

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

**PRESENT:**

**Mr. Justice Hasan Foez Siddique,**

**Chief Justice**

**Mr. Justice M. Enayetur Rahim**

**Mr. Justice Jahangir Hossain**

**CIVIL APPEAL NOS.202-203 OF 2014 with C.P. Nos.1257-1258**  
**of 2023.**

(From the judgment and decree dated 19.05.2011 passed by the High Court Division in Writ Petition No.5864 of 2000 and 6442 of 2008)

Raihana Shafi being dead her heirs: Appellant  
Monir Ahmed and others : (C.A.202-203/2014)

Government of Bangladesh, represented Petitioner  
by the Secretary, Ministry of Works: (C.P.1257-58 of 2023)

**=Versus=**

Chairman, First Court of Settlement, Respondents.  
Segunbagicha, Dhaka and others : (C.A. No.202-203/14)

Hasibur Rahman Chowdhury and others : Respondents.  
(C.P.Nos.1257-58 of 2023)

For the Appellant : Mr. Probir Neogi, Senior  
(In both the appeals) Advocate with Mr. Shishir Kanti Majumder, Advocate, Mr. Khandokar Reza-E-Raqiub, instructed by Mr. Md. Taufique Hossain, Advocate-on-Record.

For the petitioner : Mr. Sheikh Mohammad Morshed,  
(In both C.P.1257-1258/23) Additional Attorney General, instructed by Mr. Haridas Paul, Advocate-on-Record.

For the Respondent No.1-2: Mr. Sheikh Mohammad Morshed,  
(In both the appeals) Additional Attorney General, instructed by Mr. Haridas Paul, Advocate-on-Record.

For the respondent No.3: Mr.A.B.M. Siddiquir Rahman  
(In both the appeals) Khan, Advocate, instructed by Mr. Mohammad Ali, Advocate-on-Record.

Respondent : Not represented  
(In C.P.1257-1258 of 2023)

**Date of hearing on : 07.03.2023, 14.03.2023,**  
**05.04.2023 and 10.05.2023**

**Date of judgment on : 17.05.2023**

## **J U D G M E N T**

**Hasan Foez Siddique, C.J:** The delay in filing Civil Petitions for Leave Appeal Nos.1257 of 2023 and 1258 of 2023 is condoned.

Civil Appeal Nos.202 of 2014, 203 of 2014 and Civil Petitions for Leave to Appeal Nos.1257-1258 of 2023 are heard analogously and they are being disposed of by this common judgment and order.

One Abul Hashem and Monir Ahmed filed Settlement Case No.14 of 1991 (Ka: Sl. 18, P.9762(11) in the First Court of Settlement, Dhaka for getting release of the House No.21, Larmini Street, Sutrapur, Dhaka stating that one Hamidunnessa was the owner of the disputed property who gifted the same to Kaser Ali. Kaser Ali brought Money Suit and got decree and in execution case arising out of the decree, he purchased the disputed property and obtained sale certificate. Kaser Ali died leaving two sons. The petitioners of Settlement Case claimed their title and possession in the disputed land through Kaser Ali. The Court of Settlement disbelieved the documents produced by Abul Hashem and another and dismissed the case by a judgment and order dated 01.10.1993

holding that the disputed property belonged Hamidunnessa and Hasibur Rahman. They had been possessing the same as their own property till December, 1971. Thereafter, they left their house and their whereabouts were not traced. One Hasibur Rahman Chowdhury, claiming himself as son of Hamidunnessa, filed review petition for reviewing the judgment and order dated 01.10.1993 in the said case. The Court of Settlement, by its order dated 10.10.2000, rejected the said application for review holding that in the aforesaid settlement case Hasibur Rahman was not party so the instant review petition was not maintainable. Against the said order dated 10.10.2000 passed in Settlement Case No.14 of 1991 by the Court of Settlement, Hasibur Rahman Chowdhury filed Writ Petition No.5864 of 2000 in the High Court Division and obtained Rule.

