

**Vested Property Return Tribunal case No. 34 /2022**

**Bangladesh Form No. 3701**

**HIGH COURT FORM NO.J (2 )  
HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE  
DISTRICT- CHATTOGRAM**

**IN THE SENIOR ASSISTANT JUDGE, 2<sup>ND</sup> COUR AND  
VESTED PROPERTY RETURN ADDITIONAL TRIBUNAL,  
PATIYA, CHATTOGRAM**

**Present : Mr. Md. Hasan Zaman,**

**Senior Assistant Judge, Patiya, Chattogram.**

**Date of Delivery of Judgment : 21<sup>th</sup> day of November, 2024**

**Vested Property Return Tribunal case No. 34 /2022**

**Ayub Ali and 14 others .....Plaintiffs/Petitioners**

**-Versus-**

**Government of People's Republic of Bangladesh represented by  
District Commissioner Chattogram and others**

**.....Defendants/Opposite Parties**

**This case came up for final hearing on 05.09.2024 and 02.10.2024.**

**In presence of :**

**Mr. Joyram Dev .....Advocate for Plaintiff/Petitioner**

**Mr. Sawkat Ali Chowdhury, Addl. G.P (Vested Property)**

**.....Advocate for Defendants/Opposite Party**

**And having stood for consideration to this day, the court delivered the  
following judgment:-**

**This is a suit for release of vested and non-resident property.**

**Case of the Petitioners**

**1. The petitioner's case in brief is that the property in dispute is situated in Hashimpur Mouza, Chandanaish Police Station, Chattogram District, within the boundaries of the "Kha" Schedule of vested properties, as published in Gazette Serial No. 252. This property**

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comprised 65 decimals of land originally belonged to Surendra Kumar, Reboti Ranjan, Pulin Bihari, Bijon Bihari, and Kumud Bihari as reflected in R.S. Khatian No. 2670. The property later on recorded in B.S. Dag No. 20217 under B.S Khatian No 1420. The published gazette, however, contains erroneous references, listing R.S. Dag No. 15283 as 25283, B.S. Khatian No. 1420 as 3042, and B.S. Dag No. 20217 as 16822.

2. It is further case of petitioner that the recorded owners transferred the property to Kamal Mia, Ahmad Mia, and Badiur Rahman, who subsequently became tenants and began paying rents. A dispute arose between the original owners and the tenants concerning the rents, leading to the filing of Rent Suit No. 47 of 1962 before the 2nd Munsif Court, Patiya. The matter was amicably resolved through a registered solenama (No. 5602, dated 27/11/1962), pursuant to which the tenants obtained the property. To facilitate their respective possession, the tenants executed a registered partition deed (No. 1679, dated 29/07/1964). Under the terms of this deed: Kamal Mia acquired 32.50 decimals, Ahmad Mia acquired 24.50 decimals, Badiur Rahman acquired 8 decimals. Subsequently, Kamal Mia sold 03 decimals to Mofazzal Mia on 07/08/1971 (Kabla No. 1379) and 4.50 decimals to Kabir Ahmad and Ayub Ali (sons of Badiur Rahman) on 02/04/1975 (Kabla No. 1349). After these sales, Kamal Mia retained 25.97 decimals, which passed to his three sons—Mahabul Alam, Munshi Mia, and Abdul Alim—upon his death. Munshi Mia, being unmarried, predeceased his brothers, leaving his share to his surviving siblings. Abdul Alim's share devolved to his son, Md. Soleman (the petitioner No.2).

3. Later on Ahmad Mia transferred 1.50 decimals to Badiur Rahman (Kabla No. 2020, dated 31/06/1964), 4 decimals to Gura Mia (predecessor of petitioner No.8-9) vide Kabla No. 1690, dated 31/07/1964, 4 decimals to Ayub Ali (Kabla No. 2661, dated 27/07/1965) and 4 decimals to Badiur Rahman (Kabla No. 2662, dated 27/07/1965) and 10 decimals to Nurul Alam (Kabla No. 3379, dated 26/06/1975). Nurul Alam's share was later transferred to Petitioners No.10–13 through his father, Abdul Shukkur, who acted as guardian. Badiur Rahman, the remaining co-owner, held 8 decimals by partition and acquired 5.50 decimals through purchase, totaling 13.50 decimals. Upon his death, his property devolved to his sons, Ayub Ali and Kabir Ahmad.

