

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

Writ Petition No. 6641 of 2021

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Mahmuda Khatun and another

....Petitioners

Versus

Government of the People's Republic of
Bangladesh, represented by the Secretary, Ministry
of Housing and Public Works, Bangladesh
Secretariat, Ramna, Dhaka, and others

....Respondents

Mr. Muhammad Ashraf Ali, Advocate

....For the Petitioners

Mr. ASM Sakib Sikder, Advocate

.... For the respondent No. 2

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice S M Saiful Islam

Judgment on 21.06.2026.

Md. Iqbal Kabir, J:

On an application under Article 102 of the Constitution of the People's
Republic of Bangladesh, this Rule Nisi was issued in the following terms:

"Let a Rule Nisi be issued calling upon the respondents to show
cause as to why the refusal to comply with the request made by
the notice demanding justice dated 01.08.2021 (Annexure-C) to
comply with the judgment and order dated 13.10.2016 passed by
the First Court of Settlement, Dhaka in Case No. 38 of 2005 by
excluding the case property from the "Kha" list of abandoned
buildings being Holding No. P/3, Block-D, Mohammadpur Housing
Estate, Noorjahan Road, Dhaka, finally published in the official
Gazette dated 20.09.1988 at page 12858(Ka) should not be
declared to have been done without lawful authority and is of no
legal effect, and as to why they should not be directed to exclude
the case property from the "Kha" list of abandoned buildings finally
published in the office Gazette dated 20.09.1988 at page 12858
(Ka) and/or pass such other or further order or orders as to this
court may seem fit and proper."

Short facts narrated for the disposal of this Rule are that the property is
Holding No. P/3, Block-D, Mohammadpur Housing Estate, Noorjahan Road,

Dhaka, hereinafter referred to as “the case property” originally allotted to one Abdur Rashid on 13.01.1960 by the then Office of the Commissioner, Works Housing and Settlement (H&S) Department, Government of East Pakistan, and he handed over the possession of the property on 05.02.1960. Subsequently, Kamal Uddin Ahmed, by a registered deed being No 2262 dated 11.05.1973 purchase and handed over the possession of the case property and inducted him into the possession and became landless. Kamal Uddin Ahmed got his name recorded in the mutation khatian and paid all kinds of Utility bills of the case property, and thus, has been enjoying the possession of the case property. However, he came to know that the case property was illegally included in the "Kha" list of abandoned buildings purportedly under the provisions of the Abandoned Buildings (Supplementary Provisions Ordinance, 1985 (Ordinance No. 54 of 1985) in the official gazette published on 20.09.1988 at page 12858 (Ka) bearing number, P/3, Block-D, Mohammadpur Housing Estate, Noorjahan Road, Dhaka. However, late Kamal Uddin Ahmed, the predecessor of the petitioners, filed an application under section 7 of the said Ordinance before the First Court of Settlement, Bangladesh Abandoned Buildings, Segunbagicha, Dhaka, for exclusion of the case property from the "Kha" list of abandoned buildings and the said application was numbered as Case No. 38 of 2005. During the pendency of the said case before the Court of Settlement, Kamal Uddin Ahmed died on 22.02.1998, whereupon the present petitioners were substituted in the said case as heirs of late Kamal Uddin Ahmed. The Court of Settlement, upon hearing the parties and considering the materials available on record, found that the disputed property was not abandoned property. Accordingly, by judgment and order dated 13.10.2016, the Court allowed the case on contest without any order as to costs and held that the suit property had been wrongly enlisted in the list of abandoned properties. However, on 18.07.2021, the petitioners filed another application to the respondents to comply with the judgment and order dated 13.10.2016 and to exclude the property from the 'Kha' list having No. P/3, Block-D, Mohammadpur Housing Estate, Noorjahan Road, Dhaka, of Abandoned Building finally published in the official Gazette dated 20.09.1988 at page 12858 (Ka), but to no avail to date. Thereafter, petitioners served a demand justice notice while the respondents did not reply to it.

Being aggrieved, the petitioners filed this writ petition and obtained the instant Rule Nisi.

