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

WRIT PETITION NO. 9051 of 2018

IN THE MATTER OF:
An Application under Article 102 of the Constitution of the People's Republic of Bangladesh
-AND-
IN THE MATTER OF:
The Government of the People's Republic of Bangladesh.
..... Petitioner
-Versus-
Chairman, The First Court of Settlement, Segunbagicha, Dhaka and another.
.....
Respondents
Mr. Kazi Mynul Hassan, D.A.G with
Mr. Sukumar Biswas, Advocate
..... For the Petitioner

Dr. Kazi Akter Hamid, Senior Advocate with
Mr. Nakib Saiful Islam, Advocate with
Mr. Nazmul Hassan Ruble, Advocate with
Mr. Mohammad Abul Hashem Advocate with
Mr. Pannu Khan, Advocate with
Mr. Mohammad Alauddin, Advocate
……for the respondents
And
WRIT PETITION NO. 7082 of 2015

IN THE MATTER OF:
An Application under Article 102 of the Constitution of the People's Republic of Bangladesh
-AND-
IN THE MATTER OF:
Abed Khan
..... Petitioner
-Versus-
The Government of Bangladesh and another
.....
Respondents
Mr. Md. Abul Hashem, Advocate
..... For the Petitioner
Mr. Kazi Mynul Hassan, DAG with
Mr. Md. Nazrul Islam Khandakker, AAG
……for the respondents

Heard on 26.10.2022, 27.10.2022, 02.11.2022, 03.11.2022, 09.11.2022, 10.11.2022, 14.11.2022, 15.11.2022 and 16.11.2022.
Judgment delivered on 21.11.2022

Present:
Mr Justice Md. Ashfaqul Islam
And
Mr Justice Md. Shohrowardi

Md. Shohrowardi, J.

Effect of fraud on Court and whereabouts of the owner of House No. 139/A (now House No. 29), Road No. 2, Dhanmondi Residential Area, Dhaka when the P.O. No. 16 of 1972 was promulgated on 28.02.1972 are the core issues in these Rules. Therefore, both Rules were heard analogously and disposed of by this single judgment.

On an application filed under Article 102 of the Constitution of the People's Republic of Bangladesh by the petitioner Abed Khan Rule Nisi was issued on 06.07.2015 in Writ Petition No. 7082 of 2015 in the following terms;

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the enlistment of the property scheduled at 139/A, Dhanmondi Residential Area, Dhaka, (now House No.29, Road No.2), Dhanmondi Residential Area, Dhaka, from the Gazette of 28.04.1986 as abandoned property (Annexure-C) published in the Ka (wrongly written as Kha) *schedule should not be declared to have been published without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper."*

On an application filed by the Government of the People's Republic of Bangladesh under Article 102 of the Constitution Rule Nisi was issued on 31.07.2018 in Writ Petition No. 9051 of 2018 in the following terms;

> *"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the judgment and order dated 16.7.1997 passed by the First Court of Settlement in Settlement Case No. 84 of 1996. (Ka-1, Dhanmondi, Dhaka. Page 9762 (14) allowed the case and directed for exclusion of the House No. 139/A. Road No.1. Dhanmondi Residential Area, Dhaka from the Ka' list of the Abandoned Buildings prepared and published in the Bangladesh Gazette (Extra-Ordinary) on 23.9.1986 (as contained in Annexure-*

B) should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further under or orders as to this court may seem fit and proper."

Relevant facts for the disposal of the Rule Nisi issued in Writ Petition No. 7082 of 2015 are that Abdul Hakim Khan, father of the petitioner, obtained a lease of the property being House No. 139/A (Present House No. 29, Road No. 2), Dhanmondi Residential Area, Dhaka from the Communication, Buildings and Irrigation (C&B) Department, (Town Planning Branch) of the then Government of East Pakistan for 99(ninety-nine) years and Lease Deed No. 8378 dated 11.11.1957 was registered in the Office of the Sadar Sub-Registrar, Dhaka. Thereafter, Abdul Hakim Khan started construction of the house but he died on 26.01.1963 and at that time, the petitioner was a minor. A part of the building was rented out to the tenants and during the war of liberation, the relevant documents relating to the said property was destroyed since the petitioner left the country to participate in the war of liberation. Thereafter, the mother of the petitioner gifted the house in favour of the petitioner but the government vide gazette notification dated 28.04.1986 (Annexure-C) enlisted the said house in the 'Ka' list of abandoned buildings. The petitioner claimed that he is a Bangladeshi citizen by birth and the mother of the petitioner was also a bonafide Bangladeshi citizen by birth. Therefore, there is no reason for the inclusion of the disputed property in the 'Ka' list of abandoned buildings. The petitioner filed a supplementary affidavit on 06.11.2022 stating that respondent No. 2, S. Nehal Ahmed, of Writ Petition No. 9051 of 2018 is also personally known to him for about five decades and his father Nizam Uddin was also well known to the petitioner and S. Nehal Ahmed is the actual and real S. Nehal Ahmed. He has also stated that earlier the petitioner prayed for the exclusion of the building from the 'Ka' list of abandoned property published in the gazette notification dated 28.04.1986 but the learned Advocate for the petitioner inadvertently did not challenge the judgment and order dated 15.12.1992 passed by the First Court of Settlement, Dhaka in Settlement Case No. 408 of 1989.

Respondent No. 1 has filed an affidavit-in-opposition stating that the father of the petitioner sold the house in question in favour of S. Jamil Akter, S. Jalil Akter and Nehal Ahmed, sons of S. Nezam Uddin, by register Deed No. 8656 dated 28.12.1960. Therefore, the petitioner has no right, title or interest in the disputed house and he has no *locus standi* to file the writ

petition. The Gazette Notification dated 28.04.1986 was published under section 5(1) of Ordinance No. LIV of 1985 and subsequently the same was cancelled by SRO No. 364-L/86 dated 23.09.1986. It is asserted that earlier the petitioner along with 8 (eight) other heirs of Abdul Hakim Khan filed an application before the First Court of Settlement, Dhaka under Section 7 of the Abandoned Buildings (Supplementary Provisions) Ordinance, 1985 which was registered as Settlement Case No. 408 of 1989 (Annexure-2) for release of the House No. 139/A(Present House No. 29), Road No. 2, Dhanmondi Residential Area, Dhaka from the list of abandoned buildings as published in the gazette notification dated 28.04.1986. In Settlement Case No. 408 of 1989, the applicants examined 7 witnesses including the petitioner as P.W. 4. The First Court of Settlement, Dhaka by judgment and order dated 15.12.1992 in Settlement Case No. 408 of 1992 has held that the whereabouts of S. Jamil Akter, S. Jalil Akter and Nehal Ahmed, the vendees of the Abdul Hakim Khan, were not known when the P.O. No. 16 of 1972 was promulgated on 28.02.1972. Therefore, the house was rightly enlisted in the 'Ka' list of abandoned property. The claimants of Settlement Case No. 408 of 1989 did not challenge the judgment and order dated 15.12.1992 passed by the First Court of Settlement, Dhaka in Settlement Case No. 408 of 1989.

