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

Writ Petition No. 2364 of 2020

In the matter of :

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

-And-

In the matter of :

Dijendra Chandra Dey and others.
..... Petitioners.

-Versus-

The Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Land, Bangladesh Secretariat Ramna, Dhaka and others.
.....Respondents

Mr. Swapan Kumar Mitra, Advocate
..... For the Petitioners.

Mr. A.B.M. Abdullah Al Mahmud, DAG with
Mr. Mohammad Abul Hasan, AAG,
Mr. A.K.M. Alamgir Parvez Bhuiyan, AAG and
Ms. Rawsan Ara Rahman, AAG
..... For respondents.

Date of Hearing : 04.02.2024 and 10.03.2024
Date of Judgment : 20.03.2024

Present:
Mr. Justice Zubayer Rahman Chowdhury
And
Mr. Justice Md. Aminul Islam

Md. Aminul Islam, J :

On an application under Article 102(2) of the Constitution of the People's Republic of Bangladesh filed by the petitioners, a Rule Nisi was

issued calling upon the respondents to show cause as to why inclusion of the case land measuring 3400 acres out of 6400 acres situated within Upzilla- Mymensingh Sadar, Mouza-Akua, J.L. No.79, Serial No.2, S.A. Khatian No.236 and 237, Plot No.1323 published in the Bangladesh Gazette Additional issue dated 10.12.2012 (Annexure-G) should not be declared to have been passed without lawful authority and to be of no legal effect and/or such other or further order or orders to be passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, the parties were directed to maintain status-quo in respect of the possession of the case land.

The petitioners case in short is that the S.A recorded tenant Modan Mohan died leaving a son Haripada Dey, who inherited $17\frac{1}{2}$ decimal of land from plot No.1323. Thereafter, Haripada sold out $6\frac{1}{2} + 5\frac{1}{2}$ in total 12 decimals of land from plot no.1323 to the petitioner No.1 by two registered deeds, namely Deed No.11772 dated 26.06.1978 and Deed No.20381 dated 14.12.1979 and delivered possession accordingly. The

said Haripada also transferred .05 decimal of land to the petitioner no.02 by a registered Deed No.20357 dated 14.12.1979 and delivered possession to her. In such way, the petitioners got (17+12+5) 34 decimals of land in plot No.1323. Thereafter, it was detected that the Khatian number was wrongly mentioned in aforesaid three deeds being Nos.11772, 20357 and 20381 wherein old Khatian No.272 new Khatian No.237 was written instead of old Khatian No.271 new Khatian No.236. Haripada Dey executed three correction deeds vide Deed No.9534, 9536 and 9540 dated 02.05.1981. The petitioners mutated their name in the office of the respondent No.4 in respect of their purchased land from Haripada Dey to the extent of 17 decimals of land vide Mutation Case No.1041 (IX-1) 87-88, obtained D.C.R. and paid rent upto 1422 B.S. The petitioner no.1 mutated his name in the office of the respondent No.4 vide Mutation Case No.293 (My/80-81) in respect of 1.15 acres of land which he acquired by way of inheritance from his father including the land in question from plot No.1323 to the extent of 17 decimals and paid rent to the office of the respondents upto 1422 B.S.

Subsequently, the petitioner no.1 went to the concerned Tahshil Office for payment of arrear rent of the land in question on 05.11.2019, but the Tahshilder refused to receive the rent from petitioner no.1 on the ground that the land in question was a Vested Property and the same had been included in “Ka” list of the Arpita Sampatti Pratarpan list published in the Bangladesh Gazette on 10.12.2012 vide Case No.11(Ka)/94-95.

The petitioners went to the concernd Tahshil Office on 05.11.2019 for payment of arrear rent, but the Tahshilder refused to receive the rent. Being aggrieved, the petitioners filed this writ petition and obtained the present Rule.

