

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

Writ Petition No. 123 of 2005

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Jogesh Chandra Roy Memorial Trust, represented by
its Chairman, Alhaj Aktaruzzaman Chowdhury
-----Petitioner.

-Versus-

The Government of The People's Republic of
Bangladesh, represented by the Secretary, Ministry of
Land, Secretariat Building, Bangladesh Secretariat,
Raman, Dhaka and others
-----Respondents.

Mr. Suvra Chakravorty with
Mr. Md. Sumon Ali,
Mr. Nabil Ahmed Khan and
Ms. Joydeepata Deb Choudhury, Advocate
-----For the Petitioner.

Mr. M. Mohiuddin Yousuf, DAG
-----For the Respondent Nos. 1-7.

Mr. Maqbul Ahmed with
Mr. Saiful Quader Chowdhury, Advocates
-----For the Respondent No. 8.

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice S. M. Saiful Islam

**Heard on: 22.04.2026, 29.04.2026 and
03.05.2026.**

Date of Judgment: 16.06.2026.

S. M. Saiful Islam, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a 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 Order dated 24.07.2004 passed by the Respondent No. 2 in Case No. 4-6/2004 Appeal (Chittagong) (as contained in Annexure-‘K’) dismissing the appeal and thereby affirming the Order dated 12.12.2001 passed by the Respondent No. 3 in Miscellaneous Appeal No. 157 of 1996 in dismissing the appeal and thereby affirming the order passed by the respondent's land as abandoned property in Miscellaneous Case No. 26/1994-95 should not be declared to have been made without 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.”

The facts, as stated in the writ petition, in brief, are that one Jogesh Chandra Roy was the owner of the case property situated at Pingola Mouza under Potiya Police Station in the District of Chattogram. Upon his death, he left behind his only son Purnendu Bikash Roy, two daughters-in-law, namely, Parul Bala Roy and Parul Kushum Roy, and one grandson, namely, Hrishikesh Roy who inherited the case property. Subsequently, Hrishikesh Roy relinquished his share in favor of his two aunts. Thereinafter, Parul Bala Roy and Parul Kushum Roy, as the plaintiffs instituted Other Class Suit No. 11 of 1962 in the Court of 2nd Subordinate Judge,

Chottogram against the said Hrishikesh Roy, seeking a declaration of their title to the property. The suit was disposed of on compromise and a compromise decree was passed on 02.11.1962. Subsequently, during her lifetime, Parul Bala Roy executed a registered 'Will' on 10.11.1969 in favour of Parul Kushum Roy, bequeathing her share in the case property to the latter to take effect upon her death. Accordingly, after death of Parul Bala Roy, Parul Kushum Roy filed an application on 14.11.1978 for probate of the said 'Will', which was duly allowed.

While Parul Kushum Roy was in peaceful possession and enjoyment of the said property, a portion thereof was erroneously enlisted as vested property. Challenging such enlistment, Parul Kushum Roy filed Writ Petition No. 73 of 1986 before the High Court Division and obtained a Rule, which was subsequently made absolute by the judgment and order dated 22.03.1987. The Government preferred Civil Petition for Leave to Appeal No. 75 of 1987 against the said judgment, but the same was dismissed on 09.06.1987. Thereafter, Parul Kushum Roy and the petitioner constituted a Trust, namely, "**Jogesh Chandra Roy Memorial Trust**" by a registered deed being Deed No. 3699 dated 08.10.1988, and vested 8.15 decimals of land situated at Mouja Paraikora, Upazila Anwara, District Chattogram in the said 'Trust'. Subsequently, by a registered sale deed being Deed No. 4593 dated 28.08.1989, Parul Kushum Roy transferred the case land measuring 7.59 acres in favour of the said

‘Trust’ and delivered possession thereof. Thereafter, the Trust established “**Jogesh Chandra Roy Memorial Trust Technical and Business Management College**” on the said land. A temple and a cremation ground were also established thereon.

Thereafter, Respondent No. 8, who was the then Chairman of the local Union Parishad, submitted an application dated 07.08.1995 before the Upazila Nirbahi Officer (Respondent No. 6), praying for allotment of the case land in his favour. Pursuant thereto, Respondent No. 7 initiated then Miscellaneous Case No. 26/94-95 and by order dated 28.11.1995, declared 7.78 acres of the case land to be abandoned property. Subsequently, by order dated 01.07.1996, Respondent No. 5 declared the said property to be khas land, which order was approved by Respondent No. 4 on 03.07.1996. Being aggrieved thereby, the petitioner then preferred Miscellaneous Appeal No. 157 of 1996 before the Respondent No. 3 against the order of Respondent No. 4. However, by order dated 12.12.2001, Respondent No. 3 dismissed the said Appeal. Challenging the said order, the petitioner preferred an Appeal before the Respondent No. 2, the Bhumi Appeal Board, which was also dismissed by the impugned order dated 24.07.2004. Being left no other efficacious remedy, the petitioner filed the present writ petition challenging the order dated 24.07.2004 and obtained the Rule.

