

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

Present:

Justice Sheikh Abdul Awal

And

Justice S.M. Iftekhar Uddin Mahamud

**Writ Petition No. 890 of 2010**

In the matter of:

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

And

In the Matter of:

Mrs. Sogra Begum @ Mrs. Sogra Rahman  
being dead her legal heirs Most. Reshma  
Begum and others

..... Petitioners.

-Versus-

The Secretary, Ministry of Housing and  
Works and others.

..... Respondents.

Mr. Mehrab Hossain, Advocate

..... For the Petitioners.

Mr. Md. Sujad Miah, Advocate

.... For the Respondent No. 1.

Mr. Md. Mohsin Kabir, D.A.G with

Mr. A.K.M. Rezaul Karim Khandaker, D.A.G with

Ms. Shahin Sultana, A.A.G with

Mr. Md. Manowarul Islam Uzzal, A.A.G with

Mr. Md. Moklesur Rahman, A.A.G

..... For the Government.

**Heard on 07.12.2025, , 08.01.2026 and**

**Judgment on 15.01.2026.**

**Sheikh Abdul Awal, J:**

By this application under Article 102 of the Constitution the inclusion of a property situated at holding No. 125, New Eskaton Raod, Dhaka an area of land measuring 0.2598 acres and building standing thereon into the 'Ka' list of abandoned

property published in official Gazette extra ordinary number dated 23.09.1986 serial 29 Ramna (Annexure–C) under S.R.O. 364-AL/86 has been called in questions as illegal and without lawful authority.

The case of the petitioner is that the disputed property which was originally a piece of land measuring 0.2598 acres and a 3 storied building standing thereon bearing holding No. 125, New Eskaton Raod, Dhaka completely described in the schedule of the writ petition and which is hereinafter called and referred as property in question along with other land total being 1.09 acres originally belonged to one Afad Ali Sheikh in whose name the Cadastral Survey, in short, CS record of right bearing Khatian No. 27 was duly prepared and published; that while the said CS recorded original owner Afad Ali Sheikh had been owning and possessing the aforesaid land, he transferred 0.1750 acres land vide sale deed No. 6038 dated 21.12.50 and delivered possession thereof to Golam Malek and Abdur Rahman who during owning and possessing the same transferred it vide sale deed No. 2560 dated 08.04.57 and delivered possession thereof to Moulavi Badius Salam @ Badiuzzaman; that said Badius Salam @ Badiuzzaman also purchased another 0.0188 acres land from the original C.S recorded owner Afad Ali Sheikh, vide sale deed No. 3347 dated 16.05.59. In this way, said Badiuzzaman became owner in possession of the said total  $(0.1750 + 0.0188) = 0.1938$  acre land, thereafter his name was recorded in the S.A Khatian No. 27, who during owning and possessing the same transferred it vide sale deed No. 4666 dated 19.03.66 and delivered

possession thereof to the writ petitioner, Mrs. Sogra Begum. It is alleged that writ petitioner Sogra Begum also purchased another 0.0216 acres land vide sale deed No. 6932 dated 20.07.65 from Solema daughter of original C.S. recorded owner Afad Ali Sheikh and another totaling 0.0444 acres land vide sale deed No. 6931 dated 20.07.65 from Fatema, another heir and daughter of original CS recorded owner Afat Ali Sheikh and thus writ petitioner became owner in possession of totaling  $(0.0216 + 0.0444 + 0.1938) = 0.2598$  acres land by way of purchase by aforesaid 3 sale deeds (Annexure- B-11, B-12 & B-13); that the writ petitioner Sogra Begum thus being owner in possession of said total 0.2598 acres land, who constructed a 3 (three) storied building thereon by taking loan of Tk. 6,00,000/- on 06.04.1986 from the House building finance corporation on 06.04.86 and thereafter mutated her name in the SA Khatian, opened municipal holding in her name being No. 125, Eskaton Road, Dhaka, installed various utilities connection like Titas gas, WASA, DESCO and started living thereon peacefully by paying Land development taxes, City Corporation taxes, consumption bills against the utility connections till handing it over to a developer company for constructing a 7-storied building therein in the year 2007. It is further alleged that the Revenue authority of the Government, admitting the ownership and possession of the writ petitioner, who mutated her name by opening a mutation khatian as per S.A. record of right; thereafter when operation of RS record of right started, survey and settlement department of the Government (D.G., D.L.R. Office), had prepared and finally

published the revisional record of right in her name as owner in possession of the property in question in R.S. Khatian No. 284 and thereafter again, at the time of preparation and publication of the recent city survey settlement, writ petitioner's name was also recorded in the finally prepared and published City Survey khatian No. 765; that from the date of final publication of R.S record of right, Government started to realize the land development taxes from writ petitioner as per R.S record of right and continuing such realization as per RS record till now. In this back drop, while the writ petitioner owning and possessing her property as described in the schedule of the writ petition one, Mr. Baker Ahmed identifying himself as an officer under Sub-divisional Engineer, Maintenance Division-1, Abandoned Houses of the Ministry of Works, 17, Motijheel Commercial Area, Dhaka went to the petitioner's building on 09.07.1987 for making an assessment of the valuation of the house claiming the house as abandon property and then the writ petitioner for the 1st time came to know that her building was included in the 'ka' list of Abandoned Buildings by the respondent No.1, illegally and without any legal basis, she in such circumstances, for protecting his ownership and possession of the property, firstly collected abandon property gazette dated 23.09.1986 on the next day and thereafter filed an application with copies of all documents of title and possession thereof to the sub-divisional Engineer, Maintenance Division-1, abandoned Building on 14.07.87 with a prayer to exclude the building from the 'ka' list of Abandoned Buildings and thereafter by referring the said application filed settlement case

on 29.09.87 which being barred by limitation of 229 days was not registered for long time till 06.01.05 as settlement case No. 18 of 2005 ordering as follows:

"পরিত্যক্ত সম্পত্তি সংক্রান্ত অধ্যাদেশ ৫৪/৮৫ এর অধীনে প্রণীত তালিকাভুক্ত পরিত্যক্ত সম্পত্তির মালিকানা দাবী সংক্রান্ত ২৯/৯/৮৭ তারিখে দাখিলকৃত দরখাস্তটি মামলা হিসাবে শুনানীর তালিকাভুক্তির জন্য দীর্ঘদিন অপেক্ষমান আছে। দেখা যায় যে, 'ক' তালিকাভুক্ত ২৯ নং ক্রমিকের পরিত্যক্ত সম্পত্তি সম্পর্কে এই মামলাটি রুজু করা হইয়াছিল। যাহা তালিকা প্রকাশিত হইবার নির্ধারিত ১০৮ দিনের মধ্যে দায়ের করা হয় নাই। অতএব, মামলাটি রেজিস্ট্রীভুক্ত করা হউক। সংশ্লিষ্ট পক্ষগণকে নোটিশযোগে অবহিত করা হউক। আগামী ১২/৩/০৫ তারিখে মামলাটি শুনানীর জন্য তারিখ নির্ধারণ করার নিমিত্তে ধার্য রাখা হইল। মামলাটি সরকার পক্ষে পরিচালনা করিবার জন্য জনাব মোঃ আবদুল হাই এর অনুকূলে বরাদ্দ করা হইল। বরাদ্দপত্র জারী করা হউক।"

It is asserted that in-spite of registering the petitioner's application as settlement case No. 18/05 it cannot be preceded for want of quorum of officers till 2009. The petitioner was not aware of the enlistment of the property as abandoned property and as such, could not approach the Court of Settlement in time for exclusion of the property in question from the list of abandoned property.

