

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

Writ Petition No. 9643 of 2014

with

Writ Petition No. 9640 of 2014

with

Writ Petition No. 9641 of 2014

with

Writ Petition No. 9642 of 2014

with

Writ Petition No. 9644 of 2014

with

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Writ Petition No. 9649 of 2014

with

Writ Petition No. 9651 of 2014

with

Writ Petition No. 9650 of 2014

with

Writ Petition No. 9652 of 2014

with

Writ Petition No. 8096 of 2015

with

Writ Petition No. 9633 of 2014

with

Writ Petition No. 9634 of 2014

with

Writ Petition No. 9635 of 2014

with

Writ Petition No. 9636 of 2014

with

Writ Petition No. 9637 of 2014

with

Writ Petition No. 9638 of 2014

with

Writ Petition No. 9639 of 2014

with

Writ Petition No. 3297 of 2014

IN THE MATTER OF:

An application under Article 102(2)(a)(i) of the
Constitution of the People's Republic of
Bangladesh.

-And-

IN THE MATTER OF :

- A.K.M. Mainul Huq and others
..... Petitioners
(in the writ petition No. 9643 of 2014)
- Dr. Momtaz Sayeeda and others
..... Petitioners
(in the writ petition No. 9640 of 2014)
- Ms. Shahida Begum and others
..... Petitioners
(in the writ petition No. 9641 of 2014)
- Mrs. Fersous Ara and others
..... Petitioners
(in the writ petition No. 9642 of 2014)
- Khaled Saiful Islam and others
..... Petitioners
(in the writ petition No. 9644 of 2014)
- Md. Akbar Hossain and others
..... Petitioners
(in the writ petition No. 9645 of 2014)
- Rashed Mahmud and others
..... Petitioners
(in the writ petition No. 9646 of 2014)
- Akter Hossain Chowdhury and others
..... Petitioners
(in the writ petition No. 9647 of 2014)
- Nurjahan Islam and others
..... Petitioners
(in the writ petition No. 9648 of 2014)
- Mrs. Dil Ruba Saleheen and others
..... Petitioners
(in the writ petition No. 9649 of 2014)
- Dr. Rezaul Karim Mazumder and others
..... Petitioners
(in the writ petition No. 9651 of 2014)
- Md. Giash Uddin Mithu and others
..... Petitioners
(in the writ petition No. 9650 of 2014)
- Shafiqur Rahman Bhuiyan and others
..... Petitioners
(in the writ petition No. 9652 of 2014)
- Md. Rezaul Karim and others
..... Petitioners
(in the writ petition No. 8096 of 2015)
- Ali Ahmed Dewan and others
..... Petitioners
(in the writ petition No. 9633 of 2014)
- Mohammad Tazul Islam Tapader and others
..... Petitioners
(in the writ petition No. 9634 of 2014)
- A.K.M. Fazlur Karim and others
..... Petitioners

(in the writ petition No. 9635 of 2014)
 Golam Tahaboor and others
 Petitioners

(in the writ petition No. 9636 of 2014)
 Md. Abdul Latif Sarker and others
 Petitioners

(in the writ petition No. 9637 of 2014)
 Tanim Hussain Shawon and others
 Petitioners

(in the writ petition No. 9638 of 2014)
 Mrs. Nazma Begum and others
 Petitioners

(in the writ petition No. 9639 of 2014)
 Md. Jalal Uddin and others
 Petitioners

(in the writ petition No. 3297 of 2014)

-Versus-

Government of the People's republic of
 Bangladesh represented by the Secretary,
 Ministry of Land, Bangladesh Secretariat,
 Shahbag, Dhaka and others.

.....Respondents

**Mr. Sk. Fazle Noor Taposh, with
 Mr. Md. Mehedi Hasan Chowdhury with
 Mr. Md. Samiul Hoque with
 Ms. Upama Bswas, and
 Mr. Md. Jalal Uddin, Advocates**

.....For the petitioners
 (in all the writ petitions)

Mr. Manzil Murshid, Advocate

.....for the respondent No. 1
 (in all the writ petitions)

**Heard on : 13.05.2019,25.08.2019,
 04.11.2019, 11.11.2019, 17.02.2020,
 18.11.2020, 10.01.2021 & 11.01.2021**
Judgment on: 08.02.2021

Present:

**Ms. Justice Naima Haider
 &
 Mr. Justice Razik-Al-Jalil**

Naima Haider, J:

In this application under Article 102 (2) of the Constitution, Rules
 Nisi were issued in all the writ petitions in the following terms:

Let a Rule Nisi be issued calling upon the respondents to show cause as to why the Memo No. ভূঃ মঃ/শা-৮/খাজব/৬৬/২০০১/৪৬৮(৬৪) dated 07.06.2005 (Annexure-C) passed by the Senior Assistant Secretary, Section-8, Ministry of Land, Respondent no. 3 cancelling the Memo No. 8-28-85/1023(64) dated 17.10.1985 as to renewal of long term lease of non-agricultural khas land and the Memo No. ভূঃ মঃ/শা-৮/খাজব/১৩৫/২০১১/৫৮৯ dated 10.05.2011 (Annexure-D) passed by the Deputy Secretary, Section -8, Ministry of Land, Respondent no. 2 imposing new conditions as to renewal of long term lease of non-agricultural khas land should not be declared to have been issued without lawful authority and is of no legal effect and/or other or further order or orders passed as to this Court may seem fit and proper.

The relevant facts leading to filing of the instant writ petitions are briefly, set out as follows:

In Writ Petition No. 9643 of 2014, the petitioners are the owners of apartments of the holding No. 23 Shegun Bagicha, namely, "Prestige Homes", proportionality measuring 0.186 acres in Mouza: Kakrail, Police Station: Ramna, District: Dhaka under S.A. Khatian No. 4(KM)117, S.A. Plot No. 112 (KM) 22(SA)7, KM Plot No. 122 (hereinafter referred to as "the Land"). The said land was leased out to one Sree Monmonsan Mitro Roy for a period of 30 years by a registered deed with effect from 01.04.1931 to 31.03.1961 who sold the land to Sreejukto Senehalata Mukharjee vide Deed No. 3777 dated 19.09.1945. Thereafter Senehalata Mukharjee also transferred the land to Mosammat Amena Khatun vide Deed No. 314 dated 09.01.1998. The tenure of lease was further renewed for further 30 years vide deed of renewal of lease deed no. 1528 dated 16.01.1985. After the death of Mosammat Amena Khatun her heirs owned

and executed a General Power of Attorney in favour of Tropicals Homes vide Deed No. 05 dated 06.05.1998. Subsequently, a 9(nine) storied residential building comprising of 32 apartments was constructed over the land. Present petitioners including the original landlords are the present owners of the said apartments. In the writ petition, the petitioners elaborated on the devolution of title of the Land in her favour and also in favour of the other co-sharers.