At the time of issuance of the Rule, the respondents were restrained, by an order of temporary injunction, from disturbing the

peaceful possession of the petitioner over the case land and from transferring the same until disposal of the Rule.

The Rule was opposed by the Respondent No. 4, who filed an affidavit-in-opposition denying the material averments made in the writ petition. The substance of the statements made in the affidavit-in-opposition is that the petitioner's claim of title is founded upon registered Sale Deed No. 4593 dated 28.08.1989. It is contended that the said deed itself recites that the scheduled property had earlier been dedicated as *debottar* property by a *Debottar Arponnama* dated 02.11.1979. Since no prior permission for the transfer of the *debottar* property had been obtained, the sale deed dated 28.08.1989 did not confer any valid title upon the petitioner. It has further been asserted that the case land was illegally transferred to the petitioner by the said sale deed. According to the respondent, as Parul Kushum Roy died leaving behind no legal heirs, the government lawfully initiated Miscellaneous case No. 26/94-95 under section 92 of the State Acquisition and Tenancy Act, 1950. It is therefore, contended that the petitioner has no *locus standi* to maintain the present writ petition, as no valid title passed to it under the sale deed dated 28.08.1989. Accordingly, Respondent No. 4 has prayed for discharge of the Rule.

Mr. Shuvra Chakravorty, the learned Advocate, appearing for the petitioner, submits that the impugned order has been passed without lawful authority and is of no legal effect. He contends that, in Writ Petition No. 73 of 1986, it was conclusively established that

Parul Kushum Roy, the original owner of the case land, remained a citizen of the then East Pakistan and never abandoned the property. Therefore, according to the learned advocate, the subsequent declaration of the case land as khas land of the Government by the impugned orders is totally illegal and without jurisdiction. He further submits that section 92 of the State Acquisition and Tenancy Act, 1950 has no application to the facts of the present case, as the essential precondition for invoking the said provision, namely, abandonment of the property by its owner is wholly absent. He argues that Respondent No. 2 failed to appreciate that the case land is not abandoned property; rather, it has been continuously utilized for various charitable, religious, educational and social purpose through the “**Jogesh Chandra Roy Memorial Trust.**” He further submits that the case land was wrongly declared as *khas* land at the instance of the Respondent No. 8, the then Chairman of the local Union Parishad, who had earlier applied for allotment of the land in his own favour. According to him, the impugned proceedings were initiated and concluded under the undue influence of the Respondent No. 8, rendering the impugned orders arbitrary and *mala fide*. On these grounds, the learned Counsel for the petitioner prays for the Rule to be made absolute.

Conversely, Mr. M. Mohiuddin Yusuf, the learned Deputy Attorney General, appearing for the Respondent Nos. 1-7, submits that, according to the recitals contained in the registered sale deed

dated 28.08.1989, the case land had already been dedicated as *debottar* property by a *Debottar Arponnama* dated 02.11.1979. As such Parul Kusum Roy had no authority to transfer the said property and consequently the sale deed dated 28.08.1989 did not confer any valid title upon the petitioner. Accordingly, the petitioner has no *locus standi* to maintain the present writ petition. He further submits that the case land was correctly declared as khas land of the Government under section 92 of the State Acquisition and Tenancy Act, 1950 as Parul Kushum Roy died leaving behind no legal heirs and there remained no lawful owner of the property. He, therefore, contends that the impugned orders suffer from no legal infirmity warranting interference by this Court. On the aforesaid grounds, the learned Deputy Attorney General prays for discharge of the Rule.

Learned Advocate, Mr. Mokbul Ahmed, appearing on behalf of Respondent No. 8, adopts the submissions advanced by the learned Deputy Attorney General and further submits that the case land has rightly been declared as khas land of the Government. He contends that the Respondent No. 8 is in lawful possession of the case land as a lessee under the Government. He further submits that the petitioner has acquired no title to the case land and, therefore, has no *locus standi* to file this petition. Accordingly, he prays that Rule be discharged.

