

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

WRIT PETITION NO. 3816 OF 1996

with

WRIT PETITION NO. 3817 OF 1996

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Alhaj Md. Aminul Hoque

.....Petitioner

-VERSUS-

Government of the People's Republic of Bangladesh,
and others

..... Respondents

.....In Writ Petition No. 3817 of 1996

Mrs. Amina Khatun

.....Petitioner

-VERSUS-

Government of the People's Republic of Bangladesh,
and others

Mr. Md. Mostafizur Rahman, with

Mr. Ashutosh Kumar Sana, Advocates

.....For the Petitioner of both the writ petitions

Mr. Sharif Ahmed, Advocate

.....For the Respondents

Heard on 05.11.2025, 06.11.2025 and 09.11.2025

Judgment on 11.11.2025

Present:

Justice Md. Rezaul Hasan

&

Justice Urmee Rahman

Urmee Rahman, J

Both these Writ Petition No. 3816 of 1996 and Writ Petition No. 3817 of 1996 are taken up for disposal by this single judgment, since they are based on similar facts and the questions of law and facts are also similar.

These two writ petitions along with some other old writ petitions have been sent from the Hon'ble Chief Justice for disposal by this Bench.

In the writ petition No. 3816 of 1996 a Rule Nisi was issued on an application under article 102 of the Constitution of the People's Republic of Bangladesh calling upon the respondents to show cause as to why the judgment and order dated 01.09.1996 passed in Case No. 661 of 1988 by the First Court of Settlement, Bangladesh Abandoned Building, Segunbagicha, Dhaka respondent no. 3 should not be declared illegal, without lawful authority and of no legal effect and/or such other or further order or orders passed as to this court may seem fit and proper.

Similarly in Writ Petition No. 3817 of 1996 a Rule Nisi was issued calling upon the respondents to show cause as to why the judgment and order dated 01.09.1996 passed in Case No. 660 of 1988 by the First Court of Settlement, Bangladesh Abandoned Building, Segunbagicha, Dhaka respondent no. 3 should not be declared illegal, without lawful authority and of no legal effect and/or such other or further order or orders passed as to this court may seem fit and proper.

The fact of the petitioner in short is that, the property in question is situated at Mirpur 15-B/A, 1st Colony, Mirpur, Dhaka measuring five kathas of land more or less with a tin shed house situated thereon, which was allotted on 08.05.1965 to one non-Bengali refugee named Md. Salim Mistry, son of late Md. Hamid, by executing a deed of agreement by the then Special Relief Officer, Dhaka on behalf of the then Governor of East Pakistan and possession was delivered to him. Thereafter he mutated his name regarding the said property. Since he had to remain out side in connection with his work, on 04.12.1969 he executed a registered power of attorney in favour of one Md. Shahjahan in order to manage, look after, let out or rent, pay rent or taxes and to sell or transfer and to do all other necessary acts regarding the said property on his behalf. The writ petitioner was a monthly tenant in the said property under Salim Mistry since January, 1971. In 1979 Salim Mistry made a proposal to the petitioner to purchase the property. By registered deed no. 9845 and 9846 dated 28.04.1979 the petitioner and his wife Amina Khatun purchased the said property from Salim Mistry through his constituted attorney. At the time of transferring the case land, the allottee Md. Salim Mistry used to reside at Section 14 and lastly at Section 11 till his death on 05.01.1980. After purchase they mutated their names to local C.O. (revenue) office and duly paid rents and taxes. In the year 1982 they applied to the Assistant Commissioner Settlement, Ministry of Public Works and Urban Development for mutation of their names in the Housing Settlement

Office concerned. Thereafter a joint survey team of the Housing department inquired into the matter and submitted a report on 19.06.1982 to the effect that the case house is not an abandoned property. In 1983 the petitioner and his wife applied for three storied building construction and their plan was approved by the D.I.T. on 17.05.1983. In the last part of 1985 they received a notice of surrender of the case house from the Ministry of Works alleging that the case house is an abandoned property. On 23.09.1986 a gazette notification was published listing the petitioner's property in the 'kha' list of the Abandoned Property. Hence they filed the cases before the Court of Settlement for release of the property from the said list. But the settlement Court passed the impugned judgment and order by dismissing both the cases in an arbitrary manner which is liable to be set aside.