In Writ Petition No. 9640 of 2014, the petitioners are the owners of the land measuring 0.2712 acres proportionately, Holding No. 6 Segunbagicha, known as “Eastern Villa”, in Mouza: Kakrail, Police Station: Ramna, District: Dhaka under C.S. Khatian No. 3, Plot No. 79 Municipal Ward No. 3, Touji No. 16725 (hereinafter referred to as “the Land”). The said land was leased out to one Pran Kumar for a period of 30 years in the month of April, 1931 and he sold the said land to Anwari Rahmatullah on 22.01.1949 and Anwari Rahmatullah sold the land to Safia Begum and Zubeda Begum on 02.05.1950 and they renewed the said lease for a period of 30 years with effect from 29.08.1964. Thereafter they sold the said land with building thereon to Sahera Khatun vide Deed No. 3408 dated 11.01.1969 and she sold the said land to “Eastern Housing Ltd.” vide Deed No. 202 dated 23.01.1990. The Eastern Housing Ltd. subsequently constructed a multi-storied building on the land and the petitioners obtained ownership of the apartments of the building with proportionate land by several deeds. They also mutated their names and possessed the same for time peacefully.

In Writ Petition No. 9641 of 2014, the petitioners are the owners of the land proportionately measuring 0.29 acres known as “Eastern Ulania”

Holding No. 2, Mouza-Kakrail, Police Station-Ramna, District-Dhaka, C.S. Khatian No. 60, R.S. Khatian No. 157 corresponding to C.A. Plot No. 211, S.A. Plot No. 208, R.S. Plot No. 1441 (hereinafter referred to as “the Land”). The said land was originally leased out to one Sree Birendra Mohon Ghosh for a period of 15 years vide Lease Deed No. 4350 dated 27.11.1946. Thereafter he sold the said land to Miss Nurn Nahar Hady vide Deed No. 3776 dated 08.06.1948. After expiry of the period of lease said Nurn Nahar Hady applied to the Joint Collector Revenue for renewal of the said lease for further period of 60 years and Government of East Pakistan granted lease of further period of 30 years with effect from 01.04.1961 vide registered deed No. 4764 dated 13.09.1961. Nurn Nahar Hady sold the land to Md. Shah Humayun Kabir vide Deed No. 3170 dated 18.06.2006. Md. Shah Humayun Kabir subsequently constructed a multistoried building in the land and the petitioners obtained ownership of the apartments of the building proportionately land by several deeds. They also mutated their names and possess the same for long time peacefully.

In Writ Petition No. 9642 of 2014, the petitioners are the owners of the land holding No. 9, proportionately measuring 0.2011 acres known as “Eastern Haven” in Mouza-Kakrail, Police Station-Ramna, District-Dhaka, C.S. Plot No. 80, Hal Plot No. 216/1306, Shabek Khatian No. 14, Hal Khatian No. 732, Jote No. 131, Ward No.3, Sheet No. 20, Collectorate Touji No. 15725, JL No. 5, Municipal Holding No. 80, Now-9 (hereinafter referred to as “the Land”). The said land was originally leased out to one Jotirmoya Sen and he transferred the same to Dr. Md. Hossain and Dr. Md. Hossain transferred the same to M/S. Adamjee Jute Mills Ltd. by a registered deed and M/S. Adamjee Jute Mills Ltd. sold it to Mr. Shahadat

Ali Khan vide Sale Deed No. 4042 dated 25.03.1958 and he applied to the Government for renewal of the said lease for further period of 30 years and accordingly the Government through the Collector, Dhaka extended the lease for further period of 30 years i.e. upto 31st March, 1991 vide C.I. (Sadar) Order No. 416(2)1-5/60 dated 17.10.1960. Shahadat died leaving behind wife, 6 daughters and 3 sons.

In Writ Petition No. 9644 of 2014, the petitioners are the owners of the land measuring 9.31 katha, known as “Excelsia Tower” in Holding No. 6/2, Segunbagicha, Mouza-Kakrail, Police Station-Ramna, District-Dhaka, C.S. Khatian No. 38, S.A. Khatian No. 39 corresponding to C.S. Plot No. 339, S.A. Plot No. 513 (hereinafter referred to as “the Land”). The said land was originally leased out to one Mrs. Mojira Khatun vide Lease Deed No. 619 dated 31.01.1955 and 2377 dated 28.04.1961. She died leaving behind 3 sons A.K.M. Fazlur Rahman, ATM Aminur Rahman, A.S.M. Sofiqur Rahman and 3 daughters Sahina Eakub, Rowshan Bashir, Kawsar Jahan. Hasina Islam died leaving behind a son Khaled Saiful Islam and a daughter Shahin Eaqub. After expiry of lease they applied for renewal and the Government renewed the period of lease for further period of 30 years. They gave registered power of attorney to “Asset Development and Holding Ltd.” for high-rise building. The said company constructed a multistoried building on the land and the petitioners obtained ownership of the apartments of the building with proportionate land. They also mutated their names and possess the same peacefully for a long time.

In Writ Petition No. 9645 of 2014, the petitioners are the owners of the land of Holding No. 5, Segunbagicha, proportionately measuring 29.39 decimals known as “Concord Apartment” in Dhaka Collectorate Touji No.

15725, JL No. 282, Mouza-Kakrail, Police Station-Ramna, District-Dhaka, C.S. Khatian No. 2, S.A. Khatian No. 63, R.S. Khatian No. 629, D.P. Khatian No. 1143 corresponding to C.S. Plot No. 78, S.A. Plot No. 211, R.S. Mutation Khatian No. 64/4, Jot No. 772, DP Plot No. 6315, Plot No. 1237, D.P. Plot No. 6315 and measuring 17 katha 13 chatak or 0.204 katha, Dhaka Collectorate Touji No. 15725, JL NO. 282, Mouza-Kakrail at present Ramna, Police Station-Ramna under C.S. Khatian No. 2 and thereafter 98, S.A. Khatian No. 63, R.S. Khatian No. 96, D.P. Khatian No. 1143, corresponding to C.S. Plot No. 78, S.A. Plot No. 211, R.S. Plot No. 1437, D.P. Plot No. 6315, Mutation Khatian No. 63/4, Jot No. 772, Touji NO. 15725, JL No. 283 (hereinafter referred to as "the Land"). The said land was originally leased out to one Srimoty Binapany Mira for a period of 30 yeas with effect from 01.04.1932 by the Collectorate of Dhaka on 09.01.1932 vide lase Deed No. 1304 dated 22.05.1931 of the Sadar Sub-Registrar. That Srimonty Binapany Mira sold the said land to one Moulvi Fazlur Rahman vide Sale Deed No. 1912 dated 29.03.1955. That Moulvi Fazlur Rahman renewed the said lease for further 30 years with effect from 01.04.1961 vide registered lease Deed No. 4106 executed between the Governor of the Province of East Bengal as a lessor and the Moulvi Fazlur Rahman as a lessee. Moulvi Fazlur Rahman died leaving behind his wife Sufia Khatun, son Jamilur Rahman and daughter Masuda Khatun. That Jamilur Rahman died unmarried leaving behind his mother, sister and four uncles. Thereafter his mother and four uncles made oral gift on 07.09.1999 of their shares in favour of his sister Masuda Khatun through Notary Public on 12.09.1969. Masuda Khatun died leaving behind her husband one son and four daughter Sufia Khatun got some land as heir of her daughter

Masuda Khatun and she made an oral gift it to Muna Rashid, Guinea Rashid, Mohsena Ahmed and Faisal Rashid and he died leaving behind them and her nephews Syed Moinuddin Ahmed, Syed Mahbubuddin Ahmed and niece Momena Kadir and her grandson Faisal Rashid Chowdhury and granddaughters Muna Rashid, Guinea Rashid and Mohsena Ahmed who jointly became owners and possessor of the proportionate shares of the said land. Mrs. Muna Rashid filed a suit being Title Suit No. 301 of 1996 and suit was decreed on compromise on 29.06.1997 between the parties. Mrs. Muna Rashid and others got the schedule property by way of inheritance. Faisal Rashid gifted some portion of his shares of land i.e. 0.1080 ajutangsha out of 0.2948 ajutangsha to his sister Mohena Ahmed by registered Deed No. 429 dated 23.02.1998. The 0.2948 ajutangsha of land was mutation of the name of Mrs. Muna Rashid and others and they executed Irrevocable General Power of Attorney in favour of Concord Real Estate of Building Products Ltd. vide Deed No. 759 dated 25.3.1998. The said company constructed a multistoried building on the land and the petitioners obtained ownership of the apartments of the building with proportionate land by several deeds. They also mutated their names and possess the same peacefully for a long time.