In such a position the writ petitioner, Sogra Begum finding no other alternative way to protect her property approached this Court with this application under Article 102 of the Constitution for a declaration that the enlistment of the disputed house in the 'Ka' list of abandoned property is without lawful authority and is of no legal effect.

The respondent Nos. 1&4 entered appearance and contested the writ petition by filing affidavit in opposition. The case of the respondents in short is that during liberation war in

1971 the property in question was lying with uncared condition and thereupon the Government justly took possession over the property. The facts of the writ petition are in-fact based on bundle of facts which cannot be a subject matter of a summary writ jurisdiction and as such, the Rule is liable to be discharged.

Mr. Mehrab Hasan, the learned Advocate appearing for the petitioner has submitted that the disputed house does in no way answer to the definition of "abandoned property" as defined in Article 2 of P.O. No. 16 of 1972 inasmuch as it is apparent from the record that abandoned property in question was never lying with uncared condition. Mr. Hasan further submits, it is on record that the petitioner purchased the property in question by registered deed dated 20.07.1965, (Annexure- B-12&B-13) and 19.03.1966 (Annexure-B-11) and lived in the said house until her death on 26.09.2019 along with the members of her family by installing various utilities connection like Titas gas, WASA, DESCO and by paying land development taxes, City Corporation taxes, consumption bills. Finally the learned Advocate referring photocopies of the CS, SA, RS and City survey khatians, sale deed Nos. 3347 dated 16.05.59, 6038 dated 21.12.05, 2560 dated 08.04.57; 3575, dated 06.4.64, 4666 dated 19.03.66, 6932 dated 20.07.65 and 6931 dated 20.07.65; SA and RS mutation Khatians, rent receipts and several other bills as contained in Annexure-B series submits that the petitioner was a citizen of Bangladesh and the whereabouts of the original owner petitioner, Sogra Begum was known to the Government of Bangladesh and as such, inclusion sub-clause (i) of clause (1) of Article 2 of P.O.

16 of 1972 does not apply. The learned Advocate in support of his submission has relied on the decisions reported in 17 BLD 427, 9MLR(HC)76 and 42 DLR(AD) 86.

Mr. Sujat Miah, the learned Advocate appearing for the Respondent No.1, on the other hand, at the very outset takes us through the affidavit in opposition and then submits that facts of the case along with documents are in-fact based on bundle of fact which cannot be a subject matter of summary writ jurisdiction. The learned Advocate further submits that the annexed documents namely, registered deeds are created by the petitioner and whereabouts of the petitioner Sogra Begum was not known to the Government when the President Order No. 16 of 1972 was promulgated which is the main essence of the President's Order No. 16 of 1972. The learned Advocate further submits that the predecessor of the present petitioner Sogra Rahman as so-called owner was not in possession over the disputed land at the relevant time, that is, 1972 and the question of service of notice upon anyone of them does not arise at all. The learned Advocate further referring a decision reported in 59 DLR (AD) 165 submits that the petitioner having not been able to establish before the Court of Settlement that the claimant of the property or vendors were present in Bangladesh on 28.2.1972 and thereby the property having had assumed the character of abandoned property, the listing of the property in question, even if without service of notice as per provision of Ordinance No. 54 of 1985, is not material as the property because of non-service of notice for listing in the list of abandoned properties would cease to be an abandoned property

and consequent thereupon the claim of title made by the petitioner in the property in question is not legally sustainable. The learned Advocate further submits that no oral evidence has been adduced by the petitioner that Sogra Begum was present and her whereabouts was known by the Government after liberation at least on 28-2-72. The learned Advocate for the Respondent No.1 to fortify his submission has relied on the decision reported in 72 DLR (AD) 85, 59 DLR (AD) 165, 48 DLR (AD) 10.

Mr. A.K.M. Rezaul Karim Khandaker, the learned Deputy Attorney General for the Government simply opposes the Rule.

Having heard the learned Advocate for the petitioner, the learned Advocate for the respondent No.1 and the learned Deputy Attorney General and having gone through the writ petition and other relevant documents as placed before this Court.

It appears from the averments in the writ petition that the petitioner, Sogra Begum acquired the property in question on which the disputed house stands. It shows that petitioner Sogra Begum purchased the land in question by way of registered deed dated 20.07.1965, (Annexure-B-12&B-13) and 19.03.1966 (Annexure-B-11) and she constructed a house thereon through the developer company. It has also been asserted that the said Sogra Begum lived in the said house until her death on 26.09.2019 along with the members of her family. It is next alleged that by a notification in the Official Gazette dated September 23. 1986 the disputed house was enlisted in the 'Ka' list of abandoned property in pursuance of the Abandoned Buildings (Supplementary Provisions) Ordinance,

being Ordinance No. LIV of 1985. The Gazette notification whereby the disputed house was enlisted as abandoned property is at Annexure-B to the writ petition. It shows that the disputed house was recorded as abandoned property against serial No. 29 at page 9762 (08) of the Bangladesh Gazette (Extraordinary) dated September 23, 1986. This notification was obviously made in pursuance of clause (b) 5 Articles 5 of Ordinance No. LIV of 1985.

In order to appreciate the submission of the learned Advocate for the parties it is necessary to refer to Article 2 of P.O. No. 16 of 1972 which reads as follows:

In this Order, unless there is anything repugnant in the subject or contexts-

(1) "abandoned property" means any property owned by any person who is not present in Bangladesh of whose whereabouts are not known or who has ceased to occupy, supervise or manage in person his property including-

(i) any property owned by any person who is a citizen of a State which at any time after the 25<sup>th</sup> day of March, 1971, was at war with or engaged in military operations against the People's Republic of Bangladesh:

(ii) any property taken over under the Bangladesh (Taking over of Control and Management of Industrial and Commercial Concerns) Order, 1972 (Acting President's Order No. 1 of 1972) but does not include

(a) any property the owner of which is residing outside Bangladesh for any purpose which, in the opinion of the Government is not prejudicial to the interest of Bangladesh:

(b) any property which is in the possession or under the control of the Government under any law for the time being in force.