Mr. Muhammad Ashraf Ali, learned Advocate for the petitioners, submits that the respondents are not complying with the judgment and order dated

13.10.2016 passed by the First Court of Settlement, Dhaka. According to him, on innumerable occasions, respondents were approached with the request to implement the judgment and order. But the respondents have not complied with the said judgment and order till today. According to him, such non-compliance is a disregard for the laws of the land.

Mr. Ashraf Ali submits that the Court of Settlement, by its judgment and order dated 13.10.2016, passed in Case No. 38 of 2005, declared that the case property is not an abandoned building, and despite the said judgment, the respondents have not excluded the property from the list and continue to treat it as an abandoned building. He claims that soon after the judgment, they filed an application with a copy to other authorities enclosing the said judgment thereto, requesting them to comply with the judgment and order of the Court of Settlement. But the respondents have not complied with the said judgment and order till today. Though the respondents are legally bound to implement the judgment and are liable to exclude the property from the list. According to him, such continued inaction and disregard of the judgment violate the petitioners' fundamental rights guaranteed under Articles 27, 31, and 42 of the Constitution.

He next submits that the petitioners have the impression they would be treated fairly, but such rational expectation, having faced total disappointment by the inaction of the respondents, is therefore, they are constrained to come up with this application, and as such, it has claim that the delay is unintentional and bona fide and without any willful laches of the petitioners.

This Court notes that the respondent-Government did not file any written objection in the Court of Settlement, but cross-examined the witnesses of the petitioners and participated in the argument hearing. However, the case of the Government, in short, is that the case property was left by the original allottee during the liberation war period by leaving this country, and as such, the enlistment of the case property as abandoned property is correct.

Mr. ASM Sakib Sikder, learned Advocate for Respondent No. 2, argues that there is no evidence showing that either the original owner, Abdur Rashid, or the subsequent purchaser, Amena Khatun, remained in possession of, resided in Bangladesh in relation to, or exercised any management, supervision, or control over the property after the Liberation of Bangladesh. He contends that, pursuant to Articles 2(1) and 4 of P.O. No. 16 of 1972, the property automatically vested upon the Government, and any subsequent transfer is void under Article 6, which prohibits transfers of abandoned property.

Mr. Sikder further submits that the respondents are lawfully managing and possessing the property. Even if the petitioners are currently occupying it,

such occupation is unauthorized and illegal, and therefore, no prior notice is required before taking action against them. Referring to Annexure-F(2), he argues that the allotment was purely permissive, conferred no ownership or vested right, and was expressly non-transferable. Consequently, the allottee acquired no transferable interest in the property.

His submission challenges the authenticity and legal validity of the alleged transfer deed dated 12.11.1966 (Annexure-G), stating that no such deed is reflected in any official record, nor was its execution or registration ever communicated to the authorities. In the absence of supporting records and given the prohibition on transfer, the deed cannot create any legal right, title, or interest.

He also disputes the alleged 1973 transfer by registered Deed No. 2262, asserting that it is also absent from official records. He further points out that the petitioners have failed to produce any evidence of the prior permission required from the competent authority. Accordingly, the alleged transfer is unsupported by evidence, contrary to the law governing abandoned property, void ab initio, and incapable of conferring any right, title, or interest upon the petitioners or their predecessor-in-interest.

However, on query, Mr. Sikder, appearing for the respondents, candidly admitted that, although he had advanced certain submissions, the respondents, if aggrieved against the judgment passed by the Settlement Court, ought to have sought appropriate relief challenging the alleged judgment by approaching any competent forum.

We have perused the application, impugned judgment, affidavit-in-opposition, and other materials on record, and also heard the Advocate for the parties considered the submissions made hereinabove.