Mr. Md. Mostafizur Rahman, learned Advocate, appearing on behalf of the Petitioner, submitted that, in the impugned judgment the Court of Settlement only dealt with the factual aspect of the matter without considering its legal aspect to the effect that the property in question does not come within the ambit of the definition of Abandoned Property. He submits that, formation of opinion by the Government under Article 2 of Bangladesh Abandoned Property Order, 1972 is very important and mandatory, which was not followed in this case. In this regard he referred to a decision of the Appellate Division in ***Government of Bangladesh Vs Messers A.T.J. Industries Limited and others reported***

in 28 DLR (AD) 120. Mr. Rahman's further contention is that the respondent no. 3 i.e. the First Settlement Court acted illegally, mala fide and without jurisdiction in violation of the established principles of law and of natural justice as well as the provision of Article 10(5) of the Abandoned Buildings (Supplementary Provisions) Ordinance, 1985 in refusing to accept the petitioner's application for producing further evidence. In support of his argument he referred to a decision of the Appellate Division in **C Q M H Md. Ayub Ali Vs Bangladesh and others reported in 47 DLR AD 71.** Mr. Rahman's further contention is that, the term 'in person' used in the definition of 'abandoned property' does not mean physical presence of the person, it could well be through his constituted attorney and in the present case the original allottee Salim Mistry delegated his authority to manage, look after, sell etc. the property by executing a registered power of attorney. On this point he relied on a decision reported in **27 DLR 170 MLR namely, Speed Bird Navigation Com and another Vs Bangladesh and others.** Learned Advocate for the Petitioner also submitted that, after the execution of the lease agreement the original allottee mutated his name and transferred the property in 1979 i.e. after more than 12 years of getting the lease, so there has been no violation of the lease agreement of taking prior permission and the transfer was done in accordance with law. Referring to Annexure- 'H' to the writ petition he submitted that, from the survey report dated 17.06.1982 it is evident that the government has admitted that the

property is not an abandoned property. After purchasing the property from the original allottee the petitioner and his wife constructed a four storied building over the suit property upon investing a huge amount of money and have been living thereon for more than 50 (fifty) years. He finally submitted that, the possession of the house was not taken over by the Government as per Article 7 (3) (4) of Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972 and Rule 3(1)(4)(9) of Bangladesh Abandoned Property (taking over possession) Rules 1972 and as such the inclusion of this property in the 'kha' list of abandoned property list is without any lawful authority. He prays for setting aside the impugned judgment upon making the Rule absolute.

Mr. Sharif Ahmed, Advocate appears on behalf of the Respondent No. 1 i.e. the Government of Bangladesh represented by the Secretary, Ministry of Housing and Public Works upon filing an affidavit in opposition. He made his submission opposing the Rule and stated that, the original allottee got allotment on 08.05.1965 and in the indenture of agreement there was a condition in clause no. 4 that, within 12 years from the date of allotment the Refugee shall have no right to transfer, dispose of or let out, mortgage or encumber in any way the scheduled land including any structure thereon or any part thereof, if he does so, it will be a breach of condition of this agreement and will entitle the Governor to terminate the agreement (Annexure-B). However, the allottee executed the power of attorney only four years after the lease agreement in

violation of the agreement. He also submitted that, before transferring the property no prior permission was taken from the government as per the condition no. 5 of the agreement, hence the transfer is not lawful. Referring to the joint survey report in Annexure H to the petition Mr. Ahmed submitted that, nowhere in the report it is stated that the property is not an abandoned property rather it is stated that the property is not under the control of the government. Mr. Ahmed's further contention is that, in fact the original allottee left the country during the war of liberation and he never took citizenship of Bangladesh and the present petitioner and his wife entered the suit land after the liberation war as trespassers as the house remained vacant at the relevant time and as such the property was rightly listed in the 'kha' list of Abandoned Property. Finally he submitted that, the First Settlement Court rightly dismissed the petitioner's case upon proper scrutiny of the evidence on record and as such the Rule is liable to be discharged.

