

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

WRIT PETITION NO. 13546 OF 2015

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Abdul Azis Sarkar and others

.....Petitioners

-VERSUS-

Bangladesh, represented by the Secretary, Ministry
of Land and others

..... Respondents

Mr. Md. Abdul Malek, Advocate

..... For the Petitioners

Mr. Md. Rashadul Hassan, D.A.G with

Ms. Nilufar Yesmin, A.A.G with

Mr. Md. Moshir Rahman (Rahat), A.A.G with

Mr. Md. Motasin Billah Parvez, A.A.G with

Mr. Bishwanath Karmaker, A.A.G

.....For the Respondents

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

Heard on 28.06.2026

Judgment on 14.07.2026

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under
Article 102 of the Constitution of the People's Republic of Bangladesh in
the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why inclusion of the land of the petitioners in the 'Ka' list of the Vested Property under section 9(1) of the Vested Property Act, 2001 as amended in 2011 bearing Item No. 181 and V.P. Case No. 296 of 1980 of Mouza-Dania, Upazilla-Demra, District-Dhaka published in the Bangladesh Gazette in extra edition on 02.05.2012 (Annexure-E) should not be declared to have been included and published without lawful authority and are of no legal effect and as to why they should not be directed to release the land of the petitioners from the said list and/or such other or further order or orders passed as to this Court may seem fit and proper.”

Necessary facts for disposal of the instant Rule, in short, are that, the land of C.S. plot no. 1670 appertaining to C.S. Khatian No. 277 of Dania Mouza, Police Station-Demra, measuring an area of 28 decimals of land with other land originally belonged to Darika Nath Mistry, who died leaving behind two sons Upendra Nath Das and Mohendra Nath Das. Mohendra Nath Das was unmarried and he died issueless, for which his share devolved upon his brother Upendra Nath Das and thus Upendra became owner of said 28 decimals of land. While possessing and enjoying the same Upendra Nath Das sold out 28 decimals of land to Ashutosh Das vide registered saf-kabala deed No. 2146 dated 16.02.1957. Accordingly corresponding S.A. Plot No. 1670 and R.S. Plot No. 3674 appertaining to S.A. Khatian No. 323 and R.S. Khatian No. 123 were correctly prepared in his name. While possessing and enjoying the same Ashutosh sold out $4\frac{1}{2}$ decimals of land to Abdul Majid Mia by registered saf-kabala deed No.

4192 dated 20.07.1992 and City Survey Khatian No. 2400 was correctly prepared in his name and thereafter he exchanged his share with Abdul Aziz Sharker, the petitioner no. 1, who got possession of said $4\frac{1}{2}$ decimals of land and then mutated his name for that land vide mutation khatian No. 323 jote No. 64/61 under namjari jamabhag No. 11389 of 2004. The petitioner No.1 constructed his dwelling house in the said land, got water, electricity and gas connections and he has been paying bills of the said services regularly to the concerned authorities. He has deposited the holding tax to the Dania union parishad lastly on 08.07.2015.

The said S.A. and R.S recorded owner Ashutosh sold out $1\frac{1}{2}$ decimals of land to the Md. Rafiqul Islam Khan (petitioner no. 2) and Mofizul Islam Khan (petitioner no. 3) by registered saf-kabala deed No. 4914 dated 20.07.1992 and delivered possession and thereafter they mutated their names vide Mutation case No. 9271/1994-95 dated 16.11.1994. Ashutosh Das also sold out $4\frac{1}{2}$ decimals of land to Nasiruddin (petitioner no. 4) by registered saf-kabala deed No. 4913 dated 20.07.1992 and he got possession in the said land and accordingly City Survey khatian No. 5322 was correctly prepared in his name. The petitioner Nos. 2-4 constructed their dwelling houses in their respective land and obtained electricity, Gas, and water connections from the concerned authorities and they have been paying the bills regularly and they have paid holding tax to the Dania Union Parishad lastly on 15.05.2015.

The said Ashutosh Das also sold $4\frac{1}{2}$ decimals of land to Shahajahan Mia by registered saf-kabala deed No. 4911 dated 20.07.1992 and delivered possession to him and accordingly City survey khatian No. 8788 was correctly prepared in his name for the said land and he sold out it to Nazimuddin Bhuiyan and Md. Hossain Bhuiyan (petitioner no. 5) by registered saf-kabala deed No. 1854 dated 27.03.2002. While enjoying and possessing Nazimuddin Bhuiyan transferred his share to Md. Shafiqul Islam Sumon (petitioner no. 6) by gift deed No. 12170 dated 28.11.2007 and city survey khatian No. 8788 was correctly prepared in his name. The petitioners No. 5 and 6 constructed multi-storeyed building on the said land and they have got gas, water and electricity connections from the concerned authorities and have been paying bills of the said services regularly. They have paid the holding tax to the Dania Union parishad lastly on 13.08.2015.