Upon hearing the parties, it transpired that this property was allotted in favour of one Abdur Rashid, subsequently, it was transferred to the petitioners. However, the property was listed as an abandoned property; thus, the petitioners filed an application before the concerned authority. In the context, under the law, any person claiming any right or interest in any building which is declared to be an abandoned building by notification published in the official gazette under Section 5 of the Ordinance may file an application to the Court of Settlement praying for exclusion of the said building from the said list of abandoned buildings or any other reliefs. Further, it appears that under section 10 of the said Ordinance, the Court of Settlement was empowered by the above Ordinance to decide on the prayer made in an application under Section 7 of the Ordinance. Sub-section 6 of Section 10 of the Ordinance lays down that

such a decision of the Court of Settlement is final and shall be binding upon the parties to the application.

Indeed, in a Case No. 38 of 2005, the settlement court passed a judgment, thereby giving a decision which is favorable to the petitioners, wherein the Settlement Court by its judgment declared that the case is allowed on contest without any order as to costs. The suit house has been wrongly enlisted as an abandoned buildings property list. Respondents have not traveled to any other Court or forum against the judgment passed by the settlement court to date. The settlement Court passed the above decision five years back, but to date, the respondents have not taken any steps to implement that judgment by mutating the petitioners' name in the records of the right of the property in question or other acts in enjoyment of such property despite the petitioners' repeated prayers and requests. However, the record shows that the judgment was passed on 13.10.2016, the petitioners immediately filed an application to the Secretary, Ministry of Housing and Public Works, with a copy to the Chairman, Abandoned Property Management Board, and the Chairman, Housing Development Authority, enclosing the said judgment thereto, requesting them to comply with the judgment and order of the Court of Settlement. But the respondents have not complied with the said judgment and order till today.

However, in the above context, it reveals that in other decisions reported in 54 DLR (2002)-165 and 48 DLR 291, the Court, in many similar cases, writ petitions were filed before this Court seeking directions to the Government to implement judgments already delivered by this Court or other competent courts. In those cases, the Court either granted the directions that were sought or observed that, once a court had declared a property not to be abandoned property and ordered its exclusion from the list of abandoned properties, no further notification in the Official Gazette was required from the Government. The Court held that its judgment itself constituted sufficient authority, and that from the date of the judgment, the property stood excluded from the list of abandoned properties.

It is common and desirable that the authority must have decided within a responsible period; there is no need or scope to wait 5(five) years. The failure or refusal of the Government to implement or give effect to the judgment and order of the Court, even if these are declaratory in nature, like those of the present case, within a reasonable period, amounts to willful disobedience and of the Court's order, which constitutes contempt of Court (54 DLR (2002)-165)

At this juncture, it may be recalled that the settled proposition of law is that once a court of law declares a property not to be abandoned property, no further release order or notification from the Government is necessary. By virtue of such judicial declaration, the property stands excluded from the list of abandoned properties from the date of the judgment itself, and the Government is bound to give effect to that decision. If the government, for its convenience or other reasons wants to make a gazette notification that the property has been excluded from the abandoned properties list as per judgment and decree of the court of law it may do so, but for that reason, it cannot refuse or defer the decree holder's prayer for mutation of his name and acceptance of rent from him or his other acts in enjoyment of that property.

However, it has been claimed by the petitioners that the authority sought a release order even after the matter had been conclusively adjudicated by a competent Court of law. In the context, it can be said that this practice not only causes undue hardship and prolonged suffering to litigants but also undermines the authority, dignity, and majesty of the Court in the eyes of the public, thereby eroding confidence in the administration of justice.

Be that as it may, in this case, the Settlement Court had passed a judgment in the circumstances; there remained no alternative, but the respondents had to accept the decision passed by the Court. Therefore, the respondents cannot now be permitted to question or circumvent the effect of the said order. Thus, we find merit in this Rule.

Resultantly, the Rule is made absolute.

Respondents are directed to exclude the case property, Holding No. P/3, Block-D, Mohammadpur Housing Estate, Noorjahan Road, Dhaka, from the "Kha" list of abandoned buildings, published in the official Gazette dated 20.09.1988, Page-12858(Ka).

The order of status quo granted at the time of issuance of the Rule is hereby recalled and vacated.

There will be no order as to cost.

Communicate the order.

S M Saiful Islam, J:
I agree.