Hasibur Rahman Chowdhury also filed Writ Petition No.6442 of 2008 in the High Court Division, against the execution of sale agreement and order of allotment in favour of writ respondent No.3 Raihana Shafi by the Government in respect of the disputed land and obtained Rule.

The High Court Division heard the Writ Petition No.5864 of 2000 and Writ Petition No.6442 of 2008 analogously and disposed of by common judgment dated 19.05.2011.

The High Court Division made the Rule absolute issued in Writ Petition No.5864 of 2000 and set aside the judgment and orders dated 10.10.2000 and 21.10.1993 passed by the Court of Settlement in Settlement Case No.14 of 1991. It disposed of the Writ Petition No.6442 of 2008. The High Court Division sent back the case on remand to the Court of Settlement with direction to dispose of the case within 4(four) months.

Against the aforesaid judgment and order, writ respondent No.3 appellant has filed Civil Appeal No.202 of 2014 and 203 of 2014 in this Division upon getting leave and Government filed Civil Petitions for Leave to Appeal Nos.1257 of 2023 and 1258 of 2023.

Mr. Probir Neogi, learned Senior Advocate appeared for the appellant Raihana Shafi in both the appeals and Mr. Sheikh Mohammad Morhsed, learned Additional Attorney General appeared on behalf of the Government in the aforesaid two leave petitions. On the other

hand, Mr. A.B.M. Shiddiqur Rahman Khan, learned Advocate appeared for the respondent Hasibur Rahman Chowdhury in all the appeals and petitions. Raihana Shafi claimed possession of the disputed property upon getting allotment from the Government. In fact, the submissions of Mr. Probir Neogi and Additional Attorney General are identical.

They submit that the writ petitioner Hasibur Rahman Chowdhury is a fictitious man and the petitioners of the Settlement Court, namely, Abul Hashem and Monir Ahmed, preparing some fake papers and taking the opportunity of the finding of the Court of Settlement that Hamidunnessa and Hasibur Rahman Chowdhury are owners of the property, in question, have filed instant writ petition behind the back in order to grab the abandoned property. They submit that the High Court Division committed error of law in setting aside the order passed in review petition though there is no application of the Code of Civil Procedure in disposing of the litigation before the Court of Settlement. They add that the Court of Settlement rightly rejected the review petition, since the same was not

maintainable. Their further submission was that the High Court Division has committed a fundamental error of law in directing the Court of Settlement to proceed with the Settlement Case again at the instance of so called Hasibur Rahman Chowdhury though in Settlement case the provision of order 1 Rule 10 of the Code of Civil Procedure has no application. They, lastly, submit that the High Court Division, in fact, has given new life of the settlement case, thereby, allowed the Hasibur Rahman Chowdhury to ventilate his grievance inasmuch as his claim, by filing before the Court of the Settlement, is hopelessly barred by limitation.

Mr. A.B.M. Siddiqur Rahman Khan, learned Counsel appearing for the respondent Hasibur Rahman Chowdhury in both the appeals and the civil petitions, submits that Hasibur Rahman Chowdhury and his mother Hamidunessa who are the admitted owners of the property, in question, have been and has been living in different places in Bangladesh. In the papers produced by him clearly proved that Hashibur Rohman Chowdhury is a citizen of Bangladesh so he is entitled to get release of the disputed

property, the High Court Division rightly remanded the case to the Court of Settlement allowing him to ventilate his grievance and there is no error in the judgment and order of the High Court Division.