Ashutosh Das exchanged $5\frac{1}{2}$ decimals of land with Hajee Abdul Aziz Bepari by exchanged deed No. 3664 dated 27.05.1992 and he mutated his name vide Namjari Jama Bhag Nothi No. 11198 of 2009 dated 30.06.2009. Thereafter Hajee Abdul Aziz Bepari transferred 2.75 decimals of land to Akter Hossain Bepari (petitioner No.7) by Heba-bil-Awaj deed No. 7420 dated 25.11.1993. Hajee Abdul Aziz Bepari also transferred the rest 2.75 decimals of land to the petitioner No.7 by Heba deed No.13827 dated 30.12.2009. While enjoying and possessing the same city survey khatian No. 2010 was correctly prepared in his name. The petitioner No.7 constructed multi-storeyed building on this land and

got gas, water and electricity connections from the concerned authorities and has been paying bills of the said services regularly. He has paid the holding tax to the Dania Parishad lastly on 13.08.2015.

In this manner the petitioners are enjoying the exclusive and peaceful possession of the land measuring in total an area of 20.50 decimals out of 28 decimals of land appertaining to S.A. khatian no. 323. Plot no. 1670.

Although the petitioners have been in peaceful possession of their respective lands, those have been included in the 'Ka' list of the Vested Property in serial no. 180, which has been published in the Bangladesh Gazette on 02.05.2012 of which they did not have any knowledge about. On 15.10.2015 the petitioners went to the concerned *Tahshil Office* to pay land development Tax but the concerned Union Land Officer refused to receive the same on the ground that their lands have been included in the 'Ka' list of the vested property. That is how for the first time they came to learn about their property having been included in the 'Ka' list.

Being aggrieved thereby and there having no other alternative and equally efficacious remedy available, the petitioners have filed the instant writ petition and obtained the present Rule.

Learned Senior Advocate Md. Abdul Malek, appearing on behalf of the petitioners submits that, the petitioners are lawful owners of the lands in question, which they purchased from the lawful owners and they are in exclusive and peaceful possession of the lands in question as their

homestead by constructing dwelling houses thereon and as such the Gazette notification dated 02.05.2012, in respect of the lands of the petitioners, is illegal, without lawful authority and is of no legal effect.

Learned Advocate further submits that the petitioners have constitutional right to enjoy their property and protect the same but in the instant case their properties have been included in the 'Ka' list of the vested property illegally and Gazette have been published without any lawful basis and as such the said illegal list and Gazette be struck down for ends of justice. Hence, the present Rule is liable to be made absolute.

On the other hand, Mr. Md. Rashadul Hassan, the learned Deputy Attorney General contested the Rule on behalf of the respondents, however, without any affidavit in opposition and submitted that, the petitioners failed to avail the opportunity to file the case before the Arpita Shampatti Pratyarpan Tribunal within the stipulated time period. Hence the writ petition is not maintainable and the Rule is liable to be discharged.

Heard the learned Advocates for the respective parties and perused the writ petition, and all the documents annexed therewith.

It appears from the impugned Gazette notification dated 02.05.2012 that the property over which the petitioners are claiming title and possession appears in serial no. 180 at page 35204. It is evident from this gazette that the V.P. Case was initiated in the year 1980 by the Case no. 296 of 1980. From the column 3, which refers to the date of taking control

of the property by the government, it appears that the control is said to have been taken over by the government on 09.10.1980. In this regard the law is now settled by a series of judicial decisions of both the Divisions of this Court that, no property can be enlisted as vested and non-resident property after the repeal of Ordinance No. 1 of 1969 on 23.03.1974. So, after that very date if any property is enlisted as vested property, it will be regarded as invalid and illegal. The leading case on this point is *Aroti Rani Paul Vs. Sudarshan Kumar Paul* reported in **56 DLR AD 76**.