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4. Thus the petitioners are in continuous and uninterrupted possession of the disputed property, having acquired ownership either by inheritance or by purchase:

1. Petitioner No. 1 (Ayub Ali) holds 13 decimals (6.75 decimals by inheritance and 6.25 decimals by purchase).
2. Petitioner No. 2–3 (Mahabul Alam and Md. Soleman) hold 25.97 decimals.
3. Petitioner No. 4–5 (Abdul Haque and Abdul Karim) hold 6 decimals.
4. Petitioner No. 6–7 (Md. Belal and Md. Helal) hold 3 decimals.
5. Petitioner No. 8–9 hold 4 decimals by inheritance from Gura Mia.
6. Petitioner No. 10–13 hold 10 decimals through inheritance and purchase.
7. Petitioner No. 14–15 hold 2.03 decimals by inheritance.

5. When the petitioners approached the local land office to have their names mutated, they discovered that a handwritten annotation in the “remarks” column declared the property as **non-residential**. However, the certified copy of the **B.S. Khatian** obtained from the Deputy Commissioner’s office contains no such annotation. Investigation revealed that this classification was based on **VP Case No. 246/79-80**, initiated by the government upon a misleading report from the Tahsildar’s office.

6. The petitioners also learned that the **registered solenama (No. 5602)** was deliberately suppressed in the VP case, falsely asserting that the original owners had migrated to India, leaving Ahmad Mia in possession. Based on this misrepresentation, the property was unlawfully enlisted as vested property and leased to Ahmad Mia.

7. The petitioners contested this wrongful classification in multiple lawsuits, including **Other Class Suit No. 85/85**, which initially resulted in a stay on VP proceedings but was later dismissed. Ahmad Mia subsequently filed Civil Suit Nos. **34/91**, **30/95**, and **110/2001**, all of which were dismissed ex parte without government evidence. Further attempts by Ahmad Mia to oust the petitioners were also thwarted.

8. Presently, the petitioners have filed **Miscellaneous Case No. 01/2020** before the Assistant Judge’s Court, Chandanaish, for setting aside the ex-parte decree of the Other suit No. 145 of 2007 challenging the classification of the property as vested. They argue

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that the erroneous annotation in the B.S. Khatian and its subsequent gazette listing are baseless and have deprived them of their lawful property rights.

9. The petitioners have continuously possessed and maintained their rightful ownership of the disputed property, acquired through inheritance and purchase. The erroneous classification as vested property violates their legal and equitable rights. They are entitled to have the disputed property released from the list of vested properties and restored to their names in the official records.

### **Opposite Party's Case :**

10. **The Opposite Party No. 1-4 contested the case by filing written Objection contending *inter alia***, this case pertains to the disputed land, which was originally recorded in the R.S. (Revisional Survey) in the names of certain individuals and their heirs. These recorded owners became residents of India during the Indo-Pak war of 1965 and did not return to this country. Consequently, their properties were enlisted as "vested properties" under the relevant laws. Subsequently, the government, through **V.P. Case No. 246/79-80, dated 16/01/1980**, leased the disputed land on an annual basis to 1) Ahmad Mia and 2) Nurul Haque. The lessees have been in possession of the disputed land, acknowledging the government's ownership and title, by regularly paying annual rents and dues to the government. The disputed property remains government-owned property, and the claimants have no lawful title, interest, or possession over the disputed land. Consequently, the claimants are not entitled to seek any relief for the release or reversion of the disputed land.

