

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

WRIT PETITION NO. 11222 OF 2025

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Most. Poly and others

.....Petitioners

-VERSUS-

The Secretary, Ministry of Land, the Government of
the People's Republic of Bangladesh and others

..... Respondents

Mr. Jafar Alim Khan, Advocate

..... For the Petitioner

Mr. Mohammad Waliul Islam Oli, D.A.G with
Mr. Md. Ershadul Bari Khandakar, D.A.G with
Ms. Nilufar Yesmin, A.A.G with
Mr. Md. Moshir Rahman (Rahat), A.A.G with
Mr. Md. Motasim Billah Parvez, A.A.G with
Mr. Md. Faridul Islam, A.A.G

.....For the Respondents

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

**Heard on 18.01.2026, 02.02.2026 and
Judgment on 25.02.2026**

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under
Article 102 of the Constitution of the People's Republic of Bangladesh in
the following terms:

“Let a Rule Nisi be issued calling upon you the aforesaid Respondents to show cause on or before the 14th day of September, 2025, as to why the impugned inclusion of petitioner’s schedule land of Mouza-Sreedharpur, Police Station-Sreenagar under District-Munshiganj, C.S. Khatian No. 541, S.A. Khatian No. 505 and R.S. Khatian No. 429 respectively and C.S. , S.A. and R.S. Dag No. 300 measuring 0.0566 acres which has been enlisted in ‘ka’ schedule of 2012 as serial No. 830 under Section 9 of the অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১ (সংশোধিত ২০১১) published by the respondent No. 2 by an official gazette notification vide dated 23.04.2012 should not be declared illegal without any lawful authority and is of no legal effect and as to why the respondents should not be directed to release the petitioner’s schedule land of Mouza-Sreedharpur, Police Station-Sreenagar under District-Munshiganj, C.S. Khatian No. 541, S.A. Khatian No. 505 and R.S. Khatian No. 429 respectively and C.S. , S.A. and R.S. Dag No. 300 measuring 0.0566 acres which has been enlisted in ‘ka’ schedule of 2012 as serial No. 830 and/or such other or further order or orders as to this Court may seem fit and proper.

Pending hearing of the Rule, the parties are directed to maintain status-quo in respect of position and possession of the land in question for a period of 06(six) months from date.”

Relevant facts for disposal of the instant Writ Petition, in short, are that, the C.S. recorded owner of the schedule land was Loknath Mondol, son of late Dengor Mondol; Loknath Mondol died leaving behind two sons namely Rajendra Monol and Debendra Mondol and accordingly their

names were recorded in the S.A. record in equal share of 8 annas; thereafter Debendra Mondol died leaving behind only son Dinesh Chandra Mondol and Rajendra Mondol died leaving behind two sons namely, Monindra Mondol and Anindra Mondol and their names were correctly recorded in the R.S. Khatian as 8 annas share in the name of Dinesh Mondol, 4 annas in the name of Monindra Mondol and 4 annas in the name of Anindra Mondol. Thereafter Dinesh Chandra Mondol gifted the schedule land in favour of his wife Sreemoti Makhon Bala Mondol vide registered gift deed no. 4311 dated 20.07.1977, accordingly she mutated her name and paid regular rent. Subsequently Sreemoti Makhon Bala Mondol sold out 0.0850 acres of land from the schedule land to Horolal Mondol vide registered deed no. 3091 dated 23.06.1990. Horolal Mondol died leaving behind two sons namely, Meghlal Mondol and Ajit Mondol and the said Meghlal Mondol and Ajit Mondol sold out 0.0566 acres of land to Abdul Salam and Most. Poly (petitioner no. 1) vide registered deed no. 348 dated 28.01.2007 and accordingly mutated their names and obtained mutation khatian, rent receipts and DCR. Thereafter Abdul Salam while owning and possessing the case land constructed building thereon as a homestead and later on he gifted his share of 0.0466 acres of land in favour of his two sons and wife, who are the present petitioners, vide gift deed no. 7701 dated 29.09.2014 and in this way the petitioners are enjoying and possessing the case land peacefully by paying regular rents. All on a sudden the petitioners came to know that the case land has been enlisted in the vested property list in 'ka' schedule of the gazette of 2012 as serial no. 830 of the list as vested property. The

petitioners have been owning and possessing the case land from the date of their purchase and gift and paying regular taxes and therefore they had no knowledge about listing of the property in the 'ka' schedule of vested property list in 2012 and thus they could not file the vested property case to release the land within the stipulated time. Thereafter the petitioners served a notice demanding justice upon the respondents by registered post praying for release of their property from the list but the respondents did not reply thereto. Finding no other alternative and efficacious remedy they have filed the instant writ petition and obtained the instant Rule and an order of status quo.