On the other hand, the respondents contested the Rule by filing affidavit-in-opposition stating that the suit land is admittedly ‘Ka’ scheduled vested property and the owner Modan Mohan Dey left this country and thereafter V.P. Case No.11(Ka)/94-95 dated 03.07.1970 was initiated. However, the petitioner created/procured an unregistered Power of attorney through forgery, which was filed before the Tribunal and in that way, the Petitioners took mutation submitting forged deed. As such,

payment of rent was not accepted. The petitioner has no locus standi to file the Writ Petition and it is not maintainable in it's present form. The petitioner has no possession, but the Government is in possession, and therefore the Rule is liable to be discharged.

Mr. Swapan Kumar Mitra, the learned Advocate appearing on behalf of the petitioners submits that the S.A. recorded tenant Dinanath Dey of S.A. Khatian No.237 and Madan Mohan Dey of S.A. Khatian No.236 died on 18.05.1975 and 14.12.1971 respectively at their village Akua chukaitala Hindupara, Mymensingh Sadar Upazila, Mymensingh. They never left this country for India at the time of indo-Pak War in 1965 and as such the enlistment of the property in question as vested property in "Ka" list is without jurisdiction. He further submits that the Government never took possession of the case property as enemy or vested property and as such the enlistment of the case land as vested property in the "Ka" list is absolutely illegal. He further submits that after the death of S.A. recorded tenant Dinanath Dey, father of Dijendra Chandra Dey, mutated his name in respect of 17 decimal of land in Plot

No.1323 of S.A. Khatian No.237 along with other land vide Mutation Case No.293(my/80-81). He submits that the petitioners are husband and wife, they purchased 17 decimals of land from S.A. Khatian No.236 Plot No.1323 from Haripada Dey son of late Modan Mohan Dey by three registered deeds being No.11772, 20381, 20357 dated 26.06.1978 and 14.12.1979 and mutated their names in the office of the respondent No.4 vide mutation case No.1041(IX-1)/87-88, then obtained D.C.R. and the Tahsilder of the concerned Tahsil office accepted rent of the suit land and granted rent receipt upon 1422 B.S. He further submits that since the law of vested property was repealed (Ordinance No.1 of 1969) on 23.03.1974, no further vested property case can be started thereafter on the basis of the law which is already dead. Accordingly, there is no basis to treat the case land as vested property. He also submits that the case land earlier published in the “Kha” list of the Arpita Sampatti Protarpan Ain 2001, which prima facie proved that the petitioners are in possession of the case land. He lastly submits that the ‘Ka’ list was cancelled in 2013 by Act No.46 of 2013 in such way that the said schedule property who never

enlisted as vested property. The learned Advocate submits that the inclusion of the said land in the “Ka” list of vested property is liable to be declared to have been done without lawful authority and the Rule is liable to be made absolute.

Mr. A.K.M. Alamgir Parvez Bhuiyan, the learned Assistant Attorney General (AAG) appearing on behalf of the respondents submits that Modan Mohan Dey, Romoni Mohan Dey, Mohani Mohan Dey Pabitra Mohan Dey were the real owner of the schedule “Ka” land of Mouza- Akua, Mymensingh, but they left the country and went to India in 1965 and as such V.P. Case No.11(Ka)/94-95 dated 03.07.1970 was initiated against S.A. Khatian No.236, 237 and S.A. plot No.1323, hearing an area (0.52+0.17)=0.69 acres of land. But this petitioner created an unregistered Power of Attorney through forgery, which he filed before the Tribunal claiming the scheduled land. He further submits that the petitioners have no locus standi to file the writ petition and the writ petition is not maintainable. He lastly submits that matters relating to Vested Property application are to be filed to the Arpita Tribunal and the

High Court Division cannot determine the title of land without taking evidence. We have carefully perused the writ petition, annexures and other materials on record.