11. **The Opposite Party No. 6 contested the case by filing written Objection contending *inter alia***, the disputed land as described in the schedule of the petition was owned by talukdar Rebati Ranjan Ghosh, Surendra Kumar Ghosh, Pulin Bihari Ghosh, and Bijon Bihari Ghosh who retained exclusive possession and proprietary rights over the property. During the Revisional Survey (R.S.), the said disputed pond was duly recorded as being under the khas possession of the aforementioned Raiyats and finalized in R.S. Khatian No. 2670. Subsequently, during the State Acquisition Survey (S.A.), the property

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was not acquired by the government as it was found to remain under the khas possession of the talukdars. The S.A. Khatiyani No. 3148, finalized thereafter, reaffirmed the khas possession of Rebati Ranjan Ghosh and others.

**12.** Since the talukdar proprietors, being Indian nationals, subsequently migrated to India, the disputed pond was enlisted as “vested property” or “enemy property” under the relevant legal provisions. In light of this classification, O.P No. 6 and their predecessors acquired a lease over the said property via V.P. Case No. 246/1979–80. The lease was granted in accordance with due process, and rent has been regularly paid by the lessee.

**13.** Certain individuals, including Kabir Ahmed, filed a suit bearing No. **O.C. Suit No. 85/1985** before the Assistant Judge, Chandanaish, claiming ownership of the disputed property by purchase. The case was dismissed on November 13, 1988. Later on the predecessor of this Opposite party brought **O.C. Suit No. 34/1991 seeking** declaratory and injunctive relief against the government, challenging the vesting and subsequent actions. By judgment and decree dated March 1, 1992, the Court declared the opposite party's predecessor as having lawful ownership, possession, and interest over the disputed pond. Furthermore, the Court declared a government letter dated April 23, 1991, as unlawful and directed that no leases be issued to any party other than the opposite party's predecessor.

**14.** Thereafter following an allegedly unlawful order dated March 12, 1995, issued in V.P. Case No. 246/1979–80, the petitioner filed another suit bearing No. **O.C. Suit No. 30/1995** before the Assistant Judge, Chandanaish. By judgment dated September 18, 1996, the Court decreed against O.P No. 1–5, declaring the March 12, 1995, order illegal and void, while affirming that the lease granted to the petitioner was unaffected and lawful. No appeals or revisions were filed against this judgment.

**15.** Upon due investigation of the matter, the V.P. authority rejected the petitioner's application on January 29, 2024. Instead, the lease was duly renewed in the names of the opposite party (O.P No. 6) and their sister, Nur Jahan Begum, as successors to their deceased father, Ahmed Mia. The authority also directed the lessees to pay the outstanding rent along with the current year's lease fees. Thus the O.P submits that the claims in the present case are unfounded and unsustainable in law. The petitioner's application seeking cancellation

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of the O.P's lease is baseless and liable to be dismissed. The defendant prays for dismissing the case as devoid of merit.

### **Issues for Determination**

**16.** For the proper adjudication of the suit, the Court has framed the following issues for determination:

1. Are the plaintiffs entitled to an order for the release of the scheduled land as per their claim?

### **Discussions and Decision**

**17.** To prove the Petitioner's case, they examined 01 oral witnesses namely **Mahbubul Alam as Pt.W.1** before this court. During examination of Pt.W.1 the following documents were produced and proved, which have been marked as Exhibits:-

1. Certified copy of R.S. Khatian No. 2670 of Hashimpur Mouza.	<b>Exhibit 1</b>
2. Certified copy of B.S. Khatian No. 1420 of Hashimpur Mouza.	<b>Exhibit 2</b>
3. Certified copy of Deed No. 5602, registered on 27/11/1962.	<b>Exhibit 3</b>
4. Certified copy of Partition Deed No. 1679, registered on 29/07/1964.	<b>Exhibit 4</b>
5. Original copy of Sale Deed No. 1690, registered on 31/07/1964.	<b>Exhibit 5</b>
6. Certified copies of Sale Deeds No. 2661/2662, registered on 27/07/1965.	<b>Exhibit 6</b>
7. Certified copy of Deed No. 1379, registered on 07/08/1971.	<b>Exhibit 7</b>
8. Certified copy of Sale Deed No. 1349, registered on 02/04/1975.	<b>Exhibit 8</b>
9. Certified copy of Sale Deed No. 4280, registered on 06/12/1979.	<b>Exhibit 9</b>
10. Photocopy of the Gazette.	<b>Exhibit 10</b>
11. Photocopy of the National Identity Card.	<b>Exhibit 11</b>