We have heard the learned Advocates of both sides, perused the application and affidavit-in-opposition and the Annexures thereto.

It appears that the petitioner claims title to the case land on the basis of a registered sale deed dated 28/08/1989, purportedly executed by Parul Kusum Roy in its favour. A copy of the said deed has been annexed to the writ petition as Annexure- 'H'. A perusal of the recitals of the said deed reveals that it states, *inter alia*, as follows:

“বর্তমান তপশীল বর্ণিত জমির খতিয়ানস্থ আর. এস. ৫৫৪ ও ৫৫৫ দাগে বর্তমান কবলা দাত্রীর বর্ণিত পূর্ব পুরুষের তথা দেওয়ান বৈদ্যনাথ কর্তৃক স্থাপিত দুইটি কালী মন্দির স্থিত আছে এবং উক্ত কালী মন্দিরাদির তাবৎ শাসন সংরক্ষণ এবং দৈনন্দিন সেবা, পূজা ইত্যাদি যোগেশ চন্দ্র রায়ের মৃত্যুর পর বর্তমান কবলা দাত্রী একক ভাবে নির্বাহ করিয়া আসিতেছেন এবং বর্তমান তপশীল বর্ণিত সম্পত্তি এবং অপরাপর কতক সম্পত্তির তাবৎ আয় হইতে বেশিরভাগ অংশ তিনি উক্ত দুইটি কালী বাড়ির রক্ষণাবেক্ষণ এবং স্থাপিত কালীর সেবা পূজা পরিচালনার করার ব্যাপারে নির্বাহ করিয়া আসিতেছেন। বার্ষিক্য জনিত কারণে এবং শারীরিক অসুস্থতার দরুণ এবং প্রায়শঃ তাহাকে শহরে থাকিতে হয় বিধায় এবং গ্রামে থাকিয়া কালী মাতার সেবা পূজা ইত্যাদি যথাযথ ভাবে দেখাশুনা করা ইত্যাদি তাহার পক্ষে অসুবিধা পরিলক্ষিত হওয়ায় তিনি তাহার স্বর্গীয় শ্বশুর তথা প্রয়াত যোগেশ চন্দ্র রায় বাহাদুর কর্তৃক তাহার নিকট জীবন সায়াহ্নে ব্যক্ত ইচ্ছা অনুসারে সুচারুভাবে উক্ত কালী বাড়ী সংস্কার এবং মেরামতের জন্য এবং নিত্য নৈমিত্তিক পূজা যথাযথভাবে পরিচালনার জন্য স্বতঃ প্রবৃত্ত ভাবে তিনি বিগত ০২-১১-৭৯ ইংরেজী তারিখে একটি দেবোত্তর অর্পননামাও করেন। কিন্তু তদ্বারা দীর্ঘদিন পর্যন্ত তিনি কোন সুফল লাভ করিতে পারেন নাই বিধায় বরঞ্চ উক্ত দেবোত্তর নামায় বর্ণিত ব্যক্তিগণের মধ্যে কতক ব্যক্তির যথাযথ কাজের প্রতি অনীহার দরুণ মন্দির প্রায় ধ্বংসের দিকে যাইতেছে দেখিয়া উপায় বিহীন হইয়া উত্তরূপ বৈধ কারণ সহ অপরাপর একান্ত বৈধ প্রয়োজন তথা তাহার স্বর্গতঃ শ্বশুর ও স্বামীর ইচ্ছানুসারে উক্ত কালী মন্দির স্থায়ীভাবে পাকা নির্মাণ করিবার নিমিত্ত এবং ইহার যথাযথ শ্রীবৃদ্ধি করিবার নিমিত্ত এবং প্রয়াত শ্বশুর ও স্বামীর নির্দেশিত অপরাপর ধর্মীয় কার্যাদির যথাযথভাবে সমাধা করার নিমিত্ত এবং তাহাদের চিতা-মন্দিরাদির যথাযথভাবে নির্মাণ ও সংস্কার সাধনে স্থায়ী করণের নিমিত্ত