Relevant facts leading to the issuance of the Rule Nisi issued in Writ Petition No. 9051 of 2018, in a nutshell, are that the House No. 139/A, Dhanmondi Residential Area, Road No. 2, Dhaka was leased out in favour of one Abdul Hakim Khan by the then Government of East Pakistan by registered lease Deed No. 8378 dated 11.11.1957 who paid the lease money in favour of the Government. Abdul Hakim Khan transferred the property in favour of (1) S. Jamil Akter (2) S. Jalil Akter and (3) Nehal Ahmed, sons of Nezam Uddin. Since the owners of the house left the country and their whereabouts were not known to the government when P.O. No. 16 of 1972 was promulgated on 28.02.1972, the disputed house was enlisted in the 'Ka' list of the abandoned property and the government had taken over possession of the said house and subsequently allotted the house in favour of the government officials and till today the government is possessing the house by giving allotment to the government officials. Nehal Ahmed did not file any application under Article 15 (1)(2) of the P.O. No. 16 of 1972 for the release of the property in question before the competent authority and rent receipt, utility bills, wasa bills, electricity bills and telephone bills

of the said house claimed to have been paid at the relevant time were not produced before competent authority after the promulgation of the P.O. No. 16 of 1972. Present S. Nehal Ahmed is an imposter claimant. Original Nehal Ahmed and his brothers were non-Bengali and they left Bangladesh at the time of the War of Liberation in 1971. Since the owners of the house were non-Bengali, they did not file any application to the government stating that they managed, controlled and supervised the disputed house at the material point of time and the house is not an abandoned property. In Settlement Case No. 84 of 1996, imposter S. Nehal Ahmed was not examined and no evidence was adduced by the claimant. The First Court of Settlement, Dhaka passed the impugned judgment and order without any basis of evidence illegally directing the government to exclude the disputed house from the 'Ka' list of abandoned property. In the application filed under Section 7(1) of Ordinance No. 54 of 1985, the claimant did not annex any document to prove his whereabouts on 28.02.1972. The petitioner has filed several affidavits stating that the government machinery has to move through various departments/organs for correspondents which takes a long time although there is no statutory period of limitation for filing the writ petition. After passing the impugned judgment and order by the First Court of Settlement, Dhaka the concerned Ministry formed an opinion in 1997 for filing a writ petition and the Ministry of Housing and Public Works Department took initative to scrutinised the relevant documents of Nehal Ahmed and at that time, some discordant has been detected against the claimants' identity and whereabouts. One Md. Toha and 8 others as claimants including Abed Khan filed Settlement Case No. 408 of 1989 in the First Court of Settlement, Dhaka for exclusion of the House No. 139/A, Dhanmondi Residential Area, Dhaka and after adducing evidence and hearing the parties, the First Court of Settlement, Dhaka by judgment and order dated 15.12.1992 dismissed the case holding that whereabouts of the S. Jamil Akhtar, S. Jalil Akhtar and Nehal Ahmed, the vendees of Abdul Hakim Khan, are not known and the building was rightly included in the list of abandoned buildings. Nothing has been stated by the claimant S.Nehal Ahmed in Settlement Case No. 84 of 1996 as regards the judgment and order dated 15.12.1992 passed in Settlement Case No. 408 of 1989. The claimant by suppressing facts and practicing fraud upon the Court obtained the impugned judgment from the First Court of Settlement, Dhaka.

The petitioner also stated that there is no endorsement of the First Court of Settlement, Dhaka on the application filed by S. Nehal Ahmed under Section 7(1) of the Ordinance No. XIV of 1985(Annexure-C) and no date has been mentioned on said application by the First Court of Settlement, Dhaka as regards the acceptance of the said application on 08.01.1987. In the said application the claimant S. Nehal Ahmed put his initial in English at the bottom of the application and he was not examined in the case. After alleged ousting from the disputed house, S. Nehal Ahmed did not lodge any G.D entry in the concerned police station and no evidence has been adduced before the First Court of Settlement, Dhaka to prove his whereabouts. Therefore, the findings of the First Court of Settlement, Dhaka regarding his presence at the relevant time are based on no evidence.

Respondent No. 2 has filed an affidavit-in-opposition stating that the disputed house originally belonged to one Abdul Hakim Khan who obtained the lease from the Government of East Pakistan on the basis of the registered deed No. 8378 dated 11.11.1957. He paid the lease money to the government following the lease agreement and possession of the said house was also handed over in favour of the lessee Abdul Hakim Khan who subsequently transferred the disputed house by registered deed No. 8656 dated 28.11.1960 in favour of S. Jamil Akter, S. Jalil Akter and S. Nehal Ahmed, sons of S. Nezam Uddin and handed over the possession of the house in favour of the transferee. Subsequently, S. Jamil Akhtar and S. Jalil Akhter, brothers of respondent No. 2, transferred their respective shares of the plot/house to respondent No. 2 by oral gift through an affidavit dated 10.01.1969. Subsequently, the property was mutated in the name of respondent No. 2 on 16.12.1969 and he was in possession of the said house till eviction by the miscreants after liberation.

By filing supplementary affidavits respondent No. 2 further stated that the First Court of Settlement, Dhaka passed the impugned judgment in the year 1997 and after that respondent No. 2 filed Writ Petition No. 2653 of 2005 for implementation of the impugned judgment and the Hon'ble High Court Division by judgment and order dated 05.04.2006 made the Rule Nisi absolute directing the government to hand over possession of the house to the respondent No. 2. Thereafter, the Government implemented the impugned judgment and order dated 16.07.1997 passed in Settlement Case No. 84 of 1996 by gazette dated 23.08.2012 cancelling the gazette notification dated 23.09.1986. Thereafter, the government again cancelled

the said gazette notification dated 23.08.2012 by notification dated 16.06.2013 against which the petitioner again filed Writ Petition No. 688 of 2014 challenging the cancellation of the gazette notification dated 23.08.2012 and the High Court Division by judgment and order dated 08.12.2014 made the Rule absolute against which the petitioner filed C.P. No. 2427 of 2018 and after dismissal of the C.P. No. 2256 of 2017 and C.P. No. 2427 of 2018 filed the instant writ petition after about 27 years. Therefore, the writ petition is not maintainable in law.

The learned Advocate Mr. Md. Abul Hashem appearing on behalf of the petitioner of Writ Petition No. 7082 of 2015 submits that Abdul Hakim Khan, father of the petitioner, is the owner of the property and the petitioner and his mother who is the bonafide citizen of Bangladesh by birth inherited the property from his father. The petitioner is a bonafide freedom fighter and the house was enlisted in the list of abandoned property without forming any opinion that the activity of the petitioner was prejudicial to the interest of Bangladesh. Therefore, the impugned gazette notification published including the house of a bonafide freedom fighter in the list of abandoned property is liable to be declared to have been done without lawful authority and of no legal effect. Therefore, he prayed for making the Rule absolute.

The learned Deputy Attorney General Mr. Kazi Mynul Hassan appearing along with learned Advocate Mr. Sukumar Biswas on behalf of the petitioner in Writ Petition No. 9051 of 2018 as well as on behalf of respondent No. 1 in Writ Petition No. 7082 of 2015 submits that at the time of promulgation of the P.O. No. 16 of 1972 on 28.02.1972 the whereabouts of the owner of House No. 139/A, Dhanmondi Residential Area, Dhaka was not known and the government took over the possession of the house and legally enlisted the said house in the list of abandoned property vide Gazette notification dated 23.09.1986 published under Section 5(1) of the Ordinance No. XIV of 1985. He further submits that the First Court of Settlement, Dhaka by judgment and order dated 15.12.1992 passed in Settlement Case No. 408 of 1989 has decided that the whereabouts of the owner of the house in question was not known on 28.12.1972 when the P.O. No. 16 of 1972 was promulgated and the case building was rightly included in the list of abandoned property and no one has challenged the judgment and order dated 15.12.1992 passed by First Court of Settlement, Dhaka in Settlement Case No. 408 of 1989. Therefore, the subsequent judgment

passed in Settlement Case No. 84 of 1996 regarding the same property is a nullity. He further submits that after passing the judgment in Settlement Case No. 408 of 1989 some vested quarter suppressing the said judgment filed another application showing antedate i.e. 08.01.1987 to save the limitation of 108 days for filing an application as provided in Section 7(1) of the Ordinance No. XIV of 1986 and fraudulently obtained the impugned judgment and order suppressing material facts. Therefore, subsequent Settlement Case No. 84 of 1996 is barred by law.