Learned Advocate Mr. Jafar Alim Khan appeared on behalf of the petitioner. At the very outset he submitted that, the petitioners purchased the case land by way of registered deed from a person whose predecessor was the C.S., S.A., and R.S. recorded owners and were in possession by mutating their names and paying tax to the government, as such the inclusion of the property in the 'ka' schedule list by the gazette notification dated 23.04.2012 in serial no. 830 is ex facie illegal, without any lawful authority and is of no legal effect.

Mr. Khan next submitted that, the petitioners have been possessing the schedule land from the date of purchase and thereafter mutated their names by receiving duplicate carbon receipt (D.C.R.), mutation parcha and rent receipts till 15.06.2022 from the office of the respondent no. 6 hence the inclusion of the schedule property in the 'ka' schedule list on

23.04.2012 in serial no. 830 is liable to be declared to have been done without lawful authority.

He further submitted that, from the gazette notification it is found that the case property has been listed in the 'ka' schedule vide V.P. case no. 133 of 77 dated 01.09.77 in serial no. 830 (Annexure-A) though the petitioners possessing the said property as homestead by constructing building thereon and also by mutating their names with the office of the Respondent no. 5 on obtaining DCR and giving development tax with office of the Respondent no. 6 on obtaining receipts till 2022. Hence the property in possession of the petitioners will not come within the purview of 'অর্পিত সম্পত্তি' or 'প্রত্যর্পণযোগ্য সম্পত্তি'.

Learned Advocate for the petitioner argued that, the property having been listed as vested property after 23.03.1974 i.e., after the Act No. XLV of 1974 Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, 1974 came into force, the very inclusion of the property in the '*pratyarpan*' list is *ex facie* without jurisdiction and therefore the property is liable to be released from the said list.

Learned Advocate further argued that Section 10(1) of অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১ described the procedure for filing application before the tribunal for the relief of returning the possession of the property from Government's possession and Section 11 of the said Act described the procedure for execution of the judgment and decree passed by the tribunal in order to return the possession from the Government. The property in question being in possession of the petitioners all the way through, no

question of filing case before the tribunal praying for release of the same arises in the present case.

He finally submitted that, when a statutory authority acts beyond the power given by the statute, that amounts to malice in law or *quorum non judice* and in that case, the petitioner can come to the High Court Division directly under writ jurisdiction without availing the alternative remedy available under any special law for enforcement of his fundamental right.

In support of his submission, learned Advocate referred to a number of reported cases e.g. *Government of Bangladesh and others Vs. Dhaka Memon Anjuman* reported in *20 BLT (AD) 2012, pg.107*, *Sreemati Aroti Rani Paul Vs. Sree Sudarshan Kumar Paul* reported in *9 MLR (AD) 2004, pg. 155* and *Assessing Officer, Narayanganj Range and others Vs. Burmah Eastern Ltd. Reported in 34 DLR (AD) 1982, pg. 29*.

On the other hand, Mr. Mohammad Waliul Islam Oli, the learned Deputy Attorney General merely opposed the Rule; however, without submitting any vokalatnama or any affidavit in opposition.

We have heard the learned Advocate for the petitioner as well as the learned Deputy Attorney General and perused all the documents annexed as annexures with the writ petition.