এবং এই বৃদ্ধ বয়সে তাহাদের পারলৌকিক আত্মার সদগতির নিমিত্ত শেষ কার্যাদি নিজ হস্তে যথাযথভাবে সমাধা করিয়া যাইবার নিমিত্ত এবং অধিকন্তু এই বৃদ্ধ বয়সে ব্যক্তিগত খরচাদি নির্বাহের নিমিত্ত উক্ত সম্পত্তি বিক্রয়ের একান্ত প্রয়োজনীয়তা উপলব্ধি করিয়া তদ্রূপ ইচ্ছা প্রকাশ করিলে যোগেশ চন্দ্র রায় মেমোরিয়াল ট্রাস্টের পক্ষে বর্তমান চেয়ারম্যান তথা আলহাজ্ব আখতারুজ্জামান চৌধুরী কমিটির সম্মতি ও সিদ্ধান্ত মোতাবেক উক্ত জায়গা ট্রাস্টের পক্ষে ক্রয় করিতে আগ্রহ প্রকাশ করায় কথোপকথনে ইহার বাজার ভাও মূল্য =৯৮,০০০.০০/- (আটানব্বই হাজার) টাকা স্থিরতরে পণের তাবৎ টাকা অদ্য সাক্ষী সাক্ষাৎ হাজিরা মজলিশে ২য় পক্ষ কবলা দাত্রী গণিয়া বুঝিয়া পাইয়া ও লইয়া ইহার সম্পূর্ণ প্রাপ্তি স্বীকারে ১ম পক্ষ ট্রাস্টের বরাবরে অত্র কবলা সম্পাদনে প্রতিজ্ঞা, অংগীকার ও ঘোষণা করিতেছেন যে, তপশীল বর্ণিত সম্পত্তিতে ২য় পক্ষের যথাযথভাবে অর্জিত যাহা স্বত্ব সামর্থ্য ও লভ্য আছে তাহা সম্পূর্ণ নির্দায়, নির্দোষ ও নিবিড়ভাবে অদ্য হইতে ১ম পক্ষের উপর বর্তাইল।”

Thus, it appears from the recitals of the sale deed that the executant, Purul Kusum Roy, had earlier executed a deed of religious endowment (*Debottar Arponnama*) in respect of the case land and, after about ten years of such endowment, executed the said sale deed dated 28.08.1989. It is well settled that once a property is validly dedicated as *debottar* property, the founder divests herself of ownership and the property vests in the Deity. Accordingly, if Parul Kusum Roy had in fact dedicated the case land by the *Debottar Arponnama* dated 02-11-1979, she ceased to have any saleable interest therein and could not validly transfer the property by the subsequent sale deed dated 28-08-1989. The recital of the sale deed itself indicates that Parul Kusum Roy had made a religious endowment of the property. Such an endowment, once validly created,

is ordinarily irrevocable. A *Debottar* property may be alienated only by the *shebayat* or lawful manager and that too only in exceptional circumstances, such as legal necessity or for the benefit of the Estate. However, the recitals of the sale deed do not disclose whether Parul Kusum Roy was acting in the capacity of a *shebayat* at the time of execution of the sale deed, whether the transfer was effected by her in that capacity or whether the deed of endowment dated 02.11.1979 reserved any power of alienation in her favour. In the absence of such materials, it is difficult to ascertain how Parul Kusum Roy could lawfully transfer the *debottar* property by the sale deed dated 28.08.1989.

It may be noted that the petitioner has neither disclosed in the writ petition the fact that the case land had previously been dedicated as *debottar* property nor annexed the *Debottar Arponnama* dated 02-11-1979, despite the same being specifically referred to in the recitals of the sale deed dated 28.08.1989. The said document is of vital importance for determining whether Parul Kusum Roy reserved any power to revoke the endowment or any right to retransfer the property, as well as for ascertaining the terms and conditions governing the endowment, the management of the *Debottar* Estate, and the powers conferred upon the *shebayat*. In the absence of the *Debottar Arponnama*, this Court is not in a position to determine the true nature and legal effect of the endowment or the authority, if any, of Parul Kusum Roy to execute the subsequent sale deed dated 28.08.1989.

Consequently, the petitioner's claim of title to the case land remains seriously clouded and raises disputed question of title, which cannot conveniently be adjudicated in the exercise of writ jurisdiction under Article 102 of the Constitution. In the facts and circumstances of the case, we are of the view that no relief can be granted to the petitioner in the present writ petition unless and until its title to the case land is established before a competent Civil Court.

At the same time, it may also be noted that the respondent's claim that the case land is khas land of the Government does not appear, *prima facie* to rest on a sound legal foundation. According to the respondents, the case land became ownerless upon being abandoned and was; therefore, rightly declared khas land under section 92 of the State Acquisition and Tenancy Act, 1950. However, in the affidavit- in-opposition filed by Respondent No. 4, there is no specific assertion as to who the owner of the property was, nor has it been explained how or under what circumstances the property became abandoned so as to attract the provisions of section 92 of the Act. On the other hand, the petitioner has asserted that Jogesh Chandra Roy was the original owner of the case land and subsequently Parul Kusum Roy obtained the land as his successor in interest. In support of such claim, the petitioner has annexed various documents, marked as Annexures- 'A' to 'F' relating to the title and succession of Parul Kushum Roy. The respondents have not specifically or effectively controverted those documents.