**18.** On the other hand, the government, as the defendant, examined one oral witness, namely **Md. Elias (O.P.W.1)**, and submitted documentary evidence marked as Exhibit-

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Ka. On the part of the Opposite Party No.6 no oral or documentary evidence was produced in support of their claim. **Mahbubul Alam as Pt.W.1** for the petitioners and **Md Illius (O.P.W.1)** for the Opposite Party has given statements admitting the facts of the plaint and written statements respectively.

### **Discussions and Decision**

**19.** After carefully examining the pleadings, written objections, witness testimonies, and documentary evidence submitted by the parties, it appears that the petitioners claim entitlement to the release of 64 decimals of land, which is a pond, recorded under the “Ka” Schedule of vested properties published in Gazette Serial No. 252. **Exhibit-10**, a photocopy of the Gazette, shows that the said 64 decimals of land pertain to R.S. Khatian Nos. 2670. According to **Exhibit-1**, a certified copy of the aforementioned Khatian, the recorded owners of these properties were identified as Surendra Kumar, Reboti Ranjan, Pulin Bihari, Bijon Bihari, and Kumud Bihari. These individuals held undisputed title over the property before subsequent transactions occurred.

**20.** The disputed land was subsequently recorded as B.S. Dag No. 20217 under B.S. Khatian No. 1420. **Exhibit-2** confirms this updated record. However, the Gazette (**Exhibit-10**) contains critical errors, mistakenly listing R.S. Dag No. 15283 instead of 25283, B.S. Khatian No. 1420 as 3042, and B.S. Dag No. 20217 as 16822. These discrepancies suggests that the Khatian and Dag numbers were incorrectly recorded in the Gazette.

**21.** The petitioners claim that the original R.S. recorded owners transferred the property to three tenants—Kamal Mia, Ahmad Mia, and Badiur Rahman. Although no direct documentary evidence of the transfer has been provided, **Exhibit-3 (registered Solenama No. 5602, dated 27.11.1962)** indicates that a dispute regarding rents led to the initiation of **Rent Suit No. 47 of 1962** in the 2nd Munsif Court, Patiya. The suit was amicably resolved through the Solenama, under which the tenants formally acquired ownership of the property from the original R.S. recorded owners, namely Reboti Ranjan, Pulin Bihari, Bijon Bihari, Kumud Bihari, and the heirs of Surendra Kumar.

**22.** Subsequent to the Solenama, **Exhibit-4** (Partition Deed No. 1679, dated 29.07.1964) shows that the new owners—Kamal Mia, Ahmad Mia, and Badiur Rahman—

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partitioned the property among themselves for ease of possession. As per the partition deed, Kamal Mia obtained 32.50 decimals, Ahmad Mia received 24.50 decimals, and Badiur Rahman acquired 8 decimals of land.

**23.** In view of Exhibits-7 and 8, it appears that Komal Mia sold 2.03 decimals to Mofazzal Mia on 07.08.1971 (vide Kabla No. 1379) and 4.50 decimals to Kabir Ahmad and Ayub Ali (sons of Badiur Rahman) on 02.04.1975 (vide Kabla No. 1349). After these sales, Kamal Mia retained 25 decimals, which devolved upon his three sons—Mahabul Alam (**Petitioner No. 3**), Munshi Mia, and Abdul Alim—after his death. Munshi Mia, being unmarried, predeceased his brothers, leaving his share to his siblings. Abdul Alim's share further passed to his son, Md. Soleman (**Petitioner No. 2**).