It appears from Annexure B, which is the C.S. khatian No. 541, that the recorded owner is Loknath Mondol, Annexure B-1 is the

corresponding S.A. khatian no. 505, which shows the recorded owners to be two sons of Loknath Mondol i.e. Rajendra Mondol and Debendra Mondol and Annexure B-2 is the latest R.S. record in the names of Dinesh Mondol, son of Debendra Mondol holding 8 annas share and Monindra Mondol and Anindra Mondal, sons of Rajendra Mondol holding 4 annas share each. It also appears from this record that the share of Monindra and Anindra were recorded as Vested and Non-Resident property as they were residents of India at the relevant time. Dinesh Mondol being the owner of half of the property of this khatian transferred the same to his wife Makhon Bala Mondol by way of registered gift deed dated 20.07.1977, who mutated the same in her name as appeared from Annexures C and C-1. Makhon Bala Mondol transferred 8.5 decimals land out of 17 decimals of plot no. 300 to one Horolal Mondol by the registered deed dated 23.06.1990. After his death his two sons Meghlal Mondol and Ajit Mondol mutated the land in their names by the mutation case no. 1483 of 2006-2007 and transferred 05.66 decimals out of 8.5 decimals to the petitioner no. 1 and his husband Abdul Salam by the registered deed dated 28.01.2007, who mutated the land in their names by the Mutation case no. 990/14-15 and paid rents as appeared from Annexure E to E-5. Abdul Salam then transferred his share of 4.66 decimals of land to his two sons and wife, who are the present petitioners, by the registered gift deed dated 29.09.2014, Annexure-F.

From a meticulous perusal of these documents, we find that the Petitioners have been able to establish their chain of title and continuous

possession thereto regarding the land in question from the original C.S. recorded owner till date. These documents have not been controverted by the respondents by producing any other documents to the contrary. As such the documents of title and possession of the petitioners remain undisputed. Since the petitioners have been able to prove their possession over the case property at the relevant time when certain properties were listed as enemy property i.e. vested property, the question of inclusion of their property in that list appears to be without any lawful basis.

From the photocopy of the gazette notification annexed as Annexure-A it appears that, in serial no. 830 .16 decimals land of R.S. khatian no. 429 appertaining to plot no. 300 has been recorded in the 'ka' schedule of the vested property. From column 2, which refers to the 'Case record number and date of record', it appears that the property in question has been recorded as vested property by the V.P. Case No. 133 of 1977 on 01.09.1977. From column 3, which refers to the 'date of taking control of the property by the government', it appears that the control was taken over by the government on 20.09.1976. Column 5 refers to the S.A. khatian number to be 572 and columns 7 refers to the R.S. khatian number to be 429. But we have already seen from the relevant annexures that the corresponding S.A. khatian of R.S. khatian no. 429 is 505, not 572. The names appearing in column 4 also do not tally with the S.A. recorded owners of S.A. khatian no. 505 from which R.S. khatian no. 429 has arisen. Therefore, we find that prima facie the description of the property

in question in the gazette is inaccurate. As a result, the identity of the property being unspecified, the inclusion itself becomes contentious.

Moreover, admittedly the vested property case has been recorded on 01.09.1977 by V.P. Case no. 133/77 as appears on the gazette. In this regard the law is now very well settled by a series of judicial decisions of both the Divisions of this Court that, no property can be enlisted as vested and non-resident property after the repeal of Ordinance No. 1 of 1969 on 23.03.1974. So, after that very date if any property is enlisted as vested property, it will be regarded as invalid and illegal. The leading case on this point is *Aroti Rani Paul Vs. Sudarshan Kumar Paul* reported in **56 DLR AD 76**.

Any such inclusion after that stipulated date will amount to be mala fide. In the case of *Manabendra Chakrabarty and others versus The Government* reported in **3 SCOB [2015] HCD 52** in order to decide what is mala fide, His Lordship Mr. Justice Moyeenul Islam Chowdhury referred to an Indian decision reported in W.B. AIR 2001 SC 343 where Durgadas Basu J held, “It is commonplace to state that mala fide does not necessarily involve a malicious intent. It is enough if the aggrieved party established: (i) that the authority making the impugned order did not apply its mind at all to the matter in question; or (ii) that the impugned order was made for a purpose or upon a ground other than what is mentioned in the order”. It was thus held in that judgment of this Division that, “Inclusion of a property in the vested property list after

1974 can thus be said to be mala fide inasmuch as no new inclusion was lawfully permissible at that time.”

The government being unable to produce any evidence to the contrary in order to controvert the continuous peaceful possession of the petitioners over the property in question by dint of registered deeds and upon payment of government tax, the very inclusion of the property as vested property appears to be without any lawful authority.