Learned Senior Advocate Mr Kazi Aktar Hamid appearing on behalf of respondent No. 2 along with learned Advocate Mr Nakib Saiful Islam submits that although respondent No. 2 is a non-Bengali but he is a Bangladeshi citizen by birth and he never left the country after liberation and he also obtained a passport from the concerned authority and his name was also published in the voter list in 1983 by the Election Commission. Therefore the property of a Bangladeshi citizen cannot be treated as abandoned property. He further submits that the impugned judgment passed by the First Court of Settlement, Dhaka has reached its finality by our Apex Court and the government was well aware of the impugned judgment. Therefore the instant writ petition filed after about 27 years is not maintainable in law. In support of his submission, the learned Advocate for respondent No. 2 has relied on the decisions made in the case of Bangladesh vs Rehna Kamal and others reported in 56 DLR (AD) 1, Executive Engineer, Public Works Department and others vs. Md. Nizamuddin and others, reported in XV (ADC) 32, Government of Bangladesh, represented by the Secretary, Ministry of Housing and Public Works, Dhaka and others vs Tahera Begum, reported in 73 DLR (AD) 356, Murtuza Shah (Md) and another vs. Ataharul Haque and others reported in 72 DLR (AD) 231 and the judgment passed in Special Leave Petition (C) Diary No. 9217 of 2022 passed by Supreme Court of India.

On the contrary, the learned Deputy Attorney General Mr Kazi Mynul Hassan candidly submits that respondent No. 2 by suppressing judgment and order dated 15.12.1992 passed by First Court of Settlement, Dhaka in Settlement Case No. 408 of 1989 filed Writ Petition Nos. 2653 of 2005 and 688 of 2014 and at the time of pronouncement of the judgment in those writ petitions, the judgment and order dated 15.12.1992 passed in Settlement Case No. 408 of 1989 was not available before the High Court Division and respondent No. 2 by practicing fraud and suppressing material

facts upon the Court obtained the judgments from the First Court of Settlement, Dhaka in Settlement Case No. 84 of 1996 and Writ Petition Nos. 2653 of 2005 and 688 of 2014. He further submits that since respondent No. 2 by practicing fraud obtained the impugned judgment from the First Court of Settlement, Dhaka as well as from this division in those writ petition, the instant writ petition is maintainable in law. He also submits that there is no particular time limit for filing a writ petition and the petitioner explained the cause of delay in filing the writ petition. Therefore the writ petition is maintainable in law. Learned Deputy Attorney General has drawn our attention to the decisions made in the case of the Government of Bangladesh and another vs. Mashiur Rahman and others, reported in 6 BLT (AD) 73, Saifur Rahman and others vs. Haider Shah and another, reported in 19 DLR (SC) 433, Abul Khair Mia vs. Abdul Latif Sardar, reported in 32 DLR (AD) 167 and Government of the People's Republic of Bangladesh vs. Abdur Sobhan and others, reported in 73 DLR (AD) 1 and tried to impress upon us submitting that fraud vitiates everything.

He also submits that the petitioner of Writ Petition No. 7082 of 2015 suppressing the judgment and order dated 15.12.1992 passed in Settlement Case No. 84 of 1996 filed the writ petition and fraudulently obtained the Rule Nisi. Therefore, Rule Nisi is liable to be discharged with costs.

We have considered the submissions of the learned Deputy Attorney General Mr. Kazi Mynul Hassan who appeared along with the learned Advocate Mr. Sukumar Biswas on behalf of the petitioner in Writ Petition No. 9051 of 2018 and the submissions of the learned Advocate Mr. Md. Abul Hashem who appeared on behalf of the petitioner in Writ Petition No. 7082 of 2015. We have also considered the submissions of the learned Senior Advocate Mr. Dr. Kazi Aktar Hamid who appeared along with the learned Advocate Mr. Nakib Saiful Islam on behalf of respondent No. 2 in Writ Petition No. 9051 of 2018 and the learned Deputy Attorney General Mr. Kazi Mynul Hassan who appeared on behalf of the respondent No. 1 in Writ Petition No. 7082 of 2015. We have also meticulously examined records and writ petitions, and the affidavit-in-oppositions filed by the respective parties and the judgment and order passed in Settlement Case Nos. 408 of 1989 and 84 of 1996.

Since the issue as regards maintainability of the Writ Petition No. 9051 of 2018 has been raised by respondent No. 2, it is required to address the issue of maintainability before entering into the merit of the Rule. The

relief sought under Article 102 of the Constitution is extraordinary, equitable and discretionary. Therefore the petitioner approaching the writ court must come with clean hands stating full facts before the Court without concealing or suppressing anything. If any party makes a false statement or suppresses any material facts or misleads the Court and obtains any judgment by practicing fraud the same will be null and void ab initio. The person seeking relief in any Court must disclose all material facts without any reservation even if those are against him. The party seeking relief before the Court cannot be allowed to play hide and seek or to pick and choose the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts.

At the very outset it is noted that Abed Khan, the petitioner of Writ Petition No. 7082 of 2015 along with other heirs of Abdul Hakim Khan filed Settlement Case No. 408 of 1989 before the First Court of Settlement, Dhaka for exclusion of the House No. 139/A, (New House No. 29), Road No.2, Dhanmondi Residential Area, Dhaka from the 'Ka' list of abandoned property published in gazette notification dated 23.09.1986 and in the said case 7 PWs were examined on behalf of the claimants including Abed Khan as P.W. 4 and after hearing both the parties, the First Court of Settlement, Dhaka by judgment and order dated 15.12.1992 dismissed the case and arrived at a conclusion in the following terms;

> "it is evident from the above documents and the facts and circumstances of the case that Abdul Hakim Khan sold the case property to the sons of Nezamuddin by the above kabala as far back as 1960 and the petitioners have or had no title and interest in the case property at any time and they have falsely filed the present application to grab the case property by taking advantage of the fact that the vendees of Abdul Hakim Khan, being non-Bengalies, probably left the country. It is clear that the whereabouts of S. Jamil Aktar, S. Jalil Aktar and S. Nehal Ahmed, the vendees of Abdul Hakim Khan are not known and the case building was rightly declared as abandoned property and included in the 'Ka' list correctly."

Because of the above findings arrived at by the First Court of Settlement, Dhaka in Settlement Case No. 408 of 1989, it is crystal clear

that Abed Khan, the petitioner of Writ Petition No. 7082 of 2015, is fully aware of the judgment and order dated 15.12.1992 passed in Settlement Case No. 408 of 1989 declaring that whereabouts of the owners of the House No. 139/A, (new House No. 29, Road No. 2) Dhanmondi Residential Area, Dhaka was not known when the P.O. No. 16 of 1972 was promulgated on 28.02.1972 and the property was rightly included in the 'Ka' list of the abandoned property and by suppressing material facts and practicing fraud upon this Court he filed Writ Petition No. 7082 of 2015 for exclusion of the same house from the list of abandoned property and misleading this Court obtained the Rule Nisi. Therefore, we are of the firm view that Writ Petition No. 7082 of 2015 is not maintainable in law as no step has been taken by petitioner Abed Khan or by any claimant against the judgment and order dated 15.12.1992 passed by First Court of Settlement, Dhaka in Settlement Case No. 408 of 1989.

The Court of Settlement is constituted under section 9 of the Abandoned Buildings (Supplementary Provisions) Ordinance, 1985. Application of the Code of Civil Procedure in the proceeding of the said Court has been excluded by section 10(1) of the said Ordinance subject to the provision of Section 10(2) of the said Ordinance. Under Section 10(3) of the said Ordinance, all proceedings before a Court of Settlement is a judicial proceedings. Application of the Evidence Act, 1872 is not excluded in the proceeding of the Court of Settlement. Rather Sub-Section 5 of Section 10 of the said Ordinance stipulates that adducing evidence in deciding an application filed under section 7(1) of the said Ordinance is required for the person claiming that the property is not abandoned property. An application under section 7(1) of the said Ordinance is required to be filed within 108 days from the date of publication of the list in the official Gazette. Section 5(2) of the said Ordinance stipulates that the list published under sub-section (1) shall be conclusive evidence of the fact that the building included therein are abandoned property and have vested in the government as such.