Heard the learned advocates for both the parties, perused the both writ petitions, supplement affidavits and the annexures annexed therewith.

It appears from the record that the present petitioner and his wife filed Case No. 660/88 and 661/88 in the Court of Settlement for release of the property of House No. 15-B/A, 1st Colony, Mirpur, Dhaka from the list of abandoned property which has been listed in the 'kha' list in serial no. 42 of gazette notification dated 23.09.1986. In the court of settlement as many as 3 (three) witnesses were examined as P.W.s and necessary

documents were also produced in support of their case. After hearing the parties and perusing the material evidence on record and after discussing the evidence in detail the settlement court was pleased to dismiss both of their cases by the impugned judgment.

In writ jurisdiction under Article 102 of the Constitution the High Court Division ought to consider whether the court of settlement acted within lawful jurisdiction following the provision of the Ordinance No. LIV of 1985 and whether the judgment passed by it was based on proper consideration of the evidence on record.

According to Article 10(5) of the Abandoned Buildings (Supplementary Provision) Ordinance, 1985,

“A Court of Settlement shall, after such enquiry 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.”

From the impugned judgment it appears that the settlement court was constituted with the required number of members as has been prescribed by law and the case was heard at length on contest by both the parties. As many as 3 (three) P. Ws. were examined for the petitioner and their depositions along with the supporting evidences were considered by the court meticulously. No ground has been taken in the writ petition as to misreading or non-reading of evidence on record by the settlement court. Therefore the settlement court has acted within lawful jurisdiction.

Now we have to consider whether the Settlement Court was right in holding that the case property was rightly enlisted in the ‘kha’ list of Abandoned Property.

In the Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972 (P.O. No. 16 of 1972) the term ‘abandoned property’ has been defined as follows:

“abandoned property means any property owned by any person who is not present in Bangladesh or whose whereabouts are[is] not known or who has ceased to occupy supervise or manage in person his property.”

Properties which were deserted from 26 March 1971 till on or before 28.02.1972 attracted the provisions of the P.O. 16 of 1972.

From the documents annexed with the writ petition it appears that on 08.05.1965 Government of East Pakistan gave allotment to a non-Bengali refugee under its rehabilitation programme a tin shed house situated on a land measuring an area of five katha more or less; however it appears that the deed of agreement was not registered and the allottee did not pay any *salami* i.e. consideration at the time of execution of the deed.

Through this unregistered deed and without any payment of salami, Salim Mistry did not acquire any valid title over the property in question as per the provisions of Section 17 (1) (d) followed by Section 49 of the Registration Act, 1908 and Section 25 of the Contract Act of 1872.

Learned lawyer for the petitioner put forward an argument that according to Section 2 of Government Grants Act 1895 the provisions of Transfer of Property Act, 1882 shall not apply to any grant or other transfer of land or of any interest therein made by or on behalf of the Government to in favour of any person; he further argued that according to the provision of Section 90(1)(a) of the Registration Act, the documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land revenue and which form part of the records of such settlements are exempted from registration. The provisions of these Acts do not have any manner of application in the present case since no settlement or grant was given in favour of Salim Mistry, rather he was given only limited right of occupancy. As such Salim Mistry, not having acquired any title over the case property, had no right to transfer title in favour of the petitioner.

It transpires from the indenture of agreement (Annexure-B) that it contains a condition in clause 4 which clearly states that within 12 (twelve) years from the date of allotment, the Refugee shall have no right to transfer, dispose of or let out, mortgage or encumber in any way the schedule land including any structure thereon or any part thereof. It is the Petitioner's case that he entered into the case premises as a monthly tenant of Salim Mistry in 1971 before purchasing it in 1979. If this is taken to be true, this is a clear violation of the agreement since there was an express bar in letting out the property within 12 years from the date of allotment

and therefore the petitioner was nothing but an unlawful possessor in the property. Moreover, by making out this case it has been admitted by the petitioner that Salim Mistry was not in possession of the house immediately before or after the commencement of the P.O. of 16 of 1972.