Explanation: Person who is not present Bangladesh includes anybody of person or company constituted or incorporated in the territory or under the laws of State which at any time after the 25th day of March, 1971, was at war with or engaged in military operations against the People's Republic of Bangladesh:

(1A) "authorized officer means an officer authorized by the Government for the purpose of this order:

(2) "Company" including a banking company and insurance company:

(3) "Government means the Government of the People's Republic of Bangladesh:

(4) "Property" means property of any kind movable or immovable and includes any right or interest in such property and any debt or a actionable claim, any security or negotiable instrument, any right under a contract and any industrial or commercial undertaking

Explanation: "Security" includes share, scrip, stock, debenture, debenture stock or other marketable

security of a like nature in or of anybody corporate and Government security."

From the above definition it appears that an abandoned property means any property owned by a person (1) who is not present in Bangladesh, or 2) whose whereabouts are not known. or (3) who has ceased to occupy, supervise or manage in person his property.

The above general definition has certain inclusion clauses mentioned in sub-clauses (1) and (ii) of clause (1) of Article 2 and certain exclusion clauses per sub-clauses (a) and (b) of Clause (1) of Article 2. In the present case if it is found that the disputed house does not answer to the definition of abandoned property as generally defined in Clause (1) of Article 2 then it will not be necessary to consider the sub-clauses i.e. either inclusion of clauses or the exclusion clauses at all in order to come to a finding whether the disputed house was at all an abandoned property or not.

We have already seen above from the averment in the writ petition that the original owner of the disputed house Sogra Begum was a citizen of Bangladesh, who took all utility connections in her name like- Titas Gas, WASA, DESCO and paid land development taxes, City Corporation taxes, consumption bills etc. She lived in the disputed house till her death.

The respondents, particularly the respondent No. 1, Bangladesh, represented by the Secretary, Ministry of Housing and Works in-fact did not controvert the above averment made in the writ petition.

It therefore, appears that the owner of the disputed house was a woman, who was present in Bangladesh after liberation. So, the conditions in the definition that she was a person/woman was not present in Bangladesh was not at all made out.

The annexed documents namely- 3 registered deeds (Annexure-B-11,B-12&B-13), mutation Khatian, utility bills, loan of Tk. 6,00,000/- taken from the House Building Finance Corporation on 06.04.1986 just before inclusion of the property as abandoned property etc. was definitely leave no room for doubt that the whereabouts of the petitioner Sogra Begum was definitely known to the Government and this is particularly evident from the annexed documents (Annexure-B series) that the whereabouts of the original owner Sogra the Begum was known to the Government of Bangladesh where the disputed house has been situated.

On a close perusal of the annexed documents namely CS. SA, RS and City survey khatians, sale deed No. 3347 dated 16.05.59, No. 6038 dated 21.12.05, No.2560 dated 08.04.57; No.3575, dated 06.4.64, No. 4666 dated 19.03.66, No. 6932 dated 20.07.65, No. 6931 dated 20.07.65; SA and RS Mutations Khatians, Rent receipts and utility bills as contained in Annexure-B series, it is crystal clear that petitioner Sogra Begum all along lived in the disputed house and she was in the said house till to her death on 26.09.2019 and during liberation war she was in Bangladesh and must have been living in the disputed house. Consequently, the condition that the original

owner Sogra Begum and her successors (substituted petitioners), the present owner of the house, have ceased to occupy, supervise or manage in person the disputed house was not also made out. Mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of the writ court in granting appropriate relief where the facts are disputed merely to create a ground for granting appropriate relief.

Furthermore, it appears from record that the petitioner Sogra Begum all along lived in the disputed house and she was in the said house till to her death on 26.09.2019 and during liberation war she was in Bangladesh and the aforesaid house in question has been included in the 'Ka' list of abandoned houses published in the Bangladesh Gazette Extraordinary dated 23-9-1986 under the provisions of section 5 of the Abandoned Buildings (Supplementary Provisions) Ordinance 1985. Unless possession of a house is taken over by the Government that cannot be included in the 'Ka' list of abandoned buildings. In view of the same we are of the view that inclusion of petitioner's house in the 'Ka' list of abandoned houses is without any lawful authority. Petitioner's application before the Court of Settlement was not dismissed on merit, rather on the ground of limitation. Right to hold property is a fundamental right under Article 42 of the Constitution. Enlistment of a house in the list of abandoned buildings under the provisions of section 5 of the abandoned buildings (supplementary Provision) Ordinance 1985 is not violative of the aforesaid fundamental right to hold property by a citizen if the same falls within the mischief of abandoned property under President's Order 16 of 1972.

Treating one's property as abandoned property under President Order 16 of 1972 and inclusion of the same in the list of abandoned buildings when the house does not fall within the mischief of abandoned buildings violates fundamental right of such a person to hold property. Although, it apparent from the materials from the record that in this case the petitioner is in possession of the property from the date of purchase on 20.07.1965 and thereby treating the same as abandoned property and inclusion of her house in the 'Ka' list of abandoned buildings is not only contrary to the provisions of President's Order No.16 of 1972 but also violative of her fundamental right to hold property. Therefore, we find no substance in either of the contentions as raised by the learned Advocate for the Respondent No.1.

At the end of the day, faced with these formidable conclusions of facts Mr. A.K.M. Rezaul Karim Khandaker, the learned Deputy Attorney General appearing for the State finds it difficult to pursue the point that the case property is an abandoned property.

Consequently, we find that the disputed house did not answer to the definition of "abandoned property" as defined in Article 2 of P.O. No. 16 of 1972. As such, its enlistment as abandoned property in the 'Ka' list of abandoned property vide notification in Bangladesh Gazette (Extraordinary) dated September 23, 1986 against serial No. 29 at page 9762(08) has been absolutely without lawful authority.

In the result, this application succeeds. The Rule is, accordingly, made absolute.

The inclusion of the property in the 'Ka' list of abandoned property by notification in Bangladesh Gazette (Extraordinary) dated September 23, 1986 under S.R.O. 364-L/86 against serial No.29 at page 9762(08) is hereby declared to be without lawful authority and of no effect.

The parties are directed to bear their respective costs.

Communicate this judgment at once.

**S.M. Iftexhar Uddin Mahamud, J:**

I agree.