On perusal of the records, it appears that before passing the impugned judgment and order dated 16.07.1997 in Settlement Case No. 84 of 1996 no application has been filed under Section 15 of Ordinance No. XIV of 1985 by S. Nehal Ahmed before the concerned authority for releasing the house in question from the 'Ka' list of the abandoned property and findings of the First Court of Settlement, Dhaka in judgment and order

dated 15.12.1992 passed in Settlement Case No. 408 of 1989 is that the whereabouts of S. Jamil Akhter, S. Jalil Akhter and Nehal Ahmed is not known. Therefore, it is crystal clear that till the pronouncement of judgment and order dated 15.12.1992 passed in Settlement Case No. 408 of 1989 whereabouts of Nehal Ahmed was not known.

In the application dated 08.01.1987 (Annexure-C), it has been stated that respondent No. 2, S. Nehal Ahmed, was ousted from the house after the war of liberation and he took shelter at House No. 1/5, Tajmahal Road, Mohammadpur, Dhaka and other places of Dhaka City and never left Bangladesh. Therefore, admittedly till today S. Nehal Ahmed is out of possession of the disputed house.

On perusal of the application dated 08.01.1987 filed under Section 7 (1) of the said Ordinance in Settlement Case No. 84 of 1996 (Annexure-C to the Writ Petition No. 9051 of 2018) it further appears that no case number or date of filing has been mentioned on the said application by the First Court of Settlement, Dhaka. It appears from the application filed under Section 7 of Ordinance No. XIV of 1985 (Annexure-2) in Settlement Case No. 408 of 1989 (Writ Petition No. 7082 of 2015) that the First Court of Settlement, Dhaka mentioned the case number on the said application in the manner, “ ! " # $ %# & ’ ( )*”. There was no reason for not mentioning the case number on the said application (Annexure-C) by the First Court of Settlement, Dhaka if the said application was filed on 08.01.1987. Although respondent No. 2 stated that he filed the application on 08.01.1987(Annexure-C) under Section 7 of Ordinance No. LIV of 1985 in the First Court of Settlement, Dhaka but neither any receipt of filing the said application on 08.01.1987 has been produced before this Court nor the said application depict any endorsement of the First Court of Settlement, Dhaka with a date. In reply to a query, as regards the absence of endorsement of the Court on the application filed by the claimant S. Nehal Ahmed, the learned Advocate Mr Nakib Saiful Islam for respondent No. 2 apprised this Court that he is unable to explain the situation as he was not the engaged lawyer in the First Court of Settlement, Dhaka. We have found that in Settlement Case No. 408 of 1989 filed in connection with the same house in the First Court of Settlement, Dhaka and in the case of Murtuza Shah (Md) and another vs. Ataharul Haque and others, reported in 72 DLR (AD) 231, the Court of Settlement on the date of filing of the application

under Section 7(1) of the said Ordinance put specific date of filing and issued receipts as regards filing of the settlement case. In the absence of such endorsement of filing on the said application, we are constrained to hold the view that the application under Section 7 of Ordinance No. XIL of 1985 was not filed on 08.01.1987 in Settlement Case No. 84 of 1996 by respondent No. 2 which has been subsequently created or filed after passing the judgment and order dated 15.12.1992 in Settlement Case No. 408 of 1989 putting antedate i.e. 08.01.1987 to save the limitation.

The learned Advocate Mr. Nakib Saiful Islam on behalf of respondent No. 2 further submits that although respondent No. 2 filed the application on 08.01.1987 but the officials of the First Court of Settlement, Dhaka did not mention the case number on the said application and no step was taken by the said court for hearing of the said application. Consequently, he filed 02 (two) applications before the First Court of Settlement, Dhaka on 22.12.1987 and 21.11.1989 (Annexure- 1(A) and 1(B) respectively for hearing of the settlement case.

On perusal of the records of Settlement Case Nos. 84 of 1996 and 408 of 1989 and the records of the above-mentioned writ petitions filed earlier by respondent No. 2, S. Nehal Ahmed, it appears that the seal of First Court of Settlement, Dhaka put on the different applications and hajira filed in Settlement Case No. 408 of 1989 are similar. No seal of First Court of Settlement, Dhaka has been put on any application and hajira filed in Settlement Case No. 84 of 1996, but the seal put on the Annexure-1(A) and 1(B)(both are photocopies) to Writ Petition No. 9051 of 2018 are completely different from the seal put on those applications and hajira filed in Settlment Case No. 408 of 1989. Therefore, we are of the view that Annexures-1(A) and 1(B) have been subsequently created putting anti-dates 22.12.1987 and 21.11.1989 and those are forged documents and the application filed by respondent No. 2 under Section 7(1) of the Ordinance No. LIV of 1985 is barred by law as a limitation of 108 days has been prescribed in Section 7 of the said Ordinance for filing the said application from the date of publishing the list in the official gazette. Therefore, we are of the view that Settlement Case No. 84 of 1996 is not maintainable in law.

Under Section 8 of the Abandoned Buildings (Supplementary Provision) Ordinance, 1985, an application filed under section 7(1) of the said Ordinance shall be accompanied by all the documents, or the photostat or true copies thereof, on which, the applicant relies as evidence in support

of his claim. On perusal of the said application, it appears that nothing has been stated as regards the profession of the claimant as required under section 8(1) of the said Ordinance. At the time of filing the said application, the claimant submitted copies of the lease deed, purchase Kabala No. 8656 dated 28.12.1960, oral deed of gift through the affidavit dated 06.12.1969 and copy of Memo No. 2900/L dated 06.12.1969 regarding the mutation. Although the claimant stated that he tried to get the property released by sending applications to the authorities since 1972 but he did not file any copy of the said applications at the time of filing the application under section 7(1) of the said Ordinance.

In the application filed under section 7(1) of Ordinance No. LIV of 1985 (Annexure-C to the Writ Petition No. 9051 of 2018), the date of birth of S. Nehal Ahmed has been shown as 31.3.1946 but in Annexure-1(A), (another copy of the said application filed in Writ Petition No. 9051 of 2018) the date of birth has been shown as 01.03.1940 replacing '01' in place of '31' and there is also tempering in the year of birth '1946' which has been subsequently written as 1940 replacing '0' in place of '6'. This has been done by respondent No. 2 before this Court. At the time of hearing, we have drawn the attention of the learned Advocate Mr. Nakib Saiful Islam about the above tampering of the date of birth of the claimant S. Nehal Ahmed before this Court. In reply Mr Md. Nakib Saiful Islam learned Advocate for respondent No. 2 admitting the fact of tampering with date of birth simply submits that he does not know the reason why his client has done it. By order dated 30.08.2020 and 27.10.2022, we have called for the records of Settlement Case Nos. 84 of 1996 and 408 of 1989 respectively. We have also called for the records of Writ Petition Nos. 2653 of 2005 and 688 of 2014 and the Contempt Petition No. 146 of 2006. In the application filed under section 7(1) of Ordinance No. LIV of 1985 before the First Court of Settlement, Dhaka the applicant S. Nehal Ahmed put his signature in initial in English. At the time of the hearing, the learned Advocate for respondent No. 2 submits that respondent No. 2, S. Nehal Ahmed, read up to class three/four but in vokalatnama filed before the First Court of Settlement, Dhaka and also before this Court, S. Nehal Ahmed put his signature in English like a highly educated man and no signature in initial has been given on any affidavit or vokalatnama filed before this Court.