The next question arises as to the whereabouts of Salim Mistry. On this issue the Court of Settlement, upon discussing the depositions of the Petitioner's witnesses at length, has arrived at the finding that there are discrepancies and contradictions between the testimonies of the plaintiff's witnesses in this regard. The date and place of his death also could not be proved by the witnesses, as has been discussed in the impugned judgment. As such the whereabouts of Salim Mistry during the relevant time could not be proved.

The petitioner has raised an allegation that the settlement court acted mala fide in not allowing his application to produce further evidence by the order dated 29.08.1996. It was earlier held in a judgment passed by the Appellate Division in ***C Q M H Md. Ayub Ali Vs Bangladesh reported in 47 DLR (AD), 71*** that the denial of a fair trial will only arise if a proper opportunity is not afforded to the person for producing his evidence sought to be adduced by him is unreasonably shut out or he is not given a reasonable opportunity of being heard. According to Article 8 of the Ordinance of 1985, the application shall be accompanied by all the documents, or the Photostat or true copies thereof, on which the applicant relies as evidence in support of his claim. In the present case the court of

Settlement, upon receiving the applications, heard both the parties at length and have considered the documents produced before it and also the witness testimonies. The application filed by the petitioner for producing further evidence was nothing but a dilatory tactic when the hearing was at its fag end. All reasonable opportunity was given to the petitioner by the Court of Settlement; hence there is no scope to hold that the Settlement Court acted in violation of the provision of the Ordinance.

It is the petitioner's case that, Salim Mistry executed a registered power of attorney in favour of one Md. Shahjahan and the present petitioner purchased the property in question from the constituted attorney. The First Court of Settlement, after perusing the power of attorney deed dated 04.12.1969, opined that the executant's *urdu* signature available on the deed do not tally with the signature appearing on the unregistered lease agreement.

Moreover, the thumb impressions appeared on both the deeds were sent for expert opinion and in the expert report submitted by a police Inspector both the thumb impression were found to be similar; however the Settlement Court found variations with bare eyes between those two thumb impressions and therefore did not consider the report and arrived at the finding that the power of attorney dated 04.12.69 was not a genuine one.

Learned advocate for the petitioner submitted that the Settlement court acted beyond jurisdiction by disregarding the expert report. On this

point we hold that Section 73 of the Evidence Act has empowered the court to compare between two thumb impressions and as such no illegality has been committed by the Settlement Court. Furthermore, no witness was examined in order to prove the expert report and as such the expert report remained unproved, hence does not deserve any consideration by the court of law.

Regarding the purchase deed of the petitioner the Settlement Court arrived at the finding that in his statement the petitioner said that he paid consideration money of the sale directly to the owner Salim Mistry, but it appears from the purchase deed dated 28.04.1979 that one Md. Shahajan received the amount and executed the deed on behalf of Salim Mistry as his constituted attorney. Thus the payment of consideration being not proved there remains serious doubt as to the genuineness of the purchase deed of the petitioner, which was correctly pointed out by the settlement court.

In view of the fact and circumstances stated hereinabove we are of the view that, the original allottee did not acquire any title over the property in question, he only had a limited right of occupancy over the property and he was not in possession of the said property during the relevant time period between 1971 to 1972, neither his whereabouts were known to anyone. As such the property being abandoned by Salim Mistry, the same was rightly listed as Abandoned Property by the gazette notification dated 23.09.1986.

Therefore we find no merit in both these Rules.

In the result, both the Rules are discharged.

The order of Stay granted earlier by this Court is hereby vacated.

However, no order as to costs.

Communicate this judgment and order at once.

Md. Rezaul Hasan, J:

I agree.