

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 4407 OF 2000

In the matter of:

An Application under article 102 of the
Constitution of the People's Republic of
Bangladesh.

And

In the matter of:

Md. Shahabuddin being dead his legal heirs
Shakhina Begum and others

... Petitioners

-Versus-

The court of Settlement, Bangladesh Abandoned
Buildings, Segunbagicha, Ramna, Dhaka and
others

... Respondents

Mr. Md. Mainul Islam with
Mr. Md. Asad Miah, Advocate

...For the petitioners

Mr. Sujad Miah, Advocate

...For the respondent no.2

**Heard on 02.12.2025, 03.12.2025
and Judgment on 03.12.2025**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Hamidur Rahman

Md. Mozibur Rahman Miah, J.

Supplementary-affidavit filed today by the petitioner do form part of
the main writ petition.

On an application under article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why inclusion of the case property being house no. 1-B/2-8, P.S Mirpur, Dhaka in the list of the abandoned properties as 'Ka' list published in the Bangladesh gazette, extra ordinary issue on 23.09.1986 (annexure-'D' to the writ petition) and the order dated 15.05.2000 passed by the member of the court of settlement (annexure-'E-1' to the writ petition) should not be declared to have passed 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.

At the time of issuance of the rule, the respondents were restrained by an order of injunction from taking possession of the case property being house no. 1-B/2-8, P.S Mirpur, Dhaka from the lawful possession of the petitioner in any way.

The short facts leading to issuance of the instant rule are:

That the case property being house no. 1-B/2-8, P.S Mirpur, Dhaka (hereinafter referred to as the case building) was allotted to one, Shafi Ahmed son of, late Abdul Hamid and it was allotted to him by the then East Pakistan Government. The lease deed was then registered under registration no. 11893 dated 26.12.1961 and accordingly said Shafi Ahmed paid taxes to the concerned authorities and started possessing the same uninterruptedly. After getting the said case building, Shafi Ahmed entered into an agreement to sell the case building to the petitioner on 02.04.1970 fixing the value at taka 50,000/- and the petitioner paid an amount of taka 20,000/- in cash and got delivery of possession of the said building. Petitioner also paid taka

20.000/- thereafter as well, After execution of the said agreement there started political disturbances in the country and therefore said Shafi Ahmed could not register the sale deed although he was very much present in the country. However, in the year 1988 petitioner requested Shafi Ahmed to execute and register a sale deed when Shafi Ahmed registered a sale deed on 30.10.1988 being deed no. 7167. Thereafter, the petitioner constructed new structure and took connection of gas, electricity and WASA line and paid bills to the concerned authorities of the government and he has been residing in the case building peacefully since 1970. However, during survey operation, by the Dhaka Settlement office, the case building has been recorded in the name of the petitioner in DP khatian no. 1875. It has further been stated that, the petitioner is a simple man and he was not aware of inclusion of the case building in 'Ka' list of abandoned properties and on 08.05.2000 he became sure from a reliable source that the case building has been enlisted in 'Ka' list of abandoned properties on 23.09.1980. The petitioner has been in peaceful possession without any hindrance from any quarter and therefore inclusion of the case building as of abandoned property without enquiry is totally illegal. It has further been stated that, the case building has wrongly been included in 'Ka' list in the extra ordinary gazette notification dated 23.09.1986 although with the facts and circumstances, the case property does not come within the ambit of the definition of the abandoned properties as defined under P.O. 16 of 1972. By filing a supplementary-affidavit it has further been asserted that at the time of filing of the writ petition neither the agreement dated 26.12.1961 nor the impugned gazette notification dated 23.09.1986 had been annexed and therefore

supplementary affidavit was filed annexing those documents. It has also been stated that after coming to learn about the said enlistment of the property in 'Ka' list, the petitioner earlier had filed a case before the 1st court of Settlement, Dhaka and the said case was taken up for hearing by the said court but vide order dated 15.05.2000 the case was returned to the petitioner finding the case is barred by limitation under the provision of section 7(1) of Ordinance No. 54 of 1985 and hence the petitioner has compelled to file the instant writ petition having no other equally efficacious remedy.