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published the revisional record of right in her name as owner in possession of the property in question in R.S. Khatian No. 284 and thereafter again, at the time of preparation and publication of the recent city survey settlement, writ petitioner's name was also recorded in the finally prepared and published City Survey khatian No. 765; that from the date of final publication of R.S record of right, Government started to realize the land development taxes from writ petitioner as per R.S record of right and continuing such realization as per RS record till now. In this back drop, while the writ petitioner owning and possessing her property as described in the schedule of the writ petition one, Mr. Baker Ahmed identifying himself as an officer under Sub-divisional Engineer, Maintenance Division-1, Abandoned Houses of the Ministry of Works, 17, Motijheel Commercial Area, Dhaka went to the petitioner's building on 09.07.1987 for making an assessment of the valuation of the house claiming the house as abandon property and then the writ petitioner for the 1st time came to know that her building was included in the 'ka' list of Abandoned Buildings by the respondent No.1, illegally and without any legal basis, she in such circumstances, for protecting his ownership and possession of the property, firstly collected abandon property gazette dated 23.09.1986 on the next day and thereafter filed an application with copies of all documents of title and possession thereof to the sub-divisional Engineer, Maintenance Division-1, abandoned Building on 14.07.87 with a prayer to exclude the building from the 'ka' list of Abandoned Buildings and thereafter by referring the said application filed settlement case

on 29.09.87 which being barred by limitation of 229 days was not registered for long time till 06.01.05 as settlement case No. 18 of 2005 ordering as follows:

"পরিত্যক্ত সম্পত্তি সংক্রান্ত অধ্যাদেশ ৫৪/৮৫ এর অধীনে প্রণীত তালিকাভুক্ত পরিত্যক্ত সম্পত্তির মালিকানা দাবী সংক্রান্ত ২৯/৯/৮৭ তারিখে দাখিলকৃত দরখাস্তটি মামলা হিসাবে শুনানীর তালিকাভুক্তির জন্য দীর্ঘদিন অপেক্ষমান আছে। দেখা যায় যে, 'ক' তালিকাভুক্ত ২৯ নং ক্রমিকের পরিত্যক্ত সম্পত্তি সম্পর্কে এই মামলাটি রুজু করা হইয়াছিল। যাহা তালিকা প্রকাশিত হইবার নির্ধারিত ১০৮ দিনের মধ্যে দায়ের করা হয় নাই। অতএব, মামলাটি রেজিস্ট্রীভুক্ত করা হউক। সংশ্লিষ্ট পক্ষগণকে নোটিশযোগে অবহিত করা হউক। আগামী ১২/৩/০৫ তারিখে মামলাটি শুনানীর জন্য তারিখ নির্ধারণ করার নিমিত্তে ধার্য রাখা হইল। মামলাটি সরকার পক্ষে পরিচালনা করিবার জন্য জনাব মোঃ আবদুল হাই এর অনুকূলে বরাদ্দ করা হইল। বরাদ্দপত্র জারী করা হউক।"

It is asserted that in-spite of registering the petitioner's application as settlement case No. 18/05 it cannot be preceded for want of quorum of officers till 2009. The petitioner was not aware of the enlistment of the property as abandoned property and as such, could not approach the Court of Settlement in time for exclusion of the property in question from the list of abandoned property.

In such a position the writ petitioner, Sogra Begum finding no other alternative way to protect her property approached this Court with this application under Article 102 of the Constitution for a declaration that the enlistment of the disputed house in the 'Ka' list of abandoned property is without lawful authority and is of no legal effect.

The respondent Nos. 1&4 entered appearance and contested the writ petition by filing affidavit in opposition. The case of the respondents in short is that during liberation war in

1971 the property in question was lying with uncared condition and thereupon the Government justly took possession over the property. The facts of the writ petition are in-fact based on bundle of facts which cannot be a subject matter of a summary writ jurisdiction and as such, the Rule is liable to be discharged.

Mr. Mehrab Hasan, the learned Advocate appearing for the petitioner has submitted that the disputed house does in no way answer to the definition of "abandoned property" as defined in Article 2 of P.O. No. 16 of 1972 inasmuch as it is apparent from the record that abandoned property in question was never lying with uncared condition. Mr. Hasan further submits, it is on record that the petitioner purchased the property in question by registered deed dated 20.07.1965, (Annexure- B-12&B-13) and 19.03.1966 (Annexure-B-11) and lived in the said house until her death on 26.09.2019 along with the members of her family by installing various utilities connection like Titas gas, WASA, DESCO and by paying land development taxes, City Corporation taxes, consumption bills. Finally the learned Advocate referring photocopies of the CS, SA, RS and City survey khatians, sale deed Nos. 3347 dated 16.05.59, 6038 dated 21.12.05, 2560 dated 08.04.57; 3575, dated 06.4.64, 4666 dated 19.03.66, 6932 dated 20.07.65 and 6931 dated 20.07.65; SA and RS mutation Khatians, rent receipts and several other bills as contained in Annexure-B series submits that the petitioner was a citizen of Bangladesh and the whereabouts of the original owner petitioner, Sogra Begum was known to the Government of Bangladesh and as such, inclusion sub-clause (i) of clause (1) of Article 2 of P.O.

16 of 1972 does not apply. The learned Advocate in support of his submission has relied on the decisions reported in 17 BLD 427, 9MLR(HC)76 and 42 DLR(AD) 86.

Mr. Sujat Miah, the learned Advocate appearing for the Respondent No.1, on the other hand, at the very outset takes us through the affidavit in opposition and then submits that facts of the case along with documents are in-fact based on bundle of fact which cannot be a subject matter of summary writ jurisdiction. The learned Advocate further submits that the annexed documents namely, registered deeds are created by the petitioner and whereabouts of the petitioner Sogra Begum was not known to the Government when the President Order No. 16 of 1972 was promulgated which is the main essence of the President's Order No. 16 of 1972. The learned Advocate further submits that the predecessor of the present petitioner Sogra Rahman as so-called owner was not in possession over the disputed land at the relevant time, that is, 1972 and the question of service of notice upon anyone of them does not arise at all. The learned Advocate further referring a decision reported in 59 DLR (AD) 165 submits that the petitioner having not been able to establish before the Court of Settlement that the claimant of the property or vendors were present in Bangladesh on 28.2.1972 and thereby the property having had assumed the character of abandoned property, the listing of the property in question, even if without service of notice as per provision of Ordinance No. 54 of 1985, is not material as the property because of non-service of notice for listing in the list of abandoned properties would cease to be an abandoned property

and consequent thereupon the claim of title made by the petitioner in the property in question is not legally sustainable. The learned Advocate further submits that no oral evidence has been adduced by the petitioner that Sogra Begum was present and her whereabouts was known by the Government after liberation at least on 28-2-72. The learned Advocate for the Respondent No.1 to fortify his submission has relied on the decision reported in 72 DLR (AD) 85, 59 DLR (AD) 165, 48 DLR (AD) 10.