In Writ Petition No. 9646 of 2014, the petitioners are the owners of the land Ward No. 56, Segunbagicha, proportionately measuring 37.16 ajutangsho known as “Delta Bagicha” in Mouza-Kakrail, Police Station-Ramna, District-Dhaka, J.L. No. 3, S.A. Khatian No. 149, 43, R.S. Khatian No. 42, City Khatian No. 105, Mutation Khatian No. 149, corresponding to C.S. and S.A. Plot No. 346, 337, 312/336, R.S. Plot No. 1538, City Plot No. 1232 (hereinafter referred to as “the Land”). The said land was

originally leased out to one Moulvi Mosleh Uddin Ahmed for a period of 30 years. The Moulvi Mosleh Uddin Ahmed sold the land to the Moulvi Abdul Karim vide Sub-kabala No. 1770 dated 25.02.1950 and R.S. Record was preferred in his name as R.S. Khatian No. 42 and R.S. Plot No. 1538 Mr. Abdul Karim died leaving behind his wife Firoja Khatun and daughters and they renewed the said lease for further period of 30 years. Mrs. Firoja Khatun gave comprehensive Irrevocable General Power of Attorney in favour of Green Delt Housing and Development Private Ltd. vide Deed No. 2794 on herself and on behalf of her daughter. The said company subsequently constructed a multistoried building on the land and the petitioner obtained ownership of the building with proportionately and by several deeds. They also mutated their names and possess the same for long time.

In Writ Petition No. 9647 of 2014, the petitioners are the owners of the land in holding No. 26, Segunbagicha, measuring 7.903 katha proportionately known as "Property Paragon Ltd." in mouza-Kakrail, Police Station-Ramna, District-Dhaka, C.S. Khatian No. 16855, C.S. Plot No.116, S.A. Khatian No. 156, S.A. Plot No. 222, R.S. Khatian No. 29, R.S. Plot No. 1452. (hereinafter referred to as "the Land"). The said land was originally leased out to one Sree Jagodis Chandra Basu vide Lease Deed No. 1949 dated 21.08.1931 for a period of 30 years and he sold the aforesaid land to Sree Jukta Kumudini Kanungo vide Deed No. 4413 dated 24.11.1939 and she sold the said land to Amena Khatun vide Deed No. 5927 dated 09.10.1959 and Amena Khatun renewed the said lease for a period of 30 years vide Deed No. 9773 dated 21.10.1961 and after death of Amena Khatun her heirs filed the Civil Suit No. 26 of 1979 and Mr. Reaj

Ali Khan gave some portion of the land to his wife Samia Reaj through Notary Certificate No. 01 dated 07.02.1999. Mr. Reaj Ali Khan and Samia Reaj gave Irreparable General Power of Attorney in favour of property Development Ltd. vide Deed No. 967 dated 23.03.2002. The said company subsequently constructed a multistoried building on the land and the petitioners obtained ownership of the apartments of the building with proportionate land by several deeds. They also mutated their names and possess the same for a long time peacefully.

In Writ Petition No. 9648 of 2014, the petitioners are the owners of the land measuring 0.4969 acres proportionately, known as “Hashenur Green Cottage” in Holding No. 6/4, Segunbagicha, in Mouza-Kakarail, Police Station-Ramna, District-Dhaka, C.S. Plot No. 224, 343, S.A. Khatian No. 86, S.A. Plot No. 515, R.S. Khatian No. 124, R.S. Plot No. 1623 (hereinafter referred to as “the Land”). The said land was originally leased out to one Moulvi Mohiuddin Ahmed by the then East Pakistan Government vide Lease Deed No. 2795 dated 25.03.1954 and he died leaving behind his wife-Sayera Ahmed, one Kamal Ahmed Chowdhury and 7 daughters-Nasrin Sattar, Afrin Hossain, Rebaya Bari Chowdhury, Johra Islam, Mahjabin Khan, Rezia Halim Chowdhury and Parvin Arif and Sayera Ahmed sold his portion vide Deed No. 38141 dated 31.12.1977, Kamal Ahmed Chowdhury sold vide Deed No. 5728 dated 21.11.2005, Nasrin Sattar vide Deed No. 38142 dated 31.12.1997. Afrin Hossain vide Deed No.38143 dated 31.12.1977, Rabeya Bari Chowdhury vide Deed No. 4585 dated 07.02.1978, Johra Islam vide Deed No. 38144 dated 31.12.1977 Mahjabin Khan vide Deed No. 3814 dated 31.12.1977, Rezia Halim Chowdhury vide Deed No. 38145 dated 31.12.1977 and Parvin Arif.

Thereafter they sold their entire property to Alhaj Abul Hashem by several deeds. Subsequently Alhaj Abul Hossain renewed the said lease and executed on Comprehensive Irrevocable General Power of Attorney in favour of Hasenur Green Cottage Foundation Ltd. vide Deed No. 2104 dated 19.06.2003. The said company subsequently constructed a multistoried building on the land and the petitioners obtained ownership of the apartments of the building with proportionate land by several deeds. They also mutated their names and possess the same peacefully for a long time.

In Writ Petition No. 9649 of 2014, the petitioners are the owners of the land measuring 0.20 acres, proportionately known as “Eastern Paradise” in Holding No. 35, Segunbagicha, Mouza-Kakrail, Police Station-Ramna, District-Dhaka, JL No. 282, S.A. Khatian No. 111, S.A. Plot No. 230, R.S. Khatian No. 111, R.S. Plot No. 230 (hereinafter referred to as “the Land”). The said land was originally leased out to one M. Habibur Rahman by the then Government of East Pakistan and he got this lease renewed vide registered Kubuleayat No. 3878 dated 17.04.61 and thereafter he made an oral gift of some portion of the land to his wife Mr. Selina Rahman made an oral gift of the aforesaid land in favour of their sons and daughter. There was a partition suit among them. By the suit Mr. M. Tawfiqur Rahman and Nasim Kholilur Rahman have got the aforesaid land and they gave registered power of attorney to Eastern Housing Ltd. vide Deed No. 1436 dated 31.05.1994 to make a high rise building. On the basis of the said power of attorney they undertook construction of 24 apartments on the aforesaid land. The petitioners obtained ownership of the

apartments of the building with proportionate land by several deeds. They also mutated their names and possess the same peacefully for a long time.