Mr. Md. Mainul Islam, the learned counsel appearing for the petitioner upon taking us to the writ petition and supplementary-affidavit at the very onset contends that, before inclusion of the case property in 'Ka' list of abandoned property, petitioner had been in peaceful possession of the said property since 1970 and no notice has ever been issued upon the petitioner or the allottee as required under section 5 of the Recovery of government property House Building Act, 1973 and as such, inclusion of the case property in 'Ka' list of abandoned property is illegal, void and malafide and liable to be declared so have been passed without lawful authority and is of no legal effect. It has further been asserted by the learned counsel that for inclusion of the case property in 'Ka' list of abandoned property, the petitioner could not file application to the court of settlement in due time and therefore the petitioner has got no other alternative remedy except for filing the instant writ petition.

The learned counsel further contends that, since the petitioner has been in possession of the case building so inclusion of the same in 'Ka' list showing the government to have been in possession is totally illegal and

therefore the inclusion of the case property in 'Ka' list is devoid of any substance. It has further been asserted by the learned counsel that inclusion of the case property in 'Ka' list of abandoned property, it is the absolute authority of the court of settlement to entertain for releasing the same but since there has been time limit to challenge such wrongful inclusion and as the petitioner could not avail the said forum in time, so this Hon'ble court is competent enough to entertain such application as the petitioner has got no other alternative efficacious remedy and the rule is liable to be made absolute. However, in support of his submission the learned counsel has placed his reliance in the decision reported in 51 DLR (AD) 24 and takes us through paragraph no. 4 thereof.

On the contrary, Mr. Sujad Miah, the learned counsel appearing for the respondent no. 2 opposes the contention taken in the writ petition and contends that, since there has been complete legal provision to file a case before a court of settlement though filed beyond the provision so have been provided in section 7(1) of Ordinance No. 54 of 1985, so the learned court of settlement has correctly refused to entertain the said case which is liable to be sustained even though the case building has rightly been included in 'Ka' list as of abandoned properties. .

However, we have considered the submission so placed by the learned counsel for the petitioner and that of the learned counsel for the respondent no. 2. Together, we have also very meticulously gone through the writ petition, supplementary-affidavit as well as the provision so have been laid out in section 7 (1) of Abandoned Buildings (Supplementary Provisions) Ordinance, 1985 (Ordinance No. 54 of 1985). On going through the

document so have been appended with the writ petition in particular, annexure-‘E-1’ to the writ petition, we find that the petitioner at first took step by filing a case before the court of settlement but since it filed out of time as per section 7(1) of the Ordinance No. 54 of 1985, the said court has refused to entertain the same. The learned counsel appearing for the petitioner vehemently asserts that since there has been no scope to get any forum other than of writ jurisdiction for having no other alternative remedy, this writ can well be maintained. But we don’t find any legal substance in the said submission since the petitioner once availed the court of settlement which found the same as barred by limitation specifying the relevant provision of law. Had the petitioner not availed the such statutory forum and straight challenged the propriety of inclusion of the case property included in ‘Ka’ list before this court then it would have taken different view. Further, if this court has to entertain the writ petition like court of settlement it then would require to take evidence from the parties something which this court cannot do exercising writ jurisdiction. Further, if this trend is allowed then floodgate will open to the person/persons who could not invoke the jurisdiction of court of settlement and the purpose of enactment of law in particular section 7 of Ordinance No. 54 of 1985 will be redundant one.

Though the learned counsel has placed his reliance in a decision reported in 51 DLR (AD) 24 but from paragraph no. 4 we find that challenging inclusion of the case property in ‘Kha’ list a writ petition was filed and rule was made absolute by the High Court Division and upheld by the Appellate Division where the case in hand, the case building has been included in ‘Ka’ list, something the petitioner was not found to be in

possession and even challenging such inclusion, a case had also been filed before the statutory forum which is also absent in the decision cited. Invariably, the facts and point-in-issue involved in the cited decision is quite distinguishable with the facts of the instant case.

Regard being had to the above facts and circumstances we don't find any iota of substance in the rule.

Accordingly, the rule is discharged however without any order as to costs.

At any rate, the interim order, passed at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment and order along with the lower court records be communicated to the respondents forthwith.

Md. Hamidur Rahman, J.

I agree.