Mr. A.K.M. Rezaul Karim Khandaker, the learned Deputy Attorney General for the Government simply opposes the Rule.

Having heard the learned Advocate for the petitioner, the learned Advocate for the respondent No.1 and the learned Deputy Attorney General and having gone through the writ petition and other relevant documents as placed before this Court.

It appears from the averments in the writ petition that the petitioner, Sogra Begum acquired the property in question on which the disputed house stands. It shows that petitioner Sogra Begum purchased the land in question by way of registered deed dated 20.07.1965, (Annexure-B-12&B-13) and 19.03.1966 (Annexure-B-11) and she constructed a house thereon through the developer company. It has also been asserted that the said Sogra Begum lived in the said house until her death on 26.09.2019 along with the members of her family. It is next alleged that by a notification in the Official Gazette dated September 23. 1986 the disputed house was enlisted in the 'Ka' list of abandoned property in pursuance of the Abandoned Buildings (Supplementary Provisions) Ordinance,

being Ordinance No. LIV of 1985. The Gazette notification whereby the disputed house was enlisted as abandoned property is at Annexure-B to the writ petition. It shows that the disputed house was recorded as abandoned property against serial No. 29 at page 9762 (08) of the Bangladesh Gazette (Extraordinary) dated September 23, 1986. This notification was obviously made in pursuance of clause (b) 5 Articles 5 of Ordinance No. LIV of 1985.

In order to appreciate the submission of the learned Advocate for the parties it is necessary to refer to Article 2 of P.O. No. 16 of 1972 which reads as follows:

In this Order, unless there is anything repugnant in the subject or contexts-

(1) "abandoned property" means any property owned by any person who is not present in Bangladesh of whose whereabouts are not known or who has ceased to occupy, supervise or manage in person his property including-

(i) any property owned by any person who is a citizen of a State which at any time after the 25<sup>th</sup> day of March, 1971, was at war with or engaged in military operations against the People's Republic of Bangladesh:

(ii) any property taken over under the Bangladesh (Taking over of Control and Management of Industrial and Commercial Concerns) Order, 1972 (Acting President's Order No. 1 of 1972) but does not include

(a) any property the owner of which is residing outside Bangladesh for any purpose which, in the opinion of the Government is not prejudicial to the interest of Bangladesh:

(b) any property which is in the possession or under the control of the Government under any law for the time being in force.

Explanation: Person who is not present Bangladesh includes anybody of person or company constituted or incorporated in the territory or under the laws of State which at any time after the 25th day of March, 1971, was at war with or engaged in military operations against the People's Republic of Bangladesh:

(1A) "authorized officer means an officer authorized by the Government for the purpose of this order:

(2) "Company" including a banking company and insurance company:

(3) "Government means the Government of the People's Republic of Bangladesh:

(4) "Property" means property of any kind movable or immovable and includes any right or interest in such property and any debt or a actionable claim, any security or negotiable instrument, any right under a contract and any industrial or commercial undertaking

Explanation: "Security" includes share, scrip, stock, debenture, debenture stock or other marketable

security of a like nature in or of anybody corporate and Government security."

From the above definition it appears that an abandoned property means any property owned by a person (1) who is not present in Bangladesh, or 2) whose whereabouts are not known. or (3) who has ceased to occupy, supervise or manage in person his property.

The above general definition has certain inclusion clauses mentioned in sub-clauses (1) and (ii) of clause (1) of Article 2 and certain exclusion clauses per sub-clauses (a) and (b) of Clause (1) of Article 2. In the present case if it is found that the disputed house does not answer to the definition of abandoned property as generally defined in Clause (1) of Article 2 then it will not be necessary to consider the sub-clauses i.e. either inclusion of clauses or the exclusion clauses at all in order to come to a finding whether the disputed house was at all an abandoned property or not.

We have already seen above from the averment in the writ petition that the original owner of the disputed house Sogra Begum was a citizen of Bangladesh, who took all utility connections in her name like- Titas Gas, WASA, DESCO and paid land development taxes, City Corporation taxes, consumption bills etc. She lived in the disputed house till her death.

The respondents, particularly the respondent No. 1, Bangladesh, represented by the Secretary, Ministry of Housing and Works in-fact did not controvert the above averment made in the writ petition.

It therefore, appears that the owner of the disputed house was a woman, who was present in Bangladesh after liberation. So, the conditions in the definition that she was a person/woman was not present in Bangladesh was not at all made out.

The annexed documents namely- 3 registered deeds (Annexure-B-11,B-12&B-13), mutation Khatian, utility bills, loan of Tk. 6,00,000/- taken from the House Building Finance Corporation on 06.04.1986 just before inclusion of the property as abandoned property etc. was definitely leave no room for doubt that the whereabouts of the petitioner Sogra Begum was definitely known to the Government and this is particularly evident from the annexed documents (Annexure-B series) that the whereabouts of the original owner Sogra the Begum was known to the Government of Bangladesh where the disputed house has been situated.

On a close perusal of the annexed documents namely CS. SA, RS and City survey khatians, sale deed No. 3347 dated 16.05.59, No. 6038 dated 21.12.05, No.2560 dated 08.04.57; No.3575, dated 06.4.64, No. 4666 dated 19.03.66, No. 6932 dated 20.07.65, No. 6931 dated 20.07.65; SA and RS Mutations Khatians, Rent receipts and utility bills as contained in Annexure-B series, it is crystal clear that petitioner Sogra Begum all along lived in the disputed house and she was in the said house till to her death on 26.09.2019 and during liberation war she was in Bangladesh and must have been living in the disputed house. Consequently, the condition that the original

owner Sogra Begum and her successors (substituted petitioners), the present owner of the house, have ceased to occupy, supervise or manage in person the disputed house was not also made out. Mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of the writ court in granting appropriate relief where the facts are disputed merely to create a ground for granting appropriate relief.

Furthermore, it appears from record that the petitioner Sogra Begum all along lived in the disputed house and she was in the said house till to her death on 26.09.2019 and during liberation war she was in Bangladesh and the aforesaid house in question has been included in the 'Ka' list of abandoned houses published in the Bangladesh Gazette Extraordinary dated 23-9-1986 under the provisions of section 5 of the Abandoned Buildings (Supplementary Provisions) Ordinance 1985. Unless possession of a house is taken over by the Government that cannot be included in the 'Ka' list of abandoned buildings. In view of the same we are of the view that inclusion of petitioner's house in the 'Ka' list of abandoned houses is without any lawful authority. Petitioner's application before the Court of Settlement was not dismissed on merit, rather on the ground of limitation. Right to hold property is a fundamental right under Article 42 of the Constitution. Enlistment of a house in the list of abandoned buildings under the provisions of section 5 of the abandoned buildings (supplementary Provision) Ordinance 1985 is not violative of the aforesaid fundamental right to hold property by a citizen if the same falls within the mischief of abandoned property under President's Order 16 of 1972.

