

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

Present

Mr. Justice Sikder Mahmudur Razi

And

Mr. Justice Raziuddin Ahmed

Writ Petition No. 10657 of 2024

In the matter of:

An Application under Article 102(1) and (2) of the Constitution of the People's Republic of Bangladesh.

And

In the matter of:

Sachidananda Sen Gupta, FCA
.....Petitioner.

-Versus-

Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Land, Bangladesh Secretariat, Dhaka-1000 and others.

.....Respondents.

Mr. Mohammad Hossain, Sr. Adv. With
Mr. Rakibul Hasan, Adv.

.....For the petitioner.

Mr. Mohammad Mehdi Hasan, DAG with
Mr. Md. Rashadul Hassan, DAG with
Mr. Kamrul Islam, AAG
Mr. Md. Shagar Hossain, AAG
Mr. Bishwanath Krmaker, AAG
Mr. S.K. Obaidul Haque (Wasim) AAG

.....For the respondents.

Heard on: 04.12.2025

And

Judgment on: The 11th December, 2025

Sikder Mahmudur Razi, J:

On an application filed by the petitioner under Article 102(1) and (2) of the Constitution of the People's Republic of Bangladesh a Rule Nisi was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the inclusion of Bangladesh Survey (BS) plot Nos. 20003, 20127, and 20142 appertaining to Bangladesh Survey Khatian No. 6, of Mouza Jhlongiha, J.L. No. 17, Upazill-Cox's Bazar Sadar, District- Cox's Bazar measuring an area of 203 decimals of land (Scheduled property) as vested property at serial No. 31 in "Ka" Schedule published in the Bangladesh vide Gazette, Additional Issue, Notification No. 31.00.0000.040.53.005. 2012-220 dated 28.04.2012 (Annexure-F) should not be declared to have been issued without lawful authority and is of no legal effect and as to why the respondent No. 1 should not be directed to 1 to exclude the scheduled property published in the Bangladesh Gazette, Additional issue dated 28.04.2012 (Annexure-F) in favour of the petitioner and/or such other or further order or order passed as to this court may seem fit and proper”.

Facts gleaned from the writ petition and supplementary affidavit to the writ petition are that the petitioner is a citizen of Bangladesh and claims title, possession, and enjoyment of a landed property measuring a total area of 203 decimals, situated at Mouza Jhlongiha, J.L. No. 17, Upazila Cox's Bazar Sadar, District Cox's Bazar, comprising Bangladesh Survey (BS) Plot Nos. 20003, appertaining to BS Khatian No. 6 (hereinafter referred to as the “scheduled property”). The scheduled property originally belonged to

the petitioner's father, late Nripendra Mohan Sen Gupta, who purchased 3.18 acres of land in Mouza Jhiloniha by a registered deed being Deed No. 2119 dated 17.08.1938, executed by Hashmat Ali and Fazal Karim. The said purchase was duly reflected in the relevant R.S. Khatian Nos. 1224/204 and 1224/151 and the land was subsequently recorded in M.R.R. Khatian Nos. 688 and 689 in the name of the petitioner's father and others. Upon the death of the petitioner's father on 05.06.1986, the petitioner inherited the property as his sole legal heir, which inheritance is supported by the death certificate and succession certificate.

Following inheritance, the petitioner undertook necessary steps to correct and update the records of rights. Initially, Mutation Khatian No. 2003 was opened to rectify erroneous entries in the Bangladesh Survey record. Thereafter, a separate mutation, being Mutation Khatian No. 7900 was opened in the sole name of the petitioner, recording 110 decimals of land in BS Plot No. 20003. The petitioner has been paying land development tax in respect of the said land regularly, which is up to date.

Subsequently, 154 decimals of land were also recorded in the petitioner's name by amending BS Khatian No. 3247, and a further separate mutation, being Mutation Khatian No. 16057, was opened in respect of BS Plot No. 20003/27628. The petitioner has been paying land development tax in respect of the said land regularly, which is up to date.

Thus, the petitioner claims to have maintained continuous, peaceful, and uninterrupted possession over the entire scheduled property by virtue of ownership by way of succession, mutation, and payment of government revenue. In spite of that the scheduled property was included as vested property at Serial No. 31 in the 'Ka' schedule published in the Bangladesh Gazette (Additional Issue) vide Notification No. 31.00.0000.040.53.005.2012-220 dated 28.04.2012, purportedly on the basis of Vested Property Case No. 25/77-78 dated 15.11.1977. The petitioner contends that such inclusion is wholly unlawful, arbitrary, and without any factual or legal foundation, as neither the petitioner nor his predecessor ever left the territory of Bangladesh at any material point of time.