Now arises the question whether the petitioners can invoke the writ jurisdiction without availing the alternative forum which was available to them under the অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১.

In the year 2001 ‘অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১ was promulgated as a result of long-standing public demand in order to restore the possession of the listed properties to its original owners or their successors in interest. In the preamble to the Act 2001 it has been clearly stated that,

“অর্পিত সম্পত্তি হিসাবে তালিকাভুক্ত কতিপয় সম্পত্তি বাংলাদেশী মূল মালিক বা তাহার বাংলাদেশী উত্তরাধিকারী বা উক্ত মূল মালিক বা উত্তরাধিকারীর বাংলাদেশী স্বার্থাধিকারী (Successor-in-interest) এর নিকট প্রত্যর্পণ এবং আনুষংগিক বিষয়াদি সম্পর্কে বিধান প্রণয়নকল্পে প্রণীত আইন।”

By the amendment in 2011, it was provided in Section 9 that, a list of the properties to be released shall be prepared and published in the official gazette. Tribunals were also established with a view to entertain and dispose of the applications for release of the properties from the list of vested property.

In Section 7 of the Act 2001 it has been provided that,

- ৭। (১) এই আইন প্রবর্তনের পর কোন ব্যক্তি কোন সম্পত্তি প্রত্যর্পণযোগ্য সম্পত্তির তালিকায় অন্তর্ভুক্তিযোগ্য নহে মর্মে বা উক্ত তালিকায় অন্তর্ভুক্ত কোন সম্পত্তি প্রত্যর্পণযোগ্য সম্পত্তি নহে মর্মে কোন আদালতে মামলা দায়ের করিতে বা এইরূপ সম্পত্তি অবমুক্তির জন্য তত্ত্বাবধায়কের নিকট কোন দাবী উত্থাপন করিতে বা উহার ব্যাপারে নামজারীর জন্য কোন রাজস্ব কর্মকর্তার নিকট কোন আবেদন করিতে পারিবেন না।
- (২) এইরূপ মামলা দায়ের বা দাবী উত্থাপন বা আবেদন করা হইলে আদালত বা ক্ষেত্রমত তত্ত্বাবধায়ক উক্ত দাবী বা রাজস্ব কর্মকর্তা উক্ত আবেদন সরাসরি নাকচ করিবেন।

Thus, it is now to be determined, whether this section appears to be a bar for a person to invoke the writ jurisdiction, who challenges the very inclusion of the property as vested property and who is in continuous possession of the property with valid title.

This requires to look back at the historical background of the vested property at a glance. Properties which were listed as ‘enemy property’ during the time of war between Pakistan and India in 1965 were inherited by Bangladesh, after independence in 1971, as vested by operation of law and the term ‘vested property’ came into appearance. The vested properties are therefore basically the ‘enemy properties’ listed in 1965 but with a different name because India was no longer an enemy to Bangladesh during the relevant time. No new property can be enlisted as vested property which was not originally in the ‘enemy property’ list prepared in 1965. By enacting the Act of 2001, the Government took initiative to release these properties from the possession of the custodian or government to its original owners or their successors-in-interest. As such the term ‘প্রত্যর্পণযোগ্য সম্পত্তি’ came into place. A ‘প্রত্যর্পণযোগ্য সম্পত্তি’ is by nature a vested property.

The Act of 2001 defines ‘প্রত্যর্পণযোগ্য সম্পত্তি’ in Section 2 (nio) of the Act. Relevant part of this Section is quoted below:

“‘প্রত্যর্পণযোগ্য সম্পত্তি’ অর্থ অর্পিত সম্পত্তি আইনের অধীনে তত্ত্বাবধায়ক কর্তৃক অর্পিত সম্পত্তি হিসাবে তালিকাভুক্ত করা হইয়াছে এইরূপ সম্পত্তির মধ্যে-

(অ) যাহা এই আইন প্রবর্তনের পূর্বে সরকারের দখলে বা নিয়ন্ত্রণে ছিল;”

When the gazettes were published in the year 2012 with a list of ‘প্রত্যর্পণযোগ্য সম্পত্তি’ it included some properties which were not in the possession or control of the government and also were enlisted as vested property after 23.03.1974 for reasons best known to the authority who published the list. However, we have already discussed hereinabove that any enlistment of vested property after that specific date has been declared as illegal and without lawful authority by judicial decisions. The definition also makes it clear that, to be a ‘প্রত্যর্পণযোগ্য সম্পত্তি’ a property thus have to be in the control of the government.