Treating one's property as abandoned property under President Order 16 of 1972 and inclusion of the same in the list of abandoned buildings when the house does not fall within the mischief of abandoned buildings violates fundamental right of such a person to hold property. Although, it apparent from the materials from the record that in this case the petitioner is in possession of the property from the date of purchase on 20.07.1965 and thereby treating the same as abandoned property and inclusion of her house in the 'Ka' list of abandoned buildings is not only contrary to the provisions of President's Order No.16 of 1972 but also violative of her fundamental right to hold property. Therefore, we find no substance in either of the contentions as raised by the learned Advocate for the Respondent No.1.

At the end of the day, faced with these formidable conclusions of facts Mr. A.K.M. Rezaul Karim Khandaker, the learned Deputy Attorney General appearing for the State finds it difficult to pursue the point that the case property is an abandoned property.

Consequently, we find that the disputed house did not answer to the definition of "abandoned property" as defined in Article 2 of P.O. No. 16 of 1972. As such, its enlistment as abandoned property in the 'Ka' list of abandoned property vide notification in Bangladesh Gazette (Extraordinary) dated September 23, 1986 against serial No. 29 at page 9762(08) has been absolutely without lawful authority.

In the result, this application succeeds. The Rule is, accordingly, made absolute.

The inclusion of the property in the 'Ka' list of abandoned property by notification in Bangladesh Gazette (Extraordinary) dated September 23, 1986 under S.R.O. 364-L/86 against serial No.29 at page 9762(08) is hereby declared to be without lawful authority and of no effect.

The parties are directed to bear their respective costs.

Communicate this judgment at once.

**S.M. Iftexhar Uddin Mahamud, J:**

I agree.

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

Present:

Justice Sheikh Abdul Awal

And

Justice S.M. Iftekhar Uddin Mahamud

**Writ Petition No. 890 of 2010**

In the matter of:

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

And

In the Matter of:

Mrs. Sogra Begum @ Mrs. Sogra Rahman  
being dead her legal heirs Most. Reshma  
Begum and others

..... Petitioners.

-Versus-

The Secretary, Ministry of Housing and  
Works and others.

..... Respondents.

Mr. Mehrab Hossain, Advocate

..... For the Petitioners.

Mr. Md. Sujad Miah, Advocate

.... For the Respondent No. 1.

Mr. Md. Mohsin Kabir, D.A.G with

Mr. A.K.M. Rezaul Karim Khandaker, D.A.G with

Ms. Shahin Sultana, A.A.G with

Mr. Md. Manowarul Islam Uzzal, A.A.G with

Mr. Md. Moklesur Rahman, A.A.G

..... For the Government.

**Heard on 07.12.2025, , 08.01.2026 and**

**Judgment on 15.01.2026.**

**Sheikh Abdul Awal, J:**

By this application under Article 102 of the Constitution the inclusion of a property situated at holding No. 125, New Eskaton Raod, Dhaka an area of land measuring 0.2598 acres and building standing thereon into the 'Ka' list of abandoned

property published in official Gazette extra ordinary number dated 23.09.1986 serial 29 Ramna (Annexure–C) under S.R.O. 364-AL/86 has been called in questions as illegal and without lawful authority.

The case of the petitioner is that the disputed property which was originally a piece of land measuring 0.2598 acres and a 3 storied building standing thereon bearing holding No. 125, New Eskaton Raod, Dhaka completely described in the schedule of the writ petition and which is hereinafter called and referred as property in question along with other land total being 1.09 acres originally belonged to one Afad Ali Sheikh in whose name the Cadastral Survey, in short, CS record of right bearing Khatian No. 27 was duly prepared and published; that while the said CS recorded original owner Afad Ali Sheikh had been owning and possessing the aforesaid land, he transferred 0.1750 acres land vide sale deed No. 6038 dated 21.12.50 and delivered possession thereof to Golam Malek and Abdur Rahman who during owning and possessing the same transferred it vide sale deed No. 2560 dated 08.04.57 and delivered possession thereof to Moulavi Badius Salam @ Badiuzzaman; that said Badius Salam @ Badiuzzaman also purchased another 0.0188 acres land from the original C.S recorded owner Afad Ali Sheikh, vide sale deed No. 3347 dated 16.05.59. In this way, said Badiuzzaman became owner in possession of the said total  $(0.1750 + 0.0188) = 0.1938$  acre land, thereafter his name was recorded in the S.A Khatian No. 27, who during owning and possessing the same transferred it vide sale deed No. 4666 dated 19.03.66 and delivered

possession thereof to the writ petitioner, Mrs. Sogra Begum. It is alleged that writ petitioner Sogra Begum also purchased another 0.0216 acres land vide sale deed No. 6932 dated 20.07.65 from Solema daughter of original C.S. recorded owner Afad Ali Sheikh and another totaling 0.0444 acres land vide sale deed No. 6931 dated 20.07.65 from Fatema, another heir and daughter of original CS recorded owner Afat Ali Sheikh and thus writ petitioner became owner in possession of totaling  $(0.0216 + 0.0444 + 0.1938) = 0.2598$  acres land by way of purchase by aforesaid 3 sale deeds (Annexure- B-11, B-12 & B-13); that the writ petitioner Sogra Begum thus being owner in possession of said total 0.2598 acres land, who constructed a 3 (three) storied building thereon by taking loan of Tk. 6,00,000/- on 06.04.1986 from the House building finance corporation on 06.04.86 and thereafter mutated her name in the SA Khatian, opened municipal holding in her name being No. 125, Eskaton Road, Dhaka, installed various utilities connection like Titas gas, WASA, DESCO and started living thereon peacefully by paying Land development taxes, City Corporation taxes, consumption bills against the utility connections till handing it over to a developer company for constructing a 7-storied building therein in the year 2007. It is further alleged that the Revenue authority of the Government, admitting the ownership and possession of the writ petitioner, who mutated her name by opening a mutation khatian as per S.A. record of right; thereafter when operation of RS record of right started, survey and settlement department of the Government (D.G., D.L.R. Office), had prepared and finally