Petitioner's further case is that inclusion of plot no. 20127 and 20142 along with plot no. 20003 against 2.03 acres of land is erroneous. For the sake of clarity and precision, the petitioner caused a digital survey conducted by a qualified surveyor using pantograph comparison of the R.S., M.R.R. and current BS records. According to the survey report, the entire 203 decimals of the petitioner's land fall exclusively within BS Plot No. 20003, and the inclusion of BS Plot Nos. 20127 and 20142 in the Gazette notification was erroneous and unsupported by the record of rights. Further both pieces of land owned by the petitioner and now recorded under mutation khatain no. 7900 and 16057 which are originally part of B.S. Plot

no. 20003 are now recorded under the new mutation khatian as new mutation plot numbers 20003/30432 and 20003/27628.

Furthermore, in discharge of the duty of candour, the petitioner further stated that out of the original 318 decimals of land which was purchased by his father in 1938, 31 decimals were lawfully acquired under the East Bengal (Emergency) Requisition of Property Act, 1948, in L.A. Case No. 39/1963-64, which acquisition was finalized by Gazette dated 06.03.1969 upon payment of compensation. The remaining 287 decimals land continued as private property, from which the present scheduled 203 decimals land stand derived.

The petitioner has been managing and enjoying the scheduled property through rental arrangements of approximately 47 shops, which have been under the supervision of a caretaker. According to the petitioner, this peaceful possession remained undisturbed until the change of regime on 05.08.2024, when certain miscreants attempted to forcibly enter and take possession of the scheduled land, allegedly taking advantage of a temporary deterioration in law and order. In response, the petitioner's caretaker lodged a General Diary with the local police station, following which police intervention enabled the tenants to continue their business activities.

The petitioner states that he had no prior knowledge of the inclusion of the scheduled property in the vested property list and, in view of the correction of the BS records and continued acceptance of land development

tax by the authorities, bona fide believed that the property stood delisted and there is no need to challenge the listing through separate legal process. However, after the regime change on August 5, 2024, when certain individuals attempted to forcibly take possession of the scheduled land, he sought legal advice and the learned advocate advised him to challenge the listing of the scheduled property as vested property. Consequently, the petitioner on 25.08.2024, served a demand for justice notice upon the concerned authorities seeking delisting of the scheduled property from the vested property list. Having received no effective response and finding no equally efficacious alternative remedy, the petitioner invoked the writ jurisdiction of this Court under Article 102(1) and (2) of the Constitution, challenging the legality of the impugned Gazette notification and seeking protection of his constitutionally guaranteed right to property.

Mr. Mohammad Hossain, learned Senior Advocate along with Mr. Rakibul Hasan, learned advocate appears on behalf of the petitioner. Mr. Mohammad Hossain, learned Senior Advocate drawing our attention to the statements made in the writ petition and the annexures, submitted that the petitioner acquired the land in question by way of succession from his father who purchased the property in the year 1938. The learned advocate further submits that the petitioner has mutation khatain in his name and government accepted up to date rent/land development tax from the petitioner. He submitted that the genealogy and chain of ownership of the land in question is clear, continuous and unbroken.

He further submits that there was no lawful scope or jurisdiction for the concerned authority to enlist the property in the 'Ka' list of vested property by V.P. Case No. 25 of 1977-78, the same being a subsequent event to 23.03.1974.

He next submits that the petitioner has been in peaceful possession of the scheduled land, which has been under his control and management through the rental of approximately 47 shops by his caretaker. This situation has been stable and undisturbed until the recent change in the regime on August 5, 2024. Following this change in governance, certain miscreants have attempted to exploit the resulting vulnerability in law and order to forcefully enter the scheduled land. Notably, these miscreants have targeted Individuals of a particular religion in their efforts to unlawfully seize control of the petitioner's property.

He further submits that the listing of the scheduled property as vested property was incorrect both in law and in fact, as neither the petitioner nor his late father ever left the country. On the contrary, the petitioner and his late father remained actively engaged in the socio-political fabric of the nation until his father's demise. After graduating from Dhaka University, the petitioner actively participated as a political activist, contributing to the country's great liberation war in 1971. Following independence, he qualified as a Chartered Accountant in 1981, further solidifying his commitment to the nation's development. Given these facts, there was no basis whatsoever for the scheduled property to be listed as vested property.

The inclusion of the property on this list is therefore without any legal or factual foundation.

No affidavit-in-opposition has been filed from the Government's side in this matter. However, Mr. Mohammad Mehdi Hasan, learned Deputy Attorney General along with Mr. Mohammad Rashadul Hassan, learned Deputy Attorney General submits that the land has been enlisted as vested property following due process. The learned Deputy Attorney General next submits that the mouza in question is Ecologically Critical Area and there is no scope to carry on any construction works thereon. The learned Deputy Attorney General prays for discharging the Rule.

We have heard the learned advocate for the petitioners as well as the learned Deputy Attorney General, perused the writ petition, supplementary affidavit and the documents annexed therewith.