Although this Court is not a Court of Appeal but under Section 73 of the Evidence Act, 1872 this Court is empowered to compare the admitted

signatures of any person to arrive at a correct conclusion as regards the genuinity of the signature of that person. On a careful comparison of the signature of S. Nehal Ahmed put in the affidavits filed in Writ Petition No. 9051 of 2018 it is found that those signatures are completely different from the signature put earlier in Writ Petition Nos. 688 of 2014 and 2653 of 2005 and Contempt Petition No. 146 of 2006. The signature of S. Nehal Ahmed put in the affidavit dated 23.04.2005 sworn in Writ Petition No. 2653 of 2005 is completely different from the signature put in the vokalatnama filed in Writ Petition No.2653 of 2005. Signature of the S. Nehal Ahmed put in the vokalatnama filed in Writ Petition No. 688 of 2014 and the affidavit shown in Writ Petition No. 688 of 2014 are also not similar. The initial of S. Nehal Ahmed given in the application filed under Section 7 of the said Ordinance is fully different from the signature put in the vokalatnama filed in Settlement Case No. 84 of 1996. In the above conspectus, we are of the view that several persons put signatures in the name of S. Nehal Ahmed in the application filed under Section 7 of Ordinance NO. LIV of 1985(Annexure-C) in Settlement Case No. 84 of 1996 and vokalatnama filed before the First Court of Settlement, Dhaka and the above-mentioned writ petitions and contempt petition. We have also found clear evidence of tampering with the records even before this Court in another copy of the said application (Annexure-1(A)) filed along with the supplementary affidavit-in-opposition dated 02.11.2022 in the name of S. Nehal Ahmed regarding the date of birth of the respondent No. 2.

In view of the above facts and circumstances of the case, we are compelled to hold the view that after passing the judgment and order dated 15.12.1992 in Settlement Case No. 408 of 1989 somebody might have been inducted someone to pretend him as Nehal Ahmed or said Abed Khan might have been engaged someone to file the subsequent Settlement Case No. 84 of 1996 and the above mentioned Writ Petitions and Contempt Petition in the name of S. Nehal Ahmed to grab the abandoned property i.e. House No. 139/A, (New House No. 29, Road No. 2), Dhanmondi Residential Area, Dhaka and fraudulently obtained the impugned judgment suppressing material facts.

In the case of Saifur Rahman vs. Haider Shah, reported in 19 DLR (SC) 433 para 24 our Apex Court expressed its view on fraud and held as under:

> "The contention that the decision in suit No. 31/1 had only the effect of restoring the revision No. 227/49 which was

> disposed of by the Judicial Commissioner of Peshawar on the 12th February 1951, cannot be accepted, for, if that judgment is found to have been obtained by fraud it is non-existent in the eye of the law and the position is that the decision of the lower appellate Court of the 8th September 1949, which held the execution case No. 312/10 to be within time, is restored and stands as the final decision."

In the case of Abul Khair vs. Abdul Latif, reported in 32 DLR (AD) 167 para 4 it has held that:

> "If fraud is proved then there is no question of limitation." Reliance may be placed in the case of Abdul Rauf vs. Abdul Hamid Khan, (1965) 17 DLR (SC) 515 PLD 1965 (S.C.) 671 and Saifur Rahman vs. Haider Shah, 19 DLR (SC), 433 [32 DLR (AD) 167, para 4 Abul Khair vs Abdul Latif (B.H. Chowdhury J.)]"

In the case of Executive Engineer, Public Works Department vs. Md. Nizamuddin reported in 15 ADC 32 para 12 our Apex Court has held as under:

> "In the facts and circumstances, we do not find any illegality or infirmity in the decision of the High Court Division in refusing to exercise its discretion to condone the delay. The High Court Division rightly took into account the negligence and laches on the part of the appellant who managed to lose the file twice before the appeal was finally lodged after an inordinate delay of 1155 days."

In the case of the Government of Bangladesh and another vs. Mashiur Rahman and others reported in 6 BLT (AD) 73 his Lordship Mr Justice Mohammad Abdur Rouf elucidated the effect of fraud on the Court in the following terms:

> "It is a cardinal principle of administration of justice that no result of any judicial proceeding should be allowed to receive judicial approval from any court of law whenever it is obtained by practicing fraud upon the court reason being fraud demolishes the very foundation of the sanctity of such judicial proceeding. It is also the well-established principle of law that fraud vitiates all judicial proceedings. Thus contravention of the provision of law, cannot be a valid ground for allowing an order obtained by fraud to stand. When the trial court itself on consideration of the materials on record was satisfied that a fraud had been committed in obtaining the exparte decree it

> was the duty of the trial court to set aside the exparte decree. The failure of the trial court in the performance of its legal obligations ought not to have been maintained by the High Court Division in affirming the finding of the trial Court...Fact of fraud is a matter of inference from proved facts and circumstances of each case and the evidence received by the court. Each circumstance by itself may not tell much, but when a bundle of circumstances are taken together they may bring into light a fraudulent or dishonest plan to commit fraud."

In the case of Government of Bangladesh and others vs. Rehana Kamal, reported in 56 DLR(AD) 1 our Apex Court has held as under:

> "From all these discussions above, it is clear that the respondents though filed nationality certificate and the power of attorney to show that they are citizens of Bangladesh which had not been controverted by any tangible material on record, the birthright of anyone to be a citizen of any particular country could not be brushed aside in the absence of any positive contrary intention manifested so as to deprive him of the right to be a citizen of a country where he was born."

In the case of Murtuza Shah (Md) and another vs. Ataharul Haque and others, reported in 72 DLR (AD) 231 our Apex Court hold the view that:

> "Though no period of limitation has been prescribed by law for seeking redress under Article 102 of the Constitution. However, such relief must be sought as early as possible and must be shown due diligence. There is no special provision of privilege for the Government to explain the delay in invoking constitutional jurisdiction. In the case in our hand, the Government even in the relevant paragraph of the Writ Petition did not explain the knowledge about the judgment, filing of the application and obtaining of the certified copy, nor cause any reason in the application for what cause

> it has not filed the writ application as early as possible after passing the judgment."

In the case of Government of Bangladesh and others vs. Tahera Begum and others, reported in 73 DLR(AD) 356 our Apex Court has held as under:

> "The original lessee Md Mujtaba Siddique sold the property in question to Md Serajul Islam, the predecessor of the respondents by executing and registering a sale deed being No.23424 dated 14-12-1972. From the receipts of telephone bills, electricity bills, and municipal taxes, it appears that at the time of executing the sale deed and delivering of possession thereof in favour of Md Serajul Islam as well as at the time of promulgation of President's Order No.16 of 1972, the original lessee was present in Bangladesh. It also appears before us from memo No.Sha-4/1 BA-18/79/183/ 1(2) dated 3-2-1979 that the Ministry of Public Works and Urban Development hired the house in question from Md Serajul Islam for family accommodation of one of the Government officials which shows that the purchaser of the predecessor of the respondent was in possession of the case land."

In the case of The State of Madhya Pradesh vs. Bherulal passed in Special Leave Petition (C) Diary No. 9217 of 2020 it has been held that:

> "In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have a reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for

> government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay." Eight years hence the judgment is still unheeded."

In the case of Bangladesh vs. Abdur Sobhan, reported in 73 DLR(AD)1, para 10 his Lordship Mr. Justice Syed Mahmud Hossain CJ, judgment dated 10.11.2000 expressed the view of our Apex Court to adopt a "pragmatic approach in justice-oriented process" and to consider the delay "on merit unless the case is hopelessly without merit" and has held that:

> "There is no gainsaying that the Government decisions are taken by officers/ agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay, intentional or otherwise, is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, a certain amount of latitude is not impermissible. If the revisional applications brought by the Government are lost for such default no person is individually affected but what in the ultimate analysis suffers is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of "sufficient cause" for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and require the adoption of a pragmatic approach in a justice-oriented process. The Court should decide the matters on merit unless the case is hopelessly without merit"

Fraud is an act of deliberate deception to secure unfair gain illegally depriving anyone of his legal right. It involves the false representation of

material fact or intentionally withholding information or providing false statements to gain something which cannot be gained without deception. To set aside a judgment on the ground of fraud it is to be shown that the court was intentionally misled by the party to procure judgment which caused injustice to another. It is a well-settled proposition that a judgment or decree obtained by suppressing material fact or practicing fraud on the court is a nullity, non est and cannot be allowed to stand.