published the revisional record of right in her name as owner in possession of the property in question in R.S. Khatian No. 284 and thereafter again, at the time of preparation and publication of the recent city survey settlement, writ petitioner's name was also recorded in the finally prepared and published City Survey khatian No. 765; that from the date of final publication of R.S record of right, Government started to realize the land development taxes from writ petitioner as per R.S record of right and continuing such realization as per RS record till now. In this back drop, while the writ petitioner owning and possessing her property as described in the schedule of the writ petition one, Mr. Baker Ahmed identifying himself as an officer under Sub-divisional Engineer, Maintenance Division-1, Abandoned Houses of the Ministry of Works, 17, Motijheel Commercial Area, Dhaka went to the petitioner's building on 09.07.1987 for making an assessment of the valuation of the house claiming the house as abandon property and then the writ petitioner for the 1st time came to know that her building was included in the 'ka' list of Abandoned Buildings by the respondent No.1, illegally and without any legal basis, she in such circumstances, for protecting his ownership and possession of the property, firstly collected abandon property gazette dated 23.09.1986 on the next day and thereafter filed an application with copies of all documents of title and possession thereof to the sub-divisional Engineer, Maintenance Division-1, abandoned Building on 14.07.87 with a prayer to exclude the building from the 'ka' list of Abandoned Buildings and thereafter by referring the said application filed settlement case

on 29.09.87 which being barred by limitation of 229 days was not registered for long time till 06.01.05 as settlement case No. 18 of 2005 ordering as follows:

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It is asserted that in-spite of registering the petitioner's application as settlement case No. 18/05 it cannot be preceded for want of quorum of officers till 2009. The petitioner was not aware of the enlistment of the property as abandoned property and as such, could not approach the Court of Settlement in time for exclusion of the property in question from the list of abandoned property.

In such a position the writ petitioner, Sogra Begum finding no other alternative way to protect her property approached this Court with this application under Article 102 of the Constitution for a declaration that the enlistment of the disputed house in the 'Ka' list of abandoned property is without lawful authority and is of no legal effect.

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Mr. Mehrab Hasan, the learned Advocate appearing for the petitioner has submitted that the disputed house does in no way answer to the definition of "abandoned property" as defined in Article 2 of P.O. No. 16 of 1972 inasmuch as it is apparent from the record that abandoned property in question was never lying with uncared condition. Mr. Hasan further submits, it is on record that the petitioner purchased the property in question by registered deed dated 20.07.1965, (Annexure- B-12&B-13) and 19.03.1966 (Annexure-B-11) and lived in the said house until her death on 26.09.2019 along with the members of her family by installing various utilities connection like Titas gas, WASA, DESCO and by paying land development taxes, City Corporation taxes, consumption bills. Finally the learned Advocate referring photocopies of the CS, SA, RS and City survey khatians, sale deed Nos. 3347 dated 16.05.59, 6038 dated 21.12.05, 2560 dated 08.04.57; 3575, dated 06.4.64, 4666 dated 19.03.66, 6932 dated 20.07.65 and 6931 dated 20.07.65; SA and RS mutation Khatians, rent receipts and several other bills as contained in Annexure-B series submits that the petitioner was a citizen of Bangladesh and the whereabouts of the original owner petitioner, Sogra Begum was known to the Government of Bangladesh and as such, inclusion sub-clause (i) of clause (1) of Article 2 of P.O.

16 of 1972 does not apply. The learned Advocate in support of his submission has relied on the decisions reported in 17 BLD 427, 9MLR(HC)76 and 42 DLR(AD) 86.

Mr. Sujat Miah, the learned Advocate appearing for the Respondent No.1, on the other hand, at the very outset takes us through the affidavit in opposition and then submits that facts of the case along with documents are in-fact based on bundle of fact which cannot be a subject matter of summary writ jurisdiction. The learned Advocate further submits that the annexed documents namely, registered deeds are created by the petitioner and whereabouts of the petitioner Sogra Begum was not known to the Government when the President Order No. 16 of 1972 was promulgated which is the main essence of the President's Order No. 16 of 1972. The learned Advocate further submits that the predecessor of the present petitioner Sogra Rahman as so-called owner was not in possession over the disputed land at the relevant time, that is, 1972 and the question of service of notice upon anyone of them does not arise at all. The learned Advocate further referring a decision reported in 59 DLR (AD) 165 submits that the petitioner having not been able to establish before the Court of Settlement that the claimant of the property or vendors were present in Bangladesh on 28.2.1972 and thereby the property having had assumed the character of abandoned property, the listing of the property in question, even if without service of notice as per provision of Ordinance No. 54 of 1985, is not material as the property because of non-service of notice for listing in the list of abandoned properties would cease to be an abandoned property

and consequent thereupon the claim of title made by the petitioner in the property in question is not legally sustainable. The learned Advocate further submits that no oral evidence has been adduced by the petitioner that Sogra Begum was present and her whereabouts was known by the Government after liberation at least on 28-2-72. The learned Advocate for the Respondent No.1 to fortify his submission has relied on the decision reported in 72 DLR (AD) 85, 59 DLR (AD) 165, 48 DLR (AD) 10.

Mr. A.K.M. Rezaul Karim Khandaker, the learned Deputy Attorney General for the Government simply opposes the Rule.

Having heard the learned Advocate for the petitioner, the learned Advocate for the respondent No.1 and the learned Deputy Attorney General and having gone through the writ petition and other relevant documents as placed before this Court.

It appears from the averments in the writ petition that the petitioner, Sogra Begum acquired the property in question on which the disputed house stands. It shows that petitioner Sogra Begum purchased the land in question by way of registered deed dated 20.07.1965, (Annexure-B-12&B-13) and 19.03.1966 (Annexure-B-11) and she constructed a house thereon through the developer company. It has also been asserted that the said Sogra Begum lived in the said house until her death on 26.09.2019 along with the members of her family. It is next alleged that by a notification in the Official Gazette dated September 23. 1986 the disputed house was enlisted in the 'Ka' list of abandoned property in pursuance of the Abandoned Buildings (Supplementary Provisions) Ordinance,

being Ordinance No. LIV of 1985. The Gazette notification whereby the disputed house was enlisted as abandoned property is at Annexure-B to the writ petition. It shows that the disputed house was recorded as abandoned property against serial No. 29 at page 9762 (08) of the Bangladesh Gazette (Extraordinary) dated September 23, 1986. This notification was obviously made in pursuance of clause (b) 5 Articles 5 of Ordinance No. LIV of 1985.

In order to appreciate the submission of the learned Advocate for the parties it is necessary to refer to Article 2 of P.O. No. 16 of 1972 which reads as follows:

In this Order, unless there is anything repugnant in the subject or contexts-

(1) "abandoned property" means any property owned by any person who is not present in Bangladesh of whose whereabouts are not known or who has ceased to occupy, supervise or manage in person his property including-

(i) any property owned by any person who is a citizen of a State which at any time after the 25<sup>th</sup> day of March, 1971, was at war with or engaged in military operations against the People's Republic of Bangladesh:

(ii) any property taken over under the Bangladesh (Taking over of Control and Management of Industrial and Commercial Concerns) Order, 1972 (Acting President's Order No. 1 of 1972) but does not include

(a) any property the owner of which is residing outside Bangladesh for any purpose which, in the opinion of the Government is not prejudicial to the interest of Bangladesh:

(b) any property which is in the possession or under the control of the Government under any law for the time being in force.

