signature in the admitted documents and came to a conclusion that the signature of the respondent No.2 is genuine and also found that the

respondent No.2 Md. Soliman Khan is the original allottee of the case property and as such nothing to interfere with the judgment of the Court of Settlement.

Mr. Abedin, the learned Advocate finally submits that the Settlement Court found that the respondent No. 2 is very much present in this country with his family members in an ascertainable address in Dhaka and his sons and daughters are getting education in this country and thus nothing to remain interfere with the finding of the Court of Settlement, as the property in question is not an abandoned property.

We have heard the learned Advocates of the parties, perused the impugned judgment, writ petition, affidavit-in-opposition and also considered the papers and documents available in the lower court record and also gone through the decisions referred to, wherefrom it transpires that the Court of Settlement upon consideration of the materials on record came to a conclusion that the case property was not an abandoned property within the meaning of Article 2(1) of P.O 16 of 1972 and that the listing of the case property in the 'Ka' list of the Ordinance LIV of 1985 was illegal.

The determining factor of the Court of Settlement was whether the case property was abandoned one or whether there was any basis of its exclusion from the list of abandoned property.

In the instant Rule, our determination is whether the judgment and order of the Court of Settlement suffers from any illegality, or without jurisdiction or in other words the Court of Settlement made any finding upon no evidence.

The Court of Settlement allowed the case of the respondent No.2 mainly finding that the claimant of the case property is the original allottee who has been able to prove his case by producing the original deeds and documents himself. The Settlement Court also in its own initiative compared the signature of the claimant with the admitted signature available on the original lease deed and the case petition.

It appears that the respondent No.2 was forcibly dispossessed from the case property by miscreants in the year 1972 soon after the liberation war. The respondent No. 2 was surprised to know that the property was included in the 'ka' list as abandoned property by notification in the Gazette dated 23. 9. 1986 and soon after the Settlement Court was constituted the respondent No.2 rushed to the Court of Settlement and on 4.1.1987 filed an application invoking section 7(1) of the Ordinance LIV of 1985 to exclude the case property from 'ka' list of abandoned properties.

Section 7 of the Ordinance LIV of 1985 provides that persons claiming interest in the certain buildings may apply to the Court of Settlement and section 10(5) of the Ordinance reads as follows:-

“10(5) A Court of Settlement after such inquiry as it may deem necessary and after giving reasonable opportunity to the parties concerned of being heard and also adducing evidence, both oral and documentary , if any, make such decision on the prayer of the applicant as it deems fit.”

In the instant case the Court of Settlement upon proper consideration of the materials on record found that the original allottee is present in this country and the petitioner-Government did not make any attempt to controvert this fact. As such, there cannot be any reason to say that the whereabouts of the respondent No.2 is not known for the purpose of treating the case property as abandoned. Moreover, property of a Bangladeshi National cannot be treated as abandoned property without any proof of taking active part against the liberation war or he helped military operation against the state and the Government of Bangladesh in 1971. Therefore, the property in question under no circumstances falls within the purview of P.O. 16 of 1972 read with the Ordinance LIV of 1985 and hence nothing to interfere with the judgment of the Court of Settlement.

It is pertinent to mention here that the Appellate Division in some cases held that the enlistment of a building under section 5(1) of the Ordinance LIV of 1985 raises a presumption that the property is an abandoned property under section 5(2) of the same Ordinance. But the Appellate Division also held that this presumption is, of course, a rebuttable presumption and in the instant case the respondent No.2 succeeded to rebut this presumption by oral and

documentary evidence before the Court of Settlement that the case property was not an abandoned property under Ordinance LIV of 1985.

It is also pertinent to mention here that according to section 73 of the Evidence Act, 1872 the court is well competent to compare the signature of the person/persons at its own initiative as the court is the expert of all experts. Although comparison of signature by the Court of Settlement being the matter of fact cannot be interfered in the writ jurisdiction. But for our own satisfaction we asked the respondent No. 2, to appear before us and we also compared/ examined the signature of the respondent No. 2, with the available signature in the admitted documents and we also found that the signature of the respondent No. 2 is similar to those of the admitted documents.

So, we do not find any illegality in the judgment and order of the Court of Settlement which suffers from without jurisdiction or non consideration of the evidence on record.

It is needless to say that the case of the respondent Nos. 3-6 claiming themselves as a demand note holder of the petitioner depends upon the fate of this Rule.

For the reasons and discussions made herein above and also the relevant law and the submissions of the learned Advocate of the respondent No. 2, we are of the view, that the Rule has got no merit and thus the Rule is discharged. However without any order as to cost.

The petitioner is hereby directed to exclude the case property being House No.4, Block-C, Lane-3, Section-10, Mirpur, Dhaka from the list of abandoned property published in the Bangladesh Gazette (**Extraordinary**) dated 23.9.1986 within 6(six) months from the date of receipt of the judgment of this Court by the petitioner-Government and the petitioner is also directed to restore the possession of the case property in favour of the respondent No. 2 Md. Solaiman Khan son of late Kurban Khan within such period as indicated above.

Send the lower court record along with this judgment to the 1st Court of Settlement, Dhaka.

Nozrul Islam Chowdhury, J.

I agree.