In the Case of Bangladesh Bank vs. Eagleway Investment Ltd and others, reported in 2 SCOB (2015) AD 1 our Apex Court expressed the view as ragards the consequence of fraud in the following terms;

> "Since the judgment was obtained by practicing fraud upon the Court, we have no alternative but to set aside the said judgment of the Company Court and the persons concerned should be put to justice".

Sir. Edward Coke SL, Chief Justice of England, long before three centuries observed that "fraud avoids all judicial acts, ecclesiastical or temporal". It is said that "fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent)."

In the case of Rex Vs. Duchess of Kingston [2 Smith LC. 687] De Grey, C.J. observed that: "Fraud" is an intrinsic, collateral act, which vitiates the most solemn proceedings of courts of justice:

"Fraud" means an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always call loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. (Dr. Vimla v. Delhi Administration (1963 Supp. 2 SCR 585) and Indian Bank v. Satyam Febres (India) Pvt. Ltd. (1996 (5) SCC 550).

In Yashoda (Allas Sodhan)vs. Sakhaninder and others, Criminal Appeal No. 8247 of 2009 judgment dated 12.09.2022, the Supreme Court of India has held that: “Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gain at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants."

In Webster's Third New International Dictionary, it is said that “fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another.” In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain an unjust advantage; dishonest artifice or trick.”

According to Story's Equity Jurisprudence, 14th Edn., Volume 1. paragraph 263 fraud has been interpreted in the following language; "Fraud indeed, in the sense of a Court of Equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another."

In Patch Vs. Ward (1867 (3) L.R. Chancery Appeals 203], Sir John Rolt, LJ. held that: "Fraud must be actual positive fraud, a meditated and intentional contrivance to keep the parties and the Court in ignorance of the real facts of the case, and obtaining that decree by that contrivance." The Bhaurao Dagda Paralkar Vs. State of Maharashtra & Ors. [2005 (7) SCC 605] it has been held that: "Suppression of a material document would also amount to a fraud on the court. Although negligence is not fraud, it can be evidence of fraud.”

In the case of Yashoda (Allas Sodhan) vs Sakhwinder Singh and others, Civil Appeal No. 8247 of 2009, judgment dated 12.09.2022 para 22, the Supreme Court of India has held that; “It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a

judgment, decree or order by the first court or by the final court has to be treated as a nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings."

In the celebrated judgment delivered in the case of Lazarus Estates Ltd. vs. Beasley [(1956) 1 All ER 341 (1956) 1 QB 702; (1956) 2 WLR 502 (CA)] Lord Denning observed: (All ER p. 345 C) "No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud."

In Duchess of Kingstone, Smith's Leading Cases, 13th Edn., p. 644, explaining the nature of fraud, De Grey, C.J. stated that "though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled"."

In the case of Rajesh D. Darbar & Others vs. Narasingrao Krishnaj: Kulkarni & Ors, reported in 2003 (7) JT 209], the Supreme Court of India observed that: "There can be no quarrel with the proposition as noted by the High Court that a party cannot be made to suffer on account of an act of the Court. There is a well-recognized maxim of equity, namely, actus curiae neminem gravity which means an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense which serves as a safe and certain guide for the administration of law. The other maxim is, lex non-cogit ad impossibilia, i.e. the law does not compel a man to do that that he cannot possibly perform. The applicability of the abovesaid maxims has been approved by this Court in Raj Kumar Dey and ors, vs. Tarapada Dey and Ors. 1987 (4) SCC 398, Gursharan Singh vs. New Delhi Municipal Committees 1996 (2) SCC 459 and Mohammed Gazi vs. State of M.P. and Ors. 2000 (4) SCC 342."

In Kerr on Fraud and Mistake, it is stated that: "in applying this rule, it matters not whether the Judgment impugned has been pronounced by an inferior or by the highest Court of judicature in the realm, but in all cases alike it is competent for every Court, whether superior or inferior, to treat as a nullity any judgment which can be clearly shown to have been obtained by manifest fraud."

In Corpus Juris Secundum, Volume 49, paragraph 265, it is held that "Courts of record or of general jurisdiction have inherent power to vacate or set aside their own judgments". In paragraph 269, it is further held that; "Fraud or collusion in obtaining a judgment is a sufficient ground for opening or vacating it, even after the term at which it was rendered, provided the fraud was extrinsic and collateral to the matter tried and not a matter actually or potentially in issue in the action: "Fraud practiced on the court is always ground for vacating the judgment, is where the court is deceived or misled as to material circumstances, or its process is abused, resulting in the rendition of a judgment which would not have been given if the whole conduct of the case had been fair"

In American Jurisprudence, 2nd Edition, Volume 46, paragraph 825, it is opined that, "Indeed, the connection of fraud with a judgment constitutes one of the chief causes for interference by a court of equity with the operation of a judgment. The power of counts of equity in granting such relief is inherent, and frequent applications for equitable relief against judgments on this ground were made in equity before the practice of awarding new trials was introduced into the courts of common law."
In the case of Jahangir Alam vs. Shamsur Rahman, reported in 16 BLC (AD)(2011) 22 his Lordship SK Sinha(as he was then) observed in the following terms; "When a judgment is given in evidence, the party against whom it is given in evidence may, in the proceeding in which it is given in evidence, show that the judgment was obtained by fraud or collusion, and a separate suit to have the said judgment set aside is not necessary. In view of the wide terms used in section 44 of the Evidence Act, it cannot be said that it is not open to a Court other than the Court from which the decree was passed, in cases of fraud or collusion, to deal with the matter and decide whether the decree was obtained by fraud or collusion."

In Hamza Haji vs. the State of Kerala and others, Judgment dated 18.08.2006, Appeal (Civil) No. 3535 of 2006, the Supreme Court of India has held that; "The law in India is not different. Section 44 of the Evidence Act enables a party otherwise bound by a previous adjudication to show that it was not final or binding because it is vitiated by fraud. The provision, therefore, gives jurisdiction and authority to a Court to consider and decide the question of whether a prior adjudication is vitiated by fraud. In Paranjpe

Vs. Kanade [ILR 6 BOMBAY 148], it was held that it is always competent to any Court to vacate any judgment or order if it be proved that such judgment or order was obtained by manifest fraud. In Lakshmi Charan Saha Vs. Nur Ali | ILR 38 Calcutta 936), it was held that the jurisdiction of the Court in trying a suit questioning the earlier decision as being vitiated by fraud, was not limited to an investigation merely as to whether the plaintiff was prevented from placing his case properly at the prior trial by the fraud of the defendant. The Court could and must rip up the whole matter for determining whether there had been fraud in the procurement of the decree."

In S.P. Chengalvaraya Naidu (Dead) by LRS. Vs. Jagannath (Dead) by LRs & Ors. [(1993) 3 SCR 422], Supreme Court of India has held that; "it is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the highest court- has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

The Full Bench of the Bombay High Court in Guddappa Chikkappa Kurbar and another vs. Balaji Ramji Dange (AIR 1941 Bombay 274) observed that no Court will allow itself to be used as an instrument of fraud and no Court, by the application of rules of evidence or procedure, can allow its eyes to be closed to the fact that it is being used as an instrument of fraud. In Hip Foong Hong vs. H. Neotia and Company (1918 Appeal Cases 888) the Privy Council held that if a judgment is affected by fraudulent conduct it must be set aside. In Rex vs. Recorder of Leicester (1947)(1) KB 726) it is opined that " a certiorari would be to quash a judgment on the ground that it has been obtained by fraud. The basic principle obviously is that a party who had secured a judgment by fraud should not be enabled to enjoy the fruits thereof.