In Writ Petition No. 9651 of 2014, the petitioners are the owners of the land holding No. 6/3 proportionately measuring 33 decimals known as “Excelshia Park” in Mouza-Kakrail, Police Station-Ramna, District-Dhaka, C.S. Khatian No. 37, 38, C.S. Plot No. 222, 221, S.A. Khatian No. 78, S.A. Plot No. 514, R.S. Khatian No. 122, R.S. Plot No. 1622, D.P. Khatian No. 369, City Plot No. 1530 (hereinafter referred to as “the Land”). The said land was originally leased out to one Dr. Nalini Kanto Vattrasaly vide Lease Deed No. 2574 dated 29.05.1945 for a period of 16 years effect from 01.04.1945 to 31.03.1961 and he died leaving behind his wife Bhuban Mohini Deby and 3 sons- Tejedra Nath Vattrasaly, Birendra Nath Vattrasaly and Rabindra Nath Vattrasaly and they sold the aforesaid land to Mohiush Sunnat Chowdhury vide Deed No. 818 dated 02.02.1955. On default of the rent the aforesaid land was auctioned and one Golam Mohiuddin purchased auction on 24.09.1951 through Certificate Case No. 178 of 1950-51. Thereafter he sold the aforesaid land to Mohiush Sunnat Chowdhury vide Deed No. 6788 dated 18.10.1958 and he renewed the said lease for a period of 30 years on 31.05.1961. Thereafter he gave comprehensive Irrevocable General Power of Attorney in favour of the Asset Developments Holdings Ltd. vide Deed No. 3442 dated 27.08.2021 and 27.08.2002. The Asset Development Holding Ltd. subsequently constructed a multi-storied building on the land and the petitioners obtained ownership of the apartments of the building with proportionately land by several deeds. They also mutated their names and possess the same for long time peacefully.

In Writ Petition No. 9650 of 2014, the petitioners are the owners of the land holding No. 3/2, proportionately measuring 0.19 acres known as “Eastern Paneroma” in Mouza-Kakrail, Police Station-Shahbag, Dhaka, Touji No. 15725, Jot No. 15/3, Sabek Plot NO. 165 and 166 Mutation Kahtian No. 38/9, Plot No. 510 (hereinafter referred to as “the Land”). The said land was originally leased out to one Khan Babadur Naziruddin Ahmed by way of a lease Deed on 03.04.1940 and after his death his heirs- Shamsunnessa Khatun, Kamal Uddin Ahmed, Nuruddin Ahmed Jamal Uddin Ahmed, Azimuddin Ahmed, Nasimuddin Ahmed, Asadunnessa, Shamsul Huda Chowdhury, Nawshad Ahmed, Nausheen Sultana, Naushaba Sultan, Bashirunnessa, Najmunnessa and Zanatunnessa got the lease renewed vide lease Deed No. 8916 dated 19.08.1964. Jamal Uddin Ahmed having died unmarried, Nuruuddin Ahmed as plaintiff filed a suit being Title Suit No. 56 f 1966 against Shamsun Nessa Khanam and 11 others and on 25.10.1966 the suit was decreed as per solenama duly signed by the plaintiff and defendants. After the death of (1) Mrs. Shamsunnessa Khanam, (2) Mrs. Asadunnessa and (3) Shamsul Huda Chowdhury, their respective heirs became the owner of the aforesaid land for the shares left by them with (a) Naushed Ahmed (b) Nausheen Sultana and (c) Naushabs Sultana and 22 persons became owners of the aforesaid land are (1) Nasimuddin Ahmed (2) Najmunnessa Ansari, (3) Naushad Ahmed (4) Nausheen Rahman (5) Zeenatunnessa (6) Nuruddin Ahmed (7) Mina Sharafuddin (8) Shima Islam (9) Nasrin Islam (10) Parvin Abedin (11) Ambreen Alam (12) Asadul Hakim (13) Naushaba Sultana Singh (14) Azimuddin Ahme (15) Basherunnessa Rashid (16) Shahed Ahmed Kamal (17) Raihan Ahmed (18) Uzair Ahmed Kamal (19) Laika Ahmed Kamal

(20) Samina Ahmed Kamal (21) Nazir Ahmed Kamal (22) Tarik Ahmed Kamal and thereafter they transferred the aforesaid land to Eastern Housing Ltd. by Sale Deed No. 1503 dated 01.06.1998. The Eastern Housing Ltd. subsequently constructed a multistoried building on the land and the petitioners obtained ownership of the apartments of the building with proportionate land by several deeds. They also their names and possess the same for long time peacefully.

In Writ Petition No. 9652 of 2014, the petitioners are the owners of the land holding No. 3/1 measuring 0.11942 acres proportionately known as “Priyo Prangan” in Mouza-Kakrail, Police Station-Ramna, District-Dhaka, C.S. Khatian No. 96, S.A. Khatian No. 61, R.S. Khatian No. 24, City Khatian No. 21 corresponding to C.S. Plot No. 77/330, S.A. Plot No. 209, R.S. Plot No. 1439, 1440, City Plot No. 6312, 6313 (hereinafter referred to as “the Land”). The said land was originally leased out to one Tarapado Boshu and he sold it to Mrs. Akhter Eman vide Deed No. 7270 dated 19.12.1947 and Mrs. Akhter Eman renewed the lease and he sold the said land to Hamid Real Estate Construction Ltd. Company vide Deed No. 2356 date 25.07.1995. The Hamid Real Estate Construction Ltd. Subsequently constructed a multistoried building on the land and the petitioners obtained ownership of the apartments of the building with proportionately land by several deeds. They also mutated their names and possess the same for long time peacefully.

In Writ Petition No. 8096 of 2015, the petitioners are the owners of the land holding 27, Segunbagicha measuring 7½ katha proportionately known as “Eastern Homes” in Mouza-Kakrail, Police Station-Ramna, District-Dhaka, C.S. Khatian No. 116, S.A. Khatian No. 156, Plot No. 22,

R.S. Khatian No. 29, R.S. Plot No. 1452 (hereinafter referred to as “the Land”). The said land was originally leased out to one Sree Jagodis Chandra Basu vide Lease Deed No. 1949 dated 21.08.1931 for a period of 30 years and he sold the aforesaid land to Sree Jukta Kumudini Kanungo vide Deed No. 4413 dated 24.11.1939 and she sold the said land to Amena Khatun vide Deed No. 5927 dated 09.10.1959 and Amena Khatun renewed the said lease for a period of 30 years vide Deed No. 9772 dated 21.10.1961 and after death of Amena Khatun her heirs Mr. Ayaz Ali Khan and Mr. Reaz Ali Khan transferred some of the property to Mafia Yeasmin and Sumaiya Yeasmin vide Deed Nos. 1207 and 1208 dated 05.03.1986. Thereafter both Mafia Yeasmin and Sumiya Yeasmin through Eastern Housing on the land and the petitioners obtained ownership of the apartments of the building with proportionate land by several deeds. They also got mutated their names and possess the same peacefully for a long time.