In view of the submissions of the learned Deputy Attorney General, it is pertinent to observe that in a case involving inclusion of property in the 'Ka' list of vested property after 23.03.1974, the scope of judicial review is confined to examining the legality of such inclusion. In doing so, the Court will take into consideration only whether the petitioner has been able to establish a *prima facie* title to the property in question, without entering into a detailed or conclusive determination of title.

So, far the instant matter is concerned, it appears that the writ petitioner furnished a detailed genealogy of the land in question and, in support of its claim, submitted a title deed along with the relevant Khatians

as annexures. The writ petitioner also annexed the mutation khatians, DCRs and rent receipts in support of his title and possession. It further appears from the impugned Gazette that the property in question was included and published in the “Ka” list of vested property by Gazette dated 28.04.2012 at page No. 30779, serial no. 31 under V.P. Case No. 25/77-78, which was initiated in the year 1977. Therefore, on the face of the record, it appears that the inclusion and publication of the property in the vested property list are subsequent events to 23.03.1974.

It is by this time settled by catena of judgments pronounced by the Appellate Division of the Supreme Court of Bangladesh that the law relating to enemy property took birth with the promulgation of the Defence of Pakistan Ordinance and Rules in the year 1965 which were repealed in the year 1969 by Ordinance No.1 of 1969. But by Ordinance No. 1 of 1969, some of the provisions of the Defence of Pakistan Rules were kept alive and continued. Ordinance No. 1 of 1969 was repealed on 23.03.1974 with enactment of the Act No. XLV of 1974. Therefore, the government lost its authority to act under the provisions of a repealed law to vest any property treating it as enemy property after passing of the Act XLV of 1974. Hence, any inclusion of property in the vested property list after 23.03.1974 is out and out illegal.

In the case of *Aroti Rani Paul Vs. Sk Paul reported in 56 DLR (AD) 73* it was held that;

"...since the law of enemy property itself died with the repeal of Ordinance No. 1 of 1969 on 23.03.1974 no further vested property

case can be started thereafter on the basis of the law which is already dead."

Subsequently, in the case of *Saju Hosein vs Bangladesh*, reported in 58 DLR (AD) 177 it was held that-

"Since the law of enemy property itself died with the repeal of Ordinance No. 1 of 1969 on 23-3-1974 no further vested property case can be started thereafter on the basis of the law which is already dead. Accordingly, there is no basis at all to treat the case land as vested property upon starting VP Case No. 210 of 1980."

Recently, in the case of *Md. Abdul Hye vs Government of Bangladesh and Ors.*, reported in 70 DLR (2018) 313, the Hon'ble High Court Division, while declaring the inclusion of new properties as enemy property subsequent to enactment of 1974 Act as illegal, observed that;

"In the light of the decisions in the cases of Laxmi Kanta Roy vs. UNO, reported in 46 DLR (HCD) 1994, Page-136, Aroti Rani Paul vs. Shudarshan Kumar Paul and others, reported in 56 DLR (AD) 73, Saju Hosein and others vs. Bangladesh and another, reported in 58 DLR (AD) 177 and Dulichand Omraolal vs. Bangladesh, through the Secretary, Ministry of Industries and others, reported in 33 DLR (AD) 30, we believe and further observe that:

(c) all actions, decisions regarding listing any property within the territory of Bangladesh as enemy property or vested property after 23.03.1974 are illegal; "

When the said judgment and order was challenged before the Hon'ble Appellate Division, their Lordships disposed of the Civil Petition for Leave to Appeal by expunging certain observations and directions made by the High Court Division. However, in their judgment, reported in 28 BLC (AD) (2023) 88, their Lordships of the Appellate Division affirmed the observation of the High Court Division in the language reproduced below

“Apart from that this Division declared all actions; decisions regarding listing any property as vested property after 23.03.1974 as illegal. (para 51)”

In the present case it is evident from the impugned gazette (Annexure-F) that the land in question has been declared as vested property vide V.P. Case No. 25/77-78, long after 23.03.1974. Furthermore, the petitioner has been able to substantiate its clear and prima facie unbroken chain of title and peaceful possession by referring relevant title deed, Khatians and rent receipts in his name. The respondents were unable to rebut or dislodge the petitioner's submissions.

Considering the facts and circumstances of the case and the discussions made hereinabove, we find substance in the instant Rule and as such the same is required to be made absolute.

In the result, the instant Rule is made absolute.

Hence, the inclusion of the property of the petitioner measuring 2.03 acres of land against BS plot number 20003 as described above in the

Schedule 'Ka' of the Vested Property list by virtue of the V.P. Case No. 25/77-78, is hereby declared illegal and without lawful authority.

The respondents are directed to exclude the petitioner's property measuring 2.03 acres of land immediately from the "Ka" Schedule of Vested Property list published on 28.04.2012 in the Bangladesh Gazette, additional issue, at page No. 30779 being Serial No. 31.

Communicate the judgment and order at once.

(Sikder Mahmudur Razi, J:)

I agree.

(Raziuddin Ahmed, J:)