Any such inclusion after that stipulated date will amount to be mala fide. In the case of *Manabendra Chakrabarty and others versus The Governmet* reported in **3 SCOB [2015] HCD 52** in order to decide what is mala fide, His Lordship Mr. Justice Moyeenul Islam Chowdhury referred to an Indian decision reported in W.B. AIR 2001 SC 343 where Durga das Basu J held, “It is commonplace to state that mala fide does not necessarily involve a malicious intent. It is enough if the aggrieved party established: (i) that the authority making the impugned order did not apply its mind at all to the matter in question; or (ii) that the impugned order was made for a purpose or upon a ground other than what is mentioned in the order”. It was thus held that, “Inclusion of a property in the vested property list after 1974 can thus be said to be mala fide inasmuch as no new inclusion was lawfully permissible at that time.”

The government being unable to produce any evidence otherwise in order to contradict the continuous peaceful possession of the petitioners over the property in question by dint of registered deeds and by

constructing dwelling houses thereon upon payment of government holding tax and utility bills, the very inclusion of the property as vested property appears to be without any lawful authority.

Now arises the question, whether the petitioners can invoke the writ jurisdiction without availing the alternative forum which was available to them under the অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১.

In the year 2001 ‘অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১ was promulgated as a result of long-standing public demand in order to restore the possession of the ‘vested properties’ to its original owners or their successors in interest. In the preamble to the Act 2001 it has been clearly stated that,

“অর্পিত সম্পত্তি হিসাবে তালিকাভুক্ত কতিপয় সম্পত্তি বাংলাদেশী মূল মালিক বা তাহার বাংলাদেশী উত্তরাধিকারী বা উক্ত মূল মালিক বা উত্তরাধিকারীর বাংলাদেশী স্বার্থাধিকারী (Successor-in-interest) এর নিকট প্রত্যর্পণ এবং আনুষংগিক বিষয়াদি সম্পর্কে বিধান প্রণয়নকল্পে প্রণীত আইন।”

By the amendment in 2011, it was provided that, a list of the properties to be released shall be prepared and published in the official gazette. Tribunals were also established with a view to entertain and dispose of the applications for release of the properties from the list of vested property.

In Section 7 of the Act 2001 it has been provided that,

৭। ‘(১) এই আইন প্রবর্তনের পর কোন ব্যক্তি কোন সম্পত্তি প্রত্যর্পণ যোগ্য সম্পত্তির তালিকায় অন্তর্ভুক্তি যোগ্য নহে মর্মে বা উক্ত তালিকায় অন্তর্ভুক্ত কোন সম্পত্তি প্রত্যর্পণ যোগ্য সম্পত্তি নহে মর্মে কোন আদালতে মামলা দায়ের করিতে বা এইরূপ সম্পত্তি অবমুক্তির জন্য তত্ত্বাবধায়কের নিকট কোন দাবী উত্থাপন করিতে বা উহার ব্যাপারে নামজারীর জন্য কোন রাজস্ব কর্মকর্তার নিকট কোন আবেদন করিতে পারিবেন না।’

‘(২) এইরূপ মামলা দায়ের বা দাবী উত্থাপন বা আবেদন করা হইলে
আদালত বা ক্ষেত্রমত তত্ত্বাবধায়ক উক্ত দাবী বা রাজস্ব কর্মকর্তা উক্ত আবেদন
সরাসরি নাকচ করিবেনা’

It is now to be determined, whether this section appears to be a bar for a person to invoke the writ jurisdiction who challenges the very inclusion of the property as vested property and who is in continuous possession of the property with valid title.

This requires to look back at the historical background of the vested property at a glance. Properties which were listed as ‘enemy property’ during the time of war between Pakistan and India in 1965 were inherited by Bangladesh, after independence in 1971, as vested by operation of law and the term ‘vested property’ came into appearance. Therefore, the vested properties are basically the ‘enemy properties.’ No new property can be enlisted as vested property which was not originally in the ‘enemy property’ list. By enacting the Act of 2001, the Government took initiative to release these properties to its original owners or their successors-in-interest. As such the term ‘প্রত্যর্পণযোগ্য সম্পত্তি’ came into place. A 'প্রত্যর্পণযোগ্য সম্পত্তি' is by nature a vested property.