**24.** It is further claimed by the petitioners that **Ahmad Mia** transferred **1.50 decimals** to Badiur Rahman vide Kabla No. 2020 dated 31/06/1964 but this deed was not presented in this case as evidence. The petitioners again claim that Ahmed Mia transferred **4 decimals** to Gura Mia (**predecessor of petitioner No.8-9**) vide Kabla No. 1690, dated 31/07/1964. **[Exhibit-5]** proves that fact as true. In view of **[Exhibit-6]** and **[Exhibit-6(ka)]** it appears that Ahmed Mia transferred **4 decimals** to Ayub Ali (**petitioner No.1**) vide Kabla No. 2661, dated 27/07/1965 **[Exhibit-6]** and **4 decimals** to Badiur Rahman vide Kabla No. 2662, dated 27/07/1965 and **10 decimals** to Nurul Alam vide Kabla No. 129, dated 26/06/1975). That Nurul Alam's share was later transferred vide kabala No. 4280 dated 06.12.1979 **[Exhibit-9]** to **Petitioners No.10–13** through his father, Ahmadur Rahman, who acted as guardian.

**25.** Regarding the remaining co-owner, Badiur Rahman, he held 8 decimals through partition and acquired an additional 5.50 decimals through purchases, totaling 13.50 decimals. Upon his death, his shares devolved upon his heirs, Ayub Ali (Petitioner No. 1) and Kabir Ahmad (predecessor of Petitioners No. 4–7).

**26.** Considering the above transections the ownership of the petitioners to the disputed land appears to me of **Total 59.52** decimals which is distributed among the petitioners as follows:



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- **Petitioner No. 1 (Ayub Ali):** 12.25 decimals by inheritance and purchase.
- **Petitioners No. 2–3:** 25 decimals by inheritance.
- **Petitioners No. 4–5:** 4.16 decimals by inheritance.
- **Petitioners No. 6–7:** 2.08 decimals by inheritance.
- **Petitioners No. 8–9:** 4 decimals by inheritance.
- **Petitioners No. 10–13:** 10 decimals by inheritance and purchase.
- **Petitioners No. 14–15:** 2.03 decimals as heirs of Mofazzal Ahmed.

27. **Exhibit-2** (C.C. of B.S. Khatian No. 1420) confirms that the B.S. Khatian was duly recorded and published in the names of the predecessors of the petitioners—Kamal Mia, Ahmed Mia, Kabir Ahmed, Ayub Ali, Gura Mia, and others. However, Ahmed Mia’s name was erroneously retained in the B.S. Khatian, despite of transferring nearly his entire share. **Exhibit-10**, upon review of the published gazette, reveals that RS Plots Nos. 25283 (**correct Dag 15283**), corresponding to BS Plots Nos. 16822 (**correct Dag 20217**) has been classified as vested and non-residential property. The ownership of such property is recorded in the gazette as belonging to Rebuti Ranjan and others. From the gazette, it is evident that R.S owners Rebuti Ranjan and others becomes residents of India. However, a scrutiny of the disputed BS Khatian, **Exhibits-2** does not reveal that any of the R.S or BS record holders were residents of India or any portion of the property has been noted as vested property. Moreover, the name of Rebuti Ranjan and others are not found in the BS Khatian. Therefore, it is unequivocally clear that the disputed BS Plots Nos. 16822 (**correct Dag 20217**) has been erroneously and baselessly classified as vested and non-residential property under the "Ka" list.

28. The Appellate Division of the Supreme Court of Bangladesh in **Khondker Zahirul Huq vs. Government of Bangladesh (46 DLR (AD) 136)** ruled that properties could not be declared vested after the repeal of the Enemy Property (Continuance of Emergency Provisions) Ordinance of 1969 by the Vested and Non-Resident Property (Administration) Act, 1974. Any declaration of vested property post-23.03.1974 is void and without jurisdiction. This principle was reaffirmed in **Md. Ashraf Uddin vs. Md. Harun (58 DLR**

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(AD) 177) and similar cases. In the present case, VP Case No. 146/79-80 was initiated, and the property enlisted as vested on 16.01.1980, well after 23.03.1974. Consequently, it is my considered view that this enlistment is unlawful and beyond jurisdiction.

**29.** Admittedly, Ahmed Mia obtained a lease of the suit property pursuant to V.P. Case No. 246/79-80 on 19.02.1980. In the present suit, the heirs of Ahmed Mia, namely Defendants No. 6, contested the claim by filing a written objection. Upon review of the photocopy of the lease agreement submitted by Opposite Party No. 6, the execution of the lease is deemed to be genuine. Furthermore, a photocopy of the order dated 29.01.2024 issued by the UNO and AC Land, Chandanaish, in V.P. Nothi No. 246/79-80 reveals that following the death of the original lessee, Ahmed Mia, his heirs—Badsha Mia (Opposite Party No. 6) and Nurjahan Begum—were recorded as lessees in place of their deceased predecessor. It thus becomes evident that the heirs of Ahmed Mia are currently in possession of the suit property under a lease arrangement with the Government.

**30.** Although Opposite Party No. 6 referred to earlier suits—namely O.C. Suit No. 85/1985, O.C. Suit No. 34/1991, and O.C. Suit No. 30/1995—as being relevant to the present dispute, it is my considered view that the outcomes of those suits bear no significant relevance or legal implication in the current proceeding concerning the release of the suit property erroneously characterized as vested in the gazette.

**31.** In the present case, the petitioners have successfully demonstrated their acquisition of title and ownership of the 59.52 decimals of suit property through valid purchase and inheritance. Furthermore, the listing of the disputed property as vested under VP Case No. 246/79-80 has been found to be unlawful and beyond the jurisdiction of the concerned authorities. Consequently, the petitioners qualify as rightful owners and co-sharers of the property under Section 2(d) of the Vested Property Return Act, 2001, thereby making them eligible for the release of the property in question.

**32.** Upon careful consideration of the pleadings, documentary evidence, and submissions of the learned counsel for both parties, it is evident that the petitioners have successfully discharged their burden of proof and established their legal entitlement to the suit property. I am satisfied that there is no legal or factual impediment to granting the

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petitioners their rightful claim to the release of the suit property. Thus, the petitioners are entitled to the release of the 59.52 decimals out of 64 decimals of suit land as sought in the present suit. Accordingly, the issue in the suit is determined partially in favor of the petitioners.

**In result the case succeeded.**

**Court fee paid is correct**

**Hence, It is Ordered**

That this case for release of the disputed property is partially granted on contest against the Opposite Parties Nos. 1 to 5 and Opposite Party No.6 without cost.

Thus the disputed land (pond) measuring 59.52 decimals out of 64 decimals, as described in the schedule under R.S Khatian No.2670 , R.S Dag No.15283 corresponding to B.S Khatian No.3042 and B.S Dag No. 20217, is hereby directed to be released in favor of the petitioners.

This order is issued pursuant to the provisions of the **Vested Property Return Act, 2001**, and the Opposite Parties Nos. 1 to 5 are hereby directed to take necessary steps to release the specified portion of the property within the prescribed time period.

Furthermore, for the implementation of this order, a copy of the same shall be forwarded to the Opposite Party No. 1, the Deputy Commissioner of Chattogram, for taking appropriate action to ensure compliance with the directive.

The parties are hereby instructed to act in accordance with this order and ensure that the designated property is restored to the petitioner in compliance with the applicable legal provisions.

The case is thus disposed of.

**Typed & Corrected by me**

Md. Hasan Zaman  
Senior Assistant Judge,  
Senior Assistant Judge, 2<sup>nd</sup>Court and  
Vested Property Return (Addl) Tribunal  
Patiya ,Chattogram

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