In Writ Petition No. 9633 of 2014, the petitioners are the owners of the land holding No. 6-D, Topkhana Road, Segunbagicha proportionately measuring 0.23 katha known as “Nokshi Tower” in Mouza-Kakarail, Police Station-Ramna, District-Dhaka, Touji No. 15215, C.S. Khatian No. 6860, C.S. Plot No. 40, S.A. Khatian No. 106, S.A. Plot No. 512, R.S. Plot No. 1617 (hereinafter referred to as “the Land”). The said land was originally leased out to one Dr. Md. Mohiddin and Shaheda Khanam took lease of the aforesaid land and they became owner of the land by inheritance. Thereafter Dr. Md. Mohiuddin sold his portion to Jahangir Bhuiyan and Nazza Akhter vide Sale Deed Nos. 2319 and 2318 dated 03.07.1988 and Shaheda Khanam transferred his portion to Jahangir

Bhuiyan vide Deed No. 2317 dated 03.07.1988. Thus Jahangir Bhuiyan has become the owner of the land Jahangir Bhuiyan gave Comprehensive Irrevocable Power of Attorney into Avenue Builders Ltd. to Consortium who subsequently constructed a multistoried building on the land and the petitioners obtained ownership of the apartments of the building with proportionately land by several deeds. They also mutated their names and possess the same for long time peacefully.

In Writ Petition No. 9634 of 2014, the petitioners are the owners of the land holding No. 8/1, Segunbagicha proportionately measuring 18.975 decimals known as “Sylcon Villa” in Mouza-Kakrail (Old-Bijoy Nagar), Police Station-Ramna, District-Dhaka, Touji No. 15725, Khatian No. 125, Plot No. 340 (hereinafter referred to as “the Land”). The said land was originally leased out to one M. A. Moktadir vide Lease Deed No. 1149 dated 20.02.1954 for a period of 30 years by the then East Pakistan Government and M.A. Moktader died leaving behind 5 sons-Md. Saif Uddin, Md. Husham Uddin Tarek, Md. Amir Uddin Shadek, Md. Helal Uddin Yousuf and Md. Joynal Abedin and 3 daughters-Mst. Jebunnessa Huda, Mst. Samsunnessa Huda and Mst. Nurunnessa Rafique applied for renewal. In the meantime Government issued circular in the year 1985 regarding renewal of lease, therefore Government informed that no further renewal would be necessary, thereafter they gave a sale deed in favour of “Sylcon Limited” vide Deed No. 572 dated 03.03.1994. The “Sylcon Limited” subsequently constructed a multistoried building on the land and the petitioners obtained ownership of the apartments of the building with proportionately land by several deeds. They possess the same for long time peacefully.

In Writ Petition No. 9635 of 2014, the petitioners are the owners of the land holding No. 6/C, Segunbagicha proportionately measuring 17.50 decimals known as “Samet Hassan Lodge” in Mouza-Kakrail, Police Station-Ramna, District-Dhaka, C.S. Khatian No. 31, C.S. Plot No. 165, S.A. Khatian No. 96, S.A. Plot No. 511, R.S. Khatian No. 119, R.S. Plot No. 1606 (hereinafter referred to as “the Land”). The said land was originally leased out to one Khan Bahadur Nasiruddin Ahmed by a Lease Deed on 11.04.1940 for a period of 21 years with effect from 01.04.194. Thereafter he died leaving behind his wife-Shamsunnessa Khatun, 5 sons-Kamal Uddin Ahmed, Nuruddin Ahmed, Jamal Uddin Ahmed, Azimuddin Ahmed, Nasimuddin Ahmed and 5 daughters Azadunnesa, Basherunnesa, Najumunnesa Senatun Nesa and Azimunness and Azimunnessa died leaving behind her husband Sumul Huda Chowdhury 2 daughters-Mausheen Sultana and Nahaba Sultana and C.S. and S.A. record was published in their names and they renewed the aforesaid lease for a period of 30 years vide Deed No. 8916 dated 25.09.1964. Jamal Uddin Ahmed sold 1/15th out of his 2/15th undivided shares in the said land in favour of Mrs. Bashirunnessa Rashid vide Deed No. 1297 dated 26.02.1965. Nuruddin Ahmed filed Title Suit No. 65 of 1996 against the others co-shares and the suit was decreed on 25.10.1966 on compromise and Mrs. Bashirunnessa Rashid got the aforesaid land. She transferred the said to Syed Masbu Ahmed on 19.12.1980. He constructed a multistoried building on the land and the petitioners obtained ownership of the apartments of the building with proportionately land by several deeds. They also mutated their names and possess the same for long time peacefully.

In Writ Petition No. 9636 of 2014, the petitioners are the owners of the land holding No. 26/B, Segunbagicha proportionately measuring 1.14 acres known as “Eastern Housing Apartment Complex” in Mouza-Shahar Dhaka at present Ramna, District-Dhaka under ward No. 4, Sheet No. 20 of Police Station-Ramna, C.S. Khatian No. 842(Ta)(Kha) and (Enga) corresponding to C.S. Plot No. 79, 80, 88, 40, 85 S.A. Plot No. 732, 593, 592, 718, 574, Dhaka City Plot No. 1.717 and 1748 Mutation Plot No. 536/732 (hereinafter referred to as “the Land”). The said land was originally leased out to one Islam Brothers Properties Ltd. Shahsun Nahar Begum, Mahbubur Rahman, Habibur Rahman and Mostafizur Rahman were owned and possessed by Sub-kabala Deed No. 2926 and they renewed the said lease for further period of 30 years. The Islam Brothers Properties Ltd. and others gave comprehensive Irrevocable General Power of Attorney in favour of Eastern Housing Ltd. vide Deed No. 1754 dated 29.03.1986. The Eastern Housing Ltd. subsequently constructed a multistoried building on the land and the petitioners obtained ownership of the apartments of the building with proportionately land by several deeds. They also mutated their names and possess the same for long time peacefully.

In Writ Petition No. 9637 of 2014, the petitioners are the owners of the land holding No. 81, Segunbagicha proportionately measuring 7.65 katha known as “Basati Ambassador” in Mouza-Kakrail, Police Station-Ramna, District-Dhaka, C.S. Khatian No. 102, C.S. Plot No. 81, S.A. Khatian No. 81 S.A. Plot No. 217, Namjari Khatian No. 66/1, Namjari Plot No. 217 (hereinafter referred to as “the Land”). The said property was originally leased out to one Babu Sarat Chandra Guha. Thereafter, Khan

Bahadur Fazlur Rahman, Mrs. Selina Begum and Mr. Akramuzzaman were owned the aforesaid land by Exchange Deed No. 2685 dated 07.60.1949. Mr. Khan Bahadur Fazlur Rahman died leaving behind Asaduzzaman, Sajeda Begum, Arsaduzzaman, Dr. Asrafuzzaman, Rafiqur Rahman, S.M. Nasrullah Shahid Nasrollah, Saker Nasrullah Sohia Ahmed, Shohed Nasrullah, Bapi Nasrullah, Nijhat Ara Jaman and Mafisha Jaman. Thereafter they renewed the said lease and they gave separate Comprehensive Irrevocable Power of Attorney in favour of Basati Consortium Ltd. in several deeds. The Basati Consortium Ltd. subsequently constructed a multistoried building on the land and the petitioners obtained ownership of the apartments of the building with proportionately land by several deeds. They also mutated their names and possess the same for long time peacefully.