Explanation: Person who is not present Bangladesh includes anybody of person or company constituted or incorporated in the territory or under the laws of State which at any time after the 25th day of March, 1971, was at war with or engaged in military operations against the People's Republic of Bangladesh:

(1A) "authorized officer means an officer authorized by the Government for the purpose of this order:

(2) "Company" including a banking company and insurance company:

(3) "Government means the Government of the People's Republic of Bangladesh:

(4) "Property" means property of any kind movable or immovable and includes any right or interest in such property and any debt or a actionable claim, any security or negotiable instrument, any right under a contract and any industrial or commercial undertaking

Explanation: "Security" includes share, scrip, stock, debenture, debenture stock or other marketable

security of a like nature in or of anybody corporate and Government security."

From the above definition it appears that an abandoned property means any property owned by a person (1) who is not present in Bangladesh, or 2) whose whereabouts are not known. or (3) who has ceased to occupy, supervise or manage in person his property.

The above general definition has certain inclusion clauses mentioned in sub-clauses (1) and (ii) of clause (1) of Article 2 and certain exclusion clauses per sub-clauses (a) and (b) of Clause (1) of Article 2. In the present case if it is found that the disputed house does not answer to the definition of abandoned property as generally defined in Clause (1) of Article 2 then it will not be necessary to consider the sub-clauses i.e. either inclusion of clauses or the exclusion clauses at all in order to come to a finding whether the disputed house was at all an abandoned property or not.

We have already seen above from the averment in the writ petition that the original owner of the disputed house Sogra Begum was a citizen of Bangladesh, who took all utility connections in her name like- Titas Gas, WASA, DESCO and paid land development taxes, City Corporation taxes, consumption bills etc. She lived in the disputed house till her death.

The respondents, particularly the respondent No. 1, Bangladesh, represented by the Secretary, Ministry of Housing and Works in-fact did not controvert the above averment made in the writ petition.

It therefore, appears that the owner of the disputed house was a woman, who was present in Bangladesh after liberation. So, the conditions in the definition that she was a person/woman was not present in Bangladesh was not at all made out.

The annexed documents namely- 3 registered deeds (Annexure-B-11,B-12&B-13), mutation Khatian, utility bills, loan of Tk. 6,00,000/- taken from the House Building Finance Corporation on 06.04.1986 just before inclusion of the property as abandoned property etc. was definitely leave no room for doubt that the whereabouts of the petitioner Sogra Begum was definitely known to the Government and this is particularly evident from the annexed documents (Annexure-B series) that the whereabouts of the original owner Sogra the Begum was known to the Government of Bangladesh where the disputed house has been situated.

On a close perusal of the annexed documents namely CS. SA, RS and City survey khatians, sale deed No. 3347 dated 16.05.59, No. 6038 dated 21.12.05, No.2560 dated 08.04.57; No.3575, dated 06.4.64, No. 4666 dated 19.03.66, No. 6932 dated 20.07.65, No. 6931 dated 20.07.65; SA and RS Mutations Khatians, Rent receipts and utility bills as contained in Annexure-B series, it is crystal clear that petitioner Sogra Begum all along lived in the disputed house and she was in the said house till to her death on 26.09.2019 and during liberation war she was in Bangladesh and must have been living in the disputed house. Consequently, the condition that the original

owner Sogra Begum and her successors (substituted petitioners), the present owner of the house, have ceased to occupy, supervise or manage in person the disputed house was not also made out. Mere existence of the disputed question of fact, by itself, does not take away the jurisdiction of the writ court in granting appropriate relief where the facts are disputed merely to create a ground for granting appropriate relief.

Furthermore, it appears from record that the petitioner Sogra Begum all along lived in the disputed house and she was in the said house till to her death on 26.09.2019 and during liberation war she was in Bangladesh and the aforesaid house in question has been included in the 'Ka' list of abandoned houses published in the Bangladesh Gazette Extraordinary dated 23-9-1986 under the provisions of section 5 of the Abandoned Buildings (Supplementary Provisions) Ordinance 1985. Unless possession of a house is taken over by the Government that cannot be included in the 'Ka' list of abandoned buildings. In view of the same we are of the view that inclusion of petitioner's house in the 'Ka' list of abandoned houses is without any lawful authority. Petitioner's application before the Court of Settlement was not dismissed on merit, rather on the ground of limitation. Right to hold property is a fundamental right under Article 42 of the Constitution. Enlistment of a house in the list of abandoned buildings under the provisions of section 5 of the abandoned buildings (supplementary Provision) Ordinance 1985 is not violative of the aforesaid fundamental right to hold property by a citizen if the same falls within the mischief of abandoned property under President's Order 16 of 1972.

Treating one's property as abandoned property under President Order 16 of 1972 and inclusion of the same in the list of abandoned buildings when the house does not fall within the mischief of abandoned buildings violates fundamental right of such a person to hold property. Although, it apparent from the materials from the record that in this case the petitioner is in possession of the property from the date of purchase on 20.07.1965 and thereby treating the same as abandoned property and inclusion of her house in the 'Ka' list of abandoned buildings is not only contrary to the provisions of President's Order No.16 of 1972 but also violative of her fundamental right to hold property. Therefore, we find no substance in either of the contentions as raised by the learned Advocate for the Respondent No.1.

At the end of the day, faced with these formidable conclusions of facts Mr. A.K.M. Rezaul Karim Khandaker, the learned Deputy Attorney General appearing for the State finds it difficult to pursue the point that the case property is an abandoned property.

Consequently, we find that the disputed house did not answer to the definition of "abandoned property" as defined in Article 2 of P.O. No. 16 of 1972. As such, its enlistment as abandoned property in the 'Ka' list of abandoned property vide notification in Bangladesh Gazette (Extraordinary) dated September 23, 1986 against serial No. 29 at page 9762(08) has been absolutely without lawful authority.

In the result, this application succeeds. The Rule is, accordingly, made absolute.

The inclusion of the property in the 'Ka' list of abandoned property by notification in Bangladesh Gazette (Extraordinary) dated September 23, 1986 under S.R.O. 364-L/86 against serial No.29 at page 9762(08) is hereby declared to be without lawful authority and of no effect.

The parties are directed to bear their respective costs.

Communicate this judgment at once.

**S.M. Iftexhar Uddin Mahamud, J:**

I agree.