In the case of Bhaurao Dagdu Parael Kar vs. the State of Maharashtra and others, [2005(7) SCC 205] it has been observed that suppression of a material document would also amount to fraud on the Court. Although negligence is not fraud, it can be evidence of fraud."

The material fact would mean essential or substantial fact for the determination of the issue pending before the court. All facts may not be

material. In the instant case, the determination of the issue is that the house in question published in the gazette dated 23.09.1986 as abandoned property has been declared valid by the First Court of Settlement, Dhaka in Settlement Case No. 408 of 1989 is suppressed by the petitioner in Writ Petition No. 7082 of 2015, and also by respondent No. 2 of Writ Petition No. 9051 of 2018 not only in Settlement Case No. 84 of 1996 but also till pronouncement of the judgments and order passed in Writ Petition No. 2653 of 2005 and Writ Petition No. 688 of 2014.

There is no partiqular time limit for filing a writ petition . It depends on the fact of a partiqular case. If fraud is proved, questin of limetation will not arise. A Rule Nisi issued under Article 102 of the Constitution of the People's Republic of Bangladesh cannot be discharged on the ground of delay without considering the merit of the case. In the instant case, it is found that the impugned judgment and order dated 16.07.1997 was obtained by suppressing material facts and practicing fraud upon the Court. Fraud vitiates all solemn acts and a judgment and order obtained by suppressing material facts and practicing fraud upon the Court is void ab initio and non-est. In view of the above finding and observation and the facts and circumstances of the case, we are of the view that Writ Petition No. 9051 of 2018 is maintainable in law.

In **Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and others,** 2003 (Suppl.) 3 SCR 352, it was reiterated after referring to various earlier decisions of the Apex Court that fraud, misrepresentation and concealment of material fact vitiate all solemn acts. In Rajabari Abdul Rehman Munshi Vs. Vasudev Dhanjibhai Mody, AIR 1964 SC 345, it was held that if there appears on the part of a person, who has approached the Court, any attempt to overreach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise the discretion.

Admittedly neither S. Nehal Ahmed was examined in the case nor he proved any document before the First Court of Settlement, Dhaka to prove his whereabouts. No explanation has been given by respondent No. 2, S. Nehal Ahmed, for his non-examination or for not adducing any evidence before the First Court of Settlement, Dhaka. In the absence of any evidence as regards whereabouts of the claimant, the First Court of Settlement,

Dhaka was not legally empowered to pass any judgment directing the government to exclude the disputed house from the 'Ka' list of abandoned property. In view of the above facts and circumstacne of the case, there is no scope to hold the view that S. Nehal Ahmed was in the custody of the basic title deeds which does not create any question as to the genuineness of the original deed executed by Abdul Hakim Khan and subsequent transfer of the shares of the two brothers in his favour.

As regards the non-examination of the claimant in Settlement Case No. 84 of 1996 we echo with the observation of this Division made in the case of Government of Bangladesh vs. Chairman, First Court of Settlement, Dhaka and others in Writ Petition No. 2256 of 2015 wherein it has been held that;

> "From the records further it appears that no one has deposed as witness before the Court and documents were not marked and exhibited as was submitted and accordingly it is not proved according to section 136 of the Evidence Act. The witnesses are to be produced and to be examined but those were not followed."

Although respondent No. 2 claimed that he filed applications under section 15 of Ordinance No. XIL of 1985 to the competent authority for exclusion of the said house from the list of abandoned buildings but neither any copy of the said application is found along with the records of Settlement Cases No. 84 of 1996 nor any copy of the said applications claimed to have been filed by S. Nehal Ahmed to the government for the release of the property has been filed by the respondent No. 2 before this Court. The First Court of Settlement, Dhaka without any basis of evidence arrived at a finding that S. Nehal Ahmed has submitted a series of petitions to show that he tried his best to get back his property. It is surprisingly found that the Court of Settlement raised a point for consideration as to whether the case property is liable to be excluded from the 'Ka' list of the abandoned property on the basis of the petitioner's claim of ownership without raising any point as regards whereabouts of the owner of the house when the P.O. 16 of 1972 was promulgated on 28.12.1972. Therefore, the impugned judgment and order passed by the First Court of Settlement, Dhaka on the basis of the unproven title of the claimant is fallacious, perverse and not sustainable in law.

On scrutiny of the order sheets of Settlement Case No. 84 of 1996, it appears that no record of the volume book of registered deed No. 8656 dated 28.11.1960 was called for by the First Court of Settlement, Dhaka and claimant S. Nehal Ahmed was also not examined in the case. Therefore, there was no scope for the First Court of Settlement, Dhaka to compare the admitted signature of the claimant S. Nehal Ahmed by First Court of Settlement, Dhaka. In view of the above facts and circumstances of the case, the findings of the First Court of Settlement, Dhaka to the effect that "the said owner himself submitted the application on 8-1-1987 before us for release of the case property from the abandoned property list. It appears from the submitted documents that the petitioner, Mr S. Nehal Ahmed applied to the Ministry of Works for getting back his property and restoration of possession by putting his signature in English. We have compared the signature with admitted signature of the applicant which is available in the original application before us. It appears that both signatures are the product of the same hand. It means that S Nehal Ahmed who purchased the case property from Abdul Hakim and his 2 (two) brothers himself submitted the application before us on 8-1-1987 for the exclusion of the property from the abandoned property list. Therefore his presence in this country till 1987 can not be questioned. In this respect, the Ward Commissioner, Ward No. 42 of Dhaka City Corporation has also given a certificate showing the citizenship of the petitioner as a Bangladeshi. So there can not be any shadow of a doubt that the present petitioner is the only owner of the case property. The learned Advocate appearing on behalf of the Government has not been able to bring out any discrepancy in respect of the identity of the present petitioner. Therefore we are fully convinced that the present petitioner is none but he is the successive purchaser and had possession of the case property before the commencement of P.O. 16 of 1972." these are perverse and hereby expunged.

The whereabouts of the claimant of the abandoned property when P.O. No. 16 of 1972 was promulgated on 28.02.1972 is required to be proved by the claimant S. Nehal Ahmed. The issue has been earlier decided by our Apex Court in the case of Government of Bangladesh vs. Md. Jalal and others, reported in 48 DLR (AD) 10 Para 14, wherein his Lordship ATM Afzal CJ. has held that;

> "The High Court Division, in our opinion, started with a wrong premise holding that the presumption of correctness of the entries in the Gazette notification does not absolve the government from denying the facts alleged by the claimant or from disclosing the basis of treating the property as abandoned property when it is disputed. Section 5(2) of the Ordinance clearly provides that the list published under sub-section (1) shall be conclusive evidence of the fact that the buildings included therein are abandoned property and have vested in the Government as such. Section 7 says that a person claiming any right or interest in any such building may make an application to the Court of Settlement for exclusion of the building from such list, etc. on the ground that the building is not an abandoned building and has not vested in the Government under President's Order No. 16 of 1972 or that his right or interest in the building has not been affected by the provisions of that Order. The onus, therefore, is squarely on the claimant of the building to prove that the building is not an abandoned property. The Government has no obligation either to deny the facts alleged by the claimant or to disclose the basis of treating the property as abandoned property merely because the same is disputed by the claimant."

Subsequently, our Apex Court in a series of decisions in the case of Government of Bangladesh vs. Ashraf Ali, reported in 49 DLR (AD) 161, Hazerullah and another vs. Chairman, First Court of Settlement, Dhaka reported in 3 BLC(AD)(1998) 42, Govt. of Bangladesh vs. Orex Network Ltd, reported in 10 ADC(2013)1, Amena Khatun vs. Chairman, Court of Settlement and others, reported in 63 DLR (AD) 1 reiterated above view made in the case of Govt. of Bangladesh vs. Md. Jalil and others, reported in 48 DLR (AD) 10.