In Writ Petition No. 9638 of 2014, the petitioners are the owners of the land holding No. 342(39)/4, Segunbagicha known as “DOM INNO ALTORA” proportionately measuring 10.83 katha in Mouza-Kakrail, Police Station-Ramna, District-Dhaka, C.S. Khatian No. 39 and 51, S.A. Khatian No. 77, R.S. Khatian No. 50, City Khatian No. 5, C.S. Plot No. 342 and 328, S.A. Plot No. 238, R.S. Plot No. 1533, City Plot No. 6367 and 6368 (hereinafter referred to as “the Land”). The said land was originally leased out to one M. A. Jabbar vide Lease Deed Nos. 2329 and 2331 dated 25.04.1961, M. A. Jabbar died leaving behind his wife-Begum Samerun Nessa, 4 sons- M. A. Samad, M. A. Sattar, M. A. Sobahan, M. A. Selim and 3 daughters-Jebunnessa, Jinia, Sufia Khatun. Thereafter M. A. Samad as plaintiff filed Title Suit No. 281 of 1978 and the suit was decreed by solenama and M.A. Salim as plaintiff also filed Title Suit No. 326 of

1989 against the other co-shares and on 04.12.1991 the suit was decreed by solenama and by the solenama and decree and M.A. Samad, M.A. Sattar, M.A. Sobhan, M.A. Salim, Jebunnessa, Jinia and Sufia Khatun are the owners the aforesaid land and they gave Comprehensive Irrevocable Power of Attorney in favour of M/S. DOM INNO Development Ltd. vide Deed No. 3898 dated 01.11.2003. The said company constructed a multistoried building on the land and the petitioners obtained ownership of the apartments of the building with proportionately land by several deeds. They also mutated their names and possess the same for long time peacefully.

In Writ Petition No. 9639 of 2014, the petitioners are the owners of the land holding No. 18, 18/1, 18/2 and 18/3, Segunbagicha proportionately measuring 0.23 acres known as “Navana Condominium” in Mouza-Kakrail, Police Station-Ramna, District-Dhaka, S.A. Khatian No. 80, S.A. Plot No. 244, J.L. No. 5, Sheet No. 11 (hereinafter referred to as “the Land”). The said land was originally leased out to one Alhaj Mowlana Fazlul Karim by the then Collector of Dhaka vide Lease Deed No. 4306 dated 22.11.1946 for a period of 30 years and S.A. record was prepared in his name. The Government renewed the said lease for another 30 years vide Order dated 22.10.1964 in Settlement Case No. 87 of 1963-64 and the said renewal of lease was registered on 18.05.1978. He gave the said land to Mahmudul Karim, Nurjahan Begum, Samsunnahar Begum and Rajia Begum on 22.01.1979 by way of oral gift they gave Comprehensive Irrevocable Power of Attorney in favour of Navana Real Estate Ltd. vide Deed No. 2973 dated 19.10.1997. The said company constructed a multistoried building on the land and the petitioners obtained ownership of

the apartments of the building with proportionately land. They also mutated their names and possess the same for long time peacefully.

In Writ Petition No. 3297 of 2014, the petitioners are the owners of the land holding No. 118 proportionately measuring 0.30 acres known as “Segunbagicha Apartment Complex” in Mouza-Bijoynagar at present-Kakrail under Ward No. III, Sheet No. 20 of Police Station-Ramna, Touzi No. 15725, K.M. Plot No. 77 in Khatian No. 13 corresponding to S.A. Plot No. 210, S.A. Khatian No. 62 of mouza previously Bijoynagar, now Kakrail, Police Station-Raman, District-Dhaka (hereinafter referred to as “the Land”). The said land was originally leased out to one Rashik Chandra Basu for a period of 29 years with effect from 01.04.1932 to 31.03.1961 by the Collectorate of Dhaka on 09.01.1932 vide Deed No. 700 for the year 1932 of the Sadar 2nd Joint Sub-Registrar, Dhaka. Rashik Chandra Basu died on 15.9.1934 leaving behind 5 sons to inherit the said plot and all the 5(five) sons of Rashik Chandra Basu jointly transferred the plot in favour of the then Muslim Commercial Bank Ltd. on 06.01.1948. The Muslim Commercial Bank sold the said plot on 04.07.1952 vide Sale Deed No. 4588 to the Free School Street Property Limited, a private limited company incorporated under the Companies Act, 1913 of 14-15, Motijheel Commercial Area, Motijheel, Dhaka. The period of lease expired on 31.03.1961 and the aforesaid company as lessee applied for renewal of the lease. Being satisfied the lessor that is the Government of East Pakistan granted the prayer under Memo No. 6195/1-(2)/Rev.IX/76/Misc. Settlement Case No. 167/78 dated 10.11.1978 of the ADC (Revenue), Dhaka and renewed the Lease for 30 years with effect from 1st April, 1961 to 31st March, 1991 vide Deed No. 39938 dated 19.09.1979.

In 1985, the Government issued a Circular under which long term lease would be deemed to be permanently settled and no further renewal would be necessary. The relevant part of the Circular dated 17.10.1985 is set out below for ease of reference:

ভূমিপ্রশাসন ও ভূমিসংস্কার মন্ত্রণালয়

শাখা-৮

স্মারক নং- ৮-২৮/৮৫/১০২৩ (৬৪)

তারিখ: ১৭/১০/১৯৮৫ইং

প্রাপকঃ জেল প্রশাসক,
ঢাকা।

বিষয়ঃ অকৃষি খাস জমি ইজারার মেয়াদ নবায়ন সংক্রান্ত।

উপরোক্ত বিষয়ে নিম্নস্বাক্ষরকারী আদিষ্ট হইয়া জানাইতেছেন যে, সরকার সিদ্ধান্ত দিয়াছেন যে, পূর্বতন খাস মহালের অকৃষি জমি যাহা চিরস্থায়ী নবায়ন যোগ্য দীর্ঘ মেয়াদী লীজ ছিল তাহা স্থায়ী বন্দোবস্ত বলিয়া বিবেচনা করা হইবে এবং ভবিষ্যতে কোন নবায়নের প্রয়োজন হইবে না।

সরকার আরোও সিদ্ধান্ত গ্রহণ করিয়াছেন যেসব ইজারাদার দেশ ত্যাগ করিয়াছেন এবং ইজারার মেয়াদ উত্তীর্ণ হওয়ার পরও ইজারার মেয়াদ নবায়ন করার কোন আবেদন পাওয়া যায় নাই সে সব জমি খাস দখলে নেওয়া হইবে।
প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য তাঁহাকে অনুরোধ করা যাইতেছে।”

There was another circular issued by the Senior Assistant Secretary, Section-8, Ministry of Land, Administration and Land Reformation vide Memo No. 8-393/86/1456 dated 12.11.1986, where it was specifically mentioned that long term lease would be recognized as permanent settlement and no further permission would be necessary for any subsequent transfer.

After obtaining ownership of the Land, the original lessee, his transferees and subsequent transferees and their successors have been possessing the land for more than 80(eighty) years and in the meantime, the said Land has developed into 32 residential apartments along with commercial spaces. Mutation Khatian was also prepared in the names of the petitioners against the apartments as well as commercial spaces.