It is not disputed that the Hasibur Rahman Chowdhury did not file any case in the Court of Settlement for getting release of the disputed property from "Ka" list of the abandoned properties which was published in the Bangladesh Gazette on 23.09.1986 [Ka list in serial No.118 page 9762 (11)]. He filed an application for reviewing the judgment and order dated 31.10.1993 passed by the Court of Settlement in Settlement Case No.14 of 1991 filed by one Abul Hashem and Monir Ahmed. That review application was filed on 10.10.2000, that is, after about 7(seven) years after disposal of the said settlement case and about 14(fourteen) years after the aforesaid gazette notification inasmuch as time limit for filing any settlement case provided in section 7 of the Abandoned Buildings (Supplementary Provisions) Ordinance, 1985 was only 108 days. The Ordinance does not permit third party to file review petition against the judgment and

order passed by the Court of Settlement after disposal of the same.

It further appears that Hasibur Rahman Chowdhury, filing Writ Petition No.6442 of 2008, challenged the execution of the sale agreement and allotment of the disputed property in favour of Raihana Shafi by the Government. In this writ petition, he did not pray for getting release of the property from the "Ka" list of the abandoned properties. The said writ petition was disposed of without any specific result considering the prayer made in the said writ petition. That is, Hasibur Rahman Chowdhury accepted the judgment and order passed in Writ Petition No.6442 of 2008. Allottee Raihana Shafi preferred the aforesaid two appeals against the judgment and order of the High Court Division.

The only question which is to be considered as to whether the High Court Division rightly allowed Hasibur Rahman Chowdhury to ventilate his grievance in the Court of Settlement in the Settlement Case filed by Abul Hashem and another or not. The law does not provide any provision to review a judgment and order passed by the Court of



Settlement at the instance of third party whose claimed, if any, is barred by the provision of limitation. Section 10 of the Ordinance specifically provides that except as otherwise provided in the Ordinance, the provisions of the Code of Civil Procedure shall not apply to a Court of Settlement and Sub-section (2) of Section 10 limits the area of the applicability of the Code of Civil Procedure. The Court of Settlement is not a Civil Court and its authority is to determine as to whether the disputed property is abandoned property or not. The provisions of the Code of Civil Procedure should be applicable in respect of summoning and enforcing the attendance of any person and examining him on oath; requiring the discovery and production of any document; requiring evidence on affidavit; requisitioning any public record or copy there of from any office; and issuing commissions for the examination of witnesses or documents. In such view of the matter a question stands on the way as to the entertainability of the application under Order 1 Rule 10 of the Code of Civil Procedure for adding the applicant as claimant to get release

of abandoned property filed by other party making different pleading. Our view is "no".

In the application for getting release of disputed property filed by Abul Hashem and another from the list of abandoned properties there is little scope to get relief by Hasibur Rahman since the source of claim made by them in the said case is quite different. In that application for getting release of the disputed property it is difficult for Hasibur Rahman Chowdhury to establish that he is a citizen of Bangladesh and he was present in Bangladesh and his whereabouts is known or he has not ceases to occupy, supervise or manage in person of his property. Without amending the contents of the claim made by Abul Hashem and another in the Settlement Case it is almost impossible to get any relief in the said case. It is more difficult for the reason that applicability of the provisions of Civil Procedure Code is very limited.

It appears from the papers produced by Hasibur Rahman Chowdhury that he claimed that sometimes he lived at Keknasar Khabari, Sirajdikhan, sometimes at 28/2 Dakkhin Mukdapara, sometimes at Jouripur Lane, Sutrapur

of Ward No.77, Dhaka which created a doubt about his identity and his claim that earlier any point of time he had been living in the disputed property, that is, at House No.21, Larmini Street, Wari, Sutrapur, Dhaka.

Considering the aforesaid facts and circumstances, we find force in the submissions made by of Mr. Probir Neogi and learned Additional Attorney General.

Thus, both the appeals are allowed. The judgment and order dated 19.05.2011 passed by the High Court Division in Writ Petition No.5864 of 2000 (heard analogously with Writ Petition No.6442 of 2008) are set aside. The Civil Petitions for Leave to Appeal Nos.1257-1258 of 2023 are disposed of in the light of judgment and order passed in appeals.

**C.J.**

**J.**

**J.**

**The 15<sup>th</sup> May, 2023.**

/words-2004/