When a person challenges the very inclusion of the property as vested property on the ground that the V.P. case has been started after 23.03.1974, as has been appearing in the gazette, he comes within the ambit of the Constitution, which guarantees a citizen’s right to acquire, hold, transfer or otherwise dispose of property subject to certain limitations as per Article 42.

In the case of *Government of Bangladesh Versus Syed Chand Sultana and others* reported in *51 DLR (AD) 24*, regarding an abandoned property, it was held by the Appellate Division that, “*The writ petitioners*

need not have invoked the jurisdiction of the Court of Settlement because the very inclusion of the property in question in the 'kha' list is ex facie void for want of jurisdiction and is violative of Article 42 of the Constitution. The writ petitioners can come directly to the High Court Division for protection of their fundamental right even though an alternative remedy is available.” [per Mustafa Kamal J.]

This decision has been subsequently relied on in series of judgments delivered by both Divisions of the Supreme Court of Bangladesh.

In the case of *Manabendra Chakrabarty and others versus The Government* reported in *3 SCOB [2015] HCD 52* their Lordships held that, “*In this context, we feel tempted to say that it is a settled proposition of law that an aggrieved party may invoke the writ jurisdiction of the High Court Division under Article 102 of the Constitution straightway provided the action impugned is mala fide, even though there may be an alternative remedy available for him. Since we have found that the inclusion of the case property in 'ka' Schedule of the Gazette Notification dated 06.05.2012 as a vested property is mala fide, the instant writ petition, as we see it, is maintainable. ...So our definite finding is that the petitioners can come directly to the High Court Division for protection of their right to property as contemplated by Article 42 of the Constitution of Bangladesh, even though an alternative forum, that is to say, ‘অর্পিত সম্পত্তি প্রত্যর্পণ ট্রাইব্যুনাল is available for necessary legal redress.” [per Moyeenul Islam Chowdhury, J]*

Upon careful reading of the decisions passed by both the Divisions, we are of the view that, when a writ jurisdiction is invoked by an aggrieved person challenging the very inclusion of the property in the list of vested property to be illegal and unlawful (on the ground that the same has been included in the vested property list after 23.03.1974), it is his constitutional right and the writ petition will be very much maintainable even if he fails to or does not take recourse to the available alternative remedy of making an application before the Tribunal under Section 10 (1) of the অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১. The High Court Division has jurisdiction to look into the relevant fact which led to the claim raised by the petitioner unless contradicted by the respondent with supporting materials.

Thus we are of the view that, in a case where the property has been included as vested property after 23.03.1974, the following conditions are to be fulfilled before obtaining any relief under Article 102 of the Constitution:

1. The petitioner must show from the gazette that the property has been included as vested property after 23.03.1974 and
2. The Custodian/Government never took over the possession at any point of time till date; and
3. The petitioner substantiates valid chain of title from the original recorded owner as an heir or as a subsequent purchaser by producing registered documents; and

4. The petitioner produces necessary documents e.g. record of right, mutation record, rent receipts etc. in order to establish his and his predecessor's uninterrupted continuous actual possession over the property in question from the relevant time till date; and
5. Finally, these documents of title and possession are not controverted or disputed claiming otherwise by the respondents upon producing supporting evidence to prove to the contrary.

In the present case the petitioners have fulfilled all the conditions mentioned hereinabove.

With the foregoing findings and observations and in view of the fact and circumstances discussed hereinabove we find substance in the Rule.

In the result, the Rule is made absolute.

However, without any order as to costs.

The respondents are directed to release the petitioners' property concerned immediately from the list of vested property as appearing in serial no. 830 of gazette notification dated 26.02.2012 regarding 'ka' schedule property of Mouja- Sreedharpur, District- Munshigonj, J.L. No. 84/11 so far as Petitioners' 5.66 decimals land out of 16 decimals of plot no. 300 appertaining to R.S. khatian no. 429 is concerned.

Let a copy of this judgment and order be communicated to the concerned authorities at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.