Recently, when the petitioners went to the concerned authority for paying government rents against the apartments, the authority refused to accept rent from them on the ground that the earlier circular/order dated 17.10.1985 had been cancelled by order dated 07.06.2005 and since the tenure of lease has expired therefore, the Land has become khas and rent against the same cannot be accepted. The relevant part of the order dated 07.06.2005 is set out below for ease of reference:

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
ভূমি মন্ত্রণালয়
শাখা-৮

স্মারক নং- ভূঃমঃ/শা-৮/খজব/৬৬/২০০১/৪৬৮(৬৪) তারিখ: ০৭/০৬/২০০৫ইং
প্রাপকঃ জেলা প্রশাসক (সকল),
ঢাকা।

বিষয়ঃ দীর্ঘ মেয়াদী বন্দোবস্তীয় খাস জমির নবায়ন প্রসঙ্গে।

সূত্রঃ মন্ত্রণালয়ের স্মারক নং-৮-২৮/৮৫/১০২৩(৬৪), তারিখঃ ১৭/১০/১৯৮৫ইং

উপরোক্ত বিষয়ে আদেশক্রমে জানানো যাইতেছে যে, অকৃষি খাস জমির দীর্ঘ মেয়াদী লীজ নবায়ন সংক্রান্ত বিষয়ে মন্ত্রণালয় হইতে জারীকৃত ১৭/১০/১৯৮৫ইং তারিখের ৮-২৮/৮৫/১০২৩(৬৪) নং স্মারক (ছায়ালিপি সংযুক্ত) নির্দেশক্রমে বাতিল করা হইল।

২। উপরোক্ত মর্মে প্রয়োজনীয় কার্যক্রম গ্রহণের জন্য অনুরোধ করা হইল।”

Thereafter, another circular was issued by the Deputy Secretary, Secretary Section-8, Ministry of Land vide Memo No. ভূঃমঃ/শা-৮/খজব/১৩৫/২০১১/৫৮৯ dated 10.05.2011 which requires deposit of 25% of the market value of the Land has to be deposited as pre-condition for transfer of the Land and 30% of the lease money as pre-condition of renewal of lease. The relevant part of the order dated 10.05.2011 is set out below for ease of reference:

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
ভূমি মন্ত্রণালয়
অধিশাখা-৮
পরিপত্র

স্মারক নং- ভূঃমঃ/শাখা-৮/খজব/১৩৫/২০১১/৫৮৯ তারিখঃ ১০/০৫/২০১১খ্রিঃ

বিষয়ঃ আবাসিক উদ্দেশ্যে দীর্ঘমেয়াদী বন্দোবস্তকৃত খাস মহালভুক্ত অকৃষি জমি ইজারা নবায়ন।

ভূমি মন্ত্রণালয়ের অধীন দীর্ঘমেয়াদী (৩০ বছর মেয়াদী) বন্দোবস্তকৃত খাস মহালভুক্ত অকৃষি খাস জমির ইজারা নবায়ন নিম্নোক্ত ভাবে করার সিদ্ধান্ত নেয়া হয়েছেঃ-

(ক) ত্রিশ বছর করে পর পর দুইবার ইজারা নবায়ন করলে এবং নব্বই বছর ইজারার মেয়াদ পূর্ণ হলে আর নবায়নের প্রয়োজন হবে না।

(খ) ইজারা গ্রহীতার ওয়ারিশগণ উত্তরাধিকারী হিসেবে স্থলাভিষিক্ত হবেন এবং ওয়ারিশগণের মধ্যে হস্তান্তরে সরকারের অনুমতির প্রয়োজন হবে না;

(গ) ইজারাকৃত জমিওয়ারিশ ব্যতীত অন্যত্র হস্তান্তরের পূর্বে দলিলের শর্ত মোতাবেক ভূমি মন্ত্রণালয়ের পূর্বানুমতি নিতে হবে। এক্ষেত্রে হস্তান্তরের জন্য প্রস্তাবিত জমির বাজার মূল্যের ২৫% টাকা সরকারি খাতে জমা দিতে হবে;

(ঘ) ইজারা গ্রহীতার অজ্ঞতার কারণে সরকারের অনুমতি ব্যতিরেকে ইতোমধ্যে ইজারাকৃত জমি হস্তান্তরিত হয়ে থাকলে সংশ্লিষ্ট জেলা প্রশাসক হস্তান্তরের ফি বাবদ বাজার মূল্যের ৩০% টাকা নির্ধারণ পূর্বক মন্ত্রণালয়ে প্রেরণ করলে ইজারা নবায়নের বিষয়টি ভূমি মন্ত্রণালয়ে বিবেচনা করবে।”

Being aggrieved, the petitioners in all the writ petitions have moved this Division and obtained the instant Rules.

The learned Counsels appearing for the petitioners submit that once having treated the 30 years lease a perpetual lease, the respondents cannot once again treat the said lease as periodical lease. The learned Counsel further submits that the respondents do not have the power to cancel the operation of the Circular dated 17.10.1985 so as to affect the right of the petitioners. The learned Counsel also submits that the respondents do not have powers to give retrospective effect to the impugned order dated 01.06.2005. It was further submitted that the order dated 10.05.2011 also affects the rights of the petitioners in the same way as the order dated 07.06.2005, as the order dated 10.05.2011 purports to include the requirement of renewal of lease. On these, among other counts, the learned Counsels for the-petitioners submit that the Rules should be made absolute.

The Rules are opposed by Respondent No. 1 by filing Affidavits-in-Opposition wherein it is argued that the issues involved in these cases are lease-hold properties matter of no-agricultural land and so that terms and

conditions of the leases are very much important to settle the case but it was not placed by the petitioners. As per the terms and conditions No.4 of the standard lease agreement of Non-Agricultural Land, the leasehold properties cannot be transferred to any third party (excepting to the valid heirs) without any prior approval of the Ministry of Land/Government of Bangladesh and the properties would have to be mutated in the names of the transferee once so transferred. More so, as per the condition No.5 of the lease agreement, 25% of market value of the properties would have to be paid to the Government as transfer fees in case of any transfer to any third party without any prior approval of government.

Respondent No. 1 further argued that Section-8 of the then Ministry of Agricultural Administration and Land Reforms issued a letter dated 17.10.1985 as regards renewal of lease, which was subsequently cancelled by the Ministry of land on 07.06.2005 for the public interest and public policy. More so, the letter dated 17.10.1985 lost its legal force by the Non-Agricultural Khas Land Settlement Policy 1995. It is stated that by the letter dated 17.10.1985, it was told that non-agricultural khas land would not require any renewal subject to some conditions but it did not alter/amend any terms and conditions of the lease agreement meaning that it did not affect the above referred terms and conditions no.4 and 5 in any events. On the other hand, by the letter dated 07.06.2005, the respondent government did not curtail any substantive right of any leasehold owners, rather it prescribes the management and control of such property only and so it is not detrimental to the petitioners in any way. Besides, in the instant cases, leasehold properties were transferred without prior approval of the government violating the said terms and conditions, which ultimately

attracts breach of contract as well as termination/determination of contract at the option of the Government. In addition, in the event of such kind of unauthorized transfers of leasehold properties, there are no trace of present possessor of such leasehold properties in the records of the respondent government and thereby risking the management and control of the respondent government over the said leasehold properties. More so, the respondent government suffered huge revenue loss by successive several transfer of almost all leasehold properties and so the respondent government issued such letters for better management and revenue collection without putting the petitioners at fault, rather if the lease was once determined for violation of terms and conditions of lease by lessee, it would cause hardship for the subsequent third party buyers/ possessors and so, the respondent government to make the matter easy for them issued another letter on 15.09.2011 giving an opportunity of renewal of such leasehold properties in their names. It is also contention of the respondent no. 1 that the Government has the right to cancel its earlier order.