The cause of action of the filing writ petition arose on 05.11.2019 when the Tahshilder refused to receive the rent from the petitioners on the ground of inclusion of the petitioner's property of the "Ka" list of the Arpita Shampatti.

The petitioners annexed another Gazette copy of "Kha" list (Annexure-I) wherefrom it is found that same property was earlier enlisted in the "Kha" list on 18.09.2012. On our query as to enlisting the property in the "Kha" list, the learned Assistant Attorney General did not deny this fact. So the property was earlier enlisted in the "Kha" list. Subsequently, the parliament amended the Ain, 2001 and published the same official Gazette on 20.11.2013 and thereby cancelled the "Kha" list. For better understanding, the provision of Section 28 Ka (1) of the Arpita Shampitti Pratarpan Ain, 2001 in reproduced below:

২৮ক। "খ" তফসিল বিলুপ্তি, ইত্যাদি সম্পর্কিত বিশেষ বিধান:
(১) "অর্পিত সম্পত্তি প্রত্যর্পণ (দ্বিতীয় সংশোধন) আইন, ২০১৩ কার্যকর হইবার সঙ্গে সঙ্গে অর্পিত সম্পত্তি সম্পর্কিত 'খ' তফসিল বাতিল এবং উহা এমনভাবে বাতিল হইবে যেন, উক্ত তফসিলভুক্ত সম্পত্তি কখনোই অর্পিত সম্পত্তির তালিকাভুক্ত হয় নাই।"

The property was enlisted in the "Kha" schedule which was published on 18.09.2012 and later on "Ka" list, which was published on 10.12.2012. A property cannot be enlisted in the both "Kha" and "Ka" list at the same time. Subsequently, the "Kha" list was cancelled in the year 2013 by Act No.46 of 2013. The petitioners did not enquire about the "Ka" list thinking that the property was never a vested property. The petitioners came to know regarding inclusion of the property in the "Ka" schedule from the office of the Tahshilder when they went to pay the rent. The petitioners had no scope of knowing about the inclusion of the property in the "Ka" list because the Authority was receiving rents from the petitioners.

It is also evident from the Annexure-G i.e the "Ka" list, which was published in the Gazette of Arpita Shampatti Pratarpan Ain, 2001 (as amended 2013). However, V.P. Case No.11(Ka)/94-95 was started in the

year 1994-1995 pursuant to the provision of Vested Property Ordinance Emergency Property (continuance of Emergency provision) Ordinance 1969, but the said Ordinance 1969 was repealed on 23.03.1974 by Emergency Property Continuance of Emergency Provision (the Repeal) Act, 1974. The learned Advocate for the petitioners submits that as the Ordinance of 1969 was repealed on 23.03.1974, there is no scope of enlisting any property as vested property after March, 1974. Our Apex Court has also taken the same view in the case of the Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of land Vs. Md. Abdul Hye and others, reported in 19 ADC (2022) 337, wherein it has been held:

> *"all actions, decisions regarding listing any property within the territory of Bangladesh as enemy property or vested property after 23-3-1974 are illegal."*

Time and again this Court as well as our Apex Court passed several judgments reported in 56 DLR (AD) 73, 58 DLR (AD) 177 and 33 DLR (AD) 30 declaring such inclusion to be without lawful authority.

In view of the forgoing discussion and the decisions referred to above, we are of the view that the petitioners property have been enlisted in “Kha” list beyond the scope

of law.

In the result, the Rule is made absolute.

The inclusion of the petitioners land measuring 34 decimals appertaining to S.A. record of Plot No. 1323, District-Mymensingh in the “Ka” list as vested property is declared to have been made without lawful authority.

The respondents are directed to release the property in question from the “Ka” list of vested property within a period of 60 (sixty) days from the date of receipt of the certified copy of the judgment passed today.

There will be no order as to cost.

Communicate the judgment and order at once.

Zubayer Rahman Chowdhury, J :

I agree.

Md. Abadul Haque/ Bench Officer.