The Act of 2001 defines 'প্রত্যর্পণযোগ্য সম্পত্তি' in Section 2 (nio) of the Act. Relevant part of this Section is quoted below:

"প্রত্যর্পণযোগ্য সম্পত্তি' অর্থ অর্পিত সম্পত্তি আইনের অধীনে তত্ত্বাবধায়ক কর্তৃক অর্পিত সম্পত্তি হিসাবে তালিকাভুক্ত করা হইয়াছে এইরূপ সম্পত্তির মধ্যে-

(অ) যাহা এই আইন প্রবর্তনের পূর্বে সরকারের দখলে বা নিয়ন্ত্রণে ছিল;"

When the gazette was published in the year 2012 with a list of ‘প্রত্যর্পণযোগ্য সম্পত্তি’, it also included some properties which were enlisted as vested property after 23.03.1974 for reasons best known to the authority who published the list. However, we have already discussed hereinabove that any enlistment of vested property after that specific date has been declared as illegal and without lawful authority by judicial decisions. The definition also makes it clear that, to be a ‘প্রত্যর্পণযোগ্য সম্পত্তি’ the property thus have to be in the control of the government.

When a person challenges the very inclusion of the property as vested property on the ground that the V.P. case has been started after 23.03.1974, as has been appearing in the gazette, he comes within the ambit of the Constitution, which guarantees a citizen’s right to acquire, hold, transfer or otherwise dispose of property subject to certain limitations as per Article 42.

In the case of *Government of Bangladesh versus Syed Chand Sultana and others reported in 51 DLR (AD) 24*, regarding an abandoned property, it was held by the Appellate Division that, “The writ petitioners need not have invoked the jurisdiction of the Court of Settlement because the very inclusion of the property in question in the ‘kha’ list is ex facie void for want of jurisdiction and is violative of Article 42 of the Constitution. The writ petitioners can come directly to the High Court Division for protection of their fundamental right even though an alternative remedy is available.” [*per Mustafa Kamal J.*]

This decision has been subsequently relied on in series of judgments delivered by both Divisions of the Supreme Court of Bangladesh.

In the case of *Manabendra Chakrabarty and others versus The Government* reported in 3 SCOB [2015] HCD 52 their Lordships held that, “In this context, we feel tempted to say that it is a settled proposition of law that an aggrieved party may invoke the writ jurisdiction of the High Court Division under Article 102 of the Constitution straight way provided the action impugned is mala fide, even though there may be an alternative remedy available for him. Since we have found that the inclusion of the case property in ‘ka’ Schedule of the Gazette Notification dated 06.05.2012 as a vested property is mala fide, the instant writ petition, as we see it, is maintainable. So our definite finding is that the petitioners can come directly to the High Court Division for protection of their right to property as contemplated by Article 42 of the Constitution of Bangladesh, even though an alternative forum, that is to say, ‘অর্পিত সম্পত্তি প্রত্যর্পণ ট্রাইব্যুনাল’ is available for necessary legal redress.” [*per Moyeenul Islam Chowdhury, J*]

Upon meticulous reading of the decisions passed by both the Divisions, we are of the view that, when a writ jurisdiction is invoked by an aggrieved person challenging the very inclusion of the property in the list of vested property to be illegal and unlawful on the ground that the same has been included in the vested property list after 23.03.1974, it is his constitutional right and in that case the writ petition will be very much

maintainable even if he fails to or does not take recourse to the available alternative remedy of making an application before the Tribunal. The High Court Division has jurisdiction to look into the relevant fact, which led to the claim raised by the petitioner to substantiate his interest regarding the property unless contradicted by the respondent with supporting materials.

In the present case on careful perusal of the annexures we find that, the petitioners have been able to establish themselves within the purview of “মূল মালিক বা তাহার বাংলাদেশী উত্তরাধিকারী বা উক্ত মূল মালিক বা উত্তরাধিকারীর বাংলাদেশী স্বার্থাধিকারী” as per the preamble to the Act 2001.

Having said that, in the gazette notification the total quantum of land of S.A. plot no. 323 plot no. 1670 is 28 decimals but the present petitioners have been able to show their title and possession over 20.5 decimals out of that 28 decimals. Hence they would be entitled to get release of the property from the ‘ka’ list so far as their shares are concerned.

With the foregoing discussion and observations and in view of the fact and circumstances of the case we find substance in the Rule.

In the result, the Rule is made absolute-in-part.

The respondents are directed to release the petitioners’ property immediately from the list of vested property as appearing in serial no. 180 of Gazette Notification dated 02.05.2012 regarding ‘ka’ schedule property of Demra, Mouja- Dania, District- Dhaka, J.L. No. 153 so far as 20.50

decimals land out of 28 decimals of plot no. 1670 appertaining to S.A. khatian no. 323 is concerned.

However, there is no order as to costs.

Let a copy of this judgment and order be communicated to the concerned authorities at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.