Respondent no. 1 also submits that the petitioners are illegal possessors of the leasehold properties in violation of lease agreement and so they have no locus standi in the instant cases. Petitioners have made their ownership story in such a way that there has been a threat from petitioners to wipe out/erase the government authority completely over the leasehold properties so that the government would lose controlling authority of such lands/ properties. In addition, the issue involves disputed question of facts and so the proper remedy lies before the court below, not in the writ jurisdiction and hence, it may be discharged for the ends of Justice.

We have heard the learned Counsels for the petitioners and the learned Deputy Attorney General at length. We have also perused the writ, petitions; the different pleadings filed and the documents annexed therein. We agree with the learned Deputy Attorney General that the Government has the right to cancel its earlier order. We also agree that the order dated 10.05.2011 is reflective of the policy decision of the Government regarding extension of lease. However, the issue before this Division is different. The issue is whether it is permissible for the Government to take away a right created by an executive order through subsequent executive order.

In order to resolve this issue, it is important to understand whether any right has in fact been created in favour of the petitioners. The original lease deeds were executed on different dates which have already been mentioned above. The tenure of leases was further renewed by the respective lease deeds. During the validity period of the leases, the Government issued the Circular dated 17.10.1985, holding সরকার সিদ্ধান্ত দিয়াছেন যে, পূর্বতন খাস মহালের অকৃষি জমি যাহা চিরন্তন নবায়ন যোগ্য দীর্ঘ মেয়াদী লীজ ছিল তাহা স্থায়ী বন্দোবস্ত বলিয়া বিবেচনা করা হইবে এবং ভবিষ্যতে কোন নবায়নের প্রয়োজন হইবে না। Therefore, since 1985, the leases granted in favour of the predecessor of the respective petitioners in respect of the land, was deemed to be permanently settled. In addition, there was another circular issued by the Senior Assistant Secretary, Section -8, Ministry of Land, Administration and Land Reformation vide Memo No. 8-393/86/1456 dated 12.11.1986, where it was specifically mentioned that long term leases would be recognized as permanent settlement and no further permission would be necessary for any subsequent transfer.

Now, the question is whether the impugned order dated 07.06.2005 could be issued. In our view, the Government can issue order dated 07.06.2005. However, the order dated 07.06.2005 cannot operate to curtail the rights of the petitioners and the co-sharers in whose favour the land had been permanently settled and/or in favour of those who have subsequent to the permanent settlement, acquired interest and/or right over the land. In our view, the order dated 07.06.2005 can operate prospectively and not retrospectively.

It must be borne in mind that there has been substantial change in the idea of the role of government and its relation to its people. It has become a settled position of law that where the government makes a promise knowing or intending that it would be acted on by the promise, acting in reliance on it, alters his position, the Government would be bound by the promise and the promise would be enforceable against the Government at the instance of the promise. Everyone is subject to the law as fully and completely as any other and the Government is no exception. That being the position, in our view, the: order dated 07.06.2005 cannot be applied to the case of the petitioners as the Land has already been permanently settled, the Land was developed after obtaining permission from the regulator(s), building was constructed on the land and some of the apartments were sold. Respondents are, in our judgment, not exempt from liability to live up to its own promise arising out of the order dated 17.10.1985 and 12.11.1986 respectively relying upon which the petitioners have altered their position to their prejudice.

Let us now deal with the order dated 10.05.2011 which contemplates the necessity of renewal. This order, in our view, is intended for those

leases which have been entered into after 07.06.2005 and not those leases which have already been permanently settled in favour of the lessees. To hold otherwise would give rise to absurdity because then the lessee(s) in whose favour lease(s) have been permanently settled would need to treat the leases as temporary leases and take steps to renew. The order dated 10.05.2011, the legality of which has also been challenged, in our view is also not applicable in case of the petitioners since the Land had already been permanently settled.

We would like to point out that it cannot be the intention of the respondents that the operation of the impugned order dated 07.06.2005 would cancel the leases/require further renewal of those leases which have been permanently settled in terms of the order dated 17.10.1985. To hold otherwise would be to permit change of classification of the leases. In respect of the Land, to hold otherwise would mean that executives would be permitted to treat a permanently settled lease as “renewable”.

So how do the orders dated 07.06.2005 and 10.05.2011 become relevant? In our view, the effect of the order dated 07.06.2005 is that long term leases entered after 07.06.2005 will need to be renewed, in terms of the lease since forth 07.06.2005, the order dated 17.10.1985 stands cancelled. Renewal of any long terms lease(s) entered into after 07.06.2005 would need to be in accordance with the order dated 10.05.2011. As an illustration, if a lease is granted in 2006 for a period of 30 years, such lease would need to be renewed in terms of the lease agreement and in light of the order dated 10.05.2011; such lease would not automatically be regarded as being permanently settled.

In the instant case, the lease of the Land had been permanently settled and not only that, the office of the Deputy Commissioner confirmed that the lease had been permanently settled and that no further renewal would be necessary. The respondents relying upon the order dated 07.06.2005 and 10.05.2011 refused to accept rent from the petitioners. That in our view is completely misconceived and erroneous. The respondents have simply failed to understand the actual legal position in refusing and have taken into consideration irrelevant factual and legal circumstances. This justifies interference by this Division.

It can additionally be argued that the circular dated 17.10.1985 issued during the Martial Law Proclamations etc. made during the period from 24th March, 1982 to 11th November, 1986 is illegal and void ab initio. However, the Hon'ble Appellate Division, in the case of *Siddique Ahmed vs Bangladesh* reported in 69 DLR(AD) (2013) 8, in clear terms, provisionally condoned all orders made, acts and things done, actions and proceedings taken and trial conducted, during the martial law period which are past and closed on the age-old maxim 'salus populi est suprema lex'. The Hon'ble Appellate Division also vested power upon the Hon'ble High Court Division to exercise its extraordinary powers under Article 102 of the Constitution if equally efficacious remedy is not available. In view of the above judgment, we are inclined to hold that circular dated 17.10.1985 is valid and suffers from no illegality.

From the aforesaid discussion, we are inclined to dispose of the Rules.

Accordingly, the Rules are disposed of with the following directions:

- (a) The orders dated 07.06.2005 bearing স্মারক নং- ভূমঃ/শা-
চ/খজব/৬৬/২০০১/৪৬৮(৬৪) and 10.05.2011 bearing স্মারক নং- ভূমঃ/শা-
চ/খজব/১৩৫/২০১১/৫৮৯ are not applicable in respect of the Land in
question of the petitioners;
- (b) The respondents are directed to register and mutate the flats
located on the Land belonging to the petitioners if required;
- (c) The respondents are further directed to accept rent from the
petitioners, when payable.

In view of the discussions made above, the petitioners are liberty to
mutate their names in the concerned land offices and pay necessary land
development taxes, if so advised.

The respondents are directed to positively ensure that our directions
regarding registration of sale deeds, registration and mutation of the flats, if
any, and acceptance of rent set out in (b) and (c) above are complied with
without fail, within 1(one) month from the date of receipt of the copy of the
Judgment and Order.

There shall, however, be no order as to costs.

Communicate our Judgment and Order at once, for immediate
compliance.

Razik-Al-Jalil, J:

I agree