

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

Writ Petition No. 250 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:

Golam Fatema

(Being dead her heirs Ms. Jahanara Begum and another)

... Petitioners

-Versus-

Second Court of Settlement, Dhaka and another

... Respondents

Mr. Zulfiqur Ahmed, Advocate

... For the petitioner.

Mr. Md. Monjur Alam, D.A.G. with

Dr. Mohammad Soeb Mahmud, A.A.G.

Mr. Md. Abul Hassan, A.A.G.

Mr. Sk. Naser Wahed (Shemon), A.A.G.

Mr. Md. Azadul Islam (Azad), A.A.G and

Mr. Md. Tareq Rahman, A.A.G

... For the respondents

Heard on: 03.07.2025, 11.08.2025, 12.08.2025
and 20.08.2025

Judgment on: 24.08.2025

Present:

Justice Sardar Md. Rashed Jahangir

And

Justice Md. Abdul Mannan

Sardar Md. Rashed Jahangir, J:

The 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
20.11.1995 passed by the respondent No. 1, the Second Court of

Settlement, Dhaka in Settlement Case No. 216 of 1992 should not be declared to have been passed 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 instant writ petition has been filed challenging the judgment and order dated 20.11.1995 passed by the Second Court of Settlement, Dhaka in Settlement Case No. 216 of 1992, challenging the inclusion of House No. E/E-1, Ferozshah Colony, Chittagong in the 'Ka' list of the Abandoned Building published in the official gazette dated 23.09.1986 under serial No. 18 at page 9726(94), alleging that the property in question cannot be enlisted as abandoned property within the meaning of article 2(1) of the Abandoned Property (control, management and disposal) Order, 1972.

The Court of Settlement after hearing both the parties framed the following issues to be determined :

1. Whether the case property is an abandoned property within the meaning of article 2(1) of P.O. 16 of 1972?
2. Whether the enlistment of the case property in the 'Ka' list is legal?
3. Whether the petitioner has acquired any right, title and interest in the case property and entitled to get relief as prayed for?

In deciding issue Nos. 1 and 2, the Court of Settlement held as under :

“The claim of the Government is that the original allottee Md. Sobhan left the country since after liberation of Bangladesh and his whereabouts were not known and he ceased to occupy, supervise or manage the property in person and as such, the case property has become an abandoned property within the meaning of article 2(1) of P.O. 16/72. On the other hand, the claim of the petitioner is that the original allottee Md. Sobhan was her husband and his whereabouts are not known since after liberation of Bangladesh.”

And upon consideration of the contentions of both the parties, it was categorically found that whereabouts of the original allottee, Mr. Sobhan was not known to the Government and consequently, it was held that he (the original allottee) did not possess the case property after independence of Bangladesh and as such, the property has become an abandoned property within the meaning of article 2(1) of the P.O. 16 of 1972.

In determining the issue No. 2, it is also found by the Court of Settlement that in the application, the petitioner categorically averred that “the Government or any other person did not take over possession of the case property by ousting herself. The Government pleader also did not oppose this contention of the petitioner”.

Under the P.O. 16/72, a property can be declared abandoned, if the Government formed its opinion as to the abandonedness character of the property considering 3(three) events, namely;

- (i) Whether the owner/allottee or leasee of the property was present in Bangladesh on the relevant point of time;
- (ii) Whether the whereabouts the such person was known to the Government and;
- (iii) Whether the said person ceased to occupy, supervise or manage the property in person on the relevant point of time.

In several judgments, the Apex Court of the Land categorically held that the relevant point of time is, to be taken into consideration for the purpose of abandonedness character of the property, the 28th February, 1972 i.e. on 28.02.1972 whether the owner/allottee/leasee of the property in question was present in Bangladesh or his whereabouts was known to the Government or not or whether he ceased to occupy, supervise and manage the property in person on the said date. As we already found that the Court of Settlement categorically found that the whereabouts of original allottee, Md. Sobhan was not known to the Government after liberation of Bangladesh. Now the question is whether the property was ceased to occupy, supervise or manage in person or not on the relevant point of time.

In the case of M/s. Speed Bird Navigation Company and another Vs. Government of Bangladesh and others, reported in 27 DLR 170, it is held that:

“It is the petitioner’s case which has not been seriously disputed on behalf of the respondents that the operation of the business of the petitioner firm was being carried on without any break under the control and authority of the partners according to law during the days following the liberation of the country and also at the time when Presidents Order No. 16 of 1972 was promulgated. ‘To occupy, supervise or manage in person’ as has been used in the definition clause cannot be taken in the literal sense for the considerations already noticed. The words ‘in person’ in the said clause may not necessarily imply physical presence of the owner in all cases: they may as well be understood in the sense that occupation, supervision or management, as has been referred to therein is to be done with the concurrence and under the authority of the owner concerned. Any other construction will lead to some astounding consequences. An owner of a house property may find that he has been completely divested of his property on the ground that he ceased to occupy ‘in person the said property during his temporary absence from the place although the entire of his family members had been residing at the said house all the time. It can never be the legislative intent that a person who was required to go outside his country on account of some lawful purpose or had been held up in some foreign land and prevented from returning to his home land by the circumstances over which he had no control, should be deprived of his property simply because he was not

physically present to occupy, supervise or manage the said property, although it was being administered and managed according to his own arrangement and will. The words 'in person' in the definition clause should therefore be liberally construed."

In the case of Abdur Rashid and another Vs. Government of the People's Republic of Bangladesh, reported in 27 DLR 614, it has been held that:

"The owner may be absent or his whereabouts may not be known but if his family members or heirs, as the case may be, are present in Bangladesh on the relevant date his property cannot be treated as abandoned property."

In deciding the case under hand i.e. No. 216 of 1992, the Court of Settlement although categorically found that the whereabouts Md. Sobhan was not known to the Government on the relevant point of time i.e. on 28.02.1972, but at the same time in deciding point No. 2 categorically found that the contention of the claimant is that the possession of the property could not be taken over from her, meaning thereby she was in possession of the property. Although the Court of Settlement categorically held that the claimant did not take any steps to prove that she is legally married wife of Md. Sobhan.

During hearing, Ms. Jahanara Begum and Hosne-Ara Begum, daughters of Golam Fatema, petitioner of the writ petition were substituted on even of the death of their mother and through supplementary affidavit, the said substituted petitioners produced their

S.S.C mark sheet, copies of NID. From where it transpires that in the said mark sheet and NID Card they were mentioned as daughters of Md. Sobhan and they also produced some utility bills, original certificate of domicile of their alleged father and original lease deed, claiming them as the daughter of Md. Sobhan and their further contention is that on the relevant point of time, they were occupying, managing and possessing the property in question and as such, their ancestral property cannot be treated as abandoned property.

On the other hand, learned Assistant Attorney General Mr. Md. Azadul Islam (Azad) by referring to the case of Hosne-Ara Begum Vs. Chairman, Court of Settlement and another, reported in 46 DLR(AD)9, submits that so long as the Court of settlement acts within jurisdiction and does not commit any excess of jurisdiction, the High Court Division should not interfere into the judgment of Court of Settlement.

He further submits that it is an admitted position that the whereabouts of Md. Sohban after liberation was unknown to the Government, thus, the Court of Settlement did not commit any illegality in declaring the property as abandoned.

Heard learned Advocates of both the parties, perused the writ petition, series of supplementary affidavits filed on behalf of the petitioners.

It appears that although the Court of Settlement categorically found that the whereabouts of Md. Sohban is unknown and he

personally found absent in occupying, supervising and managing the property in question.

In the cases of M/s. Speed Bird Navigation Company and another Vs. Bangladesh reported in 27 DLR 170 and of Abdur Rashid and another Vs. Government of Bangladesh, reported in 27DLR 614 respectively, it is categorically held that the owner may be absent or his whereabouts may not be known, but if his family members or heirs as the case may be, were present in Bangladesh or were in possession, or were supervising, managing and occupying the property, then the property can not be treated as abandoned property.

Keeping the aforesaid principle in mind, we are of the view that justice would be best served, if the case is returned back to the Court of Settlement and is directed to decide, (i) whether the property in question i.e. House No. E/E-1, Ferozshah Colony, Chittagong were possessed, supervised, managed or occupied by the heirs of original allottee, Md. Sohban on the relevant point of time i.e. 28.02.1972 or not; after providing the petitioners an opportunity to substantiate their case by adducing proper evidences.

Accordingly, the Rule is disposed of.

The judgment and order dated 20.11.1995 passed by the respondent No. 1, the Second Court of Settlement, Dhaka in Settlement Case No. 216 of 1992 is hereby set aside and the case record is sent to the Court of Settlement to decide the case in the light of the observation made in the body of the judgment.

However, on the prayer of learned Advocate for the petitioner the original copy of the lease deed, domicil certificate and other collateral evidences is hereby directed to return back to the petitioner upon furnishing photo copies thereto.

Communicate the judgment and order at once.

Md. Abdul Mannan, J:

I agree.