It has already been observed that, according to the recital of the registered sale deed dated 28.08.1989 (Annexure- ‘H’), the case land had previously been dedicated as *debottar* property. Significantly, the impugned orders themselves also acknowledge the existence of such *debottar* endowment. In particular, Respondent No. 3, the Additional Divisional Commissioner (Revenue), in his order dated 12.12.2001, made the following observation:

“নথি দৃষ্টে দেখা যায় নালিশী ভূমিতে কয়েকবার সরেজমিনে তদন্ত হইয়াছে। প্রতিবেদনে উল্লেখ করা হয় যে, দেবোত্তর সম্পত্তি সরকারের বিনা অনুমতিতে হস্তান্তর যোগ্য নহে বিধায় বিক্রয় ও মেমোরিয়াল ট্রাস্ট গঠন অবৈধ ভিত্তিহীন ও বেআইনী বিধায় রাষ্ট্রীয় অধিগ্রহণ ও প্রজাস্বত্ব আইনের বিধান অনুযায়ী সরকারী খাস খতিয়ানে আনা হইয়াছে।” (Annexure- ‘J’)

Respondent No. 2 has recorded substantially the same findings in the impugned order dated 24-7-2004 (Annexure- ‘K’). Moreover, in the affidavit-in-opposition; Respondent No. 4 also admitted that the case land is *debottar* property. If the property had, in fact, been validly dedicated as *debottar* property, it could not, in law, be regarded as abandoned or ownerless so as to attract the provisions of section 92 of the State Acquisition and Tenancy Act, 1950. A *Debottar* property is permanently dedicated to a Hindu deity or religious institution for religious or charitable purposes. Under Hindu law, upon a valid dedication, the ownership of the property vests in the deity, which is recognized in law as a juristic person.

Consequently, the property cannot be treated as ownerless or abandoned merely because the founder or the shebayat dies or leaves no legal heirs. Prima facie, therefore, the inclusion of such property as khas land on the footing that it was abandoned or without an owner does not appear to be legally sustainable. Moreover, in the order dated 28-12-95, Respondent No. 6 observed as follows:

“বর্নিত জমিতে অবস্থিত ধ্বংসোন্মুখ একটি মন্দিরে (কালীমন্দির) কর্মরত পূজারী এক বৃদ্ধ জানান যে কথিত যোগেশ চন্দ্র রায় মেমোরিয়াল ট্রাস্টের কোন লোক কখনও সম্পত্তি দেখা-শুনায় আসে নাই।” [Annexure- ‘I (1)’]

Thus, it appears from the aforesaid order that a temple exists on the case land and that religious worship is regularly performed there. These facts lend support to the conclusion that the property has been dedicated for religious purposes and continues to be used accordingly. In such circumstances, the case land cannot, *prima facie*, be regarded as abandoned or ownerless so as to justify its inclusion as khas land under section 92 of the State Acquisition and Tenancy Act, 1950.

Having considered the facts and circumstances of the case, we are of the view that, as the petitioner’s title to the case property remains disputed and clouded, the Rule is devoid of merit. At the same time, since the inclusion of the case property as khas land of the Government has been held to be unlawful, we are of the opinion that, the ends of justice would be sufficiently served, if the Rule is disposed of with the following observations and directions:

1. The inclusion of the case land as khas land of the Government through Miscellaneous Case No. 26 of 1994-95 under Section 92 of the State Acquisition and Tenancy Act, 1950 is without lawful authority and has no legal effect.
2. Until and unless title to the case land is otherwise determined by a competent Civil Court having jurisdiction, the said land shall be treated as *debottar* property dedicated to *Kali* Temple established thereon.
3. In the absence of *Shebayat* of the *Deity* and the *debottar* property, the Deputy Commissioner, Chattogram is directed to appoint a *Shebayat* in consultation with at least 5 (five) leading *Shebayats* or priests of the Temples in the concerned Upazila.

With these observations and direction, the Rule is disposed of without any order as to costs.

The order of temporary injunction passed at the time of issuance of the Rule stands vacated.

Communicate this judgment and order at once.

Md. Iqbal Kabir, J:

I agree.