As regards the submission of the learned Senior Advocate Mr. Akter Hamid regarding the inclusion of the name of the S. Nehal Ahmed in the voter list published in 1983, it is relevant here to quote the view made in the

case of Syed Afzal Nawab vs. G.M. Yousuf and others, reported in 18 BLD (AD) 240 wherein our Apex Court has held that;

> "As a matter of fact, the acquisition of citizenship of the plaintiff has no bearing on the vesting of the property as an abandoned property when admittedly he was away from the country and failed to manage and supervise his property in any manner whatsoever."

Since the respondent No. 2 claimed that he is the owner of the house in question, his examination before the First Court of Settlement, Dhaka is required to arrive at a finding that the whereabouts of the claimant was known when P.O. No. 16 of 1972 was promulgated on 28.02.1972. This view of this Court also lends support from the decision made in the case of Md. Firoz Mia and another vs. Government of Bangladesh passed in Writ Petition No. 4971 of 2001 wherein his Lordship Moyeenul Islam Chowdhury, J held as under;

> "Be that as it may, the Court of Settlement made a very material finding that Md. Habibullah left the case property uncared for immediately after the War of Liberation in 1971. It does not stand to reason as to why the petitioners failed to adduce evidence in the Court of Settlement to the effect that Md. Habibullah occupied, managed or supervised the property in question on the relevant date (28.02.1972). This singular failure on the part of the petitioners is fully and wholly stunning."

The above view made in the Writ Petition No. 4971 of 2021 was subsequently affirmed by our Apex Court in CPLA No. 1032 of 2010 wherein Justice Surendra Kumar Sinha (as his Lordship was then) has held as under;

> "The Court of settlement was, therefore, perfectly justified in holding that the petitioners failed to prove that the property was legally enlisted in the abandoned (b) list and that the petitioners right or interest had not been affected by P.0.16 of 1972. This technical defect of the service of notice would confer no legal right upon the petitioners to retain

> possession of the abandoned property once it was legally declared as abandoned property. Nor would the abandoned character of the property be changed. This improper service of notice does not shift the onus upon the Government to prove that the property is legally declared as abandoned property. The rebuttal onus will shift only when the claimant of the property proves that the owners was in this country on 28th February, 1972 and that the property was not left abandoned or uncared for on the date of promulgation of P.0.16 of 1972."

In the case of Md. Habibur Rahman and others vs. Government of Bangladesh and others passed in Writ Petition No. 3784 of 2018 this division wherein one of us is a party (Mr Justice Md. Ashfaqul Islam) as regards the duty of claimant has held;

> "that therefore the irresistible inference which follows that in any course of the event, the bound and duty to be discharged by the claimant for taking out of a property from the 'Ka' list of the abandoned property has been time and again decided in one line though it will be repetition but till we want to reiterate that it is the claimant who shall have to prove to the hilt that the property in question is not an abandoned property. In the instant case, the petitioner could not prove that his predecessor Habib Ansary was present at the relevant time as required under law and interpreted by several decisions as discussed above."

From 48 DLR (AD) 1 to till date, time and again our Apex Court decided proposition as regards the issue of abandoned property in one line expressing the view that the onus is squarely on the claimant of the building to prove that the property is not an abandoned property and the Government has no obligation to deny the fact alleged by the claimant. In the instant case, respondent No. 2 failed to prove his whereabouts when the P.O. No. 16 of 1972 was promulgated on 28.02.1972 but the First Court of Settlement, Dhaka without any basis of evidence solely considering the unproven title of the claimant passed the impugned judgment. Therefore,

the impugned judgment and order passed by the First Court of Settlement, Dhaka in Settlement Case No. 84 of 1996 obtained by suppressing the judgment and order dated 15.12.1992 passed in Settlement Case No. 408 of 1989 and practicing fraud upon the court should not be allowed to stand.

In view of the above findings and discussion made relying on the series of decisions passed by our Apex Court and the High Court Division, we are of the view that respondent No. 2 failed to discharge his duty to prove his whereabouts when P.O. No. 16 of 1972 was promulgated on 28.02.1972 and also failed to discharge the onus to prove that he managed and supervised the House No. 139/A, Dhanmondi Residential Area, Dhaka at the relevant time. Therefore, we are of the view that the disputed house was rightly and legally published in the 'Ka' list of the abandoned property.

On perusal of the records, it appears that nothing has been stated in the Writ Petition No. 7082 of 2015 as regards the judgment and order dated 15.12.1992 passed in Settlement Case No. 408 of 1989 by the First Court of Settlement, Dhaka. The petitioner of writ petition No. 9051 of 2018 filed a supplementary affidavit on 08.06.2022 stating that the petitioner of Writ Petition No. 7082 of 2015 along with 8 other heirs of Abdul Hakim Khan filed Settlement Case No. 408 of 1989 challenging the gazette notification dated 23.09.1986 before the First Court of Settlement, Dhaka and the said Court by judgment and order dated 15.12.1992 dismissed the settlement case holding that whereabouts of S. Jamiul Akther, S. Jalil and Nehal Ahmed, the vendee of Abdul Hakim Khan, are not known and the property was rightly enlisted in the list of abandoned property. After that, the petitioner (Abed Khan) of Writ Petition No. 7082 of 2015 by filing a supplementary affidavit on 06.11.2022 stated that respondent No. 2, S. Nehal Ahmed, is known to him for about 5 decades and he is the real S. Nehal Ahmed. Be that as it may, he ought to have known about the transfer of the disputed house by his father in favour of 3 (three) sons of Nezam Uddin but he completely remain silent about the transfer of the said house by his father at the time of filing the Settlement Case No. 408 of 1989. Therefore, the statement made by Abed Khan on 6.11.2022 that present S. Nehal Ahmed is real S. Nehal Ahmed is an afterthought and outrage. We are of the firm view that Abed Khan might have inducted someone to pretend him as S. Nehal Ahmed and the subsequent application under Section 7(1) of the P.O. XIV of 1985 has been filed in the name of S. Nehal Ahmed at the instance of Abed Khan suppressing the judgment and order

dated 15.12.1992 passed by the First Court of Settlement, Dhaka in Settlement Case No. 408 of 1989.

It is found that subject to the provision of section 10(2) of Ordinance No. LIV of 1985 the Code of Civil Procedure, 1908 shall not apply to a Court of Settlement. No one has challenged the judgment and order dated 15.12.1992 passed in Settlement Case No. 408 of 1989 before any Court and the same is still in force. Since the First Court of Settlement, Dhaka in its judgment and order dated 15.12.1992 passed in Settlement Case No. 408 of 1989 has held that the House No. 139/A(new House No. 29, Road No. 2), Road No. 1, Dhanmondi Residential Area, Dhaka was rightly declared as abandoned property and included in the 'Ka' list correctly, subsequent judgment and order dated 16.07.1997 passed in connection with the same house in Settlement Case No. 84 of 1996 obtained by practicing fraud upon the Court and suppressing material facts are void ab initio and non est.

In view of the above finding, observation and propostition, the Rule Nisi issued in Writ Petition No. 9051 of 2018 is made absolute.

The impugned judgment and order dated 16.7.1997 passed by the First Court of Settlement, Dhaka in Settlement Case No. 84 of 1996. (Ka-1. Dhanmondi, Dhaka. Page-9762(14) allowing the case and directing for exclusion of the House No. 139/A, Road No.1. Dhanmondi Residential Area, Dhaka from the 'Ka' list of the Abandoned Buildings prepared and published in the Bangladesh Gazette (Extra-Ordinary) on 23.9.1986 (as contained in Annexure- B) is hereby declared to have been passed without lawful authority and is of no legal effect.

The Rule Nisi issued in Writ Petition No. 7082 of 2015 is hereby discharged with a cost of Tk. 10,000/- (ten thousand).

However, there will be no order as to costs in respect of Writ Petition No. 9051 of 2018.

Send down the records at once.

Md. Ashfaqul Islam, J.

